

Translated from French

Permanent Mission of Burkina Faso

New York, 28 March 2022

The Permanent Mission of Burkina Faso to the United Nations presents its compliments to the United Nations Office of Legal Affairs and, in reference to its note verbale LA/COD/59/1 dated 10 January 2022, by which it invited Member States to submit information or observations on the implementation of resolution 76/118, entitled “The scope and application of the principle of universal jurisdiction”, adopted by the General Assembly on 9 December 2021, has the honour to convey the following:

The Burkina Faso legislator has, through Act No. 040-2019/AN of 29 May 2019 concerning the Code of Criminal Procedure, established the power of the country’s courts to exercise universal jurisdiction. In addition to the personal jurisdiction counterpart of the principle of universal jurisdiction, which allows the courts of Burkina Faso to entertain cases involving felonies or misdemeanours committed by Burkina Faso nationals outside the territory of Burkina Faso, the courts of Burkina Faso now have jurisdiction over any felony or misdemeanour, regardless of where it is committed, subject only to the criteria of double jeopardy and compliance with the principle of *non bis in idem* (arts. 524-1 to 524-8 of the Code of Criminal Procedure)

In extradition proceedings, the courts of Burkina Faso also have the power to exercise universal jurisdiction in case of refusal to extradite. Article 519-6 of the Code of Criminal Procedure states as follows: “When Burkina Faso refuses to extradite, it must submit the case to the competent authorities for judicial proceedings to be undertaken if necessary. The referral to the competent authorities shall be notified to the requesting State.” This will be the case whenever the Burkina Faso authorities refuse to extradite, expel or return a person to a State where the person runs the risk of being subjected to torture or similar practices (art. 113-2 of the Criminal Code). In such cases, the courts of Burkina Faso have jurisdiction to try the person if the acts that are the subject of the request for surrender are contemplated in and punished by the laws in force in Burkina Faso, or if the acts constitute international crimes, such as crimes against humanity, the crime of genocide, war crimes and the crime of aggression.

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

Internal provisions establishing the power of the courts of Burkina Faso to exercise universal jurisdiction

I- Relevant provisions of Act No. 040-2019/AN of 29 May 2019 concerning the Code of Criminal Procedure

Article 519-6:

When Burkina Faso refuses to extradite, it shall refer the case to the competent authorities for judicial proceedings to be undertaken if necessary. The referral to the competent authorities shall be notified to the requesting State.

Chapter 4: Felonies and misdemeanours committed abroad

Article 524-1:

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

Article 524-2:

Any person who, in the territory of Burkina Faso, is an accomplice to a felony or misdemeanour committed abroad may be prosecuted and tried by the courts of Burkina Faso if the act is punishable under both the laws of a foreign country and the laws of Burkina Faso, provided that the act classified as a felony or a misdemeanour has been so deemed in a final judgment of the foreign court.

Article 524-3:

In the case of an offence committed abroad against an individual, criminal proceedings may only be instituted at the request of the prosecution service; the proceedings must be preceded by a complaint from the victim or an official report to the Burkina Faso authority by the authority of the country where the act was committed.

Article 524-4:

In the cases referred to in articles 524-1 and 524-2 above, whether it is a felony or a misdemeanour, no criminal proceedings shall be undertaken if the accused proves that a final judgment has been issued in his or her case abroad and, in the event of a conviction, that he or she has served his or her sentence or obtained a pardon.

Article 524-5:

Any offence of which an act characterizing one of its constituent elements has been committed in Burkina Faso shall be deemed to have been committed in the territory of Burkina Faso.

Article 524-6:

Any foreigner who, outside the territory of Burkina Faso, is found guilty, either as perpetrator or as accomplice, of a felony or misdemeanour involving a breach of State security or forgery of the State seal or of national currencies that are legal tender, may be prosecuted and tried, according to Burkina Faso law, if he or she is arrested in Burkina Faso or if the Government obtains his or her extradition.

Article 524-7:

Any Burkina Faso national who, outside the territory of Burkina Faso, is found guilty of a crime punishable under Burkina Faso law may be prosecuted and tried by the courts of Burkina Faso.

Under Burkina Faso law, any national of Burkina Faso who is found guilty of an offence in the areas of forestry, farming, fishing, customs or indirect taxation in the territory of one of the neighbouring States may be prosecuted and tried in Burkina Faso, if that State authorizes the prosecution of its nationals for the same acts committed in Burkina Faso.

Reciprocity is legally established by international agreements or by decree.

Article 524-8:

In the cases set out in the present chapter, criminal proceedings shall be instituted at the request of the prosecution service of the place where the accused resides or of his or her last known residence or of the place where he or she is found.

The Supreme Court may, at the request of the prosecution service or the parties, remand the case to a court or tribunal closer to the place of the felony or misdemeanour.

II- Relevant provisions of Act No. 025-2018/AN of 31 May 2018 concerning the Criminal Code

Chapter 3: Application of the criminal law in space¹

Article 113-1:

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

The criminal law shall also apply to offences committed by or against a national outside the territory of Burkina Faso when the acts are punishable under the laws of the country where they were committed. Criminal proceedings in such case must be preceded by a complaint from the victim or an official report from the authority of the country where the acts were committed.

¹ *Translators Note:* Please note that the reference to “space” here is not as in outer space, but as in the other half of the expression “time and space”. Chapter 2 of the Code, which they did not provide, is entitled “Application of the criminal law in time”.

The criminal proceedings shall cease if the person proves that a final judgment has been issued in his or her case abroad for the same acts, and in case of conviction, when the sentence has been served or is time-barred.

The criminal law of Burkina Faso shall also apply to offences committed on board aircraft registered in Burkina Faso, or aircraft leased without a crew and commissioned by persons fulfilling the conditions of ownership of an aircraft in Burkina Faso, or against persons on board such aircraft. It shall only apply to offences committed on board Burkinabe military aircraft, or against persons on board such aircraft.

It shall also apply to offences committed on board a vessel registered in accordance with the laws of Burkina Faso or in respect of which a permit or identification number has been issued in accordance with said law, or on board a vessel registered abroad and belonging to the State of Burkina Faso or against persons on board such vessels.

For the application of the present article, the courts of Burkina Faso shall have jurisdiction.

Article 113-2:

When the authorities of Burkina Faso refuse to extradite, expel or return a person to a State where the person runs the risk of being subjected to torture or similar practices, the courts of Burkina Faso shall have jurisdiction to try the person if the acts for which surrender is requested are contemplated in and punishable under the laws in force in Burkina Faso, or if they constitute an international crime.