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PLATFORM TO PROTECT WHISTLEBLOWERS IN AFRICA

# WHISTLEBLOWERS IN TOGO:

Overview of the Legal Framework and  
Practices

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## Whistleblowers in Togo: Overview of the Legal Framework and Practices

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*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

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

Alliance-Togo - National Alliance of Consumers and Environment (Togo)

CENTIF - Financial Intelligence Unit

CPI - Corruption Perceptions Index

CSFPPP - Committee for Monitoring Price Fluctuations of Petroleum Products

CSO - Civil Society Organisation

ECOWAS - Economic Community of West African States

FATF - Financial Action Task Force

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

HAPLUCIA - High Authority for the Prevention and Fight against Corruption and Related Offences

HAAC - High Authority of Audiovisual Communication

NGO - Non-Governmental Organisation

OTR - Togolese Revenue Office

PPLAAF - Platform to Protect Whistleblowers in Africa

RAC-Togo - Togo Anti-Corruption Network

RSF - Reporters sans frontières

SRCIC - Central Service for Criminal Research and Investigations

UNCAC - United Nations Convention against Corruption

WAMU: West Africa Monetary Union

WAEMU - West African Economic and Monetary Union

- **Legal Sources**

[United Nations Convention against Corruption of 2005](#)

[Constitution](#)

[Law on the fight against corruption and related offences](#)

[Uniform law on the fight against money laundering and terrorism financing in the member states of the West African Monetary Union \(WAMU\)](#)

[Cybersecurity Law \(2018\)](#)

[Penal Code](#)

[Labour Code](#)

[Law on access to information](#)

[Law governing declarations of assets and liabilities of senior officials](#)

[Press and Communication Code](#)

- **Executive Summary**

Although Togo has ratified the [United Nations Convention against Corruption](#), which contains numerous provisions aimed at promoting the establishment of effective reporting tools, this country lacks any legal framework regarding the protection of whistleblowers.

The adoption of a new [Constitution](#) in 2019 and the [Declaration of assets and liabilities of high-level personalities and public officials](#) in 2020, coupled with the development of the National Anti-corruption Strategy, have been positive signals regarding good governance.

However, several challenges remain, such as ensuring freedom of expression, especially for journalists, the effective enforcement of existing national laws, overlapping responsibilities among government bodies, and limited implementation of ratified international standards. These elements can constitute obstacles to progress toward a democratic society.

## 1. ANALYSIS OF 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 Togo 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.

- **Absence of specific legislative protection for whistleblowers in Togo: Analysis of gaps and challenges**

Togo ratified the [United Nations Convention against Corruption](#) (UNCAC) in 2003, whose Articles 32 and 33, respectively, emphasise the need for effective protection against potential acts of retaliation or intimidation against witnesses, experts, or victims, as well as the importance of adopting an internal legal framework including appropriate measures to ensure this protection.

The Togolese [Constitution](#) provides for freedom of expression and dissemination of opinions. However, this freedom is exercised "within the limits defined by law" (Article 26), while Article 46 asserts the criminalisation of acts of embezzlement of public funds, corruption, and misappropriation; however, no provisions specifically related to whistleblowing are provided.

The Togolese [Labor Code](#) does not provide any protection for whistleblowers. The statement of legitimate reasons for dismissal in Article 77 does not clarify whether whistleblowing can be considered as such. Article 60 deems dismissals without legitimate reasons as "abusive," as well as dismissals motivated by the opinions of the worker. Furthermore, according to Article 184, labour inspectors are bound by professional secrecy, even after leaving their service. Thus, they must keep confidential any complaints reporting a defect in the facilities or a violation of legal or regulatory provisions.

The [Penal Code](#) contains no specific provisions for the protection of whistleblowers. Its Articles 357 and 358 indicate that the breach of professional secrecy is punishable by one to three years in prison and a fine of one to three million francs, but specifies that these penalties

do not apply to "cases where the law requires or authorises disclosure." However, Article 518 of the Penal Code states that "any person who, outside the cases where they are bound by professional secrecy, refuses to testify in court, is liable to a fine of one hundred thousand to one million CFA francs." The Code also punishes false accusations more severely (Article 364).

- **Limited protection of whistleblowers under the law establishing the High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA)**

[Law No. 2015-006 of July 28, 2015](#), establishing the HAPLUCIA, grants this authority the power "to collect any information concerning acts of corruption or other related offences and to transmit them, with discernment, to the competent judicial authorities, while maintaining the confidentiality, under penalty of criminal prosecution, of the identity of whistleblowers if they so request, while ensuring respect for the presumption of innocence" (Article 3). In other words, individuals have the possibility to inform HAPLUCIA about cases of corruption or related offences.

Article 3 also specifies that HAPLUCIA "ensures the protection of any person who, in good faith, reports to the competent authorities all facts concerning established offences." Although the law provides for protection, the procedures and modalities for its implementation are not explicitly defined.

Finally, the article specifies that "the confidentiality and anonymity of the whistleblower may not be guaranteed if it is a false accusation."

Although the term "whistleblower" is not explicitly used in this law, this provision may be applicable to an individual acting as a whistleblower.

- **Limited protection of witnesses under the law in fighting against money laundering and terrorist financing**

Article 95 of [Law No. 2018-004 on fighting against money laundering and terrorist financing](#) guarantees partial or total anonymisation of data concerning witnesses in cases of risk of "serious harm" or "endangerment" to them.

Article 97 of the same law recalls that no prosecution for breach of professional secrecy can be brought against persons who, in good faith, have transmitted information or made statements of suspicion provided for by Article 79 of this law or when they have communicated information to the National Financial Information Processing Unit (CENTIF), in application of Article 60.

## **1.2 Laws and Measures Related to Combating Financial Crime**

This section focuses on the measures taken by the Togolese government 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 Togo.

- **Fight against Corruption**

In 2022, the [Corruption Perception Index \(CPI\)](#), the leading global indicator of corruption in the public sector issued by Transparency International, ranked Togo 130th out of 180 with a score of 30/100.

The [Penal Code](#) dedicates a complete section to corruption in Articles 594 to 621. These provisions are designed to repress corruption involving national public officials, foreign public officials, and international civil servants. The Penal Code also penalises corruption in the private sector, as well as all offences assimilated to corruption, such as influence peddling, abuse of office, and illicit enrichment.

A civil society [report](#) prepared by the [National Alliance of Consumers and Environment \(ANCE-Togo\)](#) on the implementation of Chapters 2 and 4 of the UNCAC highlights the country's progress in terms of transparency in the management of public affairs but mainly underscores weaknesses in terms of performance, quality of public service, and the enforcement of sanctions for acts of corruption. The legal framework of Togo is considered in this report as "incomplete and non-harmonised" as it is characterised by "a lack of clarity and blatant overlaps" in the roles and responsibilities of each control body.

- **High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA)**

The establishment of the High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA) in 2015 via [Law No. 2015-006](#) constitutes the first step towards the establishment of an independent administrative institution responsible for promoting and strengthening the prevention and fight against corruption and related offences in administrations, public establishments, private companies, and non-governmental organisations.

Togo has gradually applied sanctions against perpetrators of corruption, prosecuting magistrates and convicting numerous officials for tax fraud. In this regard, in August 2019, [five agents of the Togolese Revenue Office](#) (OTR) were sentenced to 7 years' imprisonment and a fine of 17 billion CFA francs to be paid to the OTR as damages. In November 2019, [two judges were sanctioned](#) for corruption. In the same perspective, in 2020, 225 law enforcement and security agents (88 police officers and 137 gendarmes) were sanctioned by the government for lack of discipline, personal recklessness, negligence, desertion, theft, extortion, and corruption.

Great hopes are placed in HAPLUCIA, which is expected to undergo restructuring. On January 24, 2023, Judge [Aba Kimelabalou](#) was appointed to head HAPLUCIA. Aba Kimelabalou is a first-grade magistrate; he was the Director-General of the Intergovernmental Action Group against Money Laundering in West Africa ([GIABA](#)) and a judge at the [African Court on Human and Peoples' Rights](#).



- **Obligation to declare assets and National Strategy to fight against Corruption**

In 2020, Togo adopted [Organic Law 2020-003](#), establishing the conditions for declaring assets and liabilities of high-ranking officials, senior civil servants, and other public officials as an essential measure in preventing corruption and related offences. This law aims to "strengthen good governance, promote transparency in the exercise of public functions and duties, guarantee the integrity of state servants, fight against corruption and related offences, prevent illicit enrichment among high-ranking officials, senior civil servants, and public agents, and reinforce public trust in the institutions of the Republic, public administrations, and public authorities."

Article 3 provides that "the declaration of assets and liabilities of high-ranking officials, senior civil servants, and other public agents is made at the beginning and end of their mandates or functions. It must be renewed annually, on the anniversary date, between the beginning and end of the mandate or functions."

On October 13, 2022, Togo validated its [national strategy to fight against corruption and related offences](#). The development of this strategy lasted two years and was led by HAPLUCIA. The validation session was attended by Togolese Minister of Human Rights, Citizenship Training, and Relations with Republic Institutions, Christian Triuma. It is not available online at the date of publication of this report. Still, it is formulated around three axes: strengthening the legal and institutional framework for fighting against corruption, the need to mobilise all national actors in the fight against corruption, and strengthening integrity, transparency, and the quality of public administration.

- **Fight against Money Laundering and Terrorist Financing**

The fight against money laundering and terrorist financing has been further strengthened with the adoption of [Law 2018-004](#) (see below) on the fight against money laundering and terrorist financing in the member states of the West African Monetary Union (WAMU).

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.

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.

### **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.

- **Legal Framework Regarding Freedom of Expression and the Press**

Press offences have been decriminalised in Togo since 2004, and professional journalist organisations are empowered to mobilise and defend the press when it is under attack.

In Togo, the right to freedom of expression is protected by Article 19 of the [International Covenant on Civil and Political Rights](#) and Article 9 of the [African Charter on Human and Peoples' Rights](#), which Togo has ratified.

[The Press and Communication Code](#) guarantees the exercise of freedom of information and audiovisual press. However, the law specifies that this freedom must not constitute abuse. Therefore, the exercise of this freedom must not infringe on privacy and the right to the image of others, nor consist of the dissemination of defamatory, insulting, or outrageous statements, nor violate professional secrecy, trade secrets, and defence secrets that prohibit the publication and disclosure of certain information.

This law also restricts potential investigative subjects. Furthermore, it allows for heavy fines on journalists for insulting the President of the Republic, parliamentarians, and government members. Media reporting on corruption are regularly prosecuted for libel and are subject to criminal penalties and/or fines. Moreover, by excluding social networks from its scope of application (Article 3), the Press Code appears to be significantly incomplete.

Freedom of expression and the press are guaranteed by the [Constitution](#) in Articles 25 and 26, but these freedoms do not seem to be respected in practice. In this sense, the [cybersecurity law \(2018\)](#) restricts online freedom of expression and grants greater authority to the police to conduct electronic surveillance.

- **Repression and Imprisonment of Critical Journalists in Togo: A Hostile Climate for Press Freedom**

[L'Alternative and Fraternité](#), two newspapers critical of the government, were suspended in February 2021 for four months by the High Authority for Audiovisual Communication (HAAC). The sanction against L'Alternative followed a complaint from the Minister of Urban Development, Koffi Tsolenyanu, regarding an article alleging that he had falsified documents. In March 2020, this newspaper was suspended for two months following a complaint from the [former French ambassador to Togo, Marc Vizy](#). Fraternité was suspended in March 2020 for two months following an article denouncing the suspension of two other newspapers.

In the same year, 2021, [two journalists were imprisoned](#): (1) Ferdinand Ayité, editor-in-chief of L'Alternative, was placed in pre-trial detention after his hearing, for "defamation" (Article 290 of the Togolese Penal Code) and "outrage to authorities" (Article 490 of the Togolese Code of Criminal Procedure) held during an online broadcast, and (2) Joël Egah, editor of the weekly Fraternité participating in the same broadcast, was also incarcerated. Their statements about the Minister of Justice, Pius Agbétomey, and the Minister of Commerce, Kodjo Adedze, whom they allegedly mocked for their dual role as ministers and pastors in evangelical churches, were the cause.

[Reporters Sans Frontières](#) (RSF) strongly condemned these arrests as "illegal", "arbitrary", and "dangerous" and called for their immediate release. [Amnesty International](#) also denounced this arbitrary detention as "confirmation of the intention to silence dissenting

voices, an infringement of freedom of expression". Their request for provisional release was rejected on December 14, 2021, by the investigating judge. On [December 31, 2021](#), the request was finally accepted, subject to very strict judicial control. They are deprived of their passports and banned from leaving the territory pending their trial.

A third journalist, Isidore Kouwonou, was also questioned in this case and placed under judicial supervision. The lawyer for the three journalists, [Mr. Elom Kpade](#), denounced "the lack of legal basis, and a legal vacuum in this case".

In 2020, Ferdinand Ayité was prosecuted after denouncing [acts of corruption in the importation of oil into Togo](#). He was sued for libel by the coordinator of the Committee for Monitoring Fluctuations in Oil Prices (CSFPPP), revealing how officials of this structure responsible for negotiating oil imports into Togo allegedly managed to divert hundreds of millions of euros through an opaque tendering system, while Togo has had a [decree on the code of ethics and conduct for public procurement](#) since 2019. On November 4, 2020, the Lomé Court of First Instance fined investigative journalist Ferdinand Ayité and the newspaper he works for, L'Alternative, 2 million CFA francs after finding them [guilty of defamation under Articles 160 and 163 of the Press Code](#).

In January 2021, [Carlos Kétohou](#), journalist and editor of the Togolese weekly "Indépendant Express," was arrested by the Central Service for Criminal Investigations and Research (SRCIC) under the pretext of a summons. He was summoned following the publication of [an article](#) on the front page of his newspaper on December 29, 2021, entitled "End-of-year scoop: Women ministers arrested for stealing golden spoons," reporting on the theft of golden spoons by two Togolese Ministers during a reception.

In March 2023, [Ferdinand Ayité](#) went missing a few hours before being summoned by the gendarmerie. He was supposed to appear in court on March 8th before the Lomé Tribunal, as he has been under investigation since December 2021 for "outrage to authority" and "spreading false information on social media" following complaints from two ministers about statements made in a YouTube broadcast. He reportedly surfaced on his Facebook page on Wednesday, March 8, indicating that he would be "more or less safe from danger for now" and specifying that he would provide more details later.

- **Freedom House and RSF Rankings: Persistent Challenges for Press Freedom in Togo**

In [2023](#), Togo was designated as "partly free" in the report on press freedom published by [Freedom House](#) with a score of 42/100. According to Freedom House, Togo's many unfavourable factors include the lack of political independence of HAPLUCIA and the ineffective application of the legal framework regarding the conviction of officials for corruption. There is also a lack of transparency regarding state tenders.

In its World Press Freedom Index 2022, [Reporters Sans Frontières](#) (RSF) ranks Togo as the 100th country out of 180, a decline of 26 places compared to 2021. In [2023](#), RSF ranked Togo 70th, a significant improvement from 2022. Although the media landscape is pluralistic in Togo, RSF highlights the profound lack of diversity in the topics covered. The NGO specifies that the work of journalists is thus hindered "by pressures, prosecutions, and even sanctions imposed by the regulatory body (HAAC), which lacks independence". HAAC's repressive policy seems to be a significant obstacle to the culture of investigative journalism in Togo, which regularly faces sanctions.

In this regard, on February 3, 2023, the newspaper [Liberté](#) was suspended by HAAC for three months over an article dating back to September 2022 that contained inaccurate information, for which it apologised. RSF denounces a "procedural defect in a disproportionate decision and requests its cancellation".

The [bi-monthly Tamba](#) Express has also been reported to have been suspended for three months. Togolese journalists observe and are concerned about increasing suspensions in several newspapers and media outlets. The Togolese Press Employers' Association (PPT) considers these sanctions excessive and "appeals to the national and international public opinion about the great risks facing the critical Togolese press and reserves the right to take major actions, because, when silenced, the critical Togolese press is in danger of extinction".

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

This section 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, providing enhanced protection to whistleblowers and journalists who can rely on concrete facts when disclosing sensitive information.

- **The law on freedom of access to information and public documentation**

[Law No. 2016-006 of March 30, 2016, on freedom of access to information and public documentation](#), regulates the right to access information in Togo. Under this law, several government agencies publicise their activity reports and publish other laws, decrees, orders, and other administrative documents on various state web pages. However, information related to national security and defence, the secrecy of authorities' deliberations under the executive branch and the state's foreign policy, instructions pending before courts, health, privacy, or private interests are not communicated.

In this regard, Articles 50 and 51 of this law deal with the sanctions applicable in case of disclosure of non-communicable information. Article 50 states that "without prejudice to the sanctions incurred under other legal or regulatory provisions; any person using information in violation of the provisions of this law (...) is liable to a fine of - three hundred thousand (300,000) to one million (1,000,000) CFA francs when the information has been used for non-commercial purposes; - five hundred thousand (500,000) to two million (2,000,000) CFA francs when the information has been used for commercial purposes." In addition to the fine, the offender may be prohibited from using the information for a maximum period of two years or five years in case of recidivism.

Article 51 adds that "any employee of a public body who provides a requester with confidential or non-communicable information commits an offence and is liable to administrative sanctions without prejudice to other sanctions provided for by current legislation."

- **Cybersecurity Law**

Finally, according to [Amnesty International](#), on December 7, 2018, the Togolese National Assembly adopted a [cybersecurity law \(2018\)](#) that "strongly restricts freedom of expression."

It punishes, in particular, the dissemination of false information with a sentence of up to three years in prison for offences against public morality with a sentence of up to two years in prison, as well as the production, dissemination, or sharing of data that violate "order, public security or human dignity."

Furthermore, the law contains "vague provisions relating to terrorism and treason, which provide for heavy prison sentences of up to 20 years, and could easily be used against whistleblowers and other individuals denouncing human rights violations. It also grants additional powers to the police, particularly in terms of surveillance of communications or computer equipment, without adequate judicial control."

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

This section aims to list known and public cases of whistleblowers to assess the treatment afforded by whistleblowers in the country. There are no known cases of public whistleblowers in Togo.

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

This section focuses on 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 the fight against financial crime to facilitate whistleblowing**

As evidenced by Togo's current score in Transparency International's Corruption Perceptions Index, many weaknesses persist in the country. In this context, the environment is not conducive to whistleblowing, which requires citizens to trust their institutions and their ability to defend the public interest.

- To bolster this trust, several measures could be taken. The Togolese State could consider guaranteeing independence and strengthening the powers of HAPLUCIA. It would also be beneficial to enhance the effectiveness of existing measures to fight



against corruption, money laundering, terrorism financing, and illicit financial flows in order to promote an environment conducive to whistleblowing.

- **Establishment of a comprehensive and effective legal framework for whistleblower protection**

Although Togo has ratified the [United Nations Convention against Corruption](#), which contains many provisions aimed at promoting the establishment of effective reporting tools, this country has no legal framework for whistleblower protection.

- It would, therefore, be opportune for the country to comply with the commitments made under the UNCAC by introducing measures in its legislation to ensure the protection of whistleblowers against retaliation and intimidation, both in the public and private sectors, as well as immunity from criminal and/or civil proceedings.

#### **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.

The association "[Veille Citoyenne Togo](#)" was created in 2019 and is engaged in citizen monitoring of public policies impacting the lives of populations. This association promotes citizen oversight of public action (citizen monitoring of transparency in public procurement, promoting transparency in the national and local budgetary process, fighting against corruption and impunity, and denouncing cases of embezzlement and mismanagement of public resources).

"Veille Citoyenne Togo" also intervenes in advocacy, dialogue, and negotiation. The association regularly organises training sessions and awareness-raising workshops and facilitates thematic groups and citizen participation cells.

There is also the association "[RAC-Togo](#)," which was created in 2015. Its objectives include supporting the establishment and operationalisation of a platform of CSOs in the fight against

corruption. It also informs citizens and communities about the negative impacts of corruption on development. It also strengthens the capacities of various actors (public officials, private sector, and civil society organisations) on national and international anti-corruption instruments. The network also supports legal and institutional reforms in the fight against corruption and the enforcement of anti-corruption laws through investigative activities, operations/arrests, and legal and judicial assistance.



## Get In Touch



**Email Us**

[info@pplaaf.org](mailto:info@pplaaf.org)



**Website**

[www.pplaaf.org](http://www.pplaaf.org)



**Social Media**

[@pplaaf](https://www.instagram.com/pplaaf)