



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

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2012**

**Burkina Faso\***

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\* The present document is being issued without formal editing.



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## Introduction

1. Since the advent of democracy, Burkina Faso has been firmly committed to building a nation that respects human rights. This commitment is reflected in its ratification of various human rights conventions, including the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006. The Convention was ratified by Burkina Faso on 5 December 2009 and entered into force on 23 December 2010.
2. The present report is submitted in accordance with article 29 of the Convention, which provides that each State Party shall submit to the Committee on Enforced Disappearances a report on the measures taken to give effect to its obligations under the Convention.
3. The report was prepared using a participatory process with contributions received from stakeholders concerned by issues related to enforced disappearance. Preparation of the report required consultation with several ministerial departments, institutions and civil society organizations working directly or indirectly in the promotion and protection of human rights or in a position to provide information related to issues addressed in the report. Consultations were carried out in the form of working meetings between the relevant stakeholders and the technical team tasked with preparing the report, who also made use of documents published by the stakeholders.
4. The report was prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention, adopted by the Committee at its second session (26–30 March 2012) (CED/C/2). The first part of the report provides general information on Burkina Faso while the second part provides information on the implementation of articles 1 to 25 of the Convention.

### **I. Part I**

#### **General legal framework under which enforced disappearances are prohibited**

5. Burkina Faso was one of the first countries to sign the International Convention for the Protection of All Persons from Enforced Disappearance. Since ratification in 2009, steps have been taken to give effect to the provisions of the Convention through the institutional and normative framework.
6. The Constitution of 11 June 1991 establishing the Fourth Republic provides that Burkina Faso is a democratic, unitary and secular State. It proclaims fundamental human rights and establishes republican institutions based on the principles of the separation of powers, political pluralism, the rule of law and decentralization. The revision of the Constitution through Act No. 033-2012/AN of 11 June 2012 introduced major innovations at the institutional and normative level.
7. The President of the Republic monitors compliance with the Constitution, establishes the broad outlines for State policy and represents national unity. The Government is the executive organ that directs national policy and as such it is called upon to examine draft international agreements, bills and draft regulations. It also commands the defence and security forces. The Government is accountable to Parliament. It is headed by a Prime Minister, appointed from the parliamentary majority, who coordinates government action. Within 30 days of his or her appointment, the Prime Minister delivers a policy statement before the National Assembly. This statement is followed by a discussion and a vote. The adoption of the statement is equivalent to inauguration.

8. The most recent constitutional amendment established the two-chamber parliamentary system in Burkina Faso. The two chambers are the National Assembly and the Senate. Members of Parliament have a five-year term of office and senators a six-year term. Pending the establishment of the Senate, the National Assembly exercises all the powers of the Parliament in accordance with the most recent constitutional amendment of 12 November 2013.

9. The Constitution also provides for a judicial power that is the custodian of individual and collective freedoms. This power is entrusted to judges and is exercised by the judicial and administrative courts throughout the territory of Burkina Faso. Under article 126 of the Constitution, the judicial and administrative courts of Burkina Faso are:

- The Court of Cassation;
- The Council of State;
- The Court of Audit;
- The Jurisdiction Court;
- The courts and tribunals established by the State.

10. In addition to the traditional political institutions involved in protecting and promoting human rights, institutions to consolidate and entrench the democratic process have been put in place under the Fourth Republic. These include:

- The Economic and Social Council;
- The Office of the Ombudsman;
- The Higher Council on Communication;
- The Independent National Electoral Commission;
- The Commission on Information Technology and Freedoms;
- The National Human Rights Commission;
- The Constitutional Council;
- The Higher State Supervisory Authority;
- The Public Procurement Regulatory Authority.

11. As a member of the United Nations and the African Union, Burkina Faso is a party to most international and regional instruments for the promotion and protection of human rights in general and those related to enforced disappearances in particular. In general, Burkina Faso has not made any reservations, objections, derogations, restrictions or limitations to the instruments to which it is a party. The legal status of these instruments is set out in article 151 of the Constitution, which provides that: "Treaties or agreements duly ratified or approved shall, upon publication, take precedence over domestic legislation ...". These instruments are regularly published in the Official Gazette.

12. Article 151 of the Constitution establishes the principle of the primacy of treaties over domestic law. However, a distinction must be made between directly applicable provisions and those that require certain steps to be taken before they can be implemented at the domestic level. The justiciability of the latter is, in practice, linked to the adoption of domestic legal provisions on their implementation.

13. Burkina Faso has ratified a number of instruments prohibiting torture and thus enforced disappearances. There is, of course, a close link between torture and enforced disappearance. Enforced disappearance may be accompanied by torture, not only of the

disappeared, but also of their families. In addition, procedural guarantees for detainees are not respected in either case and such crimes often involve public authorities.

14. At the international level, the following instruments have been ratified:

- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 11 February 2010;
- The Rome Statute of the International Criminal Court, ratified on 16 April 2004;
- The International Convention against the Taking of Hostages, ratified on 1 October 2003;
- The International Convention for the Suppression of Terrorist Bombings, ratified on 1 October 2003;
- The International Convention for the Suppression of the Financing of Terrorism, ratified on 1 October 2003;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 15 May 2002;
- The United Nations Convention against Transnational Organized Crime, ratified on 15 May 2002;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 4 January 1999;
- The Convention for the Suppression of Unlawful Seizure of Aircraft, ratified on 19 October 1987;
- The Organization of African Unity Convention for the Elimination of Mercenaries in Africa, Libreville, 3 July 1977, ratified on 21 September 1984;
- The Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 14 September 1965;
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified on 27 August 1962.

15. At the regional level, the following instruments have been ratified:

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified on 9 June 2006;
- The African Union Convention on Preventing and Combating Corruption, ratified on 29 November 2005;
- The African Union Convention on the Prevention and Combating of Terrorism, ratified on 27 October 2005;
- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights, ratified on 23 February 1999;
- The African Charter on the Rights and Welfare of the Child, ratified on 8 June 1992;
- The Organization of African Unity Convention for the Elimination of Mercenaries in Africa, Libreville, 3 July 1977, ratified on 21 September 1984;
- The African Charter on Human and Peoples' Rights, ratified on 21 September 1984;

- The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified on 19 March 1974.

16. At the national level, under article 151 of the Constitution, “treaties or agreements duly ratified or approved shall, upon publication, take precedence over domestic legislation, provided that the agreement or treaty concerned is implemented by the other party” and, under article 5 of the Criminal Code, “duly ratified and published treaties, agreements and conventions are subject to domestic criminal provisions”. Domestic legislation provides that no one shall be arbitrarily accused, detained or imprisoned and also releases all citizens from the duty of obedience when superior orders constitute a manifest violation of respect for human rights and public freedoms, as well as excluding superior orders as an exonerating circumstance. War crimes, crimes against humanity and the crime of genocide are punished under the conditions established by the law. No statute of limitations applies to these offences. The formation of militias is a crime punishable under the law of Burkina Faso.

17. Articles 2 and 3 of the Constitution of 11 June 1991 prohibit all forms of unlawful attack on the life, safety, physical integrity and freedom of individuals. However, the Criminal Code does not contain any provision criminalizing enforced disappearance as a separate offence. Offences against liberty, however, are punishable under article 141, paragraph 1, of the Criminal Code, which 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 is prejudicial to individual freedom, the civic rights of one or more persons or the legislation in force shall be liable to imprisonment for a term of 5 to 10 years.”

18. In addition, articles 356 and 357 of the Criminal Code may also be applied to acts that constitute the offence of enforced disappearance. Under article 356: “Anyone who abducts, arrests, detains or kidnaps a person or knowingly provides premises for the detention or kidnapping of a person, except when they are instructed to do so by an established authority or the law permits or requires such action, is liable to a prison sentence of between 5 and 10 years. If the period of detention or kidnapping exceeds 1 month, the penalty shall be 10 to 20 years’ imprisonment.” Similarly, article 357 provides that: “The maximum sentence provided for in paragraph 2 of the previous article shall be imposed if the arrest or abduction is carried out by persons wearing or appearing to wear official uniform or insignia or persons assuming a false identity or using a fake official order. The same penalty applies if the arrest or abduction is carried out using a motor vehicle or if the victim’s life is threatened.”

19. Other laws include Act No. 13/98/AN of 28 April 1998 on the legal regime applicable to public service employment and officials, Order No. 2004-077/SECU/CAB of 27 December 2004 on the Code of Conduct for the National Police, Order No. 2003-004/MJ/SG/DAPRS of 13 February 2003 on the internal regulations of prisons in Burkina Faso and Kiti (Decree) AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso. Some of these instruments set standards of conduct for prisoners and prison security personnel.

## **II. Part II Implementation of the Convention in Burkina Faso**

### **Article 1 Non-derogability of the provisions of the Convention**

20. Having ratified the International Convention for the Protection of All Persons from Enforced Disappearance, Burkina Faso is committed to implementing it fully. In so doing, no exceptions may be used to justify derogating from the provisions of the Convention in domestic law. Accordingly, neither article 59 of the Constitution, on internal political instability and states of emergency, nor any provision of the Criminal Code or any other legal text may be invoked to justify acts leading to enforced disappearance. Under article 59 of the Constitution: “Where the institutions of Burkina Faso, the independence of the nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat and/or when the proper functioning of the constitutional authorities is impaired, the President of Burkina Faso may take such measures as are required by the circumstances, after deliberations in the Council of Ministers and formal consultations with the Presidents of the National Assembly and the Constitutional Council. He or she shall inform the nation of the measures taken in a public address. Under no circumstances may foreign armed forces be called upon to intervene in an internal conflict. Parliament assembles in ordinary session and cannot be dissolved during the exercise of exceptional powers.” The state of emergency and internal political instability described in article 59 of the Constitution are subject to procedural and substantive requirements in order to avoid abuse by the political authorities.

### **Article 2 Definition of enforced disappearance**

21. The definition of enforced disappearance as provided for in the Convention does not yet exist in the domestic legislation of Burkina Faso. Nonetheless, the Constitution and the Criminal Code do address the elements that constitute the crime of enforced disappearance. Under article 3 of the Constitution, no one may be deprived of their liberty unless they have been charged with an offence punishable by law. Likewise, no one may be arrested, detained or deported other than as provided for by law. In addition, article 356 et seq. of the Criminal Code punish the elements that constitute the crime of enforced disappearance. These include detention, arrest, abduction or kidnapping carried out without an order from an established authority or not provided for by law. Article 141 of the Criminal Code also criminalizes offences against liberty.

22. Acts related to enforced disappearance include torture and similar practices that are defined and punished under the bill on the definition, prevention and punishment of torture and similar practices. This bill was adopted by the Council of Ministers on 18 December 2013 and was forwarded to the National Assembly for adoption in 2014.

### **Article 3 Appropriate measures to investigate and prosecute those responsible for acts amounting to enforced disappearance**

23. When it is suspected that an act of abduction, detention, arrest or kidnapping has been committed, the Code of Criminal Procedure provides for the investigation, examination and prosecution of the alleged perpetrators. With regard to the investigation,

the criminal investigation department, under the authority of the chief prosecutor, is mandated to record violations of criminal law, collect evidence of them and search for the perpetrators. Under article 14 of the Code of Criminal Procedure, when a preliminary investigation is opened by the investigating judge, the criminal investigation police exercises the powers delegated to it and complies with the judge's requests.

24. The alleged perpetrators are tried by the *tribunaux de grande instance* (courts of major jurisdiction) for ordinary offences and the Criminal Division of the Court of Appeal for criminal acts. The Military Court also has jurisdiction to prosecute acts that amount to enforced disappearance committed either by members of the armed forces in performing their duties or inside barracks. Since the ratification of the Convention, no cases of enforced disappearance have been recorded by the courts of Burkina Faso.

#### **Article 4**

##### **Criminalization of enforced disappearance in national legislation**

25. Enforced disappearance is not expressly criminalized under national legislation. However, acts similar to enforced disappearance are punishable. The definition of enforced disappearance is being taken into account in the ongoing revision of the Criminal Code. The adoption of the new Code will bring national legislation into line with the provisions of the Convention.

#### **Article 5**

##### **Enforced disappearance as a crime against humanity in national legislation**

26. Although there is no specific legislation that criminalizes enforced disappearance as a separate offence in Burkina Faso in accordance with the Convention, certain provisions of the Criminal Code deal with the punishment of acts that contribute to the offence of enforced disappearance. Accordingly, under article 314 of the Criminal Code, disappearance is qualified as a crime against humanity if it is carried out by means of a concerted plan against a section of the civilian population as part of a widespread or systematic attack. The perpetrators of such offences face the death penalty. Enforced disappearance can also be punished as a crime against humanity under the Rome Statute of the International Criminal Court, ratified by Burkina Faso on 16 April 2004.

27. Article 314 of the Criminal Code is consistent with article 7 of the Rome Statute, on crimes against humanity, which categorizes enforced disappearance, *inter alia*, as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

28. Enforced disappearance can also be prosecuted as a crime against humanity under Act No. 052-2009/AN of 3 December 2009, which establishes jurisdiction and procedure for the implementation of the Rome Statute of the International Criminal Court by the courts of Burkina Faso. Article 17 of this Act implementing the Rome Statute in Burkina Faso provides for the prosecution and punishment of crimes against humanity.

#### **Article 6**

##### **Criminal responsibility of superiors in cases of enforced disappearance**

29. Article 70 of the Criminal Code provides that: "No criminal responsibility shall attach to a person who commits an act that is prescribed or authorized by a law or

regulatory instrument. No criminal responsibility shall attach to a person who commits an act ordered by a legitimate authority unless that act is manifestly unlawful.”

30. The principle of the criminal responsibility of superiors is recognized in national legislation. Articles 141 et seq. of the Criminal Code concerning attacks on liberty set out penalties to this effect. Under article 141, any public official or other government representative who gives, or is responsible for giving, an order to perform an arbitrary act, or one that is prejudicial to individual freedom or the civic rights of one or more persons shall be liable to imprisonment for a term of 5 to 10 years. If the officials can prove that they were acting on the legal orders of their superiors and within their legal authority, the penalty is applicable only to the superiors who gave the orders.

31. Under article 17 of Act No. 013/98/AN of 28 April 1998, public officials carry out the orders of their superiors within the framework of existing legislation for public service delivery. However, there are limits to the obligation to obey orders. For instance, when the order is not related to the mission of the service, when execution of the order constitutes a criminal offence, and when the order is manifestly unlawful and seriously jeopardizes the public interest. Officials who execute such orders are personally liable. In addition, superiors who are aware of illegal acts committed by their subordinates are personally liable if they take no action to stop them.

32. In the same vein, article 19 of Decree No. 2004-077/SECU/CAB of 27 December 2004 on the Code of Conduct for the National Police provides that: “Subordinates must comply with instructions from their superiors except where an order is manifestly unlawful and would seriously jeopardize the public interest. In such cases, the subordinate has the duty to make his or her objections known to the issuing authority, indicating expressly why he or she believes the order to be illegal. If the order is upheld and if, despite the explanation or interpretation provided, the subordinate still refuses to comply, he or she shall refer the matter to the first higher authority that may be contacted. Note shall be taken of that refusal. Any refusal to carry out an order that does not fall into the above category shall incur the liability of the person concerned.”

33. In practice, in cases where an order is manifestly unlawful, it is recommended that officers share their views with their superiors, in accordance with proper conduct and the rules of administrative discipline. However, if the superior upholds his or her order despite these observations formulated and submitted in writing, the subordinate shall refer the matter to an authority superior to the issuing authority that he or she is able to contact. An official who refuses to execute a manifestly unlawful order cannot be sanctioned. If the subordinate incurs a punishment for having refused to execute a manifestly unlawful order, he or she may appeal to the superior of the person who gave the order or before the administrative court. It should also be noted that any arbitrary arrest or detention that can be qualified as enforced disappearance is manifestly unlawful and no subordinate can be compelled to comply with an order to carry it out.

34. Public officials responsible for policing or criminal investigation who knowingly refuse or fail to report and put an end to illegal or arbitrary detention in any location are liable to a prison term of 1 to 5 years.

## **Article 7**

### **Punishment of acts of enforced disappearance**

35. The definition of enforced disappearance contained in article 1 of the Convention has not yet been incorporated into domestic legislation. However, there are general provisions for the punishment of acts that qualify as enforced disappearance under article 3 of the Convention.

36. Under article 314 of the Criminal Code: “The death penalty applies to any person who practises deportation or slavery, or routinely and systematically carries out summary executions, abductions of persons who subsequently disappear, torture or inhuman acts, for political, philosophical, racial, religious or other reasons as part of a concerted attack on a section of the civilian population or a group fighting against the ideological system in the name of which these crimes are committed.” Similarly, articles 356, 357 and 358 of the Criminal Code establish penalties for cases of arbitrary detention and arrest, kidnapping and abduction. Article 356 provides for a penalty of 5 to 10 years’ imprisonment for anyone who abducts, arrests, detains or kidnaps a person or knowingly provides premises for the detention or kidnapping of a person, except when they are instructed to do so by an established authority or the law permits or requires such action. If the period of detention or kidnapping exceeds 1 month, the penalty shall be 10 to 20 years’ imprisonment. Under article 357, if the arrest or kidnapping is carried out by persons wearing or appearing to wear official insignia or uniform or persons assuming or using a false identity or a fake official order, those facts shall be considered to be aggravating circumstances. Article 358 of the Criminal Code provides for a penalty of life imprisonment if the person who was abducted, arrested, detained or kidnapped was subjected to physical torture. The death penalty applies if the torture resulted in death, serious injury or permanent disability.

37. Articles 398 to 405 of the Criminal Code also provide penalties for kidnapping and for failing to hand over a minor. Under article 398, any person who “by the use of violence, threat or fraud abducts or causes a minor to be abducted or leads, diverts or removes a minor or causes a minor to be led, diverted or removed from wherever he or she had been placed by those to whose authority or supervision he or she had been submitted or entrusted” shall be punished by a prison sentence of between 5 and 10 years. The child’s age or the death of the child are aggravating circumstances.

## **Article 8**

### **Statute of limitations and remedies in cases of enforced disappearance**

38. Under national legislation, acts related to enforced disappearance are either crimes or offences. Under article 7 of the Code of Criminal Procedure, in the case of crimes, the statute of limitations is 10 years after the date on which the crime was committed. Under article 8, the statute of limitations for offences is 3 years. However, under article 317 of the Criminal Code, there is no statute of limitations on crimes against humanity or genocide.

## **Article 9**

### **Jurisdiction of the courts over acts of enforced disappearance and judicial cooperation in this area**

39. Burkina Faso ratified the Rome Statute of the International Criminal Court on 16 April 2004 and adopted Act No. 052-2009/AN of 3 December 2009 on implementation of the Statute in December 2010. Under this Act, if a case of enforced disappearance involving offences covered by the Statute were to be committed in Burkina Faso, a judge in the country could invoke the Statute of the International Criminal Court to hear and rule on the case.

40. Under article 5 of the Criminal Code, criminal law applies to all offences committed in Burkina Faso regardless of the nationality of the perpetrator. In such cases, prosecution follows a complaint from the victim or a formal complaint from the authorities of the country in which the acts were committed.

41. Acts of enforced disappearance may be classified as either felonies or misdemeanours. If the acts are classified as a felony, the Criminal Division of the Court of Appeal is competent to try the case. The applicable procedure is set out in Act No. 51-93/ADP of 16 December 1993 on the procedure applicable before the Criminal Division. Article 1 of the Act provides that the Criminal Division has full jurisdiction to try individuals referred to it under a committal order.

42. Burkina Faso is a party to numerous conventions that provide for mutual legal assistance and extradition.

43. At the regional and international levels, these include:

- The General Convention on Cooperation in Judicial Matters, signed at Antananarivo on 12 September 1961;
- The Convention on Cooperation in Judicial Matters between the member States of the Non-Aggression and Defence Assistance Agreement, signed on 21 April 1987 at Nouakchott;
- The Convention of 1 July 1992 on Mutual Assistance in Criminal Matters of the Economic Community of West African States (ECOWAS), adopted at Dakar on 29 July 1992;
- The ECOWAS Extradition Convention of 1 August 1994, signed at Abuja on 6 August 1994;
- The International Convention against the Taking of Hostages, ratified on 1 October 2003;
- The African Union Convention on Preventing and Combating Corruption, ratified on 29 November 2005;
- The United Nations Convention against Corruption, ratified on 10 October 2006.

44. At the bilateral level, these are:

- The General Convention on Judicial Cooperation between Burkina Faso and the Republic of Mali, signed at Ouagadougou on 23 November 1963;
- The Agreement on Cooperation in Judicial Matters between France and Burkina Faso, signed in Paris on 24 April 1961.

45. In addition, Burkina Faso is part of the regional judicial platform of Sahel countries that comprises Burkina Faso, Mali, Mauritania and Niger. The platform aims to strengthen cooperation and mutual legal assistance among these States.

## **Article 10 Procedural guarantees for persons suspected of having committed a crime of enforced disappearance**

46. Article 3 of the Constitution stipulates that no one may be deprived of their liberty if they have not been charged with an offence punishable by law. Article 4 of the Constitution sets forth that all citizens of Burkina Faso and all persons living in the country enjoy equal protection before the law and that their case must be heard by an independent and impartial tribunal. All accused persons are presumed innocent until proven guilty by a competent court. The right to a defence and to freely choose one's counsel is guaranteed before all courts.

47. Persons suspected of having committed a crime of enforced disappearance cannot be held in pretrial detention for more than 6 months. If continued detention appears necessary at the end of that period, the investigating judge may extend it by a special substantiated court order, based on reasoned arguments by the chief prosecutor. Extensions may not exceed 6 months (Code of Criminal Procedure, art. 138). Furthermore, the accused or his or her counsel may at any time apply to the investigating judge for provisional release, subject to the obligations contained in article 139 of the Code.

48. Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso stipulates that no one may be kept in detention if a release order has been issued by a competent judge, if they have served their sentence or if their detention has not been extended in accordance with statutory conditions.

49. An investigation may be launched pursuant to Act No. 052-2009/AN of 3 December 2009 which establishes jurisdiction and procedure for implementation of the Rome Statute of the International Criminal Court by the courts of Burkina Faso.

50. A person suspected of having committed a crime of enforced disappearance:

- Shall not be compelled to incriminate himself or herself or to confess guilt;
- Shall not be subjected to any form of coercion, duress or threat, to torture or any other form of cruel, inhuman or degrading treatment or punishment;
- Shall, if questioned in a language other than a language that he or she fully understands or speaks, have, free of cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;
- Shall not be subjected to arbitrary arrest or detention; and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in the provisions of the Code of Criminal Procedure that do not conflict with the Rome Statute.

51. The person also has the following rights, of which he or she is informed prior to being questioned:

- To be informed that there are grounds to believe that he or she has committed a crime of enforced disappearance;
- To remain silent, without such silence being a consideration in the determination of guilt or innocence;
- To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in keeping with the provisions of ordinary law;
- To be questioned in the presence of counsel, unless the person has voluntarily waived his or her right to counsel.

52. In the course of prosecuting crimes, including the crime of enforced disappearance, under the aforementioned Act, the relevant court is responsible for taking the necessary measures to safeguard the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

53. Pursuant to judicial cooperation agreements between Burkina Faso and other countries, the authorities must notify their counterparts in those countries of the detention or arrest of their nationals suspected of having committed a crime of enforced disappearance.

54. When foreigners are placed in police custody or are detained, the judicial authorities must apply the provisions of the Vienna Convention on Consular Relations of 24 April

1963. Under the provisions of this Convention, if a foreigner in custody or detention so requests, the competent authorities must, without delay, inform the consular post of his or her State of origin. Any communication addressed to the consular post by the person arrested or held in detention must also be forwarded by the said authorities without delay. The said authorities must inform the person concerned without delay of his or her rights. Consular officers of the person's country of origin have the right to visit and converse with him or her. They may also arrange for his or her legal representation.

## **Article 11**

### **Extradition and guarantees of a fair trial in cases of enforced disappearance**

55. Extradition is governed by the Act of 10 March 1927 on the extradition of foreigners. According to its article 4, the acts attributed to the person concerned must incur criminal penalties under the law of Burkina Faso in order for extradition to take place. By virtue of ratifying the Convention, Burkina Faso does not require an extradition treaty with a requesting State in order to extradite a person accused of committing the offence of enforced disappearance. Burkina Faso has not recorded any cases of extradition in relation to any of the offences covered by the Convention.

56. The national criminal courts do not have universal jurisdiction. They are competent to hear cases involving offences committed in the country or in a place under their jurisdiction. They are also competent when such offences are committed in the country by or against one or more nationals of Burkina Faso.

57. The entities responsible for proceedings in cases of enforced disappearance are listed in the Code of Criminal Procedure, section I, title I, as follows:

- The criminal investigation department: senior law-enforcement officials and police officers as well as officials and other officers who are granted certain powers of investigation by law;
- The public prosecutor's office: the prosecutor-general at the appeal court and the chief prosecutor;
- The investigating judge.

58. In the case of enforced disappearance, evidence is brought in accordance with ordinary law, whereby offences can be proved through any means and judges rule based on their personal belief. In other words, judges are free to independently weigh the lawfully obtained evidence discussed during hearings. Under the Code of Criminal Procedure, forms of evidence include confessions, police investigation reports and testimonies.

59. The right to a fair trial is guaranteed in article 4 of the Constitution, which stipulates that: "All citizens of Burkina Faso and all persons living in the country enjoy equal protection before the law. Everyone is entitled to have his or her case heard by an independent and impartial tribunal. All accused persons are presumed innocent until proven guilty. The right to a defence including the right to freely choose one's own lawyer, is guaranteed in all the courts."

60. The right of defence is guaranteed at all stages of proceedings. A suspect may request counsel as soon as the preliminary investigation has been completed. A legal assistance fund, endowed with 1 billion CFA francs, has been set up to support low-income individuals who cannot afford a lawyer. In proceedings concerning serious offences, a lawyer is automatically appointed for defendants who cannot afford legal services.

61. The authorities responsible for investigating and bringing legal action in cases of enforced disappearance are senior law-enforcement officials and officers and non-commissioned officers of the gendarmerie. They may proceed with investigations either on the instructions of the chief prosecutor or on their own initiative but under the oversight of the prosecutor-general (Code of Criminal Procedure, art. 73). Except for the officers of the gendarmerie who are recognized as senior law-enforcement officials, the military authorities do not have the authority to investigate and prosecute perpetrators of enforced disappearance.

62. No disaggregated data on enforced disappearance is available because this offence is not defined in national law. However, data on cases of abduction are recorded by the national authorities; they are not disaggregated, but most relate to child abduction. In 2011, 106 child abduction cases were heard by the higher courts, compared to 139 in 2012. The rise is due to the fact that individuals are increasingly turning to the courts. These child abduction cases cannot be deemed to constitute enforced disappearance because they are mainly the action of individuals and are usually related to child custody disputes.

## **Article 12**

### **The consideration of complaints and the protection of complainants, witnesses, persons with standing and the defence counsel of victims of enforced disappearance**

63. The consideration of complaints and the protection of complainants, witnesses, persons with standing and the defence counsel of victims of enforced disappearance are governed by the Constitution and the Code of Criminal Procedure. Article 39 of the Code of Criminal Procedure provides that the chief prosecutor receives complaints and allegations and decides on follow-up action. Where proceedings are discontinued, he or she notifies the complainant. In addition, any established authority, public official or civil servant who, in the exercise of his or her functions, learns of a crime or offence is required to report it without delay to the chief prosecutor and to transmit to him or her any relevant information, reports and records. Once the chief prosecutor has been informed of unlawful acts, he or she takes all necessary measures, or ensures that these are taken, to investigate and prosecute criminal offences. To this end, he or she directs the activities carried out by the senior law-enforcement officials and police officers under his or her jurisdiction.

64. The remedies available in Burkina Faso are mainly judicial. There is no provision in domestic law that permits procedural discrimination between victims of a criminal offence, regardless of its nature. All persons, irrespective of their nationality, have the right to take their case to the competent courts. Even in the event that the public prosecutor discontinues the proceedings, the victim may still file a complaint with an investigating judge and join the proceedings as a civil party.

65. The chief prosecutor or investigating judge handling the case has the right, under articles 41 and 50 of the Code of Criminal Procedure, to call directly upon the law-enforcement agencies. This prerogative allows him or her, where necessary, to protect complainants and witnesses from any ill-treatment or intimidation arising from a complaint or statement.

66. Under domestic law, all senior law-enforcement officials have the authority to investigate acts of enforced disappearance. Accordingly, there are no specific sections within the police forces that deal with this issue.

### **Article 13**

#### **Extradition conditions in cases of enforced disappearance**

67. In Burkina Faso, there is no legal provision that expressly requires the existence of a treaty for an extradition to proceed. In practice, however, an extradition treaty is necessary. In the absence of an extradition treaty or if the offences concerned are not specified in the treaty, the offender may be extradited only if an agreement is reached between the Governments concerned.

68. The Act of 10 March 1927 on the extradition of foreigners, applicable in Burkina Faso, does not specifically consider enforced disappearance and related offences as cases for extradition. Its article 4 stipulates only that the acts concerned must be punishable under criminal law. However, under article 8 of the Convention, Burkina Faso no longer requires an extradition treaty with States parties in order to extradite a person accused of committing the offence of torture in its territory. Burkina Faso has not recorded any cases of extradition in relation to any of the offences covered by the Convention.

### **Articles 14 and 15**

#### **Mutual legal assistance and cooperation**

69. Provisions on mutual legal assistance and cooperation are contained in various domestic legal texts mentioned in the section on article 9 of the Convention.

### **Article 16**

#### **Prohibition on extraditing or expelling persons when assurances regarding their safety are not guaranteed**

70. Under article 4 of the Constitution, foreigners in Burkina Faso enjoy the same protection as nationals. In addition, Burkina Faso has ratified international legal instruments, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibit the extradition or expulsion of individuals when assurances regarding their safety are not guaranteed. Moreover, article 5 of the ECOWAS Convention on Extradition of 1 August 1994 stipulates that the extradition of a foreigner will be refused if there is a risk that he or she might be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

71. No legislative provision or practice has been adopted to undermine the prohibition on extraditing or expelling a person when assurances regarding their safety are not guaranteed. No one has been extradited from Burkina Faso under such conditions.

72. Regarding the competent authorities, extradition decisions are taken by decree of the President of Burkina Faso after approval by the Indictment Division of the Court of Appeal. If the Indictment Division refuses a request for extradition, that decision is final and extradition cannot be granted. The primary condition laid down in the Act of 10 March 1927 on the extradition of foreigners is liability to prosecution. In addition, the offence must have been committed either:

- In the territory of the requesting State by a national of that State or by a foreigner;
- Outside its territory by a national of that State;

- Outside its territory by a non-national of that State when the offence is one of those that may, under domestic law, be prosecuted in Burkina Faso even if committed by a foreigner abroad.

73. Under no circumstances is extradition granted by Burkina Faso if the act committed is not punishable under domestic law as a felony or a misdemeanour.

74. With regard to the procedure itself, the request for extradition is submitted to the Government of Burkina Faso through the diplomatic channel. It is accompanied by a judgement or sentence, or a procedural document formally declaring or automatically giving rise to the referral of the accused to a criminal court, or by an arrest warrant or any other document with the same force, issued by the judicial authority. These documents must clearly state the facts in respect of which they are issued and the date on which the events occurred. Original or certified copies of the above documents must be provided. The requesting Government should also provide copies of the legislation applicable to the alleged facts and possibly a statement of the factual basis of the case. An extradition decision may be set aside. Article 23, paragraph 3, of the Act of 10 March 1927 stipulates that: "A petition for a declaration of nullity is admissible only if made by the extradited person within three days of the notice of default served him or her immediately upon imprisonment by the chief prosecutor. The extradited person shall at the same time be informed of his or her right to choose or be appointed a lawyer." This provision states that extradition is null and void if it took place in circumstances other than those provided for by law. It may even be revoked ex officio by the investigating or trial court that has jurisdiction over the extradited person. If extradition has been granted pursuant to a final judgement, it is revoked by the Indictment Division of the court within whose jurisdiction the extradition has taken place.

75. Persons responsible for implementing the legal provisions regarding extradition receive initial training in vocational schools, in addition to skills upgrading.

## **Articles 17 and 18**

### **Detention conditions and access to information and protection of persons with standing in cases of enforced disappearance**

76. The life, safety and physical integrity of individuals are protected under article 2 of the Constitution. Article 3 stipulates that: "No one may be deprived of their liberty unless they have 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." Based on these two Constitutional provisions, incommunicado detention is prohibited. Every police and gendarmerie station has detention registers, which the police superintendent or gendarmerie chief is obliged to keep up-to-date. The chief prosecutor inspects stations, short-stay prisons and all other places where persons are likely to be deprived of their liberty to ensure that the registers are properly kept. If this is found not to be the case, the head of the given facility is liable to disciplinary sanctions, without prejudice to any criminal penalties. Detention registers are accessible to any interested person. A bill on the definition, prevention and punishment of torture and related practices provides for the establishment of a national torture prevention observatory whose mission will be to inspect places of deprivation of liberty and ensure that persons are not held incommunicado.

77. The Code of Criminal Procedure does not contain any specific provisions regarding communication between persons in police custody and their family or counsel during the preliminary investigation. However, a suspect has the right to communicate with a lawyer immediately following the initial hearing. Under article 63 of the Code, a person in police custody may see a doctor at any time while in police custody. A doctor's visit may also be

requested by a family member, thus giving relatives a way to enquire about the person in custody and receive information on the authorities that ordered remand, the place of detention and the detainee's condition. Article 62 specifies that a medical examination must be carried out if requested by the detainee.

78. Several pieces of legislation govern the treatment of persons deprived of their liberty. These include the Code of Criminal Procedure and its implementing legislation, Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso, and the Code of Military Justice. Order No. 2003-004/MJ/SG/DAPRS of 13 February 2003 on internal regulations of detention facilities in Burkina Faso lays down standards of conduct for both detainees and prison officers. In order to facilitate the family reintegration of detainees after their release, the Code of Criminal Procedure provides for them to maintain and improve their relationship with their relatives. Except under special circumstances, detainees may receive visits from their parents and guardians.

79. When foreigners are held in police custody, the judicial authorities apply the provisions of article 36 of the Vienna Convention on Consular Relations of 24 April 1963 by notifying the consular office or diplomatic mission of their country of origin and authorizing them to communicate with these institutions.

80. Deprivation of liberty may take the form of police custody or pretrial detention. The rules governing police custody are set out in the Code of Criminal Procedure. They recognize the right of senior law-enforcement officials to remand persons against whom there is prima facie evidence in connection with a judicial investigation. Articles 62 and 75 of the Code state that if, for the purposes of the investigation, a senior law enforcement official remands in custody one or several persons against whom there is prima facie evidence, the period of remand may not exceed 72 hours. The same provisions stipulate that an extension may be authorized only by the chief prosecutor or the investigating judge, for a period that may not exceed 48 hours. However, Act No. 017-2009/AN of 5 May 2009 on the suppression of organized crime derogates from the aforementioned provision on periods of custody. Its article 5 stipulates that, for the purposes of the investigation, the judge or senior law enforcement official may remand one or several alleged perpetrators of organized crime for a period of up to 10 days. That period may be extended by 5 days with the authorization of the chief prosecutor.

81. A person may also be deprived of his or her liberty by being placed in pretrial detention or by serving a prison sentence. Under the Code, pretrial detention shall be ordered by the investigating judge and may not exceed 6 months.

82. Civil society organizations generally have access to places of detention, where they regularly conduct visits and carry out activities. Various religious communities are also active in the country's short-stay prisons and correctional facilities and report on their activities there. Under Act No. 062-2009/AN of 21 December 2009, on the establishment of the national human rights commission, the commission has the authority to visit prisons and other places of detention.

83. Technical entities attached to the prison administration are responsible for monitoring the observance of the minimum rules on detention conditions. The proper running of short-stay prisons and detention centres is incumbent on the warden. The sentence enforcement judge also ensures that detainees are well treated. In addition to the checks conducted by the Ministry of Justice, the Ministry for Human Rights and the Promotion of Civic Values visits places of detention countrywide every year. Civil society organizations are involved in these visits.

## **Article 19**

### **Collection and processing of data on enforced disappearance**

84. Burkina Faso does not have a DNA database. However, the Government did adopt Act No. 010-2004/AN of 20 April 2004 on the protection of personal data, which broadly regulates the handling of personal data, irrespective of the nature, processing method or persons handling them. Its purpose is to protect the rights of individuals in relation to the processing of personal information. The Act specifically lists those who are authorized, strictly as necessary for the exercise of their duties, to process personal data on offences, convictions and preventive measures, i.e. the courts, State authorities, legal persons managing a public service, subject to authorization by the oversight body, and legal officials. Article 14 of the Act stipulates that data should be gathered and processed for specified, explicit and legitimate purposes. Accordingly, the data covered in article 17, paragraph 3, of the Convention cannot be used for any other purpose than that for which they were gathered. Moreover, the last paragraph of article 14 of the Act specifies that data may be stored for no longer than is necessary for their collection and processing. Once that period is over, data may be retained in identifiable form only for use for historical, statistical or scientific purposes.

## **Article 20**

### **Restrictions to the right to information of persons deprived of their liberty in cases of enforced disappearance**

85. Restricting the right to information is an extraordinary measure under national law. The ban is not absolute as it does not cover the accused person's lawyer. Article 112 of the Code of Criminal Procedure stipulates that: "An accused person in custody may, immediately following the initial hearing, communicate freely with his or her counsel. The investigating judge may order a ban on communication for a period of no more than 10 days and may renew it for a period of no more than a further 10 days. The ban on communication in no way applies to the accused person's counsel." The purpose of this exception is to ensure that persons deprived of their liberty may receive the assistance of a lawyer to defend their rights.

## **Article 21**

### **Release of persons deprived of their liberty**

86. In order to verify that a person deprived of his or her liberty has in fact been released, individuals may consult the various reports drawn up by the senior law enforcement officials and the detainee registers. Article 19 of the Criminal Code stipulates that: "Senior law-enforcement officials are required to notify the chief prosecutor immediately of any felonies, misdemeanours or infractions brought to their attention. On completion of their operations, they must transmit directly to the chief prosecutor the original as well as certified copies of all their reports and relevant records and documents [...]." Furthermore, article 66 of Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso sets forth that: "Upon release, every freed person shall receive an exit pass." In addition, article 147 of the Criminal Code states that: "Officials of places of detention who accept individuals [...], detain them or refuse to bring them before the senior law-enforcement official or authorized representative thereof or refuse to open their registers to any authority charged with monitoring them are guilty of arbitrary detention and are liable to between 6 months' and 2 years' imprisonment and a fine of 50,000 to 600,000 CFA francs."

87. Senior law enforcement officials, the investigating judge and administrative police officials have the authority to release persons deprived of their liberty. Article 139 of the Code of Criminal Procedure stipulates that: “In all matters, whenever release is not automatic, it may be ordered at the discretion of the investigating judge, on the advice of the chief prosecutor [...]” Moreover, under article 146 of the Criminal Code, any investigating judge, chief prosecutor or administrative police official to whose attention any cases of unlawful or arbitrary detention are brought is required to record them or put a stop to them, subject to legal proceedings.

## **Article 22**

### **Obligation to prevent and impose sanctions for obstruction of the right to a judicial remedy as a means of determining the lawfulness of deprivation of liberty**

88. In Burkina Faso, legal safeguards are in place to ensure that any person deprived of his or her liberty or any other person with a legitimate interest is entitled to take proceedings before a court. Individuals who claim that their rights have been violated may bring the matter before the competent court and claim reparation for the harm suffered. Victims of acts by the political and administrative authorities — and all persons vested with public authority in general — that are arbitrary and detrimental to their rights and freedoms have the right to apply to the courts to seek a conviction for such acts and compensation for the harm suffered. The Constitution and Organic Act No. 10/93/ADP of 17 May 1993 on the organization of the judiciary in Burkina Faso, as amended, have established a judicial system granting the right of appeal and a guarantee of collective and individual rights and freedoms for all. Likewise, article 84 of the Code of Criminal Procedure provides that: “A person claiming injury as the result of an offence may bring criminal indemnification proceedings before an investigating judge by lodging a complaint.”

89. In Burkina Faso, deprivation of liberty is governed by various laws and regulations, such as the Constitution, Act No. 43-96 ADP of 13 November 1996 on the Criminal Code, Order No. 2004-077/SECU/CAB of 27 December 2004 on the Code of Conduct of the National Police Force, Order No. 2003-004/MJ/SG/DAPRS of 13 February 2003 on internal regulations of detention facilities in Burkina Faso, Act No. 32-2003 of 14 May 2003 on internal security and Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso. Article 3 of the Constitution states 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.” The Code of Criminal Procedure provides for pretrial detention on various grounds, such as the requirements of an investigation, the extent of disturbance to public order, the safety of the perpetrator of an offence and in order to guarantee that the person concerned will appear in court. Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities states that: “No one may be held in a prison facility unless a committal warrant, an arrest warrant or a summons, or a prosecutor’s post-trial address calling for incarceration [...] has been issued for that person. No person for whom a release order has been issued by the competent judge, who has served his or her sentence or whose detention has not been extended under the conditions established by the ordinance may be kept in detention.”

90. The law establishes criminal, administrative and disciplinary penalties for judicial and administrative authorities for detention-related violations. In terms of criminal penalties, article 141 of the Criminal Code provides for imprisonment for a period of 5 to 10 years for any official or other representative of the public authorities who gives, or is responsible for

giving, an order to perform an arbitrary act, or one that is detrimental to individual freedom, the civic rights of one or more persons or the legislation in force. Similarly, detention facility officials who refuse to produce custody registers to any authority mandated to monitor them are liable to punishment. Similarly, article 148 provides for imprisonment of between 1 and 5 years for prosecutors general, chief prosecutors, their deputies, judges and senior law enforcement officials who detain, or order the detention of, an individual other than in designated detention facilities or in conditions other than those laid down by law, or who bring a citizen before a criminal court without first bringing formal charges against him or her. Penalties are also incurred by persons in charge of detention facilities who admit individuals without a detention order or court ruling or, in cases of expulsion or extradition, detain individuals without a government order, or refuse to hand them over to the senior law enforcement official or the bearer of the order.

### **Article 23**

#### **Prevention of enforced disappearances**

91. With respect to the dissemination of the International Convention for the Protection of All Persons from Enforced Disappearance, training and awareness-raising activities are envisaged for certain social and professional groups, such as police officers and prison guards. Similar steps have been taken in respect of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol. From 2009 to 2012, 225 senior law enforcement officials and 50 health-care workers received training on these instruments. In addition, lectures on the Convention and the Optional Protocol are held each year at certain training schools, such as the National Police Academy, the National School for Non-Commissioned Officers on Active Duty, the National School for the Gendarmerie and the Georges Namoano Military Academy. From 2010 to 2012, 120 trainee Army officers, 300 non-commissioned officers, 2,700 trainees from the Police Academy and 600 trainees from the National School for the Gendarmerie attended these lectures.

92. The various texts governing the relationship between hierarchical superiors and subordinates were discussed in the previous section on article 6.

### **Article 24**

#### **The right to reparation for victims**

93. The meaning of “victim” under national legislation is practically the same as the meaning set down in article 24 of the Convention. Article 2 of the Code of Criminal Procedure defines victims as “anyone who has personally suffered harm caused directly by the offence”. Under this article, a victim of an enforced disappearance in Burkina Faso may be the disappeared person, his or her spouse, child, family member or any other person who has personally suffered harm caused directly by the disappearance.

94. The right to information is one of the fundamental rights guaranteed by the Constitution. It means that the family of the disappeared person must be kept informed at all times of the victim’s situation, as well as the progress and results of the investigation. The provisions of the Code of Criminal Procedure govern how the preliminary inquiry and investigation are conducted. At this stage in the proceedings, the disappeared person’s family may at any point request the findings of the search, as long as the information provided by the senior law enforcement official or the investigating judge would not jeopardize the investigation or endanger the life of the disappeared person.

95. There are two ways to obtain reparation in court under the justice system of Burkina Faso. The first involves lodging an appeal before a civil court. Article 1,382 of the Civil Code states that the victim may claim damages for harm suffered. The second way of seeking reparation for the victim is governed by the Code of Criminal Procedure. Civil proceedings are brought before a criminal court under article 3 of the Code which states that such proceedings “may be conducted alongside the criminal proceedings and before the same court. The civil proceedings are related to the harm caused by a felony, misdemeanour or infraction. The criminal court may thus order reparation for all material, physical, moral and even emotional harm the victim may have suffered”.

96. When the State is held responsible in either a criminal or a civil court, it cannot, in principle, avoid its obligation to make reparation. Article 1,384 states that “individuals are responsible not only for harm caused by their own actions but also for harm caused by the actions of persons under their charge”. As a result, the State can be held responsible for the actions of its officials. The victim can thus seek reparation from the State in a civil court for the harm caused by the disappearance.

97. There are other appeal mechanisms within ECOWAS, such as those offered by the Community Court of Justice whose Additional Protocol, which was adopted on 19 January 2005, is innovative insofar as it grants the Court the authority to rule on human rights violations, in accordance with the provisions of the African Charter on Human and Peoples’ Rights. The Court receives complaints from States and individuals. Another noteworthy innovation is the fact that victims may apply to the Court directly without having exhausted domestic remedies. Burkina Faso is also a party to the African Court on Human and Peoples’ Rights which provides for individual communications.

98. In addition to the legal reparation system, there are administrative and political reparation mechanisms. Individuals can apply to the compensation fund for the victims of political violence. To mark the National Day of Forgiveness, the President of Burkina Faso promised that the State would compensate the victims or families of the victims of political violence committed in Burkina Faso between 1960 and 30 March 2001. In fulfilment of this promise, the Government set up, by Decree No. 2001-275/PRES/PM of 8 June 2001, a compensation fund for the victims of political violence, endowing it with a budget of 6 billion CFA francs. The fund was managed by a monitoring committee and an administrative committee, with the help of government technical assistance. Of 1,768 applications received and processed, 476 had a favourable outcome.

99. Disappeared persons fall under the provisions of the Personal and Family Code. The Code provides for two possibilities, with provisions on missing persons and others on disappeared persons.

100. Missing persons are covered by articles 8 to 17 of the Personal and Family Code. Under article 8, a missing person is anyone whose existence has become uncertain because no news has been received from him or her. With respect to persons subjected to enforced disappearance within the meaning of the Convention, the situation of such persons could be governed by the provisions on missing persons to the extent that a lack of news from that person makes it improbable that he or she enjoys the right to life. Under articles 9 to 17, the presumption of absence shall be established by legal process a year after the person was last heard of. When the presumption of absence is established by the competent court, a temporary administrator of assets, who may be a guardian responsible for representing the interests of the person presumed absent, an agent appointed by that person or any other person of his or her choice, is appointed.

101. The temporary administrator may engage only in protective, purely administrative transactions regarding the assets of the missing person and may only dispose of his or her assets with the authorization of the presiding judge. Should the missing person have any

children who are minors, those children are placed under the guardianship of the surviving spouse or, in the absence of a spouse, a guardian. Two years after the presumption of absence has been established, the court may issue a declaration of absence. When this occurs, the powers of the temporary administrator are extended to include disposal of the missing person's assets for consideration. Ten years after the person was last heard from, a declaration of death is issued by the court, upon request by any person, following an investigation by the public prosecutor's office. The declaration of death is entered in the register of civil status, and the estate of the person declared missing is administered at his or her last place of residence.

102. Articles 18 to 20 of the Personal and Family Code cover disappearance. Under article 18, a disappeared person is defined as a person "who went missing in circumstances that place his or her life in danger and whose body has not been found". When the circumstances surrounding an absence place the life of the person in danger and the body has not been found after a certain period, any interested party may ask the chief prosecutor to issue a declaration of death. This request can also be made *ex officio* by the Office of the Public Prosecutor. Thus, by means of a judicial procedure that sometimes involves the provision of additional information and administrative investigations, the death of the disappeared person may be officially declared. The declaration of death, which has the same evidential value as a death certificate, is entered in the register of civil status.

103. The declaration of death of the missing or disappeared person allows the estate of the deceased to be settled, in accordance with articles 705 to 875 of the Personal and Family Code. The estate is subject to the regulations provided for in the Code and, more specifically, in the articles mentioned above. The declaration of the death also enables the State to take measures to regulate the situation of the person's spouse and children. Under article 23 of the Code, the spouse may file for divorce and remarry, that being enforceable should the person reappear one day. However, should a disappeared person reappear, his or her children are no longer placed under guardianship or, if his or her spouse has remarried, a judge rules on the custody of the children. The absent or disappeared person can also ask for the declaration of death to be withdrawn.

104. Article 21 of the Constitution states that: "Freedom of association is guaranteed; 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." Article 2 of Act No. 10/92/ADP of 15 December 1992 on freedom of association stipulates that associations may be formed freely, without prior administrative authorization. Under national regulations, international and national organizations and associations aimed at combating enforced disappearances exist in Burkina Faso and operate freely. Relatives of disappeared persons may also form associations to take actions relating to the situation of the disappeared persons.

## **Article 25**

### **Protection of children in cases of enforced disappearance**

105. Cases of abduction and kidnapping are governed by articles 356 to 358 of the Criminal Code, which are described in the section on article 7 above. In addition to these provisions, Act No. 038-2003/AN on the definition and punishment of trafficking in children in Burkina Faso provides strong protection for children in this regard. The Act can be applied in cases of enforced disappearance involving children. It sets out a clear and easily understood definition of a child as any human being under 18 years of age. The Act also defines a trafficker as anyone who, acting alone or in association with others, organizes, accompanies, promotes or facilitates the transfer, transit, stay or placement of a child for

purposes of economic or sexual exploitation, illegal adoption, early or forced marriage or any other purpose that is detrimental to the child's health.

106. Act No. 029-2008/AN of 15 May 2008 on combating human trafficking and related practices provides for the establishment of the National Watchdog and Monitoring Committee on Child Trafficking. The enactment of this national law constitutes a step forward in the fight against trafficking in children. The institutions and persons involved in combating this practice now have the means to punish it, whereas previously many traffickers, who were punished under laws on abduction, slavery or the ill-treatment of minors, got off lightly. Some were simply released by law enforcement officials for lack of a law under which to prosecute them.

107. By ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 31 March 2006, the authorities of Burkina Faso have made a commitment to bring the national legal framework into line with international instruments. At the national level, efforts have been made to combat human trafficking through the adoption of Act No. 029-2008/AN of 15 May 2008 on combating human trafficking and related practices. Article 1 of the Act stipulates that: "Trafficking in persons designates the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." Article 2 of the same Act stipulates that "the offence of trafficking in persons includes the recruitment, transportation, transfer, harbouring or receipt of a minor for the purpose of exploitation, even when none of the means enumerated in article 1 is used". If the offence is established, the perpetrators are subject to the penalties set out in articles 4 to 6 of the Act, which range from 5 years' imprisonment to rigorous imprisonment for life, depending on the circumstances under which the offence was committed.

108. National legislation does not classify as an offence the falsification, concealment or destruction of documents attesting to a person's identity. Nevertheless, such acts could be considered to constitute the offences of forgery, falsification of records and offences aimed at preventing the identification of a child, as set out in the Criminal Code. In this regard, articles 276 to 287 define and punish the offence of forgery.

109. The concealment or destruction of documents attesting to the true identity of the children referred to in article 25, paragraph 1 (a), of the International Convention for the Protection of All Persons from Enforced Disappearance, could be punished under article 397, paragraph 1, of the Criminal Code, which provides that "those who, under conditions such that it is impossible to identify the child, knowingly transport or harbour a child, cause a child to disappear or substitute another in its place or present a child physically as being born of a woman who has not given birth to the child shall be liable for a prison sentence of between 2 and 5 years".

110. The system in place to search for and identify the persons referred to in article 25, paragraph 1 (a), of the Convention is described in the Code of Criminal Procedure. It consists of an initial investigation carried out by senior law-enforcement officials and police officers. In addition to these judicial bodies, the State also takes measures through its Ministry of Social Welfare and National Solidarity to protect children at risk. The Ministry runs shelters and vocational training centres for children in difficult circumstances; these include the André Dupont d'Orodara Children's House, the Centre for Special Education and Training in Gampèla and the Laye Centre for minors in conflict with the law. These establishments also work to rebuild connections between the children and their families. A procedural guide exists for the care, rehabilitation and reintegration of child victims of trafficking. The care provided consists in receiving, sheltering, feeding and looking after

the children in transit centres, before taking them to their families or repatriating them to their country. The rehabilitation and social reintegration of these children take the form of school enrolment, apprenticeship placement in training centres or with craftspeople and the provision of civil status documents (birth certificate, national identity card) for the recovery of their identity.

111. The issue of the identification of individuals is broadly governed by articles 31 to 54 of the Personal and Family Code, which deal with determining a person's name and with changing surnames and given names.

112. The adoption system in Burkina Faso is governed by articles 470 to 507 of the Personal and Family Code. The Code does not specifically address the issue of adoptions of children that originated in enforced disappearances. However, article 407, paragraph 2, does provide that "simple or full adoption may take place only for good reason and if it is beneficial to the adopted person". The adoption of a child may be forbidden, annulled or reviewed on the basis of this paragraph. The annulment or review shall take place before the competent court that handled, or is still handling, the entire adoption process. A request for annulment or review can be submitted by the adoptive parent, by a member of the adopted child's biological family or by the adopted child him or herself.

113. Burkina Faso has ratified the Convention on the Rights of the Child and its two Optional Protocols. A number of laws have been adopted and institutions established in order to fulfil the State's obligations under these instruments. They include:

- Act No. 19-61/AN of 9 May 1961 on juvenile delinquents and children at risk;
- Act No. 10/93/ADP of 17 May 1993 on the organization of the judiciary in Burkina Faso, amended by Act No. 028-AN of 8 September 2004. The Act established juvenile courts and juvenile judges.

114. Institutions to protect the rights of the child include the National Council for the Survival, Protection and Development of Children, established by Decree No. 2009-785/PRES/PM/MASSN/MEF/MATD of 19 November 2009. This body has a general duty to promote and protect the rights of the child. In addition to this government organization, several NGOs and associations provide the State with significant financial and material support to help protect children from violations of their rights, including child trafficking, abduction and the worst forms of child labour.

115. In accordance with the Constitution of Burkina Faso of 11 June 1991 and the Convention on the Rights of the Child, freedom of expression is regarded as a fundamental human right. This right is fundamental both for adults and for children who are capable of forming their own views. With a view to implementing this right for children, a children's parliament was established in Burkina Faso and has been operational since 16 June 1997. It provides a forum in which children can express themselves, put forward their demands and organize themselves. Starting from the premise that all children are capable of expressing their opinions in a manner befitting their age, conditions and the subject of discussion, and with recourse to different communication methods (words, signs, drawings, etc.), the Children's Parliament acts as a springboard for promoting the participation of children — who represent 54.86 per cent of the country's population — especially with regard to the implementation of their rights. Pursuant to article 1 of its regulations, the Children's Parliament comprises 126 children from the country's 13 regions, and its membership is gender-balanced.

116. There are no data available on cases of enforced disappearance in Burkina Faso. There are some statistics, however, on the trafficking, sale or abduction of children, which show that child trafficking affects the most vulnerable population groups. Data on the origins of child victims of trafficking indicate that they come from poor families living in

the most remote parts of the country, which is what makes them vulnerable to trafficking. Trafficking exists in all regions of Burkina Faso, but some areas are affected more than others. By compiling various reports, we can see that the most commonly affected ethnic groups include the Mossi, the Samo, the Dagara, the Fulsé, the Bissa, the Fulani, the Dogon and the Gourmantché.

117. The data-collection system currently in place does not allow for a better understanding of the specific issues of the sale of children, child prostitution or child pornography. However, these practices can be considered as forms of trafficking. The data are also not disaggregated by age, nationality, ethnicity, region or socioeconomic level. The data covering the past three years, disaggregated by sex, are as follows:

Table 1  
**Situation of child victims of trafficking, sale, prostitution or pornography from 2008 to 2011**

Year	Domestic trafficking			Cross-border trafficking			Total
	Number of girls	Number of boys	Subtotal	Number of girls	Number of boys	Subtotal	
2008	27	62	89	15	99	114	<b>203</b>
2009	147	508	655	22	81	103	<b>758</b>
2010	145	387	532	17	39	56	<b>588</b>
2011	450	662	1 112	33	137	170	<b>1 270</b>
<b>Total</b>	<b>769</b>	<b>1 619</b>	<b>2 388</b>	<b>87</b>	<b>356</b>	<b>443</b>	<b>2 861</b>

Source: Ministry of Social Welfare and National Solidarity, Directorate-General for the Supervision and Protection of Children and Adolescents.

118. The table shows that a great many child victims of trafficking were intercepted in Burkina Faso in 2011.

119. This interception of a large number of child victims of domestic and cross-border trafficking is a testament to the effectiveness of the legal and security framework created through the adoption of Act No. 029-2008/AN of 15 May 2008 on combating human trafficking and related practices and the establishment of local watchdog and monitoring committees on child trafficking and abduction.

Table 2  
**New cases registered by public prosecutors' offices in all courts of major jurisdiction in Burkina Faso from 2009 to 2011**

Offences	2009	2010	2011	Total
Child trafficking	11	19	14	<b>44</b>
Child abduction	103	139	107	<b>349</b>
<b>Total</b>	<b>113</b>	<b>158</b>	<b>121</b>	<b>393</b>

Source: Ministry of Justice, 2012, Statistical Yearbook of 2011.

120. The above table indicates the number of prosecutions brought against persons charged with trafficking and related practices as registered by the national courts. Prosecutions were brought before the national criminal courts in 44 cases of child

trafficking. Likewise, the courts registered 349 cases of child abduction. These prosecutions are pursuant to the aforementioned Act, which clearly defines and expressly criminalizes child trafficking and abduction. This allows victims and complainants to bring the matter before the judicial authorities in cases of such violations, hence the increase in the number of legal proceedings against persons accused of child abduction or trafficking.

### **III. Conclusion**

121. The preparation of this report of Burkina Faso, submitted pursuant to the International Convention for the Protection of All Persons from Enforced Disappearance, has provided an opportunity to assess the implementation of the Convention in the country. From a legal perspective, the Constitution and many laws and regulations facilitate the combating of acts of enforced disappearance. However, certain pieces of legislation such as the Criminal Code and the Code of Criminal Procedure need to be reviewed in order to ensure the full domestic implementation of the Convention. The review will no doubt give rise to a formal definition of the concept of enforced disappearance in domestic law and the establishment of a special regime pertaining to it. Draft revisions of these laws are being prepared, and their adoption will strengthen the legal framework in Burkina Faso and bring it into line with the Convention.

122. As for measures to implement the Convention, there are plans to conduct training and awareness-raising activities, particularly for law enforcement personnel, in order to raise awareness about the Convention and ensure its effective implementation.

123. Burkina Faso is committed to cooperating fully with the Committee on Enforced Disappearances and is thus open to any recommendations from the Committee that might improve the implementation of the Convention in the country.

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