



BURKINA FASO: A BRIEF ON EQUALITY AND NON-
DISCRIMINATION, CHILD MARRIAGE, EDUCATION, AND
MIGRANT DETENTION
(CRC ARTICLES 2, 9, 19, 24, 28, 34, 37 AND GENERAL
COMMENT 4)

Information for the Committee on the Rights of the Child

100th Pre-Sessional Working Group, February 2025

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,500 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 100th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Education, Leisure and Cultural Activities**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current available information on the constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Burkina Faso, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Burkina Faso address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Burkina Faso for having provisions in place, we hope the Committee will recommend that Burkina Faso work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Our review of full-text national constitutions found that Burkina Faso’s constitution explicitly guarantees equality and non-discrimination broadly and on the basis of all groups and statuses listed in the Convention, **with the exception of disability and foreign national origin.**

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Burkina Faso: have Burkina Faso’s constitutional provisions on general equality before the law and non-discrimination been interpreted, through case law or otherwise, to cover discrimination on the basis of disability or foreign national origin?
 - If they have not, can Burkina Faso outline any concrete, near-term plans to amend its constitution to prohibit discrimination on the basis of disability and foreign national origin?
 - If Burkina Faso cannot, recommend in its concluding observations that Burkina Faso amend its constitution to explicitly prohibit discrimination on the basis of disability and foreign national origin, consistent with CRC commitments. This could be added to Article 1 of the constitution, which already prohibits discrimination on the basis of other CRC-protected groups and statuses.

2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Burkina Faso’s Family Code sets the minimum age of marriage as 20 for both sexes; however, once all exceptions are taken into account, it allows girls as young as 15 to be married, compared to 18 for boys, although this law is currently being revised. The last recorded child marriage rates in the country are high: 9% of surveyed women had married before age 15 (despite 15 being the lowest possible age of legal marriage since at least 1989), over 50% of surveyed women had married before age 18, and 23% of girls aged 15-19 were already married at the time of survey.¹

¹ UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Burkina Faso: Can Burkina Faso clarify if the revision of its Family Code will raise the minimum age of marriage to at least 18 for both girls and boys, without exceptions?
 - If that is not the case, can Burkina Faso outline any concrete, near-term plans to pass alternative legislation that sets the minimum age of marriage to at least 18 years old without exceptions?
 - If that is not the case either, recommend in its concluding observations that Burkina Faso pass and implement legislation that protects children under the age of 18 from early marriage without exceptions.
- In its list of issues, ask Burkina Faso: given the very high rates of child marriage in the country, especially for children that formally require court permission to marry, can Burkina Faso specify what actions it is taking to enforce its existing legislation on child marriage?
 - If Burkina Faso cannot, recommend in its concluding observations that Burkina Faso take immediate action to enforce the legislation already in place.

3. Special Protection Measures: Education, Leisure and Cultural Activities (Article 28)

Our research shows that Burkina Faso’s legal framework provides for free basic education and compulsory education until the age of 16. Despite these legal guarantees, as of 2022, 28% of all Burkinabe children of primary school age were out of school.²

² UNESCO Institute for Statistics. SDG 4 September 2024 Country Dashboard. Accessed November 7, 2024, at: <http://sdg4-data.uis.unesco.org/>



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Burkina Faso: Given the current out-of-school rates for primary students, can Burkina Faso provide information on what concrete measures it is taking to effectively implement its free and compulsory education provisions?
 - If Burkina Faso does not have concrete measures in place, recommend in its concluding observations that Burkina Faso develop a concrete, near-term plan to effectively enforce its legal commitment to provide primary education that is both free and compulsory.

4. [Special Protection Measures: Children in Situations of Emergency \(Detention based on Immigration Status\) \(Articles 9, 24, 28, 37\)](#)

We have found no provisions on detention in Burkina Faso’s legislation on migrants, refugees, or asylum-seekers.

RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Burkina Faso: Given the lack of specifics on detention in its legislation on migration and asylum, can Burkina Faso clarify its framework on detention and family unity of minor migrants or asylum seekers, whether accompanied or unaccompanied?
 - If Burkina Faso does not have a concrete framework in place, recommend in its concluding observations that Burkina Faso develop a concrete, near-term plan to explicitly prohibit the detention of minor migrants and asylum seekers, whether accompanied or unaccompanied, and guarantee their family unity.



DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

BURKINA FASO'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON DISABILITY AND FOREIGN ORIGIN

Our review of full-text constitutions found that Article 1 of Burkina Faso's Constitution grants equal rights to all Burkinabè, and prohibits discrimination generally as well as on the basis of almost all Convention grounds. However, some groups that are guaranteed equality in the Convention are not covered by this constitutional provision – specifically, children facing discrimination based on foreign national origin and disability.

Constitution of Burkina Faso, amended to 2015



Article 1

All the Burkinabè are born free and equal in rights.

All have an equal vocation to enjoy all the rights and all the freedoms guaranteed by this Constitution.

Discrimination of all sorts, notably those founded on race, ethnicity, region, color, sex, language, religion, caste, political opinions, wealth and birth, are prohibited.

2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences. For girls in particular, child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

BURKINA FASO'S LEGISLATIVE PROVISIONS: GIRLS CAN BE MARRIED BEFORE THE AGE OF 18, AND MUCH YOUNGER THAN BOYS

Burkina Faso's Family Code sets 20 as the minimum age of marriage for both sexes, but allows girls 17 and older to be married with parental consent only. Civil courts may be petitioned to allow earlier marriage; when all exceptions are taken into account, girls in Burkina Faso can be married as young as 15, compared to 18 for boys.



The last recorded child marriage rates in the country are extremely high: despite the prohibition of marriage before the age of 15 even after going to civil court, 9% of surveyed women married before age 15; over 50% of women surveyed married before age 18, and 23% of girls aged 15-19 were already married at the time of survey.³ Our own research, as well as paragraph 28 of the State Party report, indicates that the family code is currently being revised.

Code des Personnes et de la Famille, 1989

Art. 238: Le mariage ne peut être contracté qu'entre un homme âgé de plus de vingt ans et une femme de plus de dix sept ans, sauf dispense d'âge accordée pour un motif grave par le tribunal civil.

Cette dispense d'âge ne peut être accordée en aucun cas pour un ayant moins de dix-huit ans et une femme ayant moins de quinze ans.

Art. 241: Le mineur ne peut contracter le mariage sans le consentement de ses pères et mère ou de celui du père ou de la mère exerçant l'autorité parentale ou de toute personne exerçant la dite autorité en vertu d'une décision judiciaire ou d'une délégation constatée par procès verbal du conseil de famille, ou du tuteur.

Art. 554. Le mineur est l'individu de l'un ou l'autre sexe qui n'a pas encore l'âge de vingt ans accomplis.

3. Special Protection Measures: Education, Leisure and Cultural Activities (Article 28)

Article 28.1 of the CRC recognizes a child's right to education, and specifically orders States Parties to "make primary education compulsory and available free to all" as well as to "[e]ncourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education." Article 2.1, referenced above, compels States Parties to ensure that these rights are enjoyed without discrimination on the basis of sex.

For all 193 UN member states, we systematically reviewed education acts and child protection laws available online through UNESCO's Observatory on the Right to Education Library and International Labour Organization's NATLEX database. Through the review we determined whether national legislation guaranteed free and compulsory primary and secondary education. We also determined whether sex discrimination in education is prohibited by law.

³ UNICEF data – Child Marriage. Retrieved November 7, 2024 from <https://data.unicef.org/topic/child-protection/child-marriage/>



BURKINA FASO'S LEGISLATIVE PROVISIONS: PRIMARY EDUCATION IS FREE AND COMPULSORY, BUT ENROLMENT LAGS BEHIND

Burkina Faso makes basic education both free and compulsory, until the age of 16. Burkina Faso's education law explicitly prohibits sex discrimination in education.

Loi d'Orientation de l'Education, 2007

Article 3: L'éducation est une priorité nationale.

Toute personne vivant au Burkina Faso a droit à l'éducation, sans discrimination aucune, notamment celle fondée sur le sexe, l'origine sociale, la race, la religion, les opinions politiques, la nationalité ou l'état de santé. (...)

Article 4 : L'enseignement de base est obligatoire pour tous les enfants de six ans à seize ans.

Article 6: L'enseignement de base public est gratuit. (...)

Despite these legal guarantees, as of 2022 28% of all Burkinabe children of primary school age were out of school,⁴ and thus the effectiveness of these provisions remains an open question.

4. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

As noted in the 2002 Committee's Report on the Rights of All Children in the Context of International Migration, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

⁴ UNESCO Institute for Statistics. SDG 4 September 2024 Country Dashboard. Accessed November 7, 2024, at: <http://sdg4-data.uis.unesco.org/>



No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 9.1 affirms the right to family unity stating:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]

BURKINA FASO'S LEGISLATIVE PROVISIONS: Sparse legislation with no provisions on detention

Our research found no provisions on detention in Burkina Faso's legislation on migrants, refugees or asylum-seekers.

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