

BRIEFING PAPER

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THE SITUATION OF HUMAN RIGHTS DEFENDERS IN BURKINA FASO

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In its last Universal Periodic Review (UPR) in April 2013, Burkina Faso accepted 138 recommendations. Of the 138, only two referred to human rights defenders (HRDs). The resolutions called on the State to promote and encourage the work of civil society in the country and pursue a regular dialogue with civil society to promote the importance of equality between women and men. The Government rejected all recommendations concerning its cooperation with special procedures, specifically all calls to extend a standing invitation to all mandate holders and did not accept related calls to accede to the Second Optional Protocol of the International Covenant on Civil and Political Rights, a call made by 12 States. In addition to the general restrictions on fundamental freedoms, during the military coup of September 2015, the rights to freedom of expression were severely restricted by the Higher Council for Communication and aggressions against human rights defenders significantly increased. Further, in October 2016, the Human Rights Committee expressed concerns regarding excessive restrictions on peaceful gatherings and disproportionate use of force against HRDs, among others.¹

A. RISKS FACING HUMAN RIGHTS DEFENDERS

- Despite maintaining peace in the country while sharing borders with countries affected by conflict in recent years,² Burkina Faso presents a very challenging environment for HRDs, who commonly face harassment and intimidation.³
- Amnesty International reported that during the coup d'état led by Gilbert Diendéré in September 2015, a number of HRDs were victims of assaults. After being arrested in the Democratic Republic of Congo in 2015, Ossibi Joan from the movement 'Balai Citoyen' was beaten by security forces in Burkina Faso. The same year, Amnesty International reported that Soldiers from the Regiment of Presidential Security (RSP) kicked and beat Jean Jacques Konomba with a belt, a photographer for Les Editions Sidwaya, until he was unconscious.⁴
- Likewise, journalists Bernard Bougouma from Radio Oméga, Ouï Koeta from Burkina 24 and Jean Conombo from Sidwaya were assaulted by the RSP due to their investigative work.⁵
- During the coup d'état, fundamental freedoms, in particular the right to freedom of expression, were further restricted. According to Freedom House the RSP ransacked the offices of Radio Oméga in Ouagadougou and Radio Laafi in Zorho and Mogtéo – stations which employed journalists who, at the time, were known for broadcasting live the events of the coup. They fired bullets in the air, set staff motorbikes alight, threatened to burn the station and destroyed and confiscated materials.⁶ In Ouagadougou, the offices of private television channel BF1 were attacked.⁷
- In July 2017, members of the Syndicat national des administrateurs civils, des secrétaires et des adjoints administratifs claimed that the Government sanctioned a number of leaders of

administrative areas, namely Prefects, for taking part in peaceful protests against 'appointments of convenience' within the decentralised administration. As a result, 76 Prefects were relieved of their duties.⁸

B. RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- In 2014, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism raised risks associated with Act No. 60-2009/AN of 17 December 2009. Concerns were raised that the Act, which intended to punish acts of terrorism, could be misused by the authorities, notably article 2.⁹ Article 2 provides a list of serious crimes considered 'acts of terrorism'. The same type of article has been used in other countries to prosecute individuals and HRDs because of their work related to countering terrorism.¹⁰
- According to the Coalition Burkinabè des Défenseurs des Droits Humains (CBDDH), the updated terrorism law N°084-2015/CNT which was voted at the National Assembly on 17 December 2014 maintains dangerous provisions for the work of HRDs in the country.¹¹ Article 2 of the 2014 terrorism law considers a violation to the integrity of a person, which includes moral integrity, a terrorist act. This article can be misused against HRDs that are publicly critical of the Government.¹²
- In addition, this law contains provisions that are inconsistent with the newly adopted law for the protection of HRDs (discussed below). Article 18 of the 2014 terrorism law allows the judicial authority to use special techniques such as wiretapping, while article 20 of the law for the protection of defenders forbids such acts and

concludes that such practices constitute harassment.

C. HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- Burkina Faso is one of the few African countries that does not criminalise homosexual conduct. Notwithstanding the relatively progressive position on homosexuality, organisations working for the promotion and protection of the rights of LGBT persons suffer specific challenges. They often work in secrecy and cannot be legally registered as organisations working on those rights for fear of persecution from the authorities. This is the case with the LGBT group LAMBDA.¹³ Requests to legally register as a non-governmental organisation by LGBTI rights organisations are repeatedly refused by the Ministry of Territorial Administration, Decentralisation, and Internal Security. No explanation is provided for the refusals.¹⁴
- In Burkina Faso, article 8 of the Constitution guarantees the right to freedom of opinion and expression, press freedom and the right to information. However, journalists reporting dissident opinions and human rights violations regularly face threats and intimidation.¹⁵ Journalists reporting on terrorism are continuously stigmatised. In 2015, the Journalists' Union declared that to prevent journalists critical of the Government from expressing their views the High Council of Communication abusively suspended live broadcast for three months.¹⁶ Some were assaulted and their equipment confiscated by the rural militia Koglweogo.
- Further, according to the Association of Burkina Journalists, military police officers threatened and verbally assaulted William Somda of BF1 Television, a private broadcasting company, as he was filming a peaceful event. An apology was issued, but no disciplinary or judicial actions were taken.¹⁷ Likewise, Mamadou Ali Compaore was assaulted on the street for comments made during debates on the same channel.¹⁸

D. THE RESPONSE FROM THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- In September 2015, the National Transition Council (CNT) adopted three consecutive laws decriminalising some press offences and eliminating prison sentences for some other offences.¹⁹ However, these laws also considerably increased fines, to between 1 and 5 million CFA, for defamation, slander and insult. Fines of such significant amounts seriously impede the rights to

freedom of expression and the press, with the risk that media professionals and civil society organisations are forced out of business.

- Concerns have been raised about the independence of the High Council of Communication, an independent administrative authority responsible for enforcing legislation governing the communication sector. Only two of the nine members represent media professional groups, while 7 are State appointees. As the authority overseeing the work of media professionals, the excessive State control over media regulation is concerning.²⁰
- On 24 March 2016, the parliament of Burkina Faso adopted Law No. 001-2016/AN²¹ to reform the National Human Rights Commission that was not effectively functioning due to a lack of funding and an excessive number of members.²² Until March 2012, the Commission had a B Status but as a result of failing to submit documentation to the Global Alliance of National Human Rights Institution, its accreditation lapsed.²³ This law represents a positive step in seeking to ensure the Commission is consistent with the Paris Principles, by seeking to guarantee (in article 2) the Commission's independence. However, it appears that the Government has failed to implement this law.
- On 27 June 2017, the National Assembly adopted a national law n°039/2017AN for the protection of HRDs. While this is a significant step toward the protection of defenders in Burkina Faso, concerns remain regarding the absence of certain protections in the law. There are no specific protections to guarantee that women HRDs - who face particular challenges - can operate in a safe and enabling environment. It is also concerning that the law does not contain specific provisions establishing a protection mechanism for defenders or allocate funds for this purpose. Such a mechanism would work to prevent, protect against, investigate and pursue accountability for attacks and other violations against HRDs.²⁴ Disappointingly the decree²⁵ which organises the functioning of the National Human Rights Commission simply states that the Commission is in charge of defender protection.

RECOMMENDATIONS TO THE GOVERNMENT OF BURKINA FASO:

- Ensure that all alleged attacks against HRDs are promptly and thoroughly investigated, that perpetrators are held accountable, and that victims have access to effective remedies.
- Ensure strong public statements recognising the legitimate and important role of HRDs, including journalists, and take steps to hold public and private actors to account for stigmatising the legitimate work of defenders.
- Ensure the full and effective implementation of national law n°039/2017AN for the protection of HRDs.
- Amend the law for the protection of HRDs to ensure the establishment and resourcing of a national protection mechanism for HRDs, to include protections for women and disabled HRDs and repeal or reform article 16, which provides the power to expel HRDs considered threats to national security.
- Review the composition of the High Council of Communication to ensure a higher number of members of professional media groups.
- Issue standing invitations to all thematic special procedures, as well as relevant regional mandate holders, and specifically invite and facilitate visits from the UN Special Rapporteurs on the situation of HRDs, on Freedom of Opinion and Expression and on Freedom of Assembly and of Association.
- Support the compliance of the newly established National Human Rights Institution with the Paris Principles, including through guarantees of independence, expertise and adequate funding.

ABOUT THIS BRIEFING PAPER

ISHR and the Coalition Burkinabè des Défenseurs des Droits Humains encourage States to consult UPR submissions by local activists and make recommendations to Burkina Faso regarding the protection of HRDs. This paper is a result of compiling public information and direct contact and experience of ACAT in the protection of HRDs. Readers should consult sources cited for additional information.

¹ <http://www.refworld.org/docid/58763ca54.html> p.6.

² http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2013/NA_2013-09-17_FR_M-LUNTUMBUE.pdf.

³ <http://www.refworld.org/docid/58763ca54.html>.

⁴ Amnesty International world report 2015/2016.

⁵ <https://www.amnesty.org/fr/latest/news/2015/09/burkina-faso-army-must-free-detained-leaders-and-avoid-violent-repression-of-protests/>

⁶ Amnesty International Report 2015/2016: The state of the world's human rights p.98.

⁷ <https://freedomhouse.org/report/freedom-press/2016/burkina-faso>.

⁸ <https://kelgueka.wordpress.com/2017/07/26/syndicalisme-70-prefets-relevés-de-leurs-postes-pour-avoir-pris-part-a-un-sit-in/>

⁹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/107/59/PDF/G1410759.pdf?OpenElement> p.6.

¹⁰ <https://www.frontlinedefenders.org/en/case/nkongho-felix-agbor-balla-detained-and-charged-military-court-eight-counts-case-update-id-5364>.

¹¹ http://www.apprendre-plus.shost.ca/documents/lois/loi_084.pdf

¹² http://www.apprendre-plus.shost.ca/documents/lois/loi_084.pdf.

¹³ <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbt/rights-of-lgbt-persons-burkinafaso.pdf>.

¹⁴ <https://www.state.gov/documents/organization/265440.pdf>; 2016 report.

¹⁵ <https://monitor.civicus.org/newsfeed/2017/03/16/burkina-faso/>

¹⁶ <https://freedomhouse.org/report/freedom-press/2016/burkina-faso>.

¹⁷ <http://www.refworld.org/docid/58ec8a63a.html>.

¹⁸ <http://lefaso.net/spip.php?article75366>.

¹⁹ http://www.csc.bf/fichiers_site/a4294bur/contenu_pages/Loiportantregime_juridiquedelapresseenligne.pdf.

http://archives.assembleenationale.bf/IMG/pdf/loi_057_portant_regime_juridique_de_la_presse_ecrite.pdf.

http://archives.assembleenationale.bf/IMG/pdf/loi_059_portant_regime_juridique_de_la_radiodiffusion.pdf.

²⁰ <https://freedomhouse.org/report/freedom-press/2016/burkina-faso>.

²¹ https://www.assembleenationale.bf/IMG/pdf/loi_001_cndh.pdf.

²² http://www.zoodomail.com/spip.php?page=imprimer_articulo&id_article=14931.

²³ http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

²⁴ <http://www.ishr.ch/news/burkina-faso-ensure-full-implementation-important-new-law-human-rights-defenders>.

²⁵ https://www.ishr.ch/sites/default/files/documents/loi_protection_des_defenseurs_des_droits_humains_bf.pdf.