



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the initial report of Burkina Faso\*

1. The Human Rights Committee considered the initial report of Burkina Faso (CCPR/C/BFA/1) at its 3279th and 3280th meetings (CCPR/C/SR.3279 and 3280), held on 28 and 29 June 2016. At its 3294th meeting, held on 11 July 2016, the Committee adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the initial report of Burkina Faso, which was submitted 14 years late, and the information contained therein. The Committee appreciated the opportunity to engage in a constructive dialogue with the high-level delegation from the State party on the measures taken by the latter to give effect to the provisions of the Covenant. It thanks the State party for its written replies (CCPR/C/BFA/Q/1/Add.1) to the list of issues (CCPR/C/BFA/Q/1), which were supplemented by the delegation's oral replies during the dialogue and the additional information it provided in writing.

##### B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party, notably:

(a) The adoption of the national justice policy for 2010-2019 and the National Pact for Justice Reform on 28 March 2015;

(b) The adoption of Act No. 22-2014/AN of 27 May 2014 aimed at preventing and punishing torture and related practices, which also provides for the establishment of a national observatory for the prevention of torture and related practices;

(c) The adoption of Act No. 061-2015/CNT of 6 September 2015 on the prevention, punishment and reparation of violence against women and girls and support for victims, and the adoption in October 2015 of a road map for the rescue and reintegration into society of persons excluded for alleged witchcraft;

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\* Adopted by the Committee at its 117th session (20 June-15 July 2016).



(d) The adoption of Act No. 015-2014/AN of 13 May 2014 on the protection of children in conflict with the law or at risk;

(e) The adoption in November 2015 of the National Strategy for the Prevention and Elimination of Child Marriage (2016-2025);

(f) The adoption of various measures to combat child labour, including a national programme to combat child labour at small-scale mining sites and quarries in Burkina Faso (2015-2019);

(g) The decriminalization of press offences, in 2015;

(h) The establishment in 2015 of the National Observatory for the Prevention and Management of Community Conflicts.

4. The Committee welcomes the ratification of or accession to the following international human rights instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2009;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2003;

(d) The Convention on the Rights of the Child, in 1990, and its Optional Protocols on the involvement of children in armed conflict, in 2006, and on the sale of children, child prostitution and child pornography, in 2007;

(e) The Convention on the Elimination of All Forms of Discrimination against Women, in 1987, and its Optional Protocol, in 2005;

(f) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1999, and its Optional Protocol, in 2010;

(g) The International Covenant on Economic, Social and Cultural Rights, in 1999;

(h) The International Convention on the Elimination of All Forms of Racial Discrimination, in 1974.

## **C. Principal subjects of concern and recommendations**

### **Applicability of the Covenant by national courts**

5. The Committee notes that article 151 of the Constitution of Burkina Faso establishes the primacy of international treaties over domestic law and that the Covenant is an integral part of domestic law and may be directly invoked by the courts. The Committee regrets, however, that the provisions of the Covenant have only rarely been invoked or applied by the courts and that only one case has been submitted under the First Optional Protocol since 1999, which could signify a lack of awareness of the Covenant and its Optional Protocol (art. 2).

6. **The State party should take steps to further raise awareness among judges, lawyers, prosecutors and other law enforcement personnel about the provisions of the Covenant, so that these can be taken into account before and by the national courts.**

### National Human Rights Commission

7. The Committee welcomes the broadening of the terms of reference of the National Human Rights Commission on 24 March 2016 to bolster its members' independence and give it functional and financial autonomy, but regrets that the decree on the organization and functioning of the Commission has not yet been adopted (art. 2).

8. **The State party is encouraged to adopt without further delay the decree on the organization and functioning of the National Human Rights Commission, to appoint new members to it, to guarantee its independence and to grant it financial autonomy and sufficient resources to fully accomplish its mandate, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

### Investigations into human rights violations

9. The Committee welcomes the establishment of the High Council for Reconciliation and National Unity and the two commissions of inquiry to elucidate and establish responsibility for serious human rights violations and crimes committed since 1960 and during the events of 2014 and 2015 respectively. It also welcomes the reopening of certain cases, including those related to the murders of Thomas Sankara and Norbert Zongo. The Committee is concerned, however, about the slow progress in some investigations, especially those related to the criminal responsibility of the police and security forces (arts. 2, 6, 7, 9, 19 and 21).

10. **The State party should continue its efforts to elucidate and establish responsibility for crimes committed in the past and should investigate the human rights violations documented by the commissions of inquiry, prosecute the alleged perpetrators and punish those found guilty in a manner commensurate with the seriousness of the offence. It should also ensure that all victims have access to an effective remedy and receive adequate compensation, restitution and rehabilitation.**

### Representation of women in public affairs

11. While noting the progress made in increasing the number of women on certain political decision-making bodies, the Committee remains concerned about the low number of women in public affairs and in positions of responsibility in the private sector. It notes in particular that, despite the introduction of a 30 per cent quota in parliamentary and municipal elections and the increased number of women registered for the 2015 parliamentary elections, the number of women elected to office has fallen and remains extremely low (arts. 2, 3 and 26).

12. **The State party should continue its efforts to increase the number of women in public affairs, including by ensuring the effective application of the legislation on political parties and by encouraging women to stand for election. It should also take steps to increase the number of women in positions of responsibility in every other sphere, including in the private sector.**

### Discrimination based on sexual orientation or gender identity

13. The Committee is concerned about the stereotyping of lesbians, gays, bisexuals and transgender persons, and about reports of discriminatory acts and hate speech aimed at them, including by politicians. It also notes with concern the absence of legislation expressly prohibiting discrimination based on sexual orientation or gender identity (arts. 2 and 26).

14. The State party should organize awareness campaigns and redouble its efforts to combat and condemn stereotyping, hate speech and violence in relation to homosexuality, bisexuality or transsexuality. It should also review its legislation to ensure that discrimination based on sexual orientation or gender identity is prohibited.

#### **Equality between men and women and practices that are harmful to women**

15. The Committee takes note of the information provided by the delegation on the possibility of raising the age of marriage and recognizing customary and traditional marriages in law. It is still concerned, however, about: (a) the continued existence of legislative provisions that discriminate against women, particularly as regards the minimum legal age for marriage and a matrimonial regime that continues to permit polygamy; (b) non-compliance with the minimum age for marriage in traditional or religious marriages; (c) the prevalence of forced marriages and early marriages; (d) the persistence and prevalence of female genital mutilation, even though this has been a criminal offence since 1996; and (e) customary practices that discriminate against women by preventing them from owning land or inheriting it from their husband (arts. 2, 3, 7, 23, 24 and 26).

16. The State party should: (a) amend the Personal and Family Code so as to guarantee that the same minimum age for marriage applies to men and women and to all marriages, including traditional or religious marriages, and take steps to reduce polygamy with a view to its abolition; (b) extend the ban on forced marriages to cover traditional or religious marriages; (c) ensure that traditional or religious marriages are officially registered and that the age and consent of the spouses are systematically verified; (d) pursue efforts to raise awareness and devise new strategies for action to eradicate the practice of female genital mutilation; and (e) strengthen action to educate and sensitize the public, including traditional and religious leaders, to the need to combat traditional practices that are harmful to women, and ensure the effective application of the legal provisions that guarantee equality in matters of inheritance and access to land.

#### **Violence against women**

17. The Committee remains concerned about the prevalence of violence against women, including marital and sexual violence, and about the inadequacy of victim support services and shelters. The Committee also notes with concern that marital rape, as defined in article 14 (2) of Act No. 061-2015/CNT, is a criminal offence only if committed “repeatedly” or when the partner exhibits “any physical incapacity to engage in a sexual relationship”, and that it is punishable only with a fine (arts. 3 and 7).

18. The State party should ensure the effective enforcement of Act No. 061-2015/CNT by making sure that cases of violence against women are thoroughly investigated, the perpetrators are prosecuted and convicted, and victims have access to effective remedies. The State party should step up awareness campaigns on this issue, improve victim support services and shelters and collect disaggregated data on the extent of violence against women. Lastly, the State party should amend article 14 (2) of Act No. 061-2015/CNT so as to make any act of marital rape a punishable offence and provide for penalties that are commensurate with the seriousness of the act.

#### **Voluntary termination of pregnancy and access to contraception**

19. The Committee is concerned about the constraints imposed on access to legal abortion in cases of rape or incest, namely, the need to obtain a judicial decision recognizing that an offence was committed and the legal deadline of 10 weeks for terminating a pregnancy. The Committee notes with concern that pregnant women are

resorting to unsafe abortions that put their lives and health at risk because of the legal obstacles, stigmatization and lack of information. The Committee is also concerned about reports of violence against women who raise questions about contraception with their partners and about the cost of contraception, which, despite being heavily subsidized, is still a major obstacle to its use. The Committee also notes with concern the inaccessibility of sexual and reproductive health services in some rural areas, the lack of information on contraception and, in particular, the lack of information on emergency contraception (arts. 3, 6, 7 and 17).

**20. The State party should eliminate the obstacles to legal abortion that prompt women to resort to unsafe abortions that put their lives and health at risk and it should lift the requirement for the prior authorization of a court for abortions resulting from rape or incest. It should also: (a) draw up and implement education and awareness programmes to combat the stigmatization of women and girls who have an abortion; (b) ensure that women and girls have access to quality services to deal with complications arising from unsafe abortions and ensure that they receive immediate and unconditional treatment; and (c) ensure that women and girls have access to sexual and reproductive health services, and that methods of contraception are accessible and available throughout the country, particularly in rural and remote areas.**

#### **The death penalty**

21. While welcoming the official moratorium on executions applied by the State party since 2007 and the fact that there have been no executions since 1988, the Committee remains concerned that the death sentence is still being handed down (art. 6).

**22. The State party should continue the political and legislative process aimed at abolishing the death penalty and its efforts to sensitize public opinion and campaign in favour of its abolition. It should also consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

#### **Mob justice and vigilante groups**

23. The Committee is concerned that the heightened sense of insecurity and mistrust of the law is reflected in cases of mob justice and the lynching of individuals suspected of committing offences and in the emergence of vigilante groups, including the “Koglweogo”, some of whom have allegedly engaged in extortion, illegal arrests and detentions, physical abuse and murder, among other things. The Committee notes with concern the State party’s intention, as confirmed by the delegation, to reorganize community-based security arrangements so as to involve the vigilante groups, to train them and to supervise them so that they can work in synergy with national security and defence forces (arts. 6, 7 and 14).

**24. The State party should: (a) reinforce the presence of national security and defence forces so as to guarantee the security of the population throughout the country and prevent the vigilante groups, including the “Koglweogo”, from taking the place of the State and performing law-enforcement tasks; (b) conduct investigations, prosecute all alleged perpetrators of human rights violations and, if they are found guilty, sentence them appropriately; and (c) organize awareness campaigns on the illegality of summary and mob justice and the criminal responsibility of perpetrators.**

#### **Violence during social and political unrest**

25. The Committee is concerned about allegations of a number of human rights violations committed by the army, notably the presidential security guard, gendarmes and prison guards during the social and political unrest of the last few years, particularly the

excessive and disproportionate use of force that has caused physical injuries and deaths, and restrictions on peaceful gatherings. It also notes with concern the reports that some media outlets, journalists, opposition figures and human rights defenders have been subjected to threats, harassment and intimidation, as well as the excessive restrictions on freedom of expression imposed by the Higher Council for Communication during the period of transition (arts. 7, 9, 19, 21 and 25).

**26. The State party should take effective measures, particularly in the area of training, to prevent members of law enforcement agencies, the security forces and the prison service from making use of excessive and disproportionate force, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It should, moreover, redouble its efforts to make sure that all allegations of serious human rights violations by the army, including the presidential security guard, gendarmes and prison guards, are subject to a prompt, thorough and impartial investigation, that the perpetrators of such violations are prosecuted and duly punished, and that victims receive appropriate compensation.**

#### **Prohibition of torture and ill-treatment**

27. The Committee is concerned about allegations of torture and ill-treatment inflicted by law enforcement officials, members of the armed forces and prison officers, including at the Wemtenga regional headquarters of the criminal investigation police. The Committee also remains concerned about reports that the legal provisions establishing the inadmissibility of confessions obtained by torture as evidence in court are not always respected. It also regrets that the national observatory for the prevention of torture and related practices provided for in Act No. 22-2014/AN is not yet operational (arts. 7, 10 and 14).

**28. The State party should: (a) take steps to prevent torture, including by strengthening the training of justice, defence and security officials; (b) ensure that alleged acts of torture and ill-treatment committed by law enforcement officials, members of the armed forces and prison officers are thoroughly investigated, that the perpetrators are prosecuted and, if found guilty, sentenced appropriately, and that victims are duly compensated and offered rehabilitation assistance; (c) ensure that confessions obtained by torture are systematically rejected by the courts, in accordance with the State party's legislation and article 14 of the Covenant; and (d) adopt, as soon as possible, decrees to make the national observatory for the prevention of torture and related practices operational.**

#### **Police custody, pretrial detention and fundamental legal safeguards**

29. While welcoming the adoption of circular No. 2015-004/MJDHPC/CAB of 5 March 2015, setting out the right to be assisted by a lawyer from the very outset of a criminal investigation and the prohibition of holding orders, the Committee remains concerned about reports of wrongful arrests and detention in police custody and about the excessive use of pretrial detention, which is one of the main causes of prison overcrowding (arts. 9, 10 and 14).

**30. The State party should take the necessary measures to ensure that the rules on the duration of police custody and pretrial detention, and the prohibition of holding orders, are respected, so as to avoid wrongful and excessive detention. The State party should also ensure that persons in police custody or pretrial detention are systematically made aware of their rights and that fundamental legal safeguards are observed, including the right to have access to a lawyer from the very outset of a criminal investigation and the right to contact a family member or friend.**

### Administration of justice

31. While welcoming the measures taken to build the capacity of the judicial system and guarantee its independence and impartiality, the Committee remains concerned about the persistent allegations of corruption and the public mistrust of the judicial authorities (art. 14).

**32. The State party should: (a) guarantee the effective independence and impartiality of the justice system and step up the fight against corruption; (b) strengthen measures aimed at ensuring access to justice, including by continuing to open new courts; and (c) allocate additional human and financial resources to the justice system, including the Legal Assistance Fund.**

### Prison conditions

33. The Committee is concerned about the inadequate detention conditions in almost all prison facilities in the State party and, particularly, about the very high rate of prison overcrowding and the high percentage of prisoners in pretrial detention. The Committee is further concerned about reports of unsatisfactory sanitary conditions, inadequate medical care and the poor quality of food served to prisoners. Lastly, the Committee is concerned that, because of the overcrowding, prisoners in pretrial detention are not separated from convicted prisoners. It regrets that there is no proper mechanism for receiving complaints from prisoners (arts. 9 and 10).

**34. The State party should redouble its efforts to improve living conditions and the treatment of prisoners, including by giving them access to proper medical care and by separating prisoners according to their detention regime, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It should also continue its efforts to remedy the problem of prison overcrowding, including by putting in place a genuine policy on the use of alternatives to the deprivation of liberty.**

### Human trafficking and child labour

35. The Committee remains concerned about human trafficking for the purposes of sexual exploitation or forced labour in the State party, and about the lack of official data on the extent of the problem. The Committee is also concerned about the provisions of Act No. 011-2014/AN on the punishment of the sale of children, child prostitution and child pornography, which allow a person found guilty to pay a fine rather than go to prison. The Committee is further concerned about the extent and persistence of the use of children for begging and forced labour, particularly as domestic workers or in dangerous work, including small-scale mining operations, farm work and selling drinks (arts. 8 and 24).

**36. The State party should: (a) continue its efforts to make the general public and those who work in the criminal justice system aware of the problem of trafficking and the risks of economic and sexual exploitation; (b) strictly enforce the laws and regulations related to child trafficking, child labour and the exploitation of children, with a view to eliminating these practices and strengthening monitoring mechanisms; (c) amend Act No. 011-2014/AN so as to ensure that the penalties handed down for sex offences involving children are commensurate with the seriousness of such offences; and (d) collect disaggregated data on the extent of trafficking for purposes of the sexual and economic exploitation, forced labour and exploitation of children.**

### **Right to demonstrate, presumption of innocence and individual criminal responsibility**

37. The Committee notes with concern that article 15 of Act No. 26 of 8 May 2008, on the punishment of acts of vandalism committed during demonstrations on the public highway, is not in conformity with the Covenant, and notably with the principle of the presumption of innocence and individual criminal responsibility, as it allows for every member of a group to be held criminally responsible, regardless of whether the perpetrator of the offence has been identified or not (arts. 14 and 21).

38. **The State party should continue its efforts to ensure that everyone can fully enjoy the rights set out in article 21 of the Covenant and the right to be presumed innocent and individual criminal responsibility, as set out in article 14, including by amending Act No. 26 of 8 May 2008.**

### **Participation in elections**

39. While recognizing that, in particular situations, a country's legislation may make it impossible for certain citizens or organizations to accede to elected office, and while noting that article 135 of the State party's Electoral Code, which renders ineligible anyone who "supported an unconstitutional change in violation of the principle of the democratic rotation of power", is applicable only to the elections in 2015, the Committee is concerned about the sweeping and ill-defined exclusion of several candidates from the 2015 parliamentary and presidential elections, which constitutes a violation of the right to take part freely in elections (art. 25).

40. **The State party should guarantee the right to vote and run for election to all its citizens without distinction, including on grounds of political opinion, in accordance with article 25 of the Covenant and taking due account of the Committee's general comment No. 25 (1996) and the ruling handed down by the Community Court of Justice of the Economic Community of West African States on 13 July 2015 (*Congress for Democracy and Progress et al. v. Burkina Faso*).**

### **Community conflicts**

41. The Committee is concerned about the resurgence of conflicts between pastoralists and farmers, which have affected the Fulani (*Peulh*) communities in particular, and which have led to physical injuries and deaths, the destruction of property and housing, and population displacement. The Committee also notes with concern reports that the Fulani community has been regularly targeted by vigilante groups (arts. 6, 9 and 27).

42. **The State party should continue its efforts to protect pastoralists and put a stop to the violations of which they are victims. It should promote intercommunal dialogue and try to reduce tensions between pastoralists and farmers, including by taking into consideration the root causes of the conflicts, such as the increased competition for land and land-tenure insecurity among indigenous peoples and other communities that follow customary land-tenure systems. The State party should also continue its efforts to ensure that human rights violations committed in the context of such conflicts are promptly investigated, prosecute and punish those responsible with sanctions commensurate with the crime and compensate the victims.**

## **D. Dissemination of information on the Covenant**

43. **The State party should widely disseminate the Covenant and its Optional Protocol, the initial report, the written replies to the Committee's list of issues, and the present concluding observations with a view to raising awareness of the rights**



enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public.

44. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations made by the Committee in paragraphs 16 (equality between men and women and practices that are harmful to women), 24 (mob justice and vigilante groups) and 36 (human trafficking and child labour) above.

45. The Committee requests the State party to submit its next periodic report by 15 July 2020 and to include in that report specific and up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. In addition, the Committee invites the State party to adopt by 15 July 2017 the simplified reporting procedure under which the Committee sends to the State party a list of issues prior to reporting. The State party's replies to this list of issues would constitute its next periodic report due under article 40 of the Covenant.

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