

NOTE ON WHISTLEBLOWER PROTECTION

This Note contains the essential texts that govern the protection of whistleblowers, victims, witnesses, and experts, including in particular:

- Articles 67 to 72 of **Ordinance No. 2013-660 of 20 September 2013** on the prevention and fight against corruption and similar offences, as amended by Ordinances No. 2013-805 of 22 November 2013 and No. 2015-176 of 24 March 2015;
- **Law No. 2018-570 of 13 June 2018**, on the protection of witnesses, victims, whistleblowers, experts, and other relevant persons.

ORDINANCE NO. 2013-660 OF 20 SEPTEMBER 2013 ON THE PREVENTION AND FIGHT AGAINST CORRUPTION AND SIMILAR OFFENCES

Article 67: Whistleblowers, witnesses, experts, victims, and their relatives, informants, as well as members of the High Authority for Good Governance (HABG) enjoy special protection by the State against possible acts of reprisal or intimidation.

The conditions for this special protection are determined by a decree issued by the Council of Ministers.

Article 68: Anyone who uses revenge, intimidation, or threats, in any form and in any manner whatsoever, against witnesses, experts, whistleblowers, or victims, or their relatives or other persons close to them, shall be punished by imprisonment for a term of one to five years.

Article 69: Whistleblowers and witnesses may declare the address of a police station, a gendarmerie brigade, or the High Authority for Good Governance as their place of residence.

The address of these persons is then recorded by the authority which drew up the report, on a register created for this purpose at the headquarters of the investigation service. This report is then held as a legal record.

Article 70: In the event of proceedings for any of the offenses set forth in this Ordinance, if the hearing of a whistleblower or witness is likely to seriously endanger the life or physical safety of that person, members of his or her family, or close relatives, the investigating judge, either ex officio or at the request of the public prosecutor, may authorise the statements of that person to be taken without his identity appearing in the record of the proceedings.

The reasoned decision of the investigating judge shall be attached to the minutes of the hearing of the whistleblower or witness, on which the signature of the person concerned shall not appear.

The identity and address of the person shall be recorded in another report signed by the person concerned, which shall be placed in a file separate from the case file, in which the decision of the investigating judge shall also be recorded. Under no circumstances may the identity or address of a whistleblower or witness who has benefited from the provisions of Articles 68 and 70 be revealed, except as provided in Article 72 of this ordinance.

Article 71: The whistleblower report or testimony may not be anonymous if, in view of the circumstances in which the offence was committed or the personality of the whistleblower or witness, knowledge of the identity of the person is indispensable for the defendant's exercise of his or her rights.

The accused may, within ten days of being informed of the hearing, contest the application of this procedure before the Indictment Chamber. If, in view of the documents presented in the proceedings and those in the file described in the final Paragraph of Article 70 of this Ordinance, the Indictment Division considers the challenge justified, it shall decide whether to cancel the hearing. It may also order that the identity of the whistleblower or witness be revealed, provided that the whistleblower or witness expressly agrees to the lifting of his or her anonymity.

Article 72: No conviction may be made solely on the basis of statements made anonymously. In the event of slanderous whistleblower report or false testimony, the identity of the whistleblower shall be revealed, and he or she may be prosecuted in accordance with the legislation in force.

LAW NO. 2018-570 OF 13 JUNE 2018 ON THE PROTECTION OF WITNESSES, VICTIMS, WHISTLEBLOWERS, EXPERTS, AND OTHER RELEVANT PERSONS

CHAPTER 1: GENERAL PROVISIONS

ARTICLE 1

For the purposes of this Law, the following definitions apply:

other person concerned: a natural person who collaborates with the bodies responsible for investigations or judicial or extrajudicial proceedings, who has links with the victim, the whistleblower, the expert, or the witness, or who has had contact with the victim, the witness, or the judicial and extrajudicial investigative bodies;

family: the spouse of the person to be protected, his or her descendants, direct relatives in the ascending line, brothers, sisters, and other collateral relatives up to and including the fourth degree, as well as those of his or her spouse;

person to be protected: a witness, victim, whistleblower, expert, or other person at risk who may be protected under a protection programme;

person close to the person to be protected: a natural person who has a close relationship with the person to be protected and who, by the very fact of his or her collaboration with the judicial or extrajudicial bodies, may be vulnerable.

ARTICLE 2

The purpose of this Law is to establish measures for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons.

ARTICLE 3

This Law applies to a witness, victim, whistleblower, expert, or any other person whose life, physical safety, or property, or that of his or her relatives, or the property of the legal entity he or she represents, is in danger as a result of his or her cooperation or willingness to cooperate in a judicial or extrajudicial investigative procedure.

This also applies to persons who are the subject of a witness, victim, whistleblower, expert, or other relevant protection programme established by a foreign state or international jurisdiction and who have been transferred to Côte d'Ivoire for security reasons, provided that no international treaty ratified by Côte d'Ivoire contains provisions to the contrary.

CHAPTER 2: PROTECTIVE BODY

ARTICLE 4

A National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons is hereby established under the Minister of Justice.

ARTICLE 5

The National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons is responsible for coordinating actions to protect and provide assistance to those in need of protection.

ARTICLE 6

The composition, powers, organisation and operation of the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons shall be determined by decree of the Council of Ministers.

CHAPTER 3: RIGHTS AND OBLIGATIONS OF THE PERSON TO BE PROTECTED

SECTION 1: RIGHTS OF THE PERSON TO BE PROTECTED

ARTICLE 7

Any victim, witness, whistleblower, expert, or affected person admitted to a protection programme shall have the following rights:

- 1) the right to protection against any form of attack on his or her physical and mental well-being;
- 2) the right to protection of his or her identity, privacy and personal data;
- 3) the right to assistance;
- 4) the right to be treated with dignity and respect;
- 5) the right to be informed of his or her rights and obligations;
- 6) the right to be informed of all procedures, including those in which it he or she may be involved, or of the possible outcome thereof;
- 7) protection against self-incrimination;
- 8) the right to logistical assistance if necessary to respond to a summons or to testify;
- 9) the right to contest an administrative decision to reject his or her application for modification, withdrawal, or termination of his or her protection;
- 10) the right to refuse to join a protection programme;
- 11) the right to withdraw from the protection programme;
- 12) the right to be reintegrated into his or her community or a safe community at the end of the protection programme;
- 13) the right to access justice;
- 14) the right to participate in judicial or extrajudicial proceedings;
- 15) the right to report any violation of human rights;
- 16) the right to be protected against any discrimination;
- 17) the right to reparation for harm suffered and to compensation in various forms.

ARTICLE 8

The person to be protected may receive financial assistance, as part of the protection programme, for as long as his or her protection and living expenses require.

SECTION 2: OBLIGATIONS OF THE PERSON BENEFITING FROM A PROTECTIVE MEASURE

ARTICLE 9

The person benefiting from a protection measure is obliged:

- 1) to comply with the agreed protocols respecting his or her protection;
- 2) to abstain from behaviours or any acts contrary to the spirit of the purpose of the protection measures;
- 3) to inform the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons of the claims of third parties against him or her;
- 4) to provide the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons with the relevant information to guarantee the execution of his or her claims against third parties.

ARTICLE 10

Participation in a protection programme does not relieve the protected person of his or her obligations to third parties.

CHAPTER 4: PROTECTIVE MEASURES

SECTION 1: COMMON PROVISIONS FOR PROTECTIVE MEASURES

ARTICLE 11

Protective measures are intended to preserve the safety and physical and psychological well-being and to guarantee the dignity and privacy of the persons to be protected.

They shall take into account the age, gender, and health status of the persons to be protected, as well as the nature and seriousness of the danger to such persons.

ARTICLE 12

The protective measures taken require the consent of the person to be protected.

They must not be prejudicial or contrary to the rights of the defence or the requirements of a fair and impartial trial.

SECTION 2: EXTRAJUDICIAL MEASURES

ARTICLE 13

The extrajudicial measures available to the person to be protected include:

- 1) the organisation of meetings in locations guaranteeing discretion and security
- 2) the use of discreet means or reliable persons to locate and transport the person to be protected;
- 3) the temporary relocation of the person to be protected to another location;
- 4) the limitation of telephone communications to the necessary minimum;
- 5) the provision of secure means of communication to the person to be protected;
- 6) changing the place of work or residence of the person to be protected;
- 7) securing the residence of the person to be protected;

- 8) the protection of the identity or personal data of the person to be protected;
- 9) the establishment of a new temporary identity for the person to be protected;
- 10) the provision of medical, psychological, administrative, logistical, or material assistance to the person to be protected;
- 11) the placement, in a secure section of the prison, of a person to be protected who is in detention, or the change of his or her place of detention.

SECTION 3: LEGAL MEASURES

ARTICLE 14

The public prosecutor may, either ex officio or at the request of the person to be protected, in the context of investigations and prosecutions, take the following protective measures:

- 1) guarantee the anonymity of the persons to be protected;
- 2) facilitate access and attendance of the persons to be protected;
- 3) declare the address of a police station, a gendarmerie brigade, or a public prosecutor's office as the place of residence of the person to be protected;
- 4) prohibit or limit any contact with the person to be protected.

ARTICLE 15

The judge, either ex officio or at the request of the person to be protected, may order one or more of the following measures:

- 1) the temporary non-disclosure to the other party to the proceedings of the identity of the person to be protected, unless knowledge of his or her identity is indispensable for the exercise of the rights of the defence; in the latter case, the judge to whom the matter is referred by way of a petition shall rule on the non-disclosure of the identity of the person to be protected;
- 2) the verification of the identity of the person to be protected in a closed session in advance of the hearing;
- 3) the prohibition of taking photographs or making audiovisual recordings of the person to be protected;
- 4) the prohibition of persons intervening in the procedure from disclosing information allowing the identification of the person to be protected;
- 5) placing a screen around the person to be protected so that the public cannot identify him or her;
- 6) the attribution and use of a pseudonym to the person to be protected instead of his or her name during the hearing;
- 7) the technological distortion of the voice of the person to be protected in the event that he or she may be identified by voice;
- 8) digital image distortion, redaction of hearing transcripts, audiovisual recordings, and any other publicly available records;
- 9) the concealment of all or part of the testimony collected on any medium whatsoever allowing the identification of the person to be protected;
- 10) the presence of a security guard in the room to prevent any contact between the person to be protected and the other parties;

- 11) the use of screens for closed circuit testimony to allow the witness not to directly see or face the accused;
- 12) the use of a closed circuit television to allow the person to be protected to testify from another room and by video conference;
- 13) the intervention of a trusted person to assist the person to be protected;
- 14) testimony in a partially or fully closed session;
- 15) testifying electronically without being physically present in the courtroom.

SECTION 4: SPECIAL MEASURES FOR MINORS TO BE PROTECTED

ARTICLE 16

The court hearing the case shall order ex officio the audiovisual recording of the hearing of the minor, in lieu of the personal appearance of a minor in need of protection. The minutes of the hearing and the originals of the recording media shall be produced before the competent authority.

However, when the court considers the appearance of the minor necessary for the determination of the truth, it may order such appearance by a reasoned decision. In this case, the appearance of the minor in need of protection may be organised by videoconference.

ARTICLE 17

The court may order the temporary exclusion of the person exercising parental authority from the hearing venue if it is established that he or she may influence the person to be protected in a significant manner during the hearing. In this case, the court shall appoint a judicial guardian to support the minor during the hearing.

SECTION 5: POST-PROCEDURAL MEASURES

ARTICLE 18

Depending on the impact of his or her testimony or vulnerability, if he or she is unable to be in a position of responsibility at the end of the procedures, the person to be protected may benefit from the following protective measures:

- 1) psychosocial follow-up and care;
- 2) financial assistance;
- 3) relocation and resettlement when all other measures have proved ineffective.

CHAPTER 5: SECURING THE COURT OR THE HEARING VENUE

ARTICLE 19

The presiding judge of the competent court or the director of the competent extrajudicial authority may order measures to secure the court or the venue of the hearing for victims, whistleblowers, experts, and witnesses, if he or she considers necessary. These measures include, in particular:

- 1) monitoring access to the premises of the court or the hearing venue;
- 2) the creation of a protected area around the person to be protected;
- 3) the arrangement of discreet entry and exit points from the court or hearing venue for the person to be protected;
- 4) the creation of and access to a safe, calm space for the person to be protected while waiting for their hearing;
- 5) the prohibition of access to the hearing venue or courtroom by certain persons whose presence is likely to influence the person to be protected.

CHAPTER 6: OBLIGATION OF CONFIDENTIALITY

ARTICLE 20

Any person who, as a result of his or her participation in an investigation or judicial or extrajudicial proceeding, obtains information about the real identity of a person in need of protection shall be required not to disclose such information to the public.

ARTICLE 21

Anyone who obtains information about a person to be protected or about protective measures taken against a person to be protected in the course of working with a witness, victim, whistleblower, expert, or other relevant person protection programme may disclose such information only with the authorization of the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons.

ARTICLE 22

A person to be protected or a protected person shall not divulge information about protective measures to which he or she is subject, except to those with the authorisation of the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons.

ARTICLE 23

A person who cooperates with a protection programme is required to maintain the confidentiality of any information obtained as a result of his or her participation in a judicial or extrajudicial proceeding.

ARTICLE 24

The person to be protected is required to keep information relating to the safety of persons involved in the protection programme secret.

CHAPTER 7: COOPERATION

ARTICLE 25

Any public or private administration, civil society organisation, or legal entity to which a request for cooperation is addressed by the Ministry of Justice must ensure that the protection of the person to be protected is not compromised when processing data relating to them.

ARTICLE 26

Any public or private administration, civil society organisation, or legal entity to which the Ministry of Justice has access, shall communicate thereto, without delay, any request for information of which it has knowledge concerning the person to be protected.

ARTICLE 27

The public prosecutor, the investigating judge, or any judicial or extrajudicial authority responsible for a procedure requiring the protection of a person may refer the matter to the National office for the protection of witnesses, victims, whistleblowers, experts, and other relevant persons, which shall determine the appropriate protection measure.

ARTICLE 28

The judicial authorities may order, at any stage of a proceeding, the reorganisation of one or more protective measures.

ARTICLE 29

The Ministry of Justice shall ensure cooperation with the competent witness protection bodies of a foreign State or an international criminal court for the transfer of a person to be protected abroad or for the reception in Côte d'Ivoire of a person to be protected coming from abroad.

CHAPTER 8: PENAL PROVISIONS

ARTICLE 30

Any person who, by virtue of his or her status or profession, has access to information relating to the protective measures and personal data of a protected person, and who, except in cases where he or she is called upon to testify in court or where the law requires him or her to disclose such information, has nevertheless revealed such information, shall be punished by imprisonment of one to five years and a fine of 500,000 to 5,000,000 francs.

The unauthorised disclosure of personal data or protective measures of victims, witnesses, whistleblowers, experts, and other relevant persons is punishable by the same penalties even if it occurs after the end of the investigations and proceedings.

ARTICLE 31

Any person who, without authorisation, reveals a fact declared secret by law or declared secret by the judge or the authority hearing the case, of which he or she has become aware during judicial or extrajudicial proceedings in which he or she was present, in particular as a party, witness, interpreter, or representative of one of the parties, shall be punished by imprisonment for one to three years and a fine of 100,000 to 1,000,000 francs.

ARTICLE 32

The person referred to in Article 30 of this law shall be punished by imprisonment of five to ten years if the disclosure has facilitated the commission of acts that have harmed the physical or mental safety of the person to be protected, a member of his or her family, an associate, or a close relative, or that have caused damage to his or her property.

If the disclosure of the information facilitated the homicide of the person to be protected, the penalty shall be imprisonment of twenty years.

ARTICLE 33

The agent responsible for protection shall be subject to imprisonment for three months to one year and a fine of 100,000 to 1,000,000 francs if, by his or her negligence, carelessness, inattention, or failure to observe the regulations, he or she involuntarily causes harm to the person to be protected.

ARTICLE 34

Any person who does not meet any of the conditions or is not in circumstances where they may benefit from them and who has been granted the status of a person in need of protection by fraudulent means, in order to obtain the implementation of the protection measures provided for in this law, shall be punished by imprisonment of one to five years and a fine of 300,000 to 3,000,000 francs.

The judge shall order the person so convicted to reimburse the costs incurred for their protection.

CHAPTER 9: FINAL PROVISIONS

ARTICLE 35

The modalities of application of the present law are determined by decree by the Council of Ministers.

ARTICLE 36

This law shall be published in the Official Gazette of the Republic of Côte d'Ivoire and executed as a State law.