

## Ivory Coast

### Summary

Whistleblowers face difficult challenges in the Ivory Coast. Whistleblowing is not protected by any law and the government does not encourage whistleblowers to come forward. President Ouattara has publicly committed to eliminating corruption and human rights violations, as well as to redressing the culture of impunity enjoyed by the authorities, yet a continued reluctance to prosecute forces loyal to the government would limit the effectiveness of any whistleblowing.

Freedom of speech and press in the Ivory Coast has improved in recent years. The 2016 Constitution reaffirms that that “freedom of thought and freedom of expression... are guaranteed to all”. Journalists and opposition supporters are no longer subject to the violent repression that characterized the first decade of the 21st century. However, penalties for defamation differ between laws, creating potential bias in the prosecution of these cases. A parliamentary vote on a media bill that criminalizes certain media offenses was scheduled for May 2017, but postponed due to pressure from civil society groups and the media.

### Legal and Policy Framework

No Ivory Coast laws or policies contain provisions that directly protect whistleblowers.

A new Constitution was approved by referendum in October 2016 and adopted in November 2016. It provides that “freedom of thought and freedom of expression... are guaranteed to all. Everyone has the right to freely express and disseminate his ideas”. However, these freedoms are “subject to respect for the law, the rights of others, national security and public order”.<sup>1</sup>

No protections for whistleblowers are set out in the Labor Code. Legitimate grounds for dismissal are ambiguous and include “gross negligence on the part of one of the parties”<sup>2</sup> and “personal reasons”, such as professional inadequacy or “wrongful conduct.”<sup>3</sup> It is unclear whether whistleblowing could be covered under one of these terms and thus be considered legitimate grounds for dismissal.

### Legal, Legislative, and Policy Gaps

As noted above, whistleblower protections in the Ivory Coast are sorely lacking. Whistleblowing provisions that allow people to disclose a wide range of information and that offer protection from retaliation are yet to be developed and implemented. The confidentiality of whistleblowers should be protected where not expressly waived, and anonymous reporting should be permitted. A governmental body that receives and investigates claims should be established, and protections should be regularly and transparently reviewed.

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<sup>1</sup> Constitution of the Ivory Coast, Article 19, [http://www.gouv.ci/doc/accords/1476446768projet\\_de\\_loi\\_portant\\_constitution\\_ri.pdf](http://www.gouv.ci/doc/accords/1476446768projet_de_loi_portant_constitution_ri.pdf)

<sup>2</sup> Labour Code, Loi No 2015-532 of July 2015, Article 15.9 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_126833.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126833.pdf)

<sup>3</sup> Labour Code, Loi No 2015-532 of July 2015, Article 17.4 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_126833.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126833.pdf)

## National Security Exemptions

Sharing military intelligence with a foreign power is punishable by up to life imprisonment under the Penal Code, depending on the intent with which the information is shared.<sup>4</sup> Revealing secrets entrusted by “state or profession” is punishable by up to six months in prison,<sup>5</sup> while disclosing information declared secret by authorities is punishable by up to three months in prison. Failing to immediately disclose acts of espionage or treason is punishable by up to 20 years in prison, subject to obligations arising out of professional secrecy.<sup>6</sup>

An Access to Information Law allows public documents and “information of public interest” to be shared. However, “only the person concerned” has the right to access information that relates to the person’s conduct.<sup>7</sup> Similarly, disclosures that would infringe upon the secrecy of government deliberations, national defense, foreign policy, monetary policy, court proceedings, and commercial matters are forbidden.<sup>8</sup> While prison sentences and fines apply for supplying false or altered documentation or destroying documents, the Access to Information Law does not set penalties for sharing non-disclosable information.

## Laws and Policies Governing Press and Speech

A Media Law was drafted in 2016 and was due to be considered in parliament in May 2017. The vote was postponed following pressure from media organizations and civil society, and the bill’s fate is currently unclear. While acknowledging that freedom of the press constitutes one of the essential pillars of democracy<sup>9</sup>, the bill provides for prison sentences of up to five years for publishing content that could incite certain crimes, racial hatred or military rebellion.<sup>10</sup> This provision has caused concern among media and civil society groups, as it is potentially “liable to a broad range of subjective interpretations, and could be exploited by powerful people and politicians to harass, threaten and intimidate journalists”.<sup>11</sup>

Under the new bill, defamation carries a fine<sup>12</sup>, with particularly large fines levied for defamation of the President,<sup>13</sup> armed forces, courts and tribunals,<sup>14</sup> members of the

<sup>4</sup> Penal Code, Chapter 2, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenssurete.php>

<sup>5</sup> Penal Code, Article 380, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenstranquillite.php>

<sup>6</sup> Penal Code, Article 176, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenssurete.php>

<sup>7</sup> Access to Information of Public Interest Law, Article 8, <http://rcliane.cerap-inades.org/docs/2013-867.pdf>

<sup>8</sup> Access to Information of Public Interest Law, Article 9, <http://rcliane.cerap-inades.org/docs/2013-867.pdf>

<sup>9</sup> Media Law Bill, Expose des Motifs, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>10</sup> Media Law Bill, Article 90, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>11</sup> Media Foundation for West Africa, *West Africa Media Rights Group Petition Ivoirian President over Repressive Press Bill*, <http://www.mfwa.org/west-africa-media-rights-group-petition-ivoirian-president-over-repressive-press-bill/>

<sup>12</sup> Media Law Bill, Article 91, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>13</sup> Media Law Bill, Article 92, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>14</sup> Media Law Bill, Article 93, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

Government or National Assembly, judges, or witnesses.<sup>15</sup> The publication of false news and the misattribution of information are also subject to substantial fines.<sup>16</sup>

The Penal Code sets out substantially harsher punishments for defamation, permitting prison terms of up to 10 years for defamation on the base of race, ethnic group or religion, with penalties doubled if the offense was committed in the press.<sup>17</sup> Slanderous accusations made to any authority empowered to act upon the accusation or to the employers of the accused can be punished with up to five years imprisonment.<sup>18</sup> The publication of false news that may result in disobedience or discredit national institutions carries a sentence of up to three years and a fine, with the publisher, editors, vendors and distributors all liable.<sup>19</sup>

Discordance between the Penal Code and Media Laws creates an environment of uncertainty and ambiguity in which journalists are potentially subject to unfairly and unevenly applied penalties.

The 2018 Freedom House *Freedom of the Press* report classifies Ivory Coast as “partly free,”<sup>20</sup> a status it has held since 2014. The report notes that in January and May 2017, mutinous army soldiers—many of them former rebels who helped bring President Alassane Ouattara to power in 2011—demanded the government pay them bonuses. While the situation ended peacefully when the government paid the bonuses, the events threatened to destabilize the country and raised fears of a potential coup d’état. The report also notes that the International Criminal Court continued its trial of former president Laurent Gbagbo for alleged war crimes.

Reporters Without Borders (RSF) ranks Ivory Coast 82 out of 180 countries in 2018,<sup>21</sup> an improvement of 20 places since 2014.<sup>22</sup> RSF finds that the “media have yet to achieve independence from the country’s political leaders” and that “the National Communication Council continues to lean harder on opposition newspapers than on pro-government ones”. However, it points to a diverse media that is no longer officially subject to criminalized media offense, and notes that “journalists are no longer subjected to outright abuses.”<sup>23</sup>

### Whistleblower cases

No known cases of whistleblowing in the Ivory Coast have been published. A concern that likely impedes many whistleblowers is that security forces operate with near total impunity, rendering prosecution based on information disclosed unlikely and the fear of retaliation extreme. For example, no prosecution has occurred in the wake of a 2011 massacre of at least 800 civilians, allegedly at the hands of forces loyal to President Ouattara.<sup>24</sup>

<sup>15</sup> Media Law Bill, Article 94, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>16</sup> Media Law Bill, Article 98, <http://www.lintelligentdabidjan.info/news/wp-content/uploads/2017/05/Transmission-de-la-loi.pdf>

<sup>17</sup> Penal Code, Article 200-1, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenstranquillite.php>

<sup>18</sup> Penal Code, Article 382, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenstranquillite.php>

<sup>19</sup> Penal Code, Article 173, <https://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenstranquillite.php>

<sup>20</sup> Freedom House, *Freedom of the Press 2016, Ivory Coast*, <https://freedomhouse.org/report/freedom-press/2016/cote-divoire>

<sup>21</sup> Reporters without Borders, *2017 World Press Freedom Index*, <https://rsf.org/en/ranking/2017#>

<sup>22</sup> Reporters without Borders, *2015 World Press Freedom Index*, <https://rsf.org/en/ranking/2015#>

<sup>23</sup> Reporters without Borders, *2017 World Press Freedom Index, Côte d’Ivoire*, <https://rsf.org/en/cote-divoire>

<sup>24</sup> Amnesty International, *Annual Report 2016/17, Cote d’Ivoire*, <https://www.amnesty.org/en/countries/africa/cote-divoire/report-cote-divoire/>

However, journalists who report sensitive information are occasionally detained on charges of publication of false news, insulting the president, or defamation. Perhaps the most high-profile case of detention of a journalist occurred in 2015, in which the publisher of daily newspaper *Aujourd'hui* was held for a week after publishing accusations that the President was complicit in plans to rig the October 2015 elections. The newspaper was also suspended for one month.<sup>25</sup>

### Relevant legislation

Laws pertaining to:

- Constitution
- Labour Code
- Penal Code
- Media Law Bill (2016)
- Media Law (2004)
- Access to Information Law

### Organizations of Interest

None noted.

### Keeping Score: Ivory Coast versus International Standards

The following standards for whistleblower laws are derived from guidelines developed by the OECD, Council of Europe, Government Accountability Project, Blueprint for Free Speech and Transparency International.

#### Key

1 = National law is recognized as consistent with international standards

2 = National law is partially recognized as consistent with international standards

3 = No national law or national law is not recognized as consistent with international standards

	Standard	Public Sector	Private Sector
1.	A broad range of organisations and workplaces are covered	3	3
2.	A broad range of offenses may be reported as whistleblowing	3	3

<sup>25</sup> Committee to Protect Journalists, *Ivory Coast authorities suspend a critical daily for one month*, <https://cpj.org/2015/08/ivory-coast-authorities-suspend-a-critical-daily-f.php>

3.	The definition of who may qualify as a whistleblower is broad	3	3
4.	A range of disclosure channels to report internally or to regulators is in place	3	3
5.	People who make disclosures to external organizations, the media or the public are protected	3	3
6.	The threshold for protection is a reasonable belief that the information disclosed is true	3	3
7.	There are opportunities and protections for anonymous disclosures	3	3
8.	Whistleblower confidentiality is protected unless expressly waived	3	3
9.	Organizations are required to establish internal disclosure procedures	3	3
10.	Whistleblowers are protected from a broad range of retaliatory acts	3	3
11.	Victimized whistleblowers have access to a full range of remedies and compensation	3	3
12.	Those who retaliate against a whistleblower are subject to sanctions	3	3
13.	A whistleblower oversight or regulatory agency has been designated	3	3
14.	Whistleblower laws are administered and reviewed transparently	3	3