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**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States parties under article 19 of the Convention**

**Initial reports of States parties due in 2000**

**Burkina Faso \***

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**Part I General information**

**A. Introduction**

1. Burkina Faso ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 January 1999. However, it has not made a declaration recognizing the competence of the Committee against Torture to receive and consider communications submitted by States or individuals under articles 21 and 22.

2. Under article 19 of the Convention, each State party should submit reports on the measures it has taken to give effect to its undertakings under the Convention.

3. The initial report is due within one year after the entry into force of the Convention for the State party concerned and periodic reports every four years thereafter unless the Committee requests other reports. Burkina Faso hereby submits its initial report to the Committee pursuant to article 19 of the Convention.

4. The report was prepared following consultations with various Government departments and civil society organizations directly or indirectly involved in promoting and protecting human rights or able to provide the necessary information on the issues addressed in the report. The consultation process involved meetings between the stakeholders and the drafting team, an analysis of their publications, and review by a validation workshop. The validation workshop was attended by all stakeholders concerned with human rights issues in general and torture in particular.

5. This report was prepared in accordance with the Harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3, of 10 May 2006). It was drafted by the technical services of the Ministry responsible for the promotion of human rights, in cooperation with all other Government departments. The draft report was also submitted for the consideration of the Interministerial Committee on Human Rights and International Humanitarian Law and adopted by the Council of Ministers.

6. The preparation of the report provided an opportunity for Burkina Faso to review its legislative, administrative and judicial provisions on torture and other cruel, inhuman or degrading treatment or punishment.

## **B. General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited**

7. Torture is prohibited under article 2 of the Constitution, which states that “the right to life, safety and physical integrity is guaranteed. Slavery, slavery-like practices, inhuman, cruel, degrading and humiliating treatment, physical and psychological torture, abuse and ill-treatment of children and all forms of degradation of persons are prohibited and punishable by law.”

8. The most important pieces of legislation are Act No. 43-96/ADP of 13 November 1996 on the Criminal Code and Act No. 013-98/AN of 28 April 1998 on the rules governing public service employment and employees. Other important instruments include 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 and Decree (*Kiti*) No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso. These instruments lay down standards of conduct for both detainees and prison officers.

9. Burkina Faso has ratified several instruments on issues related to torture.

At regional level, they include the following instruments of the Organization of African Unity/African Union:

The Convention Governing the Specific Aspects of Refugee Problems in Africa, ratified on 19 March 1974;

The African Charter on Human and Peoples’ Rights, ratified on 21 September 1984;

The African Charter on the Rights and Welfare of the Child, ratified on 8 June 1992;

The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, ratified on 23 February 1999;

The African Union Convention on the Prevention and Combating of Terrorism, ratified on 27 October 2005;

The African Union Convention on Preventing and Combating Corruption, ratified on 29 November 2005;

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, ratified on 9 June 2006.

International instruments include the following United Nations treaties:

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified on 27 August 1962;

The Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 14 September 1965;

The Convention for the Suppression of Unlawful Seizure of Aircraft, ratified on 19 October 1987;

The United Nations Convention against Transnational Organized Crime, ratified on 15 May 2002;

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 International Convention for the Suppression of the Financing of Terrorism, ratified on 1 October 2003;

The International Convention for the Suppression of Terrorist Bombings, ratified on 1 October 2003;

The International Convention against the Taking of Hostages, ratified on 1 October 2003;

The Rome Statute of the International Criminal Court, ratified on 16 April 2004.

10. In Burkina Faso, duly ratified or approved international treaties and agreements have primacy over domestic laws (Constitution, art. 151). Since the Constitution establishes the primacy of the treaties and agreements duly ratified by Burkina Faso, domestic law may not derogate from the provisions of those instruments, in general, and of instruments prohibiting torture and other cruel, inhuman or degrading treatment or punishment, in particular.

## **Part III Information in relation to each substantive article of the Convention**

### **Article 1 Definition of torture**

11. There is no reference in domestic law to the definition of torture as enshrined in the Convention. Nevertheless, the Criminal Code provides for many criminal offences akin to torture as defined in the Convention, thus including crimes against humanity (arts. 313 and 314), malicious wounding (arts. 327, 328 and 329, para. 1) and assault and battery (arts. 325 and 327). Indecent assault, rape (art. 417) and generally all forms of physical assault or injury committed by certain categories of public or law enforcement officials in the exercise of their duties (arts. 141–149 and 189) are also included.

### **Article 2 Legislative, administrative, judicial or other measures to prevent acts of torture**

12. In Burkina Faso, the prevention of torture is promoted through the Constitution, the Criminal Code, the Code of Criminal Procedure and all other relevant legislative and regulatory provisions. Domestic law guarantees the inviolability of persons held in pretrial detention and of persons sentenced to deprivation of liberty by guaranteeing their rights at every stage of criminal proceedings. 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 perpetrators and the guarantee of their representation.

#### **Paragraph 1**

13. The rules governing custody are set out in the Code of Criminal Procedure. They recognize the right of criminal investigation police 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 criminal investigation officer 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.

14. When a custody measure is used, and if the chief prosecutor considers it necessary, he or she may designate a doctor who will examine the person held in custody at any time during the period of custody. After a period of 72 hours, the person is entitled to a medical examination if he or she so requests. 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 criminal investigation officer may remand one or several alleged perpetrators of organized crime for a period of up to 10 days. This period may be extended by 5 days with the authorization of the chief prosecutor.

15. The Code of Military Justice has similar provisions. Its article 57 provides that, in times of peace, any military criminal investigation officer has the right to arrest military officials caught in *flagrante delicto*, as alleged perpetrators or co-perpetrators of, or accomplices to, a crime or offence punishable by imprisonment. Arrested military officials may be placed in provisional lock-ups or in a military prison. In all cases, the period of custody cannot exceed 48 hours. However, it may be extended by 48 hours.

16. In times of war, the period of custody may be increased to 5 days and may be extended by 5 days twice consecutively, for a maximum total period of 15 days. Once the period of custody has elapsed, the person in custody must be brought before the competent judicial authority. Custody is supervised by the Government commissioner or the competent military investigating judge.

17. The Code of Criminal Procedure does not make specific provision for communication between persons held in custody and their family or with counsel after a certain period of time. The one guarantee is that, under domestic law, the preliminary investigation stage remains confidential.

#### **Paragraph 2**

18. 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. Those measures are reviewed by the Constitutional Council. In any event, article 152 of the Constitution provides that the Constitutional Council has jurisdiction over constitutional and electoral matters and rules on the constitutionality of laws and ordinances, as well as on the conformity of international treaties and agreements with the Constitution.

#### **Paragraph 3**

19. A lawful act carried out by a State official is not punishable. Under article 70, paragraph 2, of the Criminal Code, no criminal responsibility is borne by a person who commits an act that is prescribed or authorized by a law or regulation, provided that the act is

not manifestly unlawful. Accordingly, an official may not invoke higher orders to evade punishment if his or her actions violate laws and/or regulations.

20. Any 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, is criminally liable. If that individual can prove that he or she acted on orders from superior officers in respect of matters within their remit, he or she is not liable to punishment, which in this case is imposed only on the superior officers who gave the order (Criminal Code, art. 141). Order No. 2004-077/SECU/CAB of 27 December 2004 on the code of conduct of the national police force is more specific. Its article 19 provides that “a subordinate is required to comply with the instructions of his or her superior, except where an order is manifestly unlawful and would seriously jeopardize the public interest. In that case, 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 individual concerned.”

21. Under article 142 of the Criminal Code, any minister 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, and who refuses or fails to put an end to those acts, is punishable under criminal law. If ministers charged with ordering or authorizing an act contrary to the Constitution allege that the signature attributed to them was obtained by deceit, they are obliged, in rescinding the act, to denounce the persons they claim to be responsible for the deceit, otherwise they themselves will be prosecuted and be liable to the penalty prescribed in article 142 (a prison term of 10 to 20 years, in accordance with article 143 of the Criminal Code).

22. Public officials responsible for carrying out administrative or criminal police investigation functions who knowingly refuse or fail to report or put an end to illegal or arbitrary detention in any location are liable to a prison term of 1 to 5 years.

### **Article 3 Prohibition of the expulsion, return or extradition of a person to another State where he or she might be tortured**

23. Under article 4 of the Constitution, foreigners in Burkina Faso enjoy the same protection as nationals. Article 2 of the African Charter on Human and Peoples’ Rights stipulates that: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” Article 12, paragraphs 3 and 4, of the Charter also recognize that: “Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions” and that: “A non-national legally admitted into a territory of a State Party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law.” Extradition in Burkina Faso is governed by the Act of 10 March 1927 on the extradition of foreigners.

24. Extradition decisions are taken by decree of the President of Burkina Faso after approval by the Court of Appeal’s indictment division. If the indictment division refuses a request for extradition, that decision is final and extradition cannot be granted. The primary condition laid down in this Act 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.

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

25. 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.

26. 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. Under article 23 of the Act, an extradition order may be revoked. 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, after he or she has been handed over to another State. 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.

27. In Burkina Faso, article 151 of the Constitution gives duly ratified or adopted international treaties and agreements primacy over laws. Under this constitutional provision and article 5 of the Convention on Extradition of 1 August 1994 of the Economic Community of West African States (ECOWAS), 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. Article 5 provides that: “Extradition shall not be granted if the individual whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State or if that person has not received, or would not receive, the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples’ Rights.”

## **Article 4 Classification of torture as a criminal offence under domestic law**

28. The definition of torture in article 1 of the Convention has not yet been incorporated into domestic law. However, there are general provisions for the punishment of acts that qualify as torture under article 1 of the Convention. Act No. 24-94/ADP of 24 May 1994 on the Code of Military Justice, without defining torture, provides in article 154 that: "Without prejudice to criminal prosecution of acts that constitute crimes or offences under ordinary law and, in particular, those which are contrary to the laws and customs of war and to international conventions, punishable acts under the provisions of this Code shall comprise . . . ." Torture is thus punishable.

29. Article 140 of the Criminal Code provides that any crime committed by public officials in the performance of their duties, or while on duty, constitutes malfeasance. The penalty in such cases ranges from 5 to 10 years. In general, article 313 of the Criminal Code punishes those who, in pursuance of a concerted plan to destroy, wholly or in part, a national, ethnic, racial or religious group or a particular group on the basis of any other arbitrary criterion, commit or cause to be committed against members of that group one of the following acts:

Intentionally causing violence to life;

Causing serious bodily or mental harm;

Inflicting on the group conditions of life conducive to its physical destruction in whole or in part;

Imposing measures intended to prevent births;

Forcibly transferring children.

30. Article 314 of the Criminal Code punishes 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.

31. Ordinance No. 68-7 of 21 February 1968 on the Code of Criminal Procedure, completed and amended (arts. 21 and 73) by Ordinance No. 68-53 of 29 November 1968, provides in article 224 and subsequent articles penalties for criminal investigation officers who act outside the law. Article 224 of the Code of Criminal Procedure states that: "The indictment division shall monitor the activities of public and military officials, and criminal investigation officers, acting in that capacity, excluding the judges referred to in article 16, mayors and their deputies." Under article 227, once a case has been brought before it, the indictment division may, without prejudice to disciplinary action that may be taken against the criminal investigation officer by superior officers, address its observations to the officer or decide that the officer may no longer perform, either temporarily or permanently, the duties of criminal investigation officer or delegate of the investigating judge in the country as a whole. Similarly, under article 228, "if the indictment division considers that the criminal investigation officer has committed a criminal offence, it shall refer the case to the prosecution service for appropriate action". Under article 229, decisions taken by the indictment division against criminal investigation officers are, at the request of the chief prosecutor, notified to their respective authorities. Under article 230, the indictment division's jurisdiction over criminal investigation officers extends to officials in the water and forestry sector.

32. As torture is not yet defined in domestic law, there is no legal provision for a statute of limitations in Burkina Faso.

33. Domestic law qualifies torture-related acts as either crimes or offences. Under article 7 of the Code of Criminal Procedure, in the case of a crime, the statute of limitations is 10 years after the date on which the act was committed. Under article 8, in the case of an offence, the statute of limitations is three years. However, there is no statute of limitations on certain acts, such as crimes against humanity and genocide.

34. Disciplinary measures applicable during the investigation of an alleged case of torture are provided for in Act No. 13-98/AN of 28 April 1998 on the rules governing public service employment and employees, subject to the enforcement of specific legal provisions. Under article 143 of the Act, any official against whom criminal proceedings are initiated is automatically suspended from his or her duties. If the charges brought against the official constitute professional misconduct, the disciplinary procedure is suspended until the court issues its final decision.

35. Accordingly, while torture is not considered as a separate offence in criminal law, it cannot escape punishment. To address the inconsistency of domestic law with the obligations under the Convention, a bill is being prepared with a view to the adoption of a law defining, preventing and punishing torture and related practices.

## **Article 5 Jurisdiction over acts of torture**

36. On 16 April 2004, Burkina Faso ratified the Rome Statute of the International Criminal Court and, in December 2010, it adopted Act No. 052-2009/AN of 3 December 2009 on the implementation of the Statute. The Court has jurisdiction over crimes of torture. On the basis of its universal jurisdiction, if torture were committed in Burkina Faso, a judge in the country could invoke the statutes of the Criminal Court to hear and determine the case. Under article 5 of the Criminal Code, criminal law applies to any offence committed in Burkina Faso, irrespective of the nationality of the wrongdoer. In addition, this jurisdiction extends to offences committed by or against a national of Burkina Faso outside the country when the acts are punishable by the law of the country in which they were committed. In this case, prosecution follows a complaint from the victim or a formal complaint from the authorities of the country in which the acts were committed.

37. Acts of torture may constitute either crimes or offences. The criminal division of the Court of Appeal is competent to try crimes, in

which case Act No. 51-93/ADP of 16 December 1993 on the procedure applicable before the criminal division applies. Article 1 of the Act provides that the criminal division has full jurisdiction to try individuals referred to it under a committal order.

38. Pretrial proceedings are compulsory in criminal cases. An investigating judge must be involved in cases of alleged torture but may conduct an investigation only at the formal request of the chief prosecutor. Once seized of a case, the investigating judge makes all the pretrial inquiries deemed necessary to establish the facts (Code of Criminal Procedure, art. 78).

39. When the investigating judge considers that the investigation is complete and that the facts appear to constitute a crime under the law, he or she refers the case file to the criminal division for the second stage of the proceedings. If, on examining the case, the criminal division establishes the charges against the accused as criminal offences, it issues an indictment. On the basis of this indictment, the case is formally brought before the criminal division of the Court of Appeal. When the alleged facts constitute misdemeanours, the misdemeanour division of the court of major jurisdiction is competent to try them. Article 381 of the Code of Criminal Procedure stipulates that the misdemeanour division of the *Tribunal de Grande Instance* (court of major jurisdiction) tries misdemeanours. The same article qualifies offences punishable by a prison sentence of more than 1 month or a fine of CFA francs 50,000 as misdemeanours.

40. Article 382 stipulates that the competent territorial jurisdiction is the misdemeanour division of the place where the offence was committed or of the place of residence or arrest of the perpetrator.

41. The *ratione materiae* extends to misdemeanours and violations that are inseparable from the offence before the misdemeanour division. Offences that fall within its jurisdiction are brought before it, either by referral from the investigating court, or through the voluntary appearance of the offenders, or under the expedited investigation procedure (Code of Criminal Procedure, art. 388). It should be noted that the universal jurisdiction of courts provided for in article 5, paragraph 2, is not covered by domestic law. The competence of courts to prosecute perpetrators of acts of torture is limited to situations in which the perpetrator or victim of these acts is a national of Burkina Faso or where the acts were committed in Burkina Faso or in another place within the territorial jurisdiction of Burkina Faso.

#### **Article 6 Jurisdiction of Burkina Faso courts over individuals who have committed offences under article 4**

42. Article 3 of the Constitution lays down the principle of liberty. No one may be deprived of his or her liberty unless he or she is prosecuted for acts prohibited and punished by law. Article 4 of the Constitution states that all citizens and residents of Burkina Faso enjoy equal protection under the law and stipulates that their case has to be heard by an independent and impartial court. All accused persons are presumed innocent until proven guilty. The right to a defence, including the right to choose one's own lawyer, is guaranteed in all the courts.

43. Arbitrary detention is defined in article 147 of the Criminal Code as situations in which those in charge of detention facilities:

Admit an individual without a detention order or court ruling or, in cases of expulsion or extradition, without a Government order;

Detain or refuse to produce a person to a criminal investigation police officer or person transmitting his or her orders;

Refuse to produce custody registers to any authority mandated to monitor them.

44. The rules governing pretrial detention are contained in Ordinance No. 68-7 of 21 February 1968 on the Code of Criminal Procedure and Act No. 24-94/ADP of 24 May 1994 on the Code of Military Justice.

45. Pretrial detention is specifically addressed in Title III, section 7, of the Code of Criminal Procedure. It is defined in domestic law as the deprivation of a person's liberty ordered by a judge pending trial. At that stage of the proceedings, it is not intended as a form of punishment but as a means of preventing escape, repeat offences and even contact with certain persons, for instance.

46. Article 136 provides that "pretrial detention is an exceptional measure". Pretrial detention is carried out in a place designed for that purpose. Detainees must not be required to work, inside or outside a short-stay prison, unless they so request. For the purpose of their defence, they must be guaranteed all communications and facilities consistent with the discipline and security requirements of the prison. Subject to the aforementioned conditions, any person detained in these conditions may enjoy these guarantees by applying to the competent authorities through official channels.

47. The length of pretrial detention varies according to the nature of the wrongdoing (crime or offence). In the case of an offence, when the maximum penalty prescribed by law is less than 1 year's imprisonment, an accused person domiciled in Burkina Faso may not be detained for more than 5 days after his or her first appearance before the investigating judge if he or she has not previously been convicted of a crime or sentenced to more than 3 months' imprisonment without probation for an ordinary offence. In other cases, pretrial detention may not exceed 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. No extension may be granted for a period of more than 6 months.

48. The issue of pretrial detention is also addressed in chapter 2, article 57 of the Code of Military Justice. Under its provisions, any military criminal investigation officer has the right to arrest military officials caught in flagrante delicto, as perpetrators or co-perpetrators of, or accomplices to, a crime or offence punishable by imprisonment.

49. In practice, the authorities responsible for implementing pretrial detention are the prison and short-stay prison wardens and chief wardens.

50. Under Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in

Burkina Faso, places of detention include:

Short-stay prisons;

Correctional facilities;

Agricultural detention facilities;

Rehabilitation and vocational training centres.

Under these regulations, short-stay prisons are intended for accused persons, correctional facilities for convicted persons, and agricultural detention facilities for convicted prisoners on part-time release. However, for practical reasons, the aforementioned Decree stipulates that courts may have a single facility serving as short-stay prison and correctional facility.

## **Article 7 Obligation to initiate prosecutions relating to acts of torture**

51. Article 4 of the Constitution of Burkina Faso provides that: "All citizens and residents of Burkina Faso enjoy equal protection under the law. Everyone has the right to have their case heard by an independent and impartial court. Every accused person is presumed innocent until proven guilty. The right to a defence, including the right to choose one's own lawyer, is guaranteed in all the courts."

52. On that basis, equal treatment is guaranteed for all citizens of Burkina Faso and for foreigners. Foreigners enjoy the same protection as nationals before the courts. Article 4, paragraph 1, of the Criminal Code provides that "criminal law shall apply to all offences committed in the territory, regardless of the nationality of the perpetrator".

53. The law designates the authorities responsible for investigating and prosecuting offences. Pending an investigation, the criminal investigation police, under the direction of the chief prosecutor, are responsible for reporting criminal offences, collecting evidence and finding the perpetrators. Once an investigation has been opened, the criminal investigation police carry out the tasks entrusted to them by the investigating bodies and comply with their instructions (Code of Criminal Procedure, art. 14). Article 1 provides that criminal proceedings are instituted and conducted by judges, by the officials designated by law or by the injured party itself.

54. There are no specific provisions in the Code of Criminal Procedure concerning the arrest, detention or imprisonment of foreigners. However, with regard to the custody or detention of foreigners, the judicial authorities of Burkina Faso apply the provisions of the Vienna Convention on Consular Relations of 24 April 1963. Under article 36, paragraph 1 (b), of the 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 him or her, to converse and correspond with him or her and to arrange for his or her legal representation.

55. No case has yet been brought before the domestic courts regarding any person residing in Burkina Faso found guilty of acts of torture abroad, in order for the provisions of article 7 of the Convention against Torture to be applied.

## **Article 8 Recognition of torture as an extraditable offence**

56. In Burkina Faso, no legal provision 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.

57. The Act of 10 March 1927 on the extradition of foreign nationals, applicable in Burkina Faso, does not specifically consider torture 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 who has committed 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.

## **Article 9 Mutual judicial assistance in connection with proceedings brought in respect of torture and related crimes**

58. Burkina Faso is a party to many treaties providing for mutual judicial assistance and extradition.

59. At the regional and international levels, Burkina Faso has signed and ratified treaties that also provide for extradition. These include:

The General Agreement on Judicial Cooperation, signed in Antananarivo on 12 September 1961;

The Convention on Judicial Cooperation between States Parties to the Non-Aggression and Defence Assistance Agreement, signed in Nouakchott on 21 April 1987;

The Convention on Mutual Assistance in Criminal Matters (No. A/P.1/7/92) of the Economic Community of West African States (ECOWAS), adopted in Dakar on 29 July 1992;

The ECOWAS Convention on Extradition (No. A/P.1/8/94), signed in 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.

60. Bilateral agreements include:

The General Convention on Judicial Cooperation between Burkina Faso and Mali, signed in Ouagadougou on 23 November 1963;

The Judicial Cooperation Agreement between France and Burkina Faso, signed in Paris on 24 April 1961.

## **Article 10 Education and information regarding the prohibition of torture**

61. Police officer training has no specific provision for information on the prohibition of torture. In practice, however, all police officers receive training in ethics, which covers aspects of the prohibition of torture. In criminal procedure classes, particularly during training in pretrial investigation proceedings, emphasis is placed on the need to respect the dignity of citizens and the obligation to refrain from using any form of violence or ill-treatment on persons under interrogation. Thus, the training clearly prohibits all forms of ill-treatment and torture. The same training is provided for trainee judges of the National Civil Service and Judiciary Training School.

62. Police officer training programmes also include human rights education. As part of the human rights education activities for targeted social and professional categories, the Ministry responsible for the promotion of human rights has undertaken training and awareness-raising activities on the prohibition of torture and other cruel, inhuman or degrading treatment. In 2008, a capacity-building training seminar on respect for the rights of detainees was held for prison officers. In 2010, the Ministry held a series of conferences on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol for about 2,000 defence and security college trainees. These activities were repeated in 2011 and involved the same number of people. A bill prohibiting torture and a bill on the establishment of a visiting committee for places of deprivation of liberty are currently being drafted.

63. The Ministry has also started drafting a human rights training manual for the police and the gendarmerie with the support of the Danish Institute for Human Rights.

64. In addition to taking an oath at the end of their training, doctors are trained to take care of patients while protecting their physical and mental integrity. Torture is studied as part of the medical school curriculum, mainly in sixth-year forensic medicine classes. Specialists are often called upon to lecture on the subject. Medical personnel do not study the legal aspects of torture, such as the elements that make it a criminal offence and the corresponding penalties. The curriculum is focused on the human dimension: rape, torture, malicious wounding, homicide and murder, and all other forms of violence. It enables medical personnel to easily recognize injuries caused by such acts.

## **Article 11 Review of interrogation rules, instructions, methods and practices as well as conditions of detention and treatment of persons who have been arrested, detained or imprisoned**

65. 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.

66. Domestic law does not currently permit the intervention of a lawyer at the stage of the police investigation. A person held in custody may therefore not be assisted by a lawyer, owing to the requirement for confidentiality of the pretrial investigation. In practice, however, the family and other persons such as lawyers have access to the person in custody. Pretrial detention is a strictly regulated issue.

67. The above laws and regulations, which govern the treatment of persons deprived of their liberty, incorporate the principles and standards enshrined in international instruments on the rights of prisoners and detainees. Nevertheless, in practice, the prison system faces many challenges related to overcrowding and insufficient resources. The number of detainees in short-stay prisons increased from 2,204 in 2000 to 5,437 in 2008, and the Ministry of Justice does not have sufficient resources to manage the situation. Notwithstanding the increase in prison capacity as a result of the construction of short-stay prisons and correctional facilities, which rose from 11 in 2000 to 24 in 2009, prison overcrowding remains a challenge.

68. The State is endeavouring to remedy the situation by recruiting additional prison officers. Thus, the number of detainees per prison officer decreased from 17.2 in 2000 to 7.7 in 2008 and the number of prison officers increased from 209 in 2003 to 622 in 2009. Furthermore, a high-capacity building is under construction within the Ouagadougou short-stay prison and correctional facility, with a view to reducing overcrowding in the existing infrastructure. There are also plans to build a high-security prison in Ouagadougou for the imprisonment of detainees considered to be highly dangerous. The building of the prison and the refurbishment of the Ziniaré short-stay and correctional facility to enable it to admit detainees should also significantly reduce overcrowding.

69. Both State and non-State actors may visit places of detention. Since 2004, the Ministry responsible for the promotion of human rights has visited places of detention throughout the country. Its visit reports show that all the short-stay prisons and correctional facilities visited are committed to respecting the rights of detainees but do not have the resources required for their implementation. For instance, some short-stay prisons and correctional facilities have no means of transport for detainees, and accused persons have to walk from the short-stay prison and correctional facility to the court, accompanied by armed prison officers. This exposes the



detainees to public view and is prejudicial to their honour. Other short-stay prisons and correctional facilities have social welfare units but these lack the resources to carry out the necessary background investigations in the case of children who come into conflict with the law. Judges are required by law to take background investigation reports into account when trying minors. Conditions of detention in prisons are not very satisfactory because they only partially respect the Standard Minimum Rules for the Treatment of Prisoners and the provisions of Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso. Serious shortcomings in terms of food, hygiene and health-care provision prevent short-stay prisons achieving their goal of socially integrating and rehabilitating detainees. Due to the lack of available space, the separation of adult and juvenile detainees, convicted and accused persons, and first-time and repeat offenders is not strictly observed.

70. Different religious communities hold worship services and provide psychosocial support and counselling for detainees in the various short-stay prisons and correctional facilities in Burkina Faso. They draw up reports of their activities in places of detention. NGOs also generally have access to places of detention.

71. Act No. 062-2009/AN of 21 December 2009 establishing the new National Human Rights Commission enables the Commission to visit prisons and other places of detention. The Act makes it possible for an independent institution to visit places of detention with a view to preventing torture. In practice, the Commission has not yet done so because it requires an impetus to make it more operational.

72. 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. The purpose of these standards of conduct is to ensure adequate conditions of detention and the exemplary conduct of prison officers in order to prevent, among others, cases of ill-treatment and torture. Penalties are provided for and imposed on prison officers found guilty of violating the rights of detainees under their supervision.

73. The police have developed a code of conduct. Further details are contained in article 22 of Order No. 2004-077/SECU/CAB of 27 December 2004 on the code of conduct of the national police force, which provides that, "in addition to conducting criminal investigation activities under the supervision of the indictment division, the personnel of the national police force and the administrative authorities responsible for them shall be subject to hierarchical control. The personnel of the national police force shall also be subject to the authority of the general inspectorate of the ministry responsible for domestic security."

## **Article 12 Prompt and impartial investigation of acts of torture**

74. Article 39 of Ordinance No. 68-7 of 21 February 1968 on the Code of Criminal Procedure designates the chief prosecutor as the authority responsible for receiving complaints and allegations. Article 4 of Order No. 2004-077/SECU/CAB of 27 December 2004 on the code of conduct of the national police force states that: "The national police force shall be at the service of the nation. To this end, it shall perform its duties in compliance with the Universal Declaration of Human Rights, the Constitution, international treaties and the laws and regulations in force."

75. Article 12 stipulates that: "No detainee placed under the care and protection of the police shall be subjected to violence or inhuman or degrading treatment of any form at the hands of police officers or any other person. Any police officer having custody of a person whose condition requires special care or attention shall call upon medical personnel and take the steps necessary to protect the life and health of that person. Any police officer who witnesses behaviour prohibited under this article shall be liable to disciplinary measures if he or she does nothing to stop it or fails to inform the competent authority."

76. If allegations are made against a public official, his or her supervising authority may, within its competence, conduct an investigation. If the investigation reveals *prima facie* offences, the case is referred to the chief prosecutor.

77. There is access to immediate medical examinations and forensic expertise. Two options are possible. The victim himself or herself may take the initiative to be examined for the extent of the physical injury to be assessed.

This may also be undertaken at the request of the investigating official, the chief prosecutor or the investigating judge in order to establish the facts or determine the extent of the harm suffered. If the perpetrator is a public official, once proceedings have been initiated, he or she may be placed in pretrial detention. He or she may be suspended only by the competent administrative authority pending the outcome of the criminal proceedings.

78. Article 141 of Act No. 013-98/AN of 28 April 1998 on the rules governing public service employment and employees stipulates that, in the event of serious misconduct by an official, he or she is immediately suspended by the minister of the department under whose auspices he or she works. The case is referred without delay to the disciplinary board, which must take a decision within a period of one month, failing which the case may be removed from it.

79. Under article 143 of the Act, any official against whom criminal proceedings are initiated is automatically suspended from his or her duties. If the charges brought against the official constitute professional misconduct, the disciplinary procedure is suspended until the court issues its final decision.

80. Article 144 further states that: "Where legal proceedings arise from a complaint by his or her supervising authority or service, the suspended official shall continue to receive half of his or her salary and his or her full family allowance. The same shall apply when the legal proceedings arise from a complaint by any other natural or legal person." If the facts alleged are established, a sentence is imposed.

81. The applicable criminal penalties are those provided for in articles 8 to 11 of the Criminal Code. These are:

The death penalty;

Life imprisonment;

A term of imprisonment;

A fine;

Community service (Act No. 7-2004/AN of 6 April 2006 on the administration of community service in Burkina Faso).

82. In administrative terms, article 138 of Act No. 013-98/AN of 28 April 1998 on the rules governing public service employment and employees provides for the following disciplinary measures, in order of increasing severity:

Warning;

Reprimand;

Temporary suspension for a period of up to 15 days;

Temporary suspension for a period of 16 to 30 days;

Demotion;

Compulsory retirement;

Removal from the post without affecting entitlement to a pension.

83. Act No. 062-2009/AN establishing the new National Human Rights Commission enables the Commission to investigate alleged human rights violations. Article 9 provides that: "The Commission has the power to investigate complaints. However, investigations shall not be conducted into cases involving classified information, State security or foreign policy, or cases subject to judicial review." Due to a lack of resources, the Commission has not yet started conducting any investigations.

### **Article 13 Right to complain about unlawful treatment**

84. Article 4 of the Constitution states that all citizens and residents of Burkina Faso enjoy equal protection under the law and that everyone has the right to have their case heard by an independent and impartial court. 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.

85. 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 criminal investigation officers under his or her jurisdiction.

86. The remedies available in Burkina Faso are mainly judicial. There is no provision in domestic law that permits procedural discrimination among 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.

87. There is no specific provision establishing criteria for the investigation of allegations of torture by the chief prosecutor. The procedure is the same as for every other criminal case. 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 them, where necessary, to protect complainants and witnesses from any ill-treatment or intimidation arising from a complaint or statement. There is no available disaggregated statistical data on torture because there is not yet a specific law criminalizing torture. However, disciplinary and criminal action has already been taken against public officials found guilty of physically abusing persons. For instance, two police officers from the police station of Gaoua were tried and sentenced by the criminal division of the Court of Appeal of Bobo-Dioulasso, on 17 June 2011, to a term of imprisonment of 5 years for physical abuse causing the death of Da Arnaud Some in July 2010. Three police officers were also arrested and charged for their involvement in the physical abuse of the schoolboy Justin Zongo in Koudougou and during the public demonstrations that followed the death of the victim. The Court of Appeal of Ouagadougou ruled on the case on 19 September 2011. The two police officers found guilty were sentenced to a prison term of 10 years and the third officer was sentenced to a term of 8 years.

88. Burkina Faso has no personnel or unit specifically trained to deal with cases of torture or cruel, inhuman or degrading treatment. Ordinary police or gendarmerie units attend to these matters. There is no dedicated unit dealing with violence against women either. However, cases of violence against women may be handled by the departments of the Ministry of Social Action and National Solidarity and the Ministry for the Advancement of Women. Burkina Faso has also set up a National Committee to Combat the Practice of Excision, which has a permanent secretariat with personnel trained to combat the practice of female genital mutilation. The following initiatives have been taken:

Adoption of a national action plan for 2008–2012 calling for zero tolerance of female genital mutilation;

Information, training and educational activities for community health workers, schoolchildren, children working in the informal sector and the population at large, through radio broadcasts, workshops and film discussions;

Introduction of a module on female genital mutilation into primary and secondary school curricula through a joint circular letter issued on 30 June 2003 by the ministries responsible for education;

Comprehensive care for victims through the establishment of a small operating theatre;

Regular patrols by law enforcement officials since 2000 to raise awareness of and deter the practice of female genital mutilation;

Establishment of decentralized units of the National Committee to Combat the Practice of Excision at the provincial, departmental and village levels; 4,840 village watch committees have been set up in 968 villages — including 1,440 in 2010 — to ensure the sustainability of initiatives to combat female genital mutilation;

Establishment of “SOS Excision”, a public helpline run by the Committee;

Use of innovative approaches involving leaders, different social and professional groups, young peer educators and excision practitioners.

## **Article 14 Right to redress for victims of torture**

89. In Burkina Faso, victims of acts of torture or cruel, inhuman or degrading treatment committed by public officials may seek redress before the domestic courts. Such claims are admissible for all types of injury — material and physical or psychological — resulting from the acts that are the subject of the proceedings. They are also admissible for material damage resulting from the same acts, even if the indictment does not mention any related violation that has caused material damage.

90. Two options are available to a victim of torture seeking redress. He or she may join the criminal proceedings as a civil party claiming compensation. Under article 3 of the Code of Criminal Procedure, the civil proceedings may be conducted alongside the criminal proceedings and before the same court. The victim may join the proceedings as a civil party at any time, from the commencement to the conclusion of the proceedings, through an application either to the clerk of the court or to the court itself and transmitted to the former. Where the application is made to the clerk of the court, he or she notifies the parties involved.

91. The victim may also bring the case directly to the civil court. Under article 4 of the Code of Criminal Procedure, a civil action may be brought separately from the criminal proceedings. However, judgement on the civil action is deferred until the criminal proceedings have been initiated and a final ruling has been issued. In this case, civil action may be initiated only once the statute of limitations on the criminal proceedings has expired (Code of Criminal Procedure, art. 10). Once a final ruling has been issued on the criminal proceedings, and provided a criminal sentence has been handed down, a civil action initiated within the period specified in the aforementioned articles is subject to a 30-year statute of limitations.

92. A civil action to seek redress for harm caused by a crime, offence or misdemeanour may be brought by anyone who has suffered personally from the harm directly caused by the offending act (Code of Criminal Procedure, art. 2), including Burkina Faso nationals and foreigners.

93. When public officials are concerned, compensation for the harm suffered by the victim may be provided by the State when its liability is involved.

## **Article 15 Inadmissibility of evidence obtained through torture**

94. All victims of torture are protected in any court trying them for an offence. The rules governing the taking of evidence in relation to an offence are regulated by the Code of Criminal Procedure. Under article 427 of the Code, except where otherwise provided by law, offences may be established by any form of evidence; judges make decisions in accordance with their personal convictions and may base those decisions only on the evidence produced during the trial and discussed in adversarial proceedings before them.

95. The Code of Criminal Procedure also states that no statement or report has evidentiary value unless it has been drawn up in accordance with the regulations and its author was acting in the course of duty and reporting on a matter within his or her competence and on facts he or she had personally seen, heard or established (Code of Criminal Procedure, art. 429). Article 430 of the Code further states that, except where otherwise provided by law, any statement or report of an offence has informative value only. Ultimately, confessions, like all other evidence, may be evaluated at the court's discretion. These various elements facilitate the identification and exclusion of irregular evidence. Accordingly, in practice, evidence obtained through torture is declared inadmissible by the court.

96. The two-tier system in criminal proceedings provides the guarantee that any irregular evidence is generally excluded. If such evidence is not censored at that stage, that may be done during the sentencing deliberations. At that stage, the assistance of a lawyer is compulsory. Sentencing deliberations also provide a further opportunity to exclude evidence obtained through fraud or torture.

97. In respect of the taking of evidence, the concept of indirect evidence does not exist in domestic legislation.

## **Article 16 Prevention of other cruel, inhuman or degrading treatment or punishment**

98. Article 44 of the regulations of detention facilities formally prohibits all employees and persons who have access to places of detention from using violence against detainees, addressing them in an offensive manner or using coarse or unduly familiar language.

99. Conditions of detention in short-stay prisons and correctional facilities, agricultural detention facilities and rehabilitation and vocational training centres are governed by Decree No. AN VI-103/FP/MIJ of 1 December 1988 on the organization, rules and regulations of detention facilities in Burkina Faso.

100. Article 10 of the Decree provides that: "Detainees shall be divided into categories, separating:

Women from men;

Minors aged under 18 years from adults;

Pretrial detainees from convicted prisoners when the same facility is used as a short-stay prison and a correctional facility;

Detainees placed under a special security regime from detainees subject to the ordinary regime;

Convicted prisoners, divided into their respective groups.

101. The regulations state that no distinction may be made on grounds of race, language, religion, nationality or political opinion. Searches are compulsory. All detainees must be searched upon entry into and departure from the detention facility, each time they are taken to the investigating judge or a hearing, and when they are brought back to the detention facility. Detainees may be searched only by persons of the same sex.

102. The health of detainees is a very important aspect of the regulations. Article 150 lays down the principle of satisfactory health and safety conditions in prison, with regard both to the organization and maintenance of buildings, and to standards of personal hygiene. Dormitories are required to remain open for part of the day for health and safety reasons.

103. Every detention facility should have a medical unit equipped to provide routine and basic health care. Each unit should have one doctor and a number of nurses responsible for providing health care to the detainees. They work full-time or part-time in the main detention facilities.

104. All detainees must have an individual medical card bearing their health details. Independently of his or her regular consultations, the detention facility doctor must:

Examine newly arrived detainees;

Visit the whole facility as frequently as possible and at least once every three months;

Visit detainees held in solitary confinement at least once a week;

Systematically inform the enforcement judge or the competent judge of any detainees whose state of health seems incompatible with detention or is likely to be conducive to a reduced sentence;

Encourage systematic inspections and visits by the service responsible for controlling major endemic diseases;

At the end of each year, prepare a comprehensive report on the health situation of detainees for the Ministry of Justice and the Ministry of Health.

105. Health care is provided to detainees free of charge, as is medication, which is usually the same as the medication used in public hospitals.

## **Conclusion**

106. Burkina Faso is committed to implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Many legislative, administrative and other measures have been taken to implement this instrument. Nevertheless, it emerges from this report that torture must be classified as a separate offence. Accordingly, 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 torture in domestic law and the establishment of a special regime pertaining to it. The recommendations and observations of the Committee will also help Burkina Faso to complete the establishment of mechanisms to ensure the effective implementation of the Convention at the domestic level.