



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

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Committee on Enforced Disappearances

**Additional information submitted by Burkina Faso under
article 29 (4) of the Convention***

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Contents

	<i>Page</i>
Introduction	3
I. Legal and institutional framework for the prohibition of enforced disappearance.....	3
Development of the legal framework.....	3
Development of the institutional framework.....	5
II. Implementation of the recommendations of the Committee on Enforced Disappearances	7
III. Implementation of the provisions of the Convention	15
IV. Difficulties encountered in implementing the recommendations and the provisions of the Convention	27
A. Security and humanitarian situation.....	27
B. Social unrest and institutional instability	27
C. Health crisis	27
Conclusion	28

Introduction

1. In accordance with the Constitution of 11 June 1991, Burkina Faso is firmly committed to building a nation that respects human rights. This commitment has led it to ratify almost all international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention), which it ratified without reservation on 3 December 2009.
2. This report, which covers the period 2016–2021, was prepared in a national context marked by a resurgence in terrorist attacks, humanitarian crisis, the health crisis linked to the coronavirus disease (COVID-19) pandemic and political and institutional instability. It was drawn up, in accordance with article 29 (4) of the Convention and by means of a participatory and inclusive process, by the national committee responsible for monitoring the implementation of the recommendations issued in the universal periodic review. The mandate of this committee, which is composed of representatives of ministerial departments, State institutions and civil society organizations working in the field of human rights, has been extended to include following up on the recommendations issued by treaty bodies.
3. The report was validated in a national workshop held on 28 July 2022 that brought together all public and private sector stakeholders, before being submitted to the Inter-ministerial Committee on Human Rights and International Humanitarian Law on 22 September 2022 and adopted by the Council of Ministers on 30 November 2022.
4. The report was drawn up in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 to the Convention that were adopted on 30 March 2012. It sets out the measures that have been taken to give effect to the provisions of the Convention and the recommendations made by the Committee on Enforced Disappearances following its consideration of the initial report of Burkina Faso in March 2016.
5. The report is divided into four parts. The first part provides information on the legal and institutional framework for the prohibition of enforced disappearance; the second provides information on the implementation of the recommendations of the Committee on Enforced Disappearances; the third gives account of the implementation of the provisions of articles 1 to 25 of the Convention; and the fourth addresses the difficulties encountered in implementing the Convention and the Committee’s recommendations.

I. Legal and institutional framework for the prohibition of enforced disappearance

Development of the legal framework

6. Since the submission of its initial report to the Committee on Enforced Disappearances in March 2016, the legislature of Burkina Faso has adopted important legislation and regulations that strengthen protection against enforced disappearance for all persons and penalize human rights violations. These include:
 - Act No. 002-2021/AN of 30 March 2021, amending Act No. 001-2016/AN of 24 March 2016, which created the National Human Rights Commission and provided for it to also serve as the national mechanism for the prevention of torture and related practices
 - Act No. 001-2021/AN of 30 March 2021, on the protection of persons with regard to the processing of personal data, the purpose of which is to protect the fundamental rights and freedoms of individuals with regard to the processing of their personal data
 - Act No. 002-2020/AN of 21 January 2020, establishing the volunteer defence force, which created a framework for the action of volunteers engaged in the fight against insecurity that is in strict compliance with human rights

- Act No. 040-2019/AN of 29 May 2019, enacting the Code of Criminal Procedure in Burkina Faso, which establishes that the judicial authority must ensure that those involved in criminal proceedings are informed of their rights and that these rights are upheld in all criminal proceedings
- Act No. 023-2019/AN of 14 May 2019, regulating states of siege and states of emergency in Burkina Faso, which sets out the rules governing states of siege and states of emergency, specifying that citizens continue to enjoy all rights not suspended by virtue of the Act
- Decree No. 2018-1200/PRES of 31 December 2018, declaring a state of emergency pursuant to Organic Act No. 14/59/AL of 31 August 1959, on states of emergency, which was extended successively by Act No. 045-2019/AN of 11 July 2019, Act No. 001-2020/AN of 10 January 2020 and Act No. 031-2021/AN of 24 June 2021
- Act No. 026-2018/AN of 1 June 2018, enacting general regulations on intelligence in Burkina Faso and establishing that the intelligence services must ensure respect for and the protection of the individual and collective rights and freedoms enshrined in the Constitution and in the international treaties that Burkina Faso has ratified
- Act No. 027-2018/AN of 1 June 2018, enacting regulations for the national police force that impose a number of obligations on police officers in the exercise of their duties, establishing specifically that, when executing the orders of superiors, police officers must adhere to the framework established in in-force legislation relating to the performance of public service and that superior officers are responsible for the orders and instructions they give and must not give orders that are contrary to laws and regulations. Consequently, any unlawful conduct in which police officers engage by reason of, in the course of or in connection with the performance of their duties, renders them liable to disciplinary action, without prejudice to any judicial proceedings that may also be initiated
- Act No. 025-2018/AN of 31 May 2018, enacting the Criminal Code in Burkina Faso, which contains a definition of enforced disappearance that is in line with the Convention and, in articles 523-4 and 523-5, establishes penalties for the perpetrators of such offences. Furthermore, the provisions of article 422-1 establish that enforced disappearance constitutes a crime against humanity punishable by life imprisonment when committed in execution of an established plan as part of a widespread or systematic attack directed against a civilian population
- Act No. 057-2017/AN of 19 January 2017, enacting regulations for the hospital civil service and providing, in articles 40 and 41, that all public servants working in the hospital civil service, irrespective of their place in the hierarchy, are responsible for the performance of the tasks assigned to them in exercise of their professional duties and are under an obligation to take disciplinary action against, or refer for disciplinary action by others, any public servants under their supervision who are involved in abuse, negligence or irregularity by reason of, in the course of or in connection with the performance of their duties, and that the responsibility incumbent upon their subordinates does not release superior officers from their own responsibility
- Act No. 043-2017/AN of 4 July 2017, amending Act No. 24/94/ADP of 24 May 1994, enacting the Code of Military Justice, which reinforces the rights of defence by establishing the right to a second hearing and ensuring independence in the administration of military justice by providing for public proceedings to be brought by the Military Prosecutor, in the name and in place of the Minister of Defence
- Act No. 039-2017/AN of 27 June 2017, on the protection of human rights defenders in Burkina Faso, which defines and punishes the enforced disappearance of human rights defenders and imposes upon the State a duty to protect human rights defenders against extrajudicial killings, acts of torture and similar practices, arbitrary arrest and detention, enforced disappearance, death threats, harassment, defamation and abduction
- Act No. 038-2016/AN of 24 November 2016, enacting general regulations for personnel of the armed forces, and setting forth, among other rules, the obligations

with which military officers must comply in the exercise of their duties, establishing specifically that military personnel may not perform, or be ordered to perform, acts that are contrary to the law and regulations, customs of war and international conventions or that constitute crimes or offences, particularly crimes or offences against State security and territorial integrity. The responsibility for such acts that falls to subordinate officers does not under any circumstances release superior officers from their own responsibility

7. To strengthen the protection of human rights, including in cases of enforced disappearance, further legislation has been adopted to reinforce the judiciary's capacity to prosecute such offences. Specific laws adopted include:

- Act No. 015-2019/AN of 2 May 2019, on the organization of the judiciary in Burkina Faso
- Organic Act No. 010-2016/AN of 26 July 2016, on the composition, organization, powers and functioning of the Council of State and procedures applicable thereto
- Act No. 006-2017/AN of 19 January 2017, on the establishment, organization and functioning of a special judicial unit responsible for the prosecution of terrorist acts
- Act No. 005-2017/AN of 19 January 2017, on the establishment, organization and functioning of special judicial units responsible for the prosecution of economic and financial offences and organized crime
- Act No. 043-2017/AN of 04 July 2017, amending Organic Act No. 20-95/ADP of 16 May 1995, on the composition and functioning of the High Court of Justice and procedures applicable thereto
- Act No. 010-2017/AN of 10 April 2017, on the prison system in Burkina Faso
- Act No. 010-2016/AN of 26 May 2016, on the establishment, composition, organization, powers and functioning of the Court of Cassation and procedures applicable thereto
- Act No. 010-2016/AN of 26 April 2016, on the establishment, composition, organization, powers and functioning of the administrative courts and procedures applicable thereto
- Act No. 010-2016/AN of 20 April 2016, on the establishment, composition, organization, powers and functioning of the Administrative Court of Appeal and procedures applicable thereto

8. The national legal framework was also strengthened by the ratification, on 19 December 2016, of the Protocol of the Court of Justice of the African Union. This Court has jurisdiction over disputes and ex parte applications relating to: the interpretation and application of the Constitutive Act of the African Union; the interpretation, application and validity of treaties of the African Union and all subsidiary legal instruments adopted within the framework of the African Union; all issues of international law; and the existence of any circumstance that, if proven to exist, would constitute a breach of an obligation towards a State party or the Union. Additionally, the Assembly of Heads of State and Government of the African Union may grant the Court jurisdiction over disputes other than those referred to in the Protocol.

Development of the institutional framework

9. During the reporting period, several public institutions and bodies were established that have a role in the promotion and protection of human rights and the prevention and punishment of human rights abuses and violations, including enforced disappearances. The most important of these are:

- The National Human Rights Commission, created by Act No. 001-2016/AN of 23 March 2016, as amended by Act No. 002-2021/AN of 30 March 2021. The Commission's functions include: receiving individual and collective complaints of

alleged human rights violations of any form; conducting enquiries into alleged human rights violations; providing guidance to complainants and victims; and offering legal assistance to those who request it. It also has a role in ensuring that human rights are respected in places of deprivation of liberty, to which it makes regular visits, with or without advance notice; issues recommendations to the competent authorities; and serves as the country's national mechanism for the prevention of torture and related practices. In exercise of its mandate to protect human rights, in 2021 it established two working groups, one focused on services for victims, including legal and judicial assistance, and the other on the prevention of conflict, abuse and atrocities

- The High Council for Reconciliation and National Unity, established by Act No. 074-2015/CNT of 6 November 2015 with a remit to investigate and ascertain responsibility for offences and other serious human rights violations of a political nature committed between 1960 and 2015 that have not yet been resolved and to propose any follow-up action that may help to heal or alleviate the trauma suffered by the victims and their beneficiaries. Its mandate came to an end in 2020
- The Independent Commission of Enquiry, established by Decree No. 2015-1196/PRES-TRANS/PM/MJDHPC/MEF/MATD of 28 October 2015 and amendment No. 2016-181/PRES/PM/MJDHPC/MINEFID/MATDS of 11 April 2016, and created in 2015 by the transitional government with a remit to conduct all investigations related to events that occurred in the context of the popular uprising
- Judicial units specialized in the prosecution of economic and financial offences and organized crime at Ouaga I and Bobo-Dioulasso High Courts, which henceforth have jurisdiction to hear, under the terms specified by law, highly complex economic and financial offences and offences involving organized crime
- The special judicial unit at Ouaga II High Court, which now has nationwide jurisdiction to hear, under the terms established by law, offences of terrorism, as defined in in-force national legislation
- The special unit for counter-terrorism investigations and the fight against organized crime, established by Decree No. 2018-0974/PRES/PM/MSECU/MJDHPC/MINEFID of 29 October 2018, repealed by Decree No. 2020-0431/PRES/PM/MSECU/MJ/MINEFID of 8 June 2020. With a view to establishing a framework compliant with international legal obligations, in particular those related to respect for human rights in the fight against terrorism, the Government of Burkina Faso set up this special unit in 2018 with a remit to investigate, under the supervision of the Counter-Terrorism Division, acts of terrorism and organized crime
- The central unit for combating cybercrime, created by Decree No. 2020-0096/PRES/PM/MSECU/MJ/MINEFID of 14 February 2020, with a remit to investigate crimes in which computers or computer data are the target or which are committed through or with the aid of information and communication technologies
- The Fada N'Gourma Court of Appeal, created by Act No. 029-2016/AN of 20 October 2016 and operational as of 2017
- Pô High Court, created by Act No. 013-2014/AN of 8 May 2014 and operational as of 2021
- Koupéla High Court, created by Act No. 083-2015/CNT of 17 December 2015 and operational since 2016
- Boulsa High Court, created by Act No. 016-2019/AN of 2 May 2019 and due to begin operations in the near future
- The Data Protection Commission, created by Act No. 010-2004/AN of 20 April 2004, on the protection of personal data, as amended by Act No. 001-2021/AN of 30 March 2021, on the protection of persons with regard to the processing of personal data. Article 56 of this Act provides, among other things, that the Data Protection Commission is responsible for ensuring that the use of information and communication technologies for the purpose of processing personal data does not entail any risk to personal or public liberty or privacy

10. Alongside these bodies, ministerial departments and institutions including the Ministry of Justice and Human Rights, the Ministry of Defence, Ministry of Security, Ministry of Local Administration and Social Action, Ministry of Health, Ministry of Foreign Affairs, the High Council for Communication and the Regulatory Authority for Electronic Communications and the Postal Service are all working to implement the Convention in their particular area of competence.

11. In the investigation and prosecution of enforced disappearances that constitute a crime against humanity, the authorities of Burkina Faso cooperate fully with the International Criminal Court, in accordance with the Rome Statute and the procedures set forth in Act No. 052-2009/AN of 3 December 2009, determining competencies and procedures for the implementation of the Rome Statute by the courts of Burkina Faso.

II. Implementation of the recommendations of the Committee on Enforced Disappearances

12. Following the presentation of the initial report to the Committee, the Ministry of Justice and Human Rights shared the concluding observations with public and private sector stakeholders in workshops held centrally in the capital and at the local level in the 13 regions. A total of 648 people took part in these awareness-raising workshops, the aim of which was to widely disseminate the recommendations and gather proposals for their effective implementation. Following the workshops, a road map for the implementation of treaty body recommendations in the period 2017–2019 was adopted.

13. When the road map expired, implementation of the Committee’s recommendations continued through the 2019–2022 National Action Plan for Implementation of the Recommendations of the Universal Periodic Review and the Treaty Bodies, adopted in 2019.

14. Thanks to the combined efforts of the Government and all relevant stakeholders, clear progress has been made in implementing the recommendations.

Additional information relating to the recommendation contained in paragraph 8 of the concluding observations (CED/C/BFA/CO/1)

15. A meeting to consider the desirability of making the declaration recognizing the Committee’s competence to hear individual and inter-State communications under articles 31 and 32 of the Convention was held in Ouagadougou on 9 August 2018. During the meeting, the stakeholders present were made aware of the importance of making this declaration. Consultations on the matter continue.

Additional information relating to the recommendation contained in paragraph 10 of the concluding observations

16. On 24 March 2016, the Government adopted Act No. 001-2016/AN establishing the National Human Rights Commission. This law introduced significant changes to the Commission, notably by broadening its mandate for the promotion, protection and defence of human rights and the handling of complaints. This mandate also extends to the protection of the rights of all persons against the offence of enforced disappearance.

17. Decree No. 2017-0209/PRES/PM/MJDHPC/MINEFID on the organization and functioning of the Commission was adopted on 9 March 2017. Following the adoption of these two legal texts, the new commissioners were sworn in before the Ouagadougou Court of Appeal on 25 March 2018. The Commission has been operating independently since this date.

18. In order to improve the Commission’s working conditions, the Government provided it with three vehicles and rented a building to serve as its headquarters. The Commission’s staff was increased from 8 persons in 2016 to 31 persons by the end of 2021 (13 human rights

specialists, 3 finance officers, 1 human resources manager, 5 administrative officers, 1 protocol officer, 2 security officers, 3 drivers, 2 liaison officers and 1 caretaker).

19. The Commission's administrative and financial autonomy is guaranteed by articles 2 and 48 of Act No. 001-2016/AN. Its budget is allocated by the State and set out in the Finance Act. The budget estimates prepared by the Commission are adopted in accordance with the budgetary procedure. Its budget has risen significantly in recent years, having been increased from 12 million CFA francs (CFAF) to CFAF 592 million between 2016 and 2021.

20. The Commission was defined as a separate budget unit in the 2021 Finance Act, which takes effect in 2022. The Commission is therefore compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Steps are being taken to enable the institution to obtain category "A" status.

Additional information relating to the recommendation contained in paragraph 12 of the concluding observations

21. In order to make operational the Observatory provided for in Act No. 022-2014/AN on the Prevention and Punishment of Torture and Related Practices, the Government adopted Act No. 002-2021/AN, amending Act No. 001-2016/AN establishing the National Human Rights Commission, on 30 March 2021. Under article 6 bis of this Act, the National Human Rights Commission acts as the national mechanism for the prevention of torture and related practices. In this capacity, the Commission's responsibilities are to:

- Prevent torture and related practices, taking into account the standards in force at the national, regional, subregional and international levels
- Inspect places of deprivation of liberty and their equipment and facilities, with unrestricted access
- Regularly examine the situation of persons deprived of their liberty in places of detention, with a view to strengthening their protection against torture and related practices where necessary
- Make recommendations to the competent authorities, with a view to improving the treatment and situation of persons deprived of their liberty
- Submit proposals to the competent authority concerning relevant existing or draft legislation

22. To this end, the Commission produces and publishes an annual report on the national mechanism for the prevention of torture and related practices.

23. The process of transferring the mandate of the national preventive mechanism to the Commission is a participatory and inclusive one that adheres to the provisions of the Optional Protocol and the Paris Principles. The Commission, which is actively involved in this process, is planning to review the decree on its organization and functions with the aim of establishing a standing subcommission to assume the mandate of the national preventive mechanism.

Additional information relating to the recommendation contained in paragraph 14 of the concluding observations

24. On 31 May 2018, Burkina Faso adopted Act No. 025-2018/AN on the Criminal Code and its amendment. Article 523-4 (2) of this Act contains a definition of enforced disappearance that is in compliance with the Convention. The article provides that: "Enforced disappearance is understood to be the arrest, detention, abduction or any other form of deprivation of liberty of a person or group of persons, in conditions that place such persons outside the law, by one or more agents of the State or by a person or group of persons acting with the authorization, support or acquiescence of State authorities, who refuse to acknowledge the deprivation of liberty of these persons or to disclose their fate or whereabouts."

25. The offence of enforced disappearance is punishable under article 523-4 (1), which states: “Anyone found guilty of enforced disappearance is liable to a prison sentence of between 20 and 30 years and a fine of between CFAF 500,000 and CFAF 20 million.” This is the maximum prison sentence for a specified term.

26. The last paragraph of article 523-3 provides for a life sentence for anyone found guilty of enforced disappearance in cases where the person abducted, arrested, detained or kidnapped has disappeared.

Additional information relating to the recommendation contained in paragraph 16 of the concluding observations

27. Under national law, no order issued by a superior or by a public, political, civilian, military or other authority may be invoked to justify an offence of enforced disappearance. Article 523-1 of the Criminal Code provides that: “Anyone who abducts, arrests, detains or kidnaps a person, or who knowingly provides premises to imprison or detain a person, without an order from the competent authorities, except in cases where the law permits or requires such action, is liable to a prison sentence of between 5 and 10 years and a fine of between CFAF 500,000 and CFAF 1 million. If the imprisonment or detention lasts more than one month, the penalty will be between 11 and 21 years’ imprisonment and a fine of between CFAF 1 million and CFAF 5 million.”

28. Furthermore, under article 32 of Act No. 038-2016/AN of 24 November 2016, enacting general regulations for personnel of the armed forces, military personnel may not perform, or be ordered to perform, acts that are contrary to laws and regulations, customs of war and international conventions or that constitute felonies or misdemeanours, including offences against State security or territorial integrity. The responsibility of subordinate officers for acts of enforced disappearance does not, under any circumstances, release superior officers from their own responsibility.

29. Article 89 of Act No. 027-2018/AN of 1 June 2018, enacting regulations for the national police force, provides that all police officers must carry out the orders of their hierarchical superiors in compliance with existing laws governing the exercise of public service.

30. The principle of personal responsibility of hierarchical superiors is also enshrined in articles 40 and 41 of the regulations for the hospital civil service; article 58 of the customs regulations; articles 22, 40 and 43 of Decree No. 2012-118/PRES/PM/MJPDH/MFPTSS/MEF of 21 February 2012, enacting disciplinary regulations for prison officers; and article 26 of Decree No. 2019-1386/PRES/PM/MINEFID/MEVCC/MFPTPS of 15 November 2019, enacting general disciplinary regulations and a code of ethics for officers of the water and forest administration. Article 324-1 of the Criminal Code provides that “any public official or other government representative who gives, or is responsible for giving, an order to perform an arbitrary act or one that violates the individual liberty or civic rights of one or more persons, or the laws in force, will be liable to a prison sentence of between 5 and 10 years and a fine of between CFAF 1 million and CFAF 5 million”.

31. In principle, all public officials in Burkina Faso are required to comply with the instructions of the authorities, unless the order is manifestly unlawful. Any order given to an official that contributes to the enforced disappearance of a person is manifestly unlawful.

32. Officials who refuse to carry out such an order are required to inform the authority that issued it of their objections and may not incur any penalty. If they do incur a penalty for having refused to execute a manifestly unlawful order, they may appeal to the hierarchical superior of the person who gave the order or file an appeal with the administrative court.

Additional information relating to the recommendation contained in paragraph 18 of the concluding observations

33. National law provides for mitigating circumstances to be applied to persons who have contributed to a disappeared person being found alive or who have made it possible to clarify cases of enforced disappearance by voluntarily providing information.

34. In addition, article 523-3 of the Criminal Code provides for aggravating circumstances in cases where the person abducted, arrested, detained or kidnapped has been subjected to torture or bodily harm resulting in death, mutilation of an organ or any permanent disability. In such cases, the perpetrator is liable to life imprisonment and a fine of between CFAF 5 million and CFAF 10 million. The same penalties apply if the person abducted, arrested, detained or kidnapped disappears.

Additional information relating to the recommendation contained in paragraph 20 of the concluding observations

35. As the Convention has been ratified without reservations, it supplements the national system of sanctions. In view of the continuous nature of the offence of enforced disappearance, the statute of limitations starts to run when the disappearance ends.

36. When the offence of enforced disappearance is committed on a systematic and widespread basis, it is classified as a crime against humanity, which is an imprescriptible offence under national law, specifically, under article 14 of Act No. 052-2009/AN determining the jurisdiction and procedure for the implementation of the Rome Statute of the International Criminal Court by the courts of Burkina Faso.

Additional information relating to the recommendation contained in paragraph 22 of the concluding observations

37. If the public prosecutor's office, which has sole discretion to bring prosecutions, becomes aware of acts constituting enforced disappearance, it can open an inquiry and order an investigation into the alleged or proven acts even in the absence of an official complaint.

38. The jurisdiction of the military courts covers the typical military offences defined in the Code of Military Justice. If the relevant conditions are met, the military courts also have jurisdiction under the Criminal Code to investigate and try offences undermining State security when the main perpetrators are military personnel; to investigate and try ordinary offences committed by military personnel in the exercise of their duties or mission or in a military establishment; and to try offences under the law establishing a state of emergency or a state of siege.

39. On the basis of these powers, military courts have jurisdiction to prosecute acts of enforced disappearance if they are committed by members of the armed forces in the performance of their duties or inside barracks. In these cases, the public proceedings are brought by the Military Prosecutor.

40. In order to strengthen guarantees of the right to a fair trial before the military courts, the Government has reviewed Act No. 24/94/ADP of 24 May 1994, enacting the Code of Military Justice. Following the adoption of Act No. 044-2017/AN of 4 July 2017, Act No. 24/94/ADP provides for the right to a second hearing. Complaints accompanied by civil claims are now admissible before military courts.

41. The composition, functioning and proceedings of the military courts have also been improved. Military courts are now made up of five members: a president who is a military judge or judicial officer, three military assessors, and a professional judge who is a military judge or judicial officer. Military judges receive the same professional training, at the same academies, as civilian judges. They therefore hold a master's degree in law and a professional judge's qualification.

42. Defence before the military courts is provided by civilian lawyers who are members of the bar or have been admitted as trainees, or by military officers or non-commissioned officers who are approved by the Ministry of Defence and called military defenders (Act No. 044-2017/AN of 4 July 2017, amending Act No. 24/94/ADP of 24 May 1994 enacting the Code of Military Justice, art. 31). Article 50 of the Code of Military Justice provides that “the Code of Criminal Procedure is applicable to military courts.”

43. The rules governing the independence of the judiciary apply to military courts. Consequently, military prosecutors have full discretion to decide whether or not to bring proceedings and can now act on their own initiative in cases of flagrante delicto.

44. In order to guarantee the independence of military courts, Act No. 013-99/AN of 7 April 1999, enacting regulations for the personnel of the military courts, was adopted. This Act provides for the independence of military judges, who may not be held to account for decisions they make or to which they contribute. Military judges have security of tenure.

Additional information relating to the recommendation contained in paragraph 24 of the concluding observations

45. Act No. 025-2018/AN on the Criminal Code has a section dedicated to the legal protection of witnesses, whistle-blowers and victims (arts. 335-8 and 335-9). Article 512-6 establishes that the competent authorities must take measures to protect plaintiffs and witnesses from ill-treatment and intimidation. Victims are entitled to redress and to fair and adequate compensation, including the means for the fullest rehabilitation possible. A victim’s dependants are entitled to compensation if he or she dies as a result of torture or related practices.

46. Notwithstanding any criminal prosecution that might be brought, the State is required to grant reparations to victims (art. 512-7). These same guarantees are provided for in articles 518-4 to 518-6 of the Code of Criminal Procedure.

47. Furthermore, the Code of Criminal Procedure has introduced a protection system for witnesses and victims that enables them to give evidence anonymously if revealing their identity could put them in danger or pose a risk to their families or relatives (art. 261-44).

Additional information relating to the recommendation contained in paragraph 26 of the concluding observations

48. In Burkina Faso, when there are grounds for believing that units or institutions of the defence and security forces are involved in the commission of an offence, including that of enforced disappearance, they are excluded from the investigation. Under article 523-2 of the Code of Criminal Procedure, when a criminal investigation officer is liable to be prosecuted for a felony or misdemeanour committed in the district for which he or she has territorial jurisdiction, the public prosecutor hearing the case must submit a request to the criminal division of the Court of Cassation, which proceeds and rules as it would for the settlement of a conflict of jurisdiction and designates the court responsible for bringing the proceedings within one month (Code of Criminal Procedure, art. 523-1).

Additional information relating to the recommendation contained in paragraph 28 of the concluding observations

49. Article 100-1 of the Code of Criminal Procedure specifies that criminal proceedings must be fair, adversarial and maintain a balance between the parties. It guarantees litigants equality before the law. Judicial authorities must ensure that victims are kept informed and that their rights are guaranteed throughout the criminal proceedings. In accordance with these guiding principles of criminal procedure, victims, their beneficiaries, their counsel and witnesses may participate in the legal proceedings with a view to ascertaining the truth.

50. The prosecutor and the criminal investigation officers assigned to the investigation must make themselves available to representatives of the victims' families, close friends and relatives with a view to keeping them informed of the progress made in the case and the outcome of the investigation.

51. The Government regularly organizes capacity-building sessions on issues surrounding torture and enforced disappearance for members of the defence and security forces, including criminal investigation officers and judges. Between 2014 and 2020, for example, 205 members of the defence and security forces, 40 health-care workers (doctors, nurses, advanced practice nurses and midwives) and 320 judicial personnel attended these sessions.

Additional information relating to the recommendation contained in paragraph 30 of the concluding observations

52. Under article 519-3 of the Code of Criminal Procedure, when an offence for which extradition is requested is punishable by death under the law of the requesting State and this penalty is not provided for in the law of Burkina Faso, extradition is refused unless the competent authorities of the requesting State give what are considered to be sufficient assurances that the death penalty will not be applied.

53. Extradition is also refused if, in the opinion of the competent authority in Burkina Faso, the requested person will not be guaranteed a fair trial.

54. Extradition is not granted if, in the opinion of the competent authority of Burkina Faso, the person requested has been, or is likely to be, subjected to torture or cruel, inhuman and degrading treatment in the requesting State.

Additional information relating to the recommendation contained in paragraph 32 of the concluding observations

55. Article 2 of the Constitution protects the life, safety and physical integrity of all persons living in Burkina Faso. Article 3 establishes that "no one may be deprived of his or her liberty unless he or she has been charged with an offence punishable by law. No one may be arrested, held in custody, deported or exiled except as provided for by law". Taken together, these provisions prohibit incommunicado detention.

56. Under article 100-1 of the Code of Criminal Procedure, pretrial detention may not exceed a reasonable period, taking into account the seriousness of the charges brought against the suspected or accused person and the complexity of the investigations required to establish the truth. Under this provision, freedom is the principle and detention the exception.

57. In accordance with articles 512-5 and 6 of the Criminal Code, any individuals who allege that they have been subjected to torture or enforced disappearance in Burkina Faso have the right to complain to the competent authorities and have their case promptly and impartially examined. The competent authorities must take measures to protect plaintiffs and witnesses from ill-treatment and intimidation. This provision protects the parties involved in investigations into enforced disappearance, including the complainant, the lawyers, the witnesses and the investigators, from torture and ill-treatment.

58. Anyone implicated in an offence has the right to communicate with a lawyer as early as the preliminary investigation phase. Under article 515-15 of the Code of Criminal Procedure, a person in police custody may be visited by a doctor at any time, including at the request of a family member. This possibility allows family members to enquire about the person in police custody and to obtain information on the authorities who ordered custody, the place of detention and the person's state of health. In the event that a foreign national is placed in police custody or in detention, the judicial authorities also inform the consular office or diplomatic mission of the person's country of origin and authorize him or her to communicate with these authorities.

Additional information relating to the recommendation contained in paragraph 34 of the concluding observations

59. Article 125 of Act No. 010-2017/AN of 10 April 2017 on the prison system in Burkina Faso provides that “a register of inmates shall be kept in each prison for each of the following categories of inmate: suspects, persons charged with an offence, persons facing trial, convicted persons and persons subject to enforcement by committal”.

60. In accordance with article 127 of the aforementioned Act, several types of registers are kept within prisons. These include registers of the number and names of incoming and outgoing inmates, registers of transfers, registers of minors, registers of women, release registers, registers of foreign nationals and death registers. It also gives prison governors the option of setting up a register if necessary. The Ministry of Justice regularly issues these registers to prisons.

61. Measures are taken to provide police stations and gendarmeries with standardized and detailed registers in which to record medical examinations of new detainees, consultations, transfers for medical treatment and deaths. Training sessions on how to keep registers in compliance with national and international standards are regularly organized for law enforcement officers.

62. Registers are kept up to date and a software program for managing prisoners is currently being tested in Bobo Dioulasso, Ouagadougou and Fada N’Gourma prisons. The program makes it possible to ensure that inmates’ situation in prison is monitored.

63. The deliberate failure to record a deprivation of liberty or any related information constitutes professional misconduct punishable under articles 92 and 95 of the disciplinary regulations for prison officers. The same applies to the deliberate refusal to provide information on deprivation of liberty that is not classified as confidential.

64. Article 324-7 of the Criminal Code provides for the punishment of detention that is arbitrary because of the lack of a warrant, judgment or order and of any refusal to submit registers to the authority responsible for checking them.

Additional information relating to the recommendation contained in paragraph 36 of the concluding observations

65. Training sessions on the prevention and absolute prohibition of torture and enforced disappearance have been regularly organized for judicial personnel, members of the defence and security forces and health-care staff since 2014. These personnel have familiarized themselves with the Convention and with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto. Between 2014 and 2020, 205 members of the defence and security forces, 40 health-care workers (doctors, nurses, advanced practice nurses and midwives) and 320 judicial personnel across the country attended these sessions. The training modules were based on the guidelines of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

66. In 2021, 260 young human rights defenders, 140 members of the defence and security forces and 100 health-care workers from the North, East and Sahel Regions were trained in mechanisms for preventing and punishing torture and other cruel, inhuman or degrading treatment or punishment, and enforced disappearance.

67. In 2020 and 2021, as part of a project to stabilize the East Region known as Stabest Plus, 180 members of the defence and security forces were trained to take human rights, in particular the prohibition of enforced disappearance, torture and related practices, into account in their missions to secure the territory.

Additional information relating to the recommendation contained in paragraph 38 of the concluding observations

68. No case files relating to allegations of enforced disappearance have been registered by the High Council for Reconciliation and National Unity. Furthermore, no cases of enforced disappearance have been recorded by the courts of Burkina Faso. Consequently, no one has been convicted of the offence of enforced disappearance in Burkina Faso.

Additional information relating to the recommendation contained in paragraph 40 of the concluding observations

69. Under article 241-1 of the Code of Criminal Procedure, when the public prosecutor's office, which has sole responsibility for bringing prosecutions, is aware of allegations relating to enforced disappearance, it can open an inquiry and order an investigation into these presumed or proven cases of enforced disappearance even in the absence of a formal complaint from the victim. When it has been established that the missing person is dead, the investigations continue until the presumed perpetrators and accomplices are identified. They are then prosecuted and punished in accordance with the law. The investigation may also continue until the remains of the missing person have been identified.

70. In the event that the victim dies as a result of an act of enforced disappearance, torture or related practices, his or her dependants are entitled to compensation, notwithstanding any criminal proceedings brought under article 512-7 of the Criminal Code. The competent authorities must take measures to protect plaintiffs and witnesses from ill-treatment and intimidation (Criminal Code, art. 512-6). Victims are entitled to redress and to fair and adequate compensation, including the means for the fullest rehabilitation possible (Criminal Code, 512-7).

Additional information relating to the recommendation contained in paragraph 42 of the concluding observations

71. The Criminal Code contains no specific provisions on the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance, or children born during the captivity of a mother subjected to enforced disappearance. However, article 532-13 of the Criminal Code provides for a prison sentence of between 2 and 5 years and a fine of between CFAF 500,000 and CFAF 3 million for anyone who knowingly, under conditions that make it impossible to identify the child, removes or harbours a child, causes a child to disappear or replaces him or her with another child, or presents a child physically as being born of a woman who has not given birth to the child or of a man who clearly cannot be the father.

72. In addition, article 532-14 of the Criminal Code provides for a prison sentence of between 5 and 10 years and a fine of between CFAF 500,000 and CFAF 3 million for anyone who uses violence, threats or fraudulent means to abduct or order the abduction of a minor, to remove or transport a minor, or to order his or her removal or transport, from the location where he or she had been placed by the authorities or the agency in whose care he or she had been placed. The penalty is between 11 and 21 years' imprisonment and a fine of between CFAF 1 million and CFAF 5 million if a minor under 13 years of age is abducted or removed (art. 532-15).

73. The perpetrator is liable to life imprisonment, irrespective of the minor's age, if he or she was paid, or was seeking to be paid, a ransom by the persons under whose authority or supervision the minors had been placed (art. 532-16). Abduction is also punishable by life imprisonment if it is followed by the death of the minor (art. 532-17).

III. Implementation of the provisions of the Convention

Article 1. Prohibition on derogation from the provisions of the Convention

74. Enforced disappearance is one of the most serious human rights violations. Burkina Faso has ratified the International Convention for the Protection of All Persons from Enforced Disappearance and is committed to its full implementation. National legislation does not permit any derogation from the provisions of the Convention.

75. None of the provisions of the Constitution, the Criminal Code or any other legal text can be invoked to justify acts contributing to enforced disappearance. A state of war or a threat of war, terrorism, a state of siege or emergency, internal political instability or any other public emergency cannot be used to justify derogation from the right not to be subjected to enforced disappearance.

Article 2. Definition of enforced disappearance

76. The definition of enforced disappearance set out in the Convention has been incorporated into national legislation.

77. Under the terms of article 523-4 (2) of the Criminal Code, enforced disappearance of a person is defined as the arrest, detention, abduction or any other form of deprivation of liberty of a person or a group of persons, in conditions which place them outside the protection of the law, by one or more agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State authorities, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared persons.

Article 3. Appropriate measures to investigate and bring to justice those responsible for enforced disappearance

78. Positive law in Burkina Faso requires national courts to take legal action against the perpetrators, co-perpetrators, accomplices and instigators of acts of enforced disappearance. The Code of Criminal Procedure sets out the arrangements for the investigation and prosecution of an individual or a group of individuals suspected of having engaged in abduction, detention, arrest or false imprisonment without the authorization, support or acquiescence of the State.

79. Under the terms of article 241-3 of the Code of Criminal Procedure, until an inquiry is launched, the criminal investigation police are responsible for recording breaches of criminal law, gathering evidence and searching for the perpetrators. When an inquiry is opened by the examining judge, the criminal investigation police follow his or her instructions.

Article 4. Criminalization of enforced disappearance in national legislation

80. Enforced disappearance, which is a highly reprehensible act, is a stand-alone offence in national legislation and the punishment imposed is set out in law. Under the terms of article 523-4 of the Criminal Code, anyone guilty of enforced disappearance is liable to a prison sentence of between 20 and 30 years and a fine of between CFAF 500,000 and CFAF 20 million.

Article 5. Enforced disappearance deemed a crime against humanity under national law

81. National legislation explicitly defines the widespread or systematic practice of enforced disappearance as a crime against humanity.

82. Article 422-1 of the Criminal Code defines enforced disappearance as a crime against humanity, punishable by life imprisonment, in the following terms: “an act of enforced disappearance committed in execution of a concerted plan as part of a widespread or systematic attack against any civilian population”.

83. This provision of the Criminal Code incorporates article 17 of Act No. 052-2009/AN of 3 December 2009 determining the jurisdiction and procedure for the implementation of the Rome Statute by the courts of Burkina Faso. Article 17 sets out the punishment for acts of enforced disappearance. Burkina Faso cooperates fully with the International Criminal Court in the investigation and prosecution of enforced disappearances that constitute a crime against humanity, in accordance with the Rome Statute and the procedures set forth in Act No. 052-2009/AN.

Article 6. Criminal responsibility of a superior in the event of enforced disappearance

84. The principle of the criminal responsibility of a hierarchical superior is recognized in national legislation. Under article 32 of Act No. 038-2016/AN of 24 November 2016 enacting general regulations for personnel of the armed forces, military personnel may not perform, or be ordered to perform, acts that are contrary to national laws and regulations, customs of war or international conventions or that constitute felonies or misdemeanours, including offences against State security or territorial integrity. The responsibility of subordinate officers for acts of enforced disappearance does not, under any circumstances, release superior officers from their own responsibility.

85. In addition, article 104 of Act No. 27-2018/AN of 1 June 2018, enacting regulations for the national police force, stipulates that hierarchical superiors are responsible for the orders and instructions they give. They must not give orders that violate laws or regulations.

86. The principle of personal responsibility of hierarchical superiors is also enshrined in the provisions of articles 40 and 41 of the regulations for the hospital civil service; article 58 of the customs regulations; articles 22, 40 and 43 of Decree No. 2012-118/PRES/PM/MJPDH/MFPTSS/MEF of 21 February 2012 enacting disciplinary regulations for prison officers; and article 26 of Decree No. 2019-1386/PRES/PM/MINEFID/MEVCC/MFPTPS of 15 November 2019 enacting general disciplinary regulations and a code of ethics for officers of the water and forestry administration.

87. Article 324-1 of the Criminal Code provides that “any public official or other government representative who gives, or is responsible for giving, an order to perform an arbitrary act, or one that violates the individual liberty or civic rights of one or more persons or the laws in force, will be liable to a prison sentence of between 5 and 10 years and a fine of between CFAF 1 million and CFAF 5 million”.

88. For information about manifestly unlawful orders given by hierarchical superiors, see paragraphs 31 and 32 of this report.

Article 7. Penalties for enforced disappearance

89. The Criminal Code of Burkina Faso sets out the penalties for the offence of enforced disappearance. Under the terms of article 523-4 of the Criminal Code, anyone guilty of enforced disappearance is liable to a prison sentence of between 20 and 30 years and a fine of between CFAF 500,000 and CFAF 20 million. When committed as part of a widespread or systematic practice, enforced disappearance is categorized as a crime against humanity and punishable by life imprisonment.

90. The Criminal Code also sets out, in article 523-5, the mitigating circumstances for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to the disappeared person being found alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance.

91. Aggravating circumstances are set out in article 25 (4) of the law on the protection of human rights defenders, which sets life imprisonment as the penalty for disappearances lasting more than five years.

Article 8. Statute of limitations and remedies in the event of enforced disappearance

92. No statute of limitations for the offence of enforced disappearance is specifically set out in national legislation. However, as it is a continuing criminal offence, the 10-year statute of limitations for public prosecutions can begin only from the moment the enforced disappearance ends, as set out in article 220-2 of the Code of Criminal Procedure.

93. Enforced disappearance committed as part of a widespread or systematic attack against a civilian population is classified as a crime against humanity, and is therefore an imprescriptible offence under article 422-1 of the Criminal Code, article 17 of Act No. 052-2009/AN of 3 December 2009 establishing the jurisdiction and procedure for the implementation of the Rome Statute of the International Criminal Court by the courts of Burkina Faso, and article 14 of the Code of Criminal Procedure.

94. Article 616-1 of the Code of Criminal Procedure establishes that the limitation period after which sentences may no longer be enforced is 20 years from the date on which the judgment becomes final.

95. There is no limitation period for victims to bring administrative cases.

Article 9. Competence of national courts to exercise jurisdiction over the offence of enforced disappearance and judicial cooperation

96. Burkina Faso ratified the Rome Statute on 16 April 2004 and adopted Act No. 052-2009/AN, on the implementation thereof, on 3 December 2009. Pursuant to article 15 of the Act, the national courts have jurisdiction over the offence of enforced disappearance if the person against whom proceedings are brought is present on the national territory, irrespective of where the offence was committed or of the nationality of the perpetrator or the victim.

97. Article 29 of Act No. 052-2009/AN establishes that Burkina Faso will cooperate fully with the International Criminal Court in the Court's investigation and prosecution of crimes within its jurisdiction, in accordance with the Rome Statute, the procedures set out in the Act and other national provisions.

98. Articles 113-1 and 113-2 of the Criminal Code establish the jurisdiction of Burkina Faso over offences of enforced disappearance committed in any territory under its jurisdiction or on board aircraft. Act No. 052-2009/AN of 3 December 2009 on the implementation of the Rome Statute also establishes the universal jurisdiction of the national courts over offences of enforced disappearance recognized as crimes against humanity if the alleged perpetrator is present in any territory under the jurisdiction of Burkina Faso.

99. Burkina Faso is also party to a number of treaties that provide for mutual legal assistance and extradition, including the following:

- Extradition treaty between Burkina Faso and France, signed in Ouagadougou on 24 April 2018
- Extradition treaty between Burkina Faso and the Kingdom of Morocco, signed in Ouagadougou on 4 September 2018
- Agreement on judicial cooperation between Burkina Faso and Senegal, signed on 13 October 2017

Article 10. Procedural safeguards for persons suspected of having committed an offence of enforced disappearance

100. Under article 4 of the Constitution, all nationals of Burkina Faso and all non-nationals residing in the country are entitled to equal protection of the law. The same article stipulates that cases must be heard by an independent and impartial court.

101. Article 100-1 of the Code of Criminal Procedure specifies that criminal proceedings must be fair, adversarial and maintain a balance between the parties. It guarantees litigants equality before the law. Everyone has the right to be tried within a reasonable time by an independent and impartial tribunal. They have the right to adequate facilities to prepare their defence and, in particular, to be assisted by a lawyer of their choice; if they do not have a lawyer, they must be informed of their right to have one. They have the right to have their conviction reviewed by a higher court.

102. Anyone charged with a criminal offence is presumed innocent until proved guilty according to law. They have the right to be examined by a doctor of their choice and to have contact with and receive visits from a family member or close friend. Violations of the right to be presumed innocent are addressed, punished and remedied in accordance with the law.

103. Accused persons have the right to be informed, promptly and in detail in a language they understand, of the nature and cause of the charge against them and of their guaranteed rights. No one may be compelled to testify against himself or herself or to confess guilt.

104. All persons charged with a criminal offence must have the right to the free assistance of an interpreter if they do not understand or speak the language used in all the proceedings.

105. In the event that a foreign national is placed in police custody or detention, the judicial authorities rely on the provisions of the Vienna Convention on Consular Relations. Under the terms of that Convention, if the foreign national being held in police custody or in detention so requests, the competent authorities must notify the consular post of his or her home State without delay. Any communication addressed to the consular post by the person arrested or held in detention must be forwarded by the said authorities without delay. The said authorities shall inform the person concerned of his or her right without delay. Consular officials from the person's country of origin have the right to visit, interview and correspond with him or her. They may also provide him or her with legal representation.

106. With regard to the punishment of enforced disappearance as a crime against humanity, article 26 of Act No. 052-2009/AN stipulates that courts that handle such cases must take appropriate measures to ensure the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

Article 11. Extradition and guarantee of a fair trial in cases of enforced disappearance

107. The extradition of a national of Burkina Faso is undertaken at the State's discretion. Under article 519-3 of the Code of Criminal Procedure, extradition may be refused if, in the opinion of the competent authority in Burkina Faso, the person in question cannot be guaranteed a fair trial.

108. The criminal courts in Burkina Faso have jurisdiction over offences committed on the national territory and those committed by or against nationals of Burkina Faso. For information on universal jurisdiction over the offence of enforced disappearance, including in the case of crimes against humanity, please see paragraphs 97 to 99.

109. Under the terms of book 2, title IV, of the Code of Criminal Procedure, responsibility for public prosecutions and investigations rests with officers and agents of the criminal investigation police, civil servants and agents to whom the law assigns certain functions of the criminal investigation police, the public prosecutor and the investigating judge.

110. For information on the guarantees of the right to a fair trial, see paragraphs 101 to 105.

111. The officers of the criminal investigation police are responsible for investigating assumed cases of enforced disappearance and initiating proceedings against the suspected perpetrators. Investigations may be initiated on the instructions of the public prosecutor. With the exception of gendarmerie officers who are criminal investigation officers, the military authorities are not competent to investigate and prosecute the perpetrators of enforced disappearance.

Article 12. Consideration of complaints and protection of complainants, witnesses, persons with a legitimate interest and defence counsel of victims of enforced disappearance

112. For the examination of complaints and to ensure the protection of complainants, witnesses and the defence counsel of victims in Burkina Faso, a legal and institutional mechanism is in place which enables anyone to report cases of enforced disappearance to the competent authorities and have their case examined impartially and without delay.

113. Articles 512-6 and 512-7 of the Criminal Code specify that the competent authorities must take measures to protect plaintiffs and witnesses from any ill-treatment and intimidation. Article 521-2 of the Criminal Code prescribes a prison sentence of between 2 and 5 years and a fine of between CFAF 2 million and CFAF 5 million for anyone who threatens a witness, a victim or any other person in an attempt to dissuade him or her from reporting an incident, filing a complaint or making a statement, or because a report, complaint or statement has been filed or made.

114. In order to protect victims and witnesses, trial courts may order proceedings to be held in camera, exempt victims or witnesses from having to appear at hearings and take any other measures necessary to protect their identity and privacy.

115. A protection system for witnesses and victims has been established under articles 261-44 to 261-49 of the Code of Criminal Procedure. Article 261-46 prescribes a prison sentence of between 2 and 5 years and a fine of between CFAF 5 million and CFAF 10 million for anyone who discloses the identity or address of a witness who has benefited from the protective safeguards provided for in articles 261-44 and 261-45.

116. Any allegations of enforced disappearance made by individuals may be brought to the attention of the judicial or administrative authorities responsible for receiving complaints and reports and investigating such cases. As part of its efforts to protect individuals against enforced disappearance, the National Human Rights Commission can receive and investigate individual and collective complaints about any allegations of human rights violations.

117. With regard to the admissibility and processing of complaints, article 22 of Act No. 001-2016/AN establishing the National Human Rights Commission provides that any individual or legal entity subjected to violations of human rights protected by international legal instruments, the Constitution, or national laws may file an individual or collective complaint with the Commission. A witness and victim protection mechanism has been set up within the Commission to deal with such cases.

118. All officers of the criminal investigation police have jurisdiction to investigate acts of enforced disappearance. In practice, any constituted authority, public official or civil servant who, in the course of his or her duties, becomes aware of a case of enforced disappearance must immediately report it to the public prosecutor and send all relevant information, reports and records to him or her. However, under article 243-3 of the Code of Criminal Procedure and article 80 of Act No. 44-2017/AN, if the competent authorities refuse to open an investigation into a case, the victims may refer the matter to the investigating judge by filing a complaint accompanied by a civil claim.

Article 13. Conditions governing extradition in the event of enforced disappearance

119. No person living in Burkina Faso may be extradited, expelled or returned by the authorities of Burkina Faso to a State where he or she faces a risk of being subjected to enforced disappearance. In such situations, the national courts have jurisdiction to try a person for the acts for which extradition is sought if they are punishable under national law or if they constitute an international crime.

120. Article 519-2 of the Code of Criminal Procedure establishes that extradition may not be granted by the authorities of Burkina Faso if the offence is not punishable as a felony or misdemeanour under national law. Extradition is granted to the requesting State if the offence for which extradition is requested is punishable by a penalty of at least 2 years' imprisonment in Burkina Faso.

121. The extradition of a person serving a custodial sentence in Burkina Faso may be granted only if the term yet to be served is at least 6 months.

122. The extradition of a person due to serve a custodial sentence may be granted only if the sentence to be served is at least 6 months.

123. In determining whether an offence is punishable under the laws of both Burkina Faso and the requesting State, no account may be taken of whether:

- The laws of Burkina Faso and the requesting State place the acts or omissions constituting the offence within the same category of offence, denominate the offence by the same terminology or characterize the offence in the same way
- Under the laws of Burkina Faso and the requesting State, the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State will be taken into account

124. In any event, "when the authorities of Burkina Faso refuse to extradite an individual, they must submit the case to the competent authorities so that legal action may be taken if necessary. The requesting State is informed that the case has been referred to the competent authorities" (Code of Criminal Procedure, art. 519-6). In practice, Burkina Faso has not yet registered any cases involving a request for extradition for an offence covered by the Convention.

125. Under the law of Burkina Faso currently in force, enforced disappearance is not considered to be a political offence, an offence connected with a political offence or an offence inspired by political motives. Consequently, if a person should be identified as having been guilty of enforced disappearance, he or she is liable to be extradited.

Articles 14 and 15. Mutual legal assistance and judicial cooperation

126. The Government of Burkina Faso undertakes to provide the greatest extent of mutual legal assistance in all matters relating to criminal proceedings in cases of enforced disappearance, subject to the conditions of domestic law of the requested State. Burkina Faso has signed the following agreements on mutual legal assistance and judicial cooperation:

- A tripartite agreement between Burkina Faso, Togo and Benin on cooperation to protect children in a situation of mobility or child victims of cross-border trafficking, concluded on 23 December 2019
- An agreement on cooperation in security matters between the Government of Burkina Faso and the Government of Benin of 22 December 2017
- An agreement on cooperation in security matters between the Government of Burkina Faso and the Government of Senegal of 13 October 2017
- The cooperation agreement between Burkina Faso and Guinea on combating the cross-border trafficking of children of 25 April 2017

- The African Union Convention on Cross-Border Cooperation, ratified on 24 June 2016.

127. In addition, Burkina Faso is part of the G-5 Sahel Security Cooperation Platform, which was signed on 15 December 2015. This platform makes it possible to centralize and facilitate the exchange of operational information between security services and to coordinate measures to prevent and combat crime at the regional level. Its purpose is to strengthen cooperation and mutual legal assistance between the States concerned. In 2017, within the framework of this cooperation, Burkina Faso intercepted five child victims of trafficking of Togolese nationality, who were returned to their country of origin. In 2017 and 2018, legal action was taken against 151 people, of whom 11 were accused, 79 were placed under investigation and 61 were convicted of trafficking in persons.

128. The following cooperation agreements have been established with other States that are not party to the Convention:

- A protocol of understanding between Burkina Faso and Côte d'Ivoire on the protection of children in the context of cross-border mobility, concluded on 31 July 2019
- A memorandum of understanding between the ministry in charge of security of Burkina Faso and the ministry in charge of security of Côte d'Ivoire on the cooperation of security and intelligence services of 18 July 2017

129. The implementation of the cooperation agreement with Côte d'Ivoire made it possible to intercept 12 child victims of cross-border trafficking in 2018 who were escorted back to Burkina Faso. A total of 126 intercepted child victims of cross-border trafficking were escorted back to Burkina Faso in 2021.

Article 16. Prohibition of extradition and expulsion when the safety of the person to be extradited cannot be guaranteed

130. Under article 519-2 of the Code of Criminal Procedure, extradition cannot be granted by Burkina Faso unless the act concerned is punishable by at least 2 years' imprisonment under the law of Burkina Faso and at least 6 months of the sentence remains to be served.

131. Extradition is not granted if:

- The offence for which it is requested is considered to be a political offence, an offence connected with a political offence or an offence inspired by political motives
- The offence for which it is requested was committed outside the territory of the requesting State and the law of Burkina Faso does not provide for the prosecution of the same offence when committed outside its territory
- The requested person is already being prosecuted in Burkina Faso for the acts for which extradition is requested
- A final judgment relating to the offence for which extradition is requested has been issued and executed against the person sought in Burkina Faso or in a third State
- A statute of limitations on prosecution or punishment applies under the law of either the requesting State or Burkina Faso at the time when the request is received
- The offence is covered by an amnesty in Burkina Faso, and Burkina Faso had jurisdiction to prosecute the offence under its criminal law
- The offence for which extradition is requested is punishable by death under the law of the requesting State and this penalty is not provided for in the law of Burkina Faso, unless the competent authorities of the requesting State give what are considered to be sufficient assurances that the death penalty will not be applied
- In the opinion of the competent authority of Burkina Faso, the person being sought has been, or is likely to be, subjected to torture or cruel, inhuman and degrading treatment or will not be ensured a fair trial in the requesting State

- The judgment has been rendered in absentia or by default in the requesting State and the convicted person was not given sufficient advance notification of the trial or did not have the opportunity to prepare a defence and did not, or will not, have the opportunity to have the case retried in his or her presence, unless the competent authorities of the requesting State give what are considered to be sufficient assurances that the person will be ensured the right to a hearing in which the rights of defence are upheld or unless the person, after being duly notified and given the opportunity to appear and prepare a defence, has chosen not to do so
- In the opinion of the competent authority of Burkina Faso, there are substantial grounds for believing that the extradition has been sought for the purpose of prosecuting or punishing the person concerned on the grounds of his or her race, religion, nationality, ethnic origin, political views or sex

132. Despite facing challenging health and security-related emergencies, including in connection with terrorism, the State of Burkina Faso has not taken any measures impacting on the effective implementation of the formal prohibition of offences of enforced disappearance.

133. The authority that decides on the extradition, expulsion, return or refoulement of an individual, when the criteria defined in article 519-2 of the Code of Criminal Procedure are met, is the criminal division of the *tribunal de grande instance* (court of major jurisdiction) of the place of residence of the person to be extradited. The person to be extradited retains the right to challenge a return order and have it reviewed by the Court of Appeal. Such appeals have a suspensive effect.

134. Information on the training received by government officials responsible for expelling, returning or extraditing foreign nationals may be found in paragraphs 163 and 164 of this report.

Articles 17 and 18. Access to information and the protection of persons with a legitimate interest in the event of enforced disappearance

135. Article 2 of the Constitution protects the life, safety and physical integrity of everyone living in Burkina Faso. Article 3 provides that “no one may be deprived of his or her liberty unless he or she has been charged with an offence punishable by law. No one may be arrested, held in custody, deported or exiled except as provided for by law.” Taken together, these provisions prohibit incommunicado detention.

136. See paragraph 58 for information on measures to ensure that all persons deprived of their liberty will be authorized to communicate with and be visited by their families, counsel or any other person of their choice.

137. The public prosecutor checks that registers are properly maintained when he or she inspects police stations, gendarmeries, detention facilities and any other place likely to house persons deprived of their liberty. In the event that registers are not properly maintained, the persons in charge of the facilities are liable to disciplinary sanctions, without prejudice to any criminal penalties that they may incur. Detention registers may be accessed by anyone with a legitimate interest.

138. The prison authorities have technical bodies responsible for monitoring prisons to ensure compliance with the minimum rules governing conditions of detention. The directors of detention and correctional facilities are responsible for their upkeep.

139. The judge responsible for enforcing sentences is also responsible for ensuring that prisoners are well treated. In addition to checks performed by the judge, the Office for Protection against Human Rights Violations of the Ministry of Justice and Human Rights regularly carries out inspections of places of detention throughout the country. A total of 229 places of detention were visited in 2015 (26 detention and correctional facilities and 203 gendarmeries and police stations). Following these visits, 274 people (prison officers, police officers and gendarmes) participated in capacity-building activities relating to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

and the laws and regulations governing detention in Burkina Faso. In 2017, 242 places of detention were visited (28 detention and correctional facilities and other places of detention; 120 police stations; and 94 gendarmeries) and 264 officials (prison officers, criminal investigation assistants and criminal investigation officers) participated in capacity-building activities relating to the minimum rules on detention. In 2021, 23 places of detention were visited (the Bobo-Dioulasso detention and correctional facility, 10 gendarmeries, 11 police stations and the Centre for the Education and Social Reintegration of Minors in Conflict with the Law).

140. Civil society organizations generally have access to places of detention. They regularly organize visits to facilities and conduct activities within them. Religious ministers are also present in the country's various prisons and report on their activities in places of detention.

141. The National Human Rights Commission also visits prisons and other places of detention. Under articles 25 and 26 of the Act establishing the National Human Rights Commission, civil, military and judicial authorities are required to provide the Commission's members with any relevant information and explanations and to send them any documentation considered to be necessary. The Commission is given unrestricted access to all facilities in order to investigate any allegations of human rights violations.

142. All police stations and gendarmeries have detention registers that police commissioners and brigade commanders are required to keep up to date, specifically, the logbooks and police custody registers that must be signed and initialled by the heads of the relevant unit.

143. Logbooks contain information on the missions and daily duties carried out by staff. The information generally relates to entry on duty; direct complaints; staff departures and returns; questioning and arrests; the deposit, seizure and return of objects; medical visits and consultations; visits by lawyers; family visits; visits by the authorities and authorized institutions; and checks by superiors.

144. Custody registers contain information on the identity of persons in custody; relevant offences; grounds for custody; the identity of criminal investigation officers; the period of custody (start dates and any extensions, if applicable); observations on the person in custody (medical examinations, searches); and the signatures of the criminal investigation officer and the person concerned.

145. Article 100-1 (4) of the Code of Criminal Procedure provides that, during preliminary investigations, anyone accused of a criminal offence is presumed innocent until proven guilty under the law in Burkina Faso. Violations of the right to be presumed innocent are punished and compensated in accordance with the law.

146. In order to facilitate prisoners' reintegration into their families upon release, the Code of Criminal Procedure includes measures to ensure that they maintain and improve their relationship with family members. Except in special circumstances, prisoners are entitled to receive visits from their relatives and guardians.

147. A number of laws guarantee the protection of persons requesting information and all persons investigating ill-treatment in Burkina Faso. These laws include the Constitution, Act No. 040-2019/AN of 29 May 2019 (the Code of Criminal Procedure), Act No. 025-2018/AN of 31 May 2018 (the Criminal Code), Act No. 044-2017/AN of 4 July 2017 amending Act No. 24/94/ADP of 24 May 1994 (the Code of Military Justice), Act No. 010-2017/AN of 10 April 2017 on the Prison System in Burkina Faso and Act No. 039-2017/AN of 27 June 2017 on the Protection of Human Rights Defenders in Burkina Faso.

Article 19. Collection and use of information regarding enforced disappearance

148. In Burkina Faso, the Forensic Police Service uses a database known as the Automated Fingerprint Identification System (AFIS-Criminel) to locate and check the criminal records of suspects arrested and detained in gendarmeries and police stations.

149. The Government adopted Act No. 001-2021/AN, on the protection of persons with regard to the processing of personal data, on 30 March 2021. This Act sets out general regulations on the processing of personal data, irrespective of the nature of the data, the processing method used and the persons responsible. Its purpose is to protect the fundamental rights and freedoms of individuals with regard to the processing of their personal data.

150. The Act specifies the persons and entities authorized to process personal data relating to offences, convictions and security measures. These include courts, public authorities, entities responsible for managing a public service with the approval of the supervisory authority and justice officials, who process data strictly in accordance with the requirements of their job.

151. Article 8 of the Act provides that data should be collected and processed for specific, explicitly defined and legitimate purposes only. Consequently, the types of data referred to in article 17 (3) of the Convention may not be used for purposes other than those for which they are collected.

152. Article 8 (3) of the Act establishes that data must be kept for no longer than is required for the purpose for which they were collected or processed. After this period, data may be retained in a form that allows for persons to be identified only for historical, statistical or research purposes.

Article 20. Restriction of the right to information of persons deprived of their liberty in the event of enforced disappearance

153. The restriction of the right to information is established as an exceptional measure in national law. It is not an absolute prohibition in the sense that it does not apply to counsel for the accused and is subject to review by a higher court. Under article 261-52 of the Code of Criminal Procedure, the investigating judge has the right to impose a 10-day ban on communication. This period may be renewed, but only for a further 10 days.

154. Under no circumstances may the ban on communication apply to the accused person's counsel. Under article 251-16 of the Code of Criminal Procedure, lawyers are entitled to hold a fully confidential interview with arrested persons. Interviews take place within the sight, but not the hearing, of criminal investigation officers and may last no longer than 30 minutes.

Article 21. Release of a person deprived of his or her liberty

155. The release of a person deprived of his or her liberty may be recorded in the various reports issued by criminal investigation officers and in the registers kept in places of detention.

156. Under article 146 of the Act on the Prison System in Burkina Faso, prisoners granted a final release are issued with a certificate of discharge upon their release that contains information on their civil status and a description. Released prisoners are reminded not to lose or damage their certificates as they provide proof of the legality of their release.

157. The authorities responsible for releasing prisoners are the public prosecutor, criminal investigation officers, investigating judge, the Sentence Enforcement Commission and the trial judge.

158. Under article 261-84 of the Code of Criminal Procedure, in all cases where release is not automatic, it may be ordered ex officio by the investigating judge following an application from the public prosecutor and notification of the civil party. The public prosecutor may also request a person's release at any time. The investigating judge immediately informs the civil party in writing of the public prosecutor's applications. He or she issues a ruling within five days of the date of the applications.

Article 22. Obligation to prevent and sanction obstruction of the right of judicial appeal to determine the lawfulness of deprivation of liberty

159. In Burkina Faso, legal guarantees are in place to ensure that any person deprived of his or her liberty or any other person with a legitimate interest may bring proceedings before a court. Persons who claim that their rights have been violated may apply to the competent court to have their case heard and to claim compensation for injury. Persons whose rights and freedoms are violated by arbitrary acts committed by political and administrative authorities, or by holders of public office in general, have the right to request the courts to bring proceedings against the perpetrators and the right to claim compensation for injury.

160. Deprivation of liberty in Burkina Faso is governed by numerous laws and regulations. Article 261-10 of the Code of Criminal Procedure provides that any person who claims to have suffered injury as a result of a felony or misdemeanour may, by filing a complaint, bring criminal indemnification proceedings before the investigating judge, who draws up a report when the complaint is expressed verbally.

161. For detention-related failings, the law provides for the imposition of criminal, administrative and disciplinary penalties on the judicial and administrative authorities. With regard to criminal penalties, article 324-7 of the Criminal Code provides that any person in charge of a place of detention who admits a person without a warrant or judicial decision or, in cases of deportation or extradition, without a government order, any person who detains an individual or refuses to present him or her to the criminal investigation officer or the person transmitting his or her orders, and any person who refuses to show registers to any authority responsible for checking them will be liable to a prison sentence of between 1 and 5 years and a fine of between CFAF 500,000 and CFAF 3 million.

162. Article 324-8 of the Criminal Code prescribes a prison sentence of between 1 and 5 years for prosecutors general, public prosecutors, their deputies, judges and criminal investigation officers who detain, or order the detention of, an individual outside designated detention facilities and contrary to the conditions established in law or who bring a citizen before a criminal court without first bringing formal charges against him or her.

Article 23. Prevention of enforced disappearances

163. As part of efforts to raise awareness of the Convention, training and awareness-raising activities have been organized for members of certain professions, such as police officers and prison officers. In 2017 and 2018, 120 members of the defence and security forces and 40 health-care workers (doctors, advanced practice nurses, nurses and midwives) received training in how the Convention should be implemented in their work. In 2021, 100 health-care workers, 60 police officers, 60 gendarmes and 20 prison officers received training in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention and the Istanbul Protocol, which sets out guidelines for the effective investigation of allegations of torture.

164. In addition, modules on international humanitarian law, human rights, fundamental freedoms and the rights of the child have been incorporated into training programmes for the defence and security forces. These modules are taught at military and paramilitary training centres in Burkina Faso such as the Armed Forces Training Centre (38 hours), the National Fire Fighters' Academy (50 hours), the Police Academy (3 hours of lectures), the National Academy for Non-commissioned Officers of the Gendarmerie (40 hours), the National Police Academy (40 hours), the National Prison Officers' Academy (50 hours for each of the three ranks: supervisor, officer and assistant), and the National Academy for Water and Forestry Officials (4 hours of lectures).

165. The various laws governing the relationship between superiors and subordinates are addressed in paragraphs 84 to 89 above.

Article 24. Victims' right to reparation

166. The definition of victim in national law is in accordance with article 24 of the Convention. Thus, victims are defined as all persons who have personally suffered injury as a direct result of an offence. In accordance with the Code of Criminal Procedure, the victim of an enforced disappearance in Burkina Faso may be the person reported as disappeared, his or her spouse, children or family members, or any other person who has personally suffered injury as a direct result of the disappearance.

167. The right to information is one of the fundamental rights guaranteed by the Constitution. Guaranteeing this right means ensuring that the family members of disappeared persons are informed at all times of the victim's situation and the progress and results of the investigation. The Code of Criminal Procedure governs the conduct of preliminary inquiries and investigations. At this stage of the proceedings, the family members of disappeared persons may, at any time, ask to be informed of the results of searches, unless the information given by the criminal investigation officer or the investigating judge might compromise the investigation or endanger the life of the disappeared person.

168. In the national legal system, there are two ways of obtaining redress before a court. The first way is to submit an application to a civil court. Article 1382 of the Civil Code provides that victims may claim damages for the harm that they have suffered. The second way for a victim to claim compensation is governed by the Code of Criminal Procedure. A civil action is brought before the criminal court in accordance with article 230-2 of the Code, which provides that civil actions may be brought at the same time as public proceedings and before the same court. Such actions are admissible for all types of injury, whether material, physical or psychological, resulting from the acts that are the subject of the proceedings. They are also admissible for material injury resulting from the same acts, even if the indictment does not mention any related violation that has caused material injury.

169. When the responsibility of the State is called into question before a criminal or civil court, the State cannot, in principle, evade its obligation to provide reparation. As the guarantor of the safety and security of people and property, the State is held responsible for any injury suffered by individuals if it fails to fulfil this duty.

170. Other remedies exist at the local level, including the possibility of bringing proceedings before the Court of Justice of the Economic Community of West African States. The Supplementary Protocol relating to the Court, adopted on 19 January 2005, breaks new ground by vesting the Court with jurisdiction to rule on human rights violations under the African Charter on Human and Peoples' Rights. The Court receives complaints from States and individuals. Another new development is that victims may bring a case directly before the Court without having to exhaust domestic remedies. Burkina Faso is also a member of the African Court on Human and Peoples' Rights, which is authorized to receive individual communications.

171. Freedom of expression is guaranteed under article 21 of the Constitution. All persons have the right to form associations and participate freely in the activities of the associations established. Associations must operate in compliance with the laws and regulations in force.

172. Article 4 of Act No. 064-2015/CNT of 20 October 2015, on freedom of association, states that associations may be formed freely, without prior administrative authorization. In accordance with national regulations, national and international organizations and associations that work to combat enforced disappearance exist and operate freely in Burkina Faso. Relatives of missing persons may also form an association to make representations concerning the situation of a disappeared person.

Article 25. The protection of children in the event of enforced disappearance

173. National law does not establish as an offence the falsification, concealment or destruction of documents attesting to a person's true identity or the wrongful removal of children subjected to enforced disappearance. However, similar offences, such as making it

impossible to identify a child, moving or concealing a child, making a child disappear or substituting him or her for another child, are punishable under paragraphs 71 to 73 of the Criminal Code.

IV. Difficulties encountered in implementing the recommendations and the provisions of the Convention

A. Security and humanitarian situation

174. The emergence of terrorism in 2015 has given rise to serious human rights violations and large-scale internal displacement. This situation is an obstacle to the effective implementation of the 2019–2022 National Action Plan as the State is obliged to devote a greater proportion of its human, financial and material resources to security matters and humanitarian assistance.

175. Certain areas of the country are difficult to access owing to the lack of security, making it impossible to implement planned activities in these areas. The regions most affected by insecurity are Sahel, Nord, Centre-Nord, Est and Boucle du Mouhoun.

176. Armed terrorist groups often employ deceitful tactics as part of their *modus operandi*, using equipment and uniforms taken during attacks on the positions of the defence and security forces. They carry out abductions, kidnappings and public executions. Several arrested suspects, as well as members of armed groups neutralized in counter-attacks, were wearing the uniforms of the defence and security forces. Therefore, some of the acts of which the defence and security forces are accused are in fact attributable to armed terrorist groups. This situation makes it difficult to clarify cases of enforced disappearance in which the responsibility of the State is called into question.

177. From the humanitarian perspective, terrorist attacks cause mass displacements of people fleeing high-risk areas to more secure places. As at 31 December 2021, the number of internally displaced persons was 1,579,976. Of these, 22.34 per cent were women, 16 per cent were men and 61.66 per cent were children.

B. Social unrest and institutional instability

178. For several years now, Burkina Faso has been experiencing social unrest as multiple demonstrations fuelled by a variety of social demands have taken place.

179. As with social unrest, institutional reforms involving the merging and splitting of ministerial departments and budgetary regulations have all hampered the execution of the National Action Plan for Implementation of the Recommendations.

C. Health crisis

180. Burkina Faso, in common with other countries, has had to deal with the COVID-19 pandemic since 9 March 2020. Faced with the spread of the disease, the Government issued Decree No. 2020-0239/PRES/PM/MS/MDAC/MATDC/MSECU/MINEFID of 30 March 2020 declaring a nationwide state of health emergency under article 66 of Act No. 23/94/ADP, the Public Health Code Act of Burkina Faso. The establishment of a state of emergency was intended to curb the spread of the pandemic and build lasting resilience in order to save lives.

181. Protection measures and border closures have hampered the execution of certain activities intended to implement the Committee's recommendations. Together with the lack of financial resources attributable to the successive budget cuts ordered by the Government, they have led to some activities being either postponed or cancelled. More specifically, the measures taken to manage and mitigate the pandemic have had an adverse effect on budgetary allocations for activities to implement the Committee's recommendations.

Conclusion

182. This report has enabled the Government of Burkina Faso to assess its implementation of the Convention and the recommendations arising from the submission of its initial report to the Committee in 2016. The assessment indicates that progress has been made in strengthening the legal and institutional framework for the protection and promotion of human rights.

183. Notwithstanding this progress, the security and humanitarian challenges that the State has faced since 2015 are a major concern for Burkina Faso in its quest to ensure respect for human rights. In this regard, significant efforts are being made to improve the security situation and fully realize the human rights of all persons living in Burkina Faso. With this in mind, the Government of Burkina Faso reaffirms its commitment to effectively implementing the Convention and remains open to all contributions made with a view to continually improving conditions for the implementation of the Convention and the realization of human rights in general.
