



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

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

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Burkina Faso on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BFA/1) at its 28th to 30th meetings (E/C.12/2016/SR.28-30), held on 9 and 10 June 2016, and at its 50th meeting, held on 24 June 2016, adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of Burkina Faso, although it was long overdue, and the written replies by the State party to the list of issues (E/C.12/BFA/Q/1/Add.1). The Committee also welcomes the constructive dialogue that it held with the interministerial delegation of the State party.

#### B. Positive aspects

3. The Committee welcomes the ratification by the State party of the following international human rights instruments:

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

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

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

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

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

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\* Adopted by the Committee at its fifty-eighth session (6-24 June 2016).



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

(g) International Covenant on Civil and Political Rights and its Optional Protocol, in 1999;

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

4. The Committee welcomes the establishment in both the National Assembly and the National Transition Council of a committee for general and institutional matters and human rights. It also notes the establishment of a ministry for human rights and of an interministerial committee on human rights and international humanitarian law.

5. The Committee further welcomes the adoption of legislation to strengthen the protection of economic, social and cultural rights and to promote their realization, including:

(a) Act No. 103-2015/CNT of 22 December 2015 on private tenancy leases in Burkina Faso;

(b) Act No. 60-2015/CNT of 5 September 2015 on a universal health insurance system in Burkina Faso;

(c) Act No. 34-2009/AN of 16 June 2009 on rural land tenure;

(d) Act No. 036-2015/CNT of 26 June 2015 on the Burkina Faso Mining Code.

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

### **Justiciability of rights under the Covenant**

6. The Committee notes with concern the absence of express recognition in the Constitution or in domestic legislation of a number of rights under the Covenant, relating to housing, food and the promotion of national languages, among others, which reduces the protection of those rights. The Committee regrets the lack of information on cases in which the Covenant has been invoked before the domestic courts, even though the Constitution recognizes that international instruments ratified by Burkina Faso take precedence over domestic law (art. 2 (1)).

7. **The Committee recommends that the State party incorporate all the rights set out in the Covenant into its Constitution and take the necessary measures to give effect to the Covenant in the internal legal order. It encourages the State party to raise awareness of the Covenant and its justiciability among judges, lawyers, public officials, other parties responsible for law enforcement and the general public and to establish an accessible and affordable judicial remedy. It also invites the State party to inform members of parliament about their role in the implementation of the Covenant. In that connection, the Committee would draw attention to its general comment No. 9 (1998) on the domestic application of the Covenant.**

### **Independent national human rights commission**

8. **The Committee welcomes the adoption by the State party in March 2016 of the law establishing a national human rights commission and recommends that the State party adopt the necessary measures to enable the new National Human Rights Commission to comply fully with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles). It requests the State party to ensure that the Commission's mandate covers all**

**economic, social and cultural rights and that it is allocated the human and financial resources required for its proper functioning (art. 2 (1)).**

### **Corruption**

9. The Committee is concerned by the fact that, despite the efforts made by the State party in this area, corruption and illicit financial flows hinder the full enjoyment of economic, social and cultural rights (art. 2 (1)).

**10. The Committee recommends that the State party redouble its efforts to combat corruption, illicit financial flows and related impunity and to ensure absolute transparency in the conduct of public affairs, both in law and in practice. The Committee further recommends that the State party take measures to draw the attention of politicians, members of parliament and national and local officials to the economic and social costs of corruption and that of judges, prosecutors and members of law-enforcement agencies to the importance of the strict application of the law.**

### **Non-discrimination**

11. The Committee is concerned at the absence of a general law against discrimination covering all the rights under the Covenant and at the absence of effective measures, legislative or otherwise, to combat discrimination. It notes with concern the disparities that exist between rural and urban areas in the enjoyment of economic, social and cultural rights, which affect most significantly the most marginalized and vulnerable individuals and groups (art. 2 (2)).

**12. The Committee recommends that the State party adopt and implement a comprehensive general law against discrimination that will apply to all grounds of discrimination provided for under article 2 of the Covenant and prohibit any form of direct or indirect discrimination. Such a law should also authorize the implementation of temporary special measures to benefit disadvantaged or marginalized groups, including minority groups such as the Silanko, Mossi and Fulani, indigenous peoples such as the Tuareg, Mbororo and Wodaabe, persons with albinism and persons suffering from a disability. It recommends that the State party take all necessary measures to address the regional disparities that prevent the whole population from enjoying economic, social and cultural rights on an equal footing. In that connection, the Committee invites the State party to refer to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

### **Resources**

13. The Committee is alarmed by the harmful effect on the rights of rural communities, small farmers and agropastoralists of the activities of businesses that exploit the natural resources of their territories. It is extremely concerned at reports that these activities have a serious impact on the human rights of these communities, such as the right to health, environment, education, housing and water, particularly in the Essakane community, where, by failing to build a school or to provide water for market gardens, the mining company concerned has not fully complied with its commitment to compensate displaced populations.

**14. The Committee recommends that the State party take the necessary measures to improve the implementation of the Environmental and Social Management Plan in order to ensure that no land is transferred to investors or used for economic development projects before a full evaluation of the impact on the economic, social and cultural rights of the peoples that depend on the land for their subsistence has been conducted and their free, prior and informed consent has been obtained. In that connection, the Committee recommends that the State party ensure that the Mining**

and Environment Code is enforced and that users of land who consider their rights to have been violated have access to remedies, as laid down in article 30 of the Constitution.

#### **Equal rights between men and women**

15. The Committee regrets that, in spite of amendments made to legislation to ensure equality of the sexes, inequalities between men and women persist in practice, chiefly owing to the persistence of stereotypes relating to the role of women and men. The Committee also notes with concern that women living in rural areas are even more disadvantaged (arts. 3 and 7).

16. **The Committee recommends that the State party carry out, in conjunction with civil society organizations and the media, campaigns to raise public awareness with a view to eliminating gender stereotypes in the family and in society at large in the interest of both women and men. It recommends that the State party enforce legislation combating discrimination against women and adopt specific measures to eliminate the persistent inequalities between men and women, particularly women in rural areas, and promote their full access to education, health care and land. The Committee would draw attention in this connection to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3).**

#### **Inequality in the area of succession and matrimonial regimes**

17. The Committee notes the statement by the delegation that the Personal and Family Code has been amended and will be submitted to the National Assembly at its next session. The Committee also notes the information provided by the delegation that the State party proposes to establish the legal age of marriage at 18 years for both women and men and to adopt a broader definition of marriage. The Committee is, however, concerned at the application of customary law with regard to succession, matrimonial regimes and bequests, which reinforces inequality of treatment between men and women. The Committee regrets that polygamy is still authorized under the Personal and Family Code and practised, and that early or forced marriages are common in the State party (art. 3).

18. **The Committee recommends that the State party ensure that all the discriminatory provisions of the Personal and Family Code are repealed, as well as those arising from customary law, including polygamy. It further recommends that it take effective measures to combat early and forced marriages and ensure that the provisions of the Criminal Code making them illegal are enforced. It further recommends that it ensure that all marriages authorized under the Personal and Family Code, including marriages held in the course of customary or religious ceremonies are registered free of charge by the State, so that all married persons may receive the protection provided for under the law to combat early or forced marriages.**

#### **Right to work**

19. The Committee notes with concern that, despite the efforts of the State party, the unemployment rate remains high, particularly among young people and women, and even more markedly (of the order of 30 per cent) among young adults living in urban centres (arts. 3 and 6).

20. **The Committee recommends that the State party take the necessary measures to implement the national employment policy more effectively by introducing specific targets, with a particular focus on young people and women, and by improving the quality of education and technical and occupational training, which must meet the**

needs of the labour market. The Committee draws attention in this respect to its general comment No. 18 (2005) on the right to work.

#### **Informal sector and social security**

21. The Committee expresses its concern at the fact that a large number of workers (over 70 per cent) remain in the informal economy and are not protected by labour legislation. As a result, a large proportion of the population of Burkina Faso is deprived of social protection. The Committee is also concerned by the lack of social welfare benefits not subject to assessment (arts. 6, 7 and 9).

**22. The Committee recommends that the State party ensure that its national policy should establish a universal social security system, which will progressively guarantee sufficient benefits for all workers and benefits not subject to assessment for all disadvantaged persons or families, in order to allow them a decent standard of living. In the light of International Labour Organization (ILO) Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Committee recommends that the State party take steps to regularize the situation of workers in the informal economy and systematically include the informal sector in the operations of the labour inspection services. The Committee draws attention in this connection to its general comment No. 19 (2007) on the right to social security and its statement on social protection floors (2015).**

#### **Minimum wage**

23. The Committee notes with concern that the minimum wage remains low and does not guarantee a decent standard of living and that the minimum wage does not apply to workers in the informal sector (art. 7).

**24. The Committee recommends that the State party take administrative and legislative measures to ensure that the minimum wage is periodically reviewed and set at a level sufficient to provide all workers and their families, including workers in the informal sector, with a decent standard of living. The Committee draws attention in this connection to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

#### **Trade union rights**

25. The Committee is concerned at the fact that the exercise of trade union rights, including the right to strike, are still, in practice, subject to excessive restrictions. It is concerned at reports that union leaders and members are discriminated against and liable to be dismissed from their jobs because of their trade union activities (art. 8).

**26. The Committee urges the State party to ensure that its legislative framework on trade union rights is in compliance with article 8 of the Covenant, while also taking into account the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98). It also urges the State party to protect unionized workers and their leaders from acts of intimidation, including by ensuring that such acts are investigated and that those responsible are tried and punished.**

#### **Violence against women**

27. The Committee is concerned at the prevalence and widespread occurrence of violence against women, particularly cases of domestic violence and sexual violence. It is also concerned at acts of violence against older women accused of witchcraft. The Committee regrets the difficulties faced by female victims of violence in obtaining access

to justice and receiving the necessary support. It notes with regret that, despite the efforts undertaken, the practice of female genital mutilation persists in the State party, particularly in rural areas. The Committee is also concerned by the fact that Act No. 61-2015/CNT on the prevention, punishment and reparation of violence against women and girls and care for victims does not penalize the act of rape between spouses. In this connection, it regrets that article 14 (2) of the Act imposes fines “in cases where the rape is committed repetitively against an intimate partner with whom the perpetrator entertains stable and continued sexual relations or where the said partner is physically unable for any reason to perform a sexual act” (arts. 3 and 10).

**28. The Committee invites the State party:**

(a) **To revise its legislation on the prevention, punishment and reparation of violence against women and girls and support for victims, in order to punish all acts of rape between spouses without exception;**

(b) **To guarantee access to justice for victims of domestic violence, sexual violence and violence against older women accused of witchcraft, by encouraging the reporting of such offences and ensuring that perpetrators are prosecuted and convicted;**

(c) **To redouble its efforts to combat female genital mutilation by such means as acting on the findings of studies, corroborated by empirical data, on the root causes of this practice and conducting regular awareness-raising campaigns against it;**

(d) **To guarantee access for victims to adequate recovery, counselling and rehabilitation services and to take steps to raise awareness among law enforcement officials and the general public on the need to eliminate all forms of violence against women.**

**29. The Committee draws attention in this connection to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

**Economic exploitation of children**

30. The Committee is concerned at the large number of children who are economically exploited in the agricultural sector and in domestic work, often in dangerous conditions, particularly in the artisanal mining sectors. It is also concerned at the fact that the poverty of families in rural areas and limited access to education increase the risk of the economic exploitation of children (art. 10).

**31. The Committee recommends that the State party take the necessary steps to combat the economic exploitation of children and ensure that the provisions of the Labour Code prohibiting the worst forms of child labour are applied effectively, in particular by making inspections more stringent, conducting investigations, prosecuting and sanctioning those responsible and providing victims with rehabilitation and assistance. It also recommends that the State party conduct awareness-raising campaigns concerning its legislation on child labour, particularly in mining areas and agricultural areas, as well as in towns where children are often employed in domestic work. It recommends that it take steps to support poor families in order to allow their children to enjoy the right to education.**

**Poverty**

32. The Committee is concerned that, despite the implementation of poverty reduction measures, a significant proportion of the population is not able to enjoy an adequate standard of living and that poverty remains widespread in the State party, where over 25 per cent suffer from extreme poverty. The Committee notes that poverty rates are highest

among women and persons living in rural areas, who are disproportionately affected (art. 11).

33. **The Committee recommends that the State party redouble its efforts to combat poverty, especially extreme poverty, by ensuring that the Strategy for Accelerated Growth and Sustainable Development is implemented from a rights-based perspective and provided with the necessary resources, and by giving priority to the needs of the most disadvantaged and marginalized individuals, families and social groups. The Committee recalls its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (2001).**

#### **Food insecurity and malnutrition**

34. The Committee is concerned at the fact that, despite the implementation of the national programme for the development of agricultural services and other programmes, food insecurity affects a large proportion of the population. Notwithstanding the progress made in addressing malnutrition, the Committee is concerned at the alarming persistence of acute malnutrition among children under the age of 5 years and at the prevalence of the noma disease. The Committee notes that the policy of promoting agro-industry in the State party has a harmful effect on family farms in the fertile areas of the country and can hamper the realization of the right to food of the most vulnerable strata of society, in particular on account of the resulting undue concentration of resources. It regrets the delays incurred with the implementation of the programme for the issue of land titles provided for under Act No. 34-2009/AN on the rural land tenure system, as well as the lack of a decree enforcing article 74 of the Act (art. 11).

35. **The Committee recommends that the State party redouble its efforts to guarantee the right to adequate food and to step up the struggle against hunger and malnutrition, in particular for children under the age of 5 years. It notes that it might be useful in this respect to introduce a framework law on the right to food. The Committee also recommends that the State party introduce measures to encourage the rational use of land and to end existing discriminatory practices, particularly as they affect smallholders, and to supervise agricultural investments strictly in order to ensure that they do not impede access to resources by local communities and that the conditions to which investors are subject are strictly supervised. It refers in this respect to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, adopted in 2012 by the Committee on World Food Security. The Committee also recommends that the State party take steps to promote access by smallholders to appropriate technology and to improve their access to local markets, in order to raise incomes in rural areas, particularly by promoting the spread of agroecological practices. The Committee would refer the State party to its general comment No. 12 (1999) on the right to adequate food and to the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, adopted by the Food and Agriculture Organization of the United Nations.**

#### **Forced eviction**

36. The Committee is concerned at the forced eviction of a large number of families in rural areas, in Kounkoufouanou, Essakane and elsewhere, as a result of gold-mining operations and agro-industry (art. 11).

37. **The Committee recommends that the State party adopt effective measures against forced eviction, in line with international human rights standards, and guarantee the victims of forced evictions an effective remedy to obtain restitution of their property or the grant of adequate compensation. The Committee would refer the**

**State party to its general comment No. 7 (1997) on the right to adequate housing: forced evictions.**

**Right to adequate and affordable housing**

38. The Committee notes with concern that a high proportion of the population lives in substandard housing and inadequate conditions. The Committee fears that the number of housing units built and planned by the State party is not sufficient to address the serious housing shortage that exists, particularly in Ouagadougou, and that there is no national policy on the right to affordable housing. It is also concerned at the resulting rise in housing costs, particularly in urban areas (art. 11).

**39. The Committee recommends that the State party adopt a national human rights-based housing strategy, setting out the measures to be taken and the resources required to gradually address the housing shortage. The Committee also invites the State party to enforce the law on private tenancy leases in order to protect tenants from exorbitant rents and excessive rent increases. It would draw the State party's attention to its general comment No. 4 (1991) on the right to adequate housing.**

**Right to safe drinking water and sanitation**

40. The Committee is concerned at the lack of access to safe drinking water, particularly in rural areas, and the irregular supply of drinking water by the National Water and Sanitation Bureau. It notes the absence of a national strategy for the sanitation system, in particular with regard to the treatment and disposal of solid waste and wastewater.

**41. The Committee recommends that the State party ensure the provision of safe and affordable drinking water and sanitation for all, especially people living in rural areas. It would draw the State party's attention to its general comment No. 15 (2002) on the right to water and to its statement on the right to sanitation (2010).**

**Right to health**

42. The Committee welcomes the adoption of a law on a universal health insurance system in the State party. The Committee regrets, however, that, despite the efforts made by the State party to improve the quality and availability of health-care services, disadvantaged and marginalized persons or groups, particularly those living in rural areas and persons with a disability, continue to experience difficulty in gaining access to health services. The Committee notes with regret that the health budget is insufficient to cover the whole population. The Committee is concerned at the lack of health facilities, medical equipment and medical staff and the limited availability of medicines (art. 12).

**43. The Committee recommends that the State party increase the health budget and continue its efforts to ensure the accessibility, availability and quality of health services, particularly in rural areas. In particular, it recommends that the State party improve the infrastructure of the primary health-care system and ensure that hospitals dispose of the necessary medical staff, supplies and medicines. The Committee would recall its general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12).**

**Infant and maternal mortality**

44. The Committee notes with concern that, despite progress made in reducing infant and maternal mortality rates, these remain very high. The Committee regrets that the majority of deaths of children under 5 years of age are caused by easily preventable and treatable diseases (art. 12).



45. **The Committee recommends that the State party redouble its efforts to reduce the high rate of infant mortality, particularly among children under 5 years of age, to ensure that births are assisted by duly qualified health professionals and to provide regular medical check-ups for children under 5. It also recommends that the State party take steps to prevent maternal mortality and morbidity, in particular by improving access by women to basic obstetric and neonatal care. In that connection, the Committee invites the State party to take account of the technical guidance provided by the Office of the United Nations High Commissioner for Human Rights on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22).**

#### **Sexual and reproductive health**

46. The Committee is concerned at the criminalization of abortion in all circumstances, without exception, which drives women to resort to dangerous abortions that may put their lives and their health at serious risk. The Committee is also concerned at the high levels of pregnancy, including teenage pregnancies, which are due in part to the inaccessibility and unavailability of appropriate sexual and reproductive health-care services and to the difficulties faced by women in obtaining access to means of contraception. It regrets that, in practice, rape victims do not have access to emergency contraceptives and are obliged to pay for their own medical care (art. 12).

47. **The Committee recommends that the State party:**

(a) **Repeal its legislation on the penalization of abortion with a view to adopting legislation compatible with women's rights to life, health and dignity and to take measures to prevent dangerous abortions;**

(b) **Redouble its efforts to ensure the availability and accessibility of sexual and reproductive health services, in particular the provision of emergency contraceptives and free medical supervision, including for victims of rape;**

(c) **Expand and improve comprehensive, age-appropriate sexual and reproductive health education for both sexes in primary and secondary schools.**

48. **The Committee refers in this respect to its general comment No. 22.**

#### **Access to education**

49. The Committee welcomes the rise in primary school enrolment rates in the State party, particularly owing to the introduction of free primary education. It is nonetheless concerned by:

(a) Reports that schooling still involves indirect costs in the form of financial contributions required of parents, which would limit access to primary education;

(b) Continued inequality in access to education, particularly affecting children with a disability and children living in rural areas;

(c) The high dropout rate in primary and secondary schools, in particular among girls;

(d) The poor quality of teaching due to an insufficient number of qualified teachers and the lack of infrastructure and teaching materials;

(e) The high illiteracy rate, especially in rural areas and among women (art. 13).

50. **The Committee recommends that the State party take stronger measures to guarantee the effective application of free education in primary schools and, gradually,**

in secondary schools; fully implement the Plan for Strategic Development of Basic Education with a view to guaranteeing access by all children to the educational system, with the focus on preschool education and support for inclusive education for children with a disability; and urgently address the high dropout rate from both primary and secondary education, particularly among girls, by implementing the national fast track for girls education policy. It also recommends that the State party improve the quality and infrastructure of schools, particularly in rural areas, and continue its efforts to implement its literacy plan.

#### **Access to the Internet**

51. The Committee notes with concern that the population living in the State party has only limited access to the Internet (art. 15).

52. The Committee recommends that the State party increase access to the Internet and redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet. The Committee also recommends that the State party continue its efforts to improve electricity coverage across the country.

#### **D. Other recommendations**

53. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

54. The Committee recommends that the State party take steps gradually to develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate an evaluation of the progress achieved by the State party in terms of fulfilling its obligations under the Covenant for the various sectors of the population. In that connection, the Committee would refer the State party to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3, chap. 1).

55. The Committee requests the State party to disseminate these concluding observations widely among all sectors of society, particularly among State officials, the judiciary, members of parliament, lawyers and civil society organizations and to inform the Committee, in its next periodic report, on the steps taken to implement them. It also encourages the State party to engage civil society organizations in the discussions to be held at the national level prior to the submission of its next periodic report.

56. The Committee requests the State party to submit its second periodic report by 30 June 2021 and invites it to submit an updated version of its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, covering the common core document and reports for each instrument (HRI/MC/2006/3).