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ANTI-CORRUPTION FIGHT IN PERIL

CRACKDOWN ON ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS IN
WEST AND CENTRAL AFRICA

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Cover photo: A member of Burkinabe workers' unions and civil society associations holds a placard reading 'No to impunity - No to violation of liberties - No to corruption - We say No' during a march called by UAS union to call for better security measures against terrorism, in Ouagadougou on 16 September 2019.

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GLOSSARY

WORD	DESCRIPTION
AU	Assembly of the Heads of State and Government of the African Union
ACHPR	African Commission on Human and Peoples' Rights
AUABC	African Union Advisory Board Against Corruption
AUCPCC	African Union Convention on Preventing and Combatting Corruption
BANJUL CHARTER	African Charter on Human and Peoples' Rights
CESCR	Committee on Economic, Social and Cultural Rights
CSO	Civil society organization
ECOWAS PROTOCOL	Economic Community of West African States Protocol on the Fight against Corruption
EITI	Extractive Industries Transparency Initiative
ESCR	Economic, social and cultural rights
HRD	Human rights defender
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OGP	Open Government Partnership
SLAPP	Strategic lawsuit against public participation
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNGA	United Nations General Assembly

1. EXECUTIVE SUMMARY

The year 2018 was declared by the Assembly of the Heads of State and Government of the African Union (AU) the “African Anti-Corruption Year” under the theme “Winning the Fight Against Corruption: A Sustainable Path to Africa’s Transformation”.¹ This declaration not only enhanced knowledge on the multidimensional nature and impact of corruption in the continent, but it also helped popularize the AU Convention on Preventing and Combating Corruption (AUCPCC),² galvanizing momentum for its ratification and that of other relevant AU and regional corruption-related instruments. Notwithstanding these and other positive developments, however, corruption has continued unabated in Africa, thriving in a climate of severe restrictions on human rights and civic space that has limited the ability of anti-corruption human rights defenders (HRDs) to hold powerful actors to account for corruption and human rights abuses.

This report presents the emerging body of evidence of severe repression of anti-corruption HRDs in West and Central Africa, a region where such cases remain largely under-reported and one that is characterized by a culture of impunity and lack of accountability for human rights violations. It focuses on 19 countries covered by Amnesty International’s West and Central Africa Regional Office,³ and includes 31 cases of repression of anti-corruption HRDs identified in some of those countries since 2018. These cases were selected based on a strong correlation between the work or actions of the anti-corruption HRDs and the repression they face as well as the absence of accountability and justice in the cases.

¹ African Union (AU), Declaration on the African Anti-Corruption Year, Assembly/AU/Decl.1(XXXI), 31st Ordinary Session, 1 - 2 July 2018, Nouakchott, Mauritania, at page 1.

² African Union, African Union Convention on Preventing and Combating Corruption, Second ordinary session of the Assembly of the Union, Maputo, 11 July 2003. No page number needed here as it’s the reference for the convention.

³ These are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Republic of Congo, Côte d’Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.



 ↑ The 19 West and Central African countries studied in this report.

Corruption interferes with the effective enjoyment of individual and collective rights guaranteed under international and regional human rights treaties and undermines states' ability to meet their human rights obligations.⁴ However, this relationship between corruption and human rights is not well understood, in part due to the lack of attention given to the connection between the two concepts by international, regional and national human rights institutions and instruments. This has changed in recent years, with an increased number of AU and UN statements, resolutions and reports referring to the nexus between corruption and human rights,⁵ and growing calls for a new human rights-based approach to corruption that focuses attention on the 'rights holders', the 'victims' of corruption, their rights and the obligations of states.⁶

⁴ UN Special Rapporteur on the independence of judges and lawyers, *Independence of judges and lawyers. Report of the Special Rapporteur on the independence of judges and lawyers*, 9 June 2017, UN Doc. A/HRC/35/31, para. 75-76.

⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), *The human rights case against corruption*, 2013, (OHCHR, *The Human rights case against corruption*); United Nations General Assembly (UNGA) Special session of the General Assembly against corruption, 17 December 2018, UN Doc. A/RES/73/191; African Union, "Statement on the occasion of the commemoration of the 2018 Africa Human Rights Day under the theme 'Fighting Corruption and Advancing Human Rights: Our Collective Responsibility'" 21 October 2018, https://au.int/sites/default/files/speeches/35192-sp-wane_fnal_statement_african_human_rights_day_2018_2-1.pdf.

⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR), *The human rights case against corruption*, 2013, UN; Ralph Hemsley, "Human rights and Corruption: States' human rights obligations to fight corruption", 2015, *Journal of Transnational Legal Issues*, Volume 2 Issue 1, https://www.unilu.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf; Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, 2016, pp. 12, 202-275; Anne Peters, "Corruption as a Violation of International Human Rights" *European Journal of International Law*, Volume 29, Issue 4, November 2018, Pages 1251-1287, <https://doi.org/10.1093/ejil/chy070>; Andrew B. Spalding, "Corruption, corporations, and the new human right", 2014, Volume 91, Issue 6, *Washington University Law Review*, pp. 1365-1428, https://openscholarship.wustl.edu/law_lawreview/vol91/iss6/5; Kevin E. Davis, "Corruption as a Violation of International Human Rights: A Reply to Anne Peters", 2018, *The European Journal of International Law*, Volume 29, Number 4, pp. 1289-1296, <https://doi.org/10.1093/ejil/chy074>; U4 Anti-Corruption Resource Centre, Ortrun Merkle, "Mainstreaming gender and human rights in anti-corruption programming", 2018, Bergen, Norway, Chr. Michelsen Institute, www.u4.no/publications/mainstreaming-gender-and-human-rights-in-anticorruption-programming.

States have the obligation to respect, protect, promote and fulfil the human rights of everyone, including HRDs and anti-corruption HRDs in particular. They have the obligation to create a safe and enabling environment for anti-corruption defenders to actively participate in anti-corruption efforts and hold their governments to the highest levels of transparency and accountability in the management of public affairs, including by adopting measures that ensure the full enjoyment of their rights to freedom of peaceful assembly, and those that respect, protect and promote “the freedom to seek, receive, publish and disseminate information concerning corruption”, in accordance with international and regional human rights and anti-corruption treaties.⁷ In West and Central Africa, however, Amnesty International has recorded various instances where states have violated these legal obligations, thus exposing anti-corruption HRDs to attacks, intimidation, threats and criminalization.

Anti-corruption HRDs are individuals or groups who are motivated by the desire to pursue anti-corruption work and act in the defence of human rights, without advocating hatred that constitutes incitement to discrimination, hostility or violence.⁸ They may include journalists, bloggers, civil society activists, whistle-blowers, health professionals, teachers, community groups.

These HRDs play a crucial role in the prevention of and fight against corruption and its human rights impact – a role that has been widely recognized in many international and regional anti-corruption instruments.⁹ Over the years, indeed, anti-corruption HRDs have uncovered various alleged corrupt and suspicious dealings linked to political and business figures, leading to wider public debates about corruption and the need for accountability, the adoption of transparency regulations, investigations by national authorities and international bodies, and the sacking, prosecution and condemnation of some of those involved. However, instead of being recognized for their important work, they are being attacked and hindered by state and non-state actors whose interests they threaten.

Across West and Central Africa, national authorities have used a variety of tools and tactics to silence and repress anti-corruption HRDs. These range from attacks on the rights to freedom of expression and peaceful assembly using defamation and “fake news” provisions, undue bans on protests, to personal attacks such as threats, dismissals, economic harassment, torture of anti-corruption HRDs.

Amnesty International has identified numerous cases of anti-corruption HRDs who were summoned by police units, arbitrarily arrested, charged with defamation offences and detained after denouncing corruption in West and Central Africa in the period from 2018-2022, in violation of national, regional and international human rights law. In February 2019, **Marie Claudette Ndagui**, the president of the *Association Gabonaise pour les Œuvres Sociales* (AGOS), a **Gabonese** NGO that promotes the socio-economic rights of marginalized groups, was sentenced to eight months in prison and asked to pay the heavy fine of ten million CFA francs for defamation, contempt of court and public slander that damaged the honour of the then Public Prosecutor of Libreville, Olivier N'zahou.¹⁰ The women HRD had shared testimonies alleging that Mr N'zahou had allowed a defendant to avoid prison time after receiving a bribe.¹¹ She was released on 26 September 2019 after serving her sentence. Meanwhile, Mr N'zahou was later dismissed from his post following a government anti-corruption investigation that apparently found evidence of his involvement in corrupt practices.¹²

Like elsewhere in the world, national authorities in the region have used restrictive laws and measures such as excessive force, blanket bans on protests and the demonization of protestors,¹³ which limit the ability of anti-corruption HRDs, and that of society, to mobilize to denounce corruption, human rights violations and

⁷ These include the International Covenant on Civil and Political Rights (ICCPR), [International Covenant on Civil and Political Rights](#) | OHCHR; the African Charter on Human and People's Rights, the UN Convention against Corruption (UNCAC) and the AUCPCC, [AFRICAN \(BANJUL\) CHARTER ON HUMAN AND PEOPLES' RIGHTS](#) ([african-court.org](#)).

⁸ This description draws on the definition of HRDs provided in Amnesty International, “Human rights defenders under threat: a shrinking space for civil society”, 16 May 2017, (Index: ACT 30/6011/2017), p. 8.

⁹ See for example, Article 13 of UNCAC and the 2021 Political Declaration on corruption, in which UN Member States noted “the important role of civil society, academia, the private sector and the media in identifying, detecting and reporting on cases of corruption,” and committed to promote their “active participation” in the prevention of and the fight against corruption. United Nations General Assembly, Resolution adopted by the General Assembly on 2 June 2021. *Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation*, UN Doc. A/RES/S-32/1, para. 21.

¹⁰ Front Line Defenders, “Dr Marie Claudette Ndagui’s health deteriorates while in prison”, <https://www.frontlinedefenders.org/en/case/dr-marie-claudette-ndagui-health-deteriorates-while-in-prison>.

¹¹ Front Line Defenders, “Dr Marie Claudette Ndagui’s health deteriorates while in prison” (previously cited).

¹² Le Monde Afrique, “Au Gabon, une opération anticorruption ébranle le sommet de l’Etat”, 28 November 2019, https://www.lemonde.fr/afrique/article/2019/11/28/au-gabon-une-operation-anticorruption-ebanle-le-sommet-de-l-etat_6020832_3212.html.

¹³ Amnesty International, *Protect the Protest! Why we must save our right to protest*, (Index ACT 30/5856/2022), 19 July 2022, [Protect the Protest! Why we must save our right to protest - Amnesty International](#).

demand change. On 10 December 2022, in **Equatorial Guinea**, police officers arrested and detained **Joaquín Elo Ayeto**, the coordinator of the civil society group Somos+ Platform, for organizing an event to celebrate International Human Rights Day and International Anti-Corruption Day “without official authorization”, even though the event in question was organized in Papaya Nursery, a private centre in the Semu neighbourhood in the capital city of Malabo. The police burst into the private centre just an hour before the event could start, arrested the activist and detained him briefly at the Semu police station before transferring him hours later to the central police station of Malabo. He was eventually released two days later, after civil society mobilisation in and outside the country.

Those who expose corruption in the region are also subjected to reprisals. Some face dismissals, suspension without pay, intimidation, denial of promotion, while others face various forms of economic harassment hampering their capacity to effectively carry out their activities. In **Togo**, the newspaper *L'Alternative* of journalist **Ferdinand Ayité** was accused in February 2021 of publishing false information about the Minister of Town Planning, Housing and Land Reform and suspended for four months by the *Haute Autorité de l'Audiovisuel et de la Communication* (HAAC), the media regulatory body,¹⁴ thus depriving the newspaper, already badly affected by the Covid-19 pandemic, of much-needed revenues.

Many of the anti-corruption HRDs interviewed by Amnesty International declared that they often receive verbal or online threats – anonymous and not - in an attempt to stop their anti-corruption work. Others have faced judicial harassment to pressure them into revealing the sources of the corruption allegations they relay to the public. In **Niger**, web activist and whistle-blower **Ibrahim Bana** estimates that he has been arrested 19 times and prosecuted four times since 2016, often for “disturbing the public order”,¹⁵ following the publication of corruption allegations on Facebook. In an interview with Amnesty International, the activist suggests that the purpose of the harassment is not necessarily to punish him, but rather to uncover the identity of his sources, presumably because “they [the Niger authorities] know that when I put forward facts, it's because I have evidence to support them...”¹⁶

In some instances, anti-corruption HRDs are physically attacked after making revelations about corrupt practices. In other instances, they are killed. Since 2018, indeed, three anti-corruption journalists from the region have been killed: **Ahmed Hussein-Suale Divela** in **Ghana** and **Martinez Zogo** and **Jean-Jacques Ola Bébé** in **Cameroon**. At least two of these killings allegedly involved both state and non-state actors. In **Cameroon**, journalist and head of privately-owned radio *Amplitude FM*, **Martinez Zogo**, was abducted by unidentified men on 17 January 2023, and his mutilated body was found in a wasteland in the suburbs of Yaoundé, Cameroon's capital, on 22 January 2023.¹⁷ Zogo was investigating and had been reporting on alleged embezzlement of hundreds of billions of CFA francs involving political and business figures close to the government. A joint investigation was launched into the abduction, torture and murder of the journalist on 27 January, and around 20 members of Cameroon's General Directorate for External Investigations (DGRE), Cameroon's counterintelligence agency, including its boss, Maxime Eko Eko, and special operations director, Justin Danwe, as well as a prominent media mogul and business tycoon Amougou Belinga, were arrested in connection with this crime in early February 2023.¹⁸ On 4 March 2023, all three men were charged with complicity in the torture of Zogo and remanded in custody.¹⁹

Several factors explain why human rights violations against anti-corruption HRDs such as those detailed above are allowed to happen and why, for the most part, both the alleged corrupt practices they expose and the abuses that ensue from or are connected to them are going unpunished. In this report, Amnesty International highlights the lack of a safe and enabling legal environment, that is, the lack of “a robust legal framework compliant with international standards and a strong national human rights protection system” that

¹⁴ Article 19, “Togo: Suspension of “L'Alternative” newspaper is an attack on press freedom and the right to information”, 1 March 2021, <https://www.article19.org/resources/togo-suspension-of-l-alternative-newspaper-is-an-attack-on-press-freedom-and-the-right-to-information/>.

¹⁵ MFWA, “Opposition Activist Released after Three Days in Police Custody”, 24 September 2020, <https://www.mfwa.org/opposition-activist-released-after-three-days-in-police-custody/>; Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights*, (Index: POL 10/6700/2018), 22 February 2018, *Amnesty International Report 2017/18: The state of the world's human rights - Amnesty International*, p. 281.

¹⁶ I Phone interview with Ibrahim Bana, Nigerian web activist and whistle-blower, 11 November 2022, emphasis added.

¹⁷ Amnesty International, “Cameroon: Martinez Zogo's death must not go unpunished”, 28 January 2023, *Cameroon: Martinez Zogo's death must not go unpunished - Amnesty International*.

¹⁸ Reporters Without Borders, “Cameroonian journalist Martinez Zogo's murder was a state crime, official confesses”, 3 February 2023, <https://rsf.org/en/cameroonian-journalist-martinez-zogo-s-murder-was-state-crime-official-confesses>; RSF, “4. More damning evidence in Martinez Zogo murder investigation in Cameroon”, 9 February 2023, <https://rsf.org/en/more-damning-evidence-martinez-zogo-murder-investigation-cameroon>.

¹⁹ VOA News, Moki Edwin Kindzeka, “Cameroon Media Mogul, Officers Charged in Journalist's Death”, 6 March 2023, <https://www.voanews.com/a/cameroon-media-mogul-officers-charged-in-journalist-s-death/6991728.html>.

safeguards those rights that are fundamental to the activities and safety of HRDs.²⁰ This is demonstrated, among other things, by the absence of adequate laws that protect HRDs, including anti-corruption HRDs, and of effective and independent judicial institutions that provide access to justice and effective remedies for human rights violations. This legal and institutional void has severe implications for the work and activities of anti-corruption HRDs, as it provides cover for potential corrupt practices,²¹ emboldens public and other officials, given the knowledge that their corrupt behaviour, and any attacks perpetrated against these HRDs to conceal this behaviour, will not be investigated or punished, and thus perpetuating impunity. More broadly, this contributes to weaken public confidence in the ability of national law enforcement and judicial institutions to prevent further acts of corruption and human rights violations and allow access to justice and effective redress for those abuses.

In light of this situation, Amnesty International sets a range of recommendations in this report calling on states in West and Central African to respect the rights to freedom of expression and peaceful assembly, to promote and protect anti-corruption HRDs, end impunity for attacks and other human rights violations against anti-corruption HRDs, and to strengthen national legal and institutional frameworks for fighting corruption and for enhancing accountability for corruption offences and other human rights violations. The organization urges regional and sub-regional bodies to promote the ratification, domestication, and/or full implementation of regional human rights and anti-corruption treaties and of laws necessary for the promotion and protection of human rights and the prevention of and fight against corruption in Africa. It calls for the establishment of a dedicated UN special procedure mandate, or a similar mechanism, that will examine, monitor, advise on and address the multiple and intersecting impact and consequences of corruption on human rights and urges foreign states to support anti-corruption HRDs, particularly those at risk, including by investing in programmes and initiatives that provide for their protection and preservation or through prompt resettlement schemes.

²⁰ United Nations High Commissioner for Human Rights, Report: *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned*, 11 April 2016, A/HRC/32/20, para. 12-25.

²¹ UN Special Rapporteur on the independence of judges and lawyers S, *Report of the Special Rapporteur on the independence of judges and lawyers*, March 2020, previously cited, para. 52.

2. METHODOLOGY

This report builds on and expands the emerging body of evidence of severe repression of anti-corruption human rights defenders (HRDs) - journalists, bloggers, whistle-blowers, civil society activists and others - in West and Central Africa. It documents some cases of repression of anti-corruption defenders, highlighting some of the tools and tactics used by national authorities and non-state actors to silence them, and showing why anti-corruption defenders are entitled to the same legal protection as other HRDs.

The report is primarily based on an analysis of relevant United Nations (UN) and African Union (AU) human rights and anti-corruption conventions, declarations, resolutions; national legal and institutional anti-corruption frameworks; UN and civil society reports on the implementation of these instruments and laws; media reports on the cases identified; as well as academic and media articles on these topics, and on the evolving jurisprudence on corruption and human rights. This analysis spans across 19 countries covered by Amnesty International's West and Central Africa Regional Office, namely: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Republic of Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. As such, it responds to the need for more and better reporting of cases of human rights violations against HRDs, by focusing on a region where such cases remain largely under-reported, where there is entrenched impunity for the violations, and where victims rarely enjoy access to justice and effective remedies.

The report includes 31 cases of repression of anti-corruption HRDs identified in West and Central Africa since 2018. These cases were selected based on a strong correlation between the work or actions of the anti-corruption HRDs and the repression they face as well as the absence of accountability and justice in the cases. The cases were identified through meetings, interviews and informal discussions with civil society activists and HRDs or their families, interactions with regional anti-corruption and human rights mechanisms and a review of media reports.

Overall, Amnesty International conducted interviews and held discussions with a total of 75 people between July 2022 and May 2023 as part of this research. These include senior AU and UN officials, representatives of national anti-corruption institutions, media, anti-corruption and human rights organizations, researchers, and anti-corruption defenders or their families. The interviews were conducted in English and French. Those interviewed were informed about the nature and objectives of the research and how Amnesty International would use the information gathered.

Amnesty International staff further participated in several virtual, face-to-face and hybrid events convened by CSOs and UN agencies on whistle-blower protection, governance challenges in Africa, the implementation of United Nations Convention against Corruption (UNCAC) in West Africa, the right of access to information and women's participation in the governance of natural resources, all of which provided greater insights into the challenges facing anti-corruption HRDs in the West and Central Africa region and opportunities for reform and change.

On 8-9 May 2023, Amnesty International held a hybrid consultation workshop on corruption and human rights that was attended by 64 participants, including Amnesty International sections directors from North and Sub-Saharan Africa, senior representatives of UN, AU and CSOs working on corruption, human rights, and the protection of anti-corruption HRDs, and anti-corruption HRDs. Among other things, participants examined more closely the potential relationship between corruption and human rights, the role and

contribution of anti-corruption HRDs, the challenges they face, and how they can be better protected against abuses. The workshop also served to validate some of the preliminary research findings and recommendations, many of which were formulated by anti-corruption HRDs themselves and are included in Section 8 of this report.

Amnesty International is grateful to all the people who took the time to meet with us and discuss their views on the situation of anti-corruption HRDs in West and Central Africa. We would like to thank Mr. Brian Dooley, the former Special Advisor to Mary Lawlor, the UN Special Rapporteur on the situation of HRDs, Professor Remy Ngoy Lumbu, the Chairperson of the African Commission on Human and People's Rights (ACHPR) and Ms. Charity Hanene Nchimunya, the Executive Secretary of the African Union Advisory Board against Corruption (AUABC), who agreed to share some insights into challenges facing anti-corruption HRDs and barriers to their protection in Africa and beyond. We also would like to express our utmost gratitude to all the anti-corruption HRDs and their representatives who have faced and/or still face abuses because of their work and who agreed to share their experience with us.

3. CONTEXT

3.1 THE GLOBAL CALL TO ACTION AGAINST CORRUPTION AND ITS HUMAN RIGHTS IMPACT

The year 2018 was an important year for both the human rights and the anti-corruption movements, as it marked the 70th anniversary of the Universal Declaration of Human Rights (UDHR) and the 15th anniversary of two major anti-corruption treaties, namely, the United Nations Convention on Corruption (UNCAC) and the African Convention on Preventing and Combating Corruption (AUCPCC),²² ratified by all West and Central African states covered in this report – with the exception of the Central African Republic which has not ratified the AUCPCC.

In December 2018, the UN General Assembly adopted resolution 73/191 entitled “Special session of the General Assembly against corruption”, calling for the session of the General Assembly against corruption to be convened in 2021 on challenges and measures to prevent and combat corruption and strengthen international cooperation.²³ Following the 2021 special session, the General Assembly adopted a political declaration²⁴ acknowledging the progress achieved in 15 years of implementation of UNCAC, but raising concerns over the persistent effects of corruption on human rights and reaffirming states’ obligations to prevent and fight corruption and strengthen international cooperation, in line with international standards.

The year 2018 was also declared the “African Anti-Corruption Year” under the theme “Winning the Fight Against Corruption: A Sustainable Path to Africa’s Transformation” during the 29th Ordinary Session of the Assembly of the Heads of State and Government of the African Union (AU) that took place a year earlier.²⁵ The declaration served as a public recognition of the persistent and devastating consequences that corruption has on human rights, stability, development, economic growth, inequality and public spending in the continent.²⁶ But it also provided an opportunity to appraise the progress achieved, and challenges encountered, during the first 15 years of existence of the AUCPCC,²⁷ Africa’s main normative instrument on anti-corruption that was adopted in Maputo, Mozambique on 11 July 2003 and came into force in 2006.

²² UN General Assembly (UNGA), Resolution 58/4: *United Nations Convention against Corruption*, adopted on 31 October 2003, (UNGA, Resolution 58/4). ; African Union Assembly, African Union Convention on Preventing and Combating Corruption (AUCPCC), adopted on 11 July 2003, https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf.

²³ UN General Assembly (UNGA), Resolution 73/191: *Special session of the General Assembly against corruption*, adopted on 17 December 2018, UN Doc. A/RES/73/191, (UNGA, Resolution 73/191).

²⁴ UN General Assembly, Resolution 12329: *Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation*, adopted on 2 June 2021, UN Doc. A/RES/S-32/1, p.2.

²⁵ African Union (AU) , *Declaration on the African Anti-Corruption Year*, Assembly/AU /Decl.1(XXXI), 31st Ordinary Session, 1 - 2 July 2018, Nouakchott, Mauritania, https://archives.au.int/bitstream/handle/123456789/8157/Assembly%20AU%20Decl%201%20XXXI%20_E.pdf?sequence=1&isAllowed=y.

²⁶ AU, Declaration on the African Anti-Corruption Year, (previously cited), p.1; African Union Assembly, Concept note on the African Anti-corruption Year (Project 2018) on the Theme: ‘Winning the Fight Against Corruption: A Sustainable Path to Africa’s Transformation,’ Assembly/AU/5(XXX), adopted on 28 – 29 January 2018.

²⁷ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003.

The African Anti-Corruption Year and the activities organized to celebrate it not only enhanced knowledge on the multidimensional nature and impacts of corruption in the continent,²⁸ but also helped popularize the AUCPCC, galvanizing momentum for its ratification and that of other relevant AU and regional corruption-related instruments. Three African states (Angola, Mauritius and Sudan) ratified the Convention in 2018, followed by eight others in the five years following the declaration. As of June 2023, the Convention had been ratified by 48 AU member states. Beyond the AUCPCC, the African Anti-Corruption Year helped kickstart the drafting process of the *Common African Position on Asset Recovery*, which would later be adopted in 2020, and would include a commitment on the part of African leaders to develop “best practice guidelines at a regional level for the protection, encouragement and incentivization of whistle-blowers”.²⁹

Notwithstanding these positive developments, multiple pronouncements on African states’ political commitment to transparency, accountability and the rule of law, and the raft of legal and institutional reforms instituted before and since 2018 in the continent, corruption has continued unabated, thriving in a climate of escalating crackdown and restrictions on human rights and civic space that have limited the ability of African youth, civil society activists, journalists, whistle-blowers and other anti-corruption human rights defenders (HRDs) to play a meaningful role in holding powerful actors accountable for corruption and its human rights impacts.

3.2 CORRUPTION IN WEST AND CENTRAL AFRICA

By many accounts, the global call to action against corruption and its human rights impacts did not translate into concrete or significant progress. Since 2018, in fact, Africa has consistently been the lowest scoring region on Transparency International’s (TI) Corruption Perception Index (CPI),³⁰ with an average of 32 or 33 out of 100 over the five-year period. In West and Central Africa, CPI scores have remained low and at a standstill, with only **Senegal, Benin, Ghana, Burkina Faso**, and **Gambia** earning higher scores than this average regional score (Table 1).³¹

TABLE: CPI SCORES IN SELECTED COUNTRIES IN WEST AND CENTRAL AFRICA (2018-2022)

Countries	CPI Scores per year				
	2018	2019	2020	2021	2022
Benin	40	41	41	42	43
Burkina Faso	41	40	40	42	42
Cameroon	25	25	25	27	26
Central African Republic	26	25	26	24	24
Chad	19	20	21	20	19
Congo	19	19	19	21	21
Côte d’Ivoire	35	35	36	36	37
Equatorial Guinea	16	16	16	17	17

²⁸ According to a 2019 project report, a total of 21 high-profile activities were implemented by several organs and Member States of the AU on the topic of corruption in 2018, including a High-Level Dialogue on “Winning the Fight Against Corruption: Leveraging International Cooperation to Achieve Sustainable Development in Africa” on the margins of the 73rd UN General Assembly in September 2018, Report of H. E. Muhammadu Buhari, President of The Federal Republic of Nigeria and Leader on The African Anti-Corruption Year, Assembly/AU/19(XXXII), approved during the 32nd Ordinary Session of the Assembly of the African Union, 10-11 February 2019, para. 8-10.

²⁹ African Union, Common African Position on Asset Recovery (CAPAR), adopted on 06 - 07 February 2020, EX.CL/1213(XXXVI) Add.1 Rev.1, para 4.2.1.a.

³⁰ Transparency International, *Corruption Perception Index 2018, 2019*, https://www.transparency.org/files/content/pages/2018_CPI_Executive_Summary.pdf. The Corruption Perception Index (CPI) ranks countries by perceived levels of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).

³¹ Transparency International, *Corruption Perception Index 2019, 2020*, https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf; Transparency International, *Corruption Perception Index 2020, 2021*, https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf; Transparency International, *Corruption Perception Index 2021, 2022*, https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf.

Gabon	31	31	30	31	29
Gambia	37	37	37	37	34
Ghana	41	41	43	43	43
Guinea	28	29	28	25	25
Mali	32	29	30	29	28
Mauritania	27	28	29	28	30
Niger	34	32	32	31	32
Nigeria	27	26	25	24	24
Senegal	45	45	45	43	43
Sierra Leone	30	33	33	34	34
Togo	30	29	29	30	30

Source: Transparency International.

Behind these poor scores are signs of corruption backsliding in the continent, and in the concerned region specifically. According to a survey conducted by Afrobarometer in 34 African countries between 2019 and 2021, the majority of African people interviewed (58% or almost six in 10 respondents) reported seeing rising levels of corruption in key governing institutions, such as the police (according to 48% of respondents), parliament (38% of respondents) and the judiciary (35% of respondents).³²

These perceptions of increased corruption are rooted in everyday lived experiences and realities. In **Nigeria**, despite a reduction in the prevalence of bribery observed between 2016 and 2019,³³ the Afrobarometer survey found that 77% of respondents who interacted with the police affirmed that they had to pay bribes to get police assistance while 68% stated that they did so to avoid problems with the police, and 65% responded that it was “difficult” or “very difficult” to get the assistance they needed without paying bribes.³⁴ Those who resist or are incapable of paying bribes are said to be further harassed, unlawfully detained, physically or sexually assaulted, tortured or even killed by the police.³⁵ These abuses are most often committed against young persons between the ages of 17 and 30, socially and economically vulnerable people,³⁶ and so pervasive that:

“...if you were never a victim [of police corruption and brutality], you would know somebody who had been a victim if you're a Nigerian. And the question is not if it's going to happen to you. The question is when it's going to happen to you.”

Interview with a young Nigerian woman human rights defender, 25 November 2022.

Corruption scandals in the region have also traditionally been linked to large development projects involving national and multinational companies in particular industries such as the extractive, construction, and defence and security sectors. One illustrative case is that of the French industrial group Bolloré, accused of

³² Washington Post, Christie Keulder and Robert Mattes, “Why are Africans dissatisfied with democracy? Think corruption”, 19 November 2021, <https://www.washingtonpost.com/politics/2021/11/19/why-are-africans-dissatisfied-with-democracy-think-corruption/>.

³³ UN Office on Drugs and Crime (UNODC), *Corruption in Nigeria: Patterns and trends – Second survey on corruption as experienced by the population*, December 2019, https://www.unodc.org/documents/nigeria/Corruption_Survey_2019.pdf, p.7.

³⁴ Washington Post, Josephine Appiah-Nyamekye Sanny and Brian Howard, “Nigerians are protesting police abuses. How do citizens of other African countries view the police?”, 6 November 2020, <https://www.washingtonpost.com/politics/2020/11/06/nigerians-are-protesting-police-abuses-how-do-citizens-other-african-countries-view-police/>.

³⁵ Human Rights Watch, “Everyone’s in on the game”: *Corruption and human rights abuses by the Nigeria Police Force*, August 2010, <https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>, p. 24.

³⁶ Amnesty International, *Nigeria: Time to end impunity – Torture and other violations by Special Anti-Robbery Squad (SARS)* (Index: AFR 44/9505/2020), 26 June 2020, *Nigeria: Time to end impunity: Torture and other human rights violations by special anti-robbery squad (SARS) – Amnesty International*, p.15.

alleged corruption in Togo.³⁷ In February 2021, the group agreed to pay 12 million euros as part of a deal with financial crime prosecutors, which was accepted by a Paris court.³⁸ Three of its executives had negotiated a separate plea deal with prosecutors to have proceedings against them personally dropped in return for a fine of 375,000 euros and a recognition of guilt. However, the presiding judge rejected their part of the agreement considering that the fines were too lenient.³⁹

In recent years, several cases of alleged corruption involving Africa's political elites have emerged. In July 2020, it emerged that U.S. prosecutors had filed a complaint against Denis Christel Sassou-Nguesso, son of Congo's president and a sitting member of parliament, in a move apparently designed to seize a Miami penthouse prosecutors say he bought with money allegedly misappropriated from *Société Nationale des Pétroles du Congo* (SNPC), the national oil company and Congo's largest state-owned enterprise, where he held a leadership position.⁴⁰ In July 2022, French prosecutors also charged five children of Gabon's former president Omar Bongo with receiving allegedly misappropriated public funds, "active and passive corruption", money laundering and "misuse of social assets".⁴¹

Compounding crises have enabled corruption to flourish even further in the region, impacting a wide range of human rights. Over the past five years, the region has been rocked by a succession of alleged corruption scandals, as it witnessed increases in public spending in the context of the fight against terrorism, irregular migration, the expansion of organized crime and illegal trafficking, and the coronavirus (Covid-19) pandemic. Since 2020, for example, Niger has been grappling with multiple allegations of financial improprieties and mismanagement within its defence and security sector. In 2021, the Ministry of defence was allegedly implicated in a scandal exposed by the "FinCen Files", a global investigation into the role that global banks play as enablers of corruption and money laundering.⁴² This scandal, described as "the scandal of the century"⁴³, involved the alleged embezzlement of up to 71.8 billion CFA francs (around US\$120 million) in defence spending, which represented over one third of total expenditures estimated at 185.9 billion CFA (around US\$306 million), between 2017 and 2019.⁴⁴ In Cameroon, an audit of the Supreme Court uncovered alleged large-scale corruption and mismanagement of Covid-19 funds.⁴⁵ In all, at least \$335 million in Covid-19 funds were reported missing, largely through improper procurement processes, prompting human rights groups and opposition figures to demand an investigation and for the International Monetary Fund (IMF) to make any loans to the country conditional on transparency and anti-corruption reforms.⁴⁶

³⁷ The Oakland Institute, *Doing Business with the Bolloré Group: Violations of the United Nations' Principles and Code of Conduct*, 2022, <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/doing-business-bellor%C3%A9.pdf>; Andrew Weir, "Special report: How Vincent Bolloré won control of Ghana's biggest port", 25 March 2021, https://www.africa-confidential.com/article/id/13322/SPECIAL_REPORT_How_Vincent_Bollor%C3%A9_won_control_of_Ghana%27s_biggest_port.

³⁸ France 24, "Bolloré Group fined €12 million in Togo corruption case", 26 February 2021, <https://www.france24.com/en/europe/20210226-bollor%C3%A9-group-fined-%E2%82%AC12-million-in-african-corruption-case>

³⁹ RFI, "Soupçons de corruption au Togo: Vincent Bolloré voit sa mise en examen confirmée", 22 March 2023, <https://www.rfi.fr/fr/afrique/20230322-soup%C3%A7ons-de-corruption-au-togo-vincent-bollor%C3%A9-voit-sa-mise-en-examen-confir%C3%A9>.

⁴⁰ The Wall Street Journal, Mengqi Sun, "Prosecutors seek to seize Miami Penthouse allegedly linked to Republic of Congo President's son", 19 June 2022, <https://www.wsj.com/articles/prosecutors-seek-to-seize-miami-penthouse-allegedly-linked-to-republic-of-congo-presidents-son-11592615406>; Global Witness, "The cycle of kleptocracy: a Congolese state affair Part III", 9 July 2020, <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/congolese-kleptocracy/>.

⁴¹ Le Monde, "France charges five of Gabon ex-president Bongo's children with embezzlement, corruption", 29 July 2022, https://www.lemonde.fr/en/france/article/2022/07/29/france-charges-five-of-gabon-ex-president-bongo-s-children-with-embezzlement-corruption_5991887_7.html.

⁴² International Consortium of Investigative Journalists, "An ICIJ Investigation: FINCEN FILES", 20 September 2020, <https://www.icij.org/investigations/fincen-files/>.

⁴³ International Consortium of Investigative Journalists, Will Fitzgibbon, "Niger 'scandal of the century' exposed in FinCen files sparks lawsuit demanding action", 20 January 2021, <https://www.icij.org/investigations/fincen-files/niger-scandal-of-the-century-exposed-in-fincen-files-sparks-lawsuit-demanding-action/>.

⁴⁴ L'Événement, Moussa Aksar, "Niger – Malversations au Ministère de la Défense : 71,8 milliards de FCFA captés par des seigneurs du faux", 21 September 2020, <https://levenementniger.com/niger-malversations-au-ministere-de-la-defense-718-milliards-de-fcfa-capt%C3%A9s-par-des-seigneurs-du-faux/>.

⁴⁵ Audit Bench of Cameroon's Supreme Court, *Audit of the Special National Solidarity Fund to fight the Coronavirus and its economic and social impacts*, 2021, https://minfi.gov.cm/wp-content/uploads/2021/11/AUDIT_S_REPORT_ON_THE_USE_OF_THE_COVID_19_FUND.pdf; Jeune Afrique, Georges Dougueli, "Des milliards de francs CFA détournés au Cameroun ? Le gouvernement ébranlé par le 'Covidgate'", 21 May 2021, <https://www.jeuneafrique.com/1175905/politique/des-milliards-de-cfa-detourn%C3%A9s-au-cameroun-le-gouvernement-ebanl%C3%A9-par-le-covidgate/>.

⁴⁶ VOA News, Moki Edwin Kindzeka, "Cameroon investigates missing \$335 million in Covid funds", 31 May 2021, https://www.voanews.com/a/africa_cameroon-investigates-missing-335-million-covid-funds/6206445.html; Human Rights Watch, *IMF: Make Cameroon loan contingent on anti-corruption - Lack of transparency, corruption allegations mar Covid-19 spending*, 18 June 2021, <https://www.hrw.org/news/2021/06/18/imf-make-cameroon-loan-contingent-anti-corruption>; Cameroun Agence Presse, "Covidgate : le FMI se penche sur la nouvelle demande de prêt du Cameroun ce jeudi 29 juillet 2021", 27 July 2021, <https://agencepressecameroun.com/2021-economie/2021-finances/covidgate-le-fmi-se-penche-sur-la-nouvelle-demande-de-pr%C3%AAt-du-cameroun-ce-jeudi-29-juillet-2021.html>; VOA News, Moki Edwin Kindzeka, "Cameroon investigates missing \$335 million in Covid

3.3 DENOUNCING CORRUPTION IN A CONTEXT OF SHRINKING CIVIC SPACE IN WEST AND CENTRAL AFRICA

The fight against corruption in West and Central Africa has been hampered by severe restrictions on human rights and civic space. Most, if not all, the states in the region have adopted laws and introduced state of emergency measures restricting human rights, including those human rights that are essential for the prevention of and the fight against corruption, such as the rights to freedom of expression, association, peaceful assembly and to access to information, contrary to international human rights law.⁴⁷ These laws were often introduced in a context of Covid-19 and socio-political crises, conflict situation or political transitional periods after a coup.

Measures taken by many states to respond to Covid-19 in the region were disproportionate and unduly prolonged in time,⁴⁸ and some continue to be implemented. As of the date of publication of this report, the **Togolese** authorities continued to impose the ban on gatherings of more than 15 people that was introduced to fight the spread of Covid-19.⁴⁹

When demonstrations are not banned, sometimes in the context of pre-electoral period⁵⁰ or under the pretext of national security,⁵¹ they are repressed by national authorities using excessive force. In **Senegal**, 14 people were killed during the five days of demonstrations following the gendarmerie's arrest of political opponent Ousmane Sonko in March 2021.⁵² On 1 and 2 June 2023, three children and a further 20 people at least were killed, several of whom were shot by security forces, and 390 more injured, during the violent demonstrations that erupted after a local court convicted Sonko of "corrupting youth".⁵³ On 20 October 2022 in **Chad**, security forces killed at least 50 people during a demonstration organized by several political parties and associations to protest against the extension of the transitional period and the possibility for the president of the transition to run in the presidential election.⁵⁴ In cases of excessive use of force, impunity of defence and security forces remains the rule, such as in **Senegal** where perpetrators of unlawful killings during the 2021 protests have thus far gone unpunished.⁵⁵

Internet shutdowns are also frequently used by authorities during demonstrations or at time of general elections, in violation of international and regional human rights standards⁵⁶.

funds", 31 May 2021, https://www.voanews.com/a/africa_cameroon-investigates-missing-335-million-Covid-funds/6206445.html; Human Rights Watch, *IMF: Make Cameroon loan contingent on anti-corruption - Lack of transparency, corruption allegations mar Covid-19 spending*, 18 June 2021, <https://www.hrw.org/news/2021/06/18/imf-make-cameroon-loan-contingent-anti-corruption>; Cameroun Agence Presse, "Covidgate : le FMI se penche sur la nouvelle demande de prêt du Cameroun ce jeudi 29 juillet 2021", 27 July 2021, <https://agencepressecameroun.com/2021-economie/2021-finances/covidgate-le-fmi-se-penche-sur-la-nouvelle-demande-de-pr%C3%AAt-du-cameroun-ce-jeudi-29-juillet-2021.html>.

⁴⁷ Annual report archive - Amnesty International

⁴⁸ Amnesty International Report 2020/21: *The state of the world's human rights* - Amnesty International (Index: POL 10/3202/2021), 29 March 2022, Amnesty International Report 2021/22: *The state of the world's human rights* - Amnesty International.

⁴⁹ Amnesty International, "Togo : L'interdiction de manifester doit être levée", 16 March 2022, **TOGO: L'INTERDICTION DE MANIFESTER DOIT ÊTRE LEVÉE** - Amnesty International. This was also a global trend, as shown in Amnesty International, *Silenced and misinformed: Freedom of expression in danger during Covid-19*, October 2021 (Index: POL 30/4751/2021), *Silenced and misinformed: Freedom of expression in danger during Covid-19* - Amnesty International.

⁵⁰ In Côte d'Ivoire, on 19 August 2020, the Council of Ministers suspended all public protests more than a month before the presidential election. The ban was renewed several times until 15 December 2020. See Amnesty International, "Covid-19 hits those shackled by oppression hardest thanks to decades of inequalities, neglect and abuse", 7 April 2021, <https://www.amnesty.org/en/latest/news/2021/04/annual-report-Covid19-decades-of-oppression-inequality-abuse-2/>.

⁵¹ In Guinea and Burkina Faso, the authorities which took power in coups in September 2021 and September 2022 respectively announced a ban on all demonstrations and on all activities for national security reasons in 2022. Le Figaro, "Burkina : un parti d'opposition saisit la justice pour contester l'interdiction de ses activités", 15 February 2023, <https://www.lefigaro.fr/flash-actu/burkina-un-parti-d-opposition-saisit-la-justice-pour-contester-l-interdiction-de-ses-activites-20230215>; Amnesty International, "Guinée. Interdiction de manifester 'jusqu'aux périodes de campagnes électorales'", 18 May 2022, <https://www.amnesty.org/fr/latest/news/2022/05/guinee-interdiction-de-manifester-jusquaux-periodes-de-campagnes-electorales/>.

⁵² Amnesty International, "Senegal will never forget March 2021", <https://www.amnesty.org/en/latest/campaigns/2022/03/senegal-will-never-forget-march-2021/>.

⁵³ Amnesty International, "Senegal: Amnesty International calls for independent enquiry into deadly crackdown on protests", 9 June 2023, <https://www.amnesty.org/en/latest/news/2023/06/senegal-amnesty-international-demande-une-enquete-independante-sur-la-repression-meurtriere-lors-des-manifestations/>.

⁵⁴ Amnesty International, "Chad: Repression of demonstrations must stop immediately", 21 October 2022, <https://www.amnesty.org/en/latest/news/2022/10/tchad-la-repression-des-manifestations-doit-immEDIATEMENT-cesser/>.

⁵⁵ Amnesty International, "Senegal. The authorities must immediately halt the police violence and restore social media", June 2, 2023, **Senegal: The authorities must immediately halt the police violence and restore social media** - Amnesty International

⁵⁶ Amnesty International, "Senegal. The authorities must immediately halt the police violence and restore social media", previously cited.

In many countries in West and Central Africa, the authorities are closing or placing unnecessary financial and administrative burdens on media outlets and civil society organizations (CSOs) seen as critical of governments' actions. In **Niger** and **Burkina Faso**, state revenue authorities have closed several media outlets for non-payment of taxes or "debts",⁵⁷ while in **Senegal**, the government suspended the private station Walf TV, which was covering the June 2023 protests live, for 30 days without prior notification (despite this being required by Article 192 of the Press Code) and ordered the suspension of a crowd-funding campaign it launched without clear legal justification.⁵⁸

In **Equatorial Guinea**, **Chad** and **Sierra Leone**, the authorities have adopted draconian laws, which impose strict requirements on CSOs including the requirements to work on specific issues, to align their activities with national development policy, to disclose details on external funds and donors, and/or to seek government approval before receiving external funding.⁵⁹

Elsewhere, such as in **Niger**⁶⁰, **Guinea**⁶¹, **Cameroon**⁶² and **Mali**⁶³, political opponents, activists, bloggers, journalists and other HRDs have been arbitrarily arrested and detained under charges such as false news, defamation, breach of public safety, participation in illegal gathering, simply for exercising their human rights including the rights to freedom of expression and peaceful assembly.

This situation of shrinking civic space does not spare anti-corruption HRDs, who continue to face attack, harassment, intimidation and unfair trials as this report shows. Denouncing corruption and its impacts often amounts to criticizing the illegal actions of political and economic elites who often do not hesitate to use the criminal justice system to harass, intimidate and persecute HRDs, activists and journalists and to silence any criticism, most of the time with impunity. In this context, it is unsurprising that as many as 91% of respondents in Afrobarometer's survey in **Gabon**, for instance, feared that they would face reprisals should they report alleged corrupt behaviour.⁶⁴

Far from being unique, reprisals against anti-corruption defenders in the West and Central African region are symptomatic of a larger trend of shrinking civic space for anti-corruption defenders across the world. In her 2021 report,⁶⁵ for instance, Mary Lawlor, the UN Special Rapporteur on the situation of HRDs, noted that hundreds of anti-corruption defenders all over the world face attacks, threats, online and judicial harassment, smear campaigns, criminalization and murder in their peaceful work in defence of human rights, with some groups facing multiple modes of repression.⁶⁶ The Special Rapporteur cited research conducted by the Swedish women's rights organisation Kvinna till Kvinna, for example, which showed that

⁵⁷ Media Foundation for West Africa, "Revenue Service Closes Down Media Outlets for Non-payment of Taxes", 3 August 2018, <https://www.mfwa.org/revenue-service-closes-down-media-outlets-for-non-payment-of-taxes/>. In Burkina Faso, the offices of the investigative newspaper "L'Évènement" were reopened on 9 June, seven days after being sealed by tax officials for non-payment of a "debt" of 20 million CFA francs (around XXUSD)". See Jeune Afrique, "Au Burkina Faso, réouverture des locaux du journal d'investigation « L'Évènement »", 10 June 2023, <https://www.jeuneafrique.com/1452740/politique/au-burkina-faso-reouverture-des-locaux-du-journal-dinvestigation-levenement/>. Jeune Afrique, "Au Burkina Faso, réouverture des locaux du journal d'investigation « L'Évènement »", 10 June 2023, <https://www.jeuneafrique.com/1452740/politique/au-burkina-faso-reouverture-des-locaux-du-journal-dinvestigation-levenement/>.

⁵⁸ Amnesty International, "Senegal: Amnesty International calls for independent enquiry into deadly crackdown on protests", previously cited; OHCHR, "Senegal - protests and communications clampdown", 13 June 2023, <https://www.ohchr.org/en/press-briefing-notes/2023/06/senegal-protests-and-communications-clampdown>.

⁵⁹ The International Center for Non-Profit Law, "Civic Freedom Monitor: Sierra Leone", last updated on 28 November 2022, <https://www.icnl.org/resources/civic-freedom-monitor/sierra-leone>; Amnesty International, "Chad: Legal analysis of the Chadian Ordinance on the right to freedom of association: The use of national legislation to impose unlawful restrictions on the right to freedom of associations", 25 October 2018 (Index: AFR 20/9240/2018).

⁶⁰ Amnesty International, "Niger. La loi sur la cybercriminalité est un instrument de répression des voix dissidentes", 8 May 2020, <https://www.amnesty.org/fr/latest/news/2020/05/niger-la-loi-sur-la-cybercriminalite-est-un-instrument-de-repression/>.

⁶¹ Amnesty International, "Guinea. Amnesty denounces further arbitrary arrests and excessive use of force", 2 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/guinea-amnesty-denounces-further-arbitrary-arrests-and-excessive-use-of-force/>.

⁶² Amnesty International, "Cameroon. Failure to release 23 detainees over September 2020 protests is deeply disappointing", 25 January 2023, <https://www.amnesty.org/en/latest/news/2023/01/cameroon-failure-to-release-23-detainees-over-september-2020-protests-is-deeply-disappointing/>.

⁶³ Amnesty International, "Mali. Freedom of expression and of the press in danger in Mali", 23 November 2023, <https://www.amnesty.org/en/latest/news/2023/11/mali-freedom-of-expression-and-of-the-press-in-danger-in-mali/>.

⁶⁴ Afrobarometer, Lionel Ossé, "Les Gabonais déplorent la hausse du niveau de corruption mais craignent des représailles en cas de dénonciation", Dépêche No. 590, 13 January 2023, <https://www.afrobarometer.org/wp-content/uploads/2023/01/AD590-Gabonais-deplorent-la-hausse-du-niveau-de-corruption-Depeche-Afrobarometer-12jan23.pdf>.

⁶⁵ UN Special Rapporteur on the situation of HRDs, Report: *At the heart of the struggle: human rights defenders working against corruption* - Report of the Special Rapporteur on the situation of HRDs, Mary Lawlor, 28 December 2021, UN Doc. A/HRC/49/49; See also Daraj, "A mapping study on: Defamation and disinformation campaigns against journalists and human rights defenders", 2 December 2022, Wuduh, <https://wuduh.org/Research-Mapping-Study-Wuduh-Final-Eng.pdf>.

⁶⁶ UN Special Rapporteur on HRDs, Report: *At the heart of the struggle: human rights defenders working against corruption* (previously cited).

most women HRDs across the world consider corruption to be one of the most dangerous topics for women to work on due to government repression.⁶⁷

⁶⁷ Kvinna till Kvinna Foundation, *Solidarity is our only weapon – the situation of women human rights defenders*, 2021, <https://kvinnatillkvinna.org/wp-content/uploads/2021/11/KvinnatillKvinna-Solidarity-is-our-only-weapon.pdf>, p.10.

4. CORRUPTION, HUMAN RIGHTS AND STATES' LEGAL OBLIGATIONS

4.1 CORRUPTION AS A HUMAN RIGHTS ISSUE

The global policy discourse on corruption and anti-corruption has been characterized by conceptual uncertainties – uncertainties over the definition of corruption and over its connection to human rights. Indeed, there is no universally agreed definition of this multidimensional concept of corruption,⁶⁸ despite its international recognition as a global challenge and multiple international commitments to fight corruption, including as part of the 2030 Agenda for Sustainable Development.⁶⁹ Most conventions, declarations and resolutions do not define it, and those that do either define it narrowly to mean either supply or demand-side bribery for example,⁷⁰ or define it widely, often in relation to its different manifestations. Such is the case of UNCAC and the AUCPCC, neither of which defines the term. Rather, the two conventions cover the different categories of corruption, including bribery, embezzlement, misappropriation, diversion, illicit enrichment, trading in influence, and use, concealment or laundering of the proceeds of crime.⁷¹

In the absence of a single definition, corruption has been commonly described as “the abuse of entrusted power for private gain.”⁷² It can occur both in the public and the private spheres, at the national and international level, and can have deleterious effects on sustainable development, the rule of law and human

⁶⁸ Kolawole Olaniyan, “The implications of corruption for social rights”, in Christina Binder, Jane A. Hofbauer, and Flávia Piovesan (editors), *Research Handbook on International Law and Social Rights*, 2020, p. 356.

⁶⁹ UN General Assembly (UNGA), Resolution 70/1: “*Transforming our world: the 2030 Agenda for Sustainable Development*”, adopted on 25 September 2015, UN Doc. A/Res/70/1, Microsoft Word - 1516301E.docx (un.org).

⁷⁰ Ndiva Kofele-Kale, “The right to a corruption-free society as an individual and collective human right: Elevating official corruption to a crime under international law”, 2000, *The International Lawyer*, Volume 34, Number 01, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1957&context=til>, pp. 149-178.

⁷¹ ‘Bribery of national public officials’ as the promise, offering or giving to, or solicitation or acceptance by, a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. ‘Bribery of foreign public officials and officials of public international organizations’, however, is defined as “the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.” ‘Illicit enrichment’ refers to “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful”. ‘Concealment’ refers to the “continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention”, while ‘proceeds of crime’ is defined as “any property derived from or obtained, directly or indirectly, through the commission of an offence.” See Articles 2(e), 15, 16, 20 and 24 of UNCAC. See also Articles 1 and 4 of the AUCPCC and Articles 6-7 of the ECOWAS Protocol on the Fight against Corruption (thereafter, the ‘ECOWAS Protocol’).

⁷² Transparency International, “What is Corruption?”, <https://www.transparency.org/en/what-is-corruption>.

rights. However, this relationship between corruption and human rights is not well understood. Several factors account for this shortcoming, among which is the lack of attention given to the connection between the two concepts by international, regional and national human rights instruments and institutions. In Africa, regional and sub-regional anti-corruption instruments make only vague references to human rights, if at all. The AUCPCC, for example, refers to the “promotion of economic, social and political rights” in conformity with the African Charter on Human and Peoples’ Rights (thereafter ‘the Banjul charter’) and other relevant human rights instruments in its preamble, and encourages the Africa Union Advisory Board against Corruption (AUABC), the main body created to monitor the implementation of the AUCPCC, to “build partnerships” with the African Commission on Human and Peoples’ Rights (ACHPR).⁷³ The ECOWAS Protocol on the Fight against Corruption (thereafter, the ‘ECOWAS Protocol’),⁷⁴ meanwhile, makes no mention of human rights.

Yet, corruption interferes with the effective enjoyment of individual and collective rights guaranteed under international and regional human rights treaties and undermines states’ ability to meet their human rights obligations.⁷⁵ Corruption in the police, law enforcement and judiciary, for example, has pernicious effects on the fair administration of justice and, consequently, on the enjoyment of various civil and political rights such as the rights to a fair trial, to life, to freedom from torture and other degrading treatment. It hinders the ability of law enforcement officers, judges, prosecutors and lawyers to carry out their duties in an impartial and independent manner, encourages discrimination, leads to violations of the right to due process, ill-treatment, torture, or deaths in custody, restricts victims’ access to justice, and deprives economically and socially vulnerable groups of income (used to pay bribes), thus preventing them from exercising other rights. Corruption equally impedes on the effective enjoyment of economic, social and cultural rights (ESCR), particularly of these poor and marginalized groups. This is, by restricting their access to essential facilities, goods and services (such as education, food, health, water, electricity, housing), by exposing them to various health harms, food insecurity, forced evictions, land dispossession, while facilitating the discriminatory access to public services of those able to pay bribes and influence decisions. In this regard, thus, corruption “facilitates, perpetuates and institutionalizes human rights violations.”⁷⁶

Corruption can also affect the obligation of one state to use the ‘maximum of its available resources’ to progressively achieve the full realization of ESCR, as mentioned in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁷⁷ and that which is implied in Article 21(1) of the Banjul Charter that gives states the responsibility to use and manage their wealth and natural resources maximally “for the exclusive interest and benefit” of their people.⁷⁸ Such violations of ESCR are facilitated when vital resources that could enhance the availability and quality of essential services are embezzled and diverted away from social budgets; or when high levels of corruption reduce the state’s attractiveness to business and deter foreign direct investments, thus depriving it of much-needed financing necessary for the realization of human rights.⁷⁹

At the UN level, it was not until the early 2000s that UN agencies, human rights institutions and mechanisms began to refer to corruption and its negative human rights impact, following a 2003 speech given during the adoption of UNCAC by then UN Secretary-General Kofi Annan, in which he noted that corruption “leads to violations of human rights.”⁸⁰ A special rapporteur was appointed in 2003 to conduct a

⁷³ AUCPCC, Article 22(5)(g), previously cited.

⁷⁴ Economic Community of West African States, Protocol on the Fight against Corruption, adopted on 21 December 2001, https://eos.cartercenter.org/uploads/document_file/path/406/ECOWAS_Protocol_on_Corruption.pdf.

⁷⁵ International Council on Human Rights and Transparency International, *Corruption and human rights: Making the connection*, 2009, <https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf>, pp. 35-43; Committee on Economic, Social and Cultural Rights (CESCR), General comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 2017, UN Doc. E/C.12/GC/24, para. 20; Transparency International, *CPI 2021: Corruption, human rights and democracy*, 25 January 2022, <https://www.transparency.org/en/news/cpi-2021-corruption-human-rights-democracy>; Transparency International, Gabriela Camacho, *Food security and corruption*, 8 August 2022, https://knowledgehub.transparency.org/assets/uploads/kproducts/Food-security-and-corruption_PR_14.09.2022.pdf, Transparency International, *Anti-Corruption Helpdesk Answer*, 8 August 2022, https://knowledgehub.transparency.org/assets/uploads/kproducts/Food-security-and-corruption_PR_14.09.2022.pdf; Transparency International, *CPI 2021: Corruption, human rights and democracy*, 25 January 2022, <https://www.transparency.org/en/news/cpi-2021-corruption-human-rights-democracy>.

⁷⁶ International Council on Human Rights and Transparency International, *Corruption and human rights: Making the connection*, previously cited, p. 6.

⁷⁷ CESCR, *General comment 24*, previously cited, para. 20.

⁷⁸ Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, (previously cited), pp. 289-292.

⁷⁹ CESCR, *General comment 24* (previously cited), para. 18; Anne Peters, “Corruption as a Violation of International Human Rights” *European Journal of International Law*, Volume 29, Issue 4, November 2018, pp. 1251-1287, <https://doi.org/10.1093/ejil/chy070>, pp. 1262-64.

⁸⁰ Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, (previously cited), p. 6, citing UN, “Secretary-General lauds adoption by General Assembly of United Nations Convention against Corruption”, SG/SM/8977-GA/10200-SOC/CP/271. The speech also serves as the

comprehensive study on corruption and its impact on human rights.⁸¹ However, the mandate was not renewed and calls by the Advisory Committee of the Human Rights Council⁸² and others⁸³ to establish a UN special procedure mandate that would assess violations of human rights caused by acts of corruption have remained unanswered.

More recently, however, UN and AU bodies and mechanisms have shown greater interest in the link between corruption and human rights, as illustrated in many of their statements, resolutions and reports.⁸⁴ This renewed interest has been accompanied by calls for a new human rights-based approach to corruption, which focuses attention on the 'rights holders' and the 'victims' of corruption, their rights, and on the obligations of the state.⁸⁵ This is, to complement the traditional purely criminal law enforcement approach, which has emphasized the criminalization of corrupt practices and the prosecution of perpetrators, but which has proved to be insufficient in preventing and combating corruption. As spelled out in a 2013 OHCHR report,

“A human rights-based approach to anti-corruption means putting the international human rights entitlements and claims of the people (the ‘rights holders’) and the corresponding obligations of the State (the ‘duty-bearer’) in the centre of the anti-corruption debate and efforts at all levels, and integrating international human rights principles including non-discrimination and equality, participation and inclusion, accountability, transparency, and the rule of law.”

Office of the UN High Commissioner for Human Rights, *The human rights case against corruption*, 2013, p. 5.

foreword to UNCAC. UN Office on Drugs and Crime (UNODC), *United Nations Convention against Corruption*, 2004, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf. Above.

⁸¹ The Sub-Commission on the Promotion and Protection of Human Rights, Resolution 2003/2 of 13 August 2003, para. 6.

⁸² UN Human Rights Council, Report: *Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights*, 5 January 2015, A/HRC/28/73, para. 52..

⁸³ UNCAC Coalition, “The need for a UN special rapporteur on corruption and human rights”, 13 August 2013, <https://uncaccoalition.org/the-need-for-a-un-special-rapporteur-on-corruption-and-human-rights/>; U4 Anti-Corruption Resource Centre, “Do we need a Special Rapporteur on Anti-Corruption and if so, what should its mandate look like?”, 22 December 2021, <https://www.u4.no/blog/special-rapporteur-on-anti-corruption-mandate>.

⁸⁴ United Nations Office of the High Commissioner for Human Rights (OHCHR), *The human rights case against corruption*, 2013, <https://digitallibrary.un.org/record/761279?ln=en>; UN General Assembly (UNGA), Resolution, adopted on 17 December 2018, previously cited; African Union, “Statement on the occasion of the commemoration of the 2018 Africa Human Rights Day under the theme ‘Fighting Corruption and Advancing Human Rights: Our Collective Responsibility’” 21 October 2018, https://au.int/sites/default/files/speeches/35192-sp-wane_fnal_statement_african_human_rights_day_2018_2-1.pdf; UN Special Rapporteur on the independence of judges and lawyers, Report: *Independence of judges and lawyers. Report of the Special Rapporteur on the independence of judges and lawyers*, 23 March 2020, UN Doc. A/HRC/44/47, para. 9.

⁸⁵ OHCHR, *The human rights case against corruption*, previously cited; Ralph Hemsley, “Human rights and Corruption: States’ human rights obligations to fight corruption”, 2015, *Journal of Transnational Legal Issues*, Volume 2 Issue 1, https://www.unil.ch/fileadmin/fakultaeten/rf/morawa/dok/JTLI_Vol_2_Issue_1_Hemsley.pdf; Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, 2016, pp. 12, 202-275; Anne Peters, “Corruption as a Violation of International Human Rights”, November 2018, *European Journal of International Law*, Volume 29, Issue 4, , pp. 1251–1287, <https://doi.org/10.1093/ejil/chy070>, (previously cited); Andrew B. Spalding, “Corruption, corporations, and the new human right”, 2014, *Washington University Law Review*, Volume 91, Issue 6, , pp. 1365-1428, https://openscholarship.wustl.edu/law_lawreview/vol91/iss6/5; Kevin E. Davis, “Corruption as a Violation of International Human Rights: A Reply to Anne Peters”, 2018, *The European Journal of International Law*, Volume 29, Number 4, pp. 1289–1296, <https://doi.org/10.1093/ejil/chy074>; U4 Anti-Corruption Resource Centre, Ortrun Merkle, “Mainstreaming gender and human rights in anti-corruption programming”, 2018, Bergen, Norway, Chr. Michelsen Institute, www.u4.no/publications/mainstreaming-gender-and-human-rights-in-anticorruption-programming.

**ANTI-CORRUPTION FIGHT IN PERIL:
CRACKDOWN ON ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS IN WEST AND CENTRAL AFRICA**

Amnesty International

4.2 STATES' INTERNATIONAL LEGAL OBLIGATIONS

4.2.1 STATES' HUMAN RIGHTS AND ANTI-CORRUPTION OBLIGATIONS

Framing corruption as a human rights issue has several implications for the state, not least because it imposes on it both anti-corruption *and* human rights legal obligations. But rather than seeing these two sets of legal obligations as separate, experts point out that they should be seen as complementary, with the human rights obligations reinforcing anti-corruption obligations which are formulated mostly in non-mandatory terms.⁸⁶ In other terms, the fight against corruption can only be effective in an environment where human rights are protected.

From a human rights perspective, the state has two sets of legal obligations: the substantive obligations to respect, protect, promote and fulfil human rights and procedural obligations that have to do with the process of realizing human rights. These are the obligations to ensure equality and non-discrimination and to enhance transparency, accountability and the participation of rights holders.

The 'obligation to respect' imposes a 'negative' obligation on state, its organs and agents to refrain from interfering with the effective enjoyment of human rights. The 'obligation to protect', on the other hand, requires the state to adopt all appropriate measures to protect rights holders against interference by third parties and reduce any structural risks in which the state's own officials may be involved in violating guaranteed human rights.⁸⁷ These can be legislative, administrative and judicial measures such as the adoption of relevant laws, the provision of adequately resourced mechanisms and institutions that can effectively implement adopted laws, the punishment and prosecution of perpetrators of human rights violations, and judicial mechanisms available to those seeking remedies for those violations. The obligation to promote requires states to make sure that individuals are able to exercise their human rights, for example, by promoting tolerance, raising awareness, and even building infrastructures.

The last obligation, the 'obligation to fulfil', is a 'positive' obligation and requires states to carry out their voluntary human rights obligations by moving their machinery towards the actual realization of the rights. This includes by using the 'maximum of its available resources' to progressively achieve the full realization of economic, social, and cultural rights (ESCR), as mentioned in Article 2(1) of the ICESCR⁸⁸ and implied in Article 21(1) of the Banjul Charter.⁸⁹ It also imposes on the state the obligations to proactively facilitate, provide and promote human rights,⁹⁰ including by facilitating access to information, freedom of expression and peaceful assembly, and by creating and maintaining an enabling environment that ensures the full and free exercise of these and other human rights recognized in relevant international and regional human rights treaties.

States also have obligations of transparency, non-discrimination, accountability, and participation, procedural obligations that cut across the first three dimensions of human rights obligations. As per the international covenants on human rights, for example, each state party has the obligation to respect and to ensure that its citizens and other individuals within its territory exercise their rights "without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁹¹

Each of these obligations are relevant to the anti-corruption context. The obligation to respect notably entails an obligation for state representatives and agents to refrain from acts of corruption considering they are interfering with the effective enjoyment of human rights. The obligation to protect human rights, on the other hand, entails an obligation to adopt effective and adequate protection of witnesses and experts in corruption

⁸⁶ Anne Peters, "Corruption as a Violation of International Human Rights" (previously cited), p.1260. See also Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, (previously cited), p. 8.

⁸⁷ Anne Peters, "Corruption as a Violation of International Human Rights" (previously cited), pp.1259-1260.

⁸⁸ See also ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 2011, para. 9, <https://archives.au.int/handle/123456789/2063>.

⁸⁹ ACHPR, State reporting guidelines and principles on Articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment, 2018, para. 4, p. 20, <https://achpr.au.int/index.php/en/node/845>; Kolawole Olaniyan, *Corruption and Human Rights Law in Africa*, (previously cited), pp. 289-292.

⁹⁰ CESCR, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000, UN Doc. E/C.12/2000/4, para. 37.

⁹¹ ICCPR, Article 2(1) and Article 2(2). A similar obligation can be inferred from Articles 2 and 3 of the Banjul Charter.

cases and to ensure that people who report instances of corruption do so without fear of consequent reprisals.⁹² Similarly, derived from the rights to freedom of access to information and of expression guaranteed in most international and regional human rights instruments is a corresponding duty of the state to respect, protect and promote “the freedom to seek, receive, publish and disseminate information concerning corruption” – a freedom that is subject to certain restrictions, such as for the respect of the rights and reputation of others and for the protection of national security and public order, but should nonetheless be provided for by law.⁹³ As the Inter-American Commission on Human Rights stressed, freedom of expression is “one of the most effective ways to denounce corruption” and it requires the protection of “harmless expressions”, as well as “those that shock, irritate or disturb public officials, candidates for public office or any sector of the population.”⁹⁴

Likewise, both UNCAC and the AUCPCC imply that the human rights principles of transparency, accountability and participation should guide efforts to prevent and combat corruption. Notably, the two instruments point to the state’s positive obligation to adopt measures that promote the full and active participation of individuals, civil society and the media, in the prevention of and the fight against corruption.⁹⁵

4.2.2 STATES’ OBLIGATIONS TO REALIZE THE HUMAN RIGHTS OF ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS

“Corruption is a human rights-related issue and those motivated by concerns for human rights who are working peacefully against corruption, for transparency and the rule of law are human rights defenders.”

UN Special Rapporteur on the situation of HRDs, *At the heart of the struggle: human rights defenders working against corruption*, 28 December 2021, para. 7.

Each state has the primary responsibility and duty to respect, protect and promote and facilitate all human rights of all persons, including the rights of HRDs and of anti-corruption HRDs in particular – that is, individuals or groups who are motivated by the desire to pursue anti-corruption work and act in the defence of human rights, without advocating hatred that constitutes incitement to discrimination, hostility or violence.⁹⁶ These can be journalists, civil society activists, whistle-blowers, health professionals, teachers, community groups and others who play a crucial role in the prevention of and in the fight against corruption and the promotion of human rights.⁹⁷

Over the years, anti-corruption HRDs have uncovered various alleged corrupt and suspicious dealings linked to political and business figures, leading to wider public debates about corruption and the need for accountability, to the adoption of transparency regulations, investigations by national authorities and international bodies, and the prosecution and condemnation of some of those involved. In **Gambia**, for instance, an investigation conducted by the independent investigative news outlet Malagen into alleged corruption at the Ministry of Fisheries led to the prosecution of a former senior official accused of taking bribes from a Chinese-owned fishmeal company allegedly involved in environmental crimes and illegal

⁹² UNCAC, Articles 32 and 33; AUCPCC, Articles 5(5) and (6); ECOWAS Protocol, Articles 8 and 9.

⁹³ UNCAC, Article 13(d).

⁹⁴ IACHR, Annual report for 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, OEA/Ser.LV/II.134 Doc. 5 rev. 1, 25 February 2009, para. 34, <http://www.oas.org/es/cidh/expresion/docs/informes/anales/Informe%20Anual%202008%201%20ESP.pdf>.

⁹⁵ UNCAC, Article 13(1); AUCPCC, Articles 12(1) and 12(3).

⁹⁶ Drawing on the definition of HRDs provided in Amnesty International, *Human rights defenders under threat: a shrinking space for civil society* (Index: ACT 30/6011/2017), 16 May 2017, WEBPAGE? , *Human rights defenders under threat – A shrinking space for civil society* - Amnesty International, p. 8.

⁹⁷ The important role of these actors is recognized in many instruments, including the 2021 Political Declaration on corruption, in which UN Member States noted “the important role of civil society, academia, the private sector and the media in identifying, detecting and reporting on cases of corruption,” and committed to promote their “active participation” in the prevention of and the fight against corruption. UNGA, *Resolution adopted by the General Assembly on 2 June 2021* (previously cited), para. 21.

fishing.⁹⁸ In France, ground-breaking litigation brought by the French NGOs Sherpa, Transparency International France and Congolese activists against the leaders of **Congo, Gabon and Equatorial Guinea**⁹⁹ resulted, in October 2017, in a three-year suspended sentence being given to Equatoguinean Vice President Teodoro Nguema Obiang, on charges of diverting ill-gotten gains from his country into investments on French territory.¹⁰⁰

These and other anti-corruption HRDs who engage in such sensitive, complex, lengthy and expensive investigations and legal cases do so not only to contribute to the fight against corruption, but also to protect and defend human rights, often at great personal risk. As such, and as noted in a 2020 UN report, "particular attention and, where appropriate, protective measures, should be put in place for them in order to prevent reprisals for reporting acts of corruption."¹⁰¹

The obligation to provide effective protection against retaliation, intimidation and other threats against anti-corruption HRDs, as well as against the victims and witnesses of corruption, is contained in Article 19 of the ICCPR,¹⁰² as well as in UNCAC, the AUCPCC and the ECOWAS Protocol. This involves putting in place "procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons."¹⁰³ It also requires the adoption of legal and other measures deemed necessary to ensure effective and adequate protection of reporting persons.¹⁰⁴

The three abovementioned conventions also underscore the need for states to create an enabling environment for civil society, the media and other anti-corruption defenders to participate in the prevention of and fight against corruption and hold their governments to the highest levels of transparency and accountability in the management of public affairs, including by adopting measures that establish and consolidate freedom of the press, the right of access to information, and those that respect, protect and promote the freedom to seek, receive, publish and disseminate information concerning corruption.¹⁰⁵ This is also emphasized in the UN Declaration on HRDs adopted in 1998¹⁰⁶ which, in Article 6, stipulates that:

"Everyone has the right, individually or in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;**
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to other views, information and knowledge on all human rights and fundamental freedoms".**

The UN Declaration on HRDs equally stipulates that "Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed",¹⁰⁷ while other instruments underscore the obligations of states to refrain from using legal and administrative provisions or misusing the judicial system to harass, criminalize and stigmatize their activities.

⁹⁸ Malagen, Mariam Sankanu, "How Dr. Banja sold a 'flourishing career' to Chinese for D50,000", 12 March 2023, <https://malagen.shorthandstories.com/how-dr-banja-sold-a-flourishing-career-to-chinese-for-d50-000/index.html>.

⁹⁹ Open Society Foundations, Maud Perdriel-Vaissière, *France's Biens Mal Acquis Affair: Lessons from a Decade of Legal Struggle*, May 2017, <https://www.justiceinitiative.org/uploads/8e7d1268-b5fb-44cf-b549-bc0ed6500667/legal-remedies-11-perdriel-20170612.pdf>.

¹⁰⁰ Open Society Foundations, Maud Perdriel-Vaissière, *France's Biens Mal Acquis Affair* (previously cited); National Endowment for Democracy, Tutu Alicanté, "How to catch a Kleptocrat: Lessons learned from the biens mal acquis trials in France", June 2019, Working paper, <https://www.ned.org/wp-content/uploads/2019/06/To-Catch-A-Kleptocrat.pdf>.

¹⁰¹ UN Special Rapporteur on the Independence of Judges, *Report of the Special Rapporteur on the independence of judges and lawyers*, 23 March 2020, UN Doc. A/HRC/44/47 para. 31.

¹⁰² Human Rights Council, General comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para 23.

¹⁰³ UNCAC, Article 32(2)(a).

¹⁰⁴ See, for example, ECOWAS Protocol, Article 5(c) and UNCAC, Article 33.

¹⁰⁵ See UNCAC, Article 13; AUCPCC, Articles 9 and 12; ECOWAS Protocol, Article 5.

¹⁰⁶ UN General Assembly, Resolution, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted on 9 December 1998, A/RES/53/144 (hereafter "the UN Declaration on HRDs").

¹⁰⁷ UN Declaration on HRDs, Article 2(2).

Furthermore, the 2019 African Union Declaration of Principles on Freedom of Expression and access to information in Africa contains a set of principles that reaffirm and expand on the aforementioned rights and obligations by states to protect the human rights of HRDs.¹⁰⁸ Among them are the following principles:

THE OBLIGATION TO PROTECT HRDS ACCORDING TO THE 2019 AU DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA¹⁰⁹

Principle 6. Protection of human rights defenders and others

The protections accorded to journalists and other media practitioners in this Declaration shall apply, as necessary, to every human rights defender and any other individual or group exercising their rights to freedom of expression and access to information through any medium.

Principle 20. Safety of journalists and other media practitioners

1. States shall guarantee the safety of journalists and other media practitioners.
2. States shall take measures to prevent attacks on journalists and other media practitioners, including murder, extrajudicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.
4. States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies.

Principle 21. Protecting reputations

1. States shall ensure that laws relating to defamation conform with the following standards:
 - a. No one shall be found liable for true statements, expressions of opinions or statements which are reasonable to make in the circumstances.
 - b. Public figures shall be required to tolerate a greater degree of criticism.
 - c. Sanctions shall never be so severe as to inhibit the right to freedom of expression.
2. Privacy and secrecy laws shall not inhibit the dissemination of information of public interest.

Principle 22. Criminal measures

1. States shall review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law and standards.
2. States shall repeal laws that criminalize sedition, insult and publication of false news.
3. States shall amend criminal laws on defamation and libel in favour of civil sanctions which must themselves be necessary and proportionate.
4. The imposition of custodial sentences for the offences of defamation and libel are a violation of the right to freedom of expression.

Principle 35. Protected disclosures in the public interest

1. 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.

¹⁰⁸ AU, *Declaration of principles on freedom of expression and access to information in Africa*, previously cited.

¹⁰⁹ AU, *Declaration of principles on freedom of expression and access to information in Africa*, previously cited.

5. SPOTLIGHT ON THE REPRESSION OF ANTI-CORRUPTION DEFENDERS IN WEST AND CENTRAL AFRICA

As discussed in the previous section, anti-corruption HRDs play a vital, legitimate and necessary role in the prevention of and fight against corruption and in the realization of human rights. However, instead of being recognized for their work, and instead of their participation in the fight against corruption being encouraged on paper, such as in Article 13 of UNCAC for example, in practice they are being attacked and hindered by state and non-state actors whose interests they threaten.

Over the years, state actors have violated their legal obligation to protect anti-corruption HRDs and used a variety of tools and tactics to silence and repress anti-corruption HRDs. These range from attacks on the rights to freedom of expression and peaceful assembly using defamation and “fake news” provisions and bans on protests, to personal attacks such as threats, dismissals, economic harassment, torture and even unlawful killings of anti-corruption HRDs. In some cases, these attacks are perpetrated with the involvement of non-state actors. In other cases, the attacks and threats come directly from these non-state actors – armed and organized crime groups, militias, and even corporate actors, which do have a responsibility to respect human rights, including the responsibility to “[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”.¹¹⁰

5.1 ATTACKS ON FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

5.1.1 THE CRIMINALIZATION OF FREEDOM OF EXPRESSION

Anti-corruption defenders are often subjected to judicial harassment, arbitrary arrests and detention on bogus charges or based on vaguely defined provisions on defamation, ‘fake news’, cyberstalking or terrorism found in civil or criminal codes or in cybercrime and counterterrorism laws which are contrary to international and regional human rights norms.

¹¹⁰ UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, UN Doc. HR/PUB/11/04, p. 14.



DEFAMATION PROVISIONS IN WEST AND CENTRAL AFRICA

In most West and Central African countries, defamation laws contain provisions contrary to the requirements of international human rights law and in violation of the right to the freedom of expression guaranteed by national constitutions. In many countries of the region, defamation committed through the press, or any other means of communication and its reproduction is a criminal offence punishable by prison sentences and/or heavy fines.

According to the UN Human Rights Committee, “[S]tates Parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”.¹¹¹ In Africa, the ACHPR recommended that states parties to the Banjul Charter “repeal criminal defamation laws or insult laws which impede freedom of speech” in favour of sanctions that must themselves be necessary and proportionate. The imposition of custodial sentences for offences such as defamation and slander are violations of the right to freedom of expression.¹¹²

In **Cameroon**, the penal code in its article 305¹¹³ provides for imprisonment from six days to six months and/or a fine of up to two million CFA francs for anyone who offends the honour or the reputation of a person without proof. According to articles 258-260 of **Senegal**'s penal code,¹¹⁴ defamation is punishable by imprisonment from four months to two years and a fine of 200,000 to 1,5 million CFA francs or one of these two penalties alone. In **Mauritania**, article 348 of the penal code provides for punishment of six months to five years in prison for defamation and a fine of UM 10,000 to UM 200,000 (about 175,000 to 3,460,00 CFA francs (dollars))¹¹⁵. In **Togo**, the 2015 penal code¹¹⁶ punishes public defamation by any means of communication with “a suspended prison sentence of one to six months and a fine of 500,000 to two million CFA francs (dollars).”

As shown earlier (see Section 4), Principle 21 of the 2019 AU Declaration requires that states ensure that sanctions are never so severe as to inhibit the right to freedom of expression, and that public figures tolerate a greater degree of criticism. However, in most instances, anti-corruption HRDs who are found guilty of defamation face hefty sentences and fines, especially when the person defamed is a public official. This is the case in **Burkina Faso**, **Côte d'Ivoire**, and **Congo**, where fines are heavier when the defamation is committed, for example, against a member of the government, parliament and the judiciary, as opposed to a private individual.¹¹⁷

Countries like **Côte d'Ivoire**, **Niger** and **Sierra Leone** recently revised their legal frameworks to lift prison sentences for defamation and conform with international human rights law.¹¹⁸ In 2021, **Gambia's** Supreme Court declared criminal defamation and the 2013 Information and Communications Act, the country's toughest media law which prescribes 15-year jail term or a fine of D 3 million for anyone found guilty of broadcasting false news on the internet, as unconstitutional.¹¹⁹ This follows, in part, a 2018 ruling of the ECOWAS Community Court of Justice in which the Court ordered the Gambian authorities to repeal or decriminalize its laws on sedition, “fake news”, criminal libel and defamation.¹²⁰

¹¹¹ Human Rights Committee, *General comment 34. Article 19: Freedoms of opinion and expression*, previously cited, para 47.

¹¹² African Union, Resolution on Repealing Criminal Defamation Laws in Africa - ACHPR/Res.169(XLVIII)10, adopted on 24 November 2010, <https://achpr.au.int/en/adopted-resolutions/169-resolution-repealing-criminal-defamation-laws-africa-achprres169xlvi>.

¹¹³ Cameroun, Law 2016/007 on the Penal Code, 12 July 2016, <https://www.camerlex.com/cameroun-code-penal/>.

¹¹⁴ Senegal, Basic Law 65-60 on the Penal Code, 21 July 1965, <https://www.yumpu.com/fr/document/read/21735305/droit-afriquecom-senegal-code-penal/46>.

¹¹⁵ Mauritania, Ordinance 83-162 on the institution of a Penal Code, 9 July 1983, <https://www.refworld.org/docid/491c1ffc2.html>.

¹¹⁶ Togo, Law 2015-10 providing for a new penal code, 24 November 2015, [https://www.policinglaw.info/assets/downloads/Code_p%C3%A9nale_du_Togo_\(2015\).pdf](https://www.policinglaw.info/assets/downloads/Code_p%C3%A9nale_du_Togo_(2015).pdf).

¹¹⁷ See, among others, Congo, Law 8 – 2001 on freedom of information and communication in Congo, 12 November 2001, <https://www.sgg.cg/textes-officiels/Congo-Loi-2001-08-Liberte-information-communication.pdf>; Burkina Faso, Law 025-2018/AN on the penal code in Burkina Faso, 2018, <https://www.refworld.org/docid/3ae6b5cc0.html>, Articles 524-4.

¹¹⁸ CPJ, “CPJ welcomes repeal of criminal libel in Sierra Leone, urges further reform”, 30 October 2020, <https://cpj.org/2020/10/cpi-welcomes-repeal-of-criminal-libel-in-sierra-leone-urges-further-reform/>; Amnesty International, “Gambia. Nearly five years after Jammeh's regime ended, oppressive laws remain untouched”, 23 September 2021, <https://www.amnesty.org/en/documents/afr27/4761/2021/en/>.

¹¹⁹ Kerr Fatou, Fatou Touray, “Supreme Court declared sedition constitutional, struck out defamation”, 4 October 2021, <https://www.kerrfatou.com/supreme-court-declares-sedition-constitutional-struck-out-defamation/#:~:text=SUPREME%20COURT%20DECLARED%20SEDITION%20CONSTITUTIONAL%2C%20STRUCK%20OUT%20DEFAMATION,By%20Fatou%20Touray&text=The%20Supreme%20Court%20has%20on,false%20news%20on%20the%20internet>.

¹²⁰ Global Freedom of Expression, Columbia University, “Federation of African Journalists (FAJ) and others v. The Gambia”, <https://globalfreedomofexpression.columbia.edu/cases/federation-african-journalists-faj-others-v-gambia/#:~:text=Case%20Summary%20and%20Outcome&text=The%20ECOWAS%20Court%20held%20that,into%20conformity%20with%20international%20law>.

Amnesty International has identified numerous cases of HRDs who were summoned by police units, arbitrarily arrested, charged with defamation offences and detained, after denouncing corruption in West and Central Africa in the period from 2018-2022.

In February 2019, women HRD **Marie Claudette Ndagui**, the president of the *Association Gabonaise pour les Œuvres Sociales* (AGOS), a **Gabonese** NGO that promotes the economic and social rights of marginalized groups, was sentenced to eight months in prison and asked to pay the heavy fine of 10 million CFA francs (dollar) for defamation, contempt of court and public slander for damaging the honour of the then Public Prosecutor of Libreville, Olivier N'zahou.¹²¹ This followed a press conference during which Marie Claudette Ndagui shared testimonies alleging that Mr. N'zahou had allowed a defendant to avoid prison time after receiving a bribe.¹²² She was released on 26 September 2019 after serving her sentence. Meanwhile, Mr. N'zahou was later dismissed from his post following a government anti-corruption investigation that apparently found evidence of his involvement in corrupt practices.¹²³

In **Togo**, **Ferdinand Ayité**, a member of the International Consortium of Investigative Journalists (ICIJ) and director of the newspaper *L'alternative*, was found guilty of defamation and sentenced in November 2020 to a fine of six million CFA francs (dollars)¹²⁴ following his 2020 publications on "Petrol Gate", on the alleged misappropriation of oil revenues involving two civil servants. An appeal decision confirmed the sentence despite the release of a provisional report of a government commission that confirmed Ayité's allegations.¹²⁵

SAMIRA SABOU: CONVICTED FOR REPUBLISHING A REPORT CONTAINING CORRUPTION ALLEGATIONS IN NIGER



←  Samira Sabou, Niger, © Index on Censorship.

In January 2022 in **Niger**, **Samira Sabou**, an investigative journalist and blogger, was convicted of "defamation by electronic communication," based on the country's cybercriminal law, and sentenced to one month prison and a 100 dollars fine.¹²⁶ The women HRD was convicted for republishing a May 2021 article from the Geneva-based Global Initiative against Transnational Organized Crime (GI-TOC), which alleged that a drug shipment seized by the Niger anti-trafficking agency was reacquired by drugs traffickers and leaked back into the market.¹²⁷

¹²¹ Front Line Defenders, "Dr Marie Claudette Ndagui's health deteriorates while in prison", <https://www.frontlinedefenders.org/en/case/dr-marie-claudette-ndagui-health-deteriorates-while-prison>.

¹²² Front Line Defenders, "Dr Marie Claudette Ndagui's health deteriorates while in prison" (previously cited).

¹²³ Le Monde Afrique, "Au Gabon, une opération anticorruption ébranle le sommet de l'Etat", 28 November 2019, https://www.lemonde.fr/afrique/article/2019/11/28/au-gabon-une-operation-anticorruption-ébranle-le-sommet-de-l-etat_6020832_3212.html.

¹²⁴ Front Line Defender, "Human rights defender Ferdinand Ayité found guilty and fined", 6 November 2020, <https://www.frontlinedefenders.org/en/case/human-rights-defender-ferdinand-ayite-trial>.

¹²⁵ Front Line Defenders, "Human rights defender Ferdinand Ayité found guilty and fined", 6 November 2020, <https://www.frontlinedefenders.org/en/case/human-rights-defender-ferdinand-ayite-trial>.

¹²⁶ Amnesty International, "Niger: Conviction of investigative journalists marks deepening repression of media freedom", 13 January 2022, <https://www.amnesty.org/en/latest/news/2022/01/niger-conviction-of-investigative-journalists-marks-deepening-repression-of-media-freedom/>.

¹²⁷ Global Initiative against Transnational Organized Crime, Alice Fereday and Matt Herbert, "Strange Days for Hashish Trafficking in Niger", 11 May 2021, <https://globalinitiative.net/analysis/hashish-trafficking-niger/>.

Sabou believes that her arrest and conviction are part of a targeted campaign to silence her.¹²⁸ 18 months prior to this arrest, in June 2020, she was charged with defamation following a complaint filed by the son of the former President of the Republic of Niger, chief of staff and current Minister of Petroleum, Energy and Renewable Energies, Sani Mahamadou Issoufou. The complaint was filed after a Facebook user mentioned his name in a comment responding to Sabou's Facebook post about alleged corruption in arms procurement.¹²⁹ Although she did not mention the former president's son by name, she was arrested and immediately transferred to the prison in Niamey. She told Amnesty International:

"I was summoned to court as a witness. Once at the courthouse, I was no longer treated as a witness. I was asked to tell them who are behind some of the pseudonyms that appear on my Facebook account, and I told them that I don't know. When they realized that I could not provide that information, the prosecutor told me that he was sending me to prison while he finished his investigation. I was four-months pregnant, I was not a danger to society, and I had never been imprisoned. [Yet] I spent 48 days in prison..."¹³⁰

Moussa Aksar, also a member of ICIJ, President of the Norbert Zongo Unit for Investigative Journalism (*Cellule Norbert Zongo pour le Journalisme d'Investigation*, CENOZO) and director of the Nigerien news outlet "L'Événement Niger", was equally victim of judicial harassment by Nigerien authorities, whom he believes seek to discredit him and his work.¹³¹ On 3 January 2022, he was convicted of defamation and of "dissemination of data likely to disturb public order or undermine human dignity," and sentenced to two months prison and 200 dollars following his republication of the GI-TOC article.¹³²

Besides defamation provisions, laws and regulations aimed at tackling the barrage of misinformation and "fake news" spread on social media platforms, have nearly doubled in countries such as **Benin, Burkina Faso, Côte d'Ivoire, Niger, Nigeria, Senegal** since 2016.¹³³ They too have been instrumentalised by some of these governments to silence and repress HRDs, including anti-corruption HRDs.



"FAKE NEWS" PROVISIONS IN WEST AND CENTRAL AFRICA

"Fake news" laws and regulations are widespread in West and Central African countries, such as **Senegal**, where "the publication, dissemination, disclosure or reproduction of false news" is punishable under Article 255 of the Penal Code by one to three years' imprisonment and a fine of 100,000 to 1.5 million CFA francs. In **Côte d'Ivoire**, such offence is punishable with a fine of one to five million CFA francs under article 97 of the 2017 press code.¹³⁴ In **Benin**, article 550 of the digital code adopted in June 2017 punishes "anyone who initiates or relays false information against a person through social networks or any form of electronic form of electronic support" with imprisonment of one to six months and/or a fine of 500,000 to one million CFA francs.¹³⁵

In **Cameroon**, the 2010 cybersecurity and cybercrime law punishes anyone "who publishes or propagates news by electronic communications or an information system without being able to prove its veracity or justify that he had good reason to believe in the truth of the said news" by an imprisonment of six months to two years and/or a fine of five to ten million CFA francs.¹³⁶

These laws have greatly impaired the right to freedom of expression without really solving the misinformation quandary. This is why international and regional human rights courts and monitoring

¹²⁸ Phone interview with Samira Sabou, 10 February 2023.

¹²⁹ Amnesty International, "Niger: Journalist Arrested Over Defamation Charges: Samira Sabou", 8 July 2020, <https://www.amnesty.org/en/documents/afr43/2668/2020/en/>.

¹³⁰ Phone interview with Samira Sabou, 10 February 2023, author's translation and emphasis added.

¹³¹ Online interview with Moussa Aksar, 8 September 2022.

¹³² Amnesty International, *Amnesty International report 2021/2022: The state of the world's human rights* (POL 10/4870/2022), 29 March 2022, Amnesty International Report 2021/22: The state of the world's human rights - Amnesty International, p. 275.

¹³³ Africa Check, "Governments in Africa have doubled 'false news' laws, to little effect. Another way is possible", 2 June 2021, <https://africacheck.org/fact-checks/blog/governments-africa-have-doubled-false-news-laws-little-effect-another-way-possible>.

¹³⁴ Côte d'Ivoire, Law 2017-867 on the legal regime of the press, 27 December 2017, <http://www.caiddp.ci/uploads/01981c9a7d883c4321811e8725ca4c2c.pdf>.

¹³⁵ Benin, Law 2017-20 on the Digital Code in the Republic of Benin, <https://www.afapdp.org/wp-content/uploads/2018/06/Benin-Loi-2017-20-Portant-code-du-numerique-en-Republique-du-Benin.pdf>, Article 550.

¹³⁶ Cameroon, Law 2010/012 on cybersecurity and cybercrime, 21 December 2010, <http://www.minjustice.gov.cm/index.php/fr/textes-lois/lois/295-loi-n-2010-12-du-12-decembre-2010-relative-a-la-cybersecurite-et-a-la-cybercriminalite-au-cameroun>, Article 78(1).

bodies, UN agencies, Special Mandates for Freedom of Expression and CSOs have warned against these measures and repeatedly called for a human rights-based approach in tackling misinformation online, such as increased access to information, media and internet literacy, and for social media companies to engage with human rights due diligence, not the criminalization of users.¹³⁷ The ACHPR too has called on states to repeal laws that criminalize sedition, insults and the publication of “fake news” in the 2019 *Declaration on principles of freedom of expression and access to information in Africa*.

In **Benin**, at least 17 journalists, bloggers and political activists had been prosecuted under these provisions between 2018 and 2020.¹³⁸ In August 2019, investigative journalist **Ignace Sossou** received a suspended sentence of one month’s imprisonment for “publication of false information”, in accordance with Article 550 of the country’s digital code, after he published two articles, in May 2018 and February 2019, exposing a case of tax evasion involving Beninese and Franco-Lebanese businessmen who had allegedly used offshore accounts and shell companies.¹³⁹

In **Senegal**, on 15 January 2021, **Boubacar Sèye**, a long-time migrant rights activist and President of the NGO *Horizons Sans Frontières*, was arrested and charged with “spreading false news”. The arrest was linked to the publication, in October 2020, of an interview the activist had given to the newspaper « *L’Observateur* », in which he criticized the alleged misuse of, and demanded accountability for, the funds allocated by the European Union to Senegal in the context of the fight against illegal emigration.¹⁴⁰ Sèye was provisionally released on 3 February 2021.¹⁴¹

In **Togo**, in December 2021, journalist **Ferdinand Ayité** accused two members of the Togolese government of alleged corruption on his YouTube channel “*L’autre journal*” and was arrested on 10 December 2021 with Joël Egah, a colleague who passed away on 6 March 2022.¹⁴² On 15 March 2023, Ayité was sentenced with Isidore Kowonou, another colleague also involved in the case, to three years in prison and a fine of 3 million CFA francs (dollars) for “contempt of authorities” and “propagation of falsehoods”.¹⁴³ The journalists have appealed the decision,¹⁴⁴ but were forced to flee the country for their safety.

In 2018 in **Cameroon**, **Nestor Nga Etoga**, editor of the Weekly *Le Renard*, senior editor at *Les Scoops d’Afrique* was found guilty of “defamation through the press, publication of false news, coercion and complicity”,¹⁴⁵ offences punishable under Cameroon’s penal code and its cybersecurity and cybercrime law,¹⁴⁶ after he was sued by a forestry company he had accused of forestry offences, corruption, and human rights violations. The journalist was sentenced to six months’ imprisonment, suspension for three years and a fine of one million CFA francs, and ordered to pay the costs of the proceedings which amounted to 1,276 million CFA francs, as well as 25 million CFA francs to the forestry company and its general manager.¹⁴⁷ Legal proceedings against the journalist continued until at least July 2021, when he attended his 94th

¹³⁷ Amnesty International, *Silenced and misinformed: Freedom of expression in danger during Covid-19, 2021* (Index: POL 30/4751/2021), 19 October 2021, *Silenced and misinformed: Freedom of expression in danger during Covid-19 - Amnesty International*, pp. 33-35

¹³⁸ Amnesty International, “Journalists still arbitrarily detained” (Index: AFR 17/2486/2020), 5 June 2020, <https://www.amnesty.org.uk/urgent-actions/journalist-still-arbitrarily-detained>

¹³⁹ See Bénin Web TV, Ignace Sossou, “West Africa Leaks : Erévan Bénin, un hypermarché aux ramifications offshore”, 22 May 2018, <https://archives.beninwebtv.com/2018/05/west-africa-leaks-erevan-benin-un-hypermarche-aux-ramifications-offshores/> ; Bénin Web TV, Ignace Sossou, “Bénin : des flux financiers illicites dans les pots de peinture de la SOBEPEC”, 9 February 2019, <https://archives.beninwebtv.com/2019/02/benin-des-flux-financiers-illicites-dans-les-pots-de-peinture-de-la-sobepec/>.

¹⁴⁰ Amnesty International, “Sénégal. Boubacar Seye, le président de l’ONG Horizons Sans Frontières, doit être libéré”, 26 January 2021, <https://www.amnesty.org/fr/latest/press-release/2021/01/senegalboubacarseyehorizons/>

¹⁴¹ Dakar Poste, “Révélation de Boubacar Seye, libéré de prison : ‘Aujourd’hui, je me retrouve avec un diabète...’”, 12 March 2021, https://www.dakarposte.com/Revelation-de-Boubacar-Seye-libere-de-prison-Aujourd-hui-je-me-retrouve-avec-un-diabete_a48785.html.

¹⁴² Amnesty International, “Togo: Les autorités doivent annuler les condamnations contre les journalistes Ferdinand Ayité et Isidore Kouwonou”, 17 March 2023, <https://www.amnesty.org/fr/latest/news/2023/03/togo-les-autorites-doivent-annuler-les-condamnations-contre-les-journalistes-ferdinand-ayite-et-isidore-kouwonou/>.

¹⁴³ Amnesty International, “Togo: Les autorités doivent annuler les condamnations contre les journalistes Ferdinand Ayité et Isidore Kouwonou”, previously cited.

¹⁴⁴ RSF, “International warrant for two Togolese journalists should not be executed, RSF says”, 17 March 2023, <https://rsf.org/en/international-warrant-two-togolese-journalists-should-not-be-executed-rsf-says>.

¹⁴⁵ 237Online.com, Aissatou Diallo, “Cameroon: Première audience du procès en appel du journaliste Nestor Nga Etoga”, 5 March 2018, <https://www.237online.com/cameroon-premiere-audience-du-proces-en-appel-du-journaliste-nestor-nga-etoga/>; 237Online.com, Aissatou Diallo, “Cameroon: Première audience du procès en appel du journaliste Nestor Nga Etoga”, 5 March 2018, <https://www.237online.com/cameroon-premiere-audience-du-proces-en-appel-du-journaliste-nestor-nga-etoga/>.

¹⁴⁶ Cameroon, Criminal Code (previously cited), Articles 74, 96, 97, 152, 305, 240, Law 2010/012 on cyber security and cybercrime (previously cited), Articles 74, 75, 76 and 84.

¹⁴⁷ 237Online.com, Aissatou Diallo, “Cameroon: Première audience du procès en appel du journaliste Nestor Nga Etoga”, 5 March 2018, <https://www.237online.com/cameroon-premiere-audience-du-proces-en-appel-du-journaliste-nestor-nga-etoga/>.

audience.¹⁴⁸ He passed away on 24 September 2022¹⁴⁹ in a dire financial situation after spending around 30,000 euros (dollars) in legal and travel expenses related to the lawsuits.¹⁵⁰

Defamation and “fake news” provisions are also increasingly instrumentalized as part of strategic litigation against public participation (SLAPP), which are abusive lawsuits used by political figures, individuals and businesses to threaten mostly CSOs and journalists who expose corruption and try to stop the publication of stories about alleged wrongdoing. Such tactics are used in **Nigeria**, for instance, to harass and criminalize the freedom of expression of journalists, bloggers and anti-corruption activists who are seen as critical of the management of public affairs at state and federal levels. In June 2022, the Media Foundation for West Africa criticized what it saw as “the pettiness of these legal actions”, most of which “linger for months, even years before they are struck out, abandoned or settled often with the acquittal.”¹⁵¹ The case of journalist **Agba Jalingo** illustrates this trend.

AGBA JALINGO: CONVICTED UNDER TERRORISM AND CYBERCRIME CHARGES FOR EXPOSING CORRUPTION IN NIGERIA'S CROSS RIVER STATE



Agba Jalingo in an interview with Amnesty International Nigeria in 2020.

Agba Jalingo, journalist and publisher of the online investigative news outlet CrossRiverWatch, was arrested by Nigeria's anti-robbery squad of Nigeria's police on 22 August 2019, in relation to an article in which he accused former Governor of southern Cross Rivers State of corruption.

Jalingo was eventually detained for nearly six months, and charged for treason felony, terrorism and cybercrime, all of which are offences punishable under Nigeria's criminal code, counterterrorism and 2015 cybercrime laws.¹⁵² He was acquitted of all these charges on 21 March 2022, almost 30 months after his arrest.

Between August 2022 and March 2023, Jalingo was arrested again twice in relation to a defamation and cyberattack complaint filed in July 2022 on behalf of the sister-in-law of former Cross River State Governor, Governor Benedict Ayade,¹⁵³ after an article published on *CrossRiverWatch* alleged that she had contracted a lecturer to impersonate her to take an exam at the Nigerian Law School in Abuja.¹⁵⁴ He was released on bail on 30 March 2023.

¹⁴⁸ Reporters Without Borders, “Cameroun : RSF dénonce des procédures bâillons contre un journaliste” (previously cited).

¹⁴⁹ Alwihda Info, “Cameroun : décès du journaliste Nestor Nga Etoga” 25 September 2022, https://www.alwihdainfo.com/Cameroun-deces-du-journaliste-Nestor-Nga-Etoga_a117394.html;

¹⁵⁰ Reporters Without Borders, “Cameroun : RSF dénonce des procédures bâillons contre un journaliste” (previously cited).

¹⁵¹ Media Foundation for West Africa, “The 30-month trial of Agba Jalingo and the growing SLAPP in the face of press freedom in Nigeria”, 7 June 2022, <https://www.mfwa.org/the-30-month-trial-of-agba-jalingo-and-the-growing-slapp-in-the-face-of-press-freedom-in-nigeria/>.

¹⁵² See, for example, Federal Republic of Nigeria, Terrorism (Prevention Amendment) Act, 2013, https://placng.org/lawsofnigeria/laws/terrorism_bill.pdf, Section 17.

¹⁵³ Committee to Protect Journalists, “Nigerian journalist Agba Jalingo detained over defamation, cyberattack complaint”, 25 August 2022, <https://cpj.org/2022/08/nigerian-journalist-agba-jalingo-detained-over-defamation-cyberattack-complaint/>; CrossRiverWatch, Jonathan Ugbal, “BREAKING: Court Remands Agba Jalingo In Prison For ‘Insulting’ Governor Ayade Sister In-Law”, 27 March 2023, <https://crossriverwatch.com/2023/03/breaking-court-remands-agba-jalingo-in-prison-custody-for-insulting-governor-ayade-sister-in-law/>.

¹⁵⁴ CrossRiverWatch, Jonathan Ugbal, “Governor Ayade’s In-Law Denies Contracting Suspended UNICAL Lecturer To Write Law School Exams For Her”, 30 June 2022, <https://crossriverwatch.com/2022/06/governor-ayades-in-law-denies-contracting-suspended-unical-lecturer-to-write-law-school-exams-for-her/>.

In March 2022, the ECOWAS Court of Justice ordered the Nigerian government to amend Article 24 of its cybercrime law, which punishes different forms of “cyberstalking” by imprisonment of up to 10 years and/or a minimum fine of N25 million and was found to contradict the Banjul Charter and the ICCPR, to which Nigeria is a party.¹⁵⁵

5.1.2 VIOLATIONS OF THE RIGHT TO PEACEFUL ASSEMBLY

The right to freedom of peaceful assembly has equally come under attack in recent years in the West and Central Africa region. Like elsewhere in the world, national authorities are deploying a variety of restrictive laws and other measures to curtail this right – from excessive force to blanket bans and the demonization of protestors.¹⁵⁶ These measures do not only restrict the work and activities of anti-corruption HRDs, and HRDs more generally, but they also have a negative effect on their ability, and that of society as a whole, to mobilize to denounce corruption, human rights violations and demand change.

In 2020 in **Niger**, the authorities unduly banned a declared protest to call for an investigation into the alleged misuse of funds revealed by an audit of the contracts at the Ministry of Defense, and to denounce executive interference into this process. Activists **Moudi Moussa**, **Halidou Mounkaila** and **Maïkoul Zodi** were arrested on 15 March 2020 on charges of organizing an unauthorized gathering, complicity in damaging public property, arson and manslaughter.¹⁵⁷ They were provisionally released on 29 and 30 September 2020,¹⁵⁸ but their cases are still pending.

In February 2022, a “peaceful assembly” organized in **Gambia** by the CSO **Gambia Participates**¹⁵⁹ in support of the anti-corruption law¹⁶⁰ was banned by the police. In an interview with Amnesty International, the group’s Executive Director explained that:

“What we were trying to do was to make sure the parliament prioritize and support the anti-corruption bill, ...and know that the citizens, civil society were watching... We were only going to hold placards that said to parliamentarians: ‘Prioritize the anti-corruption bill!’ ‘Support the anti-corruption bill!’ ‘The anti-corruption bill is a matter of urgency!’ Those were the messages that we wanted to put out.”¹⁶¹

The group applied for a permit to protest to the Inspector-General of Police in Banjul, in accordance with Article 5(2) of the Public Order Act of 1961.¹⁶² They were summoned by the police to provide further clarification on the goal of the protest, and once at the police, they were told to use other means of advocacy because, according to the police, “sometimes people can actually use protests... and turn it into violence.”¹⁶³ Despite providing reassurances that the “solidarity march” was going to be peaceful, and after a couple of meetings with the police, the activists were given a letter notifying them that their request was denied, without any further explanation.¹⁶⁴

In **Equatorial Guinea**, Leoncio Pisco Eko, a rapper and anti-corruption HRD was arrested on 13 September 2022 in Malabo while wearing a sign around his neck that read: “Give me back my passport”, according to his lawyer.¹⁶⁵ The artist was staging a one-man protest over the confiscation of his passport, apparently in

¹⁵⁵ The Record, Olatunji Olaigbe and Andrea Peterson, “ECOWAS Court orders Nigeria to amend Cybercrime Law”, 1 April 2022, <https://therecord.media/ecowas-court-orders-nigeria-to-amend-cybercrime-law>.

¹⁵⁶ Amnesty International, *Protect the Protest! Why we must save our right to protest* (Index: ACT 30/5856/2022), 19 July 2022, [Protect the Protest! Why we must save our right to protest - Amnesty International](#).

¹⁵⁷ Amnesty International, “Niger. Les 100 jours de détention de trois militants mettent en lumière la détérioration de la liberté d’expression”, 23 June 2020, <https://www.amnesty.org/fr/latest/news/2020/06/niger-day-detention-of-three-activists-highlights-deterioration/>.

¹⁵⁸ Amnesty International, “Niger: Further information: Activists released but charges still pending”, 9 October 2020, <https://www.amnesty.org/en/documents/afr43/3192/2020/en/>.

¹⁵⁹ Gambia Participates, “Fiscal transparency”, <https://www.gambiaparticipates.org/>.

¹⁶⁰ Gainako, Yusef Taylor, “Gambia Participates to hold “Peaceful Assembly” in Support of Anti-Corruption Bill”, 13 February 2022, <https://gainako.com/gambia-participates-to-hold-peaceful-assembly-in-support-of-anti-corruption-bill/>.

¹⁶¹ Online interview with Marr Nyang and Annetta Mahoney, Gambia Participates, 2 November 2022.

¹⁶² Gambia, Act 7, Public Order Act, 1961, amended by Act.5 of 2009, Chapter 22: 01, [https://www.righttoassembly.info/assets/downloads/1961_Public_Order_Act_of_The_Gambia_\(as_amended\).pdf](https://www.righttoassembly.info/assets/downloads/1961_Public_Order_Act_of_The_Gambia_(as_amended).pdf).

¹⁶³ Online interview with Marr Nyang and Annetta Mahoney, Gambia Participates, 2 November 2022.

¹⁶⁴ Online interview with Marr Nyang and Annetta Mahoney, Gambia Participates, 2 November 2022.

¹⁶⁵ African Insider, “Equatorial Guinea rapper freed after six weeks in custody”, 28 October 2022, <https://www.africaninsider.com/arts-and-leisure/equatorial-guinea-rapper-freed-six-weeks-custody/>.

connection to his regular denunciation of corruption and human rights abuses in the country. He was detained for six weeks and released on 28 October 2022.¹⁶⁶

JOAQUÍN ELO AYETO: ARRESTED AND DETAINED FOR ORGANIZING AN EVENT TO CELEBRATE INTERNATIONAL ANTI-CORRUPTION DAY AND INTERNATIONAL HUMAN RIGHTS DAY IN EQUATORIAL GUINEA



←  A poster prepared for an event organized by Joaquín Elo Ayeto on 10 December 2022, which reads: “The call is a space for social and political revendication. All against corruption. Protest is a right”.

On 10 December 2022, the Equatoguinean national police arrested and detained **Joaquín Elo Ayeto**, the coordinator of the civil society group Somos+ Platform, for organizing an event to celebrate International Human Rights Day and International Anti-Corruption Day “without official authorization”, even though the event in question was organized in Papaya Nursery, a private centre in the Semu neighbourhood in the capital city of Malabo. The police burst into the private centre just an hour before the event could start, arrested the activist and detained him briefly at the Semu police station before transferring him hours later to the central police station of Malabo, known as ‘Guantánamo’. He was eventually released two days later, after civil society mobilisation in and outside the country.

5.2 PERSONAL ATTACKS

5.2.1 REPRISALS: DISMISSALS AND ECONOMIC HARASSEMENT

Those who expose corruption can be subjected to a range of reprisals, including dismissals. This is notably the case for people working in anti-corruption national institutions, in spite of commitments made by states to strengthen national control mechanisms such as supreme audit institutions,¹⁶⁷ in view of the important role they play in promoting transparency, accountability, efficiency in public affairs.¹⁶⁸ In practice however, these institutions and their staff seem not only to be lacking the requisite powers and resources to do their job, but also appear to have come under increasing attack because of their anti-corruption efforts.

In June 2020, **Ghana's** former Auditor-General, **Daniel Yaw Domelevo**, was forced on leave for 167 days and subsequently removed from office by President Nana Addo Dankwa Akufo-Addo. This occurred after Domelevo had complained about alleged attempts by the board of the Audit Service to interfere in and undermine his functions, and just five days after he was instructed by the Supreme Court to inspect and report back on key documents and evidence relating to a payment made to a UK-based consulting firm for

¹⁶⁶ Barron's, “Equatorial Guinea Rapper Freed After Six Weeks In Custody”, 28 October 2022, <https://www.barrons.com/news/equatorial-guinea-rapper-freed-after-six-weeks-in-custody-01666974906>.

¹⁶⁷ UN General Assembly (UNGA), Resolution 69/313: *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, adopted on 27 July 2015, UN Doc A/RES/69/313, 17 August 2015, para. 30.

¹⁶⁸ UNGA Resolution adopted by the General Assembly on 22 December 2011 on “Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions”, UN Doc. A/RES/66/209, <https://sirc.idi.no/document-database/documents/united-nations-publications/4-un-resolution-66-209/file>, which was reaffirmed by UNGA Resolution adopted on 19 December 2014 on “Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions”, UN Doc. A/RES/69/228, <https://sirc.idi.no/document-database/documents/united-nations-publications/5-un-resolution-69-228/file>.

which there was apparently no evidence of any work done. By February 2023, he had still not received his entitlements, including wage arrears, after almost three years since his removal.¹⁶⁹

In November 2021, **Sierra Leone's** former Auditor-General **Lara Taylor Pearce** and her deputy **Tamba Momoh** were suspended indefinitely just two weeks before the former was due to submit the latest annual Audit Report to Parliament.¹⁷⁰ No official reasons were given for this suspension. However, media reports suggest that the abrupt decision to suspend the two civil servants was taken to cover up financial and procurement irregularities uncovered by the national auditing agency while auditing details of the President's travel expenditures and procurement activities of the Office of the First Lady for the financial year 2020.¹⁷¹ A tribunal was set up in March 2022 to investigate allegations of misconduct by the two public officials,¹⁷² and it is yet to decide on their fate.

Other civil servants who blow the whistle on corruption allegations in public institutions also face retaliatory actions, such as dismissals, suspension without pay, intimidation and denial of promotion.

EBRIMA L. DAMPHA: DISMISSED FOR QUESTIONING THE LEGALITY OF A PUBLIC CONTRACT IN GAMBIA



Ebrima L. Dampha, Gambia.

In **Gambia**, **Ebrima Dampha**, a former human resource officer at the Gambia Civil Aviation Agency, was dismissed in December 2021 after publishing several Facebook posts in which he raised questions about the legality, collection and the management of the \$20 security levy imposed since September 2019 on all passengers flying to and from Banjul International Airport. In a widely cited post-dated 17 December 2021, Dampha referred to the collection of the levy as a “complete daylight robbery!” This and other Facebook posts kickstarted a national conversation about the levy and the deal that was signed between the Government of Gambia and the US-based security company Securiport which administered the levy, prompting a review of the initial contract by the National Audit Office. Among other things, the latter found that the contract had been negotiated and concluded by the Secretariat of the presidency without the involvement of key stakeholders, or against their advice, violating the procedure of public procurement rules, and raising “a lot of suspicion of impropriety and corruption”.¹⁷³ Yet, despite acting in the public

¹⁶⁹ Pulse, Emmanuel Tormyl, “Domelevo yet to receive emoluments 3 years after forced removal”, 1 February 2023, <https://www.pulse.com.gh/news/local/domelevo-yet-to-receive-emoluments-3-years-after-forced-removal/rew9efk>.

¹⁷⁰ The Sierra Leone Telegraph, Abdul Rashid Thomas, “President Bio suspends Auditor General Lara Taylor-Pearce – Sierra Leone's most trusted public servant”, 12 November 2021, <https://www.thesierraleonetelegraph.com/president-bio-suspends-auditor-general-lara-taylor-pearce-sierra-leones-most-trusted-public-servant/>.

¹⁷¹ Africanist Press, Chernoh Alpha M. Bah, Matthew Anderson, and Mark Feldman, “Sierra Leone: President illegally suspends audit officials amidst controversy over presidential travel expenses and other financial irregularities”, 15 November 2021, <https://africanistpress.com/2021/11/15/sierra-leone-president-illegally-suspends-audit-officials-amidst-controversy-over-presidential-travel-expenses-and-other-financial-irregularities/>.

¹⁷² Sierra Network Radio, “Tribunal Set-Up To Investigate Lara Taylor-Pearce And Her Deputy Begins Sitting Today”, 17 March 2022, <https://snradio.net/tribunal-set-up-to-investigate-lara-taylor-pearce-and-her-deputy-begins-sitting-today/>.

¹⁷³ The Republic of Gambia, National Audit Office, *Management Letter: Audit of the Award of Contract to Securiport for the Administrative and Management of Immigration Security Services at the Banjul International Airport.*, p.7. See also Malagen, Mariam Sankanu, “Explainer: Assessing Securiport contract breach and its subsequent chaos”, 11 March 2023, <https://malagen.org/factchecking/explainer-assessing-securiport-contract-breach-and-its-subsequent-chaos/>.

interest, the whistle-blower was dismissed on the grounds that he had violated internal regulation that forbids employees from expressing an opinion for publication on any matter affecting the organization or its work “without the expressed permission of the Director General”.¹⁷⁴

In **Nigeria**, whistle-blowers have faced threats, intimidation as well as unlawful dismissals for exposing alleged corruption and other unethical behaviour in the police, banks and within the public administration.¹⁷⁵ One example is that of **Joseph Ameh**, an architect and former head of the Physical Planning Division at the Federal College of Education, Asaba, in the Delta State. In 2019 and 2020, Ameh exposed several incidences of fraud and financial improprieties at the higher education institution and as a result claims to have received death threats and warnings to truncate his career progression before being sacked in May 2020 after making internal complaints and petitioning the Independent Corrupt Practices and Other Related Offences Commission (ICPC), one of Nigeria’s anti-corruption agencies.¹⁷⁶ Although the institution’s former provost and others accused were eventually dismissed from their posts and prosecuted by the ICPC over the alleged misuse of funds,¹⁷⁷ the school has failed to reinstate Ameh after appealing a court order to that effect.¹⁷⁸ The appeal process was ongoing as of the date of this report’s publication.

Richard Oghenerhoro, another civil servant and whistle-blower, was dismissed and found guilty of “misconduct, breach of oath of secrecy, unauthorized disclosure of official information and copying of official documents”, contrary to the provisions of the Public Service Rules, after a disciplinary panel hearing in August 2022. The hearing related to revelations the whistle-blower made in 2020, alleging several instances of fake unemployment at the Ministry in 2020.¹⁷⁹

HRDs working on corruption can also face other forms of reprisals or economic harassment hampering their capacity to work. In **Togo**, the newspaper *L’Alternative* of journalist **Ferdinand Ayité** was accused in February 2021 of publishing false information about the Minister of Town Planning, Housing and Land Reform and suspended for four months by the *Haute Autorité de l’Audiovisuel et de la Communication* (HAAC), the media regulatory body,¹⁸⁰ thus depriving the newspaper, already badly hit by the Covid-19 pandemic, of much-needed revenues. Ayité has apparently also been harassed by tax authorities and received much less advertisement revenues, which he sees as economic pressure meant to “bring down his company” because of his stance and work on corruption.¹⁸¹ Since the advent of Covid-19 in January 2020, Ayité estimated that the newspaper has lost almost 40% of its income, a loss that partly influenced his decision to create the YouTube channel “*L’autre journal*”.¹⁸²

5.2.2 THREATS

HRDs working on corruption often receive threats from public or private actors to intimidate them into silence. In addition, they are also put under a great deal of pressure to reveal the identity of their sources of information.

¹⁷⁴ Madi Jobarteh, Facebook post, 18 January 2022,

<https://www.facebook.com/photo/?fbid=10158965132434355&set=a.10151451321019355>.

¹⁷⁵ Premium Times, Dyepkazah Shibayan, “INSIDE STORY: Death threats, job losses – Nigerian whistle-blowers who risked everything for public interest”, 16 March 2023, <https://www.premiumtimesng.com/news/top-news/587877-inside-story-death-threats-job-losses-nigerian-whistleblowers-who-risked-everything-for-public-interest.html#>.

¹⁷⁶ Phone interview with Joseph Ameh, 5 September 2022.

¹⁷⁷ The Guardian, Monday Osayande and Kanayo Umeh, “ICPC arraigns ex-provost, officers over alleged misuse of funds”, 17 March 2021, <https://guardian.ng/news/icpc-arraigns-ex-provost-officers-over-alleged-misuse-of-funds/>; Federal High Court, Asaba, Delta, *FRN vs Dr. Ezoem Nwanze Ignatius (Former Provost of Federal College of Education (Technical), Asaba) & 2 others*, 11 February 2021 <https://corruptioncases.ng/cases/frn-vs-dr-ezoem-nwanze-ignatius-former>.

¹⁷⁸ Sahara Reporters, “Whistleblower wins case against Asaba College as court sets aside School’s decision to sack him”, 28 June 2021, <https://saharareporters.com/2021/06/08/whistleblower-wins-case-against-asaba-college-court-sets-aside-schools-decision-sack-him>.

¹⁷⁹ The Punch, Deborah Tolu-Kolawole and Damilola Aina, “Fake employment: Panel recommends whistle-blower’s sacking”, 9 August 2022, <https://punchng.com/fake-employment-panel-recommends-whistle-blowers-sacking/>.

¹⁸⁰ Article 19, “Togo: Suspension of ‘L’Alternative’ newspaper is an attack on press freedom and the right to information”, 1 March 2021, <https://www.article19.org/resources/togo-suspension-of-l-alternative-newspaper-is-an-attack-on-press-freedom-and-the-right-to-information/>.

¹⁸¹ Phone interview with Ferdinand Ayité, 23 August 2022.

¹⁸² Phone interview with Ferdinand Ayité, 23 August 2022.

INTIMIDATION TO REVEAL THE SOURCES OF ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS

Judicial harassment can be used to pressure journalists, bloggers, and other anti-corruption HRDs into revealing the sources of the corruption allegations they relay to the public.

In **Niger**, web activist and whistle-blower **Ibrahim Bana** estimates that he has been arrested 19 times and prosecuted four times since 2016, often for “disturbing the public order”,¹⁸³ following the publication of corruption allegations on Facebook, which have in the past led to the dismissal of the Chief of Staff of the Air Force and the arrest of the Minister in charge of Communications in the country. In an interview with Amnesty International, the activist suggested that the purpose of the harassment is not necessarily to punish him, but rather to uncover the identity of his source. In his words:

“The first reflex is usually to sue me. The intention is not really to punish me... It is more to try to identify sources since they [the Nigerien authorities] know that [...] when I put forward facts, it's because I have evidence to support them...”¹⁸⁴

In **Côte d'Ivoire**, the journalist **Noël Konan** was convicted of defamation and sentenced to a fine of three million CFA francs in July 2022,¹⁸⁵ over a tweet published on 29 June 2022 in which he alleged that one of the managers of the NSIA Bank might have been implicated in the alleged theft of seven billion CFA francs from former Ivorian President Konan Bédié, - an allegation strongly refuted by the bank management.¹⁸⁶ Prior to his conviction, Konan told Amnesty International that he was questioned for several hours at a hotel about the identity of his source and had refused to reveal his source.¹⁸⁷ He was then summoned by the *Direction de l'information et des traces technologiques*, questioned by the economic and financial crime unit of the police without a lawyer, and detained overnight, in violation of national law that prohibits detention for press offences.

VERBAL AND ONLINE THREATS AGAINST ANTI-CORRUPTION DEFENDERS

Many of the HRDs interviewed by Amnesty International declared that they receive verbal or online threats – anonymous and not - in an attempt to stop their anti-corruption work.

In some West and Central African countries like **Senegal**, environmental HRDs who dare to expose alleged environmental corruption by extractive and fisheries companies, sometimes with the alleged complicity of local police and local officials, have been threatened, intimidated, arbitrarily arrested and detained on trumped-up charges. In Kedougou, Senegal's second largest economic region and a mineral-rich area, **Oudy Diallo**, a departmental councillor, has been threatened and intimidated by local public officials and their associates ever since he created *Alerte Kédougou Environnement*,¹⁸⁸ a community-based organization represented in every municipality of the region.¹⁸⁹ In November 2019, the activist was arrested and detained for 15 days following a complaint of defamation by the territorial administration after he published a Facebook post questioning the legality of land quotas allocated to administrative officials in his area, through opaque and suspicious procedures,¹⁹⁰ and received a two-month suspended sentence. Two years later, he received threatening phone calls from public officials after denouncing illegal mining activities.¹⁹¹ Despite receiving persistent threats, the activist is committed to continue his fight relentlessly, stating:

¹⁸³ Media Foundation for West Africa, “Opposition Activist Released after Three Days in Police Custody”, 24 September 2020, <https://www.mfwa.org/opposition-activist/-released-after-three-days-in-police-custody/>; Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights* (POL 10/6700/2018), 22 February 2018, *Amnesty International Report 2017/18: The state of the world's human rights* - Amnesty International, p. 281.

¹⁸⁴ Phone interview with Ibrahim Bana, 11 November 2022, author's translation, emphasis added.

¹⁸⁵ Committee to Protect Journalists, “Ivory Coast journalist Noël Konan jailed overnight, fined over a tweet”, 29 July 2022, <https://cpj.org/2022/07/ivory-coast-journalist-noel-konan-jailed-overnight-fined-over-a-tweet/>.

¹⁸⁶ NSIA Banque Cote d'Ivoire, Linked In post, 2022, https://www.linkedin.com/posts/nsia-banque-ci_a-la-suite-des-graves-all%C3%A9gations-publi%C3%A9es-activity-6947928072012660736-ktGh?utm_source=linkedin_share&utm_medium=member_desktop_web.

¹⁸⁷ Phone interview with Noël Konan, 1st December 2022.

¹⁸⁸ Alerte Kedougou Environnement, Facebook post, 3 October 2022, <https://www.facebook.com/profile.php?id=100076102532602>.

¹⁸⁹ Interview in person with Oudy Diallo, Founder of *Alerte Kédougou Environnement*, Dakar, Senegal, 9 February 2023; author's translation.

¹⁹⁰ Leral, “Kédougou: l'environnementaliste Oudy Diallo arrêté après cette publication sur Facebook”, 26 November 2019, https://www.leral.net/Kedougou-l-environnementaliste-Oudy-Diallo-arrete-apres-cette-publication-sur-Facebook_a263958.html. Leral, “Kédougou: l'environnementaliste Oudy Diallo arrêté après cette publication sur Facebook”, 26 November 2019,

https://www.leral.net/Kedougou-l-environnementaliste-Oudy-Diallo-arrete-apres-cette-publication-sur-Facebook_a263958.html.

¹⁹¹ Phone interview with Oudy Diallo, 20 January 2023.

“I do this for my children, not the ones I had myself, but the children of the community, those who will come after me. I am often told to think about my mother. My mother cannot live my life. I wouldn't want people to interfere with my struggle. This is my fight. I have prepared my children and that's the main thing.”¹⁹²

In **Gambia**, prominent activist **Madi Jobarteh**, has come under pressure after making repeated calls for the removal of the Minister of Lands due to alleged mismanagement of public lands. On 2 May 2022, most prominently, President Adama Barrow verbally attacked Jobarteh, referring to him as a “troublemaker” and accusing him of bringing violence to the country during an address at the State House. This attack was apparently related to Jobarteh’s denunciations of alleged land management corruption in the country.¹⁹³ Since December 2022, Jobarteh has received death threats on Facebook, including a couple of posts from “The Independent News”, stating that “sooner or later he will disappear”. The activist believes the message to be from a government propaganda outlet and claims to have reported the threats to the police and the national human rights institution.¹⁹⁴

5.2.3 ATTACKS ON PROPERTY AND ON THE PHYSICAL INTEGRITY OF ANTI-CORRUPTION DEFENDERS

Amnesty International has identified cases of anti-corruption HRDs who were physically attacked after making revelations about corrupt practices in their respective countries. This was the case in **Nigeria** where, after being arrested by Nigeria’s police in relation to an article in which he accused former Governor of southern Cross River State of corruption, journalist and online publisher **Agba Jalingo** spent 36 hours in the trunk of a police vehicle from Lagos to Calabar, the capital of Cross River State, and an additional 34 days in police detention, chained to a deep freezer, without charge.¹⁹⁵ In July 2021, the ECOWAS Court of Justice found that the government had breached the Banjul Charter’s provisions on international fair trial standards¹⁹⁶ and ordered it to pay Jalingo NGN 30 million (around 65,000 dollars) as compensation for ill-treating and torturing him while in detention in Cross River State.¹⁹⁷ The Court judgement has however not been obeyed by the Nigerian government, which is yet to compensate Jalingo for his unlawful detention. Neither did it stop the authorities from continuing to intimidate the investigative journalist, as shown in sub-Section 3.1.1.

In **Mali**, for example, **Moussa Touré**, the president of the NGO *Association Malienne de Lutte contre la Corruption et la Délinquance Financière* (AMLC) was abducted and beaten by four hooded men in military uniform, who stole his laptop and phone and left him for dead in October 2020. The anti-corruption activist believes that this attack was connected to a television interview he had given a few days earlier about his collaboration with two of the soldiers who first blew the whistle on the alleged misappropriation of soldiers’ bonuses, unjustified deductions from their salaries, misappropriation of dead soldiers’ salaries in the army,¹⁹⁸ and who were facing retaliation because of the disclosures.¹⁹⁹

HRDs who denounce human rights violations and corruption may also face reprisals because of their engagement with national, regional and international bodies. On 12 March 2019 in **Congo**, the office of the *Association pour les Droits de l'Homme et l'Univers Carcéral* (ADHUC) was broken into, and the mainframe computer and important documents stolen, just as the NGO’s late president Loamba Moké visited Switzerland to speak about the country’s human rights situation and about multinational oil companies’ alleged corrupt practices in the country during the consideration of its Universal Periodic Review (UPR)

¹⁹² Phone interview with Oudy Diallo, 20 January 2023.

¹⁹³ Amnesty International, “Human rights defender at risk in Gambia” (AFR 27/5568/2022), 5 May 2022, https://www.amnesty.org.uk/files/2022-05/UA04022.pdf?VersionId=k9_gGI5ds5Cw3eB_ynyaMsN1elyqn5dZ.

¹⁹⁴ There were messages so shall we put “electronic communications” with Madi Jobarteh, 28 December 2022 and 10 December 2023.

¹⁹⁵ Phone interview with Agba Jalingo, 31 November 2022.

¹⁹⁶ The Guardian, Bertram Nwannekanma, “Agba Jalingo: ECOWAS court awards N30m damages against FG”, 10 July 2021, <https://guardian.ng/news/agba-jalingo-ecowas-court-awards-n30m-damages-against-fg/>.

¹⁹⁷ The Guardian, Bertram Nwannekanma, “Agba Jalingo: ECOWAS court awards N30m damages against FG”, previously cited.

¹⁹⁸ Djeliba, “Administration militaire au Mali : Au moins 44 milliards de primes de soldats détournés”, 7 June 2020, <https://www.djeliba24.com/administration-militaire-au-mali-au-moins-44-milliards-de-primes-de-soldats-detournes/>; Mali Actu, “Mali : Non-paiement de prime depuis 3 mois et retenues injustifiées sur les salaires des militaires : Le Procureur du Pôle économique et financier saisi”, 16 May 2020, <https://maliactu.net/mali-non-paiement-de-prime-depuis-3-mois-et-retenues-injustifiees-sur-les-salaires-des-militaires-le-procureur-du-pole-economique-et-financier-saisi/>.

¹⁹⁹ Phone interview with Moussa Touré, 23 February 2023.

report at the Human Rights Council.²⁰⁰ In a documentary that retraced his visit²⁰¹ and in a letter to supporters seen by Amnesty International, the late activist speculated that the theft might have been orchestrated by the government, in an attempt to discourage ADHUC from pursuing its mission of protecting and promoting human rights in Congo.

In **Cameroon**, the award-winning health economist **Albert Ze** had his house ransacked, and a few data-related items such as his tablet, phone and hard drive, stolen in September 2021, and believes that this act was connected to his participation, a year earlier, in the Supreme Court audit of Covid-19 funds. He had agreed to contribute to the audit on condition of anonymity but was surprised to see his name listed in the report.²⁰² This was however not the first and only time that the expert would face threats and retaliation because of his work. Between 2017 and 2018, he received several threatening messages warning him that “we follow you everywhere. We know where you are and what you do...it's at your own risk” after he refused to accept the sum of 15 million CFA francs (dollars) offered to him by unknown individuals in exchange for his silence on what he saw as poor health systems governance and financing in Cameroon.²⁰³ Ze's house was broken into once again in March 2022, following his persistent calls for accountability for the alleged stolen Covid-19 funds on social media. He was subsequently told to “expect more visits” if he does not stay quiet.²⁰⁴

OLANREWAJU SURAJU: PERSECUTED IN NIGERIA BECAUSE OF HIS INVESTIGATIVE AND ADVOCACY WORK AROUND ALLEGED CORRUPTION IN NIGERIA'S OIL INDUSTRY



←  Olanrewaju Suraju, Nigeria.

In the early hours of 28 March 2022, five armed assailants reportedly broke into the house of **Olanrewaju Suraju**, one of **Nigeria's** foremost anti-corruption activists and head of Human and Environmental Development Agenda (HEDA Resource Centre). They physically assaulted him and his wife and stole all their belongings. This attack occurred after a year of persecution through smear campaigns and judicial prosecution because of his investigative and advocacy work around alleged corruption in Nigeria's oil industry. In February 2021, Suraju was taken to court by former Attorney General Mohammed Bello Adoke for forgery and cyberstalking, after a letter used in judicial proceedings as part of the court case brought against one of the multinational oil companies in Italy and alleged to be written by Mr. Adoke was posted on HEDA's website.²⁰⁵ The claim of forgery was later dropped in September 2021, and that of cyberstalking was eventually dropped on 10 March 2022.

²⁰⁰ Un Web TV, “Congo, UPR report consideration, 35th meeting, 40th Regular Session Human Rights Council”, 14 March 2019, <https://media.un.org/en/asset/k1k/k1kljuotik>.

²⁰¹ See Radio Television Suisse_ Les Productions du Noyer, “Genève, du pétrole à tout prix”, 2021, <https://www.youtube.com/watch?v=Vi7b1TKpPZ8>.

²⁰² Audit Bench of Cameroon's Supreme Court, *Audit of the Special National Solidarity Fund to fight the Coronavirus and its economic and social impacts* (previously cited), p.7.

²⁰³ Phone interview with Albert Ze, 2 February 2023. See also Albert Ze, Facebook post, 24 June 2021, <https://www.facebook.com/albertleanne/posts/1141057963061502>.

²⁰⁴ Phone interview with Albert Ze, 2 February 2023.

²⁰⁵ Premium Times, Nasir Ayitogo, “Alleged Forgery: Police write Suraju's allies, explain indictment of HEDA chair”, 30 October 2021, <https://www.premiumtimesng.com/news/top-news/492533-alleged-forgery-police-write-surajus-allies-explain-indictment-of-heda-chair.html>.

5.2.4 KILLINGS

Since 2018, three anti-corruption journalists from the region have been killed: **Ahmed Hussein-Suale Divela** in **Ghana** and those of **Martinez Zogo** and **Jean-Jacques Ola Bébé** in **Cameroon**.

AHMED SUALE DIVELA: KILLED IN GHANA FOR EXPOSING CORRUPTION IN AFRICAN FOOTBALL



Ahmed Suale Divela, Ghana.

On 16 January 2019, Ghanaian investigative journalist Ahmed Hussein-Suale Divela was killed by two unidentified gunmen on a motorbike in Madina, a suburb of the Ghana's capital, Accra. Divela was said to be on his way home after spending the day with friends when he was shot three times and died on the spot.²⁰⁶ The authorities would not be drawn into "speculations" about the causes of Divela's murder, but many believe that it was connected to his work as an investigative journalist.²⁰⁷ Divela had just completed work on "Number 12", a 2018 investigative report on allegations of corruption in African football which resulted in bans for at least 53 football officials and eight referees in several countries.²⁰⁸

Prior to his assassination, according to his family, Divela had received death threats, including from Hon. Kennedy Agyapong, a member of parliament (MP) from the ruling New Patriotic Party. In a footage of a television programme broadcast on 30 May 2018 on the television channel Net 2 TV, which Hon. Kennedy Agyapong owns, the MP was also shown threatening and inciting violence against the late investigative journalist, calling on listeners to "break his ears" and "beat him", while pointing to Divela's pictures and revealing his address.²⁰⁹ He previously denied any responsibility in the murder of the journalist.²¹⁰

The death threats against Divela were reported to police and to some media organizations,²¹¹ but the authorities apparently took no appropriate action to protect the journalist and prevent further threats or attacks against him.²¹² "They took it lightly", according to one of Divela's family representatives, believing that those making the threats "will just make noise; they won't do anything."²¹³

²⁰⁶ Premium Times, Samuel Ogunidipe, "Ghanaian undercover reporter shot dead", 17 January 2019, premiumtimesng.com/foreign/west-africa-foreign/306180-ghanaian-undercover-reporter-shot-dead.html; Anas Aremeyaw Anas, "We don't care you are journalists. The rule is simple. We will kill you." The Line of Fire with Ramita Navai, June 2022, open.spotify.com/episode/6LRd1kdZl6iY0o1aGPK7WV?si=240bb9e080e64dc7&nd=1; <https://twitter.com/anasglobal/status/1085744814619086849>.

²⁰⁷ Media Foundation for West Africa, "Where's Ghana's Attorney General going with this curveball on the Ahmed Suale murder?" 12 January 2023, <https://www.mfwa.org/issues-in-focus/where-ghanas-attorney-general-going-with-this-curve-ball-over-the-ahmed-suale-murder/>.

²⁰⁸ Cassandra Negley, "Journalist who helped expose African soccer corruption shot dead in Ghana", 17 January 2019, uk.finance.yahoo.com/news/journalist-helped-expose-african-soccer-corruption-shot-dead-ghana-172940912.html.

²⁰⁹ Anas Aremeyaw Anas, Twitter post, 17 January 2019, twitter.com/anasglobal/status/1085744814619086849: "Sad news, but we shall not be silenced. Rest in peace Ahmed".

²¹⁰ BBC, Joel Gunter, "Murder in Accra: The life and death of Ahmed Hussein-Suale", 30 January 2019, <https://www.bbc.co.uk/news/world-africa-47002878>.

²¹¹ Committee to Protect Journalists, "Ahmed Hussein-Suale Divela (killed)", 16 January 2019, cpj.org/data/people/ahmed-hussein-suale-divela/.

²¹² Online interview with Anas Aremeyaw Anas, 7 September 2022.

²¹³ Phone interview with Ahmed Divela's family representative, 14 January 2023.

Anas Aremeyaw Anas, a prominent Ghanaian investigative journalist and former employer of Divela, also deplored this lack of protection by authorities in response of these threats and said that “they won’t do anything.”²¹⁴ The journalist recounts that:

“...When Ahmed Suale kept on getting the threats, when his pictures were shown, we reported this to the police. Government was aware. It was an everyday occurrence. Yet, government would not respond. Police would not respond. And that’s what happens. Then, the people think that “well, we can carry the thing. Let’s proceed. Let’s keep going. Nobody’s talking.” That’s how journalists get killed. When society sits down and does nothing about open threats.”²¹⁵

Four years on, the investigation into the murder of Divela is still ongoing and no one has yet been brought to justice.²¹⁶ As evidenced in Ghana and in other contexts, it is this lack of accountability that enables the cycle of attacks and killings to continue with impunity.

“All of us know that ...the world cannot move without journalists. And these journalists are the people we are killing... when we finish killing them, who would now give us information? Yes, we know that Ahmed is gone and whatever we do will not bring him back. But what we are asking for, is not to see this happen again to others. That is it!”

Interview with Ahmed Divela’s family representative, 14 January 2023.

In **Cameroon**, journalist and head of privately-owned radio *Amplitude FM* **Martinez Zogo** was abducted by unidentified men on 17 January 2023 and his mutilated body found in a wasteland in the suburbs of Yaoundé, Cameroon’s capital, on 22 January 2023.²¹⁷ Zogo was investigating and had been reporting on the alleged embezzlement of hundreds of billions of CFA francs involving political and business figures close to the government. A joint investigation was launched into the abduction, torture and murder of the journalist on 27 January, and around 20 members of Cameroon’s General Directorate for External Investigations (DGRE), Cameroon’s counterintelligence agency, including its boss, Maxime Eko Eko, and special operations director, Justin Danwe, as well as a prominent media mogul and business tycoon Amougou Belinga, were arrested in connection with this crime in early February 2023.²¹⁸ On 4 March 2023, all three men were charged with complicity in the torture of Zogo and remanded in custody.²¹⁹

Less than two weeks after the disappearance of Zogo, on 3 February 2023, the body of one of his collaborators, Orthodox priest and radio presenter **Jean-Jacques Ola Bébé** was found with bullet wounds to his face close to his home in Mimboman, a suburb of Yaoundé.²²⁰ Like Zogo, Ola Bébé was known for being outspoken about corruption and other governance issues in the country. He had commented about Zogo’s murder shortly before his death and, according to media reports, complained about being followed by unidentified men.²²¹

²¹⁴ Phone interview with Ahmed Divela’s family representative, 14 January 2023.

²¹⁵ Online interview with Anas Aremeyaw Anas, 7 September 2022.

²¹⁶ Media Foundation for West Africa, “Where’s Ghana’s Attorney General going with this curveball on the Ahmed Suale murder?” 12 January 2023, <https://www.mfwa.org/issues-in-focus/where-ghanas-attorney-general-going-with-this-curve-ball-over-the-ahmed-suale-murder/>.

²¹⁷ Amnesty International, “Cameroon: Martinez Zogo’s death must not go unpunished”, 28 January 2023, [Cameroon: Martinez Zogo’s death must not go unpunished - Amnesty International](https://www.amnesty.org/en/latest/news/2023/01/cameroon-martinez-zogo-death-must-not-go-unpunished/).

²¹⁸ Reporters Without Borders, “Cameroonian journalist Martinez Zogo’s murder was a state crime, official confesses”, 3 February 2023, <https://rsf.org/en/cameroon-journalist-martinez-zogo-s-murder-was-state-crime-official-confesses>; RSF, “4. More damning evidence in Martinez Zogo murder investigation in Cameroon”, 9 February 2023, <https://rsf.org/en/more-damning-evidence-martinez-zogo-murder-investigation-cameroon>.

²¹⁹ VOA News, Moki Edwin Kindzeka, “Cameroon Media Mogul, Officers Charged in Journalist’s Death”, 6 March 2023, <https://www.voanews.com/a/cameroon-media-mogul-officers-charged-in-journalist-s-death/6991728.html>.

²²⁰ Committee to Protect Journalists, “Jean-Jacques Ola Bebe”, <https://cpj.org/data/people/jean-jacques-ola-bebe/>;

²²¹ Committee to Protect Journalists, “Jean-Jacques Ola Bebe” (previously cited); International Press Institute (IPI), “Cameroon: IPI demands an investigation into the killing of Jean Jacques Ola Bebe”, 16 February 2023, <https://ipi.media/cameroon-ipi-demands-an-investigation-into-the-killing-of-jean-jacques-ola-bebe/>.

6. LACK OF A SAFE AND ENABLING LEGAL ENVIRONMENT FOR ANTI-CORRUPTION DEFENDERS IN WEST AND CENTRAL AFRICA

“An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system, and accountability are essential for both successful anti-corruption strategies and the enjoyment of human rights, and thus enable the work of anti-corruption human rights defenders.”

UN Special Rapporteur on HRDs, *At the heart of the struggle: human rights defenders working against corruption*, 28 December 2021, para. 39.

A major factor explaining why human rights violations against anti-corruption HRDs such as those detailed in Section 5 are allowed to happen in West and Central Africa and why, for the most part, both the alleged corrupt practices they expose and the abuses that ensue from or are connected to them are going unpunished, has to do with the lack of a safe and enabling legal environment for HRDs and anti-corruption HRDs in particular. Not only are they operating in a context of severe restrictions on human rights and civic space (see Section 3), but they also lack specific protection to achieve their work.

As stated in Section 4, international human rights and anti-corruption law places on states the obligation to create an enabling environment that allows anti-corruption defenders to hold governments to account and do their work uninhibited. This requires “a robust legal framework compliant with international standards and a strong national human rights protection system” that safeguards those rights that are fundamental to the activities and safety of HRDs, such as the rights to freedom of peaceful assembly and association, to freedom of opinion and expression, access to information, equal participation in public affairs, the protection of the physical and psychological integrity, the rights of access to justice and to a fair trial, as well as their right to effective remedy.²²²

²²² UN High Commissioner for Human Rights, Report: *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned*, 11 April 2016, UN Doc. A/HRC/32/20, para. 12-25.

National legal protection for HRDs in line with international human rights norms is essential for them to do their work, without fear of reprisals and it contributes to the broader goals of upholding human rights, good government, sustainable development and respect for the rule of law, especially considering the crucial role that HRDs play in the realization and protection of the rights in society.²²³ This is particularly relevant for anti-corruption HRDs, given the specificity, complexity, and sensitivity of their work and their activities, which often clash with powerful vested interests, and result in multiple threats and attacks (See Section 5). As is the case with other most at-risk HRDs,²²⁴ such attacks on anti-corruption defenders do not only affect them and others in their immediate professional and social circles. But they also have wider consequences, as they often result in self-censorship, limit public awareness and public scrutiny of public officials, and create widespread fear and a chilling effect in society as a whole, thus putting the work and safety of anti-corruption defenders in further jeopardy.

Access to justice, through an independent and effective judiciary, as well as access to national human rights institutions and regional and international human rights mechanisms, is equally integral to a supportive legal framework for HRDs.²²⁵ An independent and effective judiciary as well as other national accountability mechanisms play an important role in the prosecution of corruption offences and the promotion and protection of human rights. This too is crucial for the work and safety of anti-corruption HRDs, as it improves trust and confidence in the national legal system's ability to effectively tackle any wrongdoings that they may uncover and guarantees that they would fully enjoy their human right of access to justice and effective remedies in case of human rights violations committed against them, the people they are connected to, and/or those whose rights they defend.

In West and Central Africa, however, a safe and enabling legal system is lacking. While authorities have adopted repressive laws and provisions restricting freedom of expression and freedom of peaceful assembly, and instrumentalized existing laws to repress anti-corruption HRDs who expose cases of corruption and human rights abuses, they have failed to put in place strong legal protection and accountability frameworks that ensure that these HRDs can operate freely and effectively without fear of reprisals.

6.1 INADEQUATE LEGAL PROTECTION FOR HUMAN RIGHTS DEFENDERS

States in West and Central Africa have in their constitutions and laws provisions guaranteeing many of the fundamental rights that should protect anti-corruption defenders. They have also led the way in the adoption of laws to protect HRDs in Africa. These laws are meant to ensure: a conducive legal, institutional and administrative framework for the work of defenders; an effective protection policies and mechanisms, including public support for the work of defenders; an effective fight against impunity and access to justice for violations against defenders; strong, independent and effective national human rights institutions; safe and open access to the United Nations and international human rights bodies.²²⁶

²²³ International Service for Human Rights, *Model law for the recognition and protection of human rights defenders*, 2016, https://academy.ishr.ch/upload/resources_and_tools/ishr_Model_Law_for_the_recognition_and_protection_of_human_rights_defenders_en.pdf.

²²⁴ This is the case, for example, of environmental defenders. See Amnesty International, *Stop burning our right! What governments and corporations must do to protect humanity from the climate crisis* (Index: POL 30/3476/2021), June 2021, *Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis: executive summary - Amnesty International*, pp.106-107.

²²⁵ UN HCR, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society*, previously cited, para. 21.

²²⁶ Special Rapporteur on the situation of human rights defenders, Report: on the situation of human rights defenders, December 2013, UN Doc. A/HRC/25/55.

Such legislation and their implementing decrees currently exist in Côte d'Ivoire,²²⁷ Mali²²⁸ and Niger,²²⁹ whereas in Benin, Cameroon, Chad, Congo, Guinea, Senegal, Sierra Leone, and Togo, draft laws are currently under discussion. Both the adopted laws and the draft laws draw, albeit to different extents, on the 'model law' on HRDs that emerged out of a consultative process led by the International Service for Human Rights in consultation with over 500 HRDs from more than 110 states across the world,²³⁰ and on a collaboration between civil society, other HRDs and their governments.

The legal protection of HRDs and the legal recognition of their rights to freedom of expression and access to information do not however guarantee the full exercise or enjoyment of these rights in practice. As the Togolese investigative journalist Ferdinand Ayité noted, "there is a certain guarantee in the texts, but the reality is quite different."²³¹ This paradox is caused partly by the inclusion, in the adopted legal texts, of restrictive provisions that are incompatible with international human rights standards. An analysis of HRDs laws illustrate this point.²³² In Mali, the 2020 implementing decree²³³ and 2021 decision²³⁴ that complement the 2018 HRD law²³⁵ substantially limited its application to only a small group of HRDs. Indeed, whereas the main law defines HRDs as "anyone who, individually or in a group, acts or seeks to act to promote, protect and realize human rights and fundamental freedoms at the local, national, regional and international levels",²³⁶ the subsequent texts refer to HRDs as "any person belonging to a legally constituted association, organization or institution...".²³⁷ What is more, to justify their status, HRDs are required to obtain and pay for identity cards from the Ministry of Human Rights along with other relevant documents.²³⁸ These provisions have the potential to exclude various types of HRDs, including anti-corruption defenders, who may not belong to any specific associations or institutions, and prevent them from benefiting from the protection of the legal framework.

Niger's legal framework for the protection of HRDs also suffer from several deficiencies. Under Section 2 of the 2022 HRD law, HRDs are required to "refrain from actions that may jeopardize social and national solidarity, national independence and sovereignty, and territorial integrity", "ensure the objectivity and credibility of information before taking any action in defence or criticism and avoid any propagation of false news" and "ensure that the information they disseminate is neither defamatory nor offensive and that it is disseminated in accordance with the laws and regulations in force".²³⁹ HRDs are further obligated to submit to the Ministry of Human Rights and the Court of Auditors an annual report on their activities, including details of the funds received, their origins and their use.²⁴⁰

In Côte d'Ivoire too, the main law obliges HRDs to prepare and submit annual activity reports to the Minister for Human Rights.²⁴¹ Furthermore, the mechanism for the protection of HRDs that was established in 2021 and placed under the authority of four separate ministries (the ministries of human rights, justice, defense, and security) does not allow for the active participation of HRDs as members, despite them being the main

²²⁷ Cote d'Ivoire, Law 2014-388 on the promotion and protection of human rights defenders (unofficial translation), 20 June 2014, <https://www.ci-ddh.org/wp-content/uploads/2014/08/Loi-N%C2%B0-2014-388-du-20-Juin-2014-portant-pro-motion-et-protection-des-d%C3%A9fenseurs-des-droits-de-l'Homme.pdf>; Cote d'Ivoire, Decree 2017-121 on the modalities of application of Law 2014-388 of 20 June 2014 on the promotion and protection of human rights defenders, 22 February 2017, <https://www.ci-ddh.org/wp-content/uploads/2017/05/De%CC%81cret-dapplication-2017-promotion-et-protection-des-DDH.pdf>; and Cote d'Ivoire, Inter-ministerial Order 972/MJDH/MEMD/MIS on the creation of the mechanism for the protection of human rights defenders, 10 November 2021, <https://n5.sync.com/dl/948d5c3c0/zra523yn-ni5pckb5-cjwp8z9e-zjks32b/view/default/8635794430000>.

²²⁸ Mali, Law 2018-003 regarding Human Rights Defenders (unofficial translation), 12 January 2018 https://ishr.ch/sites/default/files/documents/mali_loi_relative_aux_ddh.pdf.

²²⁹ Niger, Law establishing the rights and duties of human rights defenders in Niger (unofficial translation), 15 June 2022, <https://ishr.ch/wp-content/uploads/2022/07/Loi-fixant-les-droits-et-les-devoirs-des-defenseurs-des-droits-de-l'Homme-au-Niger-2022.pdf>.

²³⁰ International Service for Human Rights, *Model law for the recognition and protection of human rights defenders* (previously cited).

²³¹ Online interview with Ferdinand Ayité, Togolese investigative journalist, 23 August 2022.

²³² International Service for Human Rights, Protection instruments, <https://ishr.ch/defenders-toolbox/national-protection/> (accessed in February 2023).

²³³ Mali, Decree 2020-0087/P-RM establishing the modalities of application of the law on human rights defenders (unofficial translation), 2020, https://ishr.ch/sites/default/files/documents/decret_ndeg2020-0087_fixant_les_modalites_dapplication_de_la_loi_relative_aux_defenseurs_des_droits_de_l'homme.pdf.

²³⁴ Mali, Ministry of Justice and Human Rights, Decision 2021-237/MJDH-SG establishing the characteristics and modalities for granting and withdrawing the professional card of human rights defenders (unofficial translation), 21 Sept 2021 https://ishr.ch/wp-content/uploads/2021/11/1633114124456_Decision-des-defenseurs-des-Droits-de-l'Homme.pdf.

²³⁵ Mali, Law 2018-003 regarding Human Rights Defenders (previously cited), 12 January 2018.

²³⁶ Mali, Law 2018-003, 12 January 2018 (previously cited), Article 2.

²³⁷ See Mali, Decree 2020-0087/P-RM (previously cited), Article 2.

²³⁸ See, for example, Mali, Decree 2020-0087/P-RM (previously cited), Article 3.

²³⁹ Niger, Law establishing the rights and duties of human rights defenders in Niger (previously cited), Article 15.

²⁴⁰ Niger, Law establishing the rights and duties of human rights defenders in Niger (previously cited), Article 17.

²⁴¹ Cote d'Ivoire, Law 2014-388 on the promotion and protection of human rights defenders (unofficial translation), 20 June 2014, <https://www.ci-ddh.org/wp-content/uploads/2014/08/Loi-N%C2%B0-2014-388-du-20-Juin-2014-portant-pro-motion-et-protection-des-d%C3%A9fenseurs-des-droits-de-l'Homme.pdf>, Article 13.

beneficiaries of the mechanism²⁴² - a point of concern raised by the ACHPR during the country's last review during the 73rd Ordinary Session of the ACHPR in 2022.

6.2 THE SPECIFIC CASE OF WHISTLE-BLOWER PROTECTION LAWS

Whistle-blowers can be employees or officials of public or private organizations who report wrongdoing that has occurred, is occurring or is likely to occur, including human rights violations, corruption, mismanagement or waste of resources, dangers to the environment and abuse of public office.²⁴³ And so, legal and policy frameworks that protect them and their sources are essential to encourage reporting or disclosure of wrongdoing and ensure that those willing and able to shed light on what is hidden do so in an open manner, in accordance with the rights to freedom of expression and access to information.²⁴⁴ Specific legislation on the protection of whistle-blowers should, for instance, protect them against civil and criminal proceedings and other forms of retaliation, including disciplinary actions, dismissals, suspensions, demotions, physical and emotional harm or harassment.²⁴⁵ It should provide for independent oversight bodies with the powers and resources to receive and investigate reported retaliation or threat of retaliation, as well as a public interest defense if the public interest in disclosure of the information held outweighs the public interest in non-disclosure.²⁴⁶ Employers can be held personally liable if they victimize the person who denounces malpractice or if they fail to prevent any acts of victimization, unless they can show that they took all reasonable steps to prevent it from happening. Such legislation can also prevent an employer from enforcing a confidentiality or non-disclosure agreement which seeks to prevent whistleblowing.

In the West and Central Africa region, however, only **Ghana** has adopted a specific legislation to protect and ensure access to remedies for those who report corrupt practices and other misconduct in the public interest.²⁴⁷ In **Benin**, the 2011 anti-corruption law²⁴⁸ and a 2013 implementing decree²⁴⁹ provide whistle-blowers, witnesses, experts, victims of corruption, their relatives as well as members of anti-corruption bodies with limited 'special protection' against possible acts of retaliation or intimidation for reporting corrupt behaviour. In **Togo**, the High Authority for the Prevention of and Fight against Corruption and related crimes included the development of proposed measures to protect and motivate whistle-blowers in its 2017-23 action plan, whereas the Public Procurement Regulatory Authority has announced the availability of a hotline that whistle-blowers can use to denounce corrupt acts.²⁵⁰ In other contexts, such as in **Senegal** and **Congo**, the proposed draft HRDs laws include specific references to whistle-blowers, while in **Côte d'Ivoire** and **Nigeria**, national authorities are currently developing standalone whistle-blower protection laws, in collaboration with CSOs and other actors.

In **Nigeria**, the debate on whistle-blower protection dates back to 1999²⁵¹ and although various pieces of legislation contain broad provisions on whistle-blowing,²⁵² it was only in December 2016 that a specific whistle-blowing policy was adopted under the government of former President Muhammadu Buhari. The policy includes provisions on procedures and processes for whistle-blowing and provides for protection

²⁴² Côte d'Ivoire, Inter-ministerial Order 972/MJDH/MEMD/MIS on the creation of the mechanism for the protection of human rights defenders (unofficial translation), 10 November 2021, Article 3.

²⁴³ This definition partly draws on Principle 37 of the Tshwane Principles. See Open Society Justice Initiative, *The Global Principles on National Security and the Right to Information (Tshwane Principles)*, 12 June 2013, <https://www.justiceinitiative.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>.

²⁴⁴ UN Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on the promotion and protection of the right to freedom of opinion and expression, 8 September 2015, UN Doc. A/70/361, para. 1-2.

²⁴⁵ Tshwane Principles, Principles 40-43. See also Platform to Protect Whistle-blowers in Africa (PPLAAF), Chantelle de Sousa, *#OccupationalDetriment101: What it really looks like for whistle-blowers and the costs*, March 2023, <https://www.pplAAF.org/2023/03/27/occupational-detriment-101.html>.

²⁴⁶ Tshwane Principles, Principle 41 (C).

²⁴⁷ Ghana, Whistle-blower Act, 2006, <http://www.drasuszodis.lt/userfiles/Ghana%20Whistleblwer%20Act.pdf>.

²⁴⁸ Benin, Law on The Fight against Corruption and Other Connected Infractions in The Republic of Benin (unofficial translation), 2011, Article 31.

²⁴⁹ Benin, Decree 20,13-122 on the Conditions of Special Protections for Whistle-blowers, Witnesses, Experts and Victims (unofficial translation), 06 March 2013, <https://sgg.gouv.bj/doc/decret-2013-122/> Article 4.

²⁵⁰ Lomé Actu, Geraldo Junior, "Lutte contre la corruption au Togo: Pourquoi les lanceurs d'alerte sont-ils importants?" 15 December 2022, <https://lomeactu.com/lutte-contre-la-corruption-au-togo-pourquoi-les-lanceurs-d-alerte-sont-ils-importants/>.

²⁵¹ Phone interview with Auwal Rafsanjani, Executive Director of CISLAC/ Transparency International Nigeria, Nigeria, 20 January 2023.

²⁵² Ejemen Ojibo, "An Overview of the Effectiveness of the Nigeria Whistleblowing Framework", Global South Dialogue on Economic Crime, https://gsdec.network/7750/an-overview-of-the-effectiveness-of-the-nigeria-whistleblowing-framework/#_ftn1.

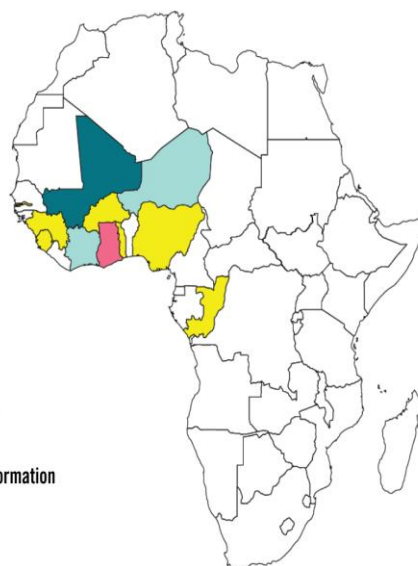
Senegal is the only member of both EITI and the OGP which has not enacted ‘access to information’ legislation. In **Nigeria**, the Freedom of Information Act was adopted by the National Assembly and signed into law in April 2011, after first being proposed in 1999.²⁶⁵ In **Ghana**, the law on access to information was passed in 2019, after 20 years of civil society advocacy.²⁶⁶ On 1 July 2021, **Gambia** adopted an Access to Information Bill,²⁶⁷ almost five years after the drafting process started, although there is still no implementing plan and the Information Commission established by the Act²⁶⁸ is yet to be created.

It is important to note that in certain contexts where they are used to request information, information holders sometimes demand high fees for the production of the information as a deterrent.²⁶⁹ This is in violation of Principle 31.4 of the 2019 AU Declaration of principles on freedom of expression and access to information in Africa, which clearly stipulates that “no fees shall be payable other than the reasonable reproduction cost of requested information”.²⁷⁰ In **Ghana**, for example, the investigative journalism outlet *The Fourth Estate* petitioned the Right to Information Commission for a review of the National Minerals Commission’s decision to demand \$1000 before releasing the requested list of licensed mining companies and those whose licenses had been revoked. The decision was eventually revoked, and the National Minerals Commission was ordered to charge only \$0,33 for the release of the same information.²⁷¹ Such constraints exist at all levels of government and are even more pronounced at the local level, where access to information laws is not always domesticated,²⁷² and where local officials often claim that “the information requested does not exist.”²⁷³

LEGAL PROTECTIONS

IN PLACE

- Law to protect human rights defenders
 - Mali
- Law on access to information
 - Burkina Faso, Congo, Gambia, Guinea, , Nigeria , Sierra Leone and Togo
- Laws to protect whistleblowers and on access to information
 - Ghana
- Laws to protect human rights defenders and on access to information
 - Côte d'Ivoire and Niger.



↑ Legislation adopted to protect HRDs, including anti-corruption HRDs, in West and Central Africa.

²⁶⁵ See Federal Republic of Nigeria, Freedom of Information Act, 28 May 2011, <https://www.cbn.gov.ng/FOI/Freedom%20of%20Information%20Act.pdf>.

²⁶⁶ See Ghana, Right to Information Act, 2019, (ACT 989), https://www.africanplatform.org/fileadmin/user_upload/Ghana-RTI-Act__1_.pdf.

²⁶⁷ Republic of Gambia, Access to Information Bill, 2021, <https://drive.google.com/file/d/1AIS7yeVNTBDlsgmVzum4BpK1GAOmPZWM/view>.

²⁶⁸ See Gambia, Access to Information Bill (previously cited), 2021, Part V.

²⁶⁹ Online interview with Muheeb Saeed, Senior Programme Officer, MWFA, 22 August 2022.

²⁷⁰ African Union (AU), Declaration of principles on freedom of expression and access to information in Africa, previously cited.

²⁷¹ Media Foundation for West Africa, “Ghana’s Information Commission orders release of information to journalist at \$0.33 instead of \$1,000 demanded by state agency”, 21 July 2021, <https://www.mfwa.org/impact-stories/ghanas-information-commission-orders-release-of-information-to-journalist-at-0-33-instead-of-1000-demanded-by-state-agency-2/>.

²⁷² Premium Times, Ijeoma Okereke, “How state officials violate Nigeria’s Freedom of Information Act”, 5 April 2020, <https://www.premiumtimesng.com/news/headlines/386053-how-state-officials-violate-nigerias-freedom-of-information-act.html>.

²⁷³ Media Foundation for West Africa, “‘They said the information requested does not exist’ – 30 citizens reveal how ATI law is struggling in Ghana’s local assemblies”, 5 April 2022, <https://www.mfwa.org/issues-in-focus/they-said-the-information-requested-does-no-exist-30-citizens-reveal-how-rti-law-is-struggling-in-ghanas-local-assemblies/>.

Enforcement and implementation challenges are also caused, in part, by lack of awareness and use of the adopted legal texts, as the following quote illustrates:

“In Sierra Leone, the law on access to information is billed as one of the best in terms of the guarantees and recourse or channels for redress for those who demand information and receive it. But most citizens are not using the law to demand information because of the impression that ‘it is for journalists’...”

Interview with an expert on freedom of expression in West Africa, 22 August 2022.

6.4 WEAK NATIONAL ACCOUNTABILITY FRAMEWORKS

The West and Central African states covered in this report have all ratified the UNCAC and the AUCPCC – with the exception of the Central African Republic –, while nine out of the 12 West African states under study have ratified the ECOWAS Protocol²⁷⁴ that entered into force in 2015.²⁷⁵ Besides ratifying these legal instruments, these states have taken several measures to prevent and fight against corruption. Countries such as **Benin, Chad, Congo, Equatorial Guinea, Gambia** and **Senegal** have modernized their anti-corruption legal frameworks and passed stand-alone laws that criminalize corruption, money laundering and other related offences,²⁷⁶ while others like **Cameroon** and **Togo**²⁷⁷ only include these offences in their constitutions and in other existing legislation such as criminal codes. Many states have equally established a domestic legal framework that obligates public officials to declare their assets and interests before taking office.

This legal framework has been supplemented with national anti-corruption policies and strategies, and with specialized anti-corruption bodies put in place to monitor and evaluate the effective implementation of those policies and strategies, and to investigate and prosecute alleged corrupt officials. These range from national anti-corruption commissions and supreme audit institutions, to specialized anti-corruption courts and anti-corruption units integrated in different national administrations. In **Benin**, for example, the government put in place a Court for the Repression of Economic Crimes and Terrorism (*Cour de Répression des Infractions Économiques et du Terrorisme* or CRIET) in 2018.²⁷⁸ It established the Court of Auditors in November 2019,²⁷⁹ and created an Office of the High Commissioner for the Prevention of Corruption in 2020,²⁸⁰ among other things.

²⁷⁴ These are: Benin, Burkina Faso, Ghana, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See Alliance Nationale des Consommateurs et de l'Environnement du Togo (ANCE) and Transparency International, *Status of the implementation of the ECOWAS Protocol on the Fight against Corruption: 20 years later, where do we stand? Delivering on our promises*, December 2021, p. 20.

²⁷⁵ Article 22 of the ECOWAS Protocol specifies that the Protocol “shall enter into force by at least nine (9) signatory states, in accordance with their respective constitutional procedures.”

²⁷⁶ See, for example, Benin, Law 2011-20 on the fight against corruption and other related offences in the Republic of Benin (unofficial translation), 12 October 2011, <https://sgg.gouv.bj/doc/loi-2011-20/>; Chad, Law 004/PR/2000 on the repression of embezzlement of public property, corruption, bribery, influence peddling and related offences in Chad (unofficial translation), 16 February 2000, <https://faolex.fao.org/docs/pdf/cha202651.pdf>; Republic of Congo, Law 5-2009 on corruption, bribery and fraud and related offences in the Republic of Congo (unofficial translation), 22 September 2009, https://www.laga-enforcement.org/media/legal_library/anti_corruption_library/Congo_Anti%20corruption%20law.pdf; and Equatorial Guinea, Decree-Law on the Prevention and Fight against Corruption in Equatorial Guinea, 28 May 2021, <https://minhacienda-gob.com/wp-content/uploads/2021/05/LEY-ANTICORRUPCION.pdf>. In Gambia, there is no stand-alone anti-corruption law. Rather, provisions on corruption and related offences are included in the Constitution, the Gambian Criminal Code, the Criminal Procedure Code, the Gambia Anti-Corruption Commission Act (2012) and the Anti-Money Laundering and Combating of Terrorist Financing Act (2012).

²⁷⁷ In Cameroon, corruption is criminalized in Section 134 of the Penal Code, which defines it as the solicitation and acceptance by a public or private agent of various advantages and favours in return for the performance of a service. In Togo, corruption is criminalized in Articles 45 and 145 of the Constitution.

²⁷⁸ Benin, Law 2018-13 amending and supplementing Act No. 2001-37 of 27 August 2002 on the organisation of the judiciary in the Republic of Benin (unofficial translation), as amended, and creating the Court for the repression of economic offences and terrorism, of 2 July 2018, <https://sgg.gouv.bj/doc/loi-2018-13/>.

²⁷⁹ Benin, Law 2019-40 revising Act 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin (unofficial translation), 7 November 2019, <https://sgg.gouv.bj/doc/loi-2019-40/>, Article 134.

²⁸⁰ Benin, Law 2020-09 on the creation, organisation and functioning of the Office of the High Commissioner for the Prevention of Corruption in the Republic of Benin (unofficial translation), 20 April 2020, <https://sgg.gouv.bj/doc/loi-2020-09/>.

The effectiveness of these measures is however hampered by important gaps. Some of these challenges stem from the inadequacy and lack of enforcement of the legal and institutional frameworks established to prevent and fight corruption. In **Gambia**, for example, the government is yet to set up the special criminal court with the jurisdiction to hear and determine corruption and related offences, despite it being provided for in the Constitution.²⁸¹ Likewise, the anti-corruption draft bill that was designed to replace the weaker Anti-corruption Act of 2012 and provides for the establishment of an anti-corruption commission has been awaiting adoption at the National Assembly since December 2019,²⁸² thus creating an important legal and institutional void in the prevention and fight against corruption.

Other challenges relate to the limited legal authority vested in anti-corruption institutions and, in some cases, the instrumentalization of existing anti-corruption laws and institutions, thus leaving public officials to engage in corrupt practices with impunity. Indeed, whereas **Ghana's** independent Commission for Human Rights and Administrative Justice (CHRAJ) has the legal authority to undertake preventive, investigative and punitive actions related to corruption and human rights violations,²⁸³ in **Senegal**, the national anti-corruption agency, the *Office National de la Lutte Contre la Fraude et la Corruption* (OFNAC), only collects and analyses reports of corruption and fraud, but does not have the power to investigate these allegations. This has prompted leading civil society activists in Senegal to call for the revision of the 2012 law that established the agency, and specifically, for the addition of new provisions that would grant it full investigative powers and strengthen its capacity.²⁸⁴

Similarly, in **Niger** the reports transmitted by the High Authority for the Fight against Corruption and Assimilated Offences (HALCIA) to the Prosecutor specialized in economic and financial matters are compulsorily prosecuted,²⁸⁵ in **Cameroon**, the annual reports of the leading anti-corruption agency, the *Commission Nationale Anti-Corruption* (CONAC), are forwarded to the President of the Republic, who decides what action to take, if any.²⁸⁶

The culture of impunity that results from these deficiencies has severe implications for the work and activities of anti-corruption HRDs, as it works to embolden public and other officials, given the knowledge that their corrupt behaviour, and any attacks perpetrated against these HRDs to conceal this behaviour, will not be investigated or punished.

This culture of impunity is compounded by lack of judicial independence in the region. Indeed, whereas most constitutions provide for the independence of the judiciary, in practice, judicial independence and impartiality is often called into question. Regarding the issue of corruption, some countries have been accused of using special anti-corruption courts in the region to shield powerful wrongdoers from legal accountability and of manipulating them to harass political opponents.²⁸⁷ In **Benin**, on April 2021, Essowé Batamoussi, a former judge at the CRIET claimed that he had resigned from his post and gone into exile after being allegedly instructed to prosecute Reckya Madougou, one of the country's main opposition leaders, although he considered that there was no evidence she had committed any crime.²⁸⁸

Meanwhile, in **Equatorial Guinea**, the former president of the Supreme Court Juan Carlos Ondo Angue was dismissed and forced into exile in 2018, after allegedly refusing to represent the country in the “*biens mal acquis*” case in France,²⁸⁹ and complaining about judicial corruption and the lack of judicial independence, following the alleged torture and death of a fellow judge in jail.²⁹⁰ Some of these concerns about the lack of

²⁸¹ Conference of the States Parties to the United Nations Convention against Corruption, Review of implementation of the United Nations Convention against Corruption, *Executive summary, Note by the Secretariat, Addendum*, 10 July 2018, CAC/COSP/IRG/I/4/1/Add.62, p. 6.

²⁸² Online interview with Marr Nyang and Annetta Mahoney, Gambia Participates, 2 November 2022.

²⁸³ Stephen Sondem, “National human rights institutions: The Ghanaian experience” (previously cited), p. 244-45; Ghana Anti-Corruption Coalition and UNCAC Coalition, *Ghana: Civil Society Report by Ghana Anti-Corruption Coalition*, (previously cited), p. 7.

²⁸⁴ Phone interview with Birahim Seck, Forum Civil, 27 February 2023.

²⁸⁵ UNODC, *Feuille de route de la plateforme régionale d'Afrique de l'Ouest et au Sahel : Déclaration*, unpublished report of the regional conference on “*Accélération de l'application de la Convention des Nations Unies contre la corruption en Afrique de l'Ouest et au Sahel*”, held in Dakar, Senegal, from 21-25 novembre 2022, p. 4.

²⁸⁶ Nkafu Policy Institute, Steve Tametong, *The fight against corruption and related acts in NDS30 in Cameroon*, October 2022, <https://nkafu.org/download/the-fight-against-corruption-and-related-acts-in-nds30-in-cameroon/>, p. 4,

²⁸⁷ U4 Anti-Corruption Resource Centre, Matthew C. Stephenson and Sofie Arjon Schütte, *Specialised anti-corruption courts – A comparative mapping: 2022 update*, 2022, <https://www.u4.no/publications/specialised-anti-corruption-courts.pdf>, pp. 18-19.

²⁸⁸ TV5 Monde, “Bénin : La CRIET accusée de partialité”, 24 December 2021, <https://information.tv5monde.com/video/benin-la-criet-accusee-de-partialite>; Human Rights Without Frontiers, *Report on Human Rights and Political Repression in Benin*, September 2022, <https://hrwf.eu/wp-content/uploads/2022/09/HRWF-Benin-Human-Rights-and-Political-Repression-September-2022.pdf>, p. 8.

²⁸⁹ AFPA, « Guinée Equatoriale : Biens Mal Acquis et tentative d'enlèvement », 16 February 2020, <http://afpafrique.org/guinee-equatoriale-biens-mal-acquis-et-tentative-denlevement/>.

²⁹⁰ Richard Messick, “Will This Whistle-blower Cost Equatorial Guinea its IMF Loan?”, 26 February 2020, Global Anti-corruption blog, <https://globalanticorruptionblog.com/2020/02/26/will-this-whistle-blower-cost-equatorial-guinea-its-imf-loan/>.

judicial independence were eventually raised by the Human Rights Committee during the country's 2019 UPR Review.²⁹¹

Together, the pervasive culture of impunity and lack of judicial independence that characterize the West and Central Africa region prevent anti-corruption HRDs from effectively and efficiently carrying out their activities and fully exercising their human rights. They provide cover for potential corrupt practices,²⁹² while also contributing to weaken public confidence in the ability of national law enforcement and judicial institutions to prevent further acts of corruption and human rights violations and allow access to justice and effective redress for those abuses.

Access to some regional mechanisms, including regional courts such as the African Court for Human and Peoples' Rights, can be an effective way to address some of these challenges and provide access to justice when the national judiciary is fragile or lacks independence.²⁹³ Unfortunately, only **Burkina Faso, Gambia, Ghana, Guinea Bissau, Mali** and **Niger** made the declaration under Article 34.6 of the Protocol establishing the Court, which allows NGOs and individuals to directly seize the Court. **Benin** and **Côte d'Ivoire** withdrew their declaration in 2020.

²⁹¹ OHCHR, *Compilation on Equatorial Guinea: Report of the Office of the United Nations High Commissioner for Human Rights*, 22 February 2019, UN Doc. A/HRC/WG.6/33/GNQ/2, para. 20.

²⁹² UN Special Rapporteur on the independence of judges and lawyers, *Report of the Special Rapporteur on the independence of judges and lawyers*, March 2020, previously cited, para. 52.

²⁹³ UN HRC, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society*, previously cited, para. 25.

7. CONCLUSION

Corruption has a negative impact on the effective enjoyment of a wide range of civil, political, economic, social, cultural rights and of the right to development. The international recognition of this pernicious human rights impact has been most visible since the mid-2010s, and particularly since 2018, as evidenced by the multiplicity of declarations, statements and resolutions adopted by international and regional intergovernmental organizations and human rights mechanisms that allude to the connection between corruption and human rights.

In Africa, the African Union declaration of 2018 as the African Anti-Corruption Year prompted many states to ratify international and regional anti-corruption conventions and adopt legal and institutional reforms to prevent and fight corruption and its human rights impact. Despite these initiatives, however, there is evidence of corruption backsliding in the continent, amid multiple, compounded crises and shrinking civic space.

Indeed, although international and regional norms oblige West and Central African states to uphold human rights that are essential for the prevention of and the fight against corruption and to protect anti-corruption defenders, there is instead a severe crackdown on the rights to freedom of expression and assembly, access to information and the right to participate in public affairs, as well as harsh repression of critics of bad governance.

This report has documented 31 such cases of repression of anti-corruption HRDs - journalists, whistle-blowers, bloggers, CSOs activists, community leaders and others who work peacefully to expose corruption and to defend and promote human rights in the region. And it has highlighted the tactics and tools deployed by national authorities, commercial and other powerful interests to silence and intimidate them, ranging from repressive laws on defamation and fake news, bans on protests, dismissals, threats, verbal and online harassment, torture and killings.

As the report showed, the lack of a safe and enabling legal environment for HRDs and for anti-corruption HRDs in particular, is one major factor accounting for the crackdown on anti-corruption HRDs in West and Central Africa. This is best illustrated by the lack of adequate and effective legal protections for HRDs, the absence and/or inadequate implementation of access to information laws, and the existence of weak national legal and institutional accountability frameworks that perpetuate impunity and do not inspire full public confidence in the ability of domestic legal systems to systematically address corruption and human rights violations and provide avenues for access to justice and effective redress for those abuses. These deficiencies are compounded by the fact that anti-corruption HRDs, like many other HRDs, are not seen as key actors in ensuring human rights and accountability and are often dismissed, ignored, isolated, and their legitimacy challenged. This, in turn, makes them easy targets for all sorts of attacks, intimidation, and criminalization.

As national and international civil society and institutions better understand the linkage between corruption and human rights, the role of anti-corruption HRDs is finally starting to be increasingly recognized. Despite isolation and attacks, these HRDs have demonstrated great resilience, as the growing number of independent investigative news outlets and investigative journalists' networks emerging across West and Central Africa show.²⁹⁴ They must be encouraged and celebrated. Their human rights must be respected, protected, promoted and fulfilled. They must be provided with access to justice and effective remedies in cases of violations. Their work must be supported and given greater visibility by local, national, regional, and international CSOs, anti-corruption and human rights mechanisms.

2023 provides the perfect opportunity to begin to change this dynamic and bring the anti-corruption and the human rights movements together in a big show of solidarity with anti-corruption HRDs, as the world is celebrating the 20-year anniversaries of the AUCPCC (on 11 July 2023) and UNCAC (on 31 October 2023) and the 25th anniversary of the Declaration on Human Rights Defenders (on 9 December 2023).

²⁹⁴ Examples include Cellule Norbert Zongo for investigative journalism in West Africa (CENOZO) based in Burkina Faso (<https://cenozo.org/>), The Museba Project in Cameroon (<https://www.themusebaproject.org/>), and Togo Reporting Post in Togo.

8. RECOMMENDATIONS

TO WEST AND CENTRAL AFRICAN STATES

PROMOTE AND PROTECT THOSE WORKING TO EXPOSE CORRUPTION AND DEFEND HUMAN RIGHTS

- Publicly recognize the legitimate and vital role of anti-corruption HRDs and respect, protect, promote and fulfill the human rights of all HRDs, including by promoting transparency, accountability and the rule of law.
- End attacks and repression of anti-corruption HRDs, including whistle-blowers, and protect them against reprisals in the exercise of their work.
- Amend or repeal their legislation in order to remove any restrictions and obstacles to the operations of HRDs, including anti-corruption HRDs, and their organizations, particularly when these restrictions are clearly discriminatory and used to repress criticism and scrutiny.
- Foster a safe and enabling legal environment, to ensure that all HRDs, including anti-corruption HRDs, are able to freely carry out their important and legitimate activities in full respect of their human rights and without any fear of reprisals, including through SLAPP suits or other abuses of the justice system. This shall include through:
 - The adoption of laws on HRDs, on the protection of whistle-blowers, and on access to information, in accordance with international human rights standards.
 - The repeal of laws that criminalize defamation, insult, and publication of “fake news” in favour of civil sanctions which must themselves be necessary and proportionate.
 - The repeal of laws or other measures that unduly ban freedom of peaceful assembly (such as blanket bans, prior authorization regimes, excessive requirements, or unfounded pretexts)
 - The adoption of laws that protect freedom of peaceful assembly, in accordance with the Banjul Charter and the ICCPR.
 - The amendment of provisions restricting the right to freedom of association by removing any barriers to the registration and operations of CSOs, including time limits to the registration as well as reporting and renewal requirements.
 - Guarantees in law and in practice of the right of associations to seek, receive and utilize funding from national, foreign, and international sources without prior authorization or undue interference.
- Enable independent media outlets and organizations to access different sources of funding, including advertisement revenues and through crowdfunding, media development programmes and other incentives and income, to promote and strengthen their sustainability, so they can ensure their editorial independence. HRDs and journalists must not be penalized or otherwise sanctioned for carrying out their legitimate activities.
- Refrain from feeding negative narratives concerning civil society organizations and human rights defenders, and describing them in language which stigmatizes, abuses, disparages or discriminates.
- Strengthen civic education on the impact of corruption on human rights and promote the culture of whistleblowing and denouncing acts of corruption through public awareness activities.

END IMPUNITY FOR CORRUPTION, ATTACKS, AND OTHER HUMAN RIGHTS VIOLATIONS AND FORMS OF VIOLENCE AGAINST ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS

- Immediately and unconditionally release any anti-corruption human rights defenders detained solely for the peaceful exercise of their human rights.
- Carry out prompt, thorough, impartial, independent, transparent and effective investigations into allegations of attacks, threats, intimidation and killings of anti-corruption HRDs, journalists and media professionals, including the killings of Ahmed Dively in Ghana, and those of Martinez Zogo and Jean-Jacques Ola Bébé in Cameroon.
- Bring to justice suspected perpetrators of such attacks against anti-corruption HRDs, including state officials and any third parties that command, conspire to commit, aid and abet, or cover up such attacks, ensuring effective and prompt access to remedies for them and their families and fair trial guarantees for those accused of such acts in compliance with international human rights standards.
- If they have not already done so, ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and make a declaration under Article 34(6) of the Protocol to allow individuals and NGOs direct access to the Court.
- Take all necessary steps to fully and effectively implement the decisions of national courts, as well as regional and continental courts, with respect to their obligations under the human rights and anticorruption treaties to which they are states parties.

STRENGTHEN NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORKS FOR FIGHTING CORRUPTION AND FOR ENHANCING ACCOUNTABILITY FOR CORRUPTION OFFENCES AND OTHER HUMAN RIGHTS VIOLATIONS

- For those who have not yet done so, ratify, domesticate and/or fully implement UNCAC, the AUCPCC and the ECOWAS Protocol on corruption.
- Report on the steps or actions taken to fulfil human rights and anti-corruption obligations, as required by the ICCPR, the Banjul Charter, UNCAC and the AUCPCC, and make the reports public and accessible in a timely manner.
- Enhance the capacity of human rights institutions and anti-corruption agencies and other anti-corruption bodies to redress any violations of human rights and to prevent and combat corruption and its human rights consequences more efficiently and effectively, in accordance with international human rights and anti-corruption standards.
- Strengthen judicial institutions' impartiality and independence from influence and pressure exerted by political authorities or other powerful actors.
- Sensitize public officials, including public administrators, law enforcement officers, judges, prosecutors, on the legal instruments, strategies and mechanisms used to promote and advance the human rights of anti-corruption human rights defenders and to uphold the legal instruments and strengthen the mechanisms in line with international human rights and anticorruption standards.

TO THE AUTHORITY OF HEADS OF STATE AND GOVERNMENT OF ECONOMIC COMMUNITY OF WEST AFRICAN STATES

- Promote the ratification, domestication, and/or full implementation of regional human rights and anti-corruption treaties and of laws necessary for the promotion and protection of human rights and the prevention and protection of corruption, including access to information laws, laws to protect HRDs and specific laws on whistle-blower protection among member states.

TO THE ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES COMMISSION

- Promote the ratification, domestication and/or full implementation of regional human rights and anti-corruption treaties and of laws necessary for the promotion and protection of human rights and the prevention and protection of corruption, including access to information laws, laws to protect HRDs and specific laws on whistle-blower protection among member states.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Promote a human rights-based approach to anti-corruption in Africa in collaboration with other AU organs, including the AUABC and the Pan-African Parliament. This could involve encouraging states to include assessments of the impact of corruption on the human rights enshrined in the Banjul Charter in their periodic reports and when reporting on the implementation of their obligations to realize the enjoyment of the human rights guaranteed under the Charter.
- Commission a comprehensive study on the impact of corruption on human rights, in Africa to foster a better understanding of the nexus between corruption and human rights and of the potential for human rights law to address corruption at the continental level.
- Jointly with the AUABC, develop guidance on the state human rights obligations relating to corruption, within the framework of Article 45(1)(b) and (c) of the Banjul Charter. This could include, *among* other things, guidance on the state obligation to prevent the use of repressive laws that impede on the right to freedom of expression and the abuse of the criminal justice system to target, harass, and intimidate those who work to denounce corruption and human rights violations.
- Organize awareness raising activities, in conjunction with the AUABC and other actors, to popularize the concept of whistle-blowing, promote the full implementation of whistle-blower protection and access to information laws where they exist, or advocate for the adoption of such laws where they do not yet exist, and disseminate relevant hard and soft law instruments that promote and protect the rights to freedom of expression, peaceful assembly, association and access to information among relevant stakeholders in the continent including state parties, national human rights institutions, national anti-corruption institutions, CSOs, journalists, media professionals, among others.

TO THE AFRICAN UNION ADVISORY BOARD AGAINST CORRUPTION

- Promote and advance the human rights of anti-corruption HRDs in Africa and collaborate with the ACHPR to encourage states to respect, protect, promote and fulfil the human rights of anti-corruption HRDs across Africa.
- Engage state and non-state actors on the issue of corruption debilitating effects on human rights during country visits and encourage national authorities to integrate such matters when fulfilling their implementation and reporting obligations under the AUCPCC.
- Encourage all states parties to the AUCPCC to make all progress reports publicly available, in fulfilment of the transparency obligations outlined in the UNCAC, the AUCPCC and the ECOWAS Protocol, and to allow citizens, CSOs and the media to monitor their governments' agreed commitments on anti-corruption.
- Jointly with the ACHPR, develop guidance on the state human rights obligations relating to corruption, within the framework of Article 22(5)(d) and (g) of the AUCPCC. This could include, *inter alia*, guidance on the state obligation to prevent the use of repressive laws that impede on the right to freedom of expression and the abuse of the criminal justice system to target, harass and intimidate those who work to denounce corruption and human rights violations.
- Commission or produce regular thematic reports on the progress achieved in the implementation of the AUCPCC in Africa, highlighting key weaknesses and challenges, identifying best practices, strengthening peer learning among national anti-corruption bodies and among African states, as a strategy to promote more effective implementation of the Convention.

TO THE UN HUMAN RIGHTS COUNCIL

- Establish, in line with the recommendations of the Advisory Committee,²⁹⁵ a dedicated special procedure mandate, or a similar mechanism, tasked to examine, monitor, advice and address the implementation of existing international human rights instruments and the multiple and intersecting impact and consequences of corruption on human rights, identifying both best practices and gaps.
- Encourage existing special procedures to examine the human rights impact of corruption on human rights.

TO INTERNATIONAL PARTNERS

- Foreign businesses have the responsibility, and states the obligation, to support anti-corruption HRDs and ensure their dealings with West and Central African countries are transparent and that they all take measures to fight corruption.
- Foreign states should remind West and Central African states of their legal obligations to respect, protect, promote and fulfil the rights of everyone to freedom of expression, association, peaceful assembly, including anti-corruption HRDs.
- Foreign states should leverage official development assistance to provide greater and long-term support to anti-corruption HRDs, journalists and media professionals, including by investing significantly in programmes and initiatives that provide protection and preservation for anti-corruption HRDs at risk in Africa.
- Those countries that have committed to protect HRDs via their diplomatic missions (for example under the European Union Guidelines on Human Rights Defenders) should ensure they support

²⁹⁵ Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, UN Doc. A/HRC/28/73, 5 January 2015, para. 52.

anti-corruption HRDs at risk in West and Central Africa, including where necessary to access safety elsewhere, either through prompt resettlement schemes or by making available other types of relocation schemes and other types of political and practical support.

- Sensitize staff in diplomatic missions, field offices and multinational corporations operating in Africa about the negative impact of corruption on human rights, and encourage them to publicly recognize the value of anti-corruption HRDs and denounce threats and attacks against them, consistent with the provisions of UNCAC, the UN Declaration on Human Rights Defenders and international human rights treaties such as the ICCPR and the Banjul Charter.

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ANTI-CORRUPTION FIGHT IN PERIL

CRACKDOWN ON ANTI-CORRUPTION HUMAN RIGHTS DEFENDERS IN WEST AND CENTRAL AFRICA

African states have ratified international and regional anti-corruption conventions and adopted several reforms to prevent and fight corruption. Despite these initiatives, however, corruption has continued unabated, thriving in a context of compounding crises and shrinking civic space. Across the West and Central Africa region, for example, there are severe restrictions on those human rights that are essential for the prevention of and the fight against corruption, including the rights to freedom of expression and peaceful assembly, access to information, as well as harsh repression of anti-corruption human rights defenders (HRDs). Indeed, instead of recognizing the important work of these HRDs, national authorities in the region have used a variety of tools and tactics to silence and repress them.

Amnesty International presents 31 cases of repression of anti-corruption defenders in West and Central Africa through attacks on the rights to freedom of expression and peaceful assembly using defamation and 'fake news' provisions, bans on protests, to personal attacks such as threats, harassment, and unlawful killings. It calls on states to promote and protect anti-corruption HRDs, end impunity for human rights violations against them, and to strengthen national frameworks for fighting corruption and for enhancing accountability for corruption offences and other human rights violations.

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