

BURKINA FASO

UNITY-PROGRESS-JUSTICE

NATIONAL ASSEMBLY

IVTH REPUBLIC

SEVENTH LEGISLATURE

ACT No. 039-2017/AN

ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN BURKINA FASO

THE NATIONAL ASSEMBLY

In view of the Constitution;

In view of Resolution No. 001-2015/AN of 30 December 2015 validating the mandate of the deputies;

deliberated at its meeting of 27 June 2017
and adopted the Act whose content follows:

CHAPTER 1: GENERAL PROVISIONS

Article 1:

This Act establishes the rules for the protection of human rights defenders in Burkina Faso and determines their responsibilities.

Article 2:

The provisions of this Act apply, without distinction, to any human rights defender in Burkina Faso.

Article 3:

Everyone has the right in Burkina Faso, individually or in association with others, to promote and defend human rights and fundamental freedoms.

CHAPTER 2: DEFINITION AND ROLE OF THE HUMAN RIGHTS DEFENDER

Article 4:

Within the meaning of this Act, a human rights defender is any person who, individually or in association with others, acts in a non-violent manner for the promotion, protection and realisation of one or more rights recognised or guaranteed by the Constitution, the Universal Declaration of Human Rights or the conventions relating to human rights ratified by Burkina Faso.

Article 5:

Within the meaning of this Act, the role of the human rights defender consists of:

- acting at the national, regional or international levels for the effective implementation of human rights;
- collecting and disseminating information on human rights violations;
- assisting and guiding victims of human rights violations;
- submitting to State bodies and institutions, as well as to organisations dealing with public affairs, criticisms and proposals aimed at improving their functioning and reporting any aspect of their work that may hinder or prevent the realisation of human rights;
- urging the State to intensify its efforts to fulfill its international human rights obligations;
- denouncing cases of human rights violations and demanding the prosecution of their perpetrators;
- educating and training in the field of human rights.

The defender [Missing text?]

CHAPTER 3: RIGHTS AND RESPONSIBILITIES OF HUMAN RIGHTS DEFENDERS

Section 1: Rights of the human rights defender

Article 6:

The human rights defender has, individually or in association with others, in accordance with the texts in force, the right:

- to seek, obtain, receive and retain information relating to human rights;

- to monitor and periodically assess the human rights situation;
- to form associations or join national and international institutions working in the field of human rights;
- to assemble and demonstrate peacefully;
- to offer and provide qualified legal assistance or other relevant advice and support for the defence of human rights;
- to seek, receive and use lawful resources for the protection of human rights.

Article 7:

The human rights defender cannot be arrested or prosecuted for his actions in defense of human rights carried out in accordance with the texts in force.

Article 8:

The human rights defender may make proposals to the government for measures against human rights violations and abuses.

He may recommend to the government legislative or regulatory changes that appear useful for the effective implementation of human rights.

Article 9:

The human rights defender may seek, obtain, retain or publish information on allegations of human rights violations and abuses.

Article 10:

In the event of legal proceedings involving the human rights defender in the context of his human rights defense mission, he may be assisted by a lawyer from the preliminary investigation stage.

Section 2: Responsibilities of the human rights defender

Article 11:

The human rights defender has the duty to:

- carry out his human rights defense activities in compliance with the laws and regulations in force;
- establish and respect transparency and impartiality in the defense and promotion of human rights;
- avoid any form of discrimination in the defense and promotion of human rights;
- defend the principle of the universality of human rights as defined by the Universal Declaration of Human Rights;
- ensure the credibility of information before undertaking defense actions;
- conduct peaceful and non-violent actions in accordance with the texts governing public demonstrations in Burkina Faso;

- assume responsibility for the dissemination of allegations of human rights violations that he undertakes;
- ensure that the information he disseminates is not defamatory and that its dissemination is done in compliance with the laws and regulations in force.

CHAPTER 4: RESPONSIBILITY OF THE STATE IN THE PROTECTION OF THE HUMAN RIGHTS DEFENDER

Section 1: Protection of the human rights defender

Article 12:

The State shall ensure the protection of human rights defenders against extrajudicial executions, acts of torture or similar practices, arbitrary arrest and detention, enforced disappearance, death threats, harassment, defamation and false imprisonment.

The State shall also ensure the protection of human rights defenders against arbitrary restrictions on freedom of expression, association and assembly.

Article 13:

The State shall guarantee the protection of human rights defenders against arbitrary searches and intrusions into their homes and workplaces.

Article 14:

When, in the exercise or on the occasion of the exercise of their functions, agents of the State or its branches commit human rights violations against a human rights defender because of his activities to defend or denounce human rights violations, the State shall ensure compensation for the resulting damage.

In this case, the State may institute proceedings for recourse against the offending agents.

Article 15:

The State shall ensure the protection of any human rights defender found on its territory. As such, it refrains from extraditing a human rights defender to a country where he risks persecution or being subjected to torture or cruel, inhuman and degrading treatment.

Article 16:

The refoulement or expulsion from the national territory of a human rights defender is prohibited, subject to representing a threat to internal security.

Section 2: Protection of witnesses and family members of the human rights defender

Article 17:

The State shall guarantee the protection of witnesses and family members of the human rights defender.

No one shall be subject to attacks, disciplinary sanctions or dismissal for having testified to the actions defined in Articles 19 to 28 of this Act.

Article 18:

For the protection of the identity and privacy of witnesses and family members of the human rights defender, the trial courts may order that the hearing be conducted in camera.

CHAPTER 5: CRIMINAL LAW PROVISIONS

Article 19:

Any allegation or imputation of a fact that undermines the honor, reputation or activities of the human rights defender shall be deemed to be defamation against a human rights defender.

Anyone found guilty of defamation against a human rights defender shall be punished by imprisonment of two months to one year and a fine of three hundred thousand (300,000) to one million (1,000,000) CFA francs, or one of these two penalties only.

Article 20:

Any repeated action that has as its object or effect a deterioration of working conditions, likely to infringe on human rights and dignity, to impair physical or mental health, or to compromise the social or professional life of the human rights defender shall be deemed to be harassment of a human rights defender.

Acts of harassment include, in particular, the surveillance of the human rights defender, the suspension of his telephone line, his wiretapping, and the confiscation of his identity and travel documents, carried out arbitrarily.

Anyone found guilty of harassing a human rights defender shall be punished by imprisonment of two months to one year and a fine of three hundred thousand (300,000) to one million (1,000,000) CFA francs, or one of these two penalties only.

Article 21:

Any deprivation of liberty without legal grounds of a human rights defender by a State agent, in the exercise of or on the occasion of the exercise of his functions, shall be deemed to be arbitrary arrest and detention of a human rights defender.

Anyone found guilty of arbitrary arrest and detention of a human rights defender shall be punished by imprisonment of six months to three years and a fine of three hundred thousand (300,000) to one million five hundred thousand (1,500,000) CFA francs, or one of these two penalties only.

Article 22:

Any abduction, arrest or detention of a human rights defender without an order from the competent authorities and outside cases where the law permits or orders it shall be deemed to be false imprisonment of a human rights defender.

Anyone found guilty of false imprisonment of a human rights defender shall be punished by imprisonment of five to ten years and a fine of nine hundred thousand (900,000) to three million (3,000,000) CFA francs.

If the false imprisonment lasted more than one month or involved a pregnant human rights defender, the penalty shall be imprisonment of ten to twenty years and a fine of one million (1,000,000) to five million (5,000,000) CFA francs.

If this results in temporary disability, the penalty is imprisonment of ten to twenty years and a fine of two million (2,000,000) to five million (5,000,000) CFA francs.

If the false imprisonment results in permanent disability or if it results in the death of the victim, the perpetrator is liable to life imprisonment.

Article 23:

Any message addressed to a human rights defender verbally, in anonymous or signed writing, by an image, symbol, emblem or by any other technological means indicating that his life will be threatened shall be considered a death threat to a human rights defender.

Anyone who threatens to kill a human rights defender shall be punished by imprisonment of two to five years and a fine of nine hundred thousand (900,000) to three million (3,000,000) CFA francs.

Article 24:

Torture of a human rights defender shall be deemed to be any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a human rights defender for the purpose of obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a State agent or other person acting in an official capacity.

Any person found guilty of torture or similar practices against a human rights defender shall be punished by imprisonment of three to five years and a fine of three hundred thousand (300,000) to one million five hundred thousand (1,500,000) CFA francs, or by one of these two penalties only.

Any person found guilty of torture or similar practices, if it results in mutilation, permanent disability or death for the victim, shall be punished by imprisonment of ten years to life imprisonment. The offender shall be liable to the same penalty if the torture is inflicted on a pregnant human rights defender.

Article 25:

The arrest, detention, abduction or any other form of deprivation of liberty of a human rights defender by agents of the State or by persons or groups of people acting with the authorisation, support or acquiescence of the State, followed by the denial of recognition of the deprivation of liberty or the concealment of the fate reserved for the disappeared person or their whereabouts, thereby removing them from the protection of the law, shall be deemed to be an enforced disappearance of a human rights defender.

Anyone guilty of the enforced disappearance of a human rights defender shall be punished by imprisonment of five to ten years and a fine of nine hundred thousand (900,000) to three million (3,000,000) CFA francs.

If the disappearance lasted more than one month, the penalty is imprisonment of ten to twenty years and a fine of one million (1,000,000) to five million (5,000,000) CFA francs.

If the disappearance lasted more than five years, the penalty is life imprisonment.

Article 26:

Any deprivation of life without trial or proper judicial procedure and with the participation, complicity, approval or consent of the State or its agents shall be deemed to be an extrajudicial or summary execution of a human rights defender.

Anyone found guilty of the extrajudicial or summary execution of a human rights defender shall be punished by life imprisonment.

Article 27:

The co-perpetrator and accomplice of the offences provided for in this Act shall be subject to the same penalties as the principal perpetrator.

Article 28:

The author, co-author and accomplice of the offences provided for in this Act shall be punished with the same penalties when these acts are committed against a witness or a family member of the human rights defender, due to the activities of the latter.

Article 29:

Human rights defenders carry out their activities in accordance with the laws in force. As such, they incur civil and criminal liability in the event of the commission of an offence.

CHAPTER 6: FINAL PROVISION

This Act shall be executed as the law of the State.

Thus done and deliberated in public session in Ouagadougou on 27 June 2017

The Secretary of the session
Blaise SAWADOGO

The President
Salifou DIALLO