

STATUS OF IMPLEMENTATION OF THE ECOWAS PROTOCOL ON THE FIGHT AGAINST CORRUPTION

FINAL REPORT



20 YEARS LATER, WHERE DO WE STAND?

DELIVERING ON OUR PROMISES

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ACRONYMS AND ABBREVIATIONS

ACGMP	Authority for the Control of Large-Scale Projects and Public Procurement
AFC	African Finance Committee
AfDB	African Development Bank
AML/CFT	Anti-Money Laundering and Combating Terrorist Financing
ANAGRASC	Agency for the Recovery and Management of Seized and Confiscated Assets
ANAIP	National Authority for access to Public Information
ANCE	National Consumers and Environmental Alliance
ANLC	National Authority for the Fight against Corruption
ANRMP	National Public Procurement Regulatory Authority
APD	Public Development Aid
APEC	Asia-Pacific Economic Cooperation
APRM	African Peer Review Mechanism
ARAP	Autoridade Reguladora das Aquisições Públicas/Public Procurement Regulatory Authority
ARCOP	Public Procurement Regulatory Authority
ARMP	Public Procurement Regulatory Authority
ASCE-LC	Higher authority for state control and the fight against corruption
BCEAO	Central Bank of West African States
BEF	Economic and Financial Brigade
BNAF	National Anti-Fraud Brigade
BPP	Public Procurement Office
CAIDP	Commission for Access to Public Interest Information and Public Documents
CCSS	Committee of Chiefs of Security Services
CENTIF	National Financial Intelligence Processing Unit
CONAC	National Committee for the Coordination of Activities to Combat Money Laundering and the Financing of Terrorism
CoST	Infrastructure Transparency Initiative
CPI	Corruption Perception Index
CSM	High Council of the Judiciary
CSO	Civil Society Organisation
DCMP	Directorate of Public Procurement Control
ECOWARN	ECOWAS Early Warning and Response Network
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission of Nigeria
EIMS	ECOWAS Integrated Maritime Strategy
EITI	Extractive Industries Transparency Initiative
EOCO	Economic and Organised Crime Office
EU	European Union
FFI	Illicit Financial Flows
GAFI	Financial Action Task Force
GDP	Gross Domestic Product
GHANEPS	Ghana Electronics Procurement System



GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GIFT	Global Initiative for Fiscal Transparency
HABG	High Authority for Good Governance
HALCIA	High Authority for the Fight against Corruption and Assimilated Offences
HAPLUCIA	High Authority for the Prevention and Fight against Corruption and Related Offences
IAS	International Accounting Standards
IBP	International Budget Partnership
ICRC	Infrastructure Concession Regulatory Commission
IFRS	International Financial Reporting Standards
ILC	Anti-Corruption Institutions
IMF	International Monetary Fund
ISO 37001	Anti-Bribery Management System
ML/TF	Money Laundering/Terrorist Financing
NACAP	National Anti-Corruption Action Plan
NACIWA	Network of National Anti-Corruption Institutions in West Africa
NACS	National Anti-Corruption Action Strategy
NCP	New Criminal Code
NIS	National Integrity System
OCLEI	Central Office for the Fight against Illicit Enrichment
OECD	Organisation for Economic Co-operation and Development
OFNAC	National Office for the Fight against Fraud and Corruption
OGP	Open Government Partnership
OHADA	Organisation for the Harmonisation of Business Law in Africa
OHCS	Office of the Head of the Civil Service
PNF	National Financial Prosecutor's Office
RCCM	Trade and Personal Property Credit Register
SCA	Lightweight Accounting System
SFO	Serious Fraud Office
SME/SMI	Small and Medium Enterprises/Small and Medium Industries
SYCSOA	West African Accounting System
SYSCOHAD A	West African Accounting System
TI-S	Transparency International Secretariat
UNCAC	United Nations Convention against Corruption
UNCAC	Global Coalition for the United Nations Framework Convention against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
US	United States
WACAP	West African Network of Central Authorities and Prosecutors
WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
WAPCCO	West African Police Chiefs Committee
WAPIS	West Africa Police Information System



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The Economic Community of West African States (ECOWAS) Protocol on the fight against corruption was adopted during the session of the Authority of Heads of State and Government held in Dakar on 21st December 2001, in order to promote the strengthening and harmonisation of anti-corruption measures.

This report discusses the implementation of some of the provisions (articles) of the Protocol including preventive measures and asset recovery. The report is intended to serve as a regional advocacy tool to strengthen the Protocol and its implementation by States Parties. It highlights the progress made as well as the gaps in the implementation of the Protocol.

Scope. In this report, a particular attention is paid to the articles of the Protocol and to matters relating to anti-corruption policies and laws (Article 3(h)), anti-corruption agencies (Article 5(h)), public participation and access to information (Article 5(e) and (i)), transparent, efficient, open and fair procurement systems (Article 5(b)), asset disclosure (Article 5(g) and Article 6(3) a and b), and combating corruption in the private sector (Article 5 and Article 6(3) a and b), (Articles 5(b), disclosure of assets (Articles 5(g) and 6(3) a and b), combating corruption in the private sector (Articles 5 and 6), laundering of proceeds of corruption and similar criminal offences (Article 7), protection of whistleblowers (Articles 5(c), 8 and 9), and debt recovery (Article 13).

Format. First, the report outlines an executive summary, which includes the abridged results, findings and recommendations of the review process, as well as the implementation and enforcement of selected articles of the Protocol. Then, the implementation of the Protocol with a focus on some best practices and gaps identified. Finally, the report ends with recommendations for priority actions to improve the implementation of the Protocol.

Methodology. Several data collection tools were developed by Ebeh Kodjo Fabrice, PhD, international anti-corruption expert and director of the National Consumer and Environmental Alliance (ANCE), with the technical assistance of Transparency International Secretariat (TI-S) in Berlin and TI's national chapters and partner organisations in the Economic Community of West African States (ECOWAS). As there are no implementation guides for the Protocol, some international standards from the United Nations Convention against Corruption (UNCAC), the Organisation for Economic Co-operation and Development (OECD), etc. were used to assess progress made by states. The findings of this report were presented at a virtual workshop attended by heads of anti-corruption agencies, ECOWAS officials, TI national chapters and partner organisations.

The report was prepared using guidelines and reporting templates from the Global Coalition for the United Nations Framework Convention against Corruption (UNCAC Coalition) and TI and is intended to be used by civil society organisations (CSOs). These tools reflect and simplify the checklist developed for the assessment of UNCAC implementation and require relatively short assessments compared to the detailed formal self-assessment checklist. The reporting template includes a series of questions on the implementation of the Protocol and requires the identification of implementation best practices and gaps in order to make recommendations for improvement.



A. Implementation of the Protocol from a Legal and Practical Perspective

Adopted at the session of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) held in Dakar on 21st December 2001, and ratified by nine (09) countries, the protocol on the fight against corruption aims, among others, to promote the harmonisation and coordination of national anti-corruption laws and policies.

Twenty years on, it should be noted that there are some achievements regarding the legal and institutional framework of the fight against corruption in the ECOWAS region, but that these achievements risk being compromised by several threats or weaknesses.

1. Strengths and Achievements of the Anti-corruption Mechanism in the ECOWAS Region

- 15 out of 15 ECOWAS countries have revised their criminal codes in order to include corruption-related offences;
- 15 out of 15 countries have established anti-corruption institutions which are now functional;
- 15 out of 15 countries have also operationalised regulatory, oversight and procurement bodies;
- 5 out of 15 countries have passed and implemented a framework law on the prevention of corruption (Benin, Burkina, Côte d'Ivoire, Guinea Conakry, Nigeria);
- 7 out of 15 countries have adopted a national anti-corruption policy/strategy (Benin, Burkina Faso, Ghana, Niger, Nigeria, Sierra Leone, Senegal); the drafting process is ongoing in Côte d'Ivoire and Togo;
- 15 out of 15 countries have passed modern anti-money laundering and combating the financing of terrorism laws (Directive No. 02/2015/CM/UEMOA) or GIABA assistance in Anglophone countries;
- 8 out of 15 countries have harmonised standards on the transparency of public financial management (Directive No. 01/2009/CM/UEMOA); each of the Anglophone countries has similar standards that are not harmonised;
- 8 out of 15 countries also have harmonised standards on the transparency of public procurement and services (Directive No. 04/2005/CM/WAEMU); each of the Anglophone countries has similar standards that are not harmonised; Liberia also passed the Public Finance Management Act in 2009.
- 8 out of 15 countries have a regulation regarding the right of access to information considered as acceptable by The Right to Information Rating (Gambia, Liberia, Sierra Leone, Ghana, Nigeria, Guinea, Burkina Faso and Côte d'Ivoire);
- ECOWAS leaders have operationalised several bodies such as the Intergovernmental Action Group against Money Laundering in West Africa (GIABA); Network of National Anti-Corruption Institutions in West Africa (NACIWA); the West African Network of Central Authorities and Prosecutors (WACAP); and the West African Police Chiefs Committee (WAPCCO).

2. Weaknesses of the anti-corruption mechanism in the ECOWAS region

2.1. Weaknesses relating to the Protocol

- Lack of operationalisation of the Technical Anti-Corruption Commission (Article 19(1) of the Protocol);
- Lack of an innovative financing mechanism for the Protocol;
- Weakness of a regional and national whistleblowing mechanism;
- Weak harmonisation of standards in the absence of EU directives or regulations resulting in a variety of legislation in the countries (assets disclosure, access to information, whistleblower protection, anti-corruption agencies, etc);
- Lack of an effective reporting system.

2.2. Weaknesses of national systems

2.2.1. Legal and Institutional Weaknesses

- Weak anti-corruption institutional framework;
- Weak anti-corruption mechanism in the private sector;
- Low public participation in decision-making processes and low access to information by the public;
- Low quality and transparency of public services;
- Low level of digitalisation of public finance and procurement; the majority of states use traditional procurement procedures (except Nigeria and Ghana which are at the nascent stage of digital procurement);
- Existence of certain vulnerabilities in the fight against money laundering and terrorist financing and weak asset recovery systems;
- Weak enforcement of standards (laws and codes of conduct);
- Weak suppression and impunity of certain acts of corruption: some cases of corruption reported by whistleblowers are not prosecuted.

2.2.2. Weakness of anti-corruption agencies.

- Low level of independence of anti-corruption agencies;
- Lack of staff code of conduct in some anti-corruption agencies;
- Lack of or poor implementation of the special status in some anti-corruption agencies;
- No or clearly articulated investigative mandate in some agencies;
- Low financial autonomy of most Anti-corruption agencies;
- Low level of autonomy regarding the recruitment of staff for anti-corruption agencies (most of them are staffed by civil servants seconded from the civil service);
- Overlapping responsibilities and conflicts of competence between anti-corruption agencies;
- Lack of/weak specialised asset recovery institutions; low capacity of stakeholders; low level of information and poor implementation of recovery measures;



- Weak judicial systems (lack of law enforcement and corruption of some officials).

B. Recommendations for priority actions

➤ TO THE ECOWAS COMMISSION

1. Enhancing the effectiveness of the Protocol

1.1. Ensure that the Technical Anti-Corruption Commission is operational

In accordance with Article 19(1) of the Protocol, the Technical Anti-Corruption Commission should be set up and be operational, in order to, among other things, supervise the implementation of the Protocol at both national and regional levels.

1.2. Ensure that the Periodic Reporting system is operational

In order to ensure effective and efficient implementation of the Protocol, Member States shall agree on a timeline for the periodic evaluation and reporting of measures adopted and challenges faced in its implementation.

1.3. Establish a Funding Mechanism for the Protocol

ECOWAS Member States should consider a specific funding mechanism for the Protocol to ensure its effectiveness and most importantly to ensure that they can provide the necessary technical assistance to States for the smooth implementation of the Protocol; similar to the operational arrangements of the ECOWAS Mechanism for Conflict Prevention and Management¹.

1.4. Enhance the implementation of the Protocol through Community Legal

Acts.

ECOWAS should enhance the harmonisation of systems and the effectiveness of the Protocol by adopting several community legal instruments (directives, decisions, regulations or other implementing measures) to support several provisions, including whistleblower protection; transparency of lobbying activities; assets disclosure; public participation and access to information; budgetary/public finance transparency; public procurement; codes of ethics and professional conduct, etc.

Strengthen the regional and international cooperation in debt collection.

➤ TO THE INTERGOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA (GIABA)

2. Strengthening Anti-Money Laundering and Counter Terrorist Financing Measures

¹ Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Abuja, December 1999), <https://www.oecd.org/fr/csao/publications/39466688.pdf> (03.11.21)



- ✓ Strengthen the process of harmonisation of Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) legislation in the region;
- ✓ Build the capacity of stakeholders on AML/CFT instruments and best practices in the region;
- ✓ Strengthen the compliance monitoring system for reporting entities and cross-border movements of cash and bearer negotiable instruments.

➤ **TO ECOWAS MEMBER STATES**

3. Strengthening the regional institutional framework and national anti-corruption frameworks

- Create/strengthen and operationalise Higher Administrative Control Authorities in countries with legal, administrative and financial autonomy;
- Create and operationalise in each State Party a National Financial Prosecutor's Office (PNF), specialised in the prosecution of acts of corruption;
- Create/strengthen and operationalise in each State Party an Economic and Financial Brigade (BEF) with units specialised in new economic and financial offences and with extended competences to these new forms of economic and financial crime;
- Create/strengthen and operationalise in each State Party an authority for access to public information and documentation;
- Create/strengthen and operationalise in each State Party the High Court of Justice, empowered to hear cases of corruption of senior State officials;
- Strengthen the High Council of the Judiciary (CSM) to be more effective in ensuring the integrity of the magistrates;
- Create/strengthen the framework for dialogue between national and regional anti-corruption stakeholders.

4. Enhancing Public Participation and Access to Information

- Strengthen/adopt and implement processes that enable citizens, especially vulnerable groups, to actively participate in the fight against corruption, in development planning and policymaking (agoras, public consultations, state-civil society consultation frameworks, etc.)²;
- Strengthen civic education about the culture of reporting acts of corruption;

²Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Abuja, December 1999),
https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Rapport_sur_la_gouvernance_en_Afrique%20IV.pdf

- Strengthen open government initiatives by joining several institutions working in this field (Open Government Partnership)³;
- Strengthen adherence to and implementation of Infrastructure Transparency Initiative (CoST)⁴;
- Strengthen adherence to and implementation of the Global Initiative for Fiscal Transparency (GIFT) standards⁵ ;
- Ensure that bodies responsible for providing access to information as well as appropriate monitoring, sanctions and evaluation mechanisms are effective.

5. Strengthening the fight against corruption in the private sector

- Support the adoption, dissemination and implementation of Codes of Conduct and Covenants of Integrity in Private Companies or the Business Principles of Transparency International for Countering Bribery (August 2004);
- Adopt a law to strengthen internal control in private companies;
- Support companies to adhere to the 10th Principle of the United Nations Global Compact-2004⁶;
- Support private companies to adhere to the ISO37001 or Anti-Corruption Management System certification⁷.

6. Enhancing the transparency of public services and finance through digitalisation

- ✓ Strengthen digital solutions (GovTech) in public finance management, including both (i) strengthening the digitalisation of public revenues and grants and (ii) strengthening the digitalisation of public expenditure management;
- ✓ Strengthen the governance of public companies through digitalisation;
- ✓ Strengthen the governance of the civil service through digitalisation;
- ✓ strengthen the governance of the judicial sector through digitalisation;

³ Open Government Partnership, <https://www.opengovpartnership.org/policy-areas/>

⁴ Infrastructure Transparency Initiative (CoST), https://infrastructuretransparency.org/wp-content/uploads/2018/06/14_CoST_Summary_French_Proof_2.pdf

⁵ Global Initiative for Fiscal Transparency <https://www.fiscaltransparency.net/public-participation-principles-and-guide/>

⁶ UN Global Compact (2004), <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10>

⁷ ISO37001 or Anti-Bribery Management System Standard, <https://www.bsigroup.com/fr-FR/ISO-37001--Systeme-de-Management-Anti-Corruption/#:~:text=L%E2%80%99ISO37001%20est%20la%20nouvelle%20norme%20internationale%20con%C3%A7ue%20pour%20la%20corruption.%20Voir%20toutes%20nos%20formations%20ISO37001%20%E>

7. Enhancing transparency in public procurement

- Strengthen the digitalisation of public procurement/electronic procurement;
- Strengthen open contracting measures: publish and update all contracts and subcontracts; make payment information public;
- Strengthen the capacity of public procurement practitioners, especially the weak capacity of procurement bodies at sectoral, deconcentrated and decentralised levels as well as at service providers' level;
- Strengthen the legal and institutional framework for public procurement: shorten procurement timeframes, incorporate explicit provisions on conflict of interest, corruption and fraud into public procurement legislation and contracts;

8. Strengthening anti-money laundering measures

- ✓ Strengthen the implementation of regulations on cash transactions in the ECOWAS region;
- ✓ Strengthen the control of cross-border movements of cash and bearer negotiable instruments within the region;
- ✓ Strengthen the regulation and control of Illicit Financial Flows (IFF);
- ✓ Strengthen the control of currency movements in the region;
- ✓ Establish and maintain beneficial ownership registers.

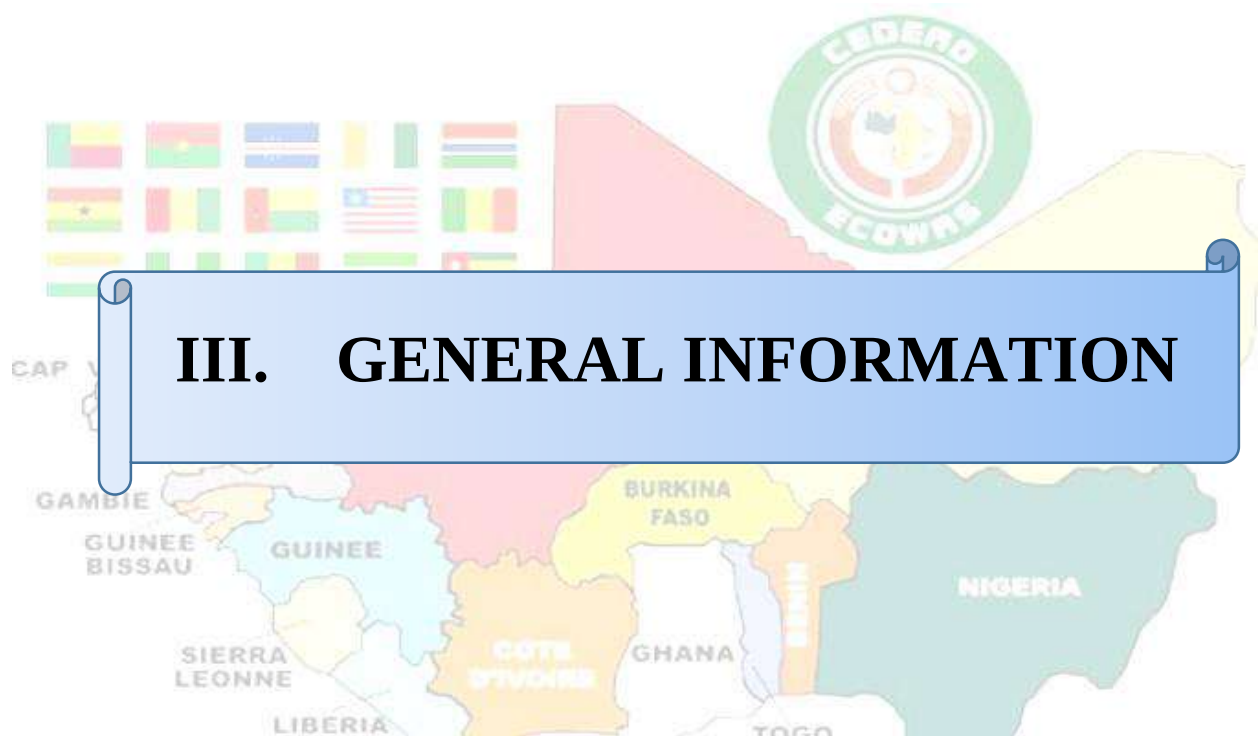
9. Strengthening asset recovery systems

- ✓ Create/strengthen and ensure that agencies in charge of debt and asset recovery comply with international standards (they should have legal, administrative and financial autonomy and not be subordinated to any ministry);
- ✓ Increase the level of information provided to stakeholders on the challenges of transnational corruption;
- ✓ Provide asset recovery institutions with technical, human and financial resources;
- ✓ Strengthen regional and international cooperation in debt collection.

10. Strengthening the enforcement of laws

- Strengthen the enforcement of sanctions against acts of corruption;
- Strengthen fairness and justice in the treatment of citizens' cases;
- Increase the prosecution of corruption.

Please see Annexe 1: Country Implementation Rating Table.



1.1. Magnitude of corruption

Corruption is one of the global scourges that ruins the economies of states, especially those in developing countries. Overall, it is estimated that each year the cost of corruption amounts to more than 10% of global Gross Domestic Product (GDP). According to the United Nations Development Programme (UNDP), it is estimated that nearly US\$2 billion is paid in bribes each year and that US\$2.6 trillion, or more than 5% of global GDP, is embezzled⁸. The UNDP adds that in developing countries, the total amount of funds diverted through corruption is 10 times higher than the amount of official development assistance (ODA).

The World Bank reveals that corruption reduces growth rates by 1% per year. An IMF study revealed that investments in countries where corruption is widespread are 5% lower than those in less corrupt countries⁹.

According to the Joint OECD/ADB Anti-bribery and Business Integrity Initiative for Africa (2011), corruption costs Africa US\$148 billion per year, while the development aid it receives per year amounts to US\$146 billion, representing 25% of Africa's GDP¹⁰.

Mindful of the nefarious consequences of corruption on the economic and social development of the sub-region, the leaders of the Economic Community of West African States (ECOWAS) adopted at the session of the Authority of Heads of State and Government held in Dakar on 21st December 2001, the Protocol on the fight against corruption¹¹.

This EU legal instrument requires the harmonisation of national anti-corruption laws, the strengthening of preventive measures and effective proportional and dissuasive sanctions and the creation of a framework for sub-regional cooperation in combating corruption.



⁸ UNDP - Primer on Corruption and Development, [https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/Primer%20on%20Corruption%20and%20Development_2008_FRANCAIS.pdf\(p.10\)](https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/Primer%20on%20Corruption%20and%20Development_2008_FRANCAIS.pdf(p.10))

⁹ UNODC, Corruption and Development (2013), https://www.unodc.org/documents/lpo-brazil/Topics_aids/Publicacoes/corr14_fs_DEVELOPMENT_FR_PRINT.pdf

¹⁰ Stocktaking of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries, OECD-AfDB joint initiative to support business integrity and anti-bribery efforts in Africa, <https://www.oecd.org/daf/anti-bribery/Stocktaking%20of%20business%20integrity%20and%20Anti-bribery%20Legislation,%20Policies%20and%20Practices%20in%20Twenty%20African%20Countries.pdf>

¹¹ ECOWAS Protocol on the fight against corruption, cited above, https://demarchesadministratives.gouv.ml/files/upload/justice/Protocole_afrique_corruption.pdf

Table 1: Comparative Table of the Corruption Perception Index (CPI) in the fifteen ECOWAS Member States FROM 2015 TO 2020

	2015		2016		2017		2018		2019		2020	
	Score /100	Global Ranking	Score /100	Global Ranking	Score /100	Global Ranking	Score /100	Global Ranking	Score /100	Global Ranking	Score /100	Global Ranking
BENIN	28	110	36	95	39	85	40	85	41	80	41	83
BURKINA FASO	31	98	42	72	42	74	41	78	40	85	40	86
CAPE VERDE	51	45	59	38	55	48	57	45	58	41	58	41
CÔTE D'IVOIRE	22	146	34	108	36	103	35	105	35	106	36	104
GAMBIA	32	91	38	87	30	130	37	93	37	96	37	102
GHANA	41	62	43	70	40	81	41	78	41	80	43	75
GUINEA	20	164	27	142	27	148	28	138	29	130	28	137
GUINEA BISSAU	21	154	16	168	17	171	16	172	18	168	19	165
LIBERIA	33	87	37	90	31	122	32	120	28	137	28	137
MALI	27	116	32	116	31	122	32	120	29	130	30	129
NIGER	26	123	35	101	33	112	34	114	32	120	32	123
NIGERIA	24	134	28	136	27	148	27	144	26	146	25	149
SENEGAL	29	105	64	45	45	66	45	67	45	66	45	67
SIERRA LEONE	24	134	30	123	30	130	30	129	33	119	33	117
TOGO	24	134	32	116	32	117	30	129	29	130	29	134

Sources: Transparency International, Corruption Perception Index

1.2. Regarding the ECOWAS Protocol on the fight against corruption

3.2.1. Background to the Protocol

- On 10th December 1999 in Lomé, the ECOWAS member States adopted the **Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security** to address the community's concern to ensure security, peace and stability in African societies.¹²

✓ Article 48 of this Protocol provides: "To eradicate corruption within their territories and in the sub-region, ECOWAS and its Member States shall promote transparency, accountability and good governance".

✓ L'Article 49 of this Protocol provides: "The ECOWAS Secretariat and Member States shall adopt strategies for combatting the problem of money laundering, by extending the scope of offences, enabling the confiscation of laundered proceeds and illicit funds and easing bank secrecy laws within and outside the sub-region".

- In 2000, in Dakar, the **Protocol A/SP1/12/01 on Democracy and Good Governance** which is supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security was adopted¹³ which complements the 1999 protocol by establishing principles of convergence concerning issues such as the prevention of internal crises, democracy and good governance, the rule of law, and human rights.

This Protocol reaffirms several principles of good governance and contains strong commitments, including:

- ✓ separation of powers - the Executive, Legislative and Judiciary; empowerment and strengthening of parliaments and guarantee of parliamentary immunity (Article 1, Paragraph (a));
- ✓ fight corruption and manage national resources in a transparent manner, ensuring that they are equitably distributed;
- ✓ establish appropriate mechanisms to address issues of corruption within the Member States and at the Community level; (Article 38.)

¹² The Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security to address the community's concern to ensure security, peace and stability in African societies, ECOWAS (1999), <https://www.droitafricain.net/files/Protocole-du-10-decembre-1999-relatif-au-mecanisme-de-prevention,-de-gestion,-de-reglement-des-conflits,-de-maintien-de-la-paix-et-de-la-securite.pdf>

¹³ Protocol A/SP1/12/01 on Democracy and Good Governance which is supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (2001), <http://ddata.over-blog.com/xxxyy/1/35/48/78/International/CEDEAO-Protocole-bonnegouvernance-democratie.pdf>

- *On 21st December 2001, the ECOWAS Authority of Heads of State and Government adopted the Protocol on the Fight against Corruption in Dakar¹⁴.*

3.2.2. Overview of the Protocol

The aim of the ECOWAS Protocol on the fight against corruption is to strengthen effective mechanisms to prevent, suppress and eradicate corruption and the harmonisation of national anticorruption laws.

The preventive measures recommended include, among others, transparency of recruitment systems; disclosure of assets by public officials; establishment of codes of conduct; good management of public finances, transparency and efficiency of public procurement; establishment of anti-corruption bodies; protection of whistleblowers; participation of civil society; fight against corruption in the private sector, etc.

The Protocol also criminalises active and passive corruption, money laundering, illicit enrichment, trading in influence, misappropriation of assets and provides a framework for cooperation between Member States.

3.2.3 The new regime of ECOWAS community acts, an opportunity for the fight against corruption

Under the new legal regime, the principle of supranational becomes more pre-eminent and there is now a de-emphasis on the adoption of Conventions and Protocols.

The Council of Ministers issues regulations and directives and takes decisions and recommendations that are supplementary to the treaties. Council acts are binding on the Member States and the Community institutions¹⁵.

- **Regulations** have general application, and all their provisions are enforceable and directly applicable in Member States and institutions of the Community;
- **Decisions** are also enforceable in Member States;
- **Directives** and their objectives are binding on all Member States. The modalities for attaining such objectives are left to the discretion of States,
- The **Commission** adopts Rules for the implementation of Acts enacted by the Council. These rules have the same legal force as Acts enacted by the Council.

¹⁴ ECOWAS 2001 Protocol A/P3/12/01 on the fight against corruption, ECOWAS (2001), https://demarchesadministratives.gouv.ml/files/upload/justice/Protocole_afrique_corruption.pdf

¹⁵ ECOWAS, New regime for community acts (last visit, 03.11.2021), <https://www.ecowas.int/ecowas-law/regulations-directives-and-other-acts/>

3.2.4. Table 2: Ratification Status ¹⁶

Country	Date of ratification	Ratification Act if available
BENIN	01/12/05	Law No. 2003-12 of 8 th July 2003 on the authorisation of the ratification of the ECOWAS Protocol A/P3/12/01 on the fight against corruption ¹⁷
BURKINA FASO	10/08/06	Law of 21 st April 2006 on "the authorisation of the ratification of the Protocol A/P3/12/01 on corruption adopted on 21 st December 2001 in Dakar (Senegal)" ¹⁸
CAPE VERDE	XXX	
COTE D'IVOIRE		
GAMBIA	XXX	
GHANA	18/10/02	
GUINEA		
GUINEA-BISSAU	XXX	
LIBERIA	XXX	
MALI	16/05/03	
NIGER	22/05/06	Law 2006-10 of 22 nd May 2006 on the "authorisation of the ratification of Protocol A/P3/12/01 on corruption adopted on 21 st December 2001 in Dakar (Senegal)" ¹⁹
NIGERIA	23/08/02	
SENEGAL	26/06/2015	Law No. 2015-16 of 6 th July 2015 authorising the President of the Republic to ratify Protocol A/P3/12/01 on the fight against corruption adopted in Dakar on 21 st December 2001 ²⁰
SIERRA LEONE	10/08/04	
TOGO	14/09/09	Law No. 2009-005 of 4 th May 2009 on the ratification of the Protocol A/P3/12/01 on the fight against corruption signed in Dakar on 21 st December 2001 ²¹

In accordance with Article 22, the Protocol entered into force in 2015, fourteen years after its adoption, with Senegal becoming the ninth Signatory State to ratify the Protocol.

¹⁶ ECOWAS, Annual Report 2015, https://www.ecowas.int/wp-content/uploads/2017/11/Annexes_2015-Annual-Report_English.pdf

¹⁷ Law 2006-10 of 22nd May 2006 on the "authorisation of the ratification of Protocol A/P3/12/01, https://assemblee-nationale.bj/index.php/liens/archives/4eme_legislature/

¹⁸ Law of 21st April 2006 on "the authorisation of the ratification of the Protocol A/P3/12/01 on corruption, <https://lefaso.net/spip.php?article13620>

¹⁹ Law 2006-10 of 22nd May 2006 on the "authorisation of the ratification of Protocol A/P3/12/01 on corruption, <https://halcia.ne/protocol-cedeao/#:~:text=Le%20Protocole%20sur%20la%20lutte%20contre%20la%20corruption,Niger%20suivant%20loi%202006-10%20du%2022%20mai%202006>

²⁰ Law No. 2015-16 of 6th July 2015 authorising the President of the Republic to ratify Protocol A/P3/12/01 on the fight against corruption adopted in Dakar on 21st December 2001, <http://www.jo.gouv.sn/spip.php?article10406#:~:text=Loi%20n%C2%B0%202015-16%20du%2006%20juillet%202015%20autorisant,corruption%20adopt%C3%A9%20%C3%A0%20Dakar%2C%20le%2021%20d%C3%A9cembre%202001.>

²¹ Law No. 2009-005 of 4th May 2009 on the ratification of the Protocol A/P3/12/01 on the fight against corruption, J.O.R.T. of 20th June 2005 p. 2

3.3. Regional Legal and Institutional Framework for the Fight against Corruption

3.3.1. Regional Legal Framework for the Fight against Corruption

The relevant ECOWAS instruments relating to the prevention and fight against corruption are:

- ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials²²;
- Protocol A/P.1/01/06 Establishing an ECOWAS Criminal. Intelligence And Investigation Bureau.
- 2001 Protocol on Democracy and Good Governance (A/SP1/12/01) Supplementary to the Protocol relating to the Mechanism for Conflict Prevention Management, Resolution, Peacekeeping and Security;
- 2001 ECOWAS Protocol A/P3/12/01 on the fight against Corruption;
- 1999 Protocol A/AP1/12/99 relating to the Mechanism for Conflict Prevention, Management and Resolution, and Peacekeeping and Security;
- 1994 ECOWAS Convention A/P1/8/94 on Extradition;
- ECOWAS Convention A/P1/7/92 on Mutual Judicial Assistance in Criminal Matters;
- 1982 Convention A/P5/5/82 on Mutual Administrative Assistance in Customs Matters
- 1981 Protocol A/SP3/5/81 on Mutual Assistance on Defence Matters;
- 1978 Protocol on Non-Aggression; and the
- 1977 Framework Agreement of the Protocol on Non-Aggression and Assistance in Defence Matters;
- Directive C/DIR. 1/08/11 on Fighting Cyber Crime within ECOWAS of 19th August 2011.

In addition to these ECOWAS instruments, there are some relevant directives of the West African Economic and Monetary Union (WAEMU), which contribute to the fight against corruption and to good economic governance; they include the following:

- ✓ Directive No. 01/2002/CM/UEMOA relating to transparency in financial relations between member States and public enterprises and between member States and international and foreign organisations²³ ;
- ✓ Directive No. 07/2002/CM/UEMOA on the fight against money laundering within the Member States of the West African Economic and Monetary Union²⁴;

²² ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, https://bibliomines.org/wp-content/uploads/Convention_de_la_CEEAO_sur_les_armes_legeres_et_de_petit_calibre_leurs_munitions_et_autres_materiels_connexes.pdf

²³ Directive No. 01/2002/CM/UEMOA relating to transparency in financial relations between member States and public enterprises and between member States and international and foreign organisations, http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_directive_01_2002_cm.pdf

²⁴ Directive No. 07/2002/CM/UEMOA on the fight against money laundering within the Member States of the West African Economic and Monetary Union, http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_directive_07_2002_cm.pdf

- ✓ Directive No. 08-2002-CM-UEMOA on measures to promote banking and use of cashless payments²⁵;
- ✓ Directive No. 04/2005/CM/UEMOA on procedures for the award, execution and settlement of public contracts and public service delegations in the West African Economic and Monetary Union²⁶;
- ✓ Directive No. 05/2005/CM/UEMOA of 9th December 2005 relating to controlling and regulating public procurement and public service delegations in the West African Economic and Monetary Union²⁷;
- ✓ Directive No. 01/2009/CM/UEMOA on the Code of transparency in the management of public finance within WAEMU²⁸;
- ✓ Directive No. 04/2009/CM/UEMOA establishing a single window for filing financial statements in the Member States of the West African Economic and Monetary Union (WAEMU)²⁹;
- ✓ Directive No. 06/2009/CM/UEMOA on Finance laws in WAEMU³⁰;
- ✓ Directive No. 07/2009/CM/UEMOA RGCP on the General Regulations of Public Accounting within WAEMU³¹;
- ✓ Directive No. 08/2009/CM/UEMOA on the State's budgetary nomenclature within WAEMU³²;
- ✓ Directive No. 02/2015/CM/UEMOA on the fight against money laundering and terrorist financing in WEAMU Member States³³.
- ✓ BCEAO Instruction No. 01/2003/SP on the promotion of the cashless payment methods³⁴;
- ✓ BCEAO Instruction No. 008-05-2015 governing the conditions of exercise of the activities of electronic money issuers and the establishment of efficient and modern payment systems for WAEMU Member States³⁵.

²⁵ Directive No. 08-2002-CM-UEMOA on measures to promote banking and use of cashless payments, http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_directive_08_2002_cm.pdf

²⁶ Directive No. 04/2005/CM/UEMOA on procedures for the award, execution and settlement of public contracts and public service delegations in the West African Economic and Monetary Union, http://www.uemoa.int/sites/default/files/bibliotheque/directive_04_2005_cm_uemoa.pdf

²⁷ Directive No 05/2005/CM/UEMOA of 09th December 2005 Controlling and regulating public procurement and public service delegations in the West African Economic and Monetary Union ; http://www.uemoa.int/sites/default/files/bibliotheque/directive_05_2005_cm_uemoa.pdf

²⁸ Directive No. 01/2009/CM/UEMOA on the Code of. Transparency in the management of public finances within WAEMU; http://www.uemoa.int/sites/default/files/bibliotheque/directive_01_2009_cm_uemoa.pdf

²⁹ Directive No.04/2009/CM/UEMOA instituant un guichet unique de dépôt des états financiers dans les États membres de l'Union Économique et monétaire Ouest-africaines (UEMOA) ; http://www.uemoa.int/sites/default/files/bibliotheque/directive_04_2009_cm_uemoa.pdf

³⁰ Directive No.06/2009/CM/UEMOA portant lois de finances au sein de l'UEMOA ; <http://www.droit-afrique.com/upload/doc/uemoa/UEMOA-Directive-2009-06-lois-de-finances.pdf>

³¹ Directive No.07/2009/CM/UEMOA portant règlement général sur la comptabilité publique au sein de l'UEMOA ; <http://www.droit-afrique.com/upload/doc/uemoa/UEMOA-Directive-2009-07-reglement-comptabilite-publique.pdf>

³² Directive No.08/2009/CM/UEMOA portant nomenclature budgétaire de l'État au sein de l'UEMOA ; <http://www.droit-afrique.com/upload/doc/uemoa/UEMOA-Directive-2009-08-nomenclature-budget-Etat.pdf>

³³ Directive No. 02/2015/CM/UEMOA on anti-money laundering and counter terrorism financing within UEMOA Member States. ; https://www.bceao.int/sites/default/files/2017-11/directive_no02_2015_cm_uemoa_lbc_ft-2.pdf

³⁴ BCEAO Instruction No. 01/2003/SP on the promotion of the cashless payment methods; https://www.bceao.int/sites/default/files/inline-files/chapitre_5_-_reglementation_relative_aux_systemes_et_moyens_de_paiement.pdf

³⁵ BCEAO Instruction No. 008-05-2015 governing the conditions of exercise of the activities of electronic money issuers and the establishment of efficient and modern payment systems for WAEMU Member States; https://www.bceao.int/sites/default/files/2017-11/instruction_no008_05_2015_intranet.pdf

In addition to these legally binding measures, ECOWAS member states have also adopted several political declarations related to the fight against corruption:

- Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa, adopted in Abuja, Nigeria, in December 2008³⁶ ;
- The Bamako Declaration on Impunity, Justice and Human Rights (4th December 2011)³⁷ ;
- ECOWAS Political Declaration and Common Position against Terrorism (February 2013)³⁸;
- Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa (December 2008)³⁹;
- The Plan of Action on Conflict Prevention (January 2019) ⁴⁰
- ECOWAS Conflict Prevention Framework (ECPF)⁴¹, 2008
- The new ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003) ⁴²
- The Action Plan to Address Illicit Drug Trafficking, Organised Crime and Drug Abuse in West Africa (2016 - 2020)⁴³
- ECOWAS New Sahel Strategy (27th February 2019)
- ECOWAS Integrated Maritime Strategy (EIMS)⁴⁴
- The Policy Framework for Security Sector Reform and Governance (4th June 2016)⁴⁵.

3.3.2. Anti-corruption regional institutional framework

According to Article 6(1) of the revised ECOWAS Treaty, the institutions of the Community are:

- **The Authority of Heads of State and Government:** The Authority shall act by decisions (Article 9 (1));
- **The Council of Ministers:** The Council shall act by regulations (Article 12(1);

³⁶ Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa, adopted in Abuja, Nigeria, in December 2008

³⁷ The Bamako Declaration on Impunity, Justice and Human Rights (4th December 2011), https://www.unodc.org/documents/westandcentralafrica/final_e-book_FRENCH.pdf
https://unowa.unmissions.org/sites/default/files/Declaration%20de%20Bamako%20FR_rev.pdf

³⁸ ECOWAS Political Declaration and Common Position against Terrorism (February 2013) ; https://www.edup.ecowas.int/wp-content/uploads/2016/11/Ecowas-CT-strategy_FRENCH_Published.pdf

³⁹ Political Declaration on the Prevention of Drug Abuse, Illicit Drug Trafficking and Organized Crimes in West Africa (December 2008); <https://edup.ecowas.int/allevants/categories/key-resources/political-declaration/>

⁴⁰ The Plan of Action on Conflict Prevention; https://old.ecowas.int/publications/en/framework/ECPF_final.pdf

⁴¹ ECOWAS Conflict Prevention Framework (ECPF), 2008 ; <https://www.ceja.ch/images/CEJA/DOCS/Bibliotheque/Legislation/Africaine/Textes%20Regionaux/DD/DD4.pdf>

⁴² The new ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003) ; https://www.unodc.org/documents/treaties/trafficking/Minimum_Plano_CEDEAO.pdf

⁴³ The Action Plan to Address Illicit Drug Trafficking, Organised Crime and Drug Abuse in West Africa ; <https://edup.ecowas.int/allevants/categories/key-resources/regional-action-plan/>

⁴⁴ ECOWAS Integrated Maritime Strategy; <https://edup.ecowas.int/allevants/categories/key-resources/eims/>

⁴⁵ The Policy Framework for Security Sector Reform and Governance (04 juin 2016) ; <https://midwa.org/pt/wp-content/uploads/2020/07/ECOWAS-POLICY-FRAMEWORK-FOR-SECURITY-SECTOR-REFORM-AND-GOVERNANCE.pdf>

- **The Community Parliament:** The legislative arm of the Community is the Community Parliament headed by the Speaker of the Parliament. The administrative functions of the Parliament are directed by the Secretary General of the Parliament. Pending elections by direct universal suffrage in future, parliamentarians are seconded by national Parliaments to the Community Parliament for a period of four years. (Article 13) ;
- **The Community Court of Justice:** Judgments of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies (Article 15(4));
- **The Commission:** It is the executive arm of the ECOWAS and the engine room of all its programmes, projects and activities. This administrative instrument was transformed from an Executive Secretariat to a Commission in 2007;
- **Specialized Technical Commissions** Each Commission shall, within its field of competence: a) prepare Community projects and programmes and submit them for the consideration of Council through the Executive Secretary, either on its own initiative or at the request of Council or the Executive Secretary; b) ensure the harmonisation and co-ordination of projects and programmes of the Community; c) monitor and facilitate the application of the provisions of this Treaty and related Protocols pertaining to its area of responsibility; d) carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Treaty. (Article 23).

Apart from these statutory bodies, several other bodies that are directly or indirectly involved in the fight against corruption have been set up by ECOWAS leaders. They include:

- ✓ **ECOWAS Committee of Chiefs Security Services (CCSS)⁴⁶:** The CCSS “review reports prepared by the ECOWAS Commission on the state of regional security and makes recommendations to the appropriate ECOWAS decision-making bodies”. It makes recommendations on how to strengthen cooperation between security services at the regional level in order to fight more effectively against the threat of cross-border criminality’.
- ✓ **Warning and Response Network (ECOWARN):** Pursuant to Chapter IV of the 1999 protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping and security, a sub-regional peace and security observation system known as the ECOWAS Warning and Response Network (ECOWARN) has been established. ECOWARN is operated by the ECOWAS Early Warning Department⁴⁷.
- ✓ **Inter-Governmental Action Group against Money Laundering in West Africa (GIABA):** GIABA is a specialised institution of ECOWAS that is responsible for strengthening the capacity of member states towards the prevention and control of money laundering and terrorist financing in West Africa (2000). It regularly reviews and conducts threat and

⁴⁶ ECOWAS Committee of Chiefs Security Services (CCSS) ; <https://www.ouestaf.com/insecurite-transfrontaliere-les-pays-de-la-cedeao-annoncent-un-comite-de-lutte/>

⁴⁷ Warning and Response Network. Operated by the ECOWAS Early Warning Department; <https://www.ecowarn.org/>

vulnerability assessments and makes recommendations on measures to combat terrorist financing in West Africa⁴⁸.

- ✓ **Network of National Anti-Corruption Institutions in West Africa (NACIWA)**⁴⁹: established in 2010 to promote coordination and cooperation among institutions established to combat corruption within the West African region.
- ✓ **West African Network of Central Authorities and Prosecutors (WACAP)**⁵⁰.
- ✓ **West African Police Chiefs Committee (WAPCCO)**⁵¹ /
- ✓ **West African Police Information System (WAPIS)**, created on 21st September 2015⁵²
- ✓ **ECOWAS Inter-Ministerial Drug Coordinating Committee.**
- ✓ **Interpol.**



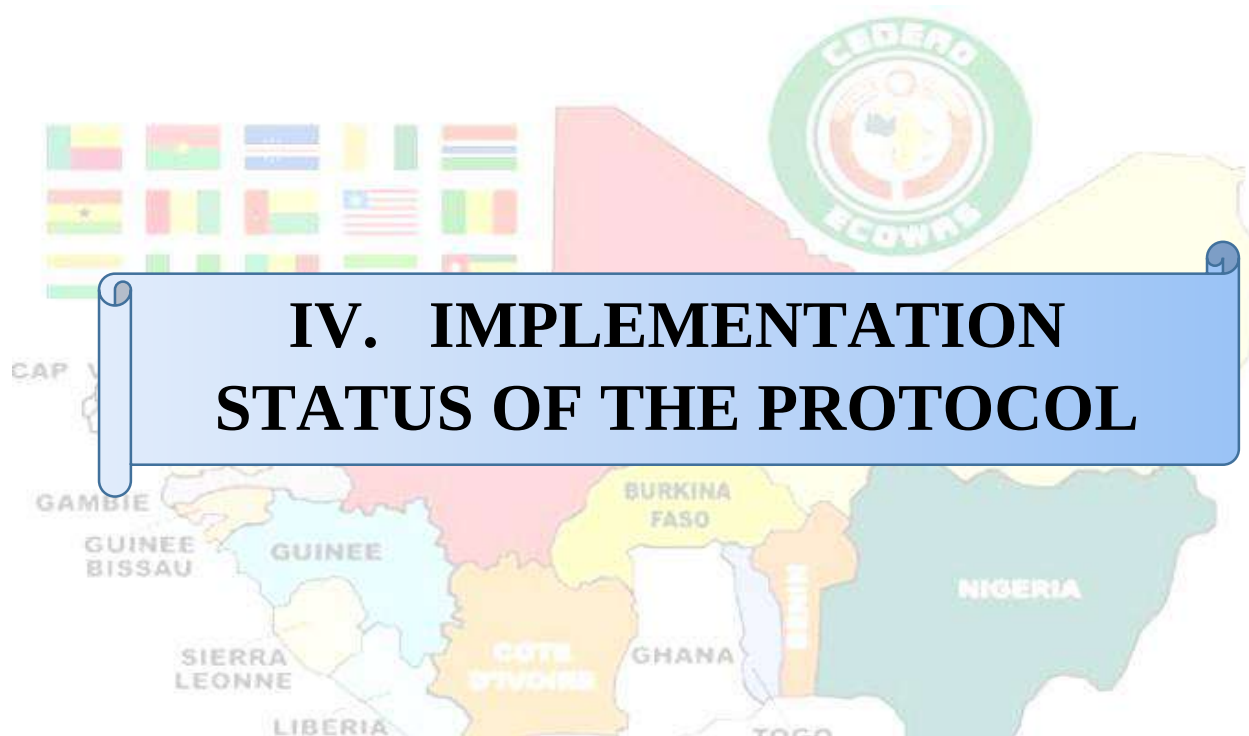
⁴⁸ Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) https://www.giaba.org/about-giaba/index_657.html

⁴⁹ Network of National Anti-Corruption Institutions in West Africa (NACIWA); [https://www.unodc.org/documents/westandcentralafrica/RINLCAO - Strategie - 2015-2017 - Version finale.pdf](https://www.unodc.org/documents/westandcentralafrica/RINLCAO_-_Strategie_-_2015-2017_-_Version_finale.pdf)

⁵⁰ West African Network of Central Authorities and Prosecutors (WACAP), established in May 2013

⁵¹ West African Police Chiefs Committee (WAPCCO) ; <https://www.aa.com.tr/fr/afrique/togo-les-chefs-de-police-de-l-afrique-de-l-ouest-en-r%C3%A9union-%C3%A0-lom%C3%A9-112002>

⁵² West African Police Information System (WAPIS), 21st September 2015; <https://www.interpol.int/fr/Notre-action/Renforcement-des-capacites/PROGRAMME-SIPAO>



4.1. ANTI-CORRUPTION POLICIES AND LAWS (ARTICLE 5(a))

Article 3(h) of the revised ECOWAS Treaty aims to establish of an enabling legal environment; Article 3(i) the harmonisation of standards and measures and Article 4 (h) accountability, economic and social justice and popular participation in development.⁵³

In addition, Article 5(a) of the Protocol stipulates that each State Party shall take measures to establish and consolidate, “*national laws, ethical guidelines, regulations and codes of conduct that would eliminate of interest, emphasise methods of recruitment based on merit and provide thorough measures aimed at guaranteeing reasonable standards of living*”⁵⁴.

4.1.1. Strengths

➤ Adoption of anti-corruption framework laws

Five out of fifteen ECOWAS countries have adopted partially compliant anti-corruption framework laws. They are Benin (Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin)⁵⁵ Burkina Faso (Law No. 004-2015/CNT on the prevention and repression of corruption in Burkina Faso)⁵⁶, Côte d'Ivoire (Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences)⁵⁷, Guinea Conakry (Law L/2017/041/AN of 4th July 2017, on the prevention, detection and repression of corruption and other related offences)⁵⁸ and Nigeria (Corrupt Practices Act of 13th June 2000)⁵⁹.

Benin has also passed Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin). However, this law was recently repealed by Article 2 of Law No. 2020-23 of 29th September 2020 amending and supplementing Law No. 2012-15 of 18th March 2013, as amended, relating to the Code of Criminal Procedure in the Republic of Benin.⁶⁰

⁵³ <https://static.lafrance.fr/882158/traite-revise-de-la-cedeao-abuja-1993.pdf>

⁵⁴ Article 5(a) of the ECOWAS Protocol on the fight against corruption, https://demarchesadministratives.gouv.ml/files/upload/justice/Protocole_afrique_corruption.pdf

⁵⁵ <https://sgg.gouv.bj/doc/loi-2011-20/>

⁵⁶ http://www.justice.gov.bf/wp-content/uploads/2017/12/loi_004_portant_prevention_et_repression_de_la_corruption_au_burkina_faso.pdf

⁵⁷ <https://www.igf.finances.gouv.ci/igfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

⁵⁸ <https://justiceguinee.gov.gn/wp-content/uploads/2018/10/LOI-N-0041-2017-Portant-Prevention-Detection-et-Repression-de-la-Corruption-et-Infractions.pdf>

⁵⁹ The corrupt practices and other related offences act, 2000. 2000 act no.5; <https://www.icpc.gov.ng/wp-content/uploads/downloads/2012/09/CORRUPT-PRACTICES-ACT-2010.pdf>

⁶⁰ Law No. 2020-23 of 29th September 2020 amending and supplementing Law No. 2012-15 of 18th March 2013, as amended, relating to the Code of Criminal Procedure in the Republic of Benin, <https://sgg.gouv.bj/doc/loi-2020-23/#:~:text=Loi%20N%C2%B0%202020->

However, it should be noted that such laws need to be strengthened because they have certain gaps, such as the non-publication of assets disclosure statements, lack of clarity on the participation of civil society or the fight against corruption in the private sector, the limited independence of some anti-corruption bodies that are under the authority of the presidency of the Republic, and some lack of clarity on the recovery of assets.

➤ *Adoption of anti-corruption policies/strategies*

Seven out of fifteen ECOWAS countries adopted their national anti-corruption strategy.

Benin adopted a National Integrity System (NIS), which comprises five (5) priority recommendations such as (1) making the ordinary justice system more independent and effective; (2) making financial justice effective; (3) ensuring that the capacity to prosecute and convict members of the government is operational; (4) reforming the ANLC to make it more effective; and (5) promoting consistency, global and concerted coordination between entities.

In 2013, Burkina Faso has adopted a national anti-corruption policy and a related plan of action through Decree No. 2013-859/PRES/PM of 3rd October 2013. Its development, implementation and evaluation are the responsibility of the ASCE-LC, whose steering committee includes representatives of civil society (Article 2 of Organic Law 082-2015).

Niger has also adopted a national anti-corruption strategy and plan of action which includes three (3) major components: (i) strengthening the prevention of corruption; (ii) improving systems for the suppression of corruption; and (iii) strengthening partnership and cooperation.

Liberia developed an anti-corruption strategy in 2006, which led to the establishment of the Anti-Corruption Framework in 2008 and other subsequent anti-corruption efforts.

Nigeria has also approved a strategy which is based on 5 pillars namely, prevention, enforcement and sanctions, public engagement, campaign for ethical reorientation and recovery of proceeds of corruption.⁶¹

Ghana adopted a National Anti-Corruption Action Plan (NACAP) (2012-2021) built around four (4) pillars which are capacity building; institutionalising efficiency, accountability and transparency, public engagement and conduct effective investigations and prosecution of corrupt conduct.

Sierra Leone also adopted a National Anti-Corruption Strategy (NACS) 2019 - 2023⁶² which is built on eight strategic pillars.

23%20du%2029%20septembre%202020%20modifiant,en%20R%C3%A9publique%20du%20B%C3%A9nin.%20Lire %20le%20document%20T%C3%A9l%C3%A9charger

⁶¹ Nigeria , National Anti-Corruption Strategy (NACS) (NACS) <https://www.nials.edu.ng/index.php/resources/seminar/282-a-highlight-of-the-national-anti-corruption-strategy-nacs-for-nigeria>

⁶² Sierra Leone, National Anti-Corruption Strategy (NACS) (NACS) 2019 – 2023; <https://www.thesierraleonetelegraph.com/wp-content/uploads/2019/08/National-Anti-Corruption-Strategy-2019-2023.pdf>

Finally, Senegal adopted a National Anti-Corruption Strategy 2020 - 2024⁶³ which has three strategic focus areas, namely (1) Improving the legal and institutional frameworks for the fight against corruption, (2) Improving the coordination of interventions and (3) Strengthening communication and the capacities of stakeholders.

➤ ***Adoption of codes of ethics and professional conduct for public officers***

It is also worth mentioning that in addition to the adoption of laws and strategies, some ECOWAS countries also adopted codes of ethics and professional conduct for public officers.

For instance, Benin adopted Decree No. 2008-813 of 31st December 2008 on the code of values and ethics for the civil service⁶⁴.

Côte d'Ivoire also adopted on 9th August 2011, a Charter of Ethics of the government which advocates ten (10) values including accountability and integrity⁶⁵. In addition, the government has a code of ethics for public officials⁶⁶, which sets out the code of conduct for public officers.

Senegal also passed the draft Bill regarding the general code of ethical standards for public officials, on Thursday 3rd August 2017⁶⁷.

Similarly, Nigeria adopted a code of conduct for public officers⁶⁸, as a Schedule to the Constitution⁶⁹. In addition, there is the code of conduct for public officers involved in procurement, the code of conduct for judicial officers or the code of conduct for Federal Prosecutors.

In addition, the Code of Conduct for the Ghana Civil Service⁷⁰ was introduced in 1999 by the Office of the Head of the Civil Service (OHCS) with the ultimate goal of improving the work culture, enhancing the overall professional effectiveness and projecting good image of the civil service.

Even if other countries have not yet adopted comprehensive codes, there are several specific codes: in Burkina Faso, a code of ethics and professional conduct for tax agents, a code of ethics and professional conduct for public procurement contracts (Decree 2015-1260); in Togo, the code of ethics and professional conduct for customs officials⁷¹ or the code of ethics and professional



⁶³ Senegal, National Anti-Corruption Strategy 2020 – 2024; http://www.ofnac.sn/resources/pdf/SNLCC_2020-2024_web.pdf

⁶⁴ Benin, Decree No. 2008-813 of 31st December 2008 on the code of values and ethics for the civil service; <https://sgg.gouv.bj/doc/decret-2008-813/>

⁶⁵ Côte d'Ivoire, government Charter of Ethics; https://www.gouv.ci/doc/Charte_Ethique_Gouvernement_09%2008%202011_vFinale.pdf

⁶⁶ Côte d'Ivoire, code of ethics for public officials; https://www.fonctionpublique.gouv.ci/documentation/Loi_XXX_Code_Deontologie.pdf

⁶⁷ Senegal, general code of ethical standards for public officials (3rd August 2017); <https://fonctionpublique.sec.gouv.sn/actualites/projet-de-code-de-d%C3%A9ontologie-g%C3%A9n%C3%A9rale-des-agents-publics>

⁶⁸ Nigeria, Code of conduct for public officers, <http://lawsofnigeria.placng.org/laws/C15.pdf>

⁶⁹ Constitution of the Federal Republic of Nigeria, Schedule 5, Part I, [http://lawsofnigeria.placng.org/laws/Constitution%20of%20the%20Federal%20Republic%20of%20Nigeria%20\(Second%20Alteration\)%20Act,%202010.pdf](http://lawsofnigeria.placng.org/laws/Constitution%20of%20the%20Federal%20Republic%20of%20Nigeria%20(Second%20Alteration)%20Act,%202010.pdf)

⁷⁰ Code of Conduct for the Ghana Civil Service), https://www.ohcs.gov.gh/sites/default/files/Civil%20Service%20Code%20of%20Conduct_0.pdf

⁷¹ Code of ethics and professional conduct for Togo customs officials; https://www.obs-traffic.museum/sites/default/files/ressources/files/DouanesTogo_CodeEthiqueetdeBonneConduite.pdf

conduct for public procurement contracts; in Niger, the code of ethics and professional conduct for customs agents, etc.

4.1.2. Weaknesses of the Protocol and Anti-corruption Systems

4.1.2.1. Low level of compliance and harmonisation of anti-corruption standards

There is a wide range of divergent anti-corruption standards and varying degrees of compliance with international standards in the sub-region (laws, codes, policies and strategies) due to the lack of community decrees, directives or regulations issued by ECOWAS decision-making bodies.

Thus, the concern for harmonisation of standards and laws, high on the agenda of ECOWAS, and reaffirmed in Article 2(iii) of the Protocol, which aims to "promote the harmonisation and coordination of national anti-corruption laws and policies"⁷², and Article 3(i) of the ECOWAS revised Treaty⁷³, which aims to "harmonise standards and measures", seems to be compromised.

There is a large degree of divergence in national laws, especially on matters relating to the disclosure of assets, access to information and public engagement, anti-corruption institutions, the fight against corruption in the private sector, whistleblower protection laws.

4.1.2.2. Inoperability of the Anticorruption Commission.

Article 19(1) of Protocole stipulates that "State Parties undertake to establish a Technical Commission, in accordance with the provisions of Article 22 of the revised ECOWAS Treaty, which shall be called the Anticorruption Commission".

The Commission shall monitor the implementation of this Protocol both at the national and sub-regional levels; gather and disseminate information among State Parties; regularly organise relevant training programmes; provide State Parties appropriate additional assistance.

The Technical Commission shall meet at least twice (2) every year (Article 19(3). Reports of meetings of the Technical Commission shall be submitted to the Council of Ministers (Article 19(5). So far, this Technical Anti-Corruption Commission is not yet operational, restricting thereby the effectiveness of the implementation of the Protocol.

Please refer to Annex 2: Summary table of anti-corruption laws and policies in the ECOWAS region.

⁷² ECOWAS Protocol A/P3/12/01 of 2001 on the fight against corruption, ECOWAS (2001), as cited above; https://demarchesadministratives.gouv.ml/files/upload/justice/Protocole_afrique_corruption.pdf

⁷³ ECOWAS Revised Treaty; <https://static.latribune.fr/882158/traite-revise-de-la-cedeao-abuja-1993.pdf>

4.2. ANTI-CORRUPTION AGENCIES (ARTICLE 5(h))

Article 5(h) of the Protocol requires States to establish and maintain “*specialised anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receive adequate training and financial resources for the accomplishment of their tasks*”.

This requirement is also enshrined in Article 5.3 of the African Union Convention on Preventing and Combating Corruption and Articles 6 and 13.2 of the United Nations Convention against Corruption (UNCAC), which require States Parties to establish, maintain and strengthen independent national anti-corruption authorities or agencies.

The OECD identifies three main models which include multi-purpose agencies with law enforcement powers; law enforcement type institutions; and preventive, policy development and coordination institutions.⁷⁴

4.2.1. Strengths of ECOWAS anti-corruption agencies

West African States are making efforts to implement this provision of the Protocol by establishing, among others, specialised anti-corruption agencies.

Benin has established and maintained the National Anti-Corruption Authority (ANLC) through Law No 2011-20 of 12th October 2011 on the fight against corruption and other related offences⁷⁵. Paragraph 2 of Article 3 and the National Anti-Corruption Authority were amended by Law No. 2020 - 09 of 23rd April 2020 on the creation, mission, organisation and functioning of the High Commission for the Prevention of Corruption. According to Article 2 of Law No. 2020 - 09 of 23rd April 2020, the “*mission of the High Commission is to monitor the implementation of anti-corruption measures within State institutions and administrations, and to initiate and implement actions to prevent corruption in both the public and private sectors*”.

In this respect, the High Commission is responsible, among other things, for promoting anti-corruption standards in the public and private sectors; formulating recommendations for preventing corruption; raising awareness, educating and disseminating texts; promoting the development and implementation of handbooks of procedures; collecting, analysing and making information available to the judicial authorities responsible for prosecuting cases; advising on appointments to positions; cooperating with public and private entities; evaluating anti-corruption standards; and producing an annual report on the state of corruption.

The High Commission for the Prevention of Corruption seems to be fairly independent, since it is under the authority of the presidency of the Republic, even though the law states that it enjoys “management autonomy” (Article 3); that it is independent of the institutions of the Republic in the discharge of its duties; that it is not subordinated to any hierarchical authority; and that it can only be dissolved for gross misconduct (Article 7).

⁷⁴ OECD, Specialised Anti-Corruption Institutions: Review of Models, Paris, Ocde 2008 ;

See M. Chêne, Centralised versus decentralised anti-corruption institutions, U4 Expert Answer, 16th March 2012, No 323.

⁷⁵ Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences;

<https://sgg.gouv.bj/doc/loi-2011-20/>

The High Commission for the Prevention Corruption is managed by a High Commissioner appointed by the President of the Republic by decree adopted at a Cabinet meeting (Article 4).

Pursuant to Article 11 of the new law, the High Commission shall draw up its annual budget, which shall be integrated into the general State budget.

Appropriate material resources and specialised personnel, as well as the training required by such personnel to carry out their duties, must be provided (Article 9, Paragraph 7).

The Office of the High Commissioner and its staff enjoy immunity from prosecution and cannot therefore be held liable for acts performed in the discharge of their duties (Article 15, Decree No. 2012-336 of 2nd October 2012, cited above).

Togo, Niger, Mali, Senegal and Côte d'Ivoire all have anti-corruption agencies which are more or less similar to that of Benin.

In Togo, for instance, Law No. 2015-006 of 28th July 2015 establishing the High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA)⁷⁶, in its Article 11, set out the principle of the appointment of its members by decree adopted at a cabinet meeting. In addition, Article 12, Paragraph 1 of the law establishing the HAPLUCIA laid down the principle of limited cooperation with judicial authorities, restricted to collecting all information relating to acts of corruption or other related offences, and transmitting them with discretion to the competent judicial authorities. As in Benin, the investigative power is very limited and not clearly articulated in the law, which states in Article 12, Paragraph 3 that HAPLUCIA shall forward substantiated complaints to the competent public prosecutor to carry out investigations and, if necessary, initiate public action.

In addition, the law further provides that, with due respect for the rights of the defence and the principle of adversarial procedure, the High Authority may be served a subpoena by the public prosecutor's office or may make submissions to the public prosecutor's office in order to provide written or oral information (Article 12, Paragraph 4).

Only members appointed by decree are entitled to immunity from prosecution; staff members do not enjoy such immunity.

The Senegalese law No. 2012-30 of 28th December 2012 establishing the National Office for the Fight against Fraud and Corruption (OFNAC)⁷⁷ also established an “*independent administrative authority with financial autonomy which is under the authority of the Presidency of the Republic*” (Article 1).

⁷⁶ Law No. 2015-006 of 28th July 2015 establishing the High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA); https://jo.gouv.tg/sites/default/files/publications/JOS_28_07_15-60%C3%A8%20ANNEE%20N%C2%B020.pdf#page=7

⁷⁷ The Senegalese law No. 2012-30 of 28th December 2012 establishing the National Office for the Fight against Fraud and Corruption (OFNAC) ; http://www.ofnac.sn/resources/pdf/Lois/Loi_n%C2%B02012-30.pdf

Article 2 of Law No. 2012-30 mandates OFNAC with two missions, namely preventing and combating fraud and corruption, and any assimilated practices and other related offences. In contrast to the agencies in Benin and Togo, OFNAC has broad investigative powers and submits a report to the public prosecutor, together with the documents relating to the case (Article 14). OFNAC may also request any report containing facts of fraud or corruption (Article 12).

Members of OFNAC cannot be prosecuted, arrested, investigated, detained or tried for views or opinions that they express, or for actions or decisions that they take in the performance of their duties (Article 9).

The OFNAC also has the power of self-referral and can therefore initiate procedure on its own in cases of fraud, corruption or any of the offences brought to its attention in accordance with Article 3(10). It may propose to the competent authority to initiate disciplinary proceedings against any civil servant or public agent guilty of any of the acts referred to in Article 3 Paragraph 10 of this law. If no action is taken in response to this proposal, OFNAC shall inform the President of the Republic (Article 15).

OFNAC draws up its budget in conjunction with the competent technical services of the State and executes it in accordance with public accounting rules (Article 20).

In Côte d'Ivoire, the High Authority for Good Governance was created through Order No. 2013-660 of 20th September 2013 relating to the prevention and fight against corruption and other related offences (Article 4).⁷⁸

This Order was amended by Order No. 2015-177 of 24th March 2015 on the modification of Articles 7, 8, 22, 25, 26 and 61 of Order No. 2013-661 of 20th September 2013 prescribing the powers, composition, organisation and functioning of the High Authority for Good Governance⁷⁹.

The operationalisation of this institution was effected by Order No. 2013-661 of 20th September 2013 establishing the powers, composition, organisation and functioning of the High Authority for Good Governance⁸⁰.

As in Senegal, the HABG is an independent administrative authority with legal personality and financial autonomy under the authority of the President of the Republic (Article 2); its ten members are appointed by presidential decree for a three-year term, renewable once (New Articles 8 and 22).

The HABG has very broad powers, including education and awareness-raising, prevention and control, investigation of corrupt practices, identification of alleged perpetrators and their accomplices and initiation of prosecutions, collection, centralisation and handling of denunciations

⁷⁸ In Côte d'Ivoire, the High Authority for Good Governance was created through Order No. 2013-660 of 20th September 2013 relating to the prevention and fight against corruption and other related offences

<https://www.igf.finances.gouv.ci/igfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

⁷⁹ Côte d'Ivoire, Order No. 2013-661 of 20th September 2013 prescribing the powers, composition, organisation and functioning of the High Authority for Good Governance <http://extwprlegs1.fao.org/docs/pdf/IVC178173.pdf>

⁸⁰ Côte d'Ivoire, Order No. 2013-661 of 20th September 2013 establishing the powers, composition, organisation and functioning of the High Authority for Good Governance <http://extwprlegs1.fao.org/docs/pdf/IVC178157.pdf>

and complaints submitted to it, receiving inspection and audit reports from State control and monitoring bodies and structures in connection with the fight against corruption, receiving asset disclosure, referring cases to the public prosecutor at the competent court, coordinating and monitoring⁸¹.

Members of the High Authority are protected against insults, provocations and threats to which they may be subjected to in the performance or while carrying out their duties (Article 17). They cannot be prosecuted, arrested, detained or tried for opinions that they express, or for facts revealed in their reports or acts that they carry out in the performance of their duties (Article 18). They shall be accorded all the guarantees, facilities and protection necessary for the performance of their duties. The public authorities are required to ensure that they have easy access to investigation spots (Article 19).

The staff of the HABG have a special status; they receive allowances and benefits as determined by decree adopted at the Cabinet meeting (Article 50). The staff also enjoy immunity from prosecution in the performance of their duties (Article 51) and are protected against insults, provocations and threats to which they may be subjected in the performance of their duties (Article 52). Finally, they shall be accorded all the guarantees, facilities and protection necessary for the performance of their duties. The public authorities are required to ensure that they have easy access to investigation spots (Article 53).

The staff of the HABG is composed of seconded civil servants, under the General Statute of the Civil Service, and contract workers under the Labour Code and subsequent texts; they are recruited, appointed and dismissed by the President of the High Authority for Good Governance (Article 49).

In the event of death, resignation or absolute impediment of the President of the HABG, the President of the Republic shall appoint a replacement (new Article 25). Pending the appointment of the new president, the most senior member of the Council shall act as substitute for the President of the High Authority for Good Governance (new Article 25, Paragraph 5).

Niger also established and maintained the High Authority for the Fight against Corruption and other related Offences (HALCIA), established by Law No. 2016-44 of 6th December 2016 on the establishment, missions, powers, composition, organisation and functioning⁸² of this institution.

The missions of HALCIA include contributing to the development of policies and strategies for the prevention of corruption, promoting campaigns to raise citizens' awareness for a behavioural change, legislative, regulatory or administrative reforms relating to its area of expertise, capacity building, making appropriate recommendations, international cooperation (Article 4).

The HALCIA is competent to conduct investigations into all acts of corruption and related offences across the country. In addition, the HALCIA may have access to any inspection or control report

⁸¹ Article 4, ORDER No. 2013-661 of 20th September 2013 establishing the powers, composition, organisation and functioning of the High Authority for Good Governance; <http://extwprlegs1.fao.org/docs/pdf/IVC178157.pdf>

⁸² Law No. 2016-44 of 6th December 2016 on the establishment, missions, powers, composition, organisation and functioning (HALCIA), <https://halcia.ne/wp-content/uploads/2019/06/LOI-HALCIA-1.pdf>

that may be useful for its investigations (Article 5). It may also conduct a search, seize and file under seal documents, objects or substances that may serve as evidence, any objects, valuables or goods associated with acts of corruption and similar offences may also be seized and filed under seal. It may have fingerprints taken, take any photographs, and generally have any procedure carried out that it deems useful for establishing all elements of the offence (Article 26). The HALCIA carries out its investigations under the supervision of its President (Article 24).

Members of the HALCIA are appointed by decree issued by the President of the Republic (Article 6) and are protected against any form of pressure or intimidation from economic, political or other entities. The State shall guarantee the security of the members and the headquarters of the HALCIA (Article 20).

The allowances and other benefits granted to HALCIA members and administrative and technical staff are determined by decree adopted at a Cabinet meeting (Article 30).

In Mali, the Central Office for the Fight against Illicit Enrichment (OCLEI) was created by Order No. 2015-032/P-RM of 23rd September 2015 establishing this institution⁸³.

Pursuant to Article 4, the Office's mission is to implement all measures for the prevention, control and fight against illicit enrichment at national, sub-regional, regional and international levels. The Office may, on the basis of serious, consistent and reliable information in its possession, refer the case to the prosecutor of the competent Economic and Financial Department.

Members of the Office are also appointed by a decree issued at a Cabinet meeting (Article 10) and removed and replaced by a decree of the President of the Republic (Article 15). They enjoy the privileges, allowances and benefits fixed by a decree issued at a Cabinet meeting (Article 13).

Burkina Faso has also fulfilled its obligation by setting up the Higher Authority for State Control and the Fight Against Corruption (ASCE-LC), created by Organic law No 082-2015/CNT of 24th November 2015 relating to its the powers, composition, organisation and functioning⁸⁴.

The ASCE-LC is mandated to prevent and combat corruption, control administrative services, co-ordinate and supervise administrative control bodies, and has broad prosecutorial powers (in accordance with the Jakarta Principles).

Article 7 of the organic law No 082-2015/CNT of 24th November 2015 confers specific powers on the ASCE-LC in four (4) areas of activity, namely, prevention of corruption (Article 8); the fight against corruption (Article 9); assets and interests declaration (Article 10) and internal administrative control (Article 11).

⁸³ <http://reforme-transparence.gouv.ml/wp-content/uploads/2019/01/ORDONNANCE-N%C2%B02015-032-P-RM-DU-23-SEPTEMBRE-2015-OCLEI.pdf>

⁸⁴ Loi Organic law No 082-2015/CNT of 24th November 2015 relating to the powers, composition, organisation and functioning of the Higher Authority for State Control and the Fight Against Corruption
https://lavoixdujuristebf.files.wordpress.com/2018/02/loi_082_organique_asce-lc-2.pdf

The ASCE-LC has very broad investigative powers in the public, private sectors and civil society; and an administrative control power. Thus, Article 55 of the organic law No. 082-2015/CNT clearly states that *“within the ASCE-LC, the state auditors and investigators in charge of the investigations have the status of judicial police officers. They exercise their powers in accordance with the provisions of the Code of Criminal Procedure. Notwithstanding the provisions of Article 12 of the Code of Criminal Procedure, they exercise their powers under the direction and control of the State Comptroller General”*.

Unlike other bodies in the sub-region, the State Comptroller General is appointed following a competitive process by the Advisory Council and then appointed by the President of Faso, whereas he or she was appointed at the discretion of the government. The comptroller general can only be dismissed if he or she commits a serious act that can be considered as gross misconduct. This decision is left to the discretion of the Advisory Board. The ASCE-LC has a code of ethics.

In the performance of their duties, members of the ASCE-LC enjoy immunity. They cannot be prosecuted, investigated, arrested, detained or tried for the opinions they express or for actions or decisions they take in the performance of their duties. They are independent of the departments, agencies and bodies they audit and free in the assessment of the facts they examine and the findings thereof (Art. 51 - Organic Law 082-2015/CNT).

The staff is recruited through a professional competitive examination and not seconded⁸⁵. The ASCE-LC has sufficient and reliable resources and financial autonomy; the budget cannot be less than 0.1% of the national budget (art.59 Organic Law 082- 2015/CNT). The ASCE-LC is audited by the Court of Auditors and may undergo a peer review⁸⁶.

Apart from the ASCE-LC, there are other bodies such as the National Anti-Fraud Brigade (BNAF), the National Anti-Fraud Authority or the National Ethics Committee.

In Ghana, the Act of August 2010 established the Economic and Organised Crime Office (EOCO)⁸⁷, replacing the Serious Fraud Office (SFO), which was established by the Serious Fraud Office Act, 1993 (Act 466).⁸⁸.

⁸⁵ « Revisiting the Jakarta Principles”, Reorganisation of ASCE into ASCE-LC: How the Jakarta Principles Shaped the New Institution, Vienna 9th November 2017; https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/SpecialEvents/2017-11-09_-_Luc_Marius_Ibriga_-_Burkina_Faso.pdf

⁸⁶ Decree 2016-978-pres on the appointment of the members of the ASCE-LC Advisory Board) <https://www.asce-lc.bf/index.php/documentations/reglementation?task=document.viewdoc&id=1>

⁸⁷ Act of August 2010 established the Economic and Organised Crime Office (EOCO), Ghana, <https://www.mint.gov.gh/wp-content/uploads/2017/06/EOCO-Act-804.pdf>

⁸⁸ U4 Expert Answer, Overview of corruption and anti-corruption in Ghana https://www.transparency.org/files/content/corruptionqas/271_Corruption_and_anti_corruption_in_Ghana.pdf

EOCO was established as a specialised agency to monitor investigate, and facilitate the prosecution of organised crime. Among other things, EOCO is also mandated to recover the proceeds of crime; monitor and detect related offences in order to take reasonable steps to prevent the commission of the specified offences and their related matters.

Under Section 4(2) of the 2010 Act, the President of the Republic shall appoint the members of the Board in accordance with article 70 of the Constitution; he may by a letter addressed to a member revoke the appointment of that member 6(5). Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance (10).

The President shall appoint an Executive Director (Article 11. (1) and Deputy Executive Directors (Article 13. (1). The Board shall keep books of account and proper records related to the Office in the form approved by the Auditor General (Article 16 (1)) and shall submit the accounts of the Office to the Auditor General to audit within three months after the end of the financial year. (Article 16 (2)). The Auditor General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister (Article 16 (3).

Independent Corrupt Practices and Other Related Offences Commission⁸⁹ and Economic and Financial Crimes Commission.

In fact, Nigeria also established various anti-corruption bodies, including the Independent Corrupt Practices and Other Related Offences Commission to investigate corruption, supervise public bodies and inform the public (Corruption Practices and Other Related Offences Act, Section 6). The country has also established the Economic and Financial Crimes Commission to investigate, enforce and raise awareness (Economic and Financial Crimes Commission Act, Article 5); and the Code of Conduct Bureau to enforce the Code of Conduct for Public Officers and to receive and examine assets declarations (Code of Conduct Bureau and Tribunal Act, Article 3).

The country has also established the Technical Unit on Governance and Anti-Corruption Reforms, which publishes reports analysing the shortcomings and compliance of Nigeria's anti-corruption initiatives with existing regional and global anti-corruption instruments. The above-mentioned bodies, as well as others such as the Bureau of Public Procurement and the Nigerian Extractive Industries Transparency Initiative, carry out sectoral assessments and monitoring activities.

The Technical Unit on Governance and Anti-Corruption Reforms serve as a single window for data, information, policy and diagnostic reports from analysis, surveys on corruption risks (Presidential Decree of 27th July 2006).

Nigerian law guarantees the functional independence of anti-corruption bodies. For example, the Corrupt Practices and Other Related Offences Act provides that the Independent Corrupt Practices

⁸⁹ ONUDC, First resumed tenth session of the Implementation Review Group (Vienna, 2-4th September 2019) Agenda item 2 Review of the implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, op. cit.; <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1904650f.pdf>

and Other Related Offences Commission shall not be subject to not to the direction or control of any other person or authority. (Section 3, Paragraph 14).

The President of the Republic shall appoint the Chairman and members of the Independent Commission, upon confirmation by the Senate, and remove them acting on an address supported by two-thirds (2/3) majority of the Senate (Corrupt Practices and Other Related Offences Act, Article 3, Paragraphs 6 and 8).

In Sierra Leone, the Anti-Corruption Commission was established by the Anti-Corruption Act, 2000, as an independent institution to monitor and eradicate corruption through prevention, investigation, prosecution and public awareness. It has the power to investigate corruption in order to detect, control, suppress and eradicate corruption and other related offences. This law was amended by the Anti-Corruption Act of 2008 which strengthened the independence and duties of this institution⁹⁰.

Pursuant to Section 22(1) of this new law, the President shall appoint, with approval of Parliament, members of the Advisory Board on Corruption. The appointed members of the Advisory Board on Corruption shall elect a chairman from among themselves. (Section 22(3)). But the chairman and vice-chairman of the commission can only be removed from office after investigation and decision by a tribunal (Section 4(5) and (6)) and the court expressly recommends their removal (Section 8(a)) or by a 2/3 vote of the members of the Parliament (Section 8(b)).

4.2.2. Weaknesses of anti-corruption agencies in West Africa

In the absence of clear implementation guidelines and criteria in the ECOWAS Protocol, the assessment of anti-corruption agencies was done in accordance with the Jakarta Principles on Anti-Corruption Agencies (ACAs)⁹¹.

This assessment revealed a number of shortcomings in the West African ACAs, including:

- **Low level of legal independence of the agencies:** The majority of the ACAs are under the authority of the presidency or the members are appointed by presidential decree (Benin, Niger, Senegal); the selection processes of the members of the ACAs are not transparent, as the majority of the members are appointed by presidential decree (HAPLUCIA/Togo, OFNAC/Senegal, HALCIA/Niger, HABG/Côte d'Ivoire, EOCO/Ghana, Anti-Corruption Commission/Nigeria or Sierra Leone, etc). These appointment processes are contrary to Principle 4 of the Jakarta Declaration on Anti-Corruption Institutions which states: “*Anti-Corruption Agencies heads shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence*”⁹²;

⁹⁰ The anti-corruption act, 2008; <http://www.sierra-leone.org/Laws/2008-12.pdf>

⁹¹ Jakarta Principles on Anti-Corruption Agencies (ACAs), Jakarta, 26-27 November 2012 ; https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_fr.pdf

⁹² Jakarta Principles on Anti-Corruption Agencies (ACAs), Jakarta, 26-27th November 2012, *op.cit.*

- **Lack of a staff code of conduct:** Several ECOWAS anti-corruption agencies do not maintain a staff code of conduct even though the Jakarta Principles on Anti-Corruption Authorities require that “*Anti-Corruption Agencies shall adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime*” (Principle 7)⁹³.
- **Absence of or poor implementation of the special status:** Some ACAs (e.g. HAPLUCIA/TOGO) do not have a special status, unlike ASCE-LC, HALCIA, HABG, etc., even though the Jakarta Principles on Anti-Corruption Institutions require that “*Anti-Corruption Agencies employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff*” (Principle 9)⁹⁴;
- **Lack of a clearly articulated investigative mandate:** In the act establishing some ACAs, as in the case of HAPLUCIA (Togo), ANLC/Benin, which is contrary to Jakarta Principle 1, which specifies that “*Anti-Corruption Agencies shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple coordinated agencies...*” (Principle 1)⁹⁵.
- **Low financial autonomy:** Apart from the ASCE-LC which has a budget of at least 1% of the national budget for its operation and the HALCIA (Niger) which benefits from both an annual allocation in the national budget of 5% from asset recoveries resulting from proceedings (Article 29) and the Independent Corrupt Practices Commission in Nigeria which prepares its own budget and submits it to the National Assembly; most of the ACAs assessed have more or less low resources for their operation. Even though Jakarta Principle 11 establishes that “*ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country’s budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA’s operations and fulfillment of the ACA’s mandate; ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements.*”
- **Low autonomy regarding staff recruitment:** Several anti-corruption agencies in West Africa operate mostly with public officers assigned by the ministry in charge of the civil service, and therefore have little autonomy to recruit, even if some legislation (e.g. the July 2015 law establishing HAPLUCIA/Togo) has provided for the possibility of recruiting staff⁹⁶.

⁹³ Jakarta Principles on Anti-Corruption Agencies (ACAs), Jakarta, 26-27th November 2012, *op.cit.*

⁹⁴ Jakarta Principles on Anti-Corruption Agencies (ACAs), Jakarta, 26-27th November 2012, *op.cit.*

⁹⁵ Jakarta Principles on Anti-Corruption Agencies (ACAs), Jakarta, 26-27 November 2012, *op.cit.*

⁹⁶ OSIWA, Effectiveness of National Anti-Corruption Agencies in West Africa Benin, Liberia, Niger, Nigeria, Senegal, Sierra Leone, <http://www.africanminds.co.za/wp-content/uploads/2017/07/9781928331360OSISAACtextfrenchWEB.pdf>

- **Overlapping and conflicts of competences between agencies:** In most countries, the Nigerian anti-corruption system is complex and involves a large number of stakeholders and institutions, thus resulting in a high risk of overlapping and conflicting jurisdictions.

Please refer to Annex 3: Comparative Analysis Table of West African Anti-Corruption Agencies as per the Jakarta Principles.



4.3. PUBLIC ENGAGEMENT AND ACCESS TO INFORMATION (Article 5 (e) and (i))

4.3.1. Freedom of the press and the right to information Article 5 (i) of the Protocol

According to Article 5(i) of the Protocol, ***“in order to achieve the objectives set out in Article 2 above, each State Party undertakes to take measures to establish and strengthen press freedom and the right to information”***.

This is also laid down in Article 10 of the United Nations Convention against Corruption (UNCAC) which requires each State Party to *“adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration...”*⁹⁷.

In the same vein, the African Commission on Human and Peoples' Rights (October 2002) indicated that ***“public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law”***⁹⁸.

4.3.1.1. Strengths of systems for access to information

Directive No. 01/2009/CM/UEMOA on the code of transparency in public finance management within UEMOA⁹⁹, domesticated in the eight (8) countries of UEMOA, has established the right of access to information as a fundamental tool to strengthen transparency in public finance in member States.

Actually, the Directive imposes on the Court of Auditors to disclose all the reports it sends to the Parliament, the Government and the President of the Republic. It also releases its specific decisions on its website and in at least two leading mass circulation national newspapers. It determines and releases an annual budgetary calendar for the preparation of the budget (Article 2.4). It also issues, in a timely manner, information concerning public finances as required by law for public administration (Article 6.1).

This Directive also requires that *“Provision of regular information to the public on the main stages of the budgetary procedure and on the economic, social and financial issues at stake should be organised in an educational and objective manner; the press, social partners and, in general, all civil society actors are encouraged to participate in the dissemination of information and the open*

⁹⁷ Article 10, United Nations Convention against Corruption (UNCAC), *op. cit.*

https://www.unodc.org/res/ji/import/international_standards/united_nations_convention_against_corruption/uncac_french.pdf (04.11.21)

⁹⁸ The Declaration of Principles on Freedom of Expression and Access to Information in Africa, adopted by the African Commission on Human and Peoples' Rights at its 65th Ordinary Session held from 21st October to 10th November 2019 in Banjul, The Gambia

<https://www.achpr.org/public/Document/file/French/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression%20FRE%202019.pdf> (04.11.21)

⁹⁹ Directive No 01/2009/CM/UEMOA on the code of transparency in public finance management within UEMOA ; http://www.uemoa.int/sites/default/files/bibliotheque/directive_01_2009_cm_uemoa.pdf (04.11.21)

debate on governance and public finance management” (Article 6.3). Article 6.5 further notes that all information and documents relating to public finances must be published by the competent institutions on their websites as soon as they are available.

It should also be noted that Directive No. 08/2002/CM/UEMOA on measures to promote banking penetration and the use of non-cash means of payment has also established this right to information in Article 7, which states that “*Member States and monetary authorities shall take, in conjunction with banks and financial institutions, the appropriate information and awareness-raising measures necessary to popularise non-cash means of payment....*”.

Eight ECOWAS member states have regulations on the right of access to information that are deemed to be acceptable by the Right to Information Rating. These countries are Gambia, Liberia, Sierra Leone, Ghana, Nigeria, Guinea, Burkina Faso and Côte d'Ivoire. Some other West African countries also have such measures, but not only are they poorly implemented in practice, but they also do not meet international standards, resulting in a low ranking in the (Global Right to Information Rating index.).

In Burkina Faso, the right of access to public information and administrative documents is covered by law No.051-2015/CNT¹⁰⁰. The law specifies that access to public information and administrative documents is free, with certain exceptions (Article 6). Public information is readily made available as of right to persons who request it (Article 8). In addition, access to public information and administrative documents is free of charge (Article 9). The law also requires that any public body should disclose publicly available information in advance or be bound to do so. The law also recognises the right to re-use certain information or public documents (Article 25). Article 52 of Law 051-2015/CNT establishes a National Authority for Access to Public Information (ANAIP) with the right of access to information.

In addition, the country also passed Law No. 004-2015/CNT on the prevention and repression of corruption¹⁰¹ which requires “*effective access by the media and the public to information concerning corruption, subject to privacy, honour, personal dignity, national security, public order and the secrecy of the investigation*” (Article 40).

Côte d'Ivoire, on the other hand, integrated the right of access to information into the 2016 Constitution; the country also passed the Law of 11th December 2013 on access to information of public interest¹⁰² and Decree No. 2016-771 of 12th October 2016 on the publication of the draft

¹⁰⁰ Law No 051-2015/CNT on the right of access to public information and administrative documents
<http://freedominfo.org/wp-content/uploads/Loi-051-portant-sur-l'acc--s---linformation-publique.pdf>

¹⁰¹ Law No. 004-2015/CNT on the prevention and repression of corruption http://www.justice.gov.bf/wp-content/uploads/2017/12/loi_004_portant_prevention_et_repressionde_la_corruption_au_burkina_faso.pdf

¹⁰² Law of 11th December 2013 on access to information of public interest;
<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.rti-rating.org%2Fwp-content%2Fuploads%2F Ivory-Coast.FOI .Dec13-3.doc&wdOrigin=BROWSELINK>

Constitution of the Republic of Côte d'Ivoire¹⁰³. Indeed, Article 18 provides that citizens have the right to information and access to public documents, under the conditions provided for by the law.

In addition, Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences¹⁰⁴ specifically required the right of access to information as an important element of the fight against corruption.

Actually, Section 16 of this Order requires that public institutions and agencies shall be under an obligation to inform the public about the services offered; to develop and publish simplified administrative procedures; to disseminate information to raise awareness about the risks of corruption within the public administration; to respond to users' requests and complaints; to state the reasons for their decisions, when they are unfavourable to users, to specify the avenues of appeal available and to avoid any inequality or discrimination against users of public services. Nigeria and Guinea have done the same.

In Nigeria, the Freedom of Information Act was passed in 2011. This Act establishes the right of any person to access information (Art. 1(1)) without demonstrating any specific interest in the information being applied for (Art. 1(2)). It also describes in detail the grounds for denial of access (Art. 11, 12, 14 to 17 and 19).

Under the Public Service Delivery Initiative (SERVICOM)¹⁰⁵, offices have been established in each ministry, department and agency to facilitate access to information and improve service delivery. However, this initiative has not been established by law and the staff who run these offices are directly employed by the relevant ministry, department or agency¹⁰⁶.

Nigeria joined the Open Government Partnership (OGP) in 2016 and subsequently adopted its National Action Plan (January 2017-June 2019).

Guinea has also fulfilled its obligation by adopting Law No. 2013-867 of 23rd December 2013 on access to information of public interest¹⁰⁷. This law states that “any natural or legal person has the right to access, without discrimination, information of public interest and public documents held by public bodies” (Article 3) and that “public bodies are required to disseminate to the public the information and public documents they hold” (Article 4). Public bodies are under an obligation to keep and manage their data (Article 5). The law also establishes in its Article 19, an Independent

¹⁰³ Decree No. 2016-771 of 12th October 2016 on the publication of the draft Constitution of the Republic of Côte d'Ivoire; <https://www.droit-afrique.com/uploads/RCI-Constitution-2016.pdf>

¹⁰⁴ Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences; <https://www.igf.finances.gouv.ci/IgfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

¹⁰⁵ Service Compact (SERVICOM), Nigeria, established by the Nigerian Communications Act 2003 (NCA 2003), No. 19 A 287 Nigerian Communications Act, 2003; <https://ncc.gov.ng/accessible/documents/128-nigerian-communications-act-2003/file>

¹⁰⁶ Implementation Review Group First part of the resumed tenth session Vienna, 2-4th September 2019 Agenda item 2 Review of the implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13th June 2019; <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1904650f.pdf>

¹⁰⁷ Law No. 2013-867 of 23rd December 2013 on access to information of public interest (2013); <http://www.caidp.ci/uploads/1039c02cbb4760940c49ff8a1656fb8e.pdf>

Administrative Authority called the Commission for Access to Information of Public Interest and to Public Documents (CAIDP).

It should also be noted that Article 93 of Law L/2017/041/AN of 4th July 2017 on the Prevention, Detection and Repression of Corruption and Related Offences provides for the right of access to information.

The Gambia also passed the Access to Information Bill 2019¹⁰⁸. This Bill enshrines the obligation of every public service to create, preserve, store, organise and maintain its information in such a way as to facilitate access (Section 6 (1)). In addition, the Bill requires every public body to publish within 30 days of production or receipt any document that is subject to disclosure (Section 7 (1)). In addition, the head of each public body must, in consultation with the minister responsible for that public body, appoint an information officer (Section 9 (1)). A body called the Information Commission was also established (Section 41 (1)).

Liberia passed the Freedom of Information Act (2010)¹⁰⁹. This law mandates every public authority or body to establish, maintain, and regularly update a widely accessible and user-friendly publication scheme whereby the public authority or public body automatically provides detailed information regarding its core functions, nature of its activities and operations, and the information it possesses (Section 2.1). In addition, the Act places an obligation on every public authority to publish, and maintained published, certain key classes of documents/information as soon as they are generated or received by the authority, irrespective of whether a request has been made or not made for them. (Section 2.5). The Act also established an independent Information Commissioner to be appointed by the President with the advice and consent of the Senate to oversee the implementation of access to information (Section 5.1).

Sierra Leone has also fulfilled its access to information obligation by passing the Right to Access to Information Act in 2013. Under Section 2 (1) of the Act, every person has the right to access information held by or is under the control of a public authority. This obligation also extends to information held by or is under the control of a private body where that information is necessary for the enforcement or protection of any right (Section 2 (2)). A body known as the 'Commission' has also been established (Section 30 (1)). The Commission and its authorised agents shall not in the performance of their duties under this Act be subject to the directions or control of any person or authority (Section 37).

Ghana also fulfilled its obligation under the Protocol by passing the Right to Information Act 2019 (Act 989)¹¹⁰.

Under this Act, a person has the right to information, subject to the provisions of this Act (Section 1(1)). This right may be exercised through an application to the authority holding the information in accordance with the Act (Section 1(2)). A person may apply for information without

¹⁰⁸ Draft Bill on Access to Information, The Gambia, https://www.law-democracy.org/live/wp-content/uploads/2019/07/Gambia.RTI_CS_Jul19.pdf

¹⁰⁹ Liberia freedom of information act of 2010, <https://www.rti-rating.org/wp-content/uploads/Liberia.pdf>

¹¹⁰ The right to information act, 2019, (act 989), <https://acts.ghanajustice.com/actsofparliament/right-to-information-act-2019-act-989/>

giving a reason for the application (Section 1(3)). An independent Access to Information Commission is established (Section 42(1)). The Commission shall not be subject to the authority or control of any person or authority in the performance of its duties (Section 42(2)).

Benin also passed Law No. 2015-07 concerning the Code of Information and Communication¹¹¹ Article 7 of which states that: *“everyone has the right to information. The State undertakes, through its various structures and institutions, to guarantee to all persons access to sources of information, particularly public information. The departments of the States in charge of carrying out this mission therefore undertake to provide any information, to disclose any document and to ensure that, if necessary, a press kit is compiled and made available to practitioners on any subject of legitimate interest to the public”*.

Pursuant to this law *“no one, especially a media professional, may be prevented or prohibited from accessing sources of information, nor be disturbed in any way whatsoever in the regular fulfilment of his or her mission as a media professional, if he or she complies with the provisions of the law”* (Article 8).

Togo passed Law 2016-006 of 30th March 2016 on free access to public information and documentation¹¹². The government also adopted Decree 2017-104/PR of 10th August 2017 on the implementation modalities of Law 2016-006 of 30th March 2016 on free access to public information and documents. According to this law, access to information and documents of public bodies is free subject to the exceptions and time limits provided for by the law (Article 4). The right of access to public information and documentation is subject to intellectual property rights (Article 6). Access to information or a document of a public body is free of charge unless the transcription, reproduction or transmission of the document entails a fee (Article 9).

The Ombudsman also receives citizens' complaints concerning denial of access to public information or documentation, in accordance with Article 46 of Law No. 2016-006 of 30th March on free access to public information and documentation. He/she shall also issue opinions on complaints related to access to public information or documentation no later than fifteen (15) days from the time the request is filed with his/her secretariat (Article 49 of the law). The Ombudsman shall notify his opinion to the interested party and to the authority involved.

In addition, the digitalisation of procedures in the public administration contributes to the prevention of and the fight against corruption and other related offences in the public sector. The implementation of the e-Government project promotes the establishment of a digital ecosystem from which all government websites are accessible, as well as the website www.service-public.gouv.tg, which features administrative procedures and online business start-ups.

Senegal has also enshrined the right of access to information in Article 8 of the Constitution¹¹³.

¹¹¹ Law No. 2015-07 concerning the Code of Information and Communication; <https://sgg.gouv.bj/doc/loi-2015-07/>

¹¹² Law 2016-006 of 30th March 2016 on free access to information and public documents; http://jo.gouv.tg/sites/default/files/publications/JOS_30_03_16-61%C3%A8%20ANNEE%20N%C2%B010.pdf#page=14

¹¹³ Constitution of Senegal; <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/59426/111008/F1002378662/SEN-59426.pdf>

Furthermore, it should be noted that Senegal has made progress and achievements in terms of access to information, in the sense that a law on archives was passed in 1981 (amended by the law of 30th June 2006)¹¹⁴, a law which recalls in its preamble that *“in order to respond to the requirements of a new citizenship, the administration must be, in its day-to-day activities, both transparent and respectful of the private life of citizens”*. According to its Article 3, archives have a public status, they “serve the administration and the citizens”. Consequently, access to these documents is public, unrestricted and free of charge. In addition, certain texts require the administration to disclose the reasons for its decision (requirements to indicate the reasons for certain decisions).

Finally, every taxpayer has the right to information which allows him to request the disclosure, at his own expense and without any need to travel, of the minutes, budgets and accounts of local authorities (Art. 3, Paragraph 4; Art. 161).

Mali adopted Decree No.03 - 580/P-RM of 30th December 2003 which sets out the implementation of the law governing relationships between public administration and users of public services. Article 11 of this decree provides that, subject to the legislative and regulatory provisions prohibiting the disclosure or publication of facts covered by secrecy and intellectual property rights, users have the right to access administrative documents which do not contain names. Notwithstanding the secrecy that covers the information listed in Article 13 above, Public administration is under an obligation to communicate to users, upon request, all administrative documents bearing their names, with no grounds of privacy, medical secrecy or secrecy in commercial and industrial matters concerning personal facts that may be invoked against them (Article 14). Access to administrative documents is granted through free consultation on the spot or by issuing copies at the expense of the user who makes the request (Article 15).

Niger adopted by Order No. 2011-22 of 23rd February 2011 the Charter on Access to Public Information and Administrative Documents¹¹⁵. This Order stipulates that access to public information is free, subject to the exceptions and time limits provided for by law and that public information is readily made available as of right to persons who request it under the conditions laid down in this Order (Article 4). The right of access to public information shall be guaranteed equally to all users without any discrimination (Article 5). Article 6 also provides that any person has the right to know the information held in an administrative document concerning him or her or whose contents are enforceable against him or her. The Ombudsman shall be the institution responsible for ensuring that the right of access of citizens to public information as provided for in this Order is complied with (Article 28).

¹¹⁴ Law No 2006-19 of 30th June 2006 on archives and administrative documents

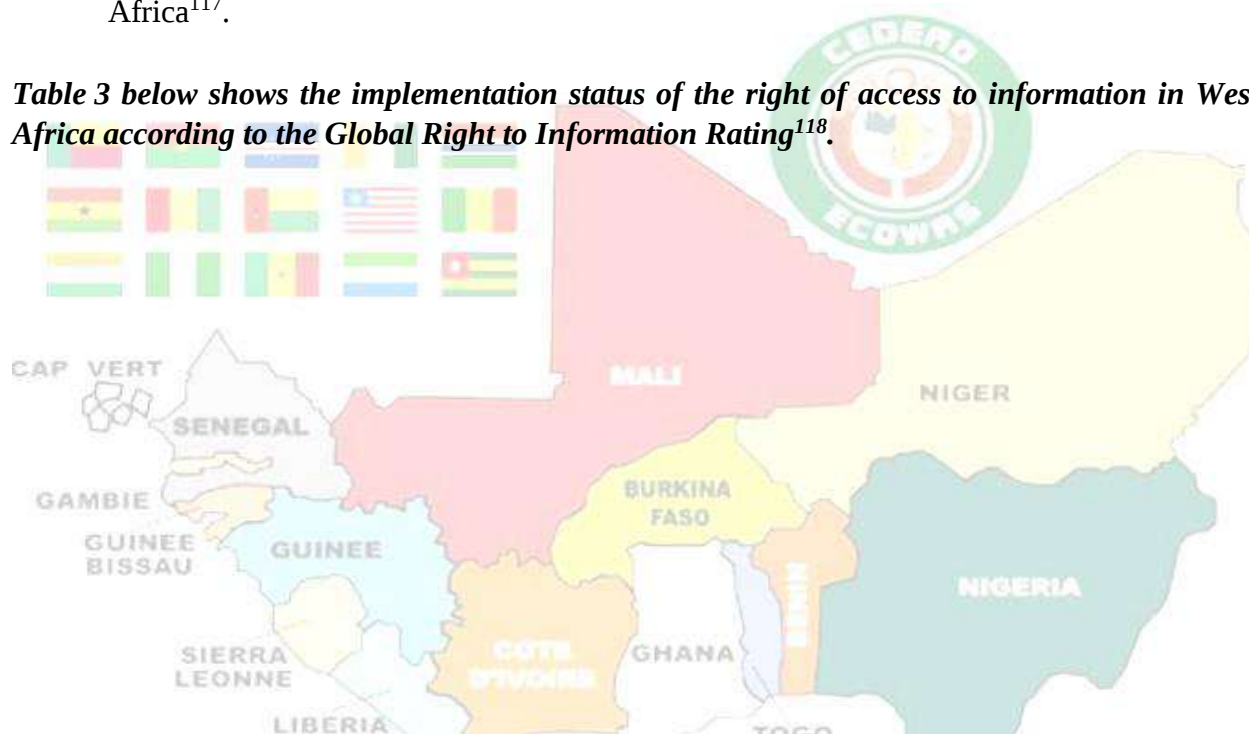
<https://ofnac.sn/resources/pdf/Lois/LOI%202006-19%20relatives%20aux%20archives%20et%20doc%20administratif.pdf>

¹¹⁵ Order No. 2011-22 of 23rd February 2011 concerning the Charter on Access to Public Information and Administrative Documents; <https://cyrilla.org/es/entity/yi52eko1cya> (4/11/21).

4.3.1.2. Weaknesses of access to information systems

- Most of the stakeholders (state agencies, citizens, media and researchers), seem to be unaware of the access to information legislation as it has not been properly disseminated;
- Poor implementation of the legislation on the ground: several journalists and CSOs interviewed during this survey stated that many of their requests for information or public documentation are rejected, left unanswered or without feedback, in violation of these applicable texts. This explains the low ranking of some African countries¹¹⁶;
- Low compliance with international standards: most of the laws in force are not fully in line with the principles of the right of access to information set out in the African Union Commission's Declaration on Freedom of Expression and Access to Information in Africa¹¹⁷.

Table 3 below shows the implementation status of the right of access to information in West Africa according to the Global Right to Information Rating¹¹⁸.



¹¹⁶Togo Global Right to Information Rating index (2018, <https://countryeconomy.com/government/global-right-information-rating/togo>)

¹¹⁷ Adopted by the African Commission on Human and Peoples' Rights at its 65th Ordinary Session held from 21st October to 10th November 2019 in Banjul, The Gambia,, https://www.achpr.org/public/Document/file/French/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_FRE_2019.pdf

¹¹⁸ The Global Right of Access to Information Index assesses each legal framework according to 61 indicators and seven (07) categories including right of access, scope, application procedure, exceptions and refusals, appeals, sanctions and protections and promotional measures, <https://www.rti-rating.org/country-data/> (22.10.2021)

The Global Right of Access to Information Index assesses each legal framework according to 61 indicators and seven (7) categories including right of access, scope, requesting procedure, exceptions and refusals, appeals, sanctions and protections and promotional measures.¹¹⁹

Country	Year of passage of the legislation	Right of access	Scope	Requesting Procedure	Exceptions and refusals	Appeals	Sanctions and Protections	Promotional Measures	Total (150)	Global Ranking (/135)
The Gambia	2021	2	30	23	23	28	7	14	127	----- -
Liberia	2010	5	30	19	27	20	7	16	124	9
Sierra Leone	2013	0	29	25	18	28	7	15	122	11
Ghana	2019	5	13	19	18	21	7	14	97	-----
Nigeria	2011	3	29	12	22	4	7	11	88	61
Guinea Conakry	2010	4	18	19	18	18	2	5	84	94
Burkina Faso	2015	5	25	18	8	14	3	6	79	73
Côte d'Ivoire	2013	2	15	20	17	13	4	5	76	79
Niger	2011	0	19	13	13	17	6	6	74	83
Togo	2016	2	23	14	8	20	1	2	68	95
Benin	2015	2	7	12	14	14	3	0	52	117

¹¹⁹ The Global Right of Access to Information Index assesses each legal framework according to 61 indicators and seven (07) categories including right of access, scope, requesting procedure, exceptions and refusals, appeals, sanctions and protections and promotional measures, <https://www.rti-rating.org/country-data/> (22.10.2021)

4.3.2. The right of civil society participation in the prevention of and fight against corruption (Article 5 (e) of the Protocol)

The ECOWAS Protocol enshrines the right of civil society participation in the prevention of and fight against corruption in Article 5 (e), according to which, in order to achieve the objectives set out in Article 2 above, each State Party undertakes to take measures to establish and strengthen “the participation of civil society and Non-Governmental Organisations (NGOs) in efforts to prevent and detect acts of corruption”.

This right is also enshrined in Article 13 of UNCAC which requires that “State Party shall take appropriate measures, ..., to promote the active participation of individuals and groups outside the public sector, such as civil society, Non-Governmental Organisations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.”

4.3.2.1. Strengths and Best Practices

Some ECOWAS countries, despite the enactment of specific laws on access to information, have also enshrined provisions on public participation in their anti-corruption laws, for instance Benin, Burkina Faso, Côte d'Ivoire, etc. It should also be noted that French-speaking countries such as Togo, Mali, Niger, etc. have all adopted the French law No. 40-484 of 1st July 1901 relating to contract of associations.

However, in most of the countries in the sub-region, there is no formal law that specifies the arrangements for the participation of CSOs, which makes it impossible to identify the specific criteria for the involvement of civil society actors in any given state entity. There is also no formal framework for dialogue between the state and CSOs through which they formally participate in decision-making and receive feedback as appropriate.

Burkina Faso establishes the right to participate in the fight against corruption in its Law No. 004-2015/CNT on the prevention and repression of corruption¹²⁰, which requires the active participation of civil society organisations in preventing and combating corruption (Article 40). This provision also requires “transparency of decision-making processes and the promotion of citizen participation in the management of public affairs”.

In addition, Law 064-2015/CNT of 20th October 2015 on freedom of association in its Article 4 states that “associations shall be formed freely and without prior administrative authorisation....”¹²¹

¹²⁰ Law No. 004-2015/CNT on the prevention and repression of corruption; http://www.justice.gov.bf/wp-content/uploads/2017/12/loi_004_portant_prevention_et_repression_de_la_corruption_au_burkina_faso.pdf

¹²¹ Law 064-2015/CNT of 20th October 2015 on freedom of association; <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101523/122351/F-1724755500/BFA-101523.pdf>

Burkina Faso has created a framework for annual consultations between the government and civil society organisations. In addition, civil society sits on the advisory board of the ASCE-LC (Article 34 of Law 004-2015) and on the Regulatory Council of ARCOP (Article 12), both of which are independent of the government. In addition, civil society is a member of the Advisory Board of the ASCE-LC (Article 34 of Law 004-2015) and of the Regulatory Council of the ARCOP (Article 12), which are two policy-making bodies in the fight against corruption and the regulation of public procurement contracts¹²². The country has also passed Law 064-2015/CNT on freedom of association.¹²³

In Benin, Article 6 of Law No. 2015-07 of 20th March 2015 on the Information and Communication Code in the Republic of Benin¹²⁴ established the freedom to speak and write, to print and publish, to read and receive information, ideas, thoughts and opinions of one's choice.

The Constitution of Côte d'Ivoire has enshrined the right to participation in its Article 20 which states that "freedom of association, assembly and peaceful demonstrations are guaranteed by law"¹²⁵.

Furthermore, Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences¹²⁶ is more explicit on the participation of civil society in the fight corruption.

As a matter of fact, Article 23 of this Order stipulates that *"associations, foundations, groups and, in general, legally constituted civil society and Non-Governmental Organisations participate in the prevention of and fight against corruption and other related offences"*

The law also recognises the right of CSOs to monitor the operation of institutions by cooperating with public authorities and companies in order to strengthen their capacity to prevent and detect corruption and other related offences, through awareness-raising, education, training and protest campaigns on the dangers that these scourges represent for society; and to monitor the implementation by the government of existing legislation, and to make proposals for codification with respect to the fight against corruption and other related offences.

In the same vein, the government of Togo, in order to promote the participation of civil society in the fight against corruption in the country, adopted the French law No. 40-484 of 1st July 1901 on

¹²² UNODC, Burkina Faso Country Report; Review by Uganda and Lao People's Democratic Republic of Burkina Faso's implementation of Articles 5-14 and 51-59 of the United Nations Convention against Corruption for the 2016-2021 cycle; https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2018_06_14_Burkina_Faso_Final_Country_Report.pdf

¹²³ Law 064-2015/CNT on freedom of association.

2016 ; <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101523/122351/F-1724755500/BFA-101523.pdf>

¹²⁴ Law No. 2015-07 of 20th March 2015 on the Information and Communication Code in the Republic of Benin; <https://sgg.gouv.bj/doc/loi-2015-07/>

¹²⁵ Law No. 2016-886 of 08th November 2016 establishing the Constitution of the Republic of Côte d'Ivoire; <https://www.presidence.ci/wp-content/uploads/2018/07/CONSTITUTION.pdf>
<https://www.droit-afrique.com/uploads/RCI-Constitution-2016.pdf>

¹²⁶ Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences; <https://www.igf.finances.gouv.ci/lgfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

the contract of association, which is applicable in Togo¹²⁷. The government also adopted Law No. 2011-10 of 16th May 2011 which sets the conditions for the exercise of freedom of assembly and peaceful public demonstrations¹²⁸.

In addition to these laws, there are two complementary regulatory texts that govern the activities of Non-Governmental Organisations (NGOs). These are Decree No. 92-130/PMRT of 27th May 1992, which sets out the conditions for cooperation between NGOs and the government¹²⁹, and Inter-ministerial Order No. 002/MPAT/MEF of 20th March 1997, which constitute the cornerstones of the legislative and regulatory framework for NGOs in Togo.

This inter-ministerial order No. 002/MPAT/MEF of 20th March 1997 sets out the details of the standard programme agreement proposed by the Government to each category of NGO in accordance with Article 9, Paragraph 3 of Decree No. 92-130/PMRT of 27th May 1992. Thus, in virtue of this decree, each category of NGO shall undertake, in accordance with its Articles of Association:

- To participate in the implementation of grassroots development actions in accordance with its Programme Agreement;
- To conclude, as part of its annual programmes with relevant ministerial departments, technical execution notices with a precise description of the projects (title, location, beneficiaries, direct effects, costs, etc.);
- To send periodic activity reports to the relevant Ministries indicating the level of execution (technical and financial);
- To pay taxes, duties and indirect taxes on its operations and transactions under the provisions of the applicable law.

Nigeria has successfully engaged civil society, particularly through representation on the boards of several public institutions, and joined the Open Government Partnership in 2016. The Independent Corrupt Practices and Other Related Offences Commission works closely with civil society in its public awareness efforts (Corrupt Practices and Other Related Offences Act, Section 6(e)). The Commission has identified 357 civil society organisations that form the National Anti-Corruption Coalition. The Economic and Financial Crimes Commission and civil society organisations have signed several memoranda of understanding¹³⁰.

¹²⁷ law No. 40-484 of 1st July 1901 on the contract of association (J. O. T. 1946 – Page 328), https://investirautogo.tg/media/LOI_1901.pdf

¹²⁸ Law No. 2011-10 of 16th May 2011 which sets the conditions for the exercise of freedom of assembly and peaceful public demonstration, https://jo.gouv.tg/sites/default/files/JO/JOS_13_08_2019-64E%20ANNEE%20N%C2%B018%20TER.pdf#page=9

¹²⁹ https://investirautogo.tg/media/DECRET_92.pdf

¹³⁰ Implementation Review Group First resumed tenth session Vienna, 2-4 September 2019 Agenda item 2 Review of the implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13th June 2019; *op.cit*

4.3.2.2. Weaknesses regarding CSO involvement in the fight against corruption

The involvement of CSOs in the fight against corruption in ECOWAS countries is fraught with several obstacles.

First, the legal framework is inadequate, especially in several Francophone West African countries. Indeed, the EU Country Roadmap for Engagement with Civil Society in several West African countries, such as Togo¹³¹, points out some inconsistencies in the legal framework governing civil society organisations, particularly the lack of clarity regarding the legal framework in the light of the current expansion of CSOs and the irrelevance to the needs of networks, umbrella organisations and platforms. The law of 1st July 1901 relating to the contract of association which is in force in the country is very outdated. Attempted reforms have failed due to multiple divergent views of the actors.

Furthermore, in most countries in the sub-region, there is no formal law that sets out the modalities for CSO participation, which makes it impossible to identify clear criteria on which civil society actors are involved by a particular state entity. There is also no formal framework for dialogue between the state and CSOs whereby CSOs formally participate in decision-making and receive feedback accordingly.

The EU Roadmap notes that, with the exception of a few, most CSOs do not participate adequately in public affairs, whether on budgetary, financial, international trade, environmental or other issues.

Furthermore, the various governments in the region have not adequately developed mechanisms for broad public consultation (agora, online platforms, etc.) to consult citizens on major development issues or during the passing of certain legislation, in accordance with certain international best practices in this area.

There is also a very low level of citizen and civil society participation in the fight against corruption in West African countries, linked to a low level of civic education about the fight against corruption, the lack of a denunciation culture and the lack of a whistleblower protection law. There are several hotlines for reporting corruption in some countries that are initiated by some state departments or civil society organisations, but these are simply ignored or hardly used and the reporting rate is still very low.

Finally, CSOs have a critical lack of technical and material resources (specialisation and expertise to convince decision-makers, human resources). They have a very low capacity to mobilise resources and a very low networking capacity.

¹³¹ file:///C:/Users/USER/Downloads/feuille_de_route-version_finale.doc.pdf

4.4. TRANSPARENT, EFFICIENT, OPEN AND FAIR PROCUREMENT SYSTEMS FOR GOODS AND SERVICES (Article 5(b))

Article 5(b) of the Protocol requests that each State Party shall take "measures to establish and consolidate: (b) transparency and efficiency in the procurement and disposal of goods, works and services and in the recruitment of personnel into the public service".

Article 9, Paragraph 1 of UNCAC also requires States Parties to "take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption".

4.4.1. The strengths of public procurement contracts systems in the ECOWAS region

The requirement for transparency in public contracts and services was reinforced by Directive No. 04/2005/CM/UEMOA on procedures for the award, execution and settlement of public contracts and contracting out of public services in the West African Economic and Monetary Union (WAEMU), domesticated by the eight WAEMU member states¹³².

Article 2 of the aforementioned Directive stipulates that procedures for awarding public contracts and public service delegations, regardless of the amount, must comply with certain principles, including the cost-effectiveness and efficiency of the procurement process; free access to public procurement; equal treatment of bidders; mutual recognition; and the transparency of procedures, through the consistency, modernity and traceability of procedures. Article 93 adds that each Member State must adopt legislative, regulatory and administrative provisions to comply with the Directive within two years of its implementation.

The Directive establishes several bodies such as regulatory bodies, supervisory bodies and public procurement bodies.

The Directive also establishes capacity requirements, including proof of technical capacity (Article 21); certification of candidates (Article 22); proof of financial capacity (Article 23); and errors and misrepresentation (Article 24). The Directive also regulates issues related to consortia and subcontracting (Articles 25 and 26).

All WAEMU member states have therefore complied with the above provisions by domesticating the directive into national laws and decrees. Despite the domestication of the directive by the majority of members, in practice, there are some shortcomings, particularly the absence of digital markets in the majority of countries in the region, with the exception of Ghana and Nigeria, and the unavailability of information on contracts and subcontractors.

However, Côte d'Ivoire has extensively embarked on reforming its public procurement system through the adoption and implementation of several texts. For example, Order No. 2019-679 of

¹³² Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea-Bissau, <http://www.uemoa.int/fr/pays/benin>

24th July 2019 on the public procurement code¹³³. The country has also adopted Order No. 2008-594 of 27th June 2018 on the creation, organisation and functioning of the national public procurement regulatory authority; Order No. 2007-586 of 4th October 2007 which repeals certain provisions of Law No. 2003 of 7th July 2003 on the transfer and sharing of powers from the State to local authorities; Decree No. 2012-1152 of 19th December 2012 on the powers, organisation and functioning of the institutional framework for the management of public-private partnerships; Decree No. 2013-308 of 8th May 2013 amending Decree No. 2009-260 of 6th August 2009 on the organisation and functioning of the national public procurement regulatory authority (ANRMP). The country has also adopted a code of ethics for public procurement and contracting out of public services by decree No.106 of 13th July 2011.

Togo has also improved its procurement system through Law No. 2009-13 of 30th June 2009 on public procurement and contracting out of public services. This law led to the establishment of bodies for the award, control and regulation of public contracts and contracting of public services. It was reinforced by the adoption of several implementation decrees, including: Decree 2009-277 of 11th November 2009 on the public procurement and contracting out of public services code¹³⁴, Decree No. 2019-097/PR of 08/07/19 on the code of ethics and professional conduct in public procurement and Decree No. 2019-096/PR of 8th July 2019 on the regulation of outsourced public contracting and project management in the Togolese Republic, Decree No. 2018 - 062/PR of 21/03/18 on the regulation of electronic transactions and services in Togo¹³⁵.

Burkina Faso has also fulfilled its obligations under the Protocol by adopting and implementing several texts. These include Law No. 039/2016/AN on the general regulation of public procurement¹³⁶ and several implementing decrees, such as Decree No. 2017-00 49 on procedures for the award, execution and settlement of public contracts and contracting out of public services¹³⁷ which was amended in 2009 by Decree No. 2019-0358 of 30th April 2019, Decree No. 2014-628 on the creation, powers, composition and operation of the public-private partnership commission¹³⁸; Decree No. 2015-1260 on the code of ethics and professional conduct for public procurement contracts¹³⁹, Decree No. 2017-0050 on the powers, organisation and operation of the

¹³³ Order No. 2019-679 of 24th July 2019 on the public procurement code ; <https://budget.gouv.ci/doc/loi/Code-Marches-Publics-Ordonnance-n-2019-679-du-24-juillet-2019.pdf>

¹³⁴ Decree 2009-277 of 11th November 2009 on the public procurement and contracting out of public services code, <https://www.otr.tg/index.php/en/documentation/sur-les-impots/textes-fiscaux-nationaux/decrets/29-decret-n-2009-277-pr/file.html>

¹³⁵ Decree No. 2018 - 062/PR of 21/03/18 on the regulation of electronic transactions and services in Togo; https://jo.gouv.tg/sites/default/files/JO/JOS_28_04_2018-63E%20ANNEE%20N%C2%B0%206%20BIS.pdf

¹³⁶ Law No. 039/2016/AN on the general regulation of public procurement; <https://www.droit-afrique.com/uploads/Burkina-Loi-2016-39-reglementation-generale-commande-publique.pdf>

¹³⁷ Decree No. 2017-00 49 on procedures for the award, execution and settlement of public contracts and contracting out of public services <https://www.droit-afrique.com/uploads/Burkina-Code-2017-marches-publics.pdf>

¹³⁸ Decree No. 2014-628 on the creation, powers, composition and operation of the public-private partnership commission; <file:///C:/Users/USER/Downloads/Decret-n%C2%B02014-628-Commission-PPP.pdf>

¹³⁹ Decree No. 2015-1260 on the code of ethics and professional conduct for public procurement contracts; <file:///C:/Users/USER/Downloads/DECRET-2015-1260-portant-code-d%C3%A9thique-et-de-d%C3%A9ontologie-de-la-CP.pdf>

public procurement regulatory authority¹⁴⁰, Decree No. 2017-0051 regulating outsourced public contracting, Decree No. 2017-049 on procedures for awarding, executing and settling public contracts and contracting out of public services, Decree No. 2017-0775 setting the public service regulation fee and the method of repayment of resources, Decree No. 2019-0549 amending Decree No. 2017-0049 on procedures for awarding, executing and settling public contracts and contracting out of public services Decree No. 2019-0574 on the determination of the nature and terms of acquiring goods and services within the framework of the implementation of Article 6 of Law No. 039-2016 of 2nd December 2016 on the general regulations governing public procurement, Decree No. 2020-0480 of 12th June 2020 on the terms of collection of the fee for the regulation of public contracts and contracting out of public services, and Decree No. 2014-024 on the terms and conditions for the implementation of Law No. 2020-2013 of 23rd May 2013 on the legal regime of public-private partnerships in Burkina Faso¹⁴¹.

In Cape Verde, public procurement is governed by the Public Procurement Code, which was enacted by Law No. 88-2015 of 14th April 2015.¹⁴² The regulatory body for public procurement is the Autoridade Reguladora das Aquisições Públicas (ARAP)¹⁴³.

The Republic of The Gambia has developed a regulatory framework for public procurement based on the Gambia Public Procurement Act of 2001, amended by the Public Procurement Authority Act of 2014¹⁴⁴ (effective 1st January 2015) and the Gambia Public Procurement Regulations of 2003.

The National Public Private Procurement Policy 2015-2020 provides a framework for public-private partnerships. The Gambia has a Public Procurement Authority (2018.)¹⁴⁵.

Public procurement in Ghana is governed by the Public Procurement Act 663 (2003), which has since been amended several times, including in 2015 (Public Procurement (Amendment) Bill, 2015) and more recently in 2016 (The public procurement (amendment) Act 2016, ACT 914). Ghana's procurement regulatory body is the Public Procurement Authority (PPA)¹⁴⁶. Ghanaians can now pay their taxes and other fiscal obligations online directly through the Ghana.GOV platform. Through this service, which was launched recently, the government is pursuing its policy of digitising public services by simplifying revenue collection.

¹⁴⁰ Decree No. 2017-0050 on the powers, organisation and operation of the public procurement regulatory authority; <file:///C:/Users/USER/Downloads/D%C3%A9cret-n%C2%B02017-0050PRESPMMINEFID-portant-attributions-organisation-et-fonctionnement-de-l'Autorit%C3%A9-de-r%C3%A9gulation-de-la-commande-publique.pdf>

¹⁴¹ Decree no. 2014-024 on the terms and conditions for the implementation of Law no. 2020-2013 of 23rd May 2013 on the legal regime of public-private partnerships in Burkina Faso <https://www.arcop.bf/decrets/>

¹⁴² Public Procurement Regulations West Africa, Cape Verde - Public Procurement - Public Service Delegations - PPP ; <http://www.marches-publics-afrique.com/reglementations-nationales-des-marches/uemoa---marches-publics/cap-vert---marches-publics---delegations-de-service-public---ppp>

¹⁴³ Autoridade Reguladora das Aquisições Públicas (ARAP); <http://www.arap.cv/index.php>

¹⁴⁴ Public Procurement Authority Act, 2014, <https://gppa.gm/wp-content/uploads/2021/05/2014-ACT.pdf>

¹⁴⁵ Gambia public procurement authority regulations, 2018; <https://gppa.gm/wp-content/uploads/2021/05/GPPA-Regulations-2019.pdf>

¹⁴⁶ Public Procurement Authority (PPA), <http://www.marches-publics-afrique.com/reglementations-nationales-des-marches/uemoa---marches-publics/ghana---marches-publics---delegations-de-service-public---ppp>

Law L/2012/020/CNT of 11th October 2012 sets out the rules governing the award, control and regulation of public procurement contracts and contracting out of public contracts in Guinea¹⁴⁷.

In addition, by decree D/2020/154/PRG/SGG of 10th July 2020 on the powers, organisation and functioning of the Public Procurement Regulatory Authority (ARMP)¹⁴⁸, Guinea has set up several regulatory bodies, including the Public Procurement Regulatory Authority (ARMP) and the control structure known as the Administration de Contrôle des Grands Projets et des Marchés Publics (ACGPMP).¹⁴⁹

In 2010, Guinea-Bissau adopted a regulation applicable to public procurement and the contracting out of public services by adopting Decree-Law No. 19/210 of 30th June 2010 on the management of public procurement, thereby domesticating the relevant EU standards. However, the related implementing decrees, including the Public Procurement Code, have not yet been issued.

In Liberia, the regulations relating to public procurement are set out in the Public Procurement and Concessions Act of 2005, which was supplemented by an Act of 1st December 2009. This was amended and approved on 16th September 2010 by the Public Procurement and Concessions Act.¹⁵⁰ The regulatory body for public procurement in Liberia is the Public Procurement & Concession Commission¹⁵¹.

By virtue of decree No. 2015-0604 of 25th September 2015, Mali adopted the code of public procurement and contracting out of public services¹⁵².

The country subsequently passed Law No. 08-022 of 23rd July 2008, as amended, creating the General Directorate of Public Procurement and Contracting out of Public Services¹⁵³ and Law No. 08-023 of 23rd July 2008, as amended, on the Regulatory Authority for Public Procurement and Contracting out of Public Services.¹⁵⁴

With Decree No. 2016-641/PRN/PM of 1st December 2016, Niger adopted the Public Procurement and Public Service Delegation Code¹⁵⁵, as well as implementing decrees such as Decree No. 2013-

¹⁴⁷ Law L/2012/020/CNT of 11th October 2012 sets out the rules governing the award, control and regulation of public procurement contracts and contracting out of public contracts in Guinea; <http://droit-afrique.com/upload/doc/guinee/Guinee-Loi-2012-20-marches-publics-services-publics.pdf>

¹⁴⁸ Decree D/2020/154/PRG/SGG of 10th July 2020 on the powers, organisation and functioning of the Public Procurement Regulatory Authority (ARMP), <http://www.droit-afrique.com/uploads/Guinee-Decret-2020-154-autorite-regulation-marches-publics.pdf>

¹⁴⁹ Administration de Contrôle des Grands Projets et des Marchés publics » (ACGPMP) ; <https://www.invest.gov.gn/page/code-en-vigueur?onglet=marches-publics>

¹⁵⁰ Public Procurement and Concessions Act (2010), <https://www.procurementinet.org/wp-content/uploads/2017/02/Public-Procurement-and-Concessions-Act-PPCA-Liberia.pdf>

¹⁵¹ Public Procurement & Concession Commission, <https://ppcc.gov.lr/2content.php?sub=67&related=1&third=67&pg=sp>

¹⁵² <https://www.droit-afrique.com/uploads/Mali-Code-2015-marches-publics.pdf>

¹⁵³ Law No. 08-022 of 23rd July 2008, as amended, creating the General Directorate of Public Procurement and Contracting out of Public Services; <http://www.armds.ml/wp-content/uploads/2018/01/Loi-08-022-relative-a-la-creation-de-la-DGMP.pdf>

¹⁵⁴ Law No. 08-023 of 23rd July 2008, as amended, on the Regulatory Authority for Public Procurement and Contracting out of Public Services; <http://ekladata.com/law-africa-news.eklablog.com/perso/MALI/Loi-n-08-023-du-23.07.2008-Autorite-de-regulat.pdf>

¹⁵⁵ Decree No. 2016-641/PRN/PM of 1st December 2016, Niger adopted the Public Procurement and Public Service Delegation Code; https://www.armp-niger.org/fileadmin/armp/pdf/Reglementation/Code_Marches_Publics/decret-641.pdf

570/PRN/PM of 20th December 2013 on specific procedures for awarding contracts for works, equipment, supplies and services for national defence and security needs; Decree No. 2018-496/PRN/PM of 20th July 2018 on the Code of Ethics and Professional Conduct for Public Procurement Contracts and Contracting out of Public Services¹⁵⁶ and Law No. 2011-37 of 28th October 2020 on the general principles, control and regulation of public procurement contracts and contracting out of public services in Niger¹⁵⁷.

In Nigeria, the regulation of public procurement is mainly based on the “Public Procurement Act 2007”¹⁵⁸. This is applicable to the State, the Federal Government, ministries and organisations. Public-private partnerships are regulated by the National Policy on Public Private Partnership of 2008. The principal actors in public procurement process in Nigeria are the Bureau of Public Procurement (BPP) and Infrastructure Commission Concession Regulatory (CICR), which specialises in PPPs.

In Senegal, the public procurement code was adopted by decree 2014-1212 of 22nd September 2014 on the public procurement code¹⁵⁹. Several implementing decrees were then issued, namely Decree No. 2007-546 of 25th April 2007 on the organisation and functioning of the Public Procurement Regulatory Authority (ARMP)¹⁶⁰, Decree No. 2007-547 of 25th April 2007 on the creation of the Central Public Procurement Directorate (DCMP)¹⁶¹.

In Sierra Leone, the laws and implementing decrees relating to public procurement include the public procurement act (2016)¹⁶² which amends the Public procurement Act (2004)¹⁶³; and the Public-private partnership Act (2010).¹⁶⁴

In the Republic of Benin, Law No. 2009-02 of 7th August 2009 on the public procurement and contracting out of public services code¹⁶⁵; as well as Law No. 2017-04 of 19th October 2017 on the

¹⁵⁶ Decree No. 2018-496/PRN/PM of 20th July 2018 on the Code of Ethics and Professional Conduct for Public Procurement Contracts and Contracting out of Public Services ; https://www.arpmp-niger.org/fileadmin/arpmp/pdf/Reglementation/Decrets/dec_pm_2018-496_code-d-ethique-et-de-deontologie-des-marches-publics-et-des-delegations-de-service-public_adopte-au-cm-du-vendredi-20-juillet-2018.pdf

¹⁵⁷ Law No. 2011-37 of 28th October 2020 on the general principles, control and regulation of public procurement contracts and contracting out of public services in Niger ; <http://www.droit-afrique.com/upload/doc/niger/Niger-Loi-2011-37-controle-regulation-marches-publics.pdf>

¹⁵⁸ Public Procurement Act 2007; <https://www.bpp.gov.ng/wp-content/uploads/2017/11/Public-Procurement-Act-2007pdf.pdf>

¹⁵⁹ Decree 2014-1212 of 22nd September 2014 on the public procurement code; <http://www.droit-afrique.com/upload/doc/senegal/Senegal-Code-2014-marches-publics.pdf>

¹⁶⁰ Decree No. 2007-546 of 25th April 2007 on the organisation and functioning of the Public Procurement Regulatory Authority (ARMP); http://www.arpmp.sn/spip/IMG/pdf/decret_ARMP.pdf

¹⁶¹ Decree No. 2007-547 of 25th April 2007 on the creation of the Central Public Procurement Directorate (DCMP) ; http://www.arpmp.sn/irmap/story_content/external_files/CodeMarches2014.pdf

¹⁶² The public procurement Act (2016), file:///C:/Users/USER/Downloads/Public_Procurement_Act_2016.pdf

¹⁶³ The Public procurement Act (2004); <https://docs.google.com/viewer?a=v&pid=sites&srcid=bWFyY2hlcY1wdWJsaWNzLWFmcmlxdWUuY29tfG1hcmNoZXMTcHVibGljcy1hZnJpY2FpbmN8Z3g6NTZlNTY3NTdmYTU3YTJkOQ>

¹⁶⁴ The Public-private partnership act (2010); <https://docs.google.com/viewer?a=v&pid=sites&srcid=bWFyY2hlcY1wdWJsaWNzLWFmcmlxdWUuY29tfG1hcmNoZXMTcHVibGljcy1hZnJpY2FpbmN8Z3g6M2E4ODcyZjUwNWVhZGZhYg>

¹⁶⁵ Law No. 2009-02 of 7th August 2009 on the public procurement and contracting out of public services code; <http://www.droit-afrique.com/upload/doc/benin/Benin-Code-des-marches-publics-2009.pdf>

public procurement code¹⁶⁶, and Law No. 2020-26 of 29th September 2020 on the public procurement code¹⁶⁷. Decree No. 2018-230 of 13th June 2018 on the code of ethics and professional conduct in public procurement¹⁶⁸.

4.4.2. Weaknesses of the public procurement system

4.4.2.1. Weak digitalisation of public procurement

Only two countries out of fifteen have launched their digital procurement portal. They are Ghana with GHANEPS (Ghana Electronic Procurement System)¹⁶⁹ and Nigeria also launched its digital procurement platform with the Bureau of E-procurement (electronic procurement)¹⁷⁰. Both platforms offer the possibility to register online by creating a secure page, accessing a user manual, accessing available tenders, requesting clarifications, submitting and tracking bids online.

In addition, there is a very low level of automation of data collection tools in the ECOWAS region, which is a serious impediment to the efficiency of public procurement in the various countries.

4.4.2.2. Limited availability of information on contracts and subcontractors

Availability of information on the post-tender, contract execution or procurement process phase is still of a concern in most countries.

Information on contracts, contract amendments, contract performance (progress reports), payments and proof of payments is rarely available or accessible in any format. The availability of information on contract performance is of paramount importance for citizen control of public procurement activities. Without this information, it is impossible to know whether a contract has been performed, how much has actually been paid for the service provided and whether changes have been made to the price or dates of the contract, as well as its specifications.

In addition, there is not enough information on subcontractors. Subcontractors can be a breeding ground for corruption, a means of avoiding conflicts of interest and other corrupt practices, so this particular issue is a clear gap to be addressed in most countries.

4.4.2.3. Lack of user skills and experience

The expertise of public procurement specialists, who technically run the procurement process, as well as of tender commissions that make decisions, needs to be improved in almost all countries. The problem is more acute in countries with decentralised systems, where local procurement

¹⁶⁶ Decree No. 2018-230 of 13th June 2018 on the code of ethics and professional conduct in public procurement
<https://www.marches-publics.bj/pages/code-des-marches-2017>

¹⁶⁷ Law No. 2020-26 of 29th September 2020 on the public procurement code;
https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=111201&p_lang=fr

¹⁶⁸ Decree No. 2018-230 of 13th June 2018 on the code of ethics and professional conduct in public procurement
https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=111201&p_lang=fr

¹⁶⁹ Ghana Electronic Procurement System; <https://www.ghaneps.gov.gh/epps/home.do>

¹⁷⁰ Bureau of E-procurement (electronic procurement); <https://www.bpp.gov.ng/>

authorities have extensive powers and financial resources. However, due to a lack of skills, technically flawed tenders are sometimes issued, leading to failed tenders. Lack of market research, lack of experience sharing between contracting entities, poor knowledge of the applicable rules, can also lead to unrealistic or inflated estimated prices in some tenders.

4.4.2.4. *Weak legal and institutional framework*

It should be noted that despite commendable progress, the legal and institutional framework for public procurement suffers from a number of shortcomings in all ECOWAS member states, including the weak capacity of procurement bodies at sectoral, deconcentrated and decentralised levels as well as at the level of service providers; the outdated legal framework on public procurement; and the cumbersome nature of public procurement procedures.

In addition, the lack of explicit reference to conflict of interest, corruption and fraud provisions in some public procurement legislation and forms leaves room for corrupt practices in some public procurement processes. Finally, the absence of an obligation in some legislation to consult civil society or the business community (public-private dialogue) on the functioning of the public procurement system undermines the level of accountability in public procurement and hampers meaningful discussions on how to improve the system.

Please refer to Annex 4: Summary table of public procurement systems in the ECOWAS region.



4.5. TRANSPARENCY IN THE MANAGEMENT OF PUBLIC FINANCES (Article 5(f))

Article (f) of the Protocol requires each State Party to establish and consolidate, “*revenue collection systems that eliminate opportunities for corruption and tax evasion and provide for regulations which require companies and organisations to maintain adequate financial books and records and adhere to internationally accepted standards of accounting*”

4.5.1. Strengths of public finance management systems

The eight (08) WAEMU member states have domesticated Directive No. 01/2009/CM/UEMOA on the code of transparency in public finance management within the WAEMU¹⁷¹. According to this Community Directive, the collection and use of public funds must be consistent with the principles of the rule of law: lawfulness, transparency, democratic control and accountability.

Article 1.5 of the Directive requires that sales of public goods be conducted in an open manner, and significant transactions be subject to specific information. The same applies to contracts between the public administration and companies, whether public or private, including extractive industries and companies operating public service concessions, which must be very clear and open (Article 1.6).

In addition, the Directive requires that the relationship between the public administration and public companies be made public.

In addition, the Directive requires that the relationship between the public administration and public companies must be governed by clear and publicly accessible provisions (Article 1.7); the activities and financial management of public administrations must be subject to internal control (Article 5.5)

Finally, the holders of any public authority, whether elected or senior civil servants, are required to disclose their assets at the beginning and end of their term of office or tenure (Article 7.1); the behaviour of public officers is governed by clear and widely known ethical rules (Article 7.2). The Directive also requires that sanctions be imposed in accordance with the principles of the rule of law on all those, whether elected or civil servants, who have to deal with or manage public funds (Article 7.3).

All these relevant provisions of the Directive have been domesticated by all WAEMU member states, including Benin through Decree No. 2015-035 of 29th January 2015 on the Code of Transparency in Public Financial Management in the Republic of Benin¹⁷²; Burkina Faso through Law No. 008-2013/AN of 23rd April 2013 on the Code of Transparency in Public Financial

¹⁷¹ Directive No. 01/2009/CM/UEMOA on the code of transparency in public finance management within the WAEMU
http://www.uemoa.int/sites/default/files/bibliotheque/directive_01_2009_cm_uemoa.pdf

¹⁷² Decree No. 2015-035 of 29th January 2015 on the Code of Transparency in Public Financial Management in the Republic of Benin <https://sgg.gouv.bj/doc/decret-2015-035/>

Management in Burkina Faso¹⁷³; Côte d'Ivoire by organic law No. 2014-337 of 05th June 2014 on the code of transparency in public finance management;¹⁷⁴ Mali by Law 2013-031 23-07-2013 on the approval of the code of transparency in public finance management¹⁷⁵; Niger by law No. 2014-07 of 16th April 2014, adopting the code of transparency in public finance management within the WAEMU¹⁷⁶; Senegal by Law No. 2012-22 of 27th December 2012 on the Code of Transparency in Public Finance Management¹⁷⁷ and Togo by Law No. 2014 - 009 on the Code of Transparency in Public Finance Management¹⁷⁸.

In addition, the eight WAEMU countries have embarked on a process of digitalisation of public finances which contributes to strengthening the transparency of public finances.

As a matter of fact, Directive No. 08/2002/CM/UEMOA on measures to promote the use of cashless means of payment¹⁷⁹ has been transposed by most countries. In addition, the instructions of the BCEA such as Instruction No. 008-05-2015 governing the conditions and modalities for the exercise of activities of electronic money issuers in the member states of the West African Monetary Union (WAMU)¹⁸⁰.

In the same vein, Nigeria passed the Fiscal Responsibility Act 2007 which provides for the national budget to be guided by the pre-approved Medium Term Expenditure Framework (MTEF), to be prepared in consultation with Non-Governmental Organisations. The government policy provides for the establishment of the Government Integrated Financial and Management Information System and the implementation of the Treasury Single Account to monitor the financial activities of ministries, departments and agencies through a single platform. Nigeria is also committed to ensuring more effective citizen participation throughout the budget cycle. Nigeria has adopted an electronic financial accounting system. All records are kept by the Ministry of Finance. In addition, ministries, departments and agencies must keep a hard copy of all financial records for seven years (Financial Regulations 2009)¹⁸¹.

¹⁷³ Law No. 008-2013/AN of 23rd April 2013 on the Code of Transparency in Public Financial Management in Burkina Faso <http://droit-afrique.com/upload/doc/burkina/Burkina-Loi-2013-08-transparence-gestion-finances-publiques.pdf>

¹⁷⁴ Organic law No. 2014-337 of 5th June 2014 on the code of transparency in public finance management; <https://igt.tresor.gouv.ci/pdf/decret/LOI-ORGANIQUE-PORTANT-CODE-TRANSPARENCE.pdf>

¹⁷⁵ Law 2013-031 23-07-2013 on the approval of the code of transparency in public finance management https://www.cabri-sbo.org/uploads/files/Documents/mali_2013_legislation_public_finance_legislation_ministry_of_finance_cen-sad_ecowas_french_2.pdf

¹⁷⁶ Law No. 2014-07 of 16th April 2014, adopting the code of transparency in public finance management within the WAEMU <http://www.finances.gouv.ne/index.php/budget-1/reglementations-budgetaires/textes-portant-modalites-d-execution-du-budget-de-l-etat/file/273-directives-uemoa>

¹⁷⁷ Law No. 2012-22 of 27th December 2012 on the Code of Transparency in Public Finance Management <http://www.jo.gouv.sn/spip.php?article9605>

¹⁷⁸ Law No. 2014 - 009 on the Code of Transparency in Public Finance Management https://finances.gouv.tg/wp-content/uploads/files/2018/07%20-%20Juillet/loi_n%C2%B0_2014_-_009_portant_code_de_transparence_dans_la_gestion_des_finances_publiques.pdf

¹⁷⁹ Directive No. 08/2002/CM/UEMOA on measures to promote the use of cashless means of payment http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_directive_08_2002_cm.pdf

¹⁸⁰ Instruction No. 008-05-2015 governing the conditions and modalities for the exercise of activities of electronic money issuers in the member states of the West African Monetary Union (WAMU); https://www.bceao.int/sites/default/files/2017-11/instruction_no008_05_2015_intranet.pdf

¹⁸¹ Implementation Review Group First resumed tenth session Vienna, 2-4th September 2019 Agenda item 2 Review of implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13th June 2019

This Budget Responsibility Act 2007 further provides that the national budget follows the pre-approved Medium Term Expenditure Framework, which is prepared in consultation with Non-Governmental Organisations. The government policy provides for the establishment of the Government Integrated Financial Management Information System and the implementation of the Treasury Single Account to monitor the financial activities of ministries, departments and agencies through a single platform. Nigeria is also committed to ensuring more effective citizen participation throughout the budget cycle¹⁸².

Nigeria has adopted an electronic financial accounting system. All records are maintained by the Ministry of Finance. In addition, ministries, departments and agencies are required to keep a hard copy of all financial records for seven years (Financial Regulations 2009).

4.5.2. Weaknesses in public financial management systems

Despite commendable efforts to carry out public finance reforms in several ECOWAS countries to promote transparency in public finances, several challenges still persist:

- **Weak enforcement of laws:** While transparency codes exist, some countries have not yet adopted their implementing legislation, thus restricting enforcement;
- **Low level of public information and participation in the budget process:** the results of the International Budget Partnership (IBP) Open Budget Index 2019¹⁸³ show that the level of public participation is still very low;
- **Weak digitalisation of public finances:** the weak digitalisation of public finance management restricts the effectiveness of measures adopted;
- **Weak public finance control:** public finance control bodies have little independence and very limited technical and human resources.

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V19/04650f.pdf>

¹⁸² Implementation Review Group First resumed tenth session Vienna, 2-4th September 2019 Agenda item 2 Review of implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13th June 2019, op.cit.

¹⁸³ https://www.internationalbudget.org/sites/default/files/2020-04/2019_Report_FR_0.pdf

4.6. ASSET DISCLOSURE (ARTICLES 5(g) and 6(3) a and b)

Article 5 (g) of the Protocol requires States to adopt “*policies that oblige public officials to disclose assets, liabilities and copies of their income tax returns. The disclosure rules should be extended to at least the spouses and dependent children of the public officials. Provisions should be made to ensure that the information provided shall not be misused*”.

In addition, Article 6, Paragraph 3(a) requires States Parties to criminalise illicit enrichment consisting of “A significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful earnings shall be considered an illicit enrichment and an act of corruption for the purposes of this Protocol among those State Parties for which it is a criminal offence”.

4.6.1. The strengths of the asset disclosure system

Directive No. 01/2009/CM/UEMOA on the code of transparency in the management of public finances within WAEMU¹⁸⁴, which is applicable in the eight WAEMU countries¹⁸⁵, includes the obligation for public finance officials to disclose their assets.

Thus, Article 7.1 of this directive states that all public office holders, whether elected officials or senior civil servants, must disclose their assets at the beginning and end of their term of office or tenure.

Burkina Faso has fulfilled its commitments under the Protocol by making asset disclosure mandatory through Law No. 004-2015/CNT on the prevention and repression of corruption¹⁸⁶. This law includes very strong provisions on the obligation for interest and asset disclosure (Article 7) as well as the publication of the declaration of interest and assets (Article 10); the list of public figures who have complied with the obligation to disclose their assets is published in the Official Gazette by the Supreme State Audit Authority, as is the list of public officials who have not complied with this obligation (Article 11); the declaration may also be made available to the judiciary if necessary (Article 12); Article 13 sets out in detail the list of persons subject to the declaration of interest and assets. Asset disclosure covers the gross assets of individuals, i.e. land and real estate; professional property and shares in companies; bank and stock market investments; furniture, household equipment and vehicles; works of art and collections; intellectual property; and the actuarial valuation of retirement and pension payments.

¹⁸⁴ Directive No. 01/2009/CM/UEMOA on the code of transparency in the management of public finances within WAEMU http://www.uemoa.int/sites/default/files/bibliotheque/directive_01_2009_cm_uemoa.pdf

¹⁸⁵ Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea-Bissau, <http://www.uemoa.int/fr/pays/benin>

¹⁸⁶ Law No. 004-2015/CNT on the prevention and repression of corruption, <https://www.arcop.bf/loi-n004-2015-cnt-portant-prevention-et-repression-de-la-corruption-au-burkina-faso/>

This declaration also includes the assets of related persons (Article 21). This law also provides for the obligation to declare donations, gifts and other benefits in kind received in the discharge of duties (Article 32); the obligation of transparency of lobbying activities (Article 34).¹⁸⁷ The country is in the process of operationalising a digital platform for online declaration.

Benin has also established the obligation to disclose assets in Article 3 of Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin. This law establishes the list of senior state officials and senior civil servants subject to asset disclosure. These provisions also apply to public elected officials and to any public official whose appointment act requires it.

However, this law was repealed by Law No. 2002-23 of 29th September 2020 which amended and supplemented Law No. 2012-15 of 18th March 2013 on the Code of Criminal Procedure in the Republic of Benin¹⁸⁸.

In addition, according to Article 9 of Law No. 2020 - 09 of 23rd April 2020 relating to the creation, mission, organisation and operations of the Office of the High Commissioner for the Prevention of Corruption in the Republic of Benin, the High Commissioner shall submit a written statement of his asset disclosure to the Court of Auditors on assumption and at the end of his term.

Paragraph 2 of this law specifies that **“a decree issued by the Council of Ministers shall also define the list of public authorities and officials subject to the obligation to disclose their assets, in addition to those subject to this obligation by virtue of the provisions of the Constitution”**. This decree has not yet been issued.

Finally, Article 52 of the Constitution (as revised by Law No. 2019-40) has set out certain rules on conflicts of interest and asset disclosure.

In fact, Paragraph 1 of Article 52 states that “in their capacity, the President of the Republic and members of the Government may not, either by themselves or through an intermediary, purchase or lease any property belonging to the State domain, without prior authorisation from the Constitutional Court, under the conditions established by the law”. Paragraph 3 further specifies that “they may not take part in procurement contracts and adjudications for the public agencies and institutions under the State or subject to their control”¹⁸⁹.

¹⁸⁷ Law No. 004-2015/CNT on the prevention and repression of corruption in burkina faso ; http://www.justice.gov.bf/wp-content/uploads/2017/12/loi_004_portant_prevention_et_repression_de_la_corruption_au_burkina_faso.pdf

¹⁸⁸ Law No. 2002-23 of 29th September 2020 which amended and supplemented Law No. 2012-15 of 18th March 2013 on the Code of Criminal Procedure in the Republic of Benin, <https://sgg.gouv.bj/doc/loi-2020-23/#:~:text=Loi%20N%C2%B0%202020-23%20du%2029%20septembre%202020%20modifiant,en%20R%C3%A9publique%20du%20B%C3%A9nin.%20Lire%20le%20document%20T%C3%A9l%C3%A9charger>

¹⁸⁹ Law No 1990-32 of 11th December 1990 relating to the Constitution of the Republic of Benin Amended by Law No 2019-40 of 7th November 2019 revising Law No 90-32 of 11th December 1990 relating to the Constitution of the Republic of Benin, <http://www.droit-afrique.com/uploads/Benin-Constitution-1990.pdf>

Benin has also established the obligation to disclose assets in Article 3 of Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin¹⁹⁰. This law establishes the list of senior state officials and senior civil servants subject to asset declaration. These provisions also extend to personalities elected to a public office and to any state official whose appointment deeds make it mandatory. Asset disclosure must be supported by documents proving the ownership of the declarants (Article 4). But this law does not require the disclosure of interests and assets of related persons.

In case of concealment or false declarations, the official involved is punished in accordance with the provisions of this law. The refusal to disclose assets is liable to a fine equal to six (6) months' remuneration received or to be received in the office held. The fine is imposed ex officio or on denunciation by the President of the Chamber of Accounts according to the classification established in Paragraph 3 above (Article 4).

Asset disclosure is prescribed by the 2016 Constitution in its Article 41 of Côte d'Ivoire, published by Decree No. 2016-771 of 12th October 2016¹⁹¹.

Under the terms of Paragraph 2 of Article 41, *"Any person invested with the functions of President of the Republic, Vice-President of the Republic, Prime Minister, President or Head of a National Institution, member of the Government, member of the Constitutional Council, parliamentarian, magistrate or any person discharging high functions in the public administration or in charge of the management of public funds, is required to disclose his assets in accordance with the law."*

Decree No. 2018-100 sets out an exhaustive list of high-profile personalities and persons exposed to corruption.

According to Articles 10 and 11 of Decree No. 2014-219, the assets to be declared include tangible and intangible movable assets, real estate, and liabilities (debt) of the person subject to the law, his or her minor children and spouse when married under the community of property regime, whether they are located on or outside Ivorian territory.

The declarant is also required to disclose the liabilities of his or her assets, including those of his or her spouse, including mortgage debts, personal debts and any other commitments that he or she deems necessary to disclose.

Asset disclosure shall be made within thirty (30) days of assuming office or commencement of the performance of the duties of office. After leaving office and within a period not exceeding thirty (30) days, the persons subject to the law shall produce another asset disclosure. The law also prescribes penalties for offences related to asset disclosure. Article 55 of Order No. 2013-660: *"Any person who discloses or publishes, in any manner whatsoever, all or part of the declarations*

¹⁹⁰ <https://sgg.gouv.bj/doc/loi-2011-20/>

¹⁹¹ Decree No. 2016-771 of 12th October 2016 relating to the publication of the draft Constitution of the Republic of Côte d'Ivoire; <http://caidp.ci/uploads/65ff25d5da1ef7ff2ad748b3c31135ee.pdf>

or observations received by the body responsible for collecting asset disclosures shall be punished by imprisonment of between one month and one year and a fine of 1,000,000 francs.».

The sanctions provided for in Article 55 above apply to HABG staff through Article 15 of Decree No. 2014-219, which states: *“Any staff member of the High Authority for Good Governance found guilty of disclosing, without the authorisation of the declarant, in any manner whatsoever, in whole or in part, declarations or observations received, shall be punished in accordance with the provisions of Article 55 of Order No. 2013-660”.*

Togo also has a robust legislation on asset disclosure. Indeed, the obligation to disclose assets was introduced in Article 145 of the Constitution of 14th October 1992¹⁹². In addition, the government adopted the organic law 2020-003 24/01/2020 setting the conditions for the disclosure of assets and liabilities of senior officials, civil servants and other public agents.¹⁹³

According to this law, property and assets must be declared. The declarant shall draw up a list of property and assets belonging to him/her in Togo and abroad in which he/she shall indicate the origin of the property, the acquisition price, the identification references, the ownership regime, in particular, whether it is owned or shared, undivided or not, as well as the location, surface area, and registration when applicable.

The declarant shall also list the financial commitments he has entered into in Togo or abroad, specifying the details of the creditors, the nature of the commitments, their amounts, their due dates, their outstanding amounts on the date of the initial, amendment or final declaration. The contracts backing up the financial commitments are annexed to asset disclosure (New Article 9).

The government also adopted organic law No. 2021-006 of 1st April 2021 to determine the composition and functioning of the Office of the Ombudsman¹⁹⁴. This law gives the ombudsman full powers to receive declarations of the property and assets of the personalities involved and authorises him to carry out investigations into the fairness, equity and quality of public services.

Senegal has also passed law No. 2014-17 of 2nd April 2014 on asset disclosure¹⁹⁵, which entrusts OFNAC with the responsibility of receiving asset disclosures of persons subject to the law.

The persons subject to the law include the President of the National Assembly, the First Quaestor of the National Assembly, the Prime Minister, Ministers, the President of the Economic, Social

¹⁹² Togolese Constitution of the Fourth Republic (Consolidated version, up to date with the constitutional law of 15th May 2019 and all previous constitutional revisions); <http://extwprlegs1.fao.org/docs/pdf/tog128398.pdf>

¹⁹³ http://jo.gouv.tg/sites/default/files/JO/JOS_29_01_2020%20-65E%20ANNEE%20N%C2%B0%2003%20TER.pdf#page=2

¹⁹⁴ Organic law No. 2021-006 of 1st April 2021 which establishes the composition and functioning of the office of the Ombudsman of the Republic.

¹⁹⁵ Law No. 2014-17 of 2nd April 2014 on asset disclosure, <http://www.ofnac.sn/resources/pdf/Lois/Loi-D-P.pdf>

and Environmental Council, all credit administrators, revenue and expenditure authorisers, and public accountants, carrying out operations involving an annual total of one billion (1,000,000,000) or more CFA francs (Article 2).

The obligated persons include the speaker of the National Assembly, the First Quaestor of the National Assembly, the Prime Minister, Ministers, the President of the Economic, Social and Environmental Council, all credit administrators, revenue and expenditure authorisers, and public accountants, carrying out operations involving an annual total of one billion (1,000,000,000) or more CFA francs (Article 2).

The declaration must include all information relating to the property and assets held by the person involved, directly or indirectly. All movable and immovable property must be declared, as well as any other movable property held in Senegal or abroad.

Declarations filed and observations made may only be communicated at the express request of the declarant or his or her beneficiaries or at the request of the judicial authorities (Article 5, Paragraph 2).

Mali has enshrined the obligation to disclose assets in Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment¹⁹⁶. Article 3 of this law identifies the obligated persons who must disclose their assets. Pursuant to this law, the following are obligated to comply with this law: any natural person, civilian or military, representative of the public authority, in charge of public office, even occasionally, or invested with an elective mandate; any agent or employee of the State, public authorities, State companies and enterprises, public institutions, cooperative bodies, unions, associations or federations of the said bodies, associations acknowledged as being of public utility, professional orders, industrial or commercial bodies in which the State or a public authority holds a percentage of the share capital, and in general, any person acting in the name of or on behalf of the public authority and/or with the means or resources of the latter.

This law also established a Central Office for Combating Illicit Enrichment. The Central Office for Combating Illicit Enrichment, which is an independent administrative authority with financial autonomy (Article 6). The mission of the Office is to implement all measures of prevention, control and fight envisaged at the national, sub-regional, regional and international levels for an effective and coordinated fight against illicit enrichment.

Article 9 of the law provides a very exhaustive list of those who are subject to asset disclosure.

Decree No. 2015-0606/P-RM of 5th October 2015 setting out the modalities for the application of Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment¹⁹⁷ provides certain clarifications necessary for the implementation of this law.

¹⁹⁶ Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment <http://www.sgg-mali.ml/JO/2014/mali-jo-2014-26.pdf>

¹⁹⁷ Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment <http://www.sgg-mali.ml/JO/2015/mali-jo-2015-46.pdf>

This decree specifies that obligated persons married under the community of property regime must declare the community property or the property deemed undivided (Article 5). The declaration of property is supported by the declaration of income and a declaration of the activities of the person concerned (Article 7).

This decree specifies that obligated persons married under the community of property regime must declare the community property or the property deemed undivided (Article 5). Property disclosure is supported by the declaration of income and a declaration of the activities of the person concerned (Article 7).

The decree also introduced the confidentiality of asset disclosure. Indeed, under Article 14 of Decree No. 2015-0606/P-RM of 5th October 2015 setting out the modalities for implementing Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment,¹⁹⁸ *“the information contained in the asset disclosure statement may not, under any circumstances, be used for purposes other than those provided for by this decree”*. In addition, Article 15 of the said decree states that *“any communication to third parties of the information contained in the declarations is prohibited. The declarations filed and the observations made may only be communicated at the express request of the declarant or his beneficiaries or at the request of judicial authorities”*¹⁹⁹. Article 16 adds that *“Any breach of the confidentiality of the declaration of assets by the disclosure or publication of any kind, or of the sincerity of its content, shall be punished by the penalties provided for by the legislation in force”*.

In Nigeria, public officers in certain categories listed in Part II of the Fifth Schedule to the Constitution²⁰⁰ are mandated to submit a declaration of assets to the Ethics Office on assumption of office and thereafter every four years and on expiration of their term of office (Constitution, Schedule 5, Part I, Art. 11). This declaration should cover all property, assets and liabilities of the public officer, his/her spouse and unmarried children under the age of 18. However, it does not report on possible conflicts of interest and is not made public²⁰¹.

4.6.2. Weaknesses of the asset disclosure system in ECOWAS countries

It should be noted that while efforts have been made by most ECOWAS States to adopt and implement asset disclosure laws, such efforts need to be continued and strengthened to achieve the goal of the Protocol.

¹⁹⁸ Decree No. 2015-0606/P-RM of 5th October 2015 setting out the modalities for implementing Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment <http://www.sgg-mali.ml/JO/2015/mali-jo-2015-46.pdf>

¹⁹⁹ Article 14 of Decree No. 2015-0606/P-RM of 5th October 2015 setting out the modalities for implementing Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment; <http://www.sgg-mali.ml/JO/2015/mali-jo-2015-46.pdf>

²⁰⁰ Constitution of the Federal Republic of Nigeria 1999, Part II, Schedule 5; https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf

²⁰¹ Implementation Review Group First resumed tenth session Vienna, 2-4 September 2019 Agenda item 2 Review of the implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13th June 2019; op.cit. https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V19_04650f.pdf

In the absence of an ECOWAS community directive or regulation on asset disclosure to promote harmonious implementation of the Protocol and facilitate its evaluation, the Asia-Pacific Economic Cooperation (APEC) standards were used to assess the asset disclosure systems in place for this report.

Such standards are outlined in the APEC Principles for Financial/Assets Disclosure and include six (06) main standards, namely fairness, transparency, targeting of senior leaders and those in at-risk positions, availability of adequate resources, usefulness and enforceability.

- **Diversity and divergence of asset disclosure standards:** in the absence of an ECOWAS community regulation to set out convergence criteria for asset disclosure, there is a wide range of laws with divergent provisions.
- **Weaknesses with regard to the scope of the obligated persons:** Some laws have made the declaration general; in others, the scope of the obligated persons is more or less restricted
- **Weak effectiveness of the declaration process:** the declaration process is not yet effective in some countries (e.g. Togo);
- **Low level of transparency:** a small number of legislations contain the obligation to disclose the content of declarations; while most legislations have provided for more or less secret declarations (the declarant alone can decide to disclose it, or a judicial decision); most of the legislations in force in the member states of the region, such as those of Senegal²⁰², Togo²⁰³, Mali²⁰⁴, etc., have adopted the principle of non-disclosure of declarations, except if the declarant so wishes or if a judicial decision is taken while UNODC standards and the international standards of the Asia-Pacific Economic Cooperation (APEC)²⁰⁵ agreement require that “disclosed information should be made as widely available as possible just like information about the overall administration of the disclosure system including information about disclosure compliance rates and enforcement activities” (Principle 2) and that “disclosed information should be readily available for use in preventing, detecting, investigating,…” (Principle 5).

Based on these principles, the assessment of the asset disclosure system of selected ECOWAS countries is shown in Table 4 below.

²⁰² <http://www.ofnac.sn/resources/pdf/Lois/Loi-D-P.pdf>

²⁰³ http://jo.gouv.tg/sites/default/files/JO/JOS_29_01_2020%20-65E%20ANNEE%20N%C2%B0%2003%20TER.pdf#page=2

²⁰⁴ <http://www.sgg-mali.ml/JO/2015/mali-jo-2015-46.pdf>

²⁰⁵ APEC Principles for Financial / Asset Disclosure by Public Officials: Fundamentals for an Effective Tool to Prevent, Detect, and Prosecute Conflicts of Interest, Illicit Enrichment, and Other Forms of Corruption, https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fmddb.apec.org%2Fdocuments%2F2012%2FACT%2FACT1%2F12_act1_002.doc&wdOrigin=BROWSELINK

Table 4: Comparative table of asset disclosure systems in accordance with the Asia-Pacific Economic Cooperation (APEC) principles²⁰⁶

	Fairness	Targeted obligated persons	Transparency	System administration bodies	Usefulness	Penalties/sanctions
BENIN	Full	Full (art 3)	Poor (art4)	Full (art4)	Poor (art4)	Full (art 4)
BURKINA FASO	Full	Full (Art 7)	Full (Art10)	Full (Art8)	Full (Art10 and 11)	Full (Art11)
CAPE VERDE	-----	-----	-----	-----	-----	-----
CÔTE D'IVOIRE	Full	Full (Art41)	Poor Art 10 and 11)	Full (Art165)	Poor (Art 10)	Full (Art55)
THE GAMBIA	-----	-----	-----	-----	-----	-----
GHANA	Full	Full (Art1)	Full (Art6)	Full (art 1(1)	Full (Art6)	Full (Art8)
GUINEA	Full	Poor (Art2)	Poor (Art19)	Full (Art11)	Poor (Art19)	Full (Art20)
GUINEA BISSAU	-----	-----	-----	-----	-----	-----
LIBERIA	-----	-----	-----	-----	-----	-----
MALI	Full	Full (Art3)	Poor (art4)	Full (Art1)	Poor (Art4)	Full (Art8)
NIGER	Full	Full (Art1)	Full (art78)	Full (Art78)	Full (Art78)	Full (Art79)
NIGERIA	Full	Full (Art10)	Poor (Art11)	Full (Art8)	Poor (Art11)	Full (Art15)
SENEGAL	Full	Moderate (Art2)	Poor (Art5 et 9)	Full (Art3)	Poor (Art5 et 9)	Full (Art 8)
SIERRA LEONE	Full	Full (Art119(1)	Full (Art120(2)	Full (Art119(1)	Full (Art120(3)	Full (Art122(g)
TOGO	Full	Full (Art3 et 7)	Poor (Art15)	Full (Art5)	Poor (Art15)	Full (Art18-19)

Legend

- **Fairness:** Asset disclosure must be established by law
- **Obligated persons:** persons who are obligated to disclose their assets
- **Transparency:** asset disclosure must be published
- **System administration body:** the law must establish a body responsible for the administration of the system
- **Usefulness of the standard:** accessibility of the declaration by the public
- **Sanctions:** the legislation on asset disclosure must provide for stringent sanctions.

²⁰⁶ APEC Principles for Financial / Asset Disclosure by Public Officials: Fundamentals for an Effective Tool to Prevent, Detect, and Prosecute Conflicts of Interest, Illicit Enrichment, and Other Forms of Corruption, https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fmddb.apec.org%2Fdocuments%2F2012%2FACT%2FACT1%2F12_act1_002.doc&wdOrigin=BROWSELINK

4.7. FIGHT AGAINST CORRUPTION IN THE PRIVATE SECTOR (Articles 5, 6 and 11)

Article 5 (f) of the ECOWAS Protocol requires each State Party to establish, “*revenue collection systems that eliminate opportunities for corruption and tax evasion and provide for regulations which require companies and organisations to maintain adequate financial books and records and adhere to internationally accepted standards of accounting*”.

In addition, Article 6 contains a number of other preventive measures, including creating or using an invoice or any other accounting document or record containing false or incomplete information. (Article 4(a)); b) unlawfully omitting to make a record of payment (Article 6(4)(b)) promising to offer or giving public officials or employees of companies of the private sector (Article 6(5)(a)); liability of legal persons (Article 11(1)); such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences (Article 11(3)).

4.7.1. Strengths of anti-corruption systems in the private sector

WAEMU countries have a wide range of legislation on the liability of legal persons.

In fact, WAEMU member states are also members of the Treaty of the Organisation for the Harmonisation of Business Law in Africa (OHADA)²⁰⁷. This treaty, which aims at harmonising business law in French-speaking Africa, has adopted several uniform acts, including the Uniform Act on Accounting and Financial Reporting, adopted on 26th January 2017 in Brazzaville (CONGO)²⁰⁸. This uniform act, which has been transposed by all WAEMU countries, requires accounting to play a greater role as an information tool for both the company’s managers and other stakeholders. The following characteristics can be noted: uniqueness of financial statements; multiple information that is not contrary to uniqueness, reliability and completeness of information; shared relevance.

WAEMU member states have also transposed the revised Uniform Act on the law of commercial companies and economic interest grouping, adopted on 30/01/2014 in Ouagadougou (Burkina Faso)²⁰⁹ which also strongly enshrined transparency standards in the management of companies. Indeed, this uniform act has enshrined several rules of transparency and governance of private companies, including the obligation to appoint an auditor who issues an opinion stating that the consolidated financial statements are regular and sincere and give a true and fair view of the result of the financial year’s operations (Art.710). He submits a report to the ordinary general meeting and may conclude that the consolidated financial statements are regular and fair and give a true

²⁰⁷ Treaty relating to the revision of the Treaty on the Harmonisation of Business Law in Africa, adopted in Quebec City (CANADA) on 17/10/2008 and published in the Official Gazette of OHADA No. 20 of 01/11/2009, <https://www.ohadalegis.com/telAUFR/2008-Traite-Ohada-revise-fr.pdf>

²⁰⁸ Uniform Act on Accounting and Financial Reporting, adopted on 26th January 2017 in Brazzaville (CONGO); <http://www.droit-afrique.com/uploads/OHADA-Acte-uniforme-2017-droit-comptable-information-financiere.pdf>

²⁰⁹ Revised Uniform Act on the law of commercial companies and economic interest grouping, adopted on 30/01/2014 in Ouagadougou (Burkina Faso); <http://www.droit-afrique.com/uploads/OHADA-Acte-uniforme-2014-droit-societes-commerciales-gie.pdf>

and fair view of the results of the operations of the previous financial year or express a qualified or adverse opinion (Article 171). The auditor's tasks include the verification of the accounts and accounting documents of the company and the control of the compliance of its accounts with applicable rules (Article 712).

In addition to these OHADA uniform acts, which are applicable in all WAEMU member states, some countries have also adopted other supplementary texts.

Burkina Faso has thus passed Law No. 004-2015/CNT on the prevention and repression of corruption. This text contains very far-reaching provisions on the fight against corruption in the private sector. Thus, Article 36 establishes the obligation for “auditors to report to the prosecutor of Burkina-Faso any payment received or made under conditions that appear illicit, by legal entities or individuals whose accounts they audit”, in accordance with OECD standards. The principle of non-deductibility of bribes is clearly established in the law, which states that “payments whose licit character is not established are subject to income tax regardless of their form and the place of their payment.” (Article 37). In general, the law requires that “*measures that aimed at prohibiting corruption in the private sector shall be taken and effective, adequate and deterrent disciplinary sanctions shall be provided for, if necessary, in case of non-compliance with such measures*” (Article 38). The law also requires that “*accounting and auditing standards used in the private sector must contribute to preventing corruption*” by prohibiting off-balance sheet accounts; off-balance sheet or inadequately identified transactions; the recording of non-existent expenses or liabilities whose purpose is not correctly identified; the use of fake documents; and the deliberate destruction of accounting documents before the end of the compulsory retention periods provided for by applicable laws and regulations (Article 39). In addition, corruption in the private sector is an offence under Articles 333-1 to 333-3 of the Penal Code²¹⁰.

The country has also developed a national file of the trade and personal property credit register (RCCM), which is publicly accessible and free of charge (Article 12 of Decree 2006-484 on the establishment, powers, organisation and operation of the national trade and personal property credit register).

Côte d'Ivoire also established some standards for the fight against corruption in the private sector in Order No. 2013-660 of 20th September 2013 on the prevention and fight against corruption and other related offences²¹¹.

Article 19 of the Order requires private companies to establish adequate and deterrence mechanisms to prevent acts of corruption and related offences. Measures taken in this respect include -the auditing standards used in the private sector; the strengthening of cooperation between agencies in charge of the detection and repression of acts of corruption and other related offences

²¹⁰ Law No. 044-2019/A which amends Law No. 025-2018/AN of 31 May 2018 on the Criminal Code; https://www.assembleenationale.bf/IMG/pdf/loi_044_portant_modification_du_code_penal.pdf

²¹¹ Order No. 2013-660 of 20 September 2013 on the prevention and fight against corruption and other related offences; <https://www.igf.finances.gouv.ci/igfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

and private companies; the promotion of the development of standards and procedures aimed at preserving the integrity of private companies, including codes of conduct to ensure that companies and all relevant professionals carry out their activities in a correct, honourable and adequate manner, in order to prevent conflicts of interest and to encourage the observance of good business practices by companies among themselves, as well as in their contractual relations with the State.

Art. 20 - Private companies are required to comply with the accounting standards and principles in force, with a view to preventing corruption and related offences in the private sector.

In Nigeria, the Corporate Affairs Commission, established under the Companies and Allied Matters Act, has issued regulations on compliance and reporting standards for private sector entities. The Business Integrity Convention was officially launched in 1997. The majority of private sector companies have signed up to it and committed themselves to the integrity standards. In addition, Nigeria is a member of the Extractive Industries Transparency Initiative (EITI). Under this scheme, private sector companies have established internal compliance departments²¹².

The Financial Reporting Council, established under the Financial Reporting Council Act 2011, is responsible for setting accounting, auditing and reporting standards for the private and public sectors. The Companies and Allied Matters Act also requires private companies to submit their accounts to the Federal Tax Administration. The opening of numbered or anonymous accounts is strictly prohibited by law (Money Laundering Prohibition Act, Section 11), as is the use of fraudulent documents and the deliberate destruction of accounting records (Corrupt Practices and Other Related Offences Act, Section 15). However, improperly identified transactions or items and the recording of non-existent expenses are not expressly prohibited when they are made for the purpose of committing an offence covered by the Convention. The tax deductibility of expenses that constitute bribes is not expressly included in the list of prohibited deductible expenses in Article 27 of the Corporate Tax Act.

Togo ratified the Treaty of the Organisation for the Harmonisation of Business Law in Africa (OHADA) of 17th October 2008²¹³ by means of a ratification authorisation law passed by the National Assembly in its ordinary session on 14th December 2009. Togo is also a party to the Uniform Act on Accounting Law and Financial Reporting, which also requires that the accounting system implemented in the company must meet the requirements of regularity and security, to ensure the authenticity of the entries so that accounting can serve both as an instrument for measuring rights and obligations of business partners, an evidence tool, as an information of management and third parties (Article 14). Togo has also domesticated the provisions of the Protocol into its new 2015 Penal Code, particularly in Article 600.

²¹² Implementation Review Group First resumed tenth session Vienna, 2-4 September 2019 Agenda item 2 Reviews of implementation of the United Nations Convention against Corruption, CAC/COSP/IRG/II/1/1/Add.16, 13 June 2019; <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1904650f.pdf>

²¹³ Treaty of the Organisation for the Harmonisation of Business Law in Africa (OHADA) of 17 October 2008; <http://www.droit-afrique.com/upload/doc/ohada/Ohada-Traite-OHADA-modifie-2008.pdf>

4.7.2. Weaknesses in the private sector's anti-corruption system

4.7.2.1. Low level of compliance of legislation with international standards

In most countries, anti corruption legislation in the private sector is still very weak.

Most countries have not taken measures to prevent the misuse of regulatory procedures by private entities, nor have they taken measures imposing restrictions on the exercise of professional activities by former public officials in the private sector.

There is also little cooperation between the private sector and law enforcement agencies to prevent corruption and to promote the development of standards and procedures for the integrity of private entities, including preventing conflict of interest and imposing restrictions on certain former public officials.

4.7.2.2. Poor compliance with ISO 37001 or anti-bribery standard in companies

There was poor adherence to ISO 37001 (adopted in 2016) or anti-bribery management systems by ECOWAS companies during this survey. This standard defines requirements and provides guidance for management systems designed to help organisations prevent, detect and combat corruption, and comply with anti-bribery laws and voluntary commitments applicable to their activities. This lack of interest in anti-corruption management systems confirms the low willingness of such companies to implement and enforce anti-corruption standards.

4.7.2.3 Low level of voluntary anti-corruption initiatives in private companies

- **Lack of formal adherence by companies to the 10th Principle of the United Nations Global Compact - 2004:** The majority of employers' organisations and chambers of commerce in the ECOWAS region have not yet signed up to the UN Global Compact, which calls on companies to take action against corruption in all its forms, including extortion and bribery.
- **Lack of adherence to voluntary anti-corruption initiatives, such as codes of conduct, anti-corruption policies, integrity pacts, etc.**

4.7.2.4. Weak accounting and auditing standards

In several private companies, audits are not systematically carried out every year and are left to the discretion of managers, in the absence of a legal obligation.

Many SMEs/SMIs use simplified accounting standards (Système Comptable Allégé [SCA]), which do not allow for great transparency and comprehensiveness of financial information.

Indeed, according to the APRM, member states of the West African Economic and Monetary Union and the Organisation for the Harmonisation of Business Law in Africa (OHADA) have their own accounting systems called SYSCOA and SYSCOHADA, but such systems are not comparable to IFRS or IAS. This existing system is reportedly not in line with international standards according to the APRM and UNCTAD reports.

4.8. LAUNDERING OF THE PROCEEDS OF CORRUPTION AND SIMILAR CRIMINAL OFFENCES (Article 7)

Article 7 (1) (a) of the Protocol requires each State Party to establish as criminal offence:

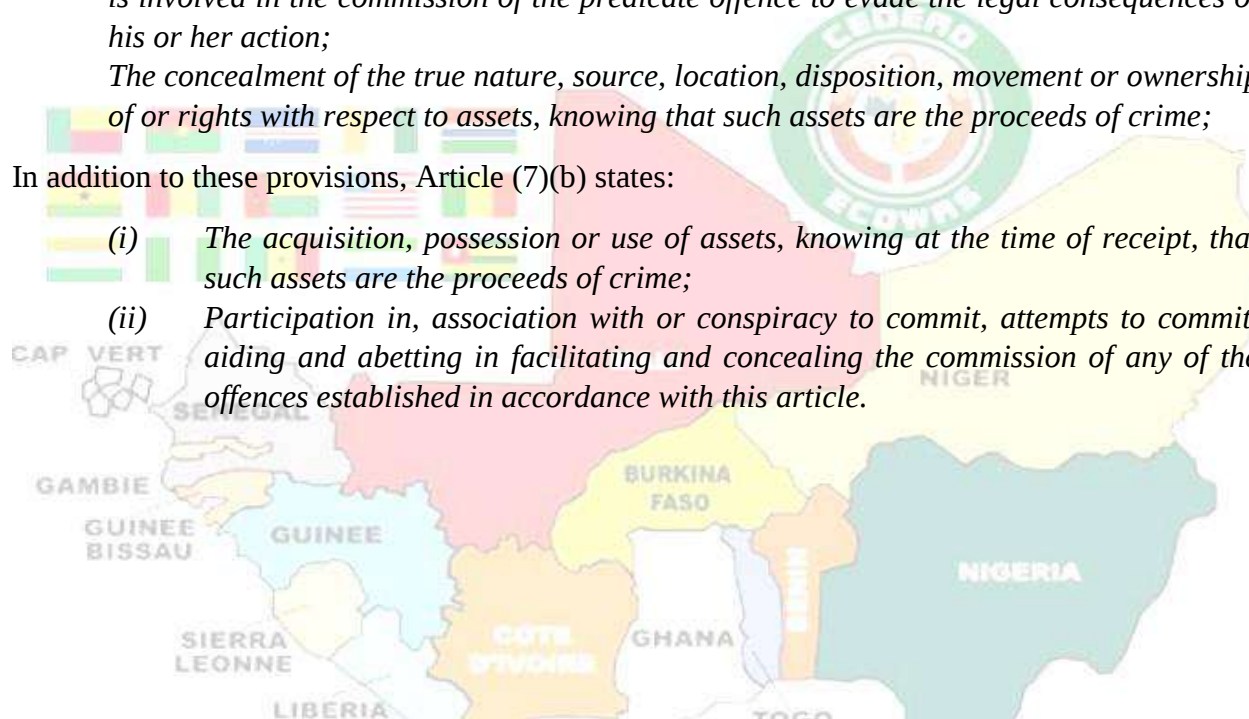
(i) The conversion or transfer of assets, knowing that such assets are the proceeds of crime, for the purpose of concealing the illicit origin of the assets or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

The concealment of the true nature, source, location, disposition, movement or ownership of or rights with respect to assets, knowing that such assets are the proceeds of crime;

In addition to these provisions, Article (7)(b) states:

(i) The acquisition, possession or use of assets, knowing at the time of receipt, that such assets are the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit, aiding and abetting in facilitating and concealing the commission of any of the offences established in accordance with this article.



4.8.1. The strengths of the anti-money laundering system in the ECOWAS region

The eight (8) WAEMU countries have harmonised national uniform Acts on anti-money laundering and combating the financing of terrorism with the adoption of Directive No. 07/2002/CM/UEMOA on the fight against money laundering in the Member States of the West African Economic and Monetary Union (WAEMU)²¹⁴, amended by Directive No. 02/2015/CM/UEMOA on the fight against money laundering and the financing of terrorism in the Member States of the WAEMU²¹⁵. This new directive has been transposed by all eight WAEMU member states²¹⁶.

The main improvements introduced by the WAEMU Directive include, among others:

- ✓ The inclusion of the fight against the financing of the proliferation of weapons of mass destruction, thus facilitating the systematic enforcement of targeted financial sanctions required by the United Nations Security Council;
- ✓ The introduction of risk assessment provisions, both at national and institutional levels, including appropriate measures to identify, assess, understand and mitigate the risks of ML/FT;
- ✓ Restricting the use of cash in transactions, including the sale of real estate above a threshold set by the competent authority, which could only be paid for by means of bank transfers or cheques;
- ✓ The obligation for reporting entities to report to CENTIF cash transactions of an amount equal to or greater than a threshold set by a BCEAO directive, whether it is a single transaction or several transactions that appear to be linked;
- ✓ The obligation for reporting entities to identify and assess the risks that may arise from the development of new products, new commercial practices and the use of innovative technologies;
- ✓ The specification of specific due diligence measures to be implemented by financial institutions in the context of their cross-border correspondent banking relationships;
- ✓ The insertion of provisions explicitly prohibiting financial institutions from establishing or maintaining a relationship with a shell bank;
- ✓ Setting out conditions for the use of third parties by reporting entities to implement customer due diligence requirements (identification, collection and retention of customer information);
- ✓ Setting out the procedures for the exchange of information between CENTIF and the supervisory authorities, professional bodies and national representative bodies.

²¹⁴ Directive No. 07/2002/CM/UEMOA on the fight against money laundering in the Member States of the West African Economic and Monetary Union (WAEMU); http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_directive_07_2002_cm.pdf

²¹⁵ Directive No. 02/2015/CM/UEMOA on the fight against money laundering and the financing of terrorism in the Member States of the WAEMU ; https://www.bceao.int/sites/default/files/2017-11/directive_no02_2015_cm_uemoa_lbc_ft-2.pdf

²¹⁶ Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea-Bissau, <http://www.uemoa.int/fr/pays/benin>

Article 76 of the WAEMU Directive establishes intra-community cooperation. At the judicial level, Articles 138 et seq. of the directive organise mutual legal assistance in money laundering and terrorist financing matters. Article 93 of the directive deals with investigative techniques. This provision allows investigative authorities (investigative judges) to monitor bank accounts and accounts similar to bank accounts where there are serious indications that they are being used or are likely to be used for operations in connection with the predicate offence or offences provided for in this law.

Finally, the directive establishes the principle of access by the judge to computer systems, networks and servers used or likely to be used by people against whom there are serious indications of participation in the offence of money laundering. In addition, the directive provides for the communication or seizure of authenticated or private documents, banking, financial and commercial documents, the surveillance or interception of communications as well as the audio or video recording or photography of acts and transactions or conversations and the interception and seizure of mail.

In addition, WAEMU member states are also implementing several directives of the Central Bank of West African States (BCEAO) relating to the fight against money laundering, including Instruction No.007-09-2017 on the modalities of application by FIs of the AML/CFT Uniform Act²¹⁷; Instruction No.008-09-2017 setting the threshold for the declaration of physical cross-border transportation²¹⁸; Instruction No.008-09-2017 setting out the threshold for reporting physical cross-border transportation of currency; Instruction No.009-09-2017 setting the threshold for payment of a claim in cash or bearer negotiable instruments²¹⁹ and Instruction No.010-09-2017 Setting the threshold for cash transaction reporting to CENTIF²²⁰.

Togo has domesticated the entire WAEMU directive on money laundering and terrorist financing through the Uniform Act No. 2018 - 004 of 04/05/2018 on the fight against money laundering and terrorist financing in the Member States of the West African Monetary Union (WAMU)²²¹.

Thus, like all other WAEMU member states, the country has set up a national financial intelligence processing unit (CENTIF), within the framework of the Palermo Convention, FATF

²¹⁷ Instruction No.007-09-2017 on the modalities of application by FIs of the AML/CFT Uniform Act

https://centif.tg/files/loi_11.pdf

²¹⁸ Instruction No.008-09-2017 setting out the threshold for reporting physical cross-border transportation of currency

https://centif.tg/files/loi_7.pdf

²¹⁹ Instruction No.009-09-2017 Setting the threshold for payment of a claim in cash or bearer negotiable instruments

https://centif.tg/files/loi_9.pdf

²²⁰ Instruction No.010-09-2017 Setting the threshold for cash transaction reporting to CENTIF https://centif.tg/files/loi_10.pdf

²²¹ Uniform Act No. 2018 - 004 of 04/05/2018 on the fight against money laundering and terrorist financing in the Member States of the West African Monetary Union (WAMU), https://centif.tg/files/loi_12.pdf

Recommendations and the implementation of WAEMU Directive No.07/2002/CM/UEMOA of 19th September 2002.

In addition, the country has also adopted several other regulatory texts such as the decree designating the competent authority and defining the procedure for administrative freezing²²²; the decree establishing, powers, composition and functioning of the National Committee for the Coordination of Anti-Money Laundering and Combating the Financing of Terrorism (CONAC)²²³; the decree that establishes the competent authority and sets out the procedure for administrative freezing²²⁴.

Burkina Faso has domesticated the WAEMU directive on money laundering and terrorist financing by Act No. 016-2016/AN on the fight against money laundering and terrorist financing in Burkina Faso²²⁵. This law defines those who are subjected to it in Articles 5 and 6. In addition, Decree No.2019- 1223/PRES/PM/MINEFID establishes the supplementary list of persons subject to AML/CFT obligations and the proliferation of weapons of mass destruction.

Benin has also domesticated the WAEMU directive on money laundering by Act No. 2020-25 of 2nd September 2020 amending Act No. 2018-17 of 25th July 2018 on the fight against money laundering and terrorist financing in the Republic of Benin²²⁶. The country has also passed Law No. 2012-26 of 7th August 2012 on the repression of offences relating to cheques, bank cards and other electronic payment instruments and processes²²⁷. The country has also adopted Decree No. 2019-046 of 31st January 2019 designating the competent authority for administrative freezing in application of Act No. 2018-17 of 25th July 2018 on the fight against money laundering and terrorist financing in the Republic of Benin²²⁸ and Decree No. 2019-047 of 31st January 2019 on

²²² Decree designating the competent authority and defining the procedure for administrative freezing, https://centif.tg/files/loi_12.pdf

²²³ Decree establishing, powers, composition and functioning of the National Committee for the Coordination of Anti-Money Laundering and Combating the Financing of Terrorism (CONAC) https://centif.tg/files/loi_13.pdf

²²⁴ Decree that establishes the competent authority and sets out the procedure for administrative freezing https://centif.tg/files/loi_12.pdf

²²⁵ Act No. 016-2016/AN on the fight against money laundering and terrorist financing in Burkina Faso; <https://lavoixdujuristebf.files.wordpress.com/2013/08/loi-relative-a-la-lutte-contre-le-blanchiment-de-capitaux-et-le-financement-du-terrorisme.pdf>

²²⁶ Act No. 2020-25 of 2 September 2020 amending Act No. 2018-17 of 25 July 2018 on the fight against money laundering and terrorist financing in the Republic of Benin; <https://sgg.gouv.bj/doc/loi-2020-25/>

²²⁷ Law No. 2012-26 of 7 August 2012 on the repression of offences relating to cheques, bank cards and other electronic payment instruments and processes; <https://www.studocu.com/row/document/universite-chouaib-doukkali/droit-penal-general/loi-portant-repression-des-infractions-en-matiere-de-cheque-de-carte-bancaire-et-dautres-instruments-et-procedes-electroniques-de-paiement/14083974>

²²⁸ Act No. 2018-17 of 25 July 2018 on the fight against money laundering and terrorist financing in the Republic of Benin; <https://sgg.gouv.bj/doc/decret-2019-046/>

the creation, powers and operation of the national technical committee for the fight against money laundering²²⁹.

Niger has also domesticated the aforementioned WAEMU directive through Law No. 2016-33 of 31st October 2016 on the fight against money laundering and terrorist financing. The purpose of this law is to prevent and repress money laundering and the financing of terrorism and the proliferation of weapons of mass destruction in Niger (Article 2). Like other WAEMU countries, the country has also carried out a national assessment of money laundering and terrorist financing risks²³⁰.

Mali has also domesticated the aforementioned directive through Law No. 2016-008 on the uniform Act on the fight against money laundering and terrorist financing²³¹. The country also has a National Financial Intelligence Processing Unit (CENTIF), which is an administrative and financial authority with autonomous decision-making powers on money laundering issues.

CENTIF's mission is to process and share information in order to combat money laundering and terrorist financing, in accordance with Article 60 of Law No.2016-008/AN-RM of 17th March 2016 on the anti money laundering and combating the financing of terrorism²³².

Côte d'Ivoire has also domesticated this WAEMU directive on money laundering through Law No. 2016-992 of 14th November 2016 on the AML/CFT²³³. The country has also adopted several other legal instruments to promote the fight against this scourge. These include Law No. 96-562 of 22nd July 1996 on the regulation of mutual or cooperative savings and credit institutions²³⁴; Law No. 97-397 of 11th July 1997 on the litigation of exchange control offences²³⁵; Law No. 98-371 on the regulation of gambling facilities²³⁶; Law No. 93-661 of 9th August 1993 on bank secrecy²³⁷ and Law No. 60-315 of 21st September 1960 on associations²³⁸.

²²⁹ Decree No. 2019-047 of 31 January 2019 on the creation, powers and operation of the national technical committee for the fight against money laundering <http://centif.bj/wp-content/uploads/2019/02/DECRET-2019-047-PORTANT-AOF-CTN.pdf>

²³⁰ CENTIF Niger, national assessment report on money laundering and terrorist financing risks; <http://www.finances.gouv.ne/index.php/une/700-centif-publication-du-rapport-d-evaluation-nationale-des-risques-de-blanchiment-de-capitaux-et-de-financement-du-terrorisme>

²³¹ Law No. 2016-008 on the uniform Act on the fight against money laundering and terrorist financing <http://www.droit-afrique.com/uploads/Mali-Loi-2016-08-lutte-blanchiment-capitaux-financement-terrorisme.pdf>

²³² Law No. 2016-008/AN-RM of 17 March 2016 on the anti money laundering and combating the financing of terrorism <http://www.droit-afrique.com/uploads/Mali-Loi-2016-08-lutte-blanchiment-capitaux-financement-terrorisme.pdf>

²³³ Law No. 2016-992 of 14 November 2016 on the AML/CFT; <https://www.centif.ci/images/lois/108ad4168a381bd0d8294e2903b6baae.pdf>

²³⁴ Law No. 96-562 of 22 July 1996 on the regulation of mutual or cooperative savings and credit institutions, <http://centif.ci/images/lois/394a589b05583142af74763caf36d9b2.pdf>

²³⁵ Law No. 97-397 of 11 July 1997 on the litigation of exchange control offences; <http://centif.ci/images/lois/d5b6f3f4a34d3c482a7c6454266a0bef.pdf>

²³⁶ Law No. 98-371 on the regulation of gambling facilities; <http://centif.ci/images/lois/3096ddbc1121ef0d14920da79d8c0d3.pdf>

²³⁷ Law No. 93-661 of 9 August 1993 on bank secrecy; <http://centif.ci/images/lois/96d8da9dab8cb5692827dbeb961efa92.pdf>

²³⁸ Law No. 60-315 of 21 September 1960 on associations; <http://centif.ci/images/lois/4bdd55fecc4cd38c277f37b4f3073d5a.pdf>

Finally, Senegal has also domesticated this directive through Law No. 2018-03 of 23rd February 2018 on anti-money laundering and combating the financing of terrorism²³⁹.

The country has also adopted several legal instruments such as Law No. 66-58 of 30th June 1966 on the organisation and regulation of gambling facilities²⁴⁰; Law No. 2005-06 of 29th April 2006 on the fight against human trafficking and similar practices and the protection of victims²⁴¹. The country has also adopted Uniform Act No. 2008-48 of 3rd September 2008 on the repression of offences relating to cheques, bank cards and other electronic payment instruments and processes²⁴²; Act No. 2008-26 of 28th July 2008 on banking regulations²⁴³ and Act No. 2009-16 of 2nd March 2009 on combating the financing of terrorism²⁴⁴; Uniform Act No. 2014-01 of 6th January 2014 on the treatment of dormant accounts in the books of the financial institutions of WAMU Member States²⁴⁵; and Act No. 2014-10 of 28th February 2014 on the Senegalese Customs Code²⁴⁶.

In addition to these laws, the country has also adopted several implementing instruments relating to anti-money laundering, in particular Decree No. 2004-1150 of 18th August 2004 on the creation, organisation and operation of the National Financial Intelligence Processing Unit (CENTIF)²⁴⁷; Decree No. 67-6390 of 13th April 1967 setting out the terms and conditions for the enforcement of Law 66-58 of 30th June 1966 on the organisation and regulation of gambling facilities²⁴⁸; and Decree No. 83-423 of 21st April 1983 on real estate transaction and management activities²⁴⁹; Decree No. 2008-1366 of 28th November 2008 on the application of the law relating to the regulation of decentralised financial systems in Senegal; Decree No. 97-1217 of 17th December 1997 on the creation and setting of rules for the organisation and functioning of the Inter-ministerial Committee for the Fight against Drugs²⁵⁰; Decree No. 97-1218 of 17th December 1997

²³⁹ Law No. 2018-03 of 23 February 2018 on anti-money laundering and combating the financing of terrorism; http://www.centif.sn/LOI_2018_03_RELATIVE_A_LA_LBCFT.pdf

²⁴⁰ Law No. 66-58 of 30 June 1966 on the organisation and regulation of gambling facilities; http://www.centif.sn/Loi_66-58_du_30_Juin_1966_etablissements%20de%20jeux%20de%20hasard.pdf

²⁴¹ Law No. 2005-06 of 29th April 2006 on the fight against human trafficking and similar practices and the protection of victims; http://www.centif.sn/Loi_2005_06.pdf

²⁴² Uniform Act No. 2008-48 of 3rd September 2008 on the repression of offences relating to cheques, bank cards and other electronic payment instruments and processes; http://www.centif.sn/Loi_uniforme_2008_48.pdf

²⁴³ Act No. 2008-26 of 28th July 2008 on banking regulations; http://www.centif.sn/Loi_2008_26.pdf

²⁴⁴ Act No. 2009-16 of 2nd March 2009 on combating the financing of terrorism; http://www.centif.sn/Loi_uniforme_2009_16_LFT.pdf

²⁴⁵ Uniform Act No. 2014-01 of 6th January 2014 on the treatment of dormant accounts in the books of the financial institutions of WAMU Member States; http://www.centif.sn/Loi_uniforme_2014_01.pdf

²⁴⁶ Act No. 2014-10 of 28th February 2014 on the Senegalese Customs Code http://www.centif.sn/Loi_2014_10.pdf

²⁴⁷ Decree No. 2004-1150 of 18th August 2004 on the creation, organisation and operation of the National Financial Intelligence Processing Unit (CENTIF); http://www.centif.sn/Decret2004_1150_aout2004.pdf

²⁴⁸ Decree No. 67-6390 of 13th April 1967 setting out the terms and conditions for the enforcement of Law 66-58 of 30th June 1966 on the organisation and regulation of gambling facilities; http://www.centif.sn/Decret_67_6390.pdf

²⁴⁹ Decree No. 83-423 of 21st April 1983 on real estate transaction and management activities; http://www.centif.sn/decret_83_423_21_avril_1983.pdf

²⁵⁰ Decree No. 97-1217 of 17th December 1997 on the creation and setting of rules for the organisation and functioning of the Inter-ministerial Committee for the Fight against Drugs; http://www.centif.sn/Decret97_1217.pdf

creating and setting the rules for the organisation and functioning of the Central Office for the Repression of Illicit Drug Trafficking²⁵¹ and Decree No. 97-1219 of 17th December 1997 on measures for the treatment of drug addicts²⁵².

Overall, it should be noted that the harmonised legal provisions in force in WAEMU member states on anti-money laundering and combating the financing of terrorism are adequately in line with international standards.

In Guinea, the National Assembly passed Law No. 2018-043 of 13th February 2019 on anti-money laundering and combating the financing of terrorism²⁵³, which merged the anti-money laundering and anti-terrorist financing laws. Article 5 of this law established the reporting entities which are, among others, the Public Treasury; the BCRG; financial organisations; and non-financial businesses and professions. Article 9 of the law identifies politically exposed persons. Article 26 enshrines the obligation to report suspicious transactions, which are submitted to CENTIF, which is responsible for processing them (Article 28). Since 2017, more than twenty reports have been filed with the judiciary and are still pending.

Nigeria has also extensively reviewed its anti-money laundering and combating the financing of terrorism provisions.

Indeed, the Nigerian Financial Intelligence Unit was first established by virtue of Section 1(2)(c) of the Economic and Financial Crimes Commission Act. The Nigerian Financial Intelligence Unit Act, which transforms the unit into an independent entity, was passed in 2018. Nigeria has introduced a domestic regulatory and supervisory regime covering a wide range of financial institutions and designated non-financial institutions (Money Laundering Prohibition Act, ss. 3-5). Designated non-financial institutions are identified in a non-exhaustive list contained in Article 25 of the Money Laundering Prohibition Act.

In addition, the Special Control Unit against Money Laundering has been established to review and disseminate information on non-financial businesses and professions. The Special Unit works in close collaboration with the Economic and Financial Crimes Commission and the Nigerian Financial Intelligence Unit, but reports to the Federal Ministry of Industry, Trade and Investment. All suspicious transaction reports must be submitted to the Nigerian Financial Intelligence Unit for further investigation. Designated non-financial institutions are required to submit foreign exchange transaction reports and report cash transactions over \$1,000 to the Special Anti-Money Laundering Unit.

²⁵¹ Decree No. 97-1218 of 17th December 1997 creating and setting the rules for the organisation and functioning of the Central Office for the Repression of Illicit Drug Trafficking http://www.centif.sn/Decret97_1218.pdf

²⁵² Decree No. 97-1219 of 17th December 1997 on measures for the treatment of drug addicts http://www.centif.sn/Decret97_1219.pdf

²⁵³ Law No. 2018-043 of 13th February 2019 on anti-money laundering and combating the financing of terrorism; <https://www.samifin.gov.mg/sites/default/files/loi2018-043.pdf>

Nigeria has adopted a risk-based approach and the Money Laundering Prohibition Act requires financial and designated non-financial institutions to authenticate customers and beneficial owners (s.3), retain customer and transaction data for at least five years (s.7) and report suspicious transactions to the Nigerian Financial Intelligence Unit. At the time of the reviewers' visit, Nigeria was considering the establishment of a beneficial ownership register. In addition, the Inter-Ministerial Committee, which includes anti-money laundering stakeholders, has been established at the national level to ensure cooperation and information sharing among Nigerian ministries, departments and agencies²⁵⁴.

Sierra Leone has enacted the Anti-Money Laundering and Combating of Financing of Terrorism Act, 2012²⁵⁵; and the Terrorism Prevention Regulations 2013²⁵⁶. The country has also conducted a Money Laundering and Terrorism Financing Vulnerability Assessment (2018)²⁵⁷. The country has also adopted its National Money Laundering and Terrorist Financing Risk Assessment Implementation Plan (2018 - 2020)²⁵⁸.

But despite all the efforts deployed, the ML/TF vulnerability assessment revealed several vulnerabilities which include porous borders; collaboration between law enforcement agencies; the emergence of fraud; the extent of smuggling of precious stones and tax evasion.

Liberia has also passed the Anti-Money Laundering and Combating the Financing of Terrorism Act (2012)²⁵⁹ with the assistance of GIABA. In addition, the country has successively passed the National Financial Intelligence Unit Act (2012)²⁶⁰; the Mutual Legal Assistance in Criminal Matters Act (2012) on 29th April 2013²⁶¹; the Fraud Act (2012) on 30th April 2013²⁶²; and the Act to Amend the Civil Procedure Act, prescribing Provisional Remedies for Proceeds of Crime Act

²⁵⁴ UNODC, Implementation Review Group First resumed tenth session Vienna, 2-4 September 2019 Agenda item 2 Review of the implementation of the United Nations Convention against Corruption, Executive summary, CAC/COSP/IRG/II/1/Add.16 ; <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1904650f.pdf>

²⁵⁵ The anti-money laundering and combating of financing of terrorism act, 2012; Supplement to the Sierra Leone Gazette Vol. CXLIII, No; dated 23rd February 2012 ; <https://fiu.gov.sl/downloads/2017-09/aml-cft-act-2012.pdf>

²⁵⁶ The Terrorism Prevention Regulations 2013 ; <https://fiu.gov.sl/downloads/2018-06/terrorism-prevention-regulations-2013.pdf>

²⁵⁷ National money laundering and terrorism financing risk assessment, Republic of Sierra Leone ; https://fiu.gov.sl/downloads/2020-01/PUBLIC%20VERSION_%20NRA%20REPORT%20AND%20ACTION%20PLANS%20OF%20SIERRA%20LEONE_March2017Final.pdf

²⁵⁸ National implementation plan on money laundering and terrorism financing risk assessment (2018–2020) ; https://fiu.gov.sl/downloads/2020-01/NATIONAL%20IMPLEMENTATION%20PLAN%20ON%20NATIONAL%20ML_TF%20RISK%20ASSESSMENT1.pdf

²⁵⁹ The anti-money laundering and terrorist financing act, 2012 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/FIU-1-Anti-Money-Laudnering-and-Terrorist-Financing-Act-2012.pdf>

²⁶⁰ The act to establish the financial intelligent unit of Liberia, 2012 ; <https://www.fiuliberia.gov.lr/aml-cft-laws/>

²⁶¹ The mutual legal assistance in criminal matters act, 2012 ; approved on 29th April 2013 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/Mutual-Legal-Assistance-Act-2012.pdf>

²⁶² The fraud ct 2012, approved on 30th April, 2013 <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/Fraud-Act-of-2012.pdf>

on 29th April 2013²⁶³. The country also passed the Criminal Law Amendment Act, Title 2 of the Revised Liberian Codes of Laws, providing for special criminal procedures for offences involving terrorist acts, passed on 16th February 2017²⁶⁴.

4.8.2. Weaknesses related to money laundering in ECOWAS countries

Despite the efforts made by ECOWAS and GIABA member states regarding anti-money laundering and combating the financing of terrorism, there are still many challenges to be addressed to strengthen the AML/CFT regime in the countries.

➤ *Weak implementation of cash transaction regulations*

Within the WAEMU, Instruction No. 01/2003/SP of 8th May 2003 of the BCEAO on the promotion of cashless means of payment prohibits the use of cash for any financial transaction of an amount equal to or exceeding 100,000 CFA francs. The national legal framework also provides for a system of systematic reporting of cash transactions of an amount equal to or exceeding fifteen million (15,000,000) CFA francs, whether it is a single operation or several operations that are connected, in accordance with the provisions of Instruction No. 010-09-2017 fixing the threshold for the reporting of cash transactions. It must be noted that the effectiveness of the implementation of these measures remains very limited because a large proportion of commercial transactions are settled in cash, sometimes involving very large amounts.



²⁶³ The act to amend the civil procedure law to provide provisional remedies for proceeds of crime, approved on 29th April, 2013 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/FIU-3Act-to-Amend-Civil-Procedure-Law-to-provide-provisional-remedies-for-proceeds-of-crimes.pdf>

²⁶⁴ Act to amend the criminal procedure law, Title 2 of the Liberian codes of laws revised to provide for special criminal procedures for offences involving terrorists acts, approved 16th February, 2017 ; <file:///C:/Users/EBEH%20Fabrice/Downloads/An-special-criminal-procedure-for-Terrorism-2017-amend-Title-2.pdf>

➤ **Poor Control of Cross-border Transportation of Currency and Negotiable Instruments**

In recent years, some airports in the ECOWAS region have witnessed significant physical transportation of currency by travellers, in violation of Articles 12 and 111 of the WAEMU Uniform Act and Instruction No. 07-09-2017 setting the threshold for the declaration of cross-border physical transportation of currency and bearer negotiable instruments. These measures are not yet fully implemented in all countries due to the lack of a regulatory instrument.²⁶⁵

➤ **Weak enforcement of applicable legislation**

The legislation on Illicit Financial Flows (IFF), including price distortion, tax base erosion and profit shifting is weak.

In addition, there is a parallel and black foreign exchange market in violation of Member States' financial regulations, as well as illicit movements of currency from one country to another.

➤ **Other weaknesses**

- ✓ The size of the informal sector in the economy;
- ✓ The difficulty in identifying the beneficial owners of goods;
- ✓ Insufficient control and sanctions for reporting entities;
- ✓ The lack of reliable database for information gathering;
- ✓ Poor compliance with foreign exchange regulations;
- ✓ Weak capacity of stakeholders on AML/CFT issues.

Please refer to Annex 5: Table 5: Cash and Suspicious Transaction Reporting (CTR, STR) (October 2017-September 2018), and Annex 6: Table 6: Summary of money laundering offences in the ECOWAS region (October 2017-September 2018).

²⁶⁵ CENTIF Togo Report 2018; https://centif.tg/files/rap_23.pdf

4.9. WHISTLEBLOWER PROTECTION (Articles 5 (c), 8 and 9)

Article 5 (c) provides that each State Party shall establish, ***“laws and other measures deemed necessary to ensure effective and adequate protection of persons who, acting in good faith, provide information on acts of corruption”***;

Article 8 (1): ***“Each State Party shall take appropriate measures within its means to provide effective protection to witnesses in criminal proceedings who give testimony concerning offences covered by this Protocol from potential retaliation or intimidation and, as appropriate, for their relatives and other persons close to them”***

Article 8 (3): ***“State Parties shall consider entering into agreements or arrangements with other States for the relocation of (... whistleblowers)”***; such measures should extend to victims and witnesses of acts of corruption (Article 8 (2))

Apart from these provisions of the Protocol, all West African States have adhered to the Principles on the Right of Access to Information contained in the Declaration of Principles of Freedom of Expression and Access to Information in Africa²⁶⁶.

Principle 35, Paragraph 1 of the Declaration states: ***“No person shall be subject to civil, criminal, administrative or employment-related or other sanctions or harm, for releasing information on wrongdoing or which discloses a serious threat to health, safety or the environment, or whose disclosure is in the public interest, in the honest belief that such information is substantially true”***. Principle 35, Paragraph 2 maintains that: ***“States shall adopt laws to establish protected disclosure regimes and independent institutions to oversee the protected disclosure of information in the public interest”***.

4.9.1. Strengths of the whistleblower systems in the ECOWAS region

Directive No. 02/2015/CM/UEMOA on anti-money laundering and combating the financing of terrorism domesticated by all eight WAEMU member states, provides for the protection of whistleblowers under the following provision: ***“The investigating judge may, of his own motion or at the request of a witness or an injured private party, decide that certain identity data shall not be mentioned in the record of the hearing, if there is a reasonable suspicion that the witness could suffer serious harm as a result of the disclosure of certain information”***. This provision also adds that ***“the identity of a witness shall be withheld if the competent authority determines that the witness, a member of the witness’s family or an associate of the witness could reasonably be harmed by the testimony. The identity of the witness shall be kept secret only if the investigation of the offence so requires and if other investigative techniques prove to be inadequate to establish the truth. A witness whose identity is kept secret shall not be summoned to a hearing without his***

²⁶⁶ Adopted by the African Commission on Human and Peoples' Rights at its 65th Ordinary Session held from 21st October to 10th November 2019 in Banjul, The Gambia,
https://achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf

or her consent. Anonymous witness testimony shall not be used as the sole grounds or determinant of any charge”.

Some ECOWAS countries have more general legislation on whistleblower protection.

This is the case in Benin, which has introduced such protection in Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin.²⁶⁷

Indeed, Article 31 of this law provides that *“in the context of the repression of the offences under this law, whistleblowers, witnesses, experts, victims and their relatives as well as members of preventive bodies shall benefit from special protection by the State against possible acts of retaliation or intimidation”*. Whistleblowers and witnesses may declare the address of the police station or gendarmerie brigade as their domicile. The address of these persons is then recorded by the police authority that has drawn up the report in a register to be opened at the head office of the investigative unit for the purpose of investigation (Article 32).

This law also provides for the possibility of anonymity for informers, who may be authorised by the investigating judge to have their statements taken without their identity being revealed (Article 33). This law also requires that *“no conviction may be pronounced solely on the basis of statements collected anonymously”* (Article 36, para. 1).

Burkina Faso has also enshrined the protection of whistleblowers in Law No. 004-2015/CNT on the prevention and repression of corruption in Burkina Faso²⁶⁸.

Indeed, this law provides that the anti-corruption body (ASCE-LC) is mandated, together with the competent state services, to ensure the protection of witnesses, whistleblowers as well as experts against reprisals and intimidation to which they may be subjected to.

The law clearly states that no one may be excluded from a recruitment procedure or from access to an internship or a period of training in a company, no employee may be sanctioned, dismissed or be the subject of a direct or indirect discriminatory measure, particularly in terms of remuneration, training, reclassification, assignment qualification, classification, professional promotion, transfer or renewal of contract for having reported or testified, either to his employer or to the judicial or administrative authorities, facts qualified as an offence within the meaning of this law of which he may have become aware in the exercise or on the occasion of the exercise of his duties (Article 76)

The law punishes with imprisonment from six months to five years and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs, any person who resorts to physical or moral violence, revenge, intimidation or threats in any form or manner whatsoever, against the person of witnesses, experts, whistleblowers or victims or their relatives or other persons close to

²⁶⁷Law No. 2011-20 of 12th October 2011 on the fight against corruption and other related offences in the Republic of Benin; <https://sgg.gouv.bj/doc/loi-2011-20/>

²⁶⁸ Law No. 004-2015/CNT on the prevention and repression of corruption in Burkina Faso <https://www.asce-lc.bf/index.php/documentations/reglementation?task=document.viewdoc&id=9>

them. Any person who discloses the identity or address of a witness who has benefited from the protective provisions of this law, Article 77, shall be subject to the same penalties.

Finally, the law provides for imprisonment of between six months and five years and a fine of between five hundred thousand (500,000) and two million (2,000,000) CFA francs for any person who, by virtue of his or her permanent or temporary position or profession, has knowledge of one or more offences provided for in this law and does not inform the competent public authorities in due course (Article 79).

Cote d'Ivoire has also established the protection of whistleblowers in Order No. 2013-660 of 20th September 2013 on combating and preventing corruption and other related offences²⁶⁹.

According to Article 67 of this law, *“whistleblowers, witnesses, victims and experts and their relatives, informants, as well as members of the High Authority for Good Governance, enjoy special protection from the State against possible acts of reprisal or intimidation”*. In addition, as in Benin's legislation, whistleblowers and witnesses may declare the address of the police station, the gendarmerie brigade or the High Authority for Good Governance as their domicile (Article 69). The address of these persons is then entered by the authority drawing up the report in an investigation register. The report constitutes a judicial information document.

The law prescribes the possibility of anonymity when the hearing of an informer or witness is likely to seriously harm the life or physical integrity of that person, members of his or her family or relatives (Article 70). This law also provides that “No person may be convicted solely on the basis of a statement made anonymously” (Article 72(1)).

Ghana also passed the Whistleblower Act, 2006 Act 720²⁷⁰: Section 2 of the Ghana Whistleblower Act (2006) expands the definition of a whistleblower beyond an employment relationship and qualifies a whistleblower as a person who makes disclosure of impropriety and this can be made by an employee in respect of an employer, an employee in respect of another employee, or a person in respect of another person, or an institution²⁷¹.

Furthermore, according to Section 1 (1) of the Act, a person may make a disclosure of information where the person has reasonable cause to believe that the information tends to show (a) that an economic crime has been committed, is about to be committed or is likely to be committed; (b) another person has not complied with a law or is in the process of breaking a law or is likely to

²⁶⁹ Order No. 2013-660 of 20th September 2013 on combating and preventing corruption and other related offences;
<https://www.igf.finances.gouv.ci/igfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>

²⁷⁰ Whistleblower Act, 2006 Act 720 ;

<http://www.drasuszodis.lt/userfiles/Ghana%20Whistleblower%20Act.pdf#:~:text=Act%20720%20THE%20SEVEN%20HUNDRED%20AND%20TWENTIETH%20ACT,others%3B%20to%20provide%20for%20the%20protection%20against%20victimisation>

²⁷¹ Law and practice on protecting. whistle-blowers in the public and financial. services sectors. Iheb Chalouat,. Carlos Carrión-Crespo and. Margherita Licata; International Labour Organization Geneva (2019); https://www.ilo.org/wcmsp5/groups/public/-ed_dialogue/---sector/documents/publication/wcms_722316.pdf

break a law which imposes an obligation on that person; (c) a miscarriage of justice has occurred, is occurring or is likely to occur; (d) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources; (e) the environment has been degraded, is being degraded or is likely to be degraded; or (f) the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.

The Act also prescribes that notwithstanding any other law to the contrary, a disclosure of an impropriety is protected if (a) the disclosure is made in good faith, (b) the whistleblower has reasonable cause to believe that the information disclosed and an allegation of impropriety contained in it are substantially true, and (c) the disclosure is made to one or more competent persons or institutions.

Nigeria has not yet passed a whistleblower protection Bill. However, the government adopted a National Whistleblowing Policy in 2016.

Whistle-blowing Policy in Nigeria is an anti-corruption programme that encourages citizens to voluntarily disclose information about fraud, bribery, looted government funds, financial misconduct. A whistleblower who provides information about any financial mismanagement to the ministry's portal is rewarded to 2.5% - 5% percentage from the recovered funds by the Nigeria government. The policy was launched on 21st December, 2016, by Nigeria's Federal Government and facilitated through the Federal Ministry of Finance²⁷².

It was reported that within the first two months of the Whistle-blowing policy in Nigeria that Nigeria's Federal Government recovered over \$178 million that were stolen from the government. By 5th June, 2017, Federal Ministry of Finance received a total of 2,150 tips from the public, 128 tips came through the website of the ministry, 1,192 was through phone calls, 540 through SMS and 290 through email to the ministry²⁷³. In October 2017, the Acting Chairman of the Economic and Financial Crimes Commission (EFCC), Ibrahim Magu said that N527,643,500; \$53,222,747; GBP21,222,890 and Euro 547,730 was recovered since the policy was launched²⁷⁴. In 2017 It was also reported that Federal Ministry of Finance paid the whistler-blower the sum of N421million²⁷⁵.

Togo, Niger and Mali do not have a general whistleblower protection law. Only the protection of whistleblowers in relation to money laundering and terrorist financing are regulated (directive No. 07/2002/CM/UEMOA on the fight against money laundering).

²⁷² Tukur, Sani (21st December, 2016). « Expose corruption and make money as Nigerian Govt adopts new whistle blowing policy ». Premium Times. Retrieved 19th April 2018

²⁷³ Kazeem, Yomi (13th February, 2017). « Nigeria's whistleblower plan to pay citizens to report corruption is off to a great start ». Quartz Africa. Retrieved 19th April 2018

²⁷⁴ Premium, Times (15th August, 2017). « Whistleblower policy, one of Buhari's main achievements – Adeosun ». Premium Times. Retrieved 19th April 2018.

²⁷⁵ Umolu, Charles (14th December, 2017). « Ikoyi Cash: Whistleblower gets N421m, jets out of Nigeria ». Vanguard. Retrieved 19th April 2018.

4.9.2. Weaknesses in whistleblower protection systems

Practices for the protection of witnesses in criminal proceedings involving organized and the Monrovia Statement on whistleblower and witness protection in West Africa, adopted in Monrovia on 21st September 2016²⁷⁶; the weaknesses related to the protection of whistleblowers in the ECOWAS region can be summarised as follows:

- **Most ECOWAS Member States have not yet passed general legislation on the protection of whistleblowers;**
- **Low level of compliance with international standards:** existing legislation does not comply with all international reporting standards: they do not protect all whistleblowers in the public and private sector; do not include clear reporting procedures; do not have a clear feedback system; lack of independent and confidential legal and practical advisory services available to whistleblowers; Lack of remedies for whistleblowers who suffer retaliation; low dissemination of existing laws and therefore not enough awareness about them; low assessment of standards (according to international standards, all whistleblower protection legislation should be monitored and reviewed at least every 3-5 years and these monitoring and assessment reports should be shared with the Parliament;
- **Weak enforcement of whistleblowing laws:** even those laws that exist are not enforced due to lack of operational arrangements.

4.10. ASSET RECOVERY (Article 13)

According to Article 13(1), *each State Party shall adopt measures, where necessary, that would permit:*

- a) *the competent authorities to identify, locate and seize assets or items for eventual forfeiture;*
- b) *the forfeiture of proceeds from crimes established in accordance with the provisions of this Protocol or other assets whose value is equal to the value of the crime*

Article 13(2): *In order to implement the measures referred to in this Article, each State Party shall empower its courts to order the surrender or seizure of banks, commercial or financial documents and shall not invoke banking secrecy in order to refuse the assistance requested by another State Party.*

²⁷⁶ RINCAO Members, Monrovia Statement on Whistleblower and Witness Protection in West Africa, adopted in Monrovia (21st September, 2016) ;
https://www.unodc.org/documents/westandcentralafrica/Sept2016_Monrovia_wistleblowers/Monrovia_Statement_on_Whistle-Blower_and_Witness_Protection_-_FR_-_21_09_2016.pdf



Article 13(4) State Parties shall assist each other in the identification and seizure of the assets or items acquired or used in committing the crimes.

Article 13(5) a State Party may transfer all or a part of the assets specified in the first Paragraph of this Article to another State Party which has assisted it in carrying out investigations or prosecuting the crime.

4.10.1. Strengths of asset recovery systems in the ECOWAS region

Directive No. 02/2015/CM/UEMOA on anti-money laundering and combating the financing of terrorism in the Member States of the West African Economic and Monetary Union (WAEMU), domesticated by the eight (8) member states of the WAEMU, provides practical arrangements to meet the obligations under the Protocol. Thus, the provisions of the national uniform acts of the eight member states comply with these requirements²⁷⁷.

Thus, the uniform provisions of the eight UEMOA member states (Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea Bissau), include updated provisions on asset recovery.

For example, Article 104 of the Directive and the national uniform acts explicitly provides that the courts have jurisdiction to hear civil actions for the direct recovery of assets. Foreign governments can take legal action and are subject to the general domestic procedural rules, including the need to demonstrate a legitimate interest. The capacity to sue includes the capacity to bring a civil action before national courts to establish the existence of a property right and to claim compensation or damages. A bond is required and the foreign government must use a lawyer registered with the local bar.

A confiscation order from a foreign court can be enforced under Articles 105 and 113 of the LC Act; Article 150 of the AML/CFT Act; and Article 20 of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Forfeiture upon request of mutual legal assistance is also possible under Articles 83 and 111-112 of the Directive and the national uniform acts; Articles 128 and 148 of the AML/CFT Act; and Articles 18 and 19 of the ECOWAS Convention. Forfeiture of property may be ordered even in the absence of a criminal conviction (Article 106 of the Directive and the countries' uniform Acts). A freezing order or seizure order of a foreign court can be enforced according to Article 147 AML/CFT Law; as well as according to Article 20 of the ECOWAS Convention. A request for mutual assistance for the purpose of seizure may be executed in accordance with Article 99 et seq. of the AML/CFT Law. Provisional measures without prior request may be ordered under Articles 99 and 100 of the AML/CFT Law.

²⁷⁷ Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo, Guinea-Bissau, <http://www.uemoa.int/fr/pays/benin>

The content of requests for mutual legal assistance is determined by the above-mentioned provisions of the AML/CFT Law (in particular Article 139), and the ECOWAS Convention.

The rights of bona fide third parties are protected by Articles 147 in fine, 150 para. 3 and 160 of the AML/CFT Law; and Article 20(2) of the ECOWAS Convention.

In addition, WAEMU member states may return confiscated property by applying the Convention directly, in accordance with Article 151 of the AML/CFT Directive and Uniform Acts, the state benefits from property confiscated on its territory at the request of foreign authorities, unless an agreement with the requesting state decides otherwise. The rights of bona fide third parties as well as the rights of legitimate owners are protected by the above-mentioned articles. The execution of a request for cooperation is, in principle, free of charge. However, there is no reason why countries should not be able to deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated property.

The WAEMU AML/CFT Directive and national uniform Acts also provide for the mandatory confiscation of proceeds of money laundering. In all cases of conviction for money laundering or attempted money laundering, the courts shall order the confiscation, for the benefit of the State, of the property that was used or intended to be used to commit the offence, the proceeds of the offence, the movable or immovable property into which such proceeds are transformed or converted and, up to their value legitimately acquired property with which such proceeds are intermingled and the income and other benefits derived from such proceeds, from property into which they are transformed or invested or from property with which they are intermingled, to whomever such proceeds and property belong, unless the owner establishes that he is unaware of their fraudulent origin²⁷⁸.

In addition, in all cases of conviction for the offence of terrorism financing or attempt to do so, the courts shall order the confiscation, for the benefit of the public treasury, of the funds and other financial resources associated with the offence as well as of any movable or immovable property intended for or having been used in the commission of the offence. The State may allocate the funds and other financial resources as well as the property referred to in Paragraph 1 above to a special fund for combating organised crime or for compensating the victims of the offences referred to in Article 8 of the Directive or their beneficiaries. The decision to authorise confiscation shall identify and locate the funds, property and other financial resources involved. Where the funds, property and other financial resources to be confiscated cannot be represented, their confiscation may be ordered in value (Art. 129)²⁷⁹

²⁷⁸ Article 128, Uniform Act, op. cit, https://jo.gouv.tg/sites/default/files/JO/JOS_04_05_2018-63E%20ANNEE%20N%C2%B0%2007.pdf#page=2

²⁷⁹ Article 128, Uniform Act, op. cit, https://jo.gouv.tg/sites/default/files/JO/JOS_04_05_2018-63E%20ANNEE%20N%C2%B0%2007.pdf#page=2

It should be recalled that this WAEMU community directive has been transposed in the eight (8) WAEMU member states.

Togo has transposed this directive through Uniform Act No. 2018-004 of 24th April 2018 Law 2018- 004 04/05/2018 on anti-money laundering and combating the financing of terrorism in the Member States of the West African Monetary Union. Togo also adopted Decree No. 2018-123/PR of 3rd August 2018 concerning the designation of the competent authority and setting out the procedure for administrative freezing²⁸⁰ which established the Minister of Finance as the authority in charge of administrative freezing. As such, it orders by decision and for a renewable period of six (6) months, the freezing of all or part of the funds and other property belonging to terrorists, terrorist organisations and persons or entities suspected of financing terrorism or supporting terrorist organisations (Article 2 of the decree). The administrative freezing is carried out without delay and without prior notification to the persons and entities covered by the measure.

Burkina Faso has also transposed the aforementioned WAEMU directive by Law No. 016-2016/AN on anti-money laundering and combating the financing of terrorism in Burkina Faso²⁸¹ and all the criminal provisions have also been incorporated in Law No. 044-2019/AN amending Law No.025-2018/AN of 31 May 2018 on the Criminal Code²⁸². Thus, a confiscation order from a foreign court can be enforced according to articles 105 and 113 of Law 004-2015/CNT on the prevention and repression of corruption in Burkina Faso²⁸³; according to art. 150 of the AML/CFT Law; as well as according to Article 20 of the ECOWAS Convention on Mutual Legal Assistance in Criminal Matters. In addition, law No.040-2019/AN on the code of criminal procedure²⁸⁴, stipulates that for the management and recovery of frozen, seized or confiscated assets, judicial police officers, the public prosecutor's office and the investigating or trial courts shall be assisted by the national body in charge of the management and recovery of seized or confiscated assets created for this purpose (Article 536-1). Provision has also been made for the creation of a national agency for the management and recovery of seized or confiscated assets (ANAGRASC) but this has not yet been implemented.

Benin has also transposed the said WAEMU directive by Law No. 018-17 of 25th July 2018 on anti-money laundering and combating the financing of terrorism in the Republic of Benin²⁸⁵. The country has also adopted Decree No. 2019-046 of 31st January 2019, designating the competent authority for administrative freezing pursuant to Law No. 2018-17 of 25th July 2018 on anti-money

²⁸⁰ https://centif.tg/files/loi_12.pdf

²⁸¹ Law No. 016-2016/AN on anti-money laundering and combating the financing of terrorism in Burkina Faso; <https://lavoixdujuristebf.files.wordpress.com/2013/08/loi-relative-a-la-lutte-contre-le-blanchiment-de-capitaux-et-le-financement-du-terrorisme.pdf>

²⁸² Law No. 044-2019/AN amending Law No.025-2018/AN of 31st May 2018 on the Criminal Code, https://www.assembleenationale.bf/IMG/pdf/loi_044_portant_modification_du_code_penal.pdf

²⁸³ Law 004-2015/CNT on the prevention and repression of corruption in Burkina Faso,

²⁸⁴ law No.040-2019/AN on the code of criminal procedure; <https://revuejurisburkina.files.wordpress.com/2019/06/code-de-procedure-penale.pdf>

²⁸⁵ Law No. 018-17 of 25th July 2018 on anti-money laundering and combating the financing of terrorism in the Republic of Benin <http://centif.bj/wp-content/uploads/2019/02/LOI-UNIFORME-CENTIF-BENIN.pdf>

laundering and combating the financing of terrorism in the Republic of Benin²⁸⁶ and Decree No. 2019-047 of 31st January 2019 on the establishment, powers and functioning of the national anti-money laundering technical committee²⁸⁷.

All other WAEMU countries have also transposed the WAEMU directive into national uniform Acts. These include Senegal, which transposed it by Law No. 2018-03 of 23rd February 2018 on anti-money laundering and combating the financing of terrorism²⁸⁸; Côte d'Ivoire by Law No. 2016-992 of 14th November 2016 on anti-money laundering and combating the financing of terrorism²⁸⁹; Niger transposed it by Law No. 2016-33 of 31st October 2016 on anti-money laundering and combating the financing of terrorism²⁹⁰; Mali by Law No. 2016-008 of 17th March 2016 on the uniform Act on anti-money laundering and combating the financing of terrorism²⁹¹. Although Guinea is not a member of the WAEMU, it has also passed Law No. 2018-043 of 13th February 2019 on the fight against money laundering and terrorist financing in almost in the same way²⁹².

With the assistance of GIABA, English-speaking countries in the ECOWAS region have also passed national anti-money laundering and combating the financing of terrorism laws with almost the same provisions as those of the WAEMU member states.

For example, Nigeria has passed the Money Laundering (Prohibition) Act, 2011 (as amended)²⁹³ which amended the 2003 Act. The Act provides for measures relating to direct recovery of property; mechanisms for recovery of property through international cooperation for the purpose of confiscation; international cooperation for the purpose of confiscation.

The administration of criminal justice Act, 2015²⁹⁴ gives the court the power to order the defendant or convict to pay a sum of money as compensation to any person injured by the offence or defraying expenses incurred on medical treatment of a victim injured by the convict in

²⁸⁶ Decree No. 2019-046 of 31st January 2019, designating the competent authority for administrative freezing pursuant to Law No. 2018-17 of 25th July 2018 on anti-money laundering and combating the financing of terrorism in the Republic of Benin; <https://sgg.gouv.bj/doc/decret-2019-046/>

²⁸⁷ Decree No. 2019-047 of 31st January 2019 on the establishment, powers and functioning of the national anti-money laundering technical committee <http://centif.bj/wp-content/uploads/2019/02/DECRET-2019-047-PORTANT-AOF-CTN.pdf>

²⁸⁸ Law No. 2018-03 of 23rd February 2018 on anti-money laundering and combating the financing of terrorism; http://www.centif.sn/LOI_2018_03_RELATIVE_A_LA_LBCFT.pdf

²⁸⁹ Law No. 2016-992 of 14th November 2016 on anti-money laundering and combating the financing of terrorism; <https://www.centif.ci/images/lois/108ad4168a381bd0d8294e2903b6baae.pdf>

²⁹⁰ Law No. 2016-33 of 31st October 2016 on anti-money laundering and combating the financing of terrorism <https://halcia.ne/wp-content/uploads/2019/07/Loi-lutte-contre-le-blanchiment-des-capitaux-et-financement-du-Terrorisme.pdf>

²⁹¹ Law No. 2016-008 of 17th March 2016 on the uniform Act on anti-money laundering and combating the financing of terrorism, <http://www.droit-afrique.com/uploads/Mali-Loi-2016-08-lutte-blanchiment-capitaux-financement-terrorisme.pdf>

²⁹² Law No. 2018-043 of 13th February 2019 on the fight against money laundering and terrorist financing in almost in the same way ; <https://www.samifin.gov.mg/sites/default/files/loi2018-043.pdf>

²⁹³ Money laundering (prohibition) act, 2011 (AS AMENDED) ; <https://www.cbn.gov.ng/Out/2018/FPRD/aml%20merged%20May%202018.pdf>

²⁹⁴ The administration of criminal justice act, 2015, <http://nigerianlawguru.com/legislations/STATUTES/ADMINISTRATION%20OF%20CRIMINAL%20JUSTICE%20ACT,2015.pdf>

connection with the offence (Section 319). As no distinction is made between victims, a state that has suffered an injury can also receive such compensation, but it is also required to use a local lawyer. The Foreign Judgements (Reciprocal Enforcement) Act provides for the registration and enforcement of foreign forfeiture orders made in other jurisdictions and is not limited to Commonwealth countries (Part I). Foreign forfeiture orders are registered and enforced on the basis of reciprocity, provided that the foreign country's procedure is in accordance with Nigerian law.

Confiscation of proceeds of crime is governed by the fraud (Advance Fee Fraud and Other Fraud Related Offences) Act 2006 (Section 17) and the Economic and Financial Crimes Commission Act (Section 24(b)). Several legal provisions provide for confiscation without conviction (e.g. Section 17 (6) of the Fraud Act, and Section 330 of the Administration of Criminal Justice Act). The Economic and Financial Crimes Commission Act provides for measures to identify, trace, freeze, confiscate and seize the proceeds of crime, and contains provisions on collaboration with other States (sect. 5 (j) and sect. 6, para. 1 (d)). Section 5 (k) and Sections 28 and 29 of the Act, Section 6 (5) (b) of the Money Laundering Prohibition Act and Section 46 of the Corruption and Related Offences Act allow the competent authorities to freeze or seize property on the basis of a request from another State, even if there is a mere suspicion of involvement in an offence. In addition, Section 44(2)(k) of the Constitution provides for the preservation of property for confiscation on the basis of an arrest or indictment made abroad. In addition, the management of recovered assets is provided for in Sections 153 to 157 of the Administration of Criminal Justice Act. The Law on the Establishment of the Economic and Financial Crimes Commission gives the Commission the general power to deal with matters relating to economic and financial crimes with other countries (Section 6(k)), but does not specify the procedure for dealing with foreign request.

In addition, the restitution and final disposal of assets are provided for in Article 321 of the Administration of Criminal Justice Act, and the compensation of bona fide third parties in Article 319 (1)(b) of the same Act. With regard to the disposal of confiscated assets, Nigeria has concluded memoranda of understanding with several countries, such as France, Italy, Spain, Switzerland and Venezuela (Bolivarian Republic of) (Economic and Financial Crimes Commission Act, art. 6, sub.sect (k)).

Sierra Leone has passed the anti-money laundering and combating of financing of terrorism act, 2012²⁹⁵; and the Terrorism Prevention Regulations, 2013²⁹⁶. The country has also conducted a Money Laundering and Terrorism Financing Vulnerability Assessment (2018)²⁹⁷. The country has

²⁹⁵ The anti-money laundering and combating of financing of terrorism act, 2012 ; Supplement to the Sierra Leone Gazette Vol. CXLIII, No ; dated 23rd February, 2012 ; <https://fiu.gov.sl/downloads/2017-09/aml-cft-act-2012.pdf>

²⁹⁶ The Terrorism Prevention Regulations 2013 ; <https://fiu.gov.sl/downloads/2018-06/terrorism-prevention-regulations-2013.pdf>

²⁹⁷ National money laundering and terrorism financing risk assessment, Republic of Sierra Leone ; https://fiu.gov.sl/downloads/2020-01/PUBLIC%20VERSION_%20NRA%20REPORT%20AND%20ACTION%20PLANS%20OF%20SIERRA%20LEONE_March2017Final.pdf

also adopted its National Money Laundering and Terrorist Financing Risk Assessment Implementation Plan (2018 - 2020)²⁹⁸.

Liberia has also passed the Anti-Money Laundering and Combating the Financing of Terrorism Act (2012)²⁹⁹ thanks to the assistance of GIABA. In addition, the country has successively passed the National Financial Intelligence Processing Unit Act (2012)³⁰⁰; the Mutual Legal Assistance in Criminal Matters Act (2012); approved on 29th April 2013³⁰¹; the Fraud Act (2012), approved on 30th April 2013³⁰²; and the Act to Amend the Civil Procedure Act, Fixing Provisional Remedies for Proceeds of Crime, approved on 29th April 2013³⁰³. The country also passed the Criminal Procedure Law Amendment Act, Title 2 of the Revised Liberian Codes of Laws, Providing for Special Criminal Procedures for Offences Involving Terrorist Acts, approved on 16th February 2017³⁰⁴.

The laws provide, inter alia, for the return of confiscated property; the State shall benefit from property confiscated in its territory at the request of foreign authorities unless an agreement with the requesting State provides otherwise. The rights of bona fide third parties as well as the rights of legitimate owners are protected by the above-mentioned provisions. The execution of a request for cooperation is, in principle, free of charge. However, nothing prevents countries from deducting reasonable expenses incurred for investigations, prosecutions or judicial proceedings leading to the return or disposal of confiscated property.

4.10.2. Weaknesses in the asset recovery system in the ECOWAS region.

- **Lack/weakness of specialised institutions:** The issue of recovery of ill-gotten assets at the domestic level remains a major challenge in the ECOWAS region due to the absence/weakness of specialised institutions in this area in the States; few countries have a specialised asset recovery institution;

²⁹⁸ National implementation plan on money laundering and terrorism financing risk assessment (2018–2020) ; https://fiu.gov.sl/downloads/2020-01/NATIONAL%20IMPLEMETATION%20PLAN%20ON%20NATIONAL%20ML_TF%20RISK%20ASSESSMENT1.pdf

²⁹⁹ The anti-money laundering and terrorist financing act, 2012 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/FIU-1-Anti-Money-Laudnering-and-Terrorist-Financing-Act-2012.pdf>

³⁰⁰ The act to establish the financial intelligent unit of Liberia, 2012 ; <https://www.fiuliberia.gov.lr/aml-cft-laws/>

³⁰¹ The mutual legal assistance in criminal matters act, 2012 ; approved on 29th April, 2013 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/Mutual-Legal-Assistance-Act-2012.pdf>

³⁰² The fraud ct 2012, approved on 30th April, 2013 <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/Fraud-Act-of-2012.pdf>

³⁰³ The act to maned the civil procedure law to provide provisional remedies for proceeds of crime, approved on 29th April, 2013 ; <https://www.fiuliberia.gov.lr/wp-content/uploads/2020/07/FIU-3Act-to-Amend-Civil-Procedure-Law-to-provide-provisional-remedies-for-proceeds-ofcrimes.pdf>

³⁰⁴ Act to amend the criminal procedure law, Title 2 of the Liberian codes of laws revised to provide for special criminal procedures for offences involving terrorists acts, approved 16th February, 2017 ; <file:///C:/Users/EBEH%20Fabrice/Downloads/An-special-criminal-procedure-for-Terrorism-2017-amend-Title-2.pdf>

- **Low level of information of the stakeholders:** the stakeholders are not yet aware of the challenges of cross-border corruption and especially the lack of human and financial resources.
- **Weak implementation of the asset recovery mechanisms:** most countries have not yet used the mechanisms of the ECOWAS and the UNCAC to recover assets abroad.
- **Weak capacity of relevant stakeholders on matters relating to asset recovery:** ECOWAS member states lack technological capacity to detect ill-gotten assets, logistical capacity for special investigations, and technical capacity in general for asset recovery.



4.11. CRIMINALISATION & SANCTIONS

Article 10 (1). Each State Party shall provide, in respect of those criminal offences established in accordance with this Protocol, effective, proportionate, and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

Article 10 (2). Each State Party shall ensure that liable legal persons ..., shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 10 (3). Each State Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Protocol, or assets the value of which correspond to such proceeds.

4.11.1. Strengths of criminalising the offences

All ECOWAS countries have criminalised the offences of corruption and money laundering in their legislation and in their criminal code.

Burkina Faso has introduced the offences of corruption and money laundering in Law No. 044-2019/AN amending Law No.025-2018/AN of 31st May 2018 on the Criminal Code³⁰⁵ and Law No.040-2019/AN on the Criminal Procedure Code³⁰⁶. For instance, failure to declare one's interest or assets is an offence punishable with six months to five years' imprisonment and a fine of 500,000 to 2,000,000 CFA francs (Article 332-26 of the Criminal Code); the same penalty applies to a false declaration of interest or assets. Disclosure of information on assets (clerk and controller or ASCE-LC members) is an offence punishable with one to three years' imprisonment and a fine of 500,000 to 1,000,000 FCFA (Article 332-27 Criminal Code).

Côte d'Ivoire, for example, has transposed the relevant anti-corruption repressive provisions into its criminal code (2017)³⁰⁷, which criminalises passive and active corruption of public officials. The code prohibits offering, giving and promising a bribe (active bribery) and soliciting, requesting, accepting and accepting a bribe (passive bribery).

In Guinea, bribery offences have been introduced in the Criminal Code (Section 2, Articles 18-43 for the public sector and 60-80 for the private sector of the anti-corruption law; Articles 771-783 of the Criminal Code of Guinea)³⁰⁸.

³⁰⁵ Law No. 044-2019/AN amending Law No.025-2018/AN of 31st May 2018 on the Criminal Code

³⁰⁶ Law No.040-2019/AN on the Criminal Procedure Code; <https://revuejurisburkina.files.wordpress.com/2019/06/code-de-procedure-penale.pdf>

³⁰⁷ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/49255/128598/F-1693355407/CIV-49255.pdf>

³⁰⁸ Law No. 2016/059/AN, of 26th October 2016 on the Criminal Code, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107329/132068/F532769828/GIN-107329.pdf>

Togo has also passed Law No. 2015-010 of 24th November 2015 on the new Criminal Code³⁰⁹. This new Criminal Code (NCP) prescribes three types of corruption, namely, bribery of national public officials which are considered as offences (Art. 594 to 596 NCP), bribery of foreign public officials and international civil servants (Art. 597 to 599); bribery in the private sector (Art. 600 NCP) and offences related to corruption.

Senegal has also transposed repressive anti-corruption provisions by Law No. 2007-01 of 12th February 2007 amending the Penal Code³¹⁰.

The country passed Law No. 2007-04 of 12th February 2007 amending the Code of Criminal Procedure³¹¹; Law No. 81-53 of 10th July 1981 on the repression of illicit enrichment³¹²; Law No. 81-54 of 10th July 1981 creating the Court of Repression of Illicit Enrichment³¹³ and Law No. 71-77 of 28th December 1971 on extradition.³¹⁴

Mali has also passed Law No. 2016-039 of 7th July 2016 amending Law No. 01-079 of 20th August 2001 on the Criminal Code³¹⁵ and Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment³¹⁶.

Niger has also adopted its new criminal code, just like Mali, which passed Law No. 2001-079 of 20th August 2001 on the Criminal Code³¹⁷.

Ghana has also passed the Criminal Offences (Amendment) Act, 2012, which amends the Criminal Offences Act, 1960 (Act 29) to include, among others, the offences of bribery, illicit trafficking in explosives, firearms and ammunition, participation in an organised criminal group³¹⁸. This Criminal Code criminalises active and passive bribery, extortion, wilful exploitation of public office and the use of public office for private gain, irrespective of the nationality of the bribe payer/taker. Direct and indirect corruption is illegal, as well as attempting, preparing or conspiring to bribe and both agent and principal are liable.

³⁰⁹Law No. 2015-010 of 24th November 2015 on the new Criminal Code, https://jo.gouv.tg/sites/default/files/publications/JOS_24_11_15-60%C3%A8%20ANNEE%20N%C2%B030.pdf

³¹⁰ Law No. 2007-01 of 12th February 2007 amending the Penal Code, http://www.centif.sn/Loi_66-60_du_21_juillet_1965_portant_code_penal.pdf

³¹¹Law No. 2007-04 of 12th February 2007 amending the Code of Criminal Procedure; http://www.centif.sn/Loi_66-61_du_21_juillet_1965_code_procedure_penal.pdf

³¹² Law No. 81-53 of 10th July 1981 on the repression of illicit enrichment, http://www.centif.sn/Loi81_53.pdf

³¹³ Law No. 81-54 of 10th July 1981 creating the Court of Repression of Illicit Enrichment; http://www.centif.sn/Loi_81_54_Cour_Rpression_Enrichissement_illicite.pdf

³¹⁴ Law No. 71-77 of 28th December 1971 on extradition, http://www.centif.sn/loi_7177.pdf

³¹⁵ Law No. 2016-039 of 7th July 2016 amending Law No. 01-079 of 20th August 2001 on the Criminal Code; <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103126/125058/F-789378204/MLI-130126.pdf>

³¹⁶Law No. 2014-015 of 27th May 2014 on the prevention and repression of illicit enrichment; <http://www.sgg-mali.ml/JO/2014/mali-jo-2014-26.pdf>

³¹⁷ Mali, law No. 2001-079 of 20th August 2001 on the Criminal Code, <http://www.droit-afrique.com/upload/doc/mali/Mali-Code-2001-penal.pdf>

³¹⁸ <https://www.refworld.org/pdfid/44bf823a4.pdf>

Finally, Cape Verde has also criminalised active and passive bribery offences in its Criminal Code under Articles 364-372³¹⁹.

4.11.2. Weaknesses

- Weak enforcement of measures (laws and codes of ethics and professional conduct);
- Lack of equity and justice in the treatment of citizens' cases;
- Weak enforcement of sanctions and impunity for certain acts of corruption.
- Poor statistical data in criminal matters.

❖ *Some statistical data relating to the enforcement of laws (See Annexes 2, 3, 4, 5, 6, 7, 8)*



³¹⁹ Código penal de Cabo Verde; Ministério da justiça (2004);
https://www.africanchildforum.org/clr/Legislation%20Per%20Country/cape%20verde/capeverde_penal_2004_pr.pdf



V. RECOMMENDATIONS

➤ **TO THE ECOWAS COMMISSION**

5.1. Strengthening the effectiveness of the Protocol

5.1.1. Operationalise the Technical Anti-Corruption Commission

In accordance with Article 19(1) of the Protocol, the Technical Anti-Corruption Commission should be established and maintained as operational.

This commission is responsible for the supervision of the implementation of the Protocol at both the national and regional levels; the collection and dissemination of information among States Parties; the regular organisation of relevant training programmes; and the provision of any additional appropriate assistance to States Parties.

5.1.2. Ensure that the evaluation and periodic reporting on implementation are effectively done

In order to ensure effective and efficient implementation of the Protocol, Member States should agree on a timetable for periodic evaluation and reporting of measures taken and difficulties experienced in its implementation.

5.1.3. Establish a financing mechanism for the Protocol

There is no specific funding mechanism for the Protocol similar to what is in place for the ECOWAS conflict prevention and management mechanism in the Protocol on Conflict Prevention, Management, Resolution, Peacekeeping and Security (Abuja, December 1999). The lack of a specific funding mechanism may also be an obstacle to the implementation of the Protocol.

ECOWAS should consider a specific funding mechanism for the Protocol to ensure its effectiveness and above all to be able to provide the necessary technical assistance to States for the smooth implementation of the Protocol.

5.1.4. Strengthen the regional and national early warning mechanism

Corruption and money laundering issues are poorly addressed in the regional and national early warning system recognised as one of the fifteen components of the ECOWAS Conflict Prevention Framework (ECPF)³²⁰.

While it is true that the information to be collected at the national level under this mechanism covers several areas, including cross-border crime, corruption, money laundering, circulation of small arms, and religious extremism, this mechanism provides little information on issues related to corruption and money laundering due to the low capacity of those involved and the insufficient number of qualified personnel to process all the information collected³²¹.

³²⁰ The ECPF in 2008 has only 14 components. The ECPF Permanent Secretariat was created in 2015 as the fifteenth component.

³²¹ Amandine Gnanguênon, West Africa: making conflict prevention the rule, not the exception, Global Affairs Canada, September 2018,,

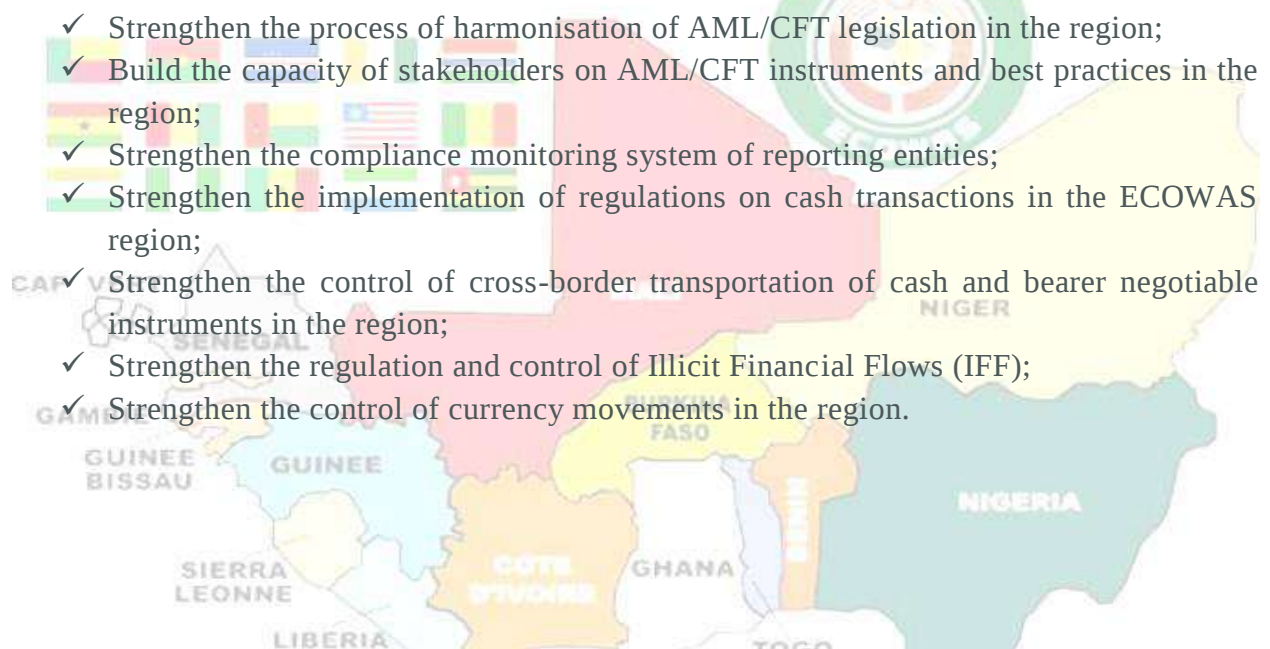
5.2. Adopt community directives or regulations

ECOWAS should strengthen the harmonisation of systems and the effectiveness of the Protocol by adopting several community directives/regulations, among others, on the protection of whistleblowers; transparency of lobbying activities; asset disclosure; public participation and access to information; budgetary/public finance transparency; public procurement, etc.

Strengthen regional and international cooperation on asset recovery.

➤ TO THE INTERGOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA (GIABA)

5.3. Strengthen anti-money laundering and combating the financing of terrorism measures

- ✓ Strengthen the process of harmonisation of AML/CFT legislation in the region;
 - ✓ Build the capacity of stakeholders on AML/CFT instruments and best practices in the region;
 - ✓ Strengthen the compliance monitoring system of reporting entities;
 - ✓ Strengthen the implementation of regulations on cash transactions in the ECOWAS region;
 - ✓ Strengthen the control of cross-border transportation of cash and bearer negotiable instruments in the region;
 - ✓ Strengthen the regulation and control of Illicit Financial Flows (IFF);
 - ✓ Strengthen the control of currency movements in the region.
- 

➤ **TO ECOWAS MEMBER STATES**

5.4. Strengthen regional and national institutional anti-corruption frameworks

- Establish/strengthen and operationalise Supreme Administrative Review Authorities with legal, administrative and financial autonomy in the countries;
- Create and operationalise in each State Party a National Financial Prosecutor's Office (PNF), specialised in the prosecution of acts of corruption;
- Establish/strengthen and operationalise in each State Party an Economic and Financial Brigade (BEF). The BEF to be established should have units specialised in new economic and financial offences and extended competences to these new forms of economic and financial crime;
- Establish/strengthen and operationalise in each State Party an authority in charge of access to public information and documentation;
- Establish/strengthen and operationalise in each State Party the High Court of Justice, empowered to deal with cases of corruption of senior State officials;
- Strengthen the High Council of the Judiciary (CSM) to better ensure the integrity of the judiciary;
- Create/strengthen the framework for dialogue between stakeholders involved in the fight against corruption at national and regional level.

5.5. Strengthening public participation and access to information

- Strengthen/adopt and implement processes that allow citizens, especially vulnerable groups, to actively participate in the fight against corruption, in development planning and in policy-making (agoras, public consultations, state-civil society consultation framework, etc.)³²²;
- Strengthen civic education on the culture of denouncing acts of corruption;
- Strengthen open government measures by joining several institutions working in the field (Open Government Partnership)³²³;
- Strengthen adherence to and implementation of infrastructure transparency standards (CoST);³²⁴
- Strengthen adherence to and implementation of the Global Initiative for Fiscal Transparency (GIFT)³²⁵ standards;

³²² https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Rapport_sur_la_gouvernance_en_Afrique%20IV.pdf

³²³ <https://www.opengovpartnership.org/policy-areas/>

³²⁴ https://infrastructuretransparency.org/wp-content/uploads/2018/06/14_Cost_Summary_French_Proof_2.pdf

³²⁵ <https://www.fiscaltransparency.net/public-participation-principles-and-guide/>

- Ensure the effectiveness of bodies responsible for providing access to information as well as appropriate monitoring, sanctions and evaluation mechanisms.

5.6. Strengthening the fight against corruption in the private sector

- Support the adoption, dissemination and enforcement of codes of conduct and integrity pacts in private companies or Transparency International's Business Principles for Countering Bribery (August 2004);
- Adopt a law to strengthen internal control of private companies;
- Support Togolese companies to adhere to the 10th Principle of the United Nations Global Compact - 2004³²⁶
- Support private companies to adhere to the ISO37001 or Anti-Bribery Management System certification³²⁷.

5.7. Enhancing the quality and transparency of public services and public finances through digitalisation

- ✓ Strengthen digital solutions (GovTech) in public finance, including both (i) strengthening the digitalisation of public revenues and subsidies and (ii) strengthening the digitalisation of public expenditure management
- ✓ Strengthen the governance of public companies through digitalisation
- ✓ Strengthen the governance of the civil service through digitalisation
- ✓ Strengthen the governance of the judicial sector through digitalisation
- ✓ Digitalise the management of the State's vehicle fleet
- ✓ Digitalise the management of development projects
- ✓ Strengthen the digitalisation of the goods clearance process
- ✓ Secure and digitalise the management of tax stamps

5.8. Enhancing transparency in public procurement

- Strengthen the digitalisation of public procurement/electronic public procurement, implement and operationalise measures for electronic submission of tenders;
- Strengthen open contracting measures, publish and update all contracts and subcontracts; make payment information public;

³²⁶ <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10>

³²⁷ <https://www.bsigroup.com/fr-FR/ISO-37001--Systeme-de-Management-Anti-Corruption/#:~:text=L%E2%80%99ISO37001%20est%20la%20nouvelle%20norme%20internationale%20con%C3%A7ue%20pour%20la%20corruption.%20Voir%20toutes%20nos%20formations%20ISO37001%203E>

- *Strengthen the capacity of public procurement agents*, especially the weak capacity of procurement bodies at sectoral, deconcentrated and decentralised levels as well as at service providers' level.
- Strengthen the legal and institutional framework for public procurement: shorten procurement timelines, incorporate explicit provisions on conflict of interest, corruption and fraud in some public procurement legislation and forms, obligation to consult civil society or the business community (public-private dialogue) on the management of the public procurement system.

5.9. Strengthening recovery systems

- ✓ Establish/strengthen and operationalise agencies in charge of debt and asset recovery in line with international standards (these agencies should have legal, administrative and financial autonomy and not be under the control of any ministry);
- ✓ Increase the level of information of stakeholders on the challenges of cross-border corruption
- ✓ Provide recovery institutions with technical, human and financial resources.





Anti-corruption initiatives in the fifteen ECOWAS countries have yielded mixed results.

Best practices noted during the review period relate to the harmonisation of AML/CFT rules in the eight WAEMU member states through the adoption of a community directive (Directive No. 02/2015/CM/UEMOA). The rules applicable in the other countries of the region in this area are also up-to-date and almost similar as a result of the technical assistance provided by GIABA.

In addition, public finance management transparency rules (Directive No. 01/2009/CM/UEMOA) and transparency of public procurement and services (Directive No. 04/2005/CM/UEMOA) have been harmonised in the eight WAEMU member states. In the other countries of the region, particularly in the Anglophone countries, these rules exist but with more or less divergent contents.

Finally, several weaknesses were noted in relation to the divergence of legislation and the low level of compliance with existing international standards, particularly in relation to asset disclosure, access to information, protection of whistleblowers, anti-corruption bodies, etc., due to the absence of community directives or regulations on these issues.

The new regime of ECOWAS community acts constitutes a real opportunity for the fight against corruption, because ECOWAS leaders can now take measures directly applicable in member states, such as regulations, directives, decisions and other community measures.





VII. ANNEXES

ANNEX 1: Scorecard of the implementation of the Protocol by country

Article of the Protocol	COUNTRY														
	BENIN	BURKINA FASO	CAPE VERDE	CÔTE D'IVOIRE	THE GAMBIA	GHANA	GUINEA	GUINEA BISSAU	LIBERIA	MALI	NIGER	NIGERIA	SENEGAL	SIERRA LEONE	TOGO
Anti-corruption laws	Law No. 2011-20 of 12 th October 2011 by Law No. 202 O - 23 of 29 th September 2020 (no more law)	Law No.004-2015 CNT on the prevention and repression of corruption in Burkina Faso; Law No.004-2015 CNT on the prevention and repression of corruption in Burkina Faso	No anti-corruption framework law	Order n° 2013-660 of 20 th September 2013 on the prevention of and fight against the prevention of and fight against corruption and other related offences	No anti-corruption framework law	No anti-corruption framework law	Law L/2017/041/AN of 4 th July 2017 on the Prevention, Detection, and Repression of Corruption and Offences	No anti-corruption framework law	No anti-corruption framework law	No anti-corruption framework law/Law N.°014-015 of 27 th May 2014 on the prevention and repression of illicit enrichment	No anti-corruption framework law	The corruption practises and other related offences 2 000, act No. 5	No anti-corruption framework law	Anti corruption act 2000 amendmen t 2008	No anti-corruption framework law
Codes of conduct	Decree No.2008 -813 of 31 st December 2008 on the code of values and ethics of	Code of Ethics and Deontology for Tax Administration Officials on the Code of Ethics and Professional Conduct for Public Procurement (Decree 1260-2015)	Information not available	Government Ethics Charter adopted on 9 th August 2011	Information not available	Office of the Head of Civil Service (OHCS) (1999)	Law No. 2020/0026/ AN on the Code of Conduct for Public Officers	Information not available	No code	Law No. 2019-058 of 5 th December 2019 on the Code of Ethics and Professional Conduct for Public Administration Employees.	Code of ethics and good conduct for customs officials	Code of Conduct for Public Officials, Schedule of the Constitution and which regulates conflicts of interest	Draft bill not yet passed.	No code	Draft bill not yet passed.



	the Civil Service														
Anti-corruption strategies or policies	National Integrity System (NIS)	National anti-corruption policy with an action plan, adopted by decree No.2013-859/PRES/PM of 3 rd October 2013	Information not available	Strategy is being drafted.	No strategy	National Anti-Corruption Action Plan (NACAP)	No strategy	Information not available	No strategy	No strategy	National Anti-Corruption Strategy and Action Plan	National Anti-Corruption Strategy (NACS)	National Anti-Corruption Strategy 2020 - 2024	National Anti-Corruption Strategy (NACS) 2019 - 2023	Strategy is being drafted.
Anti-corruption agencies (Article 5(h))	Law No. 2020-09 of 23 rd April 2020 on the Creation, Mission, Organisation and Functioning of the Office of the High Commissioner for	(ASCE-LC) by organic law No. 082-2015/CNT of 24 th November 2015	Information not available	High Authority for Good Governance by Order No.2013-661 of 20 th September 2013	Anti-corruption commission 2017	EOCO Economic and Organised Crime Office Act, 2010 (Act 804), these Regulations are made this 14 th day of June, 2012.	National Anti-Corruption Agency by the law of 4 th July 2017	No agency	CCAA by the 2008 Act	OCLEI by Order No.2015-032/P-RM of 23 rd September 2015	HALCIA by law No.2016-44 of 6 th December 2016	EFCC Economic and Financial Crime Commission Act 2004	(OFNAC) by law No. 2012-30 of 28 th December 2012.	ACC in the anti corruption act 2000	HAPLUCIA by law No.2015-006 of 28 th July 2015



	preventi on of corrupti on														
Access to informati on (Article 5 (e) and (i))	Article 7 of Law No. 2015-07 of 20 th March 2015 on the Informat ion and Commu nication Code	Article 40 of Law No.004- 2015/CNT on the prevention and repression of corruption, Law No.051- 2015/CNT on the right of access to public information and administrative documents	Informatio n not available	Article 23 of Order No. 2013-660 of 20 th September 2013 and Article 20 of the 2016 Constitution	Right to Informati on Act in 2019	The Right to Information Act 2019 (Act 989).	Law No.2013- 867 of 23 rd December 2016 on access to information of public interest, Law L/2020/0027/A N of 19 th December 2020 on the right to public information	Information not available	Freedom of Information Act (2010)	Decree No. 03 - 580/P-RM of 30 th December 2003 fixing the modalities of application of the law governing relations between the Administrati on and users of public services	Order No. 2011-22 of 23 rd February 2011 on the Charter of access to public informatio n and administrat ive documents	Right to Informatio n Act in 2011	Article 8 of the Constitution of 2016, the Archives Act was passed in 1981 (amended by the Act of 30 th June 2006)	No right of informatio n Act in place	The French law
Public participati on	Article 6 of Law No. 2015-07 of 20 th March 2015 on the Informat ion and Commu nication Code	Article 40 of law No. 004- 2015/CNT on the prevention and repression of corruption	Informatio n not available	Article 23 of Order No. 2013-660 of 20 th September 2013 on preventing and combating corruption and other related offences	Section 17 and 33 of the Constitutio n	The new Local Governance Act (Act 936)	The French law No. 40-484 of 1 st July 1901	Information not available	Constitution	The French law No. 40- 484 of 1 st July 1901	The French law No. 40- 484 of 1 st July 1901	Membersh ip to the Open Governme nt Partnershi p in 2016.	The French law No. 40- 484 of 1 st July 1901	Constitutio n	The French law No. 40-484 of 1 st July 1901, loi No.2011-10 du 16th may 2011,

Transpare nt, efficient, open and fair procurement systems for goods and services (Article 5(b))	Loi No. 2020 - 26 du 29 septembre 2020	Law No. 039/2016/AN on the general regulation of public procurement	Law No.88-2015 of 14 th April 2015	Order No. 2019-679 of 24 th July 2019	Gambia Public Procurement Authority Act, 2014 (effective 1 st January 2015)	The public procurement (amendment) act 2016, ACT 914	The law on the Public Procurement Code in Guinea of 11 th October 2012.	Decree-Law No. 19/210 of 30 th June 2010	The public procurement, act 2004	Decree No. 2015-0604 of 25 th September 2015	Decree No.2016 - 641/PRN/ PM of 1 st December 2016	Public Procurement Act 2007	The public procurement act, 2016	Decree No. 2014 - 1212 of 22 nd September 2014.	Law No. 2009-13 of 30 th June 2009
Public finance management (Article 5(f))	Decree No. 2015-035 of 29 th January 2015 on the Code of transparency in public financial management	Law No.008-2013/AN of 23 rd April 2013 on the code of transparency in public financial management	Information not available	Organic Law No. 2014-337 of 5 th June 2014 on the code of transparency in public financial management	Public finance act, 2014	Public financial management act, 2016, ACT 921	Organic law 1/91/007 of 23 rd December 1991 on the Laws of Finance, Organic Law on Finance Laws (LORF) on 27 th July 2012	No public financial management law	Public finance management act of 2009	Law 2013-031 23-07-2013 on the approval of the code of transparency in public finance management	Law No. 2014-07 of 16 th April 2014, on the adoption of the Code of transparency in public finance management within the WAEMU	law on fiscal accountability 2007	Law No. 2012-22 of 27 th December 2012 on the Code of Transparency in Public Finance Management	The public financial management act, 2016	Law No. 2014 - 009 on the code of transparency in public finance management

Asset disclosure (Articles 5 (g) and 6(3) a and b)	Article 3 of the law No. 2011-20 of 12 th October 2011	Law No.004-2015 on the prevention and repression of corruption	Information not available	DECREE No. 2014-219 of 16 th April 2014 on the modalities of asset disclosure.	Information not available	(Act 550) Public office holders (asset disclosure and disqualification) act 1998	Decree D/2020/072/PR G/SGG on asset disclosure or property of the personalities referred to in Article 36 of the Constitution (Articles 6 to 8)	Information not available	Information not available	Article 3 of Law N.°2014-015 of 27 th May 2014	Order No. 2020-02 of 27 th January 2020 determining the list of other public officials under the obligation to disclose his assets	Part II of the Fifth Schedule to the Constitution	Law No.2014-17 of 2 nd April 2014	Anti corruption act 2000 amendment 2008	Organic Law 2020-003 of 24th January 2020
Fight against corruption in the private sector (Articles 5 and 6)	OHADA Uniform Act and Criminal Code (Art. 318-341-346/357 - 359/360 - 367/373)	OHADA Uniform Act and Criminal Code (art336-26/27)	Criminal Code (art 364-372)	OHADA Uniform Act and Penal Code (art 234-408)	Criminal code	Criminal offences (amendment) act, 2012	OHADA Uniform Act and Criminal Code (Article 2 art 18-80)	Criminal code	Criminal code	OHADA Uniform Act and Criminal Code (Articles 119 to 123, Sections 8 and 9)	OHADA Uniform Act and Penal Code (Section 7 art 130 to 133). Law No.2016-33 of 31 st October 2016 on the fight against money laundering	Criminal code	OHADA Uniform Act and Penal Code	Criminal code	OHADA Uniform Act and Penal Code (art 594 – 60)
Laundering of proceeds of corruption and	Law No.2020 - 25 OF 2 nd September 2020	Law No.016-2016/AN of 3 rd May 2016 on anti money laundering	Cape Verde Money Laundering Prohibition	Law No.2016-992 of 14th November 2016	Money laundering act, 2003	Anti-Money Laundering Act, 2008 (Act 749)	Law No. 1/2006/010/an on anti-money laundering Money Laundering;	No money laundering law	Anti-money laundering and terrorist financing act, 2012	Article 5 of Act No. 2016-008 of 17 th March 2016 establishing a	Law No. 2016-33 of 31 st October 2016 on Anti-	Money laundering (prohibition) act, 2011	Loi No. 2018-03 du 23 rd February 2018	The anti-money laundering and combating of	Uniform Act No.2018-004 of 04 th May 2018

related offences (Article 7)	relating to anti-money laundering and combating the financing of terrorism	and combating the financing of terrorism	Law No. 17/VI/2002				Law L/2014/N°010/AN on combating the financing of terrorism		approved 29 th April, 2013	uniform Act on the fight against money laundering and combating the financing of terrorism	Money Laundering			financing of terrorism act, 2012	
Protection of whistleblowers (Articles 5 (c), 8 and 9)	Articles 31 to 36 of Law N.°2011-20 of 12 th October 2011	Articles 76 to 79 of Law N.°004-2015	Information not available	Articles 67 to 72 of Order No.2013-660 of 20 th September 2013	No whistleblower protection legislation	Witness Protection Act, 2018 (Act 975, the Whistleblower Act 2006 (Act 720)	No whistleblower protection legislation	No whistleblower protection legislation	No whistleblower protection legislation	No whistleblower protection legislation	Lack of whistleblower protection legislation	No whistleblower protection legislation	No whistleblower protection legislation	No whistleblower protection legislation	No whistleblower protection legislation
Debt/Asset recovery (Article 13)	Law No. 2018-17 of 25 th July 2018 on anti-money laundering and combating the financing of terrorism	Article 100 of Act No.016-2016/AN of 3 rd May 2016 on anti-money laundering and combating the financing of terrorism	Cape Verde Money Laundering Prohibition Law No. 17/VI/2002	Law No.2016-992 of 14 th November 2016	Money laundering act, 2003	Anti-Money Laundering Act, 2008 (Act 749)	Law No. 1/2006/010/an on anti-money laundering Law L/2014/N°010/AN on combating the financing of terrorism	No law on the recovery of debts.	Anti-money laundering and terrorist financing act, 2012 approved 29 th April, 2013	Law No. 2016-008 of 17 th March 2016 establishing a uniform act on the fight against money laundering and combating the financing of terrorism	Law No.2016-33 of 31 st October 2016 on the fight against money laundering	Money laundering (prohibition) act, 2011	Law No.2018-03 of 23 rd February 2018	The anti-money laundering and combating of financing of terrorism act, 2012	Uniform Act No. 2018-004 du 4 th May 2018



Implemen tation status of the law	Largely implem ented	Largely implemented	Informati on No disponible	Largely implemented	N/A	Largely implemente d	Partially	Information not available	Partially	Partially	Partially	Partially	Largely implemente d	Partially	Partially
Implemen tation status and actual enforceme nt	Moderate	Moderate	Bad	Bad	Moderate	Moderate	Moderate	Bad	Bad	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate



ANNEX 2: Summary table of anti-corruption laws and policies in the ECOWAS region

Country	Anti-corruption law	Anti-corruption policy/strategy	Code of conduct for public officials	Compliance of the law with international standards	Implementation status of the law
Benin	Law No. 2011-20 of 12 th October 2011	National Integrity System (NIS)	Decree No. 2008-813 of 31 st December 2008 on the Values and Ethics Code for the Public Service	Largely	Moderate
Burkina Faso	Law No.004-2015 CNT on the prevention and repression of corruption in Burkina Faso; Law no. No. 033-2018/AN of 26 th July 2018 amending Act No. 04-2015/CNT on the prevention and suppression of corruption	National anti-corruption policy with an action plan, adopted by decree No.2013-859/PRES/PM of 3 rd October 2013	Code of ethics and professional conduct for tax administration officials, including a code of ethics and professional conduct for public procurement (Decree 1260-2015)	Largely	Moderate
Cap Verde	No anti-corruption framework law	No strategy	No code	Not implemented	Bad
Côte d'Ivoire	Order No. 2013-660 of 20 th September 2013 on the prevention of and fight against corruption and other related offences	No strategy	Government Ethics Charter adopted on 9 th August 2011	Largely	Moderate
The Gambia	No anti-corruption framework law	No strategy	No code	Not implemented	Bad
Ghana	No anti-corruption framework law	National Anti-Corruption Action Plan (NACAP)	(1999) (Office of the Head of the Civil Service (OHCS)	Good	Fully
Guinea	Law L/2017/041/AN of 4 th July 2017 on the	No strategy	Law No.2020/0026/AN on the Code of	Largely	Moderate



	Prevention, Detection, and Repression of Corruption and Similar Offences		Conduct for Public Officials		
Guinea Bissau	No anti-corruption framework law	No strategy	No code	Not implemented	Bad
Liberia	No anti-corruption framework law	No strategy	No code	Not implemented	Bad
Mali	No anti-corruption framework law/Law No.014-015 of 27 th May 2014 on the prevention and repression of illicit enrichment	No strategy	Law No. 2019-058 of 5 th December 2019 on the Code of Ethics and Professional Conduct for Public Administration Employees.	Largely	Moderate
Niger	No anti-corruption framework law	National Anti-Corruption Strategy and Action Plan	Code of ethics and professional conduct for customs officials	Largely	Moderate
Nigeria	The corruption practises and other related offences 2000, act No. 5	National Anti-Corruption Strategy (NACS)	Code of Conduct for Public Officials, Schedule to the Constitution, which addresses conflicts of interest	Fully	Good
Senegal	No anti-corruption framework law	National Anti-Corruption Strategy 2020–2024	Law on the general code of ethics for public officials, Thursday 3 rd August 2017	Largely	Moderate
Sierra Leone	Anti corruption act 2000 amendment 2008	National Anti-Corruption Strategy (NACS) 2019–2023	No code	Largely	Moderate
Togo	No anti-corruption framework law	No strategy	Code of ethics and professional conduct for customs officials	Largely	Moderate



ANNEX 3: Comparative Analysis Table of West African Anti-Corruption Agencies in accordance with the Jakarta Principles

	BENIN ANLC	BURKINA ASCE-LC	CÔTE D'IVOIRE HABG	GAMBIA ACC	GHANA EOCO	GUINE A ANLC	LIBERIA LACC	MALI OCLEI	NIGER HALCIA	NIGERIA EFCC	SENEGAL OFNAC	SIERRA LEONE ACC	TOGO HAPLUCIA
Legal independence	Poor (Article 3)	Independent (Article 14)	Moderate (Article 8)	-----	Moderate (Art 4(2))	-----	Independent (Art 6(2))	Moderate (Article 10)	Poor (Article 2)	Moderate (Article 2(3))	Poor (Article 5)	Independent (art 2(2))	Moderate (Article 4)
Education and awareness-raising	Compliant (Article 5, Law No. 2011-20 du 12 oct. 2011)	Compliant (Article 8)	Compliant (Art 4 al 9)	-----	Not Compliant	-----	Compliant (Art5.1 et 5(2) i)	Compliant (Article 4 al 7)	Compliant (Article 4 al 2)	Compliant (Article 6)	-----	Compliant (Article (5(2))	Compliant (Article 2 al 10)
Investigation and prosecution powers	Poor (Article 2 al 5)	Compliant (Article 9)	Compliant (Article 4 al 13)	-----	Compliant (Art 3(a))	-----	Compliant (Article 5 (1), (5 [2] a, b, c)	Compliant (Article 4 al 9)	Compliant (Article 5)	Compliant (Article 6(b) et 7)	Compliant (Article 14 et 12)	Compliant (art 5 (1), (3), (16))	Poor (Article 3 al 2)
Inter-agency Collaboration	Compliant (Article 2 al 8)	Compliant (Article 8)	Compliant (Art39)	-----	Compliant (Art 3 (F))	-----	Compliant (Art4 [1] g)	Compliant (Article 6)	Compliant (Art3 al 2 et 19)	Compliant (Article 6(c), (j))	Compliant (Article 3 al 9)	Compliant (Art4(1), (c))	Yes (Article 3 al 1)
Sustainability/Sustainability of the agency	Stable (Law No. 2020 - 09 of 23 avril 2020)	Stable (Organic Law No. 082-2015)	Moderate (Order No. 2013-661 of 20 th September 2013)	-----	Stable (Economic and Organised Crime Act, 2010)	-----	Compliant (anti corruption Act, 2008)	Moderate (Order No. 2015-032/P-RM of 23 rd September 2015)	Stable (Law No. 2016-44 Of 6 th December 2016)	Compliant (EFCC Economic and Financial Crime Commission Act 2004)	Compliant (Law No. 2012-30 creating the National Office for the Fight against Fraud and Corruption (OFNAC))	Compliant (The Anti-corruption Act, 2000)	Compliant (law No. 2015-006 of 28 th July 2015)
Integrity and transparency in recruitment	Poor (Article 10)	Compliant (Article 26)	Poor (Article 8)	-----	Poor (Article 4(1))	-----	Poor (Art6.2)	Poor (Art 8)	Poor (Article 7)	Poor (Article (2)3)	Poor (Article 4)	Poor (Art 2(2))	Poor (Article 4)
Continuity (Are there provisions in the law to delegate powers to an	No Provision	Compliant (Articles 22-24)	Moderate (Article 25)	-----	Compliant (Art6(7))	-----	Compliant (Art6(1) et 6(9))	Compliant (Article 15)	Compliant (Article 16)	Compliant (Art4)	Compliant (Article 6 al 2)	Compliant (Art2(7))	Compliant (Article 7)



interim staff in the event of the suspension of the Head)													
Stability and job security	Compliant (Article 7al 2)	Compliant (Article 21)	Compliant (Article 11, membre) Poor (Article 49, personnel)	-----	Poor (Article 6(3), (4), (5))	-----	Poor (Art6.8)	Compliant (Article 14)	-----	Poor (Article (3(2)	Compliant (Article 6 al 1)	Compliant 2(5)	Compliant (Article 7)
Code of conduct	-----	No Provision	-----	-----	-----	-----	Compliant (Art9.4)	No Provision	-----	-----	-----	-----	-----
Internal Accountability Procedures	Compliant (Article 5al 5) of the law No. 2011-20 of 12 Oct 2011	Compliant (Art11)	Compliant	-----	Compliant	-----	Compliant (Art8.2)	Compliant (Art 7)	Yes	Compliant	Compliant	Compliant	Compliant
Immunity of members	Not Compliant	Moderate (Article 51)	Yes (Article 51 à 52)	-----	Compliant (Art18)	-----	-----	Compliant (Article 21)	Compliant (Article 20)	Compliant (Art 41)	Compliant (Article 9)	Not Compliant (art 35)	Compliant (Article 8, but limited to members)
Special status (remuneration)	Moderate (Article 11a l 2)	Moderate (Article 25)	Moderate (Article 50)	-----	Moderate (Article 10)	-----	Moderate (Art9.2)	Moderate (Article 13)	Moderate (Article 30)	Moderate (Art 10)	Moderate (article 8)	Moderate (art 3)	No (Article 17)
Adequate resources	Poor (Article 11)	Independen t (Article 59)	Poor (Article 56 -58)	Yes (Art2part4)	Poor (Art15)	-----	Moderate (Article 12. 1)	Independent (Article 23)	Moderate (Article 29)	Moderate (art35)	Poor (articles 19-20)	Moderate (art 52)	Poor (Article 17)
Administrative and financial autonomy	Poor (Article 11)	Compliant (Article 59)	Poor (Article 56 -58)	-----	Poor (Article 15)	-----	Moderate (Art13.1)	Compliant (Article 23)	Moderate (Article 29)	Moderate (Art 35)	Poor (articles 19-20)	Poor (Art 52)	Yes (Article 1)
External Accountability	Compliant (Article 9 al 1)	Compliant (Art10)	Compliant (Art59)	-----	Compliant (Article 16(2) et 16 (3))	-----	Compliant (Art14.1)	Compliant (Article 26)	-----	Compliant (Art 36)	Not Compliant	Compliant (Art54)	Not Compliant
Reporting	Compliant	Compliant	Compliant (Article 6)	-----	-----	-----	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant

Legend for Annexe 3: Comparative Analysis Table of West African Anti-Corruption Agencies in accordance with the Jakarta Principles

ITEMS	RATING CRITERIA		
	Poor	Moderate	Compliant
Legal independence	Member of the Agency reporting to the Presidency	Appointed by presidential decree	Competitive election process/president proposes and they are appointed by the National Assembly or the Senate
Education and awareness-raising	Not provided for by law	Partially provided for in the law	Fully provided for by law
Investigation and prosecution powers	Not provided for by law	Partially provided for in the law	Fully provided for by law
Inter-agency Collaboration	Does not collaborate with other agencies	Partially collaborates with others	Collaborates with many other agencies.
Sustainability/Stability of the agency	The instrument that set up the agency is a decree...	The instrument that set up the agency is a decree...	The body that established the agency is an organic law or the constitution
Integrity and transparency in recruitment	All the staff members are seconded from government.	The law provides for recruitment and secondment	The agency recruits its staff in a transparent manner
Continuity (Are there provisions in the law to delegate powers to an interim staff in the event of the suspension of the Head)	In the absence of the President, the President of the Republic shall provisionally appoint a replacement for the President		In the event of absence, the law provides for a member to step in
Stability and job security	The President may dismiss members at any time		The President may dismiss only after a court has given its opinion
Code of conduct	No code of conduct		Existence of a code of conduct
Internal Accountability Procedures	The law does not provide for an internal control manual		The law provides for an internal control manual
Immunity of members	No immunity prescribed by law for members	The law provides immunity for members, not staff	The law provides for immunity for members and staff
Special status (remuneration)	No decree determines wages	A Decree determines salaries but is not enforced	A decree provides for wages and is enforced.
Adequate resources			
Administrative and financial autonomy	The budget of the Agency is integrated into the general state budget	The agency proposes a budget to the National Assembly	A percentage of the budget is allocated to the Agency
External Accountability	The law provides that the Court of Auditors shall audit the accounts		The law does not provide that the Court of Auditors shall audit the accounts
Reporting	No report published		Report published

ANNEX 4: Summary table of public procurement systems in the ECOWAS region

Country	Public Procurement Act	Public procurement agencies			Availability of information on the websites.	E-procurement	Compliance with international standards
		Regulations	Control	Procurement			
Benin	Law No. 2020 - 26 of 29th September 2020	Yes (ARMP) art 17	Yes (DNCMP) art 14	Yes (PRMP) art10	Yes	No	Largely compliant
Burkina Faso	Law No. 039/2016/AN on the general regulation of public procurement	Yes (Independent Administrative Authority for the Regulation of Public Procurement) art10	Yes (Administrative Entity in charge of the control of public procurement) art 16	No	Yes	No	Largely compliant
Cape Verde	Law No.88-2015 of 14th April 2015	Public Procurement Regulatory Authority (ARAP)	No	No	Yes	No	Poor
Côte d'Ivoire	Order No.2019-67 of 24 th July 2019	Yes (ARMP) art17	Yes (administrative body in charge of control) art16	Yes (public procurement unit) art13	Yes	No	Largely compliant
Gambia	Gambia Public Procurement Authority Act de 2014 (effective 1 January 2015)	Gambia public Procurement Regulations de 2003	the Gambia public procurement authority act, 2014	General provisions on procurement proceedings	Yes	No	Largely compliant
Ghana	The public procurement (amendment) act 2016, ACT 914	-----	Yes (ARAP)	-----	Yes	Yes	Largely compliant
Guinea	Law on the Public Procurement Code in Guinea, 11 th October 2012.	Yes (independent administrative authority) art13	Yes (ACGPMP) art11	Yes (contracting authority of the national public procurement department) art7	Yes	No	Largely compliant
Guinea Bissau	Decree-Law No. 19/210 of 30 th June 2010	Yes (ARMP)	Yes (DGMP)	Yes (central public procurement unit UCAP)	No	No	Largely compliant
Liberia	No public procurement Act	No	Public Procurement & Concession Commission	No	No	No	
Mali	Decree No. 2015-0604 of 25th	Yes (ARMP)	No	Yes (ARMDS) art. 1 of Law No.08-022 of 23 rd July 2008, amended, establishing	Yes	No	Largely compliant



	September 2015			the General Directorate of Public Procurement and Contracting out of Public Services			
Niger	Decree No.2016 - 641/PRN/PM of 1 st December 2016	Yes (ARMP) art 8 of law No. 2011-37 of 28 th October 2020 on the general principles, control and regulation of public contracts and contracting out of public services	(a priori control body for public contracts) art 6 of law No. 2011-37 of 28 th October 2020 on the general principles, control and regulation of public contracts and contracting out of public services	No	Yes	No	Largely compliant
Nigeria	Public Procurement Act 2007	Infrastructure Commission Concession Regulatory (CICR)	Bureau of Public Procurement (BPP)	No	Yes	Yes	Largely compliant
Senegal	Decree No. 2014 - 1212 of 22 nd September 2014	Yes (art1) of Decree No. 2007-546 of 25 th April 2007 on the organisation and functioning of the Public Procurement Regulatory Authority (ARMP)	Yes, art. 1) of Decree No. 2007-547 of 25 th April 2007 creating the Central Directorate of Public Procurement (DCMP)	Yes, Decree No. 2014 - 1212 of 22 nd September 2014	Yes	No	Largely compliant
Sierra Leone	The public procurement act, 2016	-----	-----	-----	Yes	No	Partially compliant
Togo	Law No. 2009-13 of 30th June 2009	Yes (ARMP) art8	Yes (art7)	Yes (art6)	Yes	No	Largely compliant





ANNEX 5: Table of Cash Transactions Reports and Suspicious Transactions Reports (CTRs, STRs) (October 2017-September 2018)³²⁸

ITEMS	Benin	Burkina Faso	Cape Verde	Côte d'Ivoire	Gambia	Ghana	Guinea	Guinea Bissau	Liberia	Mali	Niger	Nigeria	Senegal	Sierra Leone	Togo	Total
STRs	501	164	83	302	31	570	53	07	94	54	32	477	110	13	256	2755
STRs in connection with ML	486	160	82	114	16	570	16	07	02	30	06	383	108	07	255	2249
Number of STRs related to TF	02	04	01	1	15	00	00	00	02	08	01	08	02	02	01	48
Number of STRs related to other offences (tax or other economic or financial crimes)	13	50	00	187	00	126	37	00	00	15	25	78	00	06	00	540
Number of CTRs (NPOs or others)	00	04	00	00	49143	1906263	00	00	00	00	00	00	00	00	00	191 0410
Number of cases being handled	120	157	50	3519	00	185	753	00	00	00	50	00	00	20	566	5421
Number of requests for information received	10	14	03	28	24	641	03	01	00	07	08	08	13	14	08	782
Number of requests for information issued	14	19	21	06	256	352	04	01	00	19	22	00	30	02	19	765
Number of cases handled	19	27	00	28	00	10	08	04	00	00	17	00	00	08	14	142
Number of complaints filed	00	00	20	00	00	00	00	00	00	00	00	00	00	29	00	51
Number of cases referred to judicial/competent authorities	17	11	00	28	16	00	05	00	00	00	17	00	00	00	14	129
Number of blocked operations/frozen cases	38	01	04	00	00	23	04	00	00	00	00	00	00	05	00	76
Number of criminal prosecutions for ML/TF	03	00	99	03	00	00	13	00	00	00	00	00	17	00	00	145



³²⁸³²⁸ https://www.giaba.org/media/f/1071_FR_RESUME%20DES%20RAPPORTS%20PAYS%202018.pdf

ANNEX 6: Table of predicate money laundering offences (October 2017-September 2018) ³²⁹

Features of offences	Benin	Burkina Faso	Cape Verde	Côte d'Ivoire	Gambia	Ghana	Guinea	Guinea Bissau	Liberia	Mali	Niger	Nigeria	Senegal	Sierra Leone	Togo	Total
Corruption	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	16
Drug Trafficking	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	16
Counterfeit	1	1	0	1	0	1	1	1	1	1	0	1	0	0	1	12
Piracy	1	1	0	1	0	0	1	1	0	1	0	0	0	0	1	9
Tax Fraud	1	1	1	1	0	1	1	1	1	1	1	1	0	1	1	14
Theft	1	1	0	1	0	1	1	1	0	1	0	0	1		1	11
Trafficking in persons	1	1	0	1	0	1	1	1	0	1	0	1	1	1	1	13
Sexual Exploitation	1	0	0	0	0	0	1	0	0	1	0	0	0	0	0	05
Smuggling	1	1	0	1	0	1	1	0	0	1	0	1	1	1	1	11
Others	0	1	0	0	0	0	1	1	0	0	0	0	1		1	05

ANNEX 7: Comparative table of decisions rendered by the DRC in three ECOWAS countries

Country	Types of decisions during 2019					Total
	Appeal dismissed	Lack of jurisdiction of the DRC	Successful appeals	Inadmissible appeal	Sanction decision	
Burkina Faso	25	3	347	303	51	709
Côte d'Ivoire	-----	-----	-----	-----	-----	49
Senegal	65	1	115	19	3	729

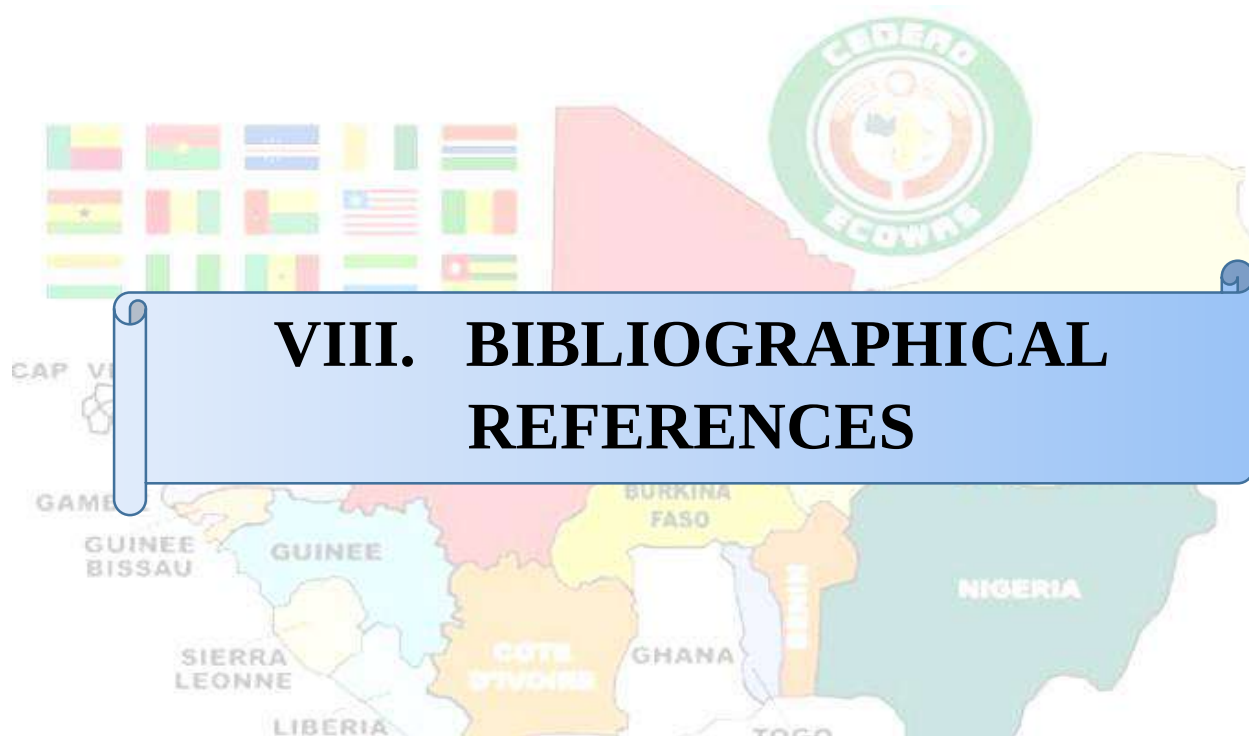
³²⁹ https://www.giaba.org/media/f/1071_FR_RESUME%20DES%20RAPPORTS%20PAYS%202018.pdf



ANNEX 8: Table of distribution of corruption cases by institution and offences in 2019 in Benin

Area	OFFENCES							Total
	Money laundering	Active Corruption	Passive Corruption	Misappropriation of public funds	Extorsion	Fraud at examinations and competitive tests.	Misuse of title	
TPI ³³⁰ ABOMEY-CALAVI	0	2	1	4	17	3	15	42
TPI ALLADA	0	0	0	1	1	0	0	2
TPI COTONOU	1	3	0	1	0	1	3	9
TPI YESDAH	0	3	0	0	3	0	3	9
TPI POBE	0	0	0	0	2	0	0	2
TPI PORTO-NOVO	0	2	0	1	2	0	12	17
TPI ABOMEY	0	1	0	2	6	3	4	16
TPI APLAHOUE	0	0	0	1	1	0	0	2
TPI LOKOSSA	0	0	0	1	1	0	6	8
TPI SAVALOU	0	0	0	0	1	0	0	1
TPI DJOUGOU	0	2	1	0	0	0	1	3
TPI KANDI	0	0	0	0	0	0	1	2
TPI NATITTINGOU	0	0	0	0	6	0	2	8
TPI PARAKOU	0	0	0	2	5	1	4	12
CRIET	8	2	0	4	12	0	2	28
GENERAL TOTAL	9	15	2	17	57	8	53	161

³³⁰ Court of First Instance.



Treaties-Conventions-Directives and Protocols

- Revised Treaty of the Economic Community of West African States (ECOWAS), of 24th July 1993, <https://static.latribune.fr/882158/traite-revise-de-la-cedeao-abuja-1993.pdf>
- Protocol on the fight against corruption (2001), https://demarchesadministratives.gouv.ml/files/upload/justice/Protocole_afrique_corruption.pdf
- Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (December 1999), <https://www.droitafricain.net/files/Protocole-du-10-decembre-1999-relatif-au-mecanisme-de-prevention,-de-gestion,-de-reglement-des-conflits,-de-maintien-de-la-paix-et-de-la-securite.pdf>
- Protocol a/sp1/12/01 on democracy and good governance which is supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (December 2001), <http://ddata.over-blog.com/xxxyyy/1/35/48/78/International/CEDEAO-Protocole-bonnegouvernance-democratie.pdf>
- The United Nations Convention against Corruption (2003);
- The African Union Convention (AUC) on Preventing and Combating Corruption, adopted by the Heads of State at the African Union Summit held in Maputo on 11th July 2003 and ratified by Law No. 2005-007 of 18th May 2005;
- The United Nations Convention against Transnational Organized Crime (UNTOC) adopted on 15th November 2000 in New York, signed on 12th December 2000 and ratified on 2nd July 2004;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted on 15th November 2000 in New York, signed by Togo on 12th December 2000 and ratified on 8th May 2009;
- Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted on 15th November 2000 in New York, signed by Togo on 12th December 2000 and ratified on 28th September 2010 and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, adopted in New York on 31st May 2001 and ratified by Togo on 17th July 2012;
- Protocol A/SP1/12/01 on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Dakar, 21st December 2001);
- Directive No. 01/2009/CM/UEMOA on the code of transparency in public finance management within WAEMU;
- Directive No. 04/2005/CM/UEMOA on procedures for the award, execution and settlement of public contracts and contracting out of public services in the West African Economic and Monetary Union;
- Directive No. 06/2009/CM/UEMOA on Finance laws in WAEMU;
- Directive No. 07/2009/CM/UEMOA RGCP on the General Regulations of Public Accounting within WAEMU;
- Directive No. 08/2009/CM/UEMOA on the State's budgetary nomenclature within WAEMU
- Directive No. 02/2015/CM/WAEMU on the fight against money laundering and terrorist financing in the WAEMU Member States;
- Directive No. 04/2009/CM/UEMOA establishing a single window for filing financial statements in the Member States of the West African Economic and Monetary Union (WAEMU);
- Directive No. 08/2002/CM/UEMOA on measures to promote banking and the use of cashless payments.

Some national laws and regulations

- The Togolese Constitution of the Fourth Republic of 14th October 1992, amended on 15th May 2019;
- Law No. 1983-1 of 2nd March 1983 establishing the Togolese code of criminal procedure;
- Organic law No. 96-11 of 21st August 1996 on the status of magistrates;
- Organic law No. 97-04 of 6th March 1997 on the organisation and functioning of the High Council of the Judiciary;
- Organic law No. 98-014 of 10th July 1998 on the organisation and the functioning of the Court of Auditors;
- Organic law No. 2009-003 of 15th April 2009 on the status of magistrates of the Court of Audit of Togo;

- Organic law No. 2014-013 of 10th June 2014 on finance laws. This law mandates the State to inform citizens of all matters relating to governance and the management of public funds (Article 2);
- Organic law 2020-003 of 24th January 2020 setting the conditions for the disclosure of assets and liabilities of senior officials, civil servants and other public agents
- Law No. 2021-006 of 1st April 2021 that determines the composition and functioning of the Office of the Ombudsman;
- Law No. 2007-010 of 1st March 2007 on the general status of Togolese armed forces personnel;
- Law No. 2009-013 on public procurement and public service delegation;
- Law No. 2012-016 of 14th December 2012 on the establishment of the Togolese Revenue Authority, which includes and oversees customs and taxes. It has in its organisational chart an anti-corruption department and all its agents disclose their assets;
- Law No. 2012-018 of 17th December 2012 on electronic communications, amended by Law No. 2013-003 of 19th February 2013;
- Law No. 2013-002 of 21st January 2013 on the general status of the Togolese civil service;
- Law No. 2013-007 of 25th February 2013 which amends Organic Law No. 96-11 of 21st August 1996 on the status of magistrates;
- Law No. 2014-009 of 1st June 2014, on the code of transparency in public finance management;
- Law No. 2015-005 of 28th July 2015 on the special status of the National Police;
- Law No. 2015-006 of 28th July 2015 establishing the High Authority for the Prevention and Fight against Corruption and Related Offences (HAPLUCIA);
- Law No. 2015-010 of 24th November 2015 on the new criminal code, which incorporates the relevant offences contained in the above-mentioned international legal instruments;
- Law No. 2016-006 of 26th March 2016 on freedom of access to information and public documentation;
- Law No. 2017-007 of 22nd June 2017 on electronic transactions;
- Framework law No. 2017-006 of 22nd June 2017 on the information society (losito);
- Uniform Act No. 2018-004 of 4th May 2018 on the fight against money laundering and terrorist financing in WAMU Member States;
- Law No. 2018-005 of 14th June 2018 on the land and property code;
- Law No. 2018-026 of 7th December 2018 on cyber security and the fight against cybercrime;
- Law No. 2019-014 on the protection of personal data,
- Law No. 2019-015 of 30th October 2019 on the judicial organisation code;
- Law No. 2019-016 on the judicial regime applicable to audiovisual communications in the Togolese Republic;
- Law No. 2019-015 of 24th October 2019 on the code of judicial organisation;
- Law No. 2021-005 of 1st April 2021 on the automation of the criminal record;
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