

## Burkina Faso, Creation of Self-Defence Militias

**INTRODUCTORY TEXT:** *In Burkina Faso, since 2016, the creation of “self-defence militias” (Local Community Security Structures (SCLSs)) has raised concerns with a number of international human rights bodies, including the Committee against Torture (CAT). These SCLSs, regulated by Burk-inabe law, allegedly act beyond their legal competence (ultra vires). In addition, since 2020, a new Burkinabe law installs so-called “volunteers for the defence of the homeland” (VDP), which have an even more militarized role than the SCLSs. This case looks into the qualification of these groups and their members as well as the responsibility for their acts.*

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**N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

### A. Volunteers for the defence of the Homeland Act

[Source: Loi N°002-2020/AN portant institution de volontaires pour la défense de la patrie, adopted by the National Assembly of Burkina Faso on 21 January 2020]

#### Volunteers for the Defence of the Homeland Act

Law No. 002-2020/AN of 21 January 2020

The National Assembly,

[...]

at its session of 21 January 2020, adopted the Act set out below.

[...]

## **CHAPTER 1: GENERAL PROVISIONS**

### **Article 1**

This Act establishes the Volunteers for the Defence of the Homeland (hereunder "VDPs").

### **Article 2**

A VDP is an individual of Burkinabe nationality who, in their capacity as a volunteer auxiliary to the defence and security forces, shall serve the security interests of their vil-lage or residential area, in accordance with a contract signed between the VDP and the state.

### **Article 3**

The VDP's mission is to contribute, if necessary by force of arms, to the defence and protection of persons and property in the VDP's village or residential area.

[...]

### **Article 4**

VDPs from the same village or residential area shall constitute a Group of Volunteers for the Defence of the Homeland (hereunder "GVDP") for that village or residential area.

[...]

## **CHAPTER 2: RECRUITMENT OF VOLUNTEERS FOR THE DEFENCE OF THE HOMELAND**

### **Article 5**

VDPs shall be recruited in their village or residential area on a voluntary basis, subject to the local population's approval at a general meeting.

[...]

### **Article 6**

The contract governing the VDP's commitment shall last for one year and is renewable.

The VDP's commitment may be renewed upon signature of a new contract.

## **CHAPTER 3: RIGHTS AND OBLIGATIONS**

## **Section 1: Rights**

### **Article 7**

The GVDP enjoys the financial support of the state for its operations.

The GVDP may also receive donations in kind or in cash from individuals or corporations in accordance with the conditions set out by law.

### **Article 8**

The VDP shall be covered by health insurance in the event of an injury sustained in the course of their duties.

[...]

### **Article 11**

In the event of the death of the VDP, the cost of their burial shall be borne by the state.

The beneficiaries of any VDP who dies in fulfilment of their duties shall receive financial assistance.

[...]

### **Article 13**

VDPs shall enjoy the protection of the state while carrying out their duties.

However, VDPs shall remain liable before the competent courts for any reprehensible acts committed while under contract or in the course of carrying out their duties.

## **Section 2: Obligations**

### **Article 14**

VDPs shall be ready to serve at all times and shall reside in their village or residential area.

### **Article 15**

VDPs owe their allegiance to the military authority.

They are required to collaborate with the other defence and security forces.

They may not carry out any act that is contrary to the laws, regulations, customs and usages of war or to the international treaties to which Burkina Faso is party.

VDPs shall be responsible for carrying out the missions that they are assigned.

#### **Article 16**

Without prejudice to the application of criminal law, disciplinary measures may be taken against VDPs or statutory penalties applied in accordance with the regulations and code of conduct governing VDPs.

[...]

#### **Article 17**

VDPs are bound by a duty of discretion and professional confidentiality, including after the termination of their duties. They shall refrain from carrying out any act or making any remarks that may be detrimental to public order.

#### **Article 18**

VDPs are forbidden from carrying out the duties of criminal investigators or performing actions to maintain public order.

[...]

### **Section 3: Discipline**

#### **Article 20**

VDPs are subject to the code of conduct.

[...]

## **B. Braga Massacre: *Le Monde Afrique***

[Source: Sophie Douce, "La tuerie perpétrée dans le nord du Burkina Faso attise les tensions communautaires" [Massacre in northern Burkina Faso stokes communal tensions], *Le Monde Afrique*, 10 March 2020, [https://www.lemonde.fr/afrique/article/2020/03/10/la-tuerie-perpetree-dans-le-nord-du-burkina-faso-attise-les-tensions-communautaires\\_6032519\\_3212.html](https://www.lemonde.fr/afrique/article/2020/03/10/la-tuerie-perpetree-dans-le-nord-du-burkina-faso-attise-les-tensions-communautaires_6032519_3212.html)]

[1] At least 43 people were killed on Sunday, 8 March, in the province of Yatenga. Eyewitnesses say a village self-defence group is responsible.

[2] A massacre. At least 43 people were killed on Sunday, 8 March, in attacks on three villages in the district of Barga, located in Yatenga Province, in northern Burkina Faso, according to preliminary figures released by the government on Monday. Several eyewitnesses say members of a village self-defence group are responsible. "The koglleogo ['guardians of the bush'] came on motorbikes. They were looking for Peuls. They shot at the men and set fire to the houses. Then they carried on their killing spree in Barga and

Ramdola,” said a 66-year-old survivor, whose son was wounded in the attack, speaking by telephone from the village of Dinguila.

[3] “Defence and security forces were immediately deployed to secure the villages that had been attacked,” said Rémis Fulgance Dandjinou, the government’s spokesperson, in a statement on Mon-day. But according to others, those forces have already left the area, giving rise to fear of reprisals. “All the Peuls have run away. It’s total panic. We are afraid that the koglweogo will come back to massacre us,” said another survivor, sheltering in Ouahigouya, 30 kilometres from his village. An-other man from Dinguila, an ethnic Mossi, said: “We are very worried. The situation could degenerate if the Peuls seek revenge and call on the jihadists.”

[4] On Monday, ministers in charge of national defence and territorial administration were sent to the scene of the massacre to “take stock of the situation”. In a tweet, President Roch Marc Christian Kaboré condemned “in the strongest possible terms the heinous attack carried out by unidentified armed men on Sunday”. Two days of national mourning have been decreed.

[5] But among the Peul community’s self-defence associations, tempers are fraying. “Why is the government talking about unidentified armed men?” Daouda Diallo, the spokesperson for the Collec-tive against Impunity and Stigmatization, asks bitterly. “The perpetrators were clearly identified by their victims. They were koglweogo! They are able to act with impunity; the authorities are complicit in the militias’ actions,” he says.

[6] Violence has continued to escalate in Burkina Faso, which has become the latest epicentre of the crisis in the Sahel. In its annual report, Armed Conflict Location and Event Data Project, an NGO, states that violent incidents were up 174% in 2019, with more than 1,300 civilians killed in the coun-try. The increase in terrorist attacks since 2015 has stoked tensions between communities. The Peuls, who are regularly accused by some locals of siding with jihadist groups, have been increasingly stig-matized.

[7] On 1 January 2019, the murder of a Mossi chief and his family in Yirgou, Centre-North Region, led to a deadly vendetta against the Peul community conducted by a self-defence group. According to official statistics, 49 people were killed. According to the Collective against Impunity and Stigma-tization, the number was over 200.

[...]

[8] On 21 January Burkina Faso’s parliament passed a law enabling the recruitment of “volunteers for the defence of the homeland”. Its aim: to train and arm the population in certain locations to fight against terrorist groups. Officially, the government is assuring people that volunteers are not yet op-erational on the ground; a witness to which Le Monde Afrique has spoken, contradicts this. “Soldiers have taught us how to shoot and given us weapons. Our chief looks after them between missions. Whenever a local person alerts us to the presence of suspicious people in the area, we go out to capture them. Nine out of ten are Peuls,” says this

“volunteer”, who wished to remain anonymous and is also a member of the koglwego in Kaya, the capital of the Centre-North Region.

[...]

## C. Braga Massacre: Amnesty Report

[Source: Amnesty International, “Burkina Faso: Witness testimony confirms armed group perpetrated mass killings”, 20 March 2020, <https://www.amnesty.org/en/latest/news/2020/03/burkina-faso-witness-testimony-confirms-armed-group/>]

[1] Key witnesses have told Amnesty International that the appalling attacks in Burkina Faso northern Yatenga province on 8 March were perpetrated by a “self-defence” armed group that has often operated alongside the country’s military.

[2] The organisation spoke to seven key local witnesses and survivors in the villages of Dinguila-Peulh, Barga and Ramdolla-Peulh that were attacked, who clearly stated that it was the “Koglwego” who carried out the onslaught; firing and indiscriminately killing people, and burning homes and possessions. At least 43 people, including a 90-year old blind man, were killed during these attacks.

[3] The attacks occurred in the context of the government’s promulgation of the “Volunteers for the Defence of the Homeland Act” (Loi sur les volontaires pour la défense de la patrie) in an effort to ramp up the fight against growing violence and attacks by armed groups across Burkina Faso. The law provides for the mobilization of volunteers at the local level to assist the government’s military operations.

[...]

### “Koglwego” identified as responsible for the attacks

[4] Early in the morning of 8 March, the village of Dinguila-Peulh was attacked by a column of armed men on motorcycles and carrying rifles. The assailants then continued towards the villages of Barga and Ramdolla-Peulh.

[5] At least 43 people were killed during the attacks in the three villages according to a government statement which claimed the assailants were “unidentified armed men”.

[6] However, survivors Amnesty International spoke to, clearly identified the “Koglwego” as responsible for the attacks.

[7] A witness in Dinguila-Peulh told the organisation:

[8] “The ‘Koglweogo’ entered the village on the morning of 8 March around 5.30 AM and started shooting, killing about 24 villagers, including two elders. They stripped some of the dead of their money, took seven motorcycles and burned six other motorcycles. They continued afterwards to Barga where they killed more people, and then to Ramdolla-Peulh, where they only burned homes. Security forces arrived in the afternoon in Dinguila-Peulh. The following day, two ministers visited the village and we could bury the bodies of the people killed.”

[...]

[9] Other survivors told Amnesty International that the “Koglweogo” burned homes, granaries, carts and motorcycles, forcing most of the villagers to flee to Ouahigouya.

### **The “Volunteers for the Defence of the Homeland Act”**

[10] The “Volunteers for the Defence of the Homeland Act” is a new law which was promulgated in January 2020, in a context of ethnic polarization in the Sahel, North and Center-North regions of Burkina Faso, as well as the proliferation of non-state armed groups like Ansaroul Islam, the Group for the Support of Islam and Muslims (GSIM), and the Islamic State in the Greater Sahara (ISGS).

[11] Per the law, volunteers are recruited at village-level or at their residence area on a voluntary basis, and with the approval of the village development committee or the municipal council. After selection, they are supposed to be trained for two weeks and deployed under military authority for one-year renewable.

[12] The volunteers are supposed to operate only within their residence area and to be under military authority. In practice, members of the “Koglweogo” armed groups recruited by authorities have operated beyond their residence area, even though some are being suspected of having committed human rights abuses.

[13] “The authorities should ensure the protection of human rights by refraining from recruiting members of self-defense groups such as the ‘Koglweogo’, with little respect for the value of human life, as volunteers. They cannot take the gamble of outsourcing the response to insecurity to armed groups that have regularly abused human rights,” said Ousmane Di-allo [Amnesty International’s West Africa researcher].

[...]

## **Discussion**

### **Abbreviations**

- VDP: Volontaire pour la défense de la Patrie (volunteer for the defence of the homeland)

- GVDP: Groupe de VDPs (group of VDPs)
- Koglweogo: “guardians of the bush” – self-defence groups

## **I. Classification of the Conflict and Applicable Law**

1.
  - a. According to the facts of the case, how would you classify the situation in Barga? Is there an armed conflict? If so, is it international (IAC) or non-international (NIAC) in nature? What conditions must be met for it to be an armed conflict? Who are the parties to the conflict? What law governs the situation? (GC I-IV, Art. 2, 3; P I, Art. 1; P II, Art. 1; ICTY, *The Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70)
  - b. Assuming that the koglweogo/self-defence group that carried out the killings in Barga was a GVDP, what is the nature of the situation and what is the applicable law? If it was not a GVDP, what is the nature of the situation and what is the applicable law?
  - c. Assuming that the groups accused of having committed the massacre in Barga are the ones contracted by the state for maintaining security and fighting the Islamist militias, was the population of Barga protected by IHL vis-à-vis the volunteers? What if there was no ongoing conflict against the Islamist groups?
  - d. Are the groups discussed in the case bound to respect international human rights law (IHRL)? What if they cannot be considered state agents?

## **II. Classification of Groups and Persons**

2.
  - a. What is the status of the GVDP? Are the different GVDPs part of the armed forces of Burkina Faso? Are they a non-state armed group?
  - b. Since the GVDPs were created and are governed by Burkinabe law, are they an organ of the state?
  - c. Does the fact that the government signs contracts with the VDP make the individual VDP an agent of the Burkinabe state? Or that the VDP has to serve at any time and receives compensation from the state? Does the fact that the state finances the GVDPs, requires them to undergo basic training and subjects them to control by the military authorities change anything in your analysis?
  - d. If Burkina Faso was involved in an armed conflict, would the adverse party violate IHL if it targeted a member of the GVDP? Only if and as long as that member is actively participating in hostilities? Or do GVDP



members have a continuous fighting function?

3. Why are the GVDPs accompanied by the armed forces? What do you make of the obligation for the members of the VDP to comply with the laws, regulations, customs and usages of war and international conventions?

4. What are the rules governing the attribution of armed formations to states under IHL? What does it mean for a group to “belong” to a state? What is the relevance of this question in an IAC and what in an NIAC? (GC III, Art. 4; ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 131 and ICJ, *Nicaragua v. United States*, paras 115–116; International Law Commission, *Articles on State Responsibility*, Art. 4, 5, 8, 9 and 11)

5. Assuming that the role of the GVDPs was not governed by Burkinabe legislation, could they nevertheless be considered agents of the state? Under what circumstances? Based on what you know of the situation, may we consider them to be under the effective control of Burkina Faso? What if it had overall control? (ICTY, *The Prosecutor v. Tadić*, Appeals Chamber, Jurisdiction, para. 131 and ICJ, *Nicaragua v. United States*, paras 115–116)

### **III. State Responsibility**

6. Is the fact that the groups in question are constituted under Burkinabe law sufficient for their acts to be attributable to Burkina Faso? Can their members be considered agents of the state? If so, would all of their acts be attributable to Burkina Faso, or only those conducted in an official capacity? (International Law Commission, *Articles on State Responsibility*, Arts 4 and 7)

7. Assuming that the groups may not be considered agents of Burkina Faso, could violations they commit nevertheless raise the issue of the international responsibility of that state? Is Burkina Faso obliged by IHL to protect the population of Barga from non-state armed groups? What about by IHRL?

8. Assuming that the situation is that of an armed conflict, is the state of Burkina Faso responsible under IHL for the acts of the armed groups in Barga? Does your answer change if it was a GVDP? And if it was not? (HC-IV, Art. 3; P I, Art. 91; CIHL, Rule 149)