

Translated from French

Burkina Faso

Permanent Mission to the United Nations

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The Permanent Mission of Burkina Faso to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with reference to its note verbale No. LA/COD/50/1 of 11 January 2022, in which the Office invited Member States to submit information and observations on their implementation of paragraphs 10, 12, 13, 15, 18 and 20 of General Assembly resolution 76/106, entitled “Criminal accountability of United Nations officials and experts on mission”, adopted by the General Assembly on 9 December 2021, has the honour to provide the information below.

In Burkina Faso, the criminal liability of United Nations officials and experts on mission is governed by Act No. 025–2018/AN of 31 May 2018 (the Criminal Code) and Act No. 040-2019/AN of 29 May 2019 (the Code of Criminal Procedure).

Article 113-1, paragraph 2, of the Criminal Code provides that offences committed outside the national territory by a national of Burkina Faso or a foreign national are punishable under the criminal law of Burkina Faso, provided that the acts are punishable under the laws of the country in which they were committed. The courts of Burkina Faso have jurisdiction to hear and rule on such offences committed outside the national territory. However, the prosecution before those courts must be preceded by either a complaint from the victim or an official complaint from the authorities of the country in which the act was committed.

These legislative provisions of the Penal Code of Burkina Faso, which predate resolution 76/106, allow the country to implement the resolution fully, as they address offences committed by both nationals of Burkina Faso and foreign nationals, including United Nations officials and experts on mission.

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Furthermore, the criminal law of Burkina Faso provides for cooperation between States through requests for information, letters rogatory and bilateral agreements on extradition and/or mutual legal assistance in criminal matters that have been or may be signed.

Although Burkina Faso does not, in principle, extradite its citizens, it may, at its discretion, examine extradition requests, determining whether the accused was a national at the time the act was committed.

While extradition and mutual legal assistance in criminal matters are possible on the basis of treaties, bilateral or multilateral agreements, reciprocity or international comity, all of the following conditions and principles must be respected: the principle of dual criminality, the proportionality of the penalty, the principle of *non bis in idem*, a commitment to respect the rule of speciality, the non-application of the death penalty and the absence of the risk of torture.

In sum, the criminal law of Burkina Faso is adequate to enable it to cooperate in this matter with other subjects of international law, as a requested State or requesting State, in order to ensure the effective and efficient punishment of offences committed outside its national territory by either nationals of Burkina Faso or foreign nationals, including United Nations officials and experts on mission.

The Permanent Mission of Burkina Faso to the United Nations thanks the Office of Legal Affairs for its kind cooperation and takes this opportunity to convey to it the renewed assurances of its high consideration.

Annex: relevant provisions of the Criminal Code and Code of Criminal Procedure of Burkina Faso

Relevant provisions of Act No. 040-2019/AN of 29 May 2019, the Code of Criminal Procedure**Chapter 4: Crimes and offences committed abroad****Article 524-1**

The courts of Burkina Faso shall have jurisdiction to hear cases concerning offences committed under the conditions set forth in articles 113-1 and 113-2 of the Criminal Code.

Article 524-2

Any person who, in the territory of Burkina Faso, has become an accomplice to a crime or offence committed abroad may be prosecuted and tried by the courts of Burkina Faso if the act is punishable under both the law of the foreign country and the law of Burkina Faso, provided that the commission of the crime or offence has been established in a final judgment of the courts of the foreign country.

Article 524-3

An offence committed abroad against an individual may be prosecuted only at the request of the public prosecutor, and it must be preceded by a complaint from the victim or an official complaint addressed to the authorities of Burkina Faso by the authorities of the country in which the act was committed.

Article 524-4

In the circumstances set forth in articles 524-1 and 524-2, regardless of whether the act constitutes a crime or an offence, no prosecution shall take place if the accused person demonstrates that he or she has been the subject of a final judgment abroad and, if he or she was convicted, that the sentence has been served or is time-barred or that he or she has been pardoned.

Article 524-5

An offence shall be considered to have been committed in Burkina Faso if any of its constituent elements was committed in Burkina Faso.

Article 524-6

Any foreign national who, outside the territory of Burkina Faso, has committed – as a perpetrator or an accomplice – a crime or offence against the security of the State or involving forgery of the State seal or counterfeiting of national legal tender currency may be prosecuted and tried under the law of Burkina Faso, if such foreign national is arrested in Burkina Faso or the Government

secures his or her extradition.

Article 524-7

Any national of Burkina Faso who, outside the territory of Burkina Faso, has committed an act that amounts to a crime punishable under the law of Burkina Faso may be prosecuted and tried by the courts of Burkina Faso.

Any national of Burkina Faso who has committed an offence or infraction relating to forestry, rural matters, fisheries or customs and excise in the territory of a neighbouring State may be prosecuted and tried in Burkina Faso under the law of Burkina Faso, if such neighbouring State allows the prosecution of its nationals for committing the same act in Burkina Faso. Reciprocity shall be legally established by international conventions or by decree.

Article 524-8

In the cases provided for in this section, prosecution shall be initiated at the request of the public prosecutor of the place of residence or last known residence of the accused, or the public prosecutor of the place where he or she is found.

The Court of Cassation may, at the request of the public prosecutor or the parties, refer the case to a court or tribunal nearer to the place of the crime or offence.

Relevant provisions of Act No. 025-2018/AN of 31 May 2018, the Criminal Code**Chapter 3: Spatial application of criminal law****Article 113-1**

The criminal law of Burkina Faso applies to any offence committed in the national territory, regardless of the nationality of the perpetrator.

The criminal law of Burkina Faso also applies to offences committed by or against a national of Burkina Faso outside the national territory, provided that the act is punishable under the laws of the country in which it was committed. In such cases, prosecution must be preceded by a complaint from the victim or an official complaint from the authorities of the country in which the act was committed.

Prosecution shall be terminated if the person demonstrates that he or she has been subject to a final judgment in relation to the same act and, if there was a conviction, the sentence has been served or is time-barred.

The criminal law of Burkina Faso shall also be applicable to offences committed on board aircraft registered in Burkina Faso or aircraft leased without crew and operated by persons eligible to own an aircraft in Burkina Faso, or against persons on board such aircraft. It shall be the only law applicable to offences committed on board military aircraft of Burkina Faso or against persons on board such aircraft.

It shall also be applicable to offences committed on board vessels registered under the law of Burkina Faso or in respect of which a permit or identification number has been issued in accordance with that law, on board vessels registered abroad that belong to the Government of Burkina Faso, or against persons on board such vessels.

The courts of Burkina Faso shall have jurisdiction over the application of this article.

Article 113-2

If the extradition, deportation or refoulement of a person to a State where he or she would be at risk of torture or similar practices is refused by the authorities of Burkina Faso, the courts of Burkina Faso shall have jurisdiction to try the person if the acts constituting the basis for the request for surrender are criminalized and punishable under the laws in force in Burkina Faso or constitute an international crime.
