



# International Convention for the Protection of All Persons from Enforced Disappearance

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Burkina Faso under article 29, paragraph 1, of the Convention\*

#### I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, whereby it would recognize the competence of the Committee to receive individual and inter-State communications.
2. Please indicate whether the provisions of the Convention can be directly invoked before and applied by the courts or other competent authorities or whether they must be incorporated into domestic law. If the latter is the case, please indicate when the State party will be able to incorporate all the provisions of the Convention into its domestic law. If possible, please provide examples of court decisions or administrative measures issued by the courts or other competent authorities in which the provisions of the Convention have been applied and case law in which violations of the Convention have been identified.
3. Please provide information on the measures taken by the State party since 2012 to obtain accreditation for the National Human Rights Commission from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Please indicate whether any action has been taken to ensure that the National Human Rights Commission has sufficient resources to ensure its independence and to carry out its mandate in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please inform the Committee about the role, powers and working methods of independent administrative authorities, such as the Office of the Ombudsman and the National Observatory for the Prevention of Torture and Related Practices with respect to enforced disappearances.

#### II. Definition and criminalization of enforced disappearance (arts. 1-7)

4. With regard to paragraph 41 of the report (CED/C/BFA/1), please clarify in which cases acts of enforced disappearance are classified as felonies and in which cases they are classified as misdemeanours. Please indicate when the State party intends to adopt a definition of enforced disappearance as a separate offence, in accordance with article 2 of the Convention, given that paragraph 21 of its report

\* Adopted by the Committee at its ninth session (7-18 September 2015).



states that the definition of enforced disappearance as provided for in the Convention does not yet exist in the domestic legislation of Burkina Faso, while paragraph 25 of the report states that the definition of enforced disappearance is being taken into account in the ongoing revision of the Criminal Code. Please provide information on the status of the aforementioned revision of the Criminal Code, including the time frame envisaged for its adoption and entry into force. Please also provide information on the contents of this revision, in particular with regard to the inclusion of a definition of enforced disappearance as a separate offence within the meaning of article 4 and the specific aggravating and mitigating circumstances and the penalties provided for (arts. 1, 2, 4, 6 and 7).

5. Please indicate whether any complaints have been lodged regarding acts defined in article 2 of the Convention that were carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State. If so, please provide disaggregated data on the investigations carried out and their results, including the sanctions imposed on those responsible, and the reparations — including rehabilitation — provided to victims (arts. 2, 3, 12 and 24).

6. Please clarify whether, in accordance with article 6 of the Convention, the State party holds criminally responsible any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an act of enforced disappearance, given article 70 of the Criminal Code, which states that no criminal responsibility shall attach to a person who commits an act ordered by a legitimate authority unless that act is manifestly unlawful, and article 141, paragraph 2, of the Code, which states that any public official who orders or causes others to order an arbitrary act or one that is prejudicial to the individual freedom or the civic rights of one or more persons cannot be punished if he or she can demonstrate that he or she was acting on the legal orders of his or her superiors (art. 6).

7. With regard to paragraphs 36 and 37 of the report, please specify whether all the aggravating circumstances referred to in article 7, paragraph 2 (b), of the Convention are taken into account in cases of enforced disappearance. Similarly, please indicate whether the mitigating circumstances provided for in article 7, paragraph 2 (a), of the Convention are applicable in cases of enforced disappearance (art. 7).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8-15)**

8. Regarding the information provided by the State party in paragraph 25 of its report on the revision of the Criminal Code currently under way, please clarify the term or terms of limitation envisaged for criminal prosecution and punishment in cases of enforced disappearance. Please confirm that the extreme seriousness and the continuous nature of the offence of enforced disappearance will be taken into consideration when the term or terms of limitation are set. Please also clarify how the State party will guarantee that the terms of limitation will not apply to criminal, civil or administrative actions brought by victims seeking the right to an effective remedy (art. 8).

9. In paragraph 39 of its report, the State party refers to cases of enforced disappearance involving offences covered by the Rome Statute. Please indicate which legal regime applies when enforced disappearance is characterized as an isolated act, as referred to in article 4 of the Convention, and not as a crime against humanity (art. 9).

10. Concerning the information on extradition in Burkina Faso provided in paragraph 55 of the report, please indicate which legal provisions and/or procedures

apply in the event that an individual alleged to have committed an offence of enforced disappearance is present in territory under the jurisdiction of Burkina Faso and the extradition request made by the requesting State has been denied. Please also indicate whether a denial of extradition could be based on the immunity granted to certain categories of people and officials and, if so, please inform the Committee of those categories (art. 11).

11. With regard to the information contained in paragraphs 24 and 61 of the report, please indicate which authorities are responsible for investigating cases of enforced disappearance committed by members of the armed forces in the performance of their duties, including cases committed against other military personnel (art. 11).

12. In the light of paragraph 40 of the report, which states that criminal law applies to all offences committed in Burkina Faso regardless of the nationality of the perpetrator, please clarify whether, in cases where a person is suspected of the offence of enforced disappearance, the mere presence of the alleged perpetrator in the territory of Burkina Faso — even on a temporary basis — is sufficient for the law to apply, or whether the person must habitually reside in Burkina Faso (art. 11).

13. With regard to the information provided in paragraph 66 of the report, please indicate whether the State party plans to establish specialized organizations to investigate and prosecute cases of enforced disappearance and other serious human rights violations. If so, please provide information about: (a) the structure of such organizations; (b) the level of specialization or training of the staff; and (c) the resources at their disposal (art. 12).

14. In the light of articles 41 and 50 of the Code of Criminal Procedure, please explain whether domestic law provides for any mechanisms to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, and persons participating in the investigation into an enforced disappearance, are effectively protected against any ill-treatment or intimidation arising from the complaint or any evidence given. If so, please provide detailed information in that respect. Please also indicate whether there are any mechanisms in place to exclude any law enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of committing the offence or of having been involved in the commission of the offence (art. 12).

15. Please indicate whether the State party intends to revise the Act of 10 March 1927 on the extradition of foreigners, applicable in Burkina Faso, in order to make the offence of enforced disappearance, as defined in article 2 of the Convention, an extraditable offence in any treaties concluded with other States (art. 13).

16. In the light of article 5, paragraph 2, of the Act, which specifies that extradition shall not be granted if the offence is of a political nature or if the circumstances indicate that the extradition is being requested for political purposes, please indicate what measures the State party plans to take to ensure that enforced disappearance is never considered to be a political offence or an offence inspired by political motives for the purposes of extradition (art. 13).

17. Please indicate whether the condition of reciprocity set forth in the Act of 10 March 1927 is required in order to extradite a person to a requesting State that is not a party to the Convention (art. 13).

#### **IV. Measures to prevent enforced disappearances (arts. 16-23)**

18. Please provide information on the procedures for expulsion and return, including information about which authorities have the power to decide on the expulsion or return of individuals. Please indicate whether it is possible to appeal against an expulsion or return decision. Please provide detailed information on the mechanisms and criteria which are applied as part of expulsion, return, surrender or extradition procedures to assess the risk of a person being subjected to enforced disappearance. Lastly, please indicate whether the State party is considering explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance (art. 16).

19. With regard to the information provided in paragraph 76 of the report, please indicate when the State party intends to adopt regulations prohibiting secret or unofficial detention (art. 17).

20. Please clarify whether all the elements mentioned in article 17, paragraph 3, of the Convention are included in the detention registers, regardless of the nature and location of the place of deprivation of liberty. Please provide examples of cases of poor record-keeping and indicate the disciplinary and/or legal action taken in response to those cases. In this regard, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and about the measures taken to ensure that such omissions are not repeated, including whether training has been imparted to the personnel in question (arts. 17 and 22).

21. Taking into account the information provided in paragraphs 77 and 78 of the report, please indicate whether the State party plans to include in the Code of Criminal Procedure a provision protecting the right of detainees awaiting trial to immediately inform their families and/or legal counsel about their detention and/or receive visits from them. Please indicate the nature and duration of special restrictions that would hinder the right of access to information about persons deprived of their liberty by any person with a legitimate interest in such information and, if relevant, the measures envisaged to abolish these restrictions if they are in breach of international law, applicable standards and the objectives of the Convention (arts. 17, 18 and 20).

#### **V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)**

22. In the absence of any legislation explicitly criminalizing enforced disappearance, please explain how article 3 of the Code of Criminal Procedure may be invoked. Please also indicate who is responsible for providing compensation or reparation under domestic law in the event of an enforced disappearance where the perpetrator is not identified. Please also specify whether domestic law provides for all the forms of reparation set out in article 24, paragraph 5, of the Convention for persons who have suffered harm as the direct result of an enforced disappearance (art. 24).

23. In the absence of a specific declaration of absence due to enforced disappearance, and in the absence of a declaration of death, please indicate what rights are available to the relatives of a disappeared person so that they may resolve issues related to social welfare, financial matters, family law and property rights. Please

indicate whether the issuance of a declaration of death has any impact on the State party's obligation to continue an investigation until the fate of a disappeared person has been ascertained (art. 24).

24. With regard to the information provided in paragraph 108 of the report, please indicate whether the State party plans to incorporate into its domestic legislation any measures to prevent or punish under its criminal law the falsification, concealment or destruction of documents attesting to the true identity of the children referred to in article 25, paragraph 1 (a), of the Convention. Please also indicate what measures are currently being used to detect the use of forged documents to attest to the identity of these children (art. 25).

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