



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

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## Committee on Enforced Disappearances

### Concluding observations on the additional information submitted by Burkina Faso under article 29 (4) of the Convention\*

1. The Committee on Enforced Disappearances considered the additional information submitted by Burkina Faso under article 29 (4) of the Convention<sup>1</sup> at its 475th and 476th meetings, held on 20 and 21 February 2024.<sup>2</sup> At its 489th meeting, held on 29 February 2024, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the additional information submitted by Burkina Faso, as requested by the Committee in its concluding observations.<sup>3</sup> It thanks the State party for the additional information submitted in writing in response to the list of themes communicated to the State party on 15 December 2022 and welcomes the open, fruitful and constructive dialogue held with the delegation of the State party at the Committee's twenty-sixth session, on 20 and 21 February 2024, regarding the measures taken to fulfil the State party's obligations under the Convention in the following areas: (a) searches and investigations in disappearance cases; (b) the characteristics of disappearances, including enforced disappearances, in the State party; and (c) reparations and support for victims and the protection of their rights.

#### B. Positive aspects

3. The Committee welcomes the legislative measures taken by the State party in areas relevant to the Convention, including:

(a) Act No. 025-2018/AN of 31 May 2018, enacting the Criminal Code, which contains a definition of enforced disappearance that is in line with the Convention, establishes penalties for the perpetrators of such offences in articles 523-4 and 523-5 and defines enforced disappearance as a crime against humanity in article 422-1;

(b) 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.

\* Adopted by the Committee at its twenty-sixth session (19 February–1 March 2024).

<sup>1</sup> [CED/C/BFA/AI/1](#).

<sup>2</sup> See [CED/C/SR.475](#) and [CED/C/SR.476](#).

<sup>3</sup> [CED/C/BFA/CO/1](#), para. 47.



## C. Effect given to the Committee's recommendations and new developments in the State party

4. The Committee takes note of the measures taken by the State party to implement the Convention and the recommendations contained in its previous concluding observations. The Committee is fully aware of the many serious difficulties the State party is facing. Nevertheless, it wishes to express its concerns, in particular about the many reports of enforced disappearance being committed on the territory of the State party and the impunity enjoyed by the perpetrators. The Committee encourages the State party to implement its recommendations, which were made in a constructive and cooperative spirit, in order to ensure that the legal framework and the measures taken by the authorities are fully in line with the State party's obligations under the Convention.

### 1. General information

#### Urgent action procedure

5. The Committee notes the information provided by the State party during the dialogue concerning the urgent actions procedures initiated in December 2023 and January 2024 with regard to Daouda Diallo and Sansan Anselme Kambou, as well as the State party's stated commitment to respond without delay. The Committee regrets, however, that it has yet to receive any information on this topic despite having sent a reminder to the Permanent Mission of the State party on 31 January 2024, with a deadline of 14 February 2024 in the case of Mr. Diallo (art. 30).

**6. The Committee urges the State party to strengthen its cooperation under the urgent action procedure and to respond without delay to requests for urgent action transmitted by the Committee, in order to clarify the fate and whereabouts of the disappeared persons and provide information on the measures taken to search for them and investigate their disappearance. In addition, the Committee invites the State party to disseminate information about the urgent action procedure among civil society actors and the general public.**

#### Individual and inter-State communications

7. The Committee takes note of information according to which a meeting to consider the desirability of making the declarations 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. It regrets, however, that the State party has yet to make the requisite declarations (arts. 31 and 32).

**8. The Committee encourages the State party to recognize its competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention.**

#### Regulatory and institutional framework and allegations of enforced disappearance

9. The Committee acknowledges the State party's efforts to develop a regulatory and institutional framework to prevent and punish enforced disappearances in accordance with the Convention, as well as its assertion regarding efforts to strengthen the capacity of judicial institutions to punish these acts. The Committee is nonetheless concerned by the numerous allegations of enforced disappearances, which the State party acknowledged during the dialogue, and by the lack of cases of enforced disappearance before the national courts and of any investigations under way in such cases.

**10. The Committee recommends that the State party take the legislative and institutional measures necessary to prevent, prosecute and punish enforced disappearances and to provide victims with assistance and access to reparations, in line with article 24 (4) and (5) of the Convention.**

### **National human rights institution**

11. The Committee welcomes the adoption of Act No. 002-2021/AN of 30 March 2021 amending Act No. 001-2016/AN of 24 March 2016, on the establishment of the National Human Rights Commission, to designate the Commission as the national mechanism for the prevention of torture and related practices, as well as the information provided during the dialogue, according to which the human and financial resources allocated to the Commission have been increased. The Committee notes the measures taken to promote awareness of the Commission among the general public and the national and local authorities. However, it is concerned that the Commission is not accredited with the Global Alliance of National Human Rights Institutions and that no information has been provided on its work to promote and protect the rights enshrined in the Convention.

**12. The Committee encourages the State party to ensure that the National Human Rights Commission is fully in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It also recommends that the Commission has the financial, technical and human resources necessary to perform its functions, in particular those relating to enforced disappearances, and to engage with the entire population and the national and local authorities.**

## **2. Statistics and outcome of searches and investigations in disappearance cases**

### **Statistical data on enforced disappearances**

13. The Committee is concerned by the lack of clear and reliable statistical data on the number of persons who have disappeared in the State party, including persons who may have been subjected to enforced disappearance. Although the State party mentioned during the dialogue that some data were available on the disappearance of members of the internal security forces and the *Volontaires pour la défense de la patrie* and on a few cases of persons who have been found, the Committee regrets that the information is vague and incomplete (arts. 1–3, 5, 12 and 24).

**14. The Committee recommends that the State party set up without delay a national registry of disappeared persons, consolidate the information on disappeared persons contained in the various public databases and produce accurate and reliable statistics on disappeared persons, including on those who may have been subjected to enforced disappearance. These statistics should make it possible to identify the different groups of victims, the causes and dynamics of enforced disappearance and patterns of behaviour, and serve as a basis for adopting more effective prevention, investigation and search measures. The national registry should be regularly updated, ensuring the uniform, comprehensive and immediate registration of all disappearances. It should contain, at a minimum, the following information: (a) the total number and identity of all disappeared persons, with an indication of those who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention; (b) the sex, gender identity, age, nationality and ethnic origin of the disappeared person, as well as the place, date, context and circumstances of the person's disappearance, including all evidence relevant to determining whether it was an enforced disappearance; and (c) the status of the relevant search and investigation procedures and of procedures for the exhumation, identification and return of remains.**

### **Investigations into cases of enforced disappearance and victims' rights**

15. The Committee takes note of the information provided to it regarding current investigative measures, in particular the fact that, as soon as it is made aware of acts constituting enforced disappearance, the public prosecution service can open an inquiry and order an investigation into the alleged or proven acts even in the absence of an official complaint. It nonetheless regrets having received little information on the investigations conducted into these disappearances and on their outcome, including the punishment imposed on the perpetrators (arts. 2, 3, 6, 7 and 9–12).

**16. The Committee recommends that the State party take all measures necessary to:**

(a) **Ensure that all cases of enforced disappearance are investigated ex officio, promptly, exhaustively, impartially, independently and with a differential approach and that the interministerial working group on human rights violations is able, as part of counter-terrorism efforts, to work specifically on cases of enforced disappearance committed in this context;**

(b) **Ensure that the alleged perpetrators of enforced disappearance, including military and civilian superiors and State officials who authorize, support or acquiesce to such disappearances, are tried and, if found guilty, given appropriate penalties;**

(c) **Guarantee that all institutions involved in the investigation of cases of enforced disappearance have effective and timely access to all relevant documentation that may be in the possession of State agencies, in particular intelligence services of the armed and security forces.**

### **Military jurisdiction**

17. The Committee takes note of the information provided during the dialogue about the security context, the organization of the judicial system and Act No. 013-99/AN of 7 April 1999 enacting regulations for the personnel of the military courts, which guarantees the independence of military judges and the right of appeal. The Committee is nonetheless concerned that, under national law, military courts have jurisdiction to investigate allegations of acts of enforced disappearance committed by military personnel (art. 11).

18. **Recalling its statement on enforced disappearances and military jurisdiction,<sup>4</sup> the Committee recommends that the State party take the legislative measures necessary to exclude the investigation and prosecution of acts of enforced disappearance from the competence of the military courts in all cases.**

### **Suspension from duties**

19. The Committee regrets not having received specific information on the existing mechanisms to ensure, in practice, that no member of law enforcement or the security forces or any other public official suspected of involvement in the commission of an enforced disappearance participates in the investigation thereof (art. 12).

20. **The Committee recommends that the State party ensure that public officials suspected of involvement in the commission of an offence of enforced disappearance are suspended from their duties from the outset and for the duration of the investigation, without prejudice to the principle of the presumption of innocence, and that the law enforcement or security forces whose members are suspected of having participated in an act of enforced disappearance may not take part in the investigation.**

### **Coordination of search, investigation and identification activities in disappearance cases**

21. The Committee is concerned at the lack of coordination and information exchange among the institutions responsible for search, investigation and identification activities in disappearance cases, including enforced disappearance, and at reports that victims and their relatives are not involved in these procedures (arts. 12 and 24).

22. **The Committee recommends that the State party ensure that the institutions involved in investigating cases of enforced disappearance and in searching for, recovering and identifying the remains of disappeared persons coordinate their activities, cooperate and exchange information so that they can work effectively and expeditiously. The Committee also recommends that the State party ensure that relatives of disappeared persons are able to participate in the search for and identification of human remains, in investigations and in all stages of the proceedings, under an appropriate procedure, and that they are kept regularly informed of the progress and results of these activities and investigations.**

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<sup>4</sup> A/70/56, annex III.

## Impunity

23. The Committee is concerned over Act No. 026-2018/AN of 1 June 2018 enacting general regulations on intelligence in Burkina Faso, in particular article 18, which exempts from punishment intelligence officers who, in the performance of their duties, commit offences that are “absolutely necessary” to the success of the mission or to their security or that of other persons required for the completion of the mission. This provision could encourage the commission of offences, including enforced disappearance, and promote impunity for them (arts. 7, 11 and 24).

**24. The Committee supports the recommendations made during the universal periodic review,<sup>5</sup> as well as those by the Committee against Torture,<sup>6</sup> in relation to Act No. 026-2018/AN. The Committee recommends that the State party repeal any provision that could have the effect of exempting perpetrators of acts of enforced disappearance from prosecution or criminal penalties.**

## Identification and return of the bodies and mortal remains of disappeared persons

25. The Committee notes with concern the scant progress made in the identification, return and preservation of bodies and mortal remains of disappeared persons. It is also concerned by reports that genetic testing remains hard to access and that the collection of samples **from victims' relatives is the exception rather than the rule (art. 12 and 24).**

26. **The Committee urges the State party to:**

(a) **Intensify its efforts to identify the bodies and mortal remains of disappeared persons and to return them to their relatives in a dignified manner and in accordance with the cultural norms and traditions of the victims;**

(b) **Ensure that, once informed of the discovery of a body or human remains, the public prosecutor immediately takes the measures necessary to ensure their preservation and identification, even when found by a member of the public without the intervention of State officials;**

(c) **Ensure that the competent authorities protect areas where exhumations and forensic activities are taking place, as well as cemeteries and places where unidentified bodies are located.**

## Mass graves

27. The Committee is concerned at reports of mass graves on the territory of the State party, particularly in the villages of Karma and Djibo. It notes the State party's statement that it is not aware of the existence of such mass graves. In this context, the Committee notes the advances in the areas of forensics and DNA identification mentioned by the State party but remains concerned at the lack of specific information on the efforts undertaken to identify, forensically examine and return the bodies of disappeared persons in a respectful manner. The Committee is also concerned at the lack of information on how these advances are contributing to the search for and identification of victims of enforced disappearance other than those who belonged to the internal security forces (arts. 12 and 24).

**28. The Committee recommends that the State party set up a mechanism to verify reports of mass graves, particularly in the villages of Karma and Djibo. In addition, the Committee urges the State party to take into consideration, in the development and implementation of a search strategy, the Guiding Principles for the Search for Disappeared Persons and recommends that the State party ensure that each identified mass grave is protected and dealt with using the appropriate forensic methods. The Committee further recommends that the State party ensure that the mission and aims of the technical and forensic police specifically and effectively include the identification of all disappeared persons and that the procedure is accessible to all victims.**

<sup>5</sup> See [A/HRC/55/5](#).

<sup>6</sup> [CAT/C/BFA/CO/2](#), paras. 15 and 16.

### 3. Characteristics of disappearances, including enforced disappearances, in the State party

#### Reports of enforced disappearance

29. The Committee is concerned over the many reports of enforced disappearances allegedly committed by the armed forces or armed groups acting under the control of the State or with its authorization or acquiescence, such as the *Volontaires pour la défense de la patrie*. While it takes note of the State party's assurances that the security crisis is not ethnicity-related, the Committee is nonetheless concerned that, according to the reports it has received, most enforced disappearances have been of persons belonging to or perceived as belonging to the Fulani People. It also takes note of the concern expressed in this regard by the Committee on the Elimination of Racial Discrimination.<sup>7</sup> The Committee is further concerned by recent reports of enforced disappearance targeting human rights defenders, journalists and political opponents (arts. 1 and 2).

30. **The Committee strongly urges the State party to ensure that no one is subjected to enforced disappearance. It recommends that the State party take all the measures necessary to ensure that its officials do not commit enforced disappearance and to effectively investigate all alleged disappearances, prosecute those responsible for such acts and, if they are found guilty, give them sentences commensurate with the seriousness of the offence. The Committee also recommends that the State party strengthen the oversight of the *Volontaires pour la défense de la patrie* operating under its control with a view to effectively preventing and punishing cases of enforced disappearance attributable to its members. It further recommends that the State party study the impact of communal and ethnic conflict on the practice of enforced disappearance and take steps to put an end to such conflict.**

#### Forced mobilization and enforced disappearances

31. While taking into account the information provided by the State party on legal safeguards and means of challenging an act of forced mobilization, the Committee regrets that several practices implemented under Decree No. 2023-0475 on general mobilization and states of national emergency might constitute enforced disappearance (arts. 1, 11, 12, 17–22 and 24).

32. **The Committee recalls that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance. In this light, the Committee recommends that the State party ensure that the measures taken to combat terrorism do not give rise to enforced disappearances and that the families of recruited persons are systematically informed of their whereabouts and can contact them whenever they wish.**

#### Acts committed by non-State actors without State participation

33. The Committee is aware of the many challenges that the State party is facing as a result of serious abuses, including disappearances, committed by non-State armed groups. Nevertheless, it regrets that it has not received information on the investigations conducted into these disappearances and their results, including the sanctions imposed on the perpetrators, and on the assistance provided to the victims and the search for and location of persons who have disappeared through the actions of non-State actors in cases where the victims are civilians and not State officials (art. 3).

34. **The Committee recommends that the State party increase its efforts to ensure that allegations of acts defined in article 2 of the Convention committed by armed groups without the authorization, support or acquiescence of the State are immediately, thoroughly and impartially investigated and that the alleged perpetrators are brought**

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<sup>7</sup> CERD/C/BFA/CO/12-19, para. 15.

**to justice and, if found guilty, given sentences commensurate with the seriousness of their acts.**

#### **Crimes against humanity**

35. While it takes into account the efforts of the State party to define enforced disappearance as a crime against humanity in its national legislation, the Committee takes note of the State party's stated refusal to consider applying this classification despite having reported a widespread or systematic practice of enforced disappearances attributable to persons or groups of persons acting without the State's authorization, support or acquiescence (art. 5).

**36. The Committee recommends that the State party consider establishing a specialized unit for the investigation of crimes against humanity and, within this unit, a specialized team for investigating cases of enforced disappearance.**

#### **4. Reparations and support for victims and protection of their rights**

##### **Right to reparation**

37. The Committee takes into account the reparation measures for victims of enforced disappearance provided for in national legislation but is concerned at the lack of clear information on the implementation of this right and at the information, received during the dialogue with the delegation of the State party, according to which only a small number of people have had access to reparations, which have been limited to financial compensation and vocational training. The Committee notes with concern that neither the current legal framework nor its enforcement guarantee access to a comprehensive reparations system (art. 24).

**38. The Committee recommends that the State party ensure that all victims of enforced disappearance, regardless of the date of the commission of the offence and even if no criminal proceedings have been instituted, have the right to the truth and to reparation. In that regard, the Committee recommends that the State party:**

(a) **Explicitly include in its legislation the right of victims to the truth, in accordance with article 24 (2) of the Convention;**

(b) **Take the measures necessary to ensure that domestic legislation provides for a system of full reparation, compatible with article 24 (5) of the Convention, that is applicable even if no criminal proceedings have been instituted or the alleged perpetrators have not been identified and takes into account the particular circumstances of the victims, including their sex, sexual orientation, gender identity, age, ethnic origin, social status and disability.**

##### **Transitional justice**

39. The Committee welcomes once again the establishment of the High Council for Reconciliation and National Unity,<sup>8</sup> whose mandate was to receive and process complaints of historical violations of human rights with a view to the awarding of reparations. The Committee notes that the High Council recorded some 5,000 cases but regrets that no information was provided on the outcome of the High Council's work even though its mandate ended in 2021 (art. 24).

**40. The Committee recommends that the State party ensure that the results of the work of the High Council for Reconciliation and National Unity are widely disseminated at the national and international levels. Where the results provide relevant information, the State party should ensure that this information is taken into account in the design and adoption of measures to prevent and eradicate human rights violations, specifically enforced disappearances.**

<sup>8</sup> CED/C/BFA/CO/1, paras. 37 and 38.

**Protection of persons who report an enforced disappearance or are involved in investigating such a disappearance**

41. The Committee remains concerned by reports of threats and reprisals against human rights defenders, victims of enforced disappearance and their relatives and representatives, and by the impunity that the perpetrators of these acts enjoy (arts. 12 and 24).

42. **The Committee urges the State party to redouble its efforts to prevent acts of violence, threats and reprisals against individuals who file complaints, witnesses, relatives of disappeared persons and their defenders, as well as all individuals taking part in the investigation of an enforced disappearance. In particular, the Committee recommends that the State party revise the current protection model to guarantee that: (a) the life and integrity of the person are protected; (b) protection measures ordered by the governmental authorities are implemented promptly and effectively, while ensuring that the authorities coordinate their activities and that persons under protection measures are involved in assessing the risk they face and in determining what measures to put in place, taking a differentiated approach based on their sex, gender identity, sexual orientation, age, ethnicity, disability and vulnerability; (c) thorough, impartial and effective investigations are launched, those responsible are brought to justice and punished, and comprehensive reparations are awarded to the victims; and (d) sufficient human and financial resources are allocated to the protection systems.**

**Legal situation of disappeared persons whose fate has not been clarified**

43. The Committee notes the information provided by the State party on the legal framework applicable to disappeared persons under the Persons and Family Code and on the two situations provided for in that context, namely, absence and disappearance. The Committee remains concerned, however, that the declaration of death might cause searches for disappeared persons to be terminated. While it understands the importance of clarifying the legal status of the relatives of a disappeared person and their rights in terms of social protection, the Committee considers that, given the continuous nature of enforced disappearance, this legal procedure should not be based on the assumption that the disappeared person is dead until his or her fate has been clarified (art. 24).

44. **The Committee invites the State party to consider revising its legislation to introduce provisions stipulating that, in the event of enforced disappearance, declaring an absent or disappeared person dead does not extinguish the State party's obligation, under article 24 (3) and (6) of the Convention, to search for the person. The Committee also invites the State party to ensure in its legislation a balance between the need to clarify the legal status and rights of the relatives of disappeared persons and the need to protect the interests and rights of disappeared persons, especially in terms of the State party's obligation to search for them.**

**D. Fulfilment of the rights and obligations under the Convention, dissemination and follow-up**

45. The Committee wishes to draw attention to the obligations taken on by States when they ratify the Convention and urges the State party to ensure that all the measures it adopts, regardless of their nature or the authority adopting them, are in full accordance with the Convention and other relevant international instruments.

46. The Committee also emphasizes the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations. The Committee therefore places particular emphasis on the need for the



**State party to systematically adopt a gender perspective and take into account the specific needs of women and children as it acts on the recommendations contained in the present concluding observations and the full range of rights and obligations deriving from the Convention.**

**47. The State party is encouraged to disseminate widely the Convention, the additional information submitted under article 29 (4) of the Convention and the present concluding observations in order to raise awareness among governmental authorities, civil society actors and the public at large. The Committee also encourages the State party to promote the participation of civil society in the actions taken to implement the recommendations contained in the present concluding observations.**

**48. In accordance with article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 5 March 2025, for review in 2026, specific and updated information on the follow-up given to the recommendations made in the present concluding observations and any other information that it considers relevant in the light of the Convention. The Committee encourages the State party to adopt a national policy on the prevention of enforced disappearance and to promote and facilitate the participation of civil society, in particular organizations of victims of enforced disappearance, in the preparation of this additional information.**

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