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## **The Right to education of internally displaced children in Burkina Faso**

Submitted in partial fulfillment of an LL M in Human Rights and  
Democratisation in Africa

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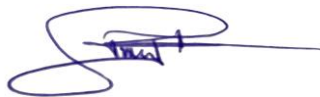
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## Dedication

*I dedicate this dissertation to:*

- *All the internally displaced children of Burkina Faso, whose lives were turned upside down.*
- *All those valiant Burkinabè soldiers who fight every day to preserve the integrity of our beloved country, and more particularly to Lieutenant Farid Haroun Sawadogo, who courageously sacrificed himself on 13 August 2024 for his brothers in arms and for the nation.*
- *My dear daughter, Aurore Dimitria, who has had to cope with her mother's absence over the last few months. I wish you all the happiness in the world and hope that this dissertation will inspire you and give you the strength to pursue your dreams.*
- *To my parents, my brothers and my sister.*

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## ABBREVIATIONS AND ACRONYMS

ACHPR: African Charter on Human and Peoples' Rights

ACmHPR: African Commission on Human and Peoples' Rights

ACRWC: African Charter on the Rights and the Welfare of the Child

ACERWC: African Committee on the Rights and Welfare of the Child

AU: African Union

CESCR: Committee on Economic, Social and Cultural Rights

CRC: Convention on the Rights of the Child

ECOWAS: Economic Community of West African States

ECCJ: ECOWAS Community Court of Justice

ICESCR: International Covenant on Economic Social and Cultural Rights

IDC: Internally Displaced Children

IDPs: internally displaced persons

NGOs: Non-Governmental Organisations

IOM: International Organization for Migration

OHCHR: Office of the high commissioner for Human rights

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNESCO: united Nations economic, social and cultural organisation

## Chapter 1: Introduction

### 1.1. Background

For several years now Burkina Faso has been going through an unprecedented security crisis. After the first terrorist attacks in 2015, the country is continually under attack from armed terrorist groups throughout its territory.<sup>1</sup> Since 2015, it seems that the country has become a favorite playground for terrorists, with repeated attacks all over the country. In 2023, the repeated crises made the country the first African country most affected by terrorism, and second in the world after Afghanistan.<sup>2</sup>

One of the consequences of terrorism in Burkina Faso is the unconstitutional change of power. In fact, the country has experienced two military coups in the space of eight (8) months, plunging it into democratic and institutional instability, which is not conducive to the fight against terrorism.

Similarly, the security situation has forced many Burkinabè citizens including children to leave their homes to take refuge in other regions more secure. The consequence of this security situation is a humanitarian crisis characterised by millions of internally displaced persons (IDPs), more than 50 per cent of whom are children.<sup>3</sup> From 2018 to 2020 the number of IDPs rose from 27,347 to 1,074,993, then to 2,062,534 in 2023.<sup>4</sup>

The education sector has been the victim of acts of terrorism resulting in serious violations of human rights, and the right to education. These acts have taken the form of attacks and murders of teachers, destruction of property and intimidation, causing the closure of many schools. The ongoing security crisis in Burkina Faso has had a devastating impact on the country's education system, depriving more than a million internally displaced children (IDC) of access to education<sup>5</sup> of their fundamental right to education.<sup>6</sup> In 2020, the number of schools closed was 2,512, affecting 349,909 IDC and 11,219 teachers.<sup>7</sup> In 2023, repeated attacks by armed terrorist

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<sup>1</sup> D Boly National report of the study on Obstacles to access and continuity of education for children in situations of forced displacement in the Central Sahel region" Burkina Faso [https://www.ecoi.net/en/file/local/2100373/BURKINA\\_Rapport+national\\_FINAL.pdf](https://www.ecoi.net/en/file/local/2100373/BURKINA_Rapport+national_FINAL.pdf) (accessed 03 May 2024)

<sup>2</sup> 'Burkina Faso, the first African country to be affected by terrorism in 2023 Burkina Faso' Jeune Afrique <https://www.jeuneafrique.com/1428979/politique/le-burkina-faso-premier-pays-africain-touche-par-le-terrorisme-en-2023/> (accessed 26 July 2024).

<sup>3</sup> 'Registration of internally displaced persons of Burkina Faso' Permanent Secretariat of the National Council for Emergency Relief and Rehabilitation (CONASUR) 31 March 2023 <https://drive.google.com/file/d/1FzhO8Es5-wVCeVQPS9eRxn8fxCmQ9cg9/view> (accessed 03 May 2024)

<sup>4</sup> 'The situation of internally displaced persons' Reliefweb [https://reliefweb.int/updates?view=maps&advanced-search=%28PC46%29%28S1503%29&search=title%3A%22Aper%20des%20personnes%20d%C3%A9plac%C3%A9es%20internes%22OR%20title%3A%22Situation%20des%20personnes%20d%C3%A9plac%C3%A9es%20internes%22&gl=1%2A1lohc5j%2A\\_ga%2AMTM4MzA3NTkxMy4xNzA3NzQxMDE4%2A\\_ga\\_E60ZNX2F68%2AMTcyMjgxNDc0Ni42LjEuMTcyMjgxODAwMy42MC4wLjA.&page=1](https://reliefweb.int/updates?view=maps&advanced-search=%28PC46%29%28S1503%29&search=title%3A%22Aper%20des%20personnes%20d%C3%A9plac%C3%A9es%20internes%22OR%20title%3A%22Situation%20des%20personnes%20d%C3%A9plac%C3%A9es%20internes%22&gl=1%2A1lohc5j%2A_ga%2AMTM4MzA3NTkxMy4xNzA3NzQxMDE4%2A_ga_E60ZNX2F68%2AMTcyMjgxNDc0Ni42LjEuMTcyMjgxODAwMy42MC4wLjA.&page=1) (accessed 26 July 2024).

<sup>5</sup> 'Burkina Faso: 1 million children out of school due to violence and insecurity' UNICEF <https://www.unicef.fr/article/burkina-faso-1-million-denfants-non-scolarisés-en-raison-de-la-violence-et-linsecurite/> (accessed 04 May 2024).

<sup>6</sup> 'What you need to know about the right to education' UNESCO <https://www.unesco.org/fr/right-education/need-know> (accessed 05 May 2024).

<sup>7</sup> 'Emergency Plan for Education in Burkina Faso 2020- 2021' Ministry of National Education, Literacy and Promotion of National Languages



groups led to the displacement of teachers and pupils, the disruption of learning programmes and the closure of more than 6,000 schools<sup>8</sup> making Burkina Faso home to half of the schools closed in West and Central Africa.<sup>9</sup>

It is undeniable that between 2015 and 2024, in less than ten years, the right to education of IDC in Burkina Faso has seriously deteriorated, mainly due to the increase in their numbers, the growing closure of schools and the intensification of terrorist attacks. It is clear that the government of Burkina Faso is encountering major difficulties in implementing effective solutions to improve the situation of these children, who are increasingly deprived of access to education. The continuing rise in the number of IDC, combined with an already fragile education system, highlights the inability of the state to respond adequately to the urgent needs of this vulnerable population.

Although education is not always considered a primary need in emergency or crisis situations, its importance for those affected is undeniable. Parents and pupils unanimously stress its essential role in ensuring stability, protection and continuity.<sup>10</sup> Schools provide a safe, social and learning environment for children that contributes to psychological resilience and reconstruction of communities.

IDC, deprived of education, face an uncertain future and considerable risks.<sup>11</sup> They become easy prey for armed terrorist groups who recruit them. Criminal networks also take advantage of the vulnerability of these children to exploit them. Girls in particular are also at risk of early marriage and pregnancy, putting an end to their lives as children and trapping them in a cycle of poverty. IDC, deprived of their right to education, are thus deprived of any hope of a future and represent a time bomb for the stability of Burkina Faso. Given this situation, access to education for these IDC in Burkina Faso has become a major challenge, threatening their fundamental right to education and compromising their future.

## 1.2. Problem statement

Burkina Faso has ratified the main international and african instruments that enshrine the right to education for all children without discrimination. These include the UNESCO Convention Against Discrimination in Education<sup>12</sup> International Covenant on Social and Cultural Rights, (ICESCR)<sup>13</sup> the Convention on the Rights of the Child (CRC)<sup>14</sup> and the African Charter on the

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[https://planipolis.iiep.unesco.org/sites/default/files/ressources/burkina\\_faso\\_plan\\_urgence\\_2020-2021.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/burkina_faso_plan_urgence_2020-2021.pdf) (accessed 29 July 2024).

<sup>8</sup> 'Monthly Statistical Report on Education in Emergencies' Ministry of Education (February 2023) [https://reliefweb.int/attachments/df318823-a8ce-49a4-aebe-34cdc08b6a2d/RAPPORT%20STATISTIQUE%20MENSUEL\\_ESU\\_MARS%202023.pdf](https://reliefweb.int/attachments/df318823-a8ce-49a4-aebe-34cdc08b6a2d/RAPPORT%20STATISTIQUE%20MENSUEL_ESU_MARS%202023.pdf) (accessed 05 may 2024).

<sup>9</sup> n 4 as above.

<sup>10</sup> 'Education in emergency' Right to education (2022) <https://www.right-to-education.org/issue-page/education-emergencies> (accessed 11 Auguste 2024).

<sup>11</sup> n 7 as above.

<sup>12</sup> Adopted, 14 December 1960, entered into force, 14 May 1962.

<sup>13</sup> International covenant on economic, social and cultural rights 1966 (04 January 1999).

<sup>14</sup> Convention on the rights of the child 1989 (31 August 1990).

Rights and Welfare of the Child (African Children's Charter).<sup>15</sup> Burkina Faso's Constitution also enshrines the right to education for all children living in the country.<sup>16</sup> Regrettably, with the security and humanitarian crises that the country is experiencing, the implementation of the right to education by the Burkinabe state is being put to the test. The right to education of children in general, and of IDC in particular, is facing multiple challenges due to school closures, the lack of educational infrastructure in host areas, and the lack of resources. Despite the efforts of the government and NGOs, more than a million IDC in Burkina Faso<sup>17</sup> have no access to education.

### **1.3. Research Objectives**

The main objective of this research is to assess the effectiveness of protecting the right to education of IDC in Burkina Faso. This main objective is supported by the following sub-objectives:

- To examine the adequacy of laws, policies and other measures in Burkina Faso regarding the implementation and protection of the right to education of IDC.
- To identify the challenges and obstacles to the effective protection of the right to education of displaced children in Burkina Faso.
- To spotlight best practices from other countries that protect the right education for IDC.
- To propose concrete measures to overcome the obstacles to access to education for displaced children in Burkina Faso.

### **1.4. Research questions**

Following the objectives mentioned earlier, the main research question is, to what extent has Burkina Faso promoted and protected the right to education of IDC?

This main question is supported by the following sub-questions:

- How effective is the protection of the right to education of IDC in Burkina Faso?
- How does the situation of IDC in Burkina Faso differ from that of other children in the country in terms of access to education?
- How do other countries facing security crises manage to protect and guarantee the right to education of IDC?
- What measures can be taken to overcome the obstacles that affect the right to education of IDC in Burkina Faso?

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<sup>15</sup> African charter on the rights and welfare of the child 1990 (08 June 1992).

<sup>16</sup> Constitution of Burkina Faso of 11 June 1991.

<sup>17</sup> n 4 as above.

## 1.5. Literature Review

In his article, *The right to education of the children in period of conflict in Mali* M Berthe<sup>18</sup> looks at children's right to education in times of conflict in Mali, highlighting the obstacles to implementing this right which are the increase in conflicts in certain areas of the country and the weakening of the authority of the State. It also highlights possible solutions to overcome these obstacles. It should be noted that this study of Berthe is limited solely to the Malian context and unfortunately does not extend to the Burkina Faso context. However, it is important to this study as it provides exemplars of countries where the right of education of internationally displayed children are also affected.

Mahamat in his master's dissertation, demonstrates that the right to education is secured by the legal texts of Burkina Faso, namely the Constitution and national laws, and that there are institutions responsible for implementing this right.<sup>19</sup> The study also shows Burkina Faso's obligations with regard to the implementation of the right to education. Obstacles to the right to education in Burkina Faso are linked to poverty and socio-cultural factors that prevent parents from sending girls to school. This study is inspired by Mahamat's research as it proposes a better approach to the State of Burkina Faso to comprehensive access to education especially for children internal displaced due to the ongoing armed crises.

Ouédraogo<sup>20</sup> on the other hand, looks at the protection of the right to education in the event of a violation of territorial integrity in Burkina Faso. He sets out the challenges faced by Burkina Faso in protecting the right to education when the integrity of its territory is violated. He also analyses the mechanisms for monitoring the right to education, highlighting their shortcomings.<sup>21</sup> The study shows that there is discrimination based on the economic situation of vulnerable children in conflict zones, and that remedies are not available for violations of the right to education when territorial integrity is violated. It should be noted that the study of Ouedraogo focuses mainly on national law, specifically constitutional law and administrative law, but does not dwell on international instruments for the protection of the right to education. In order to fill the gap and gain a better understanding of Burkina Faso's obligations, this study explores not only national law and policies but also international instruments relating to the protection of IDC's right to education.

In her article, MK Konkobo<sup>22</sup> points out that children's right to education in Burkina Faso is a reality, as it is a right protected by domestic law through the constitution and the existence of programmes and a budget dedicated to education. She points out that the existing partnership

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<sup>18</sup> M Berthe 'The right to education of the children in period of conflict in Mali' (2021) [https://revues.acaref.net/wp-content/uploads/sites/3/2021/03/Mohamed-BERTHE-1\\_le-droit-a-leducation.pdf](https://revues.acaref.net/wp-content/uploads/sites/3/2021/03/Mohamed-BERTHE-1_le-droit-a-leducation.pdf) (accessed 04 may 2024).

<sup>19</sup> KT Mahamat 'The right to education in Burkina Faso' master's dissertation, University Aube Nouvelle, 2018 <https://revuejuris.net/wp-content/uploads/2019/12/Memoire-Kouffa-FINAL-3-1.pdf> (accessed 03 may 2024).

<sup>20</sup> AS Ouédraogo 'Protection of the right to education in the event of a breach of territorial integrity in Burkina Faso' (2024) [https://afrilex.u-bordeaux.fr/wp-content/uploads/2024/02/Afrilex\\_OUEDRAOGO-Ahmed-Sidwaouga-Leffectivite-du-droit-a-leducation-en-periode-securitaire-au-Burkina-Faso.pdf](https://afrilex.u-bordeaux.fr/wp-content/uploads/2024/02/Afrilex_OUEDRAOGO-Ahmed-Sidwaouga-Leffectivite-du-droit-a-leducation-en-periode-securitaire-au-Burkina-Faso.pdf) (accessed 03 may 2024).

<sup>21</sup> As above.

<sup>22</sup> MK Konkobo 'The right to education of children in Burkina Faso' (2008) <https://journals.openedition.org/insaniyat/2514?lang=ar> (accessed 09 August 2024).

between Burkina Faso and institutions such as the UNDP, UNICEF and the World Bank to guarantee the right to education is based on the principles laid down by the CRC, such as the principle of responsibility, universality and non-discrimination, and the principle of participation.

Likewise, Konkobo<sup>23</sup> explains that the right to education in Burkina Faso is relative because of the low school enrolment rate among children, particularly girls. She points out that this low rate is linked to socio-cultural constraints, the unsuitability of training courses in relation to the job market, the unsuitability of government policy and economic factors. She also points out that international development partners such as the IMF and the World Bank sometimes impose conditions on states that can be counter-productive and prevent them from achieving the development goals they are supposed to. In fact, *MK Konkobo* points out that these institutions, by requiring states to put an end to free public education, are hindering the realisation of human rights and the right to education in poor countries such as Burkina Faso, where access to education is sometimes reserved for the privileged and the wealthy.

The second study concerns the right to education in Burkina Faso before the advent of the security crisis, while the second focuses on Burkina Faso's protection of the right to education for all when territorial integrity is violated.<sup>24</sup> Although *MK Konkobo's*<sup>25</sup> article deals with children's right to education in Burkina Faso, it differs from my research, which focuses on the right to education of a very specific group of children, namely IDC. The present research focuses on the right to education of IDC since the start in 2015 of the security and humanitarian crisis in Burkina Faso.

## **1.6. Research methodology**

This study employs a doctrinal research methodology to analyse international, regional and national instruments relating to the right to education and the child's rights. The research based primarily on the CRC, ICESCR, the African Children's Charter and the African Charter

At national level, the research focuses on an analysis of Burkina Faso's constitution, laws relating to national education and policies for implementing the right to education. Secondary data sources such as books, newspapers, articles and reports by the government and its technical and financial partners working in the field of education in Burkina Faso are also used to analyse the situation of IDC's right to education and the extent to which this right is protected.

## **1.7. Limitations of the Study**

The security and political context in Burkina Faso are constantly changing, which can affect the protections and challenges related to the education of IDC. It can be difficult to monitor changes and take them into account in research.

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<sup>23</sup> As above.

<sup>24</sup> n19 as above.

<sup>25</sup> n 21 as above.

Burkina Faso has not, so far complied with all its obligations to submit reports to international treaty monitoring bodies on education. The lack of access to such key, informative reports limits access to the most up-to-date information on measures taken by the government to meet its human rights obligations. To overcome this challenge, this research explores alternative sources of information such as reports from international and civil society organizations as they regularly publish reports and analyses on the right to education in Burkina Faso. Independent research and studies by academics, researchers and research institutes on the right to education are also used to overcome this challenge.

## **1.8. Structure**

This study has five chapters. The first chapter is the introductory chapter, and it contains the brief background, problem statement, research question, literature review methodology and overview of chapters.

Chapter two looks at the legal framework of the right to education of IDC.

Chapter three discusses the obligations of Burkina Faso in the implementation of the right to education of IDC, as well as the obstacles it faces. It also addresses the mechanisms for monitoring and enforcing the right to education of IDC.

Chapter four analyses how countries such as Mali and the Federal Republic of Nigeria who have experienced conflict, manage to protect and guarantee the right to education of IDC. It explores the practices and approaches put in place by these countries and suggests lessons that Burkina Faso could learn from their experiences.

And chapter five provides a general conclusion and recommendations for strengthening the protection of the right to education of IDC.

## Chapter 2: The sufficiency of Burkina Faso's laws to address the issue of education of internally displaced children

### 2.1. Introduction

Burkina Faso has affirmed its commitment to respecting and protecting human rights and the rights of the child, and to this end has ratified several international and regional conventions. This chapter therefore aims to analyse the international and regional normative framework for the protection of the right to education of IDC. At the regional level, the focus is on the African Union system. At the national level, the laws and institutions of Burkina Faso are also examined to determine whether they adequately protect and guarantee the right to education of IDC.

### 2.2. International Legal framework for the right to Education of IDC in Burkina Faso

Burkina Faso has ratified several international treaties and conventions relating to human rights and the rights of the child. Some of these treaties and conventions are universal, while others are regional.<sup>26</sup> Universal international treaties and conventions are legal binding instruments whose accession and ratification are open to the entire international community without distinction or discrimination.<sup>27</sup>

It should be noted that IDPs and IDC remain citizens and nationals of their country of origin.<sup>28</sup> This means that the national and international law applicable to them is the same as that applicable to the country's other citizens and nationals.<sup>29</sup> Thus, IDPs and IDC differ from other citizens of the country only in the forced nature of their displacement.

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<sup>26</sup> n 21 as above.

<sup>27</sup> C Sciotti-Lam *The applicability of international human rights treaties in domestic law* (2004) 115.

<sup>28</sup> C Cournil 'The emergence of a right for internally displaced persons' (2009) *Quebec Journal of International Law* 22(1) 1–25 <https://doi.org/10.7202/1068704ar> (accessed 19 August 2024).

<sup>29</sup> 'Internal displacements guidelines application manual' OCHA <https://www.onlinelibrary.iihl.org/wp-content/uploads/2020/05/2008-O1-1.pdf> (accessed 19 August 2024).

### 2.2.1 Universal legal framework for the right to education of IDC

The right to education of IDC is protected and guaranteed under international human rights law and international humanitarian law.<sup>30</sup> International human rights law includes the Universal Declaration of Human Rights<sup>31</sup> (UDHR) and the ICESCR.<sup>32</sup>

In 1948, the United Nations (UN) adopted the UDHR in response to the atrocities and acts of barbarism committed during the Second World War.<sup>33</sup> The UDHR is considered to be the global reference, the fundamental roadmap in the field of human rights.<sup>34</sup> Although it is not legally binding on the States that have ratified it, the UDHR has political and moral values.<sup>35</sup> Indeed, Burkina Faso has enshrined the principles of the UDHR in its constitution and national legislation, thus underlining its importance.

The UDHR is the first international legal instrument to recognise education as a right.<sup>36</sup> Article 26 of the UDHR states that every human being has the right to education. This means that IDC have the same right to education as all other children. This includes the right to free and compulsory elementary education and equitable access to secondary and higher education.<sup>37</sup>

The ICESCR is a convention adopted following the UDHR as part of the second generation of human rights.<sup>38</sup> By ratifying the ICESCR in 1999, Burkina Faso committed to adapt its laws, policies and programmes to protect and promote economic, social and cultural rights.<sup>39</sup>

The ICESCR establishes the right to education through Article 13, which offers a comprehensive vision of this right.<sup>40</sup> Article 13 stresses the importance of free compulsory primary education as the basis for a successful education.<sup>41</sup> It also encourages access to

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<sup>30</sup> 'Education in emergencies' Initiative for the right to education <https://www.right-to-education.org/issue-page/education-emergencies> (accessed 20 August 2024).

<sup>31</sup> Universal Declaration of Human Rights 1948.

<sup>32</sup> n 12 as above

<sup>33</sup> 'The Universal Declaration of Human Rights' Amnesty International <https://www.amnesty.org/fr/what-we-do/universal-declaration-of-human-rights/> (accessed 20 August 2024).

<sup>34</sup> 'Universal Declaration of Human Rights' France Diplomatie (2005). [https://www.diplomatie.gouv.fr/IMG/pdf/dudh\\_cle8bfd42-1.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/dudh_cle8bfd42-1.pdf) (accessed 19 August 2024).

<sup>35</sup> 'Adoption of the universal declaration' World perspective (<https://perspective.usherbrooke.ca/bilan/servlet/BMEve/490#:~:text=Quarante%2Dtrois%20pays%20votent%20pour,Irak%2C%20Iran%2C%20Islande%2C%20Liban>) (accessed 19 August 2024).

<sup>36</sup> 'The United Nations' Initiative for the right to education <https://www.right-to-education.org/fr/page/les-nations-unies> (accessed 20 August 2024).

<sup>37</sup> n 28 above 41.

<sup>38</sup> 'Manual for the practice of human rights education with young people' Council of Europe (2023) <https://rm.coe.int/compass-2023-fra-final-web-1-1680af992d> (accessed 23 August 2024).

<sup>39</sup> n 21 as above

<sup>40</sup> 'International Covenant for Economic, Social and Cultural Rights' Initiative for the right to education <https://www.right-to-education.org/node/559> (accessed 24 August 2024).

<sup>41</sup> ICESCR article 13.

secondary and higher education, while stressing the need to combat illiteracy and continually improve the quality of education. To this end, article 13 of the ICESCR establishes the obligation of all Member States to guarantee this right for all persons, including IDPs and their children. Under Article 13, this means that even in situations of forced displacement, children must be able to access and receive education without hindrance.<sup>42</sup> In the case *Minister for Basic Education v Basic Education for All* the Supreme Court held that the constitutional right to basic education should be immediately guaranteed and that the failure of the Limpopo Department of Education and the National Department of Basic Education to distribute textbooks to all pupils in Limpopo schools violated the right to education under Article 13 of the ICESCR and Article 28 of the CRC. The Court also found that the provision of textbooks only to some students, while depriving others, amounted to unfair discrimination and infringed constitutional rights.<sup>43</sup> This decision by the Supreme Court of South Africa reaffirms that States must ensure access to education for all children without distinction or discrimination. States must therefore create mechanisms to facilitate access to education for all children, by overcoming the administrative and logistical barriers often encountered by IDC. This obligation includes not only guaranteeing physical access to education but also adapting education systems to meet the specific needs of IDC and combating all forms of discrimination.<sup>44</sup>

The CESCR finds an indispensable complement in the CRC, adopted in 1989.<sup>45</sup> The CRC was adopted by the United Nations General Assembly in resolution 44/25. The CRC holds the record for the most widely ratified human rights treaty.<sup>46</sup> The CRC stands out for its recognition of children's civil, cultural, economic, political and social rights, and marks an important step forward in recognising children as subjects of law in their own right.<sup>47</sup>

The right to education is deeply rooted in the CRC, particularly in Articles 28 and 29. Article 28 establishes the right to education by stressing the importance of equal opportunities for all children.<sup>48</sup> This means that every child, whether IDC or not, must have equal access to school. This provision requires states to guarantee that primary education is compulsory and free, while ensuring the availability and accessibility of secondary education. Consequently, education is

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<sup>42</sup> n 39 as above.

<sup>43</sup> *Minister for Basic Education v Basic Education for All* (2015) SA 369 (SCA).

<sup>44</sup> As above.

<sup>45</sup> n 13 as above.

<sup>46</sup> 'The International Convention on the Rights of the Child' UNICEF <https://www.unicef.fr/convention-droits-enfants/> (accessed 25 August 2024).

<sup>47</sup> 'The International Convention on the Rights of the Child: fundamental principles' UNICEF (2010) <https://eduscol.education.fr/document/25900/download> (accessed 25 August 2024).

<sup>48</sup> CRC, article 28.



not only an obligation but also a free right, accessible to all children without distinction. Article 29 of the CRC sets out the objectives of education, stipulating that it shall promote the child's full development and contribute to his or her personal and social development.<sup>49</sup>

In addition, Article 2 of the CRC requires States parties to respect and protect the rights of all children within their jurisdiction without discrimination of any kind. This obligation includes IDC, who must enjoy the same rights to education as other children. States must ensure that these children have real and effective access to education.<sup>50</sup>

Burkina Faso ratified the Convention on 31 August 1990, but 34 years later, the country still has no law on the protection of children's rights. Article 24 of the Constitution recognises its role in promoting children's rights, but these rights are not clearly defined

UNESCO Convention against Discrimination in Education adopted by Burkina Faso in 2012,<sup>51</sup> is a key instrument for promoting education without discrimination. The Convention prohibits all forms of segregation or exclusion and promotes equality of educational opportunity. Under Article 3 of the Convention, States undertake to take measures to eliminate and prevent all discrimination. Accordingly, Burkina Faso must take the necessary measures to ensure that IDC have access to education by removing all economic, social and legislative barriers that may impede IDC access to education.

Within the framework of international humanitarian law, some conventions guarantee and protect the right to education of IDC; Geneva Convention relative to the Protection of Civilian Persons in Time of War (GC IV)<sup>52</sup> and the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).<sup>53</sup> International humanitarian law (IHL) aims to mitigate the effects of armed conflict by regulating the behaviour of the parties involved. In times of armed conflict, the impact on education is often devastating, including attacks on teachers, students and schools.<sup>54</sup> Therefore,

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<sup>49</sup> CRC, article 29.

<sup>50</sup> 'The Impact of Internal Displacement on Education in Sub-Saharan Africa' Global Education Monitoring (2020) [https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef\\_0000373666\\_fre&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach\\_import\\_573019e8-3c74-48b3-9d92-c3cf9ac0b538%3F\\_%3D373666fre.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000373666\\_fre/PDF/373666fre.pdf#%5B%7B%22num%22%3A141%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C0%2C370%2C0%5D](https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000373666_fre&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_573019e8-3c74-48b3-9d92-c3cf9ac0b538%3F_%3D373666fre.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000373666_fre/PDF/373666fre.pdf#%5B%7B%22num%22%3A141%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C0%2C370%2C0%5D) (accessed 25 August 2024).

<sup>51</sup> UNESCO Convention against Discrimination in Education 1960 (2012).

<sup>52</sup> Geneva Convention relative to the protection of civilian persons in time of War 1949 (7 November 1961).

<sup>53</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977 (20 October 1987).

<sup>54</sup> n 39 as above.

in the interests of protecting education and children, the IHL has a number of obligations that must be respected by parties to a conflict.

The first principle established by GC IV is the taking of measures to protect orphans and children separated from their families, by ensuring that education is facilitated for children up to the age of 15.<sup>55</sup> This obligation, stipulated in article 24, applies to all children without exception or discrimination, whatever their origin, present on the territory of one of the parties to the conflict.<sup>56</sup> The second principle is established by Article 94 of GC IV and concerns the education of persons and children during detention. The Detaining Power has an obligation to ensure the education of children and young persons, either inside or outside places of detention.<sup>57</sup> The third principle concerns the special protection of children, including the obligation of the parties to the conflict to provide children with the necessary attention and assistance because of their age or for other reasons.<sup>58</sup> This can be interpreted as an obligation on the parties to the conflict to provide them with an appropriate education.<sup>59</sup> The fourth principle establishes the facilitation of education in the event of military occupation, with the obligation for the occupying power to guarantee the proper functioning of educational establishments and, if possible, to provide education by persons of the same nationality, language and religion as the pupils.<sup>60</sup>

Additional Protocol II was adopted in 1977 to remedy the lack of regulation of non-international armed conflicts.<sup>61</sup> It contains provisions for the protection of children and their right to education in times of non-international armed conflict. These provisions also apply to IDC when their country is in a conflict situation. Paragraph 3 of Article 4 of Protocol II states that children must receive the necessary care and assistance, which includes their right to an education. This education must include not only general academic subjects, but also religious and moral education, in accordance with the wishes of their parents.<sup>62</sup> Paragraph 1 states that

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<sup>55</sup> Geneva Convention relative to the protection of civilian persons in time of war, article 24.

<sup>56</sup> Commentary on article 24 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (1958) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-24/commentary/1958?activeTab=> (accessed 26 August 2024).

<sup>57</sup> Commentary on article 94 of the Geneva Convention IV relative to the protection of civilian persons in time of war 12 August 1949 (1958) <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-94/commentary/1958?activeTab=>

<sup>58</sup> GC IV article 77.

<sup>59</sup> n 39 as above.

<sup>60</sup> GC IV article 50.

<sup>61</sup> 'Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.' HIL Databases <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=default> (accessed 27 August 2024).

<sup>62</sup> Protocol II to the Geneva conventions article 4.

all persons not taking part in hostilities shall be treated humanely and without discrimination. This means that the provisions of paragraph 3 apply to all children, including IDC. Finally, article 13 of Protocol II states that the parties to the conflict must take all measures to protect civilians and civilian property. This protection includes schools, teachers and pupils.<sup>63</sup>

The Guiding Principles on Internal Displacement<sup>64</sup> was adopted by the UN Commission on Human Rights in 1998. These 30 recommendations on internal displacement represent a set of essential guiding principles for the protection of IDPs. They provide a clear definition of what constitutes an IDP, summarise the international standards applicable to their situation and specify the responsibilities of States.<sup>65</sup> Principle 23, sets out recommendations concerning the right to education of IDPs in general and IDC in particular. This principle recommends that states ensure that IDC receive free and compulsory primary education. The principle goes further by stating that the education received by IDC should be in accordance with their cultural identity, language and religion.<sup>66</sup>

In July 2010, the United Nations General Assembly adopted Resolution 64/290 on the right to education in emergencies.<sup>67</sup> This resolution was adopted based on the main international instruments that guarantee the right to education, such as the UDHR and the CRC. It underlines the importance of the right to education for children in emergencies such as armed conflicts and natural disasters. Indeed, conflicts and natural disasters constitute major obstacles to access to education for many children, particularly those living in affected areas. Resolution 64/290 condemns attacks on schools, teachers and pupils, stressing that these are serious violations of international humanitarian law and human rights. The Resolution therefore calls on the international community to implement strategies to guarantee the right to education in emergencies, especially for children, to strengthen education systems and to mobilise more resources for this sector. To this end, the resolution recommends that States implement the *Minimum Standards for Education in Emergencies standards for education in situations of emergency, crisis and reconstruction* of the Inter-Agency Network for Education in

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<sup>63</sup> Protocol II to the Geneva Conventions, article 13.

<sup>64</sup> Guiding Principles on Internal Displacement 1998.

<sup>65</sup> 'Guiding Principles on Internal Displacement' Initiative for the Right to Education <https://www.right-to-education.org/node/1254> (accessed 29 August 2024).

<sup>66</sup> Guiding Principles on Internal Displacement, principle 23.

<sup>67</sup> Resolution 64/290 of the General Assembly of the United Nations on the right to education in emergencies July 2010.

Emergencies.<sup>68</sup> Although it is not binding on States, it sets out the measures to be taken to guarantee and protect the right to education in emergencies.<sup>69</sup>

In the case T-025 of 2004, Colombia's Constitutional Court handed down a landmark decision concerning the rights of IDPs and IDC right to education. After examining hundreds of petitions relating to various rights violations, the Court concluded that the government's failure to protect IDPs constituted a massive violation of human rights, including the right to education.<sup>70</sup> It found that IDPs had been victims of serious and repeated violations of their constitutional rights, and that these breaches violated Colombia's international human rights obligations, including under the UDHR, the ICESCR, and the CRC.

### 2.2.2 The Legal Framework for the Right to Education of IDC in Africa

With the aim of creating a framework that reflects African realities, the African Union (AU) has decided to adopt a number of instruments to protect and promote human rights. Thus, the African Charter on Human and Peoples' Rights (ACHPR),<sup>71</sup> marked a decisive step in the protection of human rights in Africa. Burkina Faso, like other African states, ratified the Charter in 1984.

The right to education is explicitly protected by the ACHPR in Articles 2, 17 and 25. Article 17 states that the right to education is a fundamental right, affirming that everyone should be able to benefit from an education that promotes their personal development and full integration into society. This right is particularly relevant for IDC, who may find themselves in precarious conditions and have specific educational needs requiring special attention.<sup>72</sup> Article 25 imposes an obligation on States to promote and disseminate human rights, particularly through education. For IDC, this obligation translates into the need to adopt appropriate measures to integrate these children into the education system and protect them against any form of discrimination or exclusion.<sup>73</sup> Article 2 of the ACHPR establishes the fundamental principle of

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<sup>68</sup> n 66 as above para 5.

<sup>69</sup> 'Guideline for education in emergency' Cooperazione Internazionale (2018) <https://www.coopi.org/uploads/home/15c6c13473a527.pdf>.

<sup>70</sup> MD Collazos 'Social transformation in Colombia : internally displaced persons and the constitutional court, a Landmark case' (2020) <https://blog-iacl-aidc.org/constitutional-landmark-judgments-in-central-and-south-america/2020/7/21/vx17y4pwj6ugz4prke6fcbg3oerm15> ( accessed 9 October 2024).

<sup>71</sup> ACHPR 1986 (6 June 1984).

<sup>72</sup> 'Listening to the voices of internally displaced communities to achieve inclusive and equitable quality education' Inter-Agency Network for Education in Emergencies (INEE) (2021) <https://inee.org/sites/default/files/resources/INEE%20Internally%20Displaced%20Communities%20Report%20v2.3%20FR%20LowRes.pdf> (accessed 25 August 2024).

<sup>73</sup> n 71 as above.

equality before the law, thereby laying the foundations for equitable access to education for all individuals including IDC.<sup>74</sup>

Faced with the difficulties of integrating certain African concerns into the CRC framework, African States have opted to strengthen children's rights by taking account of their culture, history and the values of African civilization.<sup>75</sup> This is why the African States decided to adopt the ACRWC. The ACRWC sets out the right to education in a much broader and more comprehensive way than the ACHPR.<sup>76</sup> Article 11 states that every child has the right to education and specifies the measures that States must adopt to guarantee the full exercise of this right. This includes specific provisions concerning discipline and IDC. The article also defines the objectives of education and recognises the right of parents to choose an education for their children that respects their religious and moral convictions.<sup>77</sup>

The AU has adopted the Convention for the Protection and Assistance of IDPs in Africa<sup>78</sup> (Kampala Convention) to remedy the lack of regulations on the protection and assistance of IDPs. For Dr Chaloka Beyani, the United Nations Special Rapporteur on the human rights of IDPs, the Kampala Convention represents an exceptional achievement in that it reflects the will and determination of African states to resolve the problem of internal displacement in Africa.<sup>79</sup>

Article 9 of the Kampala Convention obliges states to provide adequate humanitarian assistance to IDPs. This humanitarian assistance includes the right to education for these people, particularly children.<sup>80</sup> This right to education includes the establishment of a specific education system adapted to the needs of IDC.<sup>81</sup> Thus, following the Kampala Convention, States have a responsibility to ensure that IDPs, especially children, have access to quality education.<sup>82</sup>

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<sup>74</sup> ACHPR article 2.

<sup>75</sup> JD Bonkougou 'The African system for the protection of the Rights of the child' (2006) <https://journals.openedition.org/crdf/7187> (accessed 26 August 2024).

<sup>76</sup> 'Manual on the Right to Education' UNESCO (2020) [https://inee.org/sites/default/files/resources/RTE-UNESCO\\_Right%20to%20education%20handbook\\_2020\\_fr.pdf.pdf](https://inee.org/sites/default/files/resources/RTE-UNESCO_Right%20to%20education%20handbook_2020_fr.pdf.pdf) (accessed 28 August 2024).

<sup>77</sup> ACRWC, article 11.

<sup>78</sup> Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009 (05 July 2012).

<sup>79</sup> 'Making the Kampala Convention operational' Internal Displacement Monitoring Centre (IDMC) (2010) <https://api.internal-displacement.org/sites/default/files/inline-files/AU-media-pack-FR.pdf> (accessed 28 August 2024).

<sup>80</sup> Kampala Convention, article 9(2)b.

<sup>81</sup> As above, article 9(2)c.

<sup>82</sup> n 75 as above.

### **2.3. The existence of a National Legal framework for the Right to education of IDC**

Burkina Faso has a multitude of legal texts regulating children's rights, but these are not always applied in practice. This research therefore focuses on some of the main texts governing the right to education of IDC in Burkina Faso. These include the Burkina Faso constitution of 12 June 1992,<sup>83</sup> the personal and family code, and the national education policy law.

#### 2.3.1 The Constitution of Burkina Faso

Under Burkina Faso's previous constitutional regimes, children's rights and protection were not mentioned in the constitutions.<sup>84</sup> Since the 1990 World Conference on Education, there has been a progressive internationalization of the right to education, which has resulted in the adoption of legal texts in Burkina Faso. That same year, in 1990, Burkina Faso ratified the CRC, thereby making a commitment to respect and protect children's rights.<sup>85</sup>

Thus, a year later in 1991, Burkina Faso adopted a new constitution that gave central importance to children's rights and the right to education. Its preamble explicitly committed the country to all international human rights instruments, including those concerning children.<sup>86</sup> The right to education is enshrined in articles 18, 27, and 101 of the Constitution. Article 18 specifically states that education, instruction, and training are social rights recognised by the constitution.<sup>87</sup> As for article 27, it guarantees every individual residing on Burkina Faso's territory, including IDC, the right to a free and quality education in a public or private institution of their choice.<sup>88</sup> This provision, read with with international standards, aims to ensure equal opportunities and enable every child to fully develop their potential. Article 101 stipulates that the conditions of the right to education, recognised by all, are determined by law. Similarly, in its article 24, the Constitution proclaims that the State works for the rights of the child; which evidently includes the right to education for children.

While it is true that the constitution is silent on the specific situation of IDC, this can be explained by the fact that IDC retain their status as Burkinabe citizens. To prevent any form of

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<sup>83</sup> n 15 as above.

<sup>84</sup> SK Kabore 'The perception of the right to education in the fundamental texts of Burkina Faso' (2014) [https://revuesciences-techniquesburkina.org/index.php/lettres\\_sciences\\_sociales\\_et\\_hum/article/download/848/731/3034](https://revuesciences-techniquesburkina.org/index.php/lettres_sciences_sociales_et_hum/article/download/848/731/3034) (accessed 30 August 2024).

<sup>85</sup> n 18 as above.

<sup>86</sup> as above.

<sup>87</sup> Constitution of Burkina Faso, article 18.

<sup>88</sup> As above, article 27.

discrimination against IDPs and their children, Article 1 of the constitution stipulates that all Burkinabe are born free and equal before the law.<sup>89</sup> Consequently, no distinction should be made based on ethnicity, caste, or region.

### 2.3.2 Other national laws on the right to education of IDC

While the right to education for IDC in Burkina Faso is implicitly recognised by the constitution, other laws affirm this right for all Burkinabè children.

The Personal and Family Code (CPF)<sup>90</sup> states the equality of all children before the law, without any exception or discrimination.<sup>91</sup> The CPF goes further by enshrining the principle of the child's best interests in all decisions concerning them.<sup>92</sup> Regarding children's right to education, it is also guaranteed by the CPF through Articles 510 and 513, which establish that parents, through parental authority, have a duty to ensure the safety and full development of the child.<sup>93</sup> Article 513, on the other hand, underscores the parents' obligation to provide for their child's material needs, education and maintenance.<sup>94</sup> It is clear from the provisions of the CPF that all children, including IDC, enjoy the same rights, including the right to education.

In addition to the CPF, Law 013-2007 on the orientation of education in Burkina Faso enshrines the right to education for all children.<sup>95</sup> This law applies to all educational and training activities in Burkina Faso.<sup>96</sup> In accordance with Article 3, education is a right recognised for all without any discrimination.<sup>97</sup> Thus, this right is also recognised for IDPs, especially IDC. Similarly, Law 013-2007 stipulates in Article 4 that basic education is compulsory for all Burkinabe children. Moreover, Article 6 establishes the principle of free basic education for all children aged three to sixteen without discrimination and on the basis of equality and equity among Burkinabe citizens.<sup>98</sup> This right to compulsory and free education is ensured by the State and territorial collectivities of Burkina Faso. Therefore, in accordance with Articles 4 and 6 of Law

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<sup>89</sup> As above, article 1.

<sup>90</sup> Personal and Family Code of Burkina Faso of 16 November 1989.

<sup>91</sup> CPF article 236.

<sup>92</sup> As above, article 406.

<sup>93</sup> As above, article 510.

<sup>94</sup> As above, article 513.

<sup>95</sup> Law 013-2007 on the orientation of education in Burkina Faso.

<sup>96</sup> As above, article 1.

<sup>97</sup> As above, article 3.

<sup>98</sup> As above, article 4.

013-2007, the State and territorial collectivities must make every effort to guarantee IDC a free and compulsory basic education without any discrimination.

### 2.3.3 A weak legal protection of the rights of the IDC

Although Burkina Faso ratified the Kampala Convention, 12 years ago, no concrete steps have been taken to domesticate its provisions. For example, there is no specific law dedicated to the protection of IDPs in the country. No law in Burkina Faso explicitly mentions the rights of IDPs or recognises them as a vulnerable category of the population requiring special protection or attention.

Admittedly, the promotion of children's rights is enshrined in Article 24 of the Constitution. However, this is still insufficient, as there is still a legislative vacuum concerning the definition of children's rights in general and the rights of IDC in particular. Burkina Faso is failing to meet its international obligations to protect children's rights, as defined by the CRC and the ACRWC. The current legislation does not meet the needs and requirements of children in general, IDCs, and IDPs. This begs the question: is the country ratifying international conventions because of external pressure, without then incorporating them into its national legal system? Or is it a case of negligence on the part of the national authorities? A draft child protection code has been in the pipeline since 2020, but to date it has still not been adopted. Given these gaps, it is difficult to argue that child protection and the right to education for IDC are a priority for the current government. The military junta in power, focused on restoring territorial integrity and fighting terrorism, seems to favour the adoption of security measures rather than guaranteeing fundamental rights.

Burkina Faso would do well to work on the effective transposition of the conventions it ratifies, so that the population, especially the most vulnerable such as IDC, can actually benefit from the protection they offer.



## **2.4. Burkina Faso's obligations in the implementation of the Right to education of IDC**

Burkina Faso has three obligations concerning the right to education in general. These are the obligations to respect, the obligation to protect and to fulfil.<sup>99</sup> These obligations were set out by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 13. As part of the right to education for IDC, the State of Burkina Faso should guarantee inclusive education, based on equal treatment and adapted to the situation of the IDC.<sup>100</sup>

2.4.1 The obligation of Burkina Faso to respect and protect the right to education for IDC  
Through the obligations to respect and protect, CESCR member States must refrain from interfering with and restricting the enjoyment and exercise of all the rights protected and established by the Covenant. The obligation to respect and protect includes that States are not allowed to take any measures that diminish the right to education. This means that Burkina Faso must avoid taking any measures that will undermine the right to education of IDC.

In its General Comment No. 3 of 1990, the Committee reaffirmed the inherent obligation of each State party to fulfill, at least minimally, all the rights outlined in the Covenant.<sup>101</sup> The obligation to respect therefore requires States to take the necessary steps to ensure that everyone has the right freely to exercise his or her educational choices, in association with others or within a community.<sup>102</sup> This includes a commitment not to create obstacles to access to education or to put in place policies that compromise the exercise of this right. This means adopting laws and policies that explicitly include the right to education for IDC. The obligation to respect the right to education also includes respect for freedom of expression and opinion, and the right to seek, receive and impart information and ideas.<sup>103</sup>

States also have an obligation to protect the right to education of IDC. The obligation to protect the right to education means that states must take the necessary measures to prevent third parties such as private individuals and armed groups from hindering the enjoyment and exercise of this right.<sup>104</sup> This obligation implies implementing preventive and repressive measures to ensure that citizens can fully exercise their right to education, as well as the other human rights

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<sup>99</sup> General Comment n3 of the CESCR.

<sup>100</sup> General Comment 4 of the UN Committee on the Rights of Persons with Disabilities (CRPD) on the right to inclusive education. Burkina Faso ratified the Convention on the Rights of Persons with Disabilities on 23 July 2009.

<sup>101</sup> General comment 3 of the CESCR on the nature of States parties' obligations.

<sup>102</sup> General comment 24 of the CESCR para 55.

<sup>103</sup> General comment 21 para 49 of the CESCR on the right of everyone to take part in cultural life.

<sup>104</sup> n 100 as above para 47.

essential to its realisation.<sup>105</sup> For example, the State must protect children against practices that would deprive them of their right to education.

#### 2.4.2 The Obligation to realise the right to education of IDC

The obligation to implement the right to education is one of the obligations whose immediate implementation is incumbent on all ICESCR Member States.<sup>106</sup> Even if the ICESCR rights are rights whose realisation must be progressive, the right to education of children is a right whose immediate reality is incumbent on States.<sup>107</sup> Burkina Faso cannot simply refrain from doing harm, it must also ensure that the necessary infrastructure and resources are in place to enable IDC to exercise their right to education. These include budgetary and judicial measures, as well as any other appropriate measure to ensure the full enjoyment of this right by IDC.<sup>108</sup> In its General Comment 13, the CESCR states that the obligation to fulfill the right to education implies two other obligations: the obligation to facilitate and to provide.<sup>109</sup>

In this respect, the obligation to facilitate the exercise of the right to education consists of the State taking measures to promote access to this right. This can be done through regulations and infrastructure provision aimed at improving the quality and availability of education for all. The CESCR stresses also that the State must adopt concrete measures to ensure that education is accessible to all, without distinction, including IDC.<sup>110</sup> In its General Comment 12, the CESCR states that if necessary, the State must take the lead in ensuring that people have effective access to this right.<sup>111</sup> This is essential in situations of humanitarian or security crisis such as in Burkina Faso, where State intervention is necessary to ensure that IDC's right to education is effective.

Finally, with regard to the obligation to ensure the right to education, States are generally obliged to intervene when an individual or group, despite their best efforts, is unable to exercise

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<sup>105</sup> K Hausler; N Urban & R McCorquodale *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook* (2010) 17 [https://www.biiicl.org/files/6099\\_protecting\\_education\\_handbook.pdf](https://www.biiicl.org/files/6099_protecting_education_handbook.pdf) (accessed 14 September 2024).

<sup>106</sup> General comment 13 of the CESCR para 43.

<sup>107</sup> General Comment 3 para 1 of the CESCR.

<sup>108</sup> 'Manual on the Right to Education' UNESCO and The Right to Education Initiative 2020 [https://inee.org/sites/default/files/resources/RTE-UNESCO\\_Right%20to%20education%20handbook\\_2020\\_fr.pdf.pdf](https://inee.org/sites/default/files/resources/RTE-UNESCO_Right%20to%20education%20handbook_2020_fr.pdf.pdf) (accessed 09 September 2024).

<sup>109</sup> n 105 as above para 46.

<sup>110</sup> As above para 47.

<sup>111</sup> General comment 12 of the CESCR on the right to adequate food.

alone a right recognised by the Covenant.<sup>112</sup> State intervention in this regard may take the form of measures such as:<sup>113</sup>

- Allocate an adequate share of public resources to ensure the progressive, if not immediate, realisation of the right to education;
- Guarantee the availability of public services, including the construction and maintenance of school infrastructure;
- Design targeted strategies and action plans for the right to education;
- Put in place monitoring mechanisms to evaluate respect for the right to education;
- Review any legislation, regulations or standards that harm the realization of the right to education;

#### 2.4.3 Burkina Faso's specific obligations regarding the right to education of IDC

States Parties to ICESCR shall ensure that their education systems at all levels meet the objectives set out in Article 13, in particular by respecting the principles of endowment, accessibility, acceptability and adaptability of education.<sup>114</sup> To this end, the CESCR emphasises the following obligations:

- Respect allocation by ensuring the provision of education services, in particular by avoiding the closure of public schools;
- Protect accessibility to education by ensuring that third parties, including parents and employers, do not prevent girls from attending school;
- Facilitate the acceptability of education by taking concrete steps to make it culturally appropriate for minorities and indigenous peoples, while ensuring equitable quality for all;
- Ensuring the adaptability of education by developing and funding curricula that meet the current needs of students in a constantly changing world;
- Ensuring the availability of educational services by developing a network of schools, including building classrooms, offering curricula, providing teaching materials, training teachers and guaranteeing them nationally competitive remuneration.

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<sup>112</sup> n 105 as above.

<sup>113</sup> 'Understanding Education as a Right' Initiative for the Right to education <https://www.right-to-education.org/page/understanding-education-right> (accessed 10 September 2024).

<sup>114</sup> n 105 as above para 50.

Burkina Faso is thus required not to interfere in the provision of education services, to protect access to education, to ensure its quality and to adapt it to the needs of students. Free and compulsory primary education is an immediate priority for all states, while they must also adopt a national strategy for secondary, higher and basic education.<sup>115</sup> States must also establish scholarship schemes for disadvantaged groups such as IDPs and guarantee minimum standards for public schools. Secondly, the State must cooperate at the international level to promote the right to education and ensure that their international agreements do not prejudice this right.

In its General Comment No. 3, the Committee affirmed that States parties have *a minimum core obligation to ensure the satisfaction of, at the very least, the minimum essential levels* of each of the rights enshrined in the Covenant, including the right to education.<sup>116</sup> In the context of IDC in Burkina Faso, this *minimum fundamental obligation* implies that the State must guarantee equitable and non-discriminatory access to schools and public education programs in order to meet the educational needs of these vulnerable children, despite their displacement situation.

United Nations General Assembly Resolution 64/290 on education in emergencies urges states to adopt measures to ensure an inclusive and responsive education system for children affected by crises, such as IDC.<sup>117</sup> States are also invited to adopt policies, strategies and legal frameworks aimed at protecting schools and creating a safe and protective educational environment for all children.<sup>118</sup> States are also called upon to guarantee a quality education system that takes into account the specific needs of IDC. Finally, it is crucial that the financial resources needed for education in emergency are allocated in order to ensure quality education for these children.<sup>119</sup>

#### 2.4.4 Burkina Faso's compliance with its obligations

We have already seen that the right to education for IDCs is a legal reality in Burkina Faso, even if it is not perfect. However, it is necessary to assess Burkina Faso's compliance with its obligations. Firstly, with regard to the obligation to protect, the government of Burkina Faso has not succeeded in effectively protecting schools against terrorist attacks since the start of the

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<sup>115</sup> As above para 51-52.

<sup>116</sup> As above para 57.

<sup>117</sup> n 66 as above.

<sup>118</sup> As above para 7-9.

<sup>119</sup> As above para 18.

security crisis. In fact, by 2023, more than 6,000 schools had been closed, affecting thousands of teachers and almost a million children.<sup>120</sup> In addition, teachers and pupils are being kidnapped and killed by armed terrorist groups. In this context, it is clear that the State is having difficulty meeting its obligation to protect as required by the ICESCR and the Committee.

Secondly, concerning the obligation to implement, the State is also finding it difficult to comply. In host communities, IDC struggle to access education due to a lack of financial resources and an insufficient number of places in state schools. These schools often have fewer places than the number of IDPs present. Despite this crying need, few host areas are seeing an increase in the number of schools to meet demand. As a result, many IDPs whose parents cannot afford to pay public school fees end up dropping out. In a study conducted in 2023 by *Dramane Boly*, it was shown that IDCs are the most disadvantaged in host areas in terms of access to education. Indeed, 30 per cent of IDCs are out of school, compared to 7 per cent of children in the refugee community.<sup>121</sup> While Burkina Faso is meeting its obligation to respect IDPs' right to education, it is struggling to meet its obligations to protect and implement.

## **2.5. Conclusion**

My findings indicate that forced displacement does not change the citizenship of individuals displaced within their own country. IDPs retain their full citizenship rights and obligations. Therefore, the legal framework governing the rights of IDC is the same as that of other children. Consequently, there is a scarcity of specific provisions addressing the right to education for IDC, both internationally and domestically.

At the international level, this right is protected by the UDHR, the ICESCR, and the CRC. In the context of IHL, it is ensured by GC IV and Additional Protocol II. Regionally, this right is recognised by the ACHPR, the ACRWC, and the Kampala Convention, which offers specific protection for IDPs. At the national level, the Constitution, as the supreme law, as well as the Personal and Family Code and Law 013-2007, also guarantees this right. Nevertheless, the right to education for IDC is recognised as a legal reality in Burkina Faso, although its practical implementation requires significant improvements.

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<sup>120</sup> n 28 as above.

<sup>121</sup> n 1 as above.

## Chapter 3: Assessing the implementation of the right to education for internally displaced children in Burkina Faso

### 3.1. Introduction

In the previous chapter, the author presented the international and national legal framework for the right to education of IDPs, as well as the obligations of the State. This chapter examines the strategies, policies and measures adopted by Burkina Faso to realise this right, as well as the mechanisms for monitoring violations. The aim is to assess the effectiveness of these measures and whether they truly guarantee IDC's right to education, taking into account the challenges posed by the current security crisis.

### 3.2. Measures taken by Burkina Faso to enforce IDC's right to education

To provide a holistic response to the security crisis and ensure educational continuity for affected children throughout the country, the Burkina Faso government, through the Ministry of Education, Literacy and the Promotion of National Languages (MENAPLN), has put in place a series of measures.<sup>122</sup> These include the adoption of national policies, the implementation of concrete actions, and the introduction of teaching practices adapted to the particular conditions of IDC.

#### 3.2.1. National education policies for IDC

To address the impact of the security crisis on education, the Government of Burkina Faso has put in place the Schooling Strategy for Pupils in High Security Challenge Zones (SSEZFDS) for the period 2019-2024. Given the instability of the security situation, this strategy has been designed to be flexible, pragmatic and scalable, in order to incorporate other risks such as floods, violent winds and health crises, which could also affect the education system. The main vision of the SSEZFDS is that *by 2024, Burkina Faso will have a healthy, peaceful and safe school environment that guarantees and promotes the effective continuity of teaching/learning activities throughout the country.*<sup>123</sup>

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<sup>122</sup> n 1 as above.

<sup>123</sup> National strategy for the enrolment of pupils in areas facing major security challenges in Burkina Faso (SSEZDS) 2019-2024, Ministry of Education, Literacy and the Promotion of National Languages.

- The strategic objective of the SSEZFDS is to ensure the schooling of all children, the protection and well-being of those involved in education and the strengthening of the capacity of educational structures in the regions concerned, following the example of safe zones. It is made up of 7 operational objectives :
- Prevent the closure of classes in the face of attacks and security threats in secure areas to ensure a safe and protective learning environment;
- to ensure the reopening of closed educational facilities in accordance with the established security level;
- facilitate access and retention of girls and children in vulnerable situations;
- create inclusive educational spaces for displaced pupils;
- facilitate the re-enrolment of displaced pupils;
- provide health, hygiene, food and nutrition for pupils;
- and strengthen the resilience of stakeholders.

Rather than limiting myself to a few specific areas, the reality on the ground calls for the search for global solutions and the implementation of decisive actions to tackle the educational challenges on a national scale, as the whole country is affected, to varying degrees, by the security crisis. It is therefore imperative to welcome IDC at all levels of education, in search of safety, food and education. With this in mind, the SSEZFDS has been revised to become the National Strategy for Education in Emergencies (SN-ESU 2020-2024). The SN-ESU thus adopts a multiple-risk approach, offering a holistic and coherent response to all the dangers likely to affect the education system and the right to education of displaced children in Burkina Faso.<sup>124</sup>

The SN-ESU's ambition is *to ensure the continuity of the right to education and to provide, by 2024, an equitable, inclusive and quality education in which teaching/learning activities take place in a healthy, protected school environment for all children, with the support and guidance of a resilient community.*<sup>125</sup> It has been drawn up on the basis of a number of international guiding principles recommended by the UN, such as the INEE minimum standards<sup>126</sup> and the Humanitarian-Development-Security Nexus. In terms of strategic objectives, the SN-ESU is structured around three main areas:

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<sup>124</sup> n 1 as above.

<sup>125</sup> National Strategy for Education in Emergencies-Burkina Faso 2019-2024.

<sup>126</sup> n 66 as above para 11.

- Axis 1: Access to education and creation of a protective and secure learning environment by guaranteeing educational continuity for all children, ensuring the protection and well-being of those working in the education sector, and strengthening the capacity of schools in the affected regions.
- Axis 2: Ensuring quality teaching and learning for children affected by insecurity and other risks, by strengthening the skills of education staff and stakeholders, while adopting teaching approaches adapted to emergency situations.
- Axis 3: Steering and coordination, which involves focusing on setting up an operational system to steer, coordinate and monitor and evaluate the SN-ESU.

The Technical Secretariat for Education in Emergencies (ST-ESU) was created in 2019 in order to implement these various priorities. It is responsible for implementing emergency education actions and steering the SN-ESU.

The 2022 alternative report on education in emergencies highlights major challenges in implementing the planned actions.<sup>127</sup> Of the 19 actions in the National Strategy for Education in Emergencies (SN-ESU), only one is considered to be on track. The other actions are progressing more slowly, with 15 actions underway but at varying levels of progress, while three are behind schedule.

A major problem hampering implementation is the lack of funding. Only FCFA 5.688 billion has been raised out of a forecast budget of FCFA 55.507 billion. This financial shortfall severely limits the ability to meet educational needs in emergencies, underlining the importance of increased investment to strengthen this initiative.<sup>128</sup>

As part of the monthly statistics report on education in emergency for May 2024, it was noted that the number of internally displaced students enrolled and re-enrolled increased from October 2023 to March 2024, before falling in April 2024.<sup>129</sup> The number of displaced students rose from 390,941 in October 2023 to 432,390 at the end of May 2024, a significant increase of 41,449 displaced students.

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<sup>127</sup> ‘Alternative monitoring report on the implementation of the National Strategy on Education Emergency 2020-2022’ Burkina Faso National Coalition for Education For All [https://cneptbf.org/IMG/pdf/rapport\\_alternatif\\_sn-esu\\_08\\_10\\_2022-2.pdf](https://cneptbf.org/IMG/pdf/rapport_alternatif_sn-esu_08_10_2022-2.pdf) (accessed 13 October 2024).

<sup>128</sup> As above.

<sup>129</sup> ‘Monthly Statistical Report on Education in Emergencies of 31 May 2024-Burkina Faso’ Technical Secretariat for Education in Emergencies <https://reliefweb.int/report/burkina-faso/rapport-statistique-mensuel-de-leducation-en-situation-durgence-du-31-mai-2024> (accessed 13 October 2024).



### 3.2.2. Concrete actions taken for the right to education of IDC

As part of the implementation of education activities in emergency situations, consultation frameworks are organised at national and decentralised levels between the various education stakeholders in Burkina Faso. At national level, these include consultations between the SN-ESU and the ministry responsible for education, technical and financial partners and various NGOs and associations. Consultations are also being organised between the Ministry of Education and the National Council for Emergency Relief and Rehabilitation (CONASUR). CONASUR's mission is to ensure the reception, assistance and socio-economic reintegration of IDPs. CONASUR is also involved in education and training, as well as rebuilding community infrastructure, although these tasks are not exhaustive.<sup>130</sup>

At the decentralised level, consultations are held with representatives of the regions, provinces and town halls, communities and parents' associations.<sup>131</sup> The aim of these consultations is to find lasting solutions to guarantee access to education for IDC in crisis situations. They also aim to harmonise the efforts of the various stakeholders to ensure better coordination and effectiveness of interventions. The consultations help to identify the specific needs and challenges of the various regions and communities affected by the crisis, and to develop strategies tailored to local realities.<sup>132</sup> These consultation frameworks promote an inclusive approach, in which each stakeholder plays a role in defining and implementing actions to promote education in emergencies and the right to education of IDC in Burkina Faso.<sup>133</sup>

The establishment of the SSEZFDS in 2019 by the Ministry of Education was accompanied by a three-year action plan for 2020-2022, as well as specific curricula for education in emergency situations, with the aim of supporting IDC in their studies. The SSEZFDS has identified a number of remedial actions aimed at displaced pupils who are less than three months behind in

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<sup>130</sup> Article 12 of the decree 2009-601 on the creation, composition, remit and operation of the National Council for Emergency Relief and Rehabilitation.

<sup>131</sup> n 1 as above p 15.

<sup>132</sup> 'Education Can not Wait is launching a program to support education in regions affected by the crisis' Burkina Faso National Coalition for Education for All <https://cneptbf.org/spip.php?article56> (accessed 17 September 2024).

<sup>133</sup> JC Ndabananiye; AB Ndiaye; JT Thanh & M Tréguier *Education in emergencies: MENAPLN's commitment and leadership in Burkina Faso* (2021) 33 [https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef\\_0000380440&file=/in/rest/notationSVC/DownloadWatermarkedAttachment/attach\\_import\\_b68da251-c6c0-457b-8ed3-31b93d5f8acb%3F\\_%3D380440fre.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000380440/PDF/380440fre.pdf#%5B%7B%22num%22%3A76%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C-2%2C484%2C0%5D](https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000380440&file=/in/rest/notationSVC/DownloadWatermarkedAttachment/attach_import_b68da251-c6c0-457b-8ed3-31b93d5f8acb%3F_%3D380440fre.pdf&locale=en&multi=true&ark=/ark:/48223/pf0000380440/PDF/380440fre.pdf#%5B%7B%22num%22%3A76%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C-2%2C484%2C0%5D) (accessed 18 September 2024).

their schooling, those who have been out of school for more than three months, and those who remain in areas affected by insecurity. The initiatives include the Strategy for Accelerated Enrolment/Gateway (SSA/P), digital education, the Education by Radio Programme (PER), interactive audio broadcasts (EIA) and an online educational platform. Peace education, integrated into this approach, aims to transform the school into a space for promoting peace and to strengthen this culture among children.<sup>134</sup>

The Ministry of Education, in collaboration with UNICEF and other partners in the education sector, has adopted the *Safe School* approach to strengthen the capacity of schools and communities to resist armed attacks. This initiative aims to stabilise an education system weakened by security threats, while gradually laying the foundations for an inclusive and resilient school in Burkina Faso.<sup>135</sup>

In addition to actions taken at national level, local authorities, particularly town halls, are key players in the response to emergency situations. Their role is particularly important in the education sector, one of the most decentralised areas in Burkina Faso. The social services of town halls play a crucial role in the reception of displaced children. They register them, direct them to schools and facilitate their enrolment. In collaboration with their partners, the town halls set up financial aid schemes to support these children and their families. They also help to draw up birth certificates for children who have none.<sup>136</sup>

### 3.2.3. Teaching practices in favor of the right to education for displaced children

IDC require special educational support to facilitate their integration into the education system. Remedial classes are set up to make up for lost time. Thanks to these measures, their academic performance, both in interim assessments and end-of-year exams, has improved significantly.

The adoption of innovative teaching methods, such as group teaching, has facilitated learning in large classes due to the influx of IDC. In addition, differentiated teaching has enabled teachers to adapt their methods to the different levels of pupils, by refining teaching strategies and techniques. Arrangements such as tutoring and peer education have been introduced,

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<sup>134</sup> n 1 as above.

<sup>135</sup> 'To ensure the continuity of education' UNICEF 2020 <https://www.unicef.org/burkinafaso/communiqués-de-presse/pour-assurer-la-continuité-de-l'éducation-unicef-developpe-le-programme-safe> (accessed 18 September 2024).

<sup>136</sup> n 1 as above.

enabling more advanced pupils to support those who are experiencing more difficulties, thereby promoting their progress.<sup>137</sup>

Despite the overcrowded conditions, the teachers have been able to develop teaching approaches adapted to this new situation, helping to improve the children's academic results and restore their self-confidence. There are many positive aspects to this educational approach. Teachers have shown ingenuity in helping IDC overcome their inferiority complex vis-à-vis their peers and integrate into the classroom. In addition, psychosocial activities, including games involving local and displaced pupils, helped the latter to relieve their stress and feel more at ease in their school environment. The school's counsellors, trained to deal with the stress of displaced children, as well as the dynamism of certain parent-teacher associations, have greatly contributed to their support and well-being.<sup>138</sup>

### **3.3. Obstacles in the implementation of the right to education of IDC**

There are many obstacles to the realisation of IDP children's right to education. The study carried out in 2023 by *Dramane Boly* shows that IDC are the most disadvantaged in terms of school attendance, for economic reasons, because there are too many children in the classroom and because of social constraints.

#### **3.3.1 Economic obstacles**

Households in situations of forced displacement face extreme financial difficulties, often finding themselves in total destitution. Around 76.5 per cent of IDP households pay for their children's schooling themselves, placing an immense burden on already fragile families.<sup>139</sup> In this context, children become a crucial source of income for survival, as their financial contribution, through professional activities, helps to meet household needs. Boys are often involved in gold panning, petty trading or handicrafts such as carpentry. Girls, on the other hand, mainly work as domestic help, waitresses in maquis or in small shops. Child labour is the second most common reason for boys and girls not to go to school.<sup>140</sup>

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<sup>137</sup> As above.

<sup>138</sup> As above.

<sup>139</sup> 'The effects of the security crisis on human development in Burkina Faso' CIEREA-PTCI (2023) [https://www.undp.org/sites/g/files/zskgke326/files/migration/bf/UNDP\\_bf\\_Rapport\\_CSDH\\_2021.pdf](https://www.undp.org/sites/g/files/zskgke326/files/migration/bf/UNDP_bf_Rapport_CSDH_2021.pdf) (accessed 18 September 2024).

<sup>140</sup> 'Joint Evaluation of Education and Child Protection Needs in Burkina Faso' Joint Education Needs Assessment (JENA) (2021) <https://cpaor.net/sites/default/files/2023-05/Evaluation%20conjointe%20des%20besoins%20en%20mati%C3%A8re%20d%E2%80%99Education%20et>

CONASUR, which is responsible for receiving, housing and providing food for IDC, was quickly overwhelmed by the growing number of pupils from the conflict zones. However, its intervention is limited to official sites identified as such. CONASUR does not currently have a guarantee fund specifically allocated to internally displaced students or students in difficulty. Setting up such a fund would have made it possible to guarantee access to education for these vulnerable children. Beyond their humanitarian situation, these pupils are first and foremost minors for whom the State has a duty of protection and supervision.<sup>141</sup>

In Burkina Faso, support for the education of IDC is mainly based on humanitarian aid or aid from technical and financial partners. The government has not yet set up an emergency fund specifically to address the right to education of IDC.<sup>142</sup> Yet such a measure could ensure a more sustainable and systematic response to the challenges facing these children, thereby guaranteeing their fundamental right to education, despite the crises that disrupt their daily lives. Even before the security crisis, despite the efforts made by the State to guarantee access to education, these initiatives remained insufficient, as Burkina Faso is one of the poorest countries in the world. With the deterioration of the security situation and the allocation of a large part of the State's resources to the fight against terrorism, it has become even more difficult for the government of Burkina Faso to guarantee the right to education, particularly for vulnerable populations and IDC.

### 3.3.2 Lack of school infrastructure

Overcrowding in schools has a negative impact on students' academic performance, clearly illustrating the inadequacy of educational infrastructure to meet growing needs. For a long time, basic education development plans have focused on extending public school infrastructure in priority rural areas, which are considered to be lagging furthest behind in terms of access to education. However, this approach left out the urban centres, which were seen as more advantaged.<sup>143</sup> Today, these urban centres, which are home to a large number of (IDPs), find themselves swamped by an influx of pupils, putting their intake capacity to the test.<sup>144</sup> The lack of school infrastructure is a violation of the right to quality education as prescribed by the CESCR in its General Comment 13.

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[%20Protection%20de%20l%E2%80%99enfance%20au%20Burkina%20Faso.pdf#page26](#) (accessed 20 September 2024).

<sup>141</sup> n 19 as above.

<sup>142</sup> As above.

<sup>143</sup> n 1 as above p 34.

<sup>144</sup> CIEREA-PTCI n 138 as above.

In addition, in some regions, schools are requisitioned to house IDPs or serve as bases for military detachments, further exacerbating the shortage of available educational space. This situation not only compromises access to education for displaced children, but also highlights the wider challenge of infrastructure management in a context of humanitarian and security crisis.<sup>145</sup>

In their flight, some people in situations of forced displacement have lost everything, including their civil status documents. The absence of civil status documents can be a handicap to the continuation of schooling for the children of these populations. Even though there is a degree of flexibility for children who have been forcibly displaced, civil status documents are still required in order to take part in the various school exams. Another element linked to documentation concerns enrolment in intermediate classes, where proof such as school reports showing that the child has reached the required level is requested.<sup>146</sup>

### 3.3.3 Social and cultural constraints

Child marriage remains a worrying reality in Burkina Faso, constituting a major cause of girls dropping out of school. Girls are often forced into early marriages in order to reduce the financial burden on their families. In some communities, early marriage is seen as a strategy for improving difficult living conditions and strengthening family ties through matrimonial alliances.

Growing insecurity exacerbates this situation. Some parents see child marriage, particularly of girls, as a form of protection against the risks of armed conflict.<sup>147</sup> These young girls are increasingly targeted by armed groups, who recruit them to perform various tasks, reinforcing the perception that marriage will protect them from these dangers. In addition, certain deeply rooted cultural practices, such as ‘giving away’ a girl in marriage as soon as she is born, continue to encourage early marriage and, consequently, the dropping out of school of girls.<sup>148</sup>

Early pregnancy is also a major factor in girls dropping out of school in Burkina Faso. Under the pressure of social norms and to preserve the family's ‘honour’, young girls are often forced to marry very early to avoid pregnancy outside marriage, which is perceived as a source of

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<sup>145</sup> As above.

<sup>146</sup> n 1 as above p 32.

<sup>147</sup> ‘Making education in emergencies a priority in Burkina Faso’ Save the Children (2020) <https://burkinafaso.savethechildren.net/sites/burkinafaso.savethechildren.net/files/library/Faire%20de%20l%27Education%20en%20Situation%20d%27Urgence%20une%20priorite%20-BFA-%20SC-%20Mai%202022...%20%2800000002%29.pdf> (accessed 19 September 2024).

<sup>148</sup> n 1 as above p 36.

shame. Pregnancies in schools also reveal a flagrant inequality of treatment between boys and girls. Boys, who are often responsible for these pregnancies, are not punished in any way, while girls are often forced to drop out of school. This situation reflects not only societal indifference but also the absence of effective policies to hold the perpetrators of these pregnancies accountable, who in almost 70 per cent of cases escape any consequences.<sup>149</sup>

Finally, the perception of education in some displaced communities also contributes to school drop-out. For many families, sending their children to herd cattle is seen as more useful than enrolling them in school. This reluctance to send children to school is often explained by the fact that conventional schooling does not guarantee graduates a job. Having noted the lack of professional success of young people who have attended school in their environment, many parents do not see the point of investing financially in their children's education, preferring to direct them towards economic activities deemed more profitable in the short term.

### **3.4. Mechanisms for monitoring IDC's right to education**

Human rights monitoring and control mechanisms are put in place with the aim of implementing human rights. This section looks first at the universal mechanisms for monitoring IDC right to education, then at regional monitoring mechanisms, and finally at national mechanisms.

#### **3.4.1 Universal mechanisms for monitoring IDC's right to education**

Universal monitoring mechanisms are mechanisms set up by the UN. They are essentially the Committee on Economic, Social and Cultural Rights, the Special Rapporteur on the right to education and the Committee on the Rights of the Child.

##### ***A. Committee on Economic Social and Cultural rights***

The Committee on Economic, Social and Cultural Rights (CESCR) is responsible for monitoring the protection and implementation of the rights set out in the International Covenant on Economic, Social and Cultural Rights. States are required to submit a report two years after acceding to the Covenant, and every five years thereafter, describing the concrete measures taken to realise the rights enshrined in the Covenant.<sup>150</sup>

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted in 2008 allows individuals to lodge complaints directly with the CESCR. The protocol

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<sup>149</sup> MMG Guigma/Diasso 'The problem of unwanted pregnancies and the situation of girl mothers in Africa and throughout the world' (2013) [https://apf-francophonie.org/sites/default/files/2023-01/2013\\_07\\_session\\_femmes\\_grossesse.pdf](https://apf-francophonie.org/sites/default/files/2023-01/2013_07_session_femmes_grossesse.pdf) (accessed 20 September 2024).

<sup>150</sup> ICESCR articles 16 & 17.

strengthens the legal protection of economic, social and cultural rights. Unfortunately, Burkina Faso, although a signatory to the ICESCR, has not yet acceded to this protocol, thus depriving its citizens of this additional guarantee.<sup>151</sup>

Although there are as yet no specific cases concerning violations of the right to education and the right to education of IDC on which the CESCR has issued a decision, the Committee has nevertheless reaffirmed its competence to examine and rule on cases concerning violations of economic, social and cultural rights falling within the framework of the Covenant. The case of *IDG vs. Spain*, in which the CESCR recognised a violation of the right to housing, marks a turning point in the protection of economic, social and cultural rights.<sup>152</sup>

### *B. The Special Rapporteur on the right to education*

Established by the Commission on Human Rights, which became the Human Rights Council in 2006, the mandate of the Special Rapporteur<sup>153</sup> on the right to education is to receive complaints and draw up detailed reports on the implementation or failure to implement the right to education in the States visited.<sup>154</sup> Generally, the Special Rapporteur is a competent person who deals with complaints concerning violations of children's right to education in Burkina Faso and can make recommendations in this regard.

### *C. Committee on the Rights of the Child*

The Committee on the Rights of the Child is the United Nations body responsible for overseeing the implementation of the CRC by States parties, including the right to education.<sup>155</sup> To strengthen the protection of children's rights, a third optional protocol was adopted on 19 December 2011, allowing any child or their representatives to submit individual complaints to the Committee in the event of a violation of their rights. This mechanism provides an additional avenue to ensure that children's rights are respected and protected.

In its Concluding Observations on the United Kingdom, adopted in October 2008, the Committee on the Rights of the Child expressed concern about the continuing significant

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<sup>151</sup> 'Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' United Nations Treaty Collection [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&clang=fr](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=fr) (accessed 20 September 2024).

<sup>152</sup> 'I.D.G c. Espagne (Communication No. 2/2014) [17.06.2015]' Housing Right Watch (2015) <https://www.housingrightswatch.org/fr/jurisprudence/idg-c-espagne-communication-no-22014-17062015> (accessed 20 September 2024).

<sup>153</sup> Vernor Muñoz was the special rapporteur appointed in 2006.

<sup>154</sup> paragraph 9 of resolution 2004/25 of the Commission on Human Rights, adopted without a vote on 16 April 2004.

<sup>155</sup> CRC article 28 to 29.

inequalities in educational outcomes for children living in economically disadvantaged circumstances. It noted that several groups of children face difficulties in enrolling, continuing or re-entering the education system, whether in mainstream schools or in alternative settings, thus depriving them of the full enjoyment of their right to education. These groups include children with disabilities, children from Traveller and Roma communities, asylum-seeking children, children who have dropped out of school or do not attend for various reasons (illness, family responsibilities, etc.).<sup>156</sup> In response to these findings, the Committee recommended that the United Kingdom invest more in concrete measures to ensure access to truly inclusive education, enabling all children, particularly those from disadvantaged, marginalised or distant groups, to fully exercise their right to education.<sup>157</sup>

Burkina Faso has not received a recommendation from the Committee on the Rights of the Child. However, in its 2019 periodic report to the Committee, it was reported that the government had put in place a strategy to reopen schools closed due to terrorism and was organizing special examinations for children in affected areas.

### 3.4.2 Regional mechanisms

At the regional level, the existing mechanisms for monitoring the right to education are those of the AU and the ECOWAS Court of Justice. At AU level, its mechanisms are the African Committee on the Rights and Welfare of the Child (ACERWC), the Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.<sup>158</sup>

#### *A. African committee of experts on the rights and welfare of the child*

The ACERWC was created in 2002 under article 32 of the ACRWC.<sup>159</sup> It has the classic status of a quasi-judicial body for the protection of children's rights. It is responsible for supervising and ensuring the application of the ACRWC. It has two control mechanisms: the reporting procedure and the individual appeals procedure. Under the reporting procedure, states must submit reports to the Committee every three years. Under the individual complaints procedure,

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<sup>156</sup> Committee on the Rights of the Child CRC/C/GBR/CO/4, para 66 20 October 2008 <https://documents.un.org/doc/undoc/gen/g08/445/74/pdf/g0844574.pdf> (accessed 21 September 2024).

<sup>157</sup> As above para 67.

<sup>158</sup> 5th and 6th monitoring reports on the implementation of the convention on the rights of the child on the rights of the the child and its 2 optional protocols [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBFA%2F5-6&Lang=en#](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBFA%2F5-6&Lang=en#) (accessed 20 September 2024).

<sup>159</sup> Article 32 of the ACRWC.



any person, group or NGO recognised by the AU, a member state can complain about any issue covered by the Charter.<sup>160</sup> The Committee is competent to carry out inquiries or investigations into facts suggesting violations of children's rights in a member state.<sup>161</sup>

To this end, on May 31, 2015, the Committee published its decision in the Talibé children case concerning Senegal. In this case, ACERWC determined that the government's failure to protect the rights of talibés constituted a violation of several provisions of the ACRWC. It is also notable that ACERWC found Senegal to be in breach of Article 11 of the ACRWC due to its failure to guarantee free and compulsory education for all children.<sup>162</sup>

ACERWC has not received a communication with regard to Burkina Faso, yet. But in its concluding observations on the combined fourth, fifth and sixth periodic reports on the implementation of the Charter,<sup>163</sup> it recommends that the government of Burkina Faso:

- Reinforce the compulsory nature of the right to education and take measures to ensure free basic education throughout Burkina Faso;
- Equip existing schools with textbooks and other relevant school materials to ensure the quality of education.
- Identify the reasons for low enrolment and high drop-out rates, in order to formulate strategies to ensure increased enrolment.
- Recruit additional qualified teachers.

### *B. African Commission on Human and Peoples' right*

The African Commission on Human and Peoples' Rights (ACmHPR) is responsible for monitoring, respecting and implementing human rights instruments, in particular the ACHPR, which enshrines the right to education in Article 17. Within this framework, ACmHPR receives periodic reports from States. The ACmHPR is also empowered to examine complaints lodged by individuals or NGOs concerning violations of the rights protected by the ACHPR.

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<sup>160</sup> H Seifu 'Access of Children to the African human rights protection system' [https://www.coe.int/t/dg3/children/justicespeeches/seifu\\_EN.asp](https://www.coe.int/t/dg3/children/justicespeeches/seifu_EN.asp) (accessed 21 September 2024).

<sup>161</sup> Article 45 of the ACRWC.

<sup>162</sup> 'African Committee of Experts on the Rights and Welfare of the Child Finds Senegal in Violation of Right to Education in Talibés Children Case' Right to Education 2015 <https://www.right-to-education.org/news/african-committee-experts-rights-and-welfare-child-finds-senegal-violation-right-education> (accessed 21 September 2024).

<sup>163</sup> Concluding observations and recommendations of the ACERWC on the combined fourth, fifth and sixth periodic reports of Burkina Faso on the implementation of ACRWC [https://www.acerwc.africa/sites/default/files/2022-09/\\_Burkina%20Faso%20CO%20FR-2-15.pdf](https://www.acerwc.africa/sites/default/files/2022-09/_Burkina%20Faso%20CO%20FR-2-15.pdf) (accessed 21 September 2024).

The ACmHPR has issued several rulings, notably in its General Comment No. 227/99, concluding that the right to education is violated in cases such as looting, massacres, the deportation of civilians, the deportation of foreigners, and the prolonged closure of universities and high schools by the state.<sup>164</sup> However, the Commission considers that a violation of the right to education is not proven in the absence of sufficient evidence, or in the event of an international embargo following a *coup d'état*. For example, in a case in Cameroon where a complainant accused the state of discrimination in the funding and allocation of educational resources, the Commission concluded that there had been no violation, in the absence of convincing evidence from the complainant, despite proven efforts on the part of the state to remedy the situation.<sup>165</sup>

### *C. African court on human and peoples' rights*

The African Court on Human and Peoples' Rights, created in 2008, is competent to examine claims for reparation and compensation following violations of the rights guaranteed by the African Charter and its additional protocol. It receives and examines applications from relevant organizations with special status with the ACmHPR, as well as applications lodged by individuals directly with the Court. Victims of violations of the right to education are therefore able to bring their case before the Court, provided that the state of which they are a national has ratified the protocol establishing this body, that it has recognised the Court's competence to receive individual complaints from its nationals, and that existing domestic remedies have been exhausted.<sup>166</sup> In addition, all available domestic remedies must have been exhausted before referring a case to the Court.

Burkina Faso has lodged a declaration allowing the Court to accept applications from individuals and NGOs, thus enabling any IDP to bring a case before the Court when he or she considers that his or her right to education has been violated.<sup>167</sup>

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<sup>164</sup> ACmHPR, Communication n 227/99, May 2003, R.D. Congo vs Burundi, Rwanda and Ouganda <https://achpr.au.int/fr/decisions-communications/democratic-republic-congo-burundi-rwanda-uganda-22799> (accessed 21 September 2024).

<sup>165</sup> ACmHPR Communication n 266/2003, Kevin Mgwanga Gunme and al vs Cameroun, May 2009 <https://achpr.au.int/index.php/en/decisions-communications/kevin-mgwanga-gunme-et-al-cameroun-26603> (accessed 21 September 2024).

<sup>166</sup> M Özden *The right to education: a fundamental human right stipulated by the UN and recognised by regional treaties and numerous national constitutions* 2005 <https://www.cetim.ch/wp-content/uploads/Br-edu-fr-a42.pdf> (accessed 20 September 2024).

<sup>167</sup> 'Your country has taken away your right to take your case directly to the African Court. Claim it!' Amnesty International <https://www.amnesty.org/fr/petition/your-country-withdrew-your-right-to-seek-justice-at-the-african-court-claim-it-back/> (accessed 21 September 2024).

#### D. ECOWAS Court of Justice

The Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ) was established in accordance with the provisions of Articles 6 and 15 of the Revised ECOWAS Treaty.<sup>168</sup> Following amendments made to its original Protocol in the Court's 2005 Supplementary Protocol, the ECCJ jurisdiction is now extended to cover cases of human rights violations in ECOWAS member states. The Supplementary Protocol does not require applicants to exhaust domestic remedies as a precondition for bringing actions relating to human rights violations before the Court. Over 85 per cent of the cases concluded by the ECCJ as of December 2009 related to alleged human rights violations within ECOWAS member states.<sup>169</sup> The Court's jurisdiction is contentious, advisory and arbitrary.<sup>170</sup>

As a result, individuals can bring a case before the Community Court to assert their violated rights, including the right to education. In its decision of 27 October 2019 in *SERAP v Nigeria*, ECOWAS affirmed its jurisdiction to examine a complaint relating to the right to education, as guaranteed by the ACHPR.<sup>171</sup> This demonstrates that the Charter protects rights that are concrete and not purely theoretical. For example, about discrimination in schools, the Court ordered Sierra Leone to revoke its policy banning pregnant girls from attending mainstream schools.<sup>172</sup> The ban violated the right to education, based on the ACRWC and the Maputo Protocol, or Additional Protocol on the Rights of Women in Africa.

Unfortunately, the citizens of Burkina Faso will no longer have access to the ECOWAS Court of Justice, since Burkina Faso has announced its withdrawal from ECOWAS on 28 January 2024.<sup>173</sup>

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<sup>168</sup> Revised Treaty of the Economic Community of West African States 1993 (28 May 1975) <https://www.ecowas.int/wp-content/uploads/2022/06/REVISED-Treaty-Updated-fr.pdf> (accessed 21 September 2024).

<sup>169</sup> BM Djeugoue 'The ECOWAS Court of Justice' 2015 <https://www.ihrda.org/fr/2015/05/la-cour-de-justice-de-la-communaute-de-la-cedeao/> (accessed 21 September 2024).

<sup>170</sup> Protocol A/P1/7/91 on the court of Justice of ECOWAS, article 9 & 10.

<sup>171</sup> Case N°ECW/CCJ/AAP/0808, Droit Economiques et Sociaux et Projet Responsabilité (SERAP) v. Nigeria.

<sup>172</sup> Case N°ECW/CCJ/APP/22/18-Women Against Violence and Exploitation in Society (WAVES) dated 12 December 2019.

<sup>173</sup> 'Burkina Faso withdraws from ECOWAS: reasons for departure explained to private sector' Burkina Faso Government Information Service (SIG) [https://www.sig.gov.bf/details?tx\\_news\\_pi1%5Baction%5D=detail&tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Bnews%5D=1691&cHash=4afe4cf89efd5df590fa4616ce78c8a7](https://www.sig.gov.bf/details?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=1691&cHash=4afe4cf89efd5df590fa4616ce78c8a7) (accessed 22 September 2023).

### 3.4.3 National mechanisms

As the right to education for IDC, is recognised in Burkina Faso, its implementation and observance must be rigorously monitored at the national level.<sup>174</sup> To this end, two remedies are available: the jurisdictional remedies and the non-jurisdictional remedies.

#### *A. Jurisdictional control*

Article 125 of the Burkina Faso Constitution states that *the judiciary shall ensure respect for the rights and freedoms defined in this Constitution*.<sup>175</sup> Respect for rights, including the right to education, is now ensured by the judiciary. This means that any IDC who feels that his or her right to education has been infringed can apply to the courts for compensation for the damage suffered.

Very few Burkinabè have recourse to the courts to enforce their socio-economic rights.<sup>176</sup> This is due to several obstacles to access to justice in Burkina Faso. These include, on the one hand, the geographical distance between the litigants and the judge, the inadequacy of the current judicial organization, and the excessive slowness and high cost of justice. On the other hand, there are specific obstacles linked to the socio-political context and to African perceptions: the mistrust of litigants in Burkina Faso towards the judicial system, which can be explained both by a lack of knowledge of state law and its lack of effectiveness and by an impression of the unpredictability of justice. Similarly, with the closure of courts even in state zones under the control of armed groups, it is legitimate to question the possibility of guaranteeing the effectiveness of the right to education for IDC.

Despite the strengthening of human rights litigation in Burkina Faso, the justiciability of economic, social and cultural rights, and of the right to education of IDC in particular, remains incomplete. This is due to the lack of effectiveness and remedies in exercising the justiciability of the right to education.<sup>177</sup>

#### *B. Institutionnal control*

In Burkina Faso, non-jurisdictional control of fundamental rights, and of the right to education is exercised by the National Human Rights Commission (CNDH).

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<sup>174</sup> Constitution of Burkina Faso articles 18, 27&101.

<sup>175</sup> Constitution of Burkina Faso article 125 para. 2.

<sup>176</sup> n 19 as above.

<sup>177</sup> As above.

The CNDH is responsible for promoting and protecting human rights in Burkina Faso. To this end, it is responsible for publicising human rights instruments.<sup>178</sup> It also provides advice to public authorities on all human rights situations and violations.<sup>179</sup> It is also empowered to receive individual requests on allegations of violation of human rights and the right to education. It may also be seized ex officio at the request of its chairman or one of its members.<sup>180</sup>

In light of the provisions of this law and the missions we have mentioned, the CNDH should, in theory, occupy a central position in the protection and promotion of human rights in Burkina Faso. However, unlike its counterparts in the sub-region, the CNDH is struggling to establish itself. It is merely subsisting, and remains largely unknown to the population, even though it has been in existence since 2001.<sup>181</sup> Moreover, the structure's lack of decentralization limits its visibility among the Burkinabe population. Of Burkina Faso's 13 regions, the CNDH is only present in 3, which hampers its access and recognition on a national scale.

In its 2021 report on the human rights situation in Burkina Faso, the CNDH recommended that the government improve the living conditions of IDPs and ensure that their rights are respected.<sup>182</sup> Unfortunately, the CNDH has not been seized for violation of the right to education and the right to education of IDC in Burkina Faso.

### **3.5. Conclusion**

An analysis of the implementation of the right to education for IDC in Burkina Faso reveals the following:

Firstly, the enjoyment of the right to education by IDC is not effective for all, and this is due to economic, social and cultural factors and the lack of infrastructure in the host localities.

Secondly, Burkina Faso has put in place a number of policies and projects to guarantee the right to education for IDC.

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<sup>178</sup> Article 4 of law n°001-2016/AN creating a National Human Rights Commission in Burkina Faso Burkina Faso.

<sup>179</sup> As above article 5.

<sup>180</sup> As above article 23.

<sup>181</sup> n 18 as above p 66.

<sup>182</sup> 'CNDH 2021 report on the human rights situation in Burkina Faso: Summary' CNDH 2021 <https://cndhburkina.bf/rapport-2021-de-la-cndh-sur-la-situation-des-droits-humains-au-burkina-faso-la-synthese/#:~:text=Le%20rapport%20sur%20la%20situation,et%20particuli%C3%A8rement%20dans%20les%20zones> .

And finally, there are mechanisms in place to monitor the effectiveness of the right to education at international, regional and domestic level. However, internally, the government has to make efforts to ensure that the right to education for IDC is effectively monitored.

## Chapter 4: Realising the right to education for internally displaced children: Mali and Federal Republic of Nigeria

### 4.1. Introduction

In the previous chapter, the author highlighted Burkina Faso's obligations with regard to the right to education of IDC, as well as the obstacles encountered in guaranteeing this right. The policies and actions put in place by Burkina Faso to realise this right were presented.

This chapter therefore aims to draw lessons from the experiences of Mali and Nigeria in realising the right to education of IDC. To do this, the author begins by analysing the legislative frameworks and then the policies put in place in Mali and Nigeria to protect and promote the right to education of IDC. Akin to Burkina Faso, these two countries, share a regional context marked by insecurity and population displacement, therefore offer relevant examples for studying the legislative frameworks and policies relating to the education of IDC. By analysing the experiences of these two neighbouring countries, the aim is to identify useful lessons for Burkina Faso.

### 4.2. Legal frameworks

#### 4.2.1 International Framework

Mali and Nigeria are parties to several international conventions and treaties recognising and protecting children's right to education. Mali ratified the UDHR on 19 August 1977,<sup>183</sup> the ICESCR on 16 July 1977,<sup>184</sup> and the CRC on 20 September 1990.<sup>185</sup> In terms of international humanitarian law, Mali ratified the Fourth Geneva Convention relative to the Protection of Civilians in Time of War in May 1965.<sup>186</sup> In August 1989, the country also acceded to Additional Protocol II on the protection of victims of non-international armed conflicts.<sup>187</sup>

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<sup>183</sup> n 30 as above.

<sup>184</sup> International covenant on economic, social and cultural rights 1966.

<sup>185</sup> Convention on the rights of the child 1989.

<sup>186</sup> Geneva Convention relative to the protection of civilian persons in time of War 1949.

<sup>187</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977.

At regional level, Mali has ratified African instruments protecting children's right to education, such as the ACHPR in December 1981,<sup>188</sup> and the ACRWC in June 1998.<sup>189</sup> Finally, on 7 November 2012, the country affirmed its commitment to preventing the internal displacement of its population and also its commitment to protecting and guaranteeing the rights of IDPs and the right to education of displaced children by ratifying the Kampala Convention.<sup>190</sup>

Since 1960, Nigeria has been a member state of the United Nations<sup>191</sup> and has ratified numerous international human rights instruments that provide for the right to education.<sup>192</sup> These include the UDHR,<sup>193</sup> the CESCRC,<sup>194</sup> and the CRC.<sup>195</sup> At the regional level, Nigeria has ratified the ACHPR,<sup>196</sup> the ACRWC,<sup>197</sup> and the Kampala Convention.<sup>198</sup> Nigeria has thus domesticated these international instruments by putting in place a national legal framework that recognises and protects the right to education for all children and in particular for IDC

#### 4.2.2 National legislation

By acceding to these international instruments, Mali and Nigeria have demonstrated their commitment to guaranteeing the right to education, including that of IDC. Article 10 of the 2023 Constitution of Mali, explicitly enshrines the right to education for all, without discrimination.<sup>199</sup> Moreover, article 11 of the same Constitution reinforces this commitment by instituting compulsory, free and secular public education for all Malians, thereby consolidating the foundations of an inclusive education system.<sup>200</sup> In line with constitutional provisions, article 4 of the Education Orientation Act states that the right to education is recognised for all Malians, without exception, including IDC.<sup>201</sup> This legislation establishes that the right to education in Mali is realised through access to education in a public or private establishment.<sup>202</sup>

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<sup>188</sup> African Charter on Human and Peoples' Rights 1986.

<sup>189</sup> African Charter on the Rights and the Welfare of the Child 1990.

<sup>190</sup> Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009.

<sup>191</sup> Growth in United Nations membership <https://www.un.org/fr/about-us/growth-un-membership-1945-present> (accessed 4 October 2024).

<sup>192</sup> EO Akingbehin 'The Justiciability of Right to free Basic Education Conundrum in Nigeria, South Africa and India: from Obstacle to Miracle' 2021 <https://dj.univ-danubius.ro/index.php/AUDJ/article/download/834/1211/3299> (accessed 4 October 2024).

<sup>193</sup> Ratified by Nigeria on 31 March 1977.

<sup>194</sup> Ratified on 29 July 1993.

<sup>195</sup> Ratified on 19 April 1991.

<sup>196</sup> Ratified on 22 July 1983.

<sup>197</sup> Ratified on 23 July 2001.

<sup>198</sup> Ratified on 17 April 2012.

<sup>199</sup> Constitution of the Republic of Mali, adopted on 18 June 2023 and promulgated on 22 July 2023.

<sup>200</sup> As above.

<sup>201</sup> Law 99-046 of 29 December 1999 on education policy, Article 4.

<sup>202</sup> As above.



Article 20 of Mali's Child Protection Code reinforces these provisions by recognising the right to education for all Malian children.<sup>203</sup>

The Constitution of the Federal Republic of Nigeria 1999 recognises and enshrines the right to education in its section 18.<sup>204</sup> The section stipulates that the government must align its policies to ensure equality of opportunity and adequate access to education at all levels for all Nigerians, including IDC. This provision also imposes an obligation on the government to combat illiteracy and to ensure, as far as possible, free, compulsory and universal primary education.<sup>205</sup> However, this provision does not directly confer a right to education on individuals, but rather requires the government to make every effort to ensure access to education. In fact, the provision on education does not appear in the Chapter on Fundamental Rights, but in the Chapter on Fundamental Objectives and Guiding Principles of State Policy. In principle, therefore, this means that the Nigerian Constitution does not recognise the right to education for individuals, but rather imposes an obligation on the executive to promote and achieve education.<sup>206</sup> However, in *Attorney General of Ondo State v. Attorney General of the Federation*, the Supreme Court recognised the applicability of socio-economic rights, including the right to education in Nigeria.<sup>207</sup> It ruled that all economic, social and cultural rights are enforceable insofar as the government has adopted laws and policies aimed at their realisation. With this decision, the Nigerian Supreme Court recognises the right to education and its justiciability for all Nigerians and IDC.<sup>208</sup>

In compliance with its obligations under the CRC, Nigeria adopted the Child Rights Act in 2003. This Act consolidates the fundamental rights of the child and, under Section 15, guarantees every Nigerian child the right to a free, compulsory, and universal basic education.<sup>209</sup> This provision reaffirms the principles of the Constitution, specifying that the government has an obligation to ensure access to education for all children, including IDC.

The Compulsory, Free and Universal Basic Education Act 2004 of Nigeria mandates all federal governments to guarantee compulsory, free, and accessible education to all children in the country, including those displaced within national borders.<sup>210</sup> This obligation applies to primary

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<sup>203</sup> Ordonnance n 02-062/P-RM of 05 June 2002 on Child Protection Code.

<sup>204</sup> The constitution of the Federal Republic of Nigeria 1999.

<sup>205</sup> Constitution of Nigeria, Section 18.

<sup>206</sup> n 193 as above.

<sup>207</sup> *Attorney General of Ondo State v. Attorney General of the Federation* 2002, 222.

<sup>208</sup> n 193 as above.

<sup>209</sup> Child Rights Act, Section 15.

<sup>210</sup> Compulsory, free and Universal Basic Education Act 2004 of the Federal Republic of Nigeria, Section 2(1).

school and the first cycle of secondary education. The law also imposes a duty on parents to ensure that their children complete their basic education, subject to criminal penalties for non-compliance.<sup>211</sup>

#### 4.2.3 Gaps in legislation

The failure to domesticate the Kampala Convention in Mali highlights a legal vacuum that weakens the protection of IDPs in a context where such protection is crucial. A national law aligned with the Kampala Convention would not only strengthen the rights of IDPs, but would also serve as a guide for the actors responsible for their protection and assistance, incorporating specific responses to the unique challenges faced by these populations. At present, Malian legislation does not cover the specific needs of IDPs, particularly in terms of education for displaced children. Furthermore, the Child Protection Code makes no mention of IDC or their right to education, leaving a rights gap for these children.

By comparison, Nigeria has introduced more structured legislation in the form of the *National Commission for Refugees, Migrants, and IDPs Act* (NCRMI),<sup>212</sup> and the *National Policy for IDPs*.<sup>213</sup> The NCRMI Act sets out specific protection and assistance measures for IDPs, as well as establishing a dedicated national commission. This legislation acts as a roadmap for IDP rights protection and assistance, providing a clear and structured frame of reference. Adopting a similar framework in Mali could thus provide a solid basis for better meeting the needs of IDPs and their children. The National Policy for IDPs, created in accordance with the recommendations of the Kampala Convention establishes a national accountability framework to protect, promote and guarantee the rights of IDPs in Nigeria.

### 4.3. Institutional frameworks and Coordination

In Mali, the right to education for IDC is shared between several state structures. Firstly, the National Department of Basic Education of the Ministry of Education is responsible for implementing and guaranteeing children's right to education. In addition to this department, the Education Sector Planning and Statistics Unit is the only body authorised to produce education sector statistics. Finally, the National Directorate for Social Development is a central structure

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<sup>211</sup> As above.

<sup>212</sup> National Commission for Refugees, Migrants and Internally Displaced Persons Act 2022.

<sup>213</sup> The National Policy on IDPs, 2021.

of the Ministry of Social Development, Solidarity and the Elderly, responsible for IDPs. These structures adopt and implement national policies in areas within their remit relating to the right to education of IDC.<sup>214</sup> In Mali, the coordination of education for IDCs is defined in the Ten-Year Programme for the Development of Education and Vocational Training (PRODEC 2)<sup>215</sup> and is carried out through four institutional frameworks:

*The Interministerial Committee*, chaired by the Prime Minister, ensures compliance with the strategic guidelines and includes the Ministers for Education, Higher Education, Employment, the Economy, Decentralisation and Town and Country Planning.

*The Steering Committee*, chaired by the Secretary General of the Ministry of Education, coordinates the implementation of the programme.

*The Technical Secretariat* prepares the working documents for the Steering Committee and works with the structures concerned, as well as the education cluster which includes UNICEF and Save the Children.

*The local authority coordination committees* monitor the implementation of the programme, in accordance with decree no. 08-095/P-RM of 21 February 2008.

In Nigeria, the National Policy for IDPs designates the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development (FMHADMSD) as the ministry responsible for the coordination and management of IDPs.<sup>216</sup> The FMHADMSD must ensure more predictable funding, strengthened coordination mechanisms, better preparedness measures, and improved common services. To do so, it must collaborate with other Ministries, Departments, and Agencies (MDAs), as well as international and national humanitarian organizations, in the framework of protecting and guaranteeing the rights and needs of IDPs. For the realization and coordination of education for IDC, the FMHADMSD collaborates with the Ministry of Education, UNICEF and Save the Children.<sup>217</sup>

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<sup>214</sup> D Boly 'National Report of the study on Obstacles to access and continuity of education for children in situations of forced displacement in the Central Sahel region Central Sahel region-Mali' 2023 <https://reliefweb.int/report/mali/mali-rapport-national-de-letude-sur-les-obstacles-lacces-et-la-continuite-de-leducation-pour-les-enfants-en-situation-de-deplacement-force-dans-la-region-du-sahel-central-2022-2023> (accessed 30 September 2023).

<sup>215</sup> Ten-Year Education and Vocational Training Development Programme (2019-2028) Ministry of National Education of the Republic of Mali [https://planipolis.iiep.unesco.org/sites/default/files/ressources/mali-prodec2\\_2019-2028.pdf](https://planipolis.iiep.unesco.org/sites/default/files/ressources/mali-prodec2_2019-2028.pdf) (accessed 2 October 2024).

<sup>216</sup> The National Policy on IDPs, Chapter 5(3).

<sup>217</sup> As above 5(3)3.

#### 4.4. Policy frameworks and National strategies

The Ten-Year Programme for the Development of Education and Vocational Training (PRODEC 2) for the period 2019-2018 was put in place with the aim of enabling every Malian to complete at least a quality basic education in order to provide the country with the skills that are essential for its emergence.<sup>218</sup> Structured around five major programmes, PRODEC 2 includes the issue of education in emergency situations and IDC in programme 5.<sup>219</sup> Mali then drew up a Humanitarian Response Plan for the period 2020-2022, which has been extended to 2024.<sup>220</sup> In 2024, the sectoral objectives for education in the Humanitarian Response Plan are to:<sup>221</sup>

- provide quality education to out-of-school children in regions affected by any kind of crisis;
- promote equitable access to inclusive education in a protective environment;
- strengthen the resilience of the education system.

In addition, in 2015 Mali adopted a National Strategy for the Management of IDPs and Returnees, the overall aim of which is to promote post-conflict stabilisation by facilitating the socio-economic reintegration of affected populations.<sup>222</sup> The strategy also includes emergency education for IDC and the provision of medical and psychosocial support.

In Nigeria, the Nigerian National Policy on IDPs, recognised and establishes that IDPs have diverse needs in the short, medium and long term; and that access to education is one of those needs that must be taken into account. Accordingly, the policy states that in the event of forced displacement, the authorities concerned should ensure that IDPs have access to free and compulsory primary education.<sup>223</sup> It also provides for the relocation of IDC to the nearest schools and the construction of schools where appropriate. The competent authority must work with the education cluster to ensure that IDC have access to education.<sup>224</sup> The policy also provides informal training for IDC who do not have access to formal education, and

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<sup>218</sup> Ten years education n 216 as above.

<sup>219</sup> n 215 as above p 7.

<sup>220</sup> 'Mali's 2020 Humanitarian Response Plan' OCHA 2020 <https://fts.unocha.org/plans/913/summary> (accessed 2 October 2024).

<sup>221</sup> 'Mali launches the 2024 humanitarian response plan' United Nations Mali 2024 <https://mali.un.org/fr/258930-le-mali-lance-le-plan-de-r%C3%A9ponse-humanitaire-2024> (accessed 2 October 2024).

<sup>222</sup> Nationale Strategic for the Management of Internally Displaced Persons and Returnees, Ministry of Solidarity, Republic of Mali, Humanitarian Action and Reconstruction of the North 2015 <https://www.refworld.org/policy/strategy/natlegbod/2015/fr/121353> (accessed 02 October 2024).

<sup>223</sup> The National Policy on IDPs, chapter 3.1.3 para 15.

<sup>224</sup> As above, chapter 3.1.4 para O.

psychosocial support and a safe environment for IDC. The Nigerian National Policy emphasises the specific health and safety needs of IDC. There are also provisions concerning the IDC with disabilities, demonstrating the interest shown in the inclusion and diversity of IDC.

Since 2016, OCHA has been working with the Nigerian government and various humanitarian partners to implement the *Humanitarian Response Plan* (HRP) in areas affected by Boko Haram.<sup>225</sup> The HRP covers several sectors, including education for IDC, and aims to improve access to inclusive basic education. It also seeks to strengthen and maintain the capacity of the Ministry of Education to plan and deliver an adequate education response in emergencies. The HRP specifically targets the educational needs of IDPs, providing immediate access to learning for out-of-school children and supporting their retention in school. It also focuses on building the skills of teachers, providing them with training including mentoring and peer support mechanisms, to better prepare them to teach in an emergency context.

#### **4.5. Implementation challenges of the right to education of IDC**

IDC education in Mali and Nigeria faces security, financial and infrastructure obstacles. These challenges have an impact on the effectiveness of IDC's right to education.

##### **4.5.1 Security Challenge**

Since 2012, Mali has been facing terrorist attacks in the north and centre of its territory.<sup>226</sup> This conflict has led to serious human rights violations and forced displacements of populations, often targeted by armed terrorist groups. Terrorist attacks target schools, teachers and even pupils. When terrorists arrive in a locality, they demand that schools close and that Malian government officials leave the area or face reprisals. To this end, teachers and pupils are kidnapped and killed.<sup>227</sup> It is the same story in Nigeria, where Boko Haram has been on the rampage since 2009. Between 2009 and 2015, at least 611 teachers were murdered and 19,000

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<sup>225</sup> Nigeria Humanitarian Response Plan 2024 <https://reliefweb.int/report/nigeria/nigeria-humanitarian-response-plan-2024#:~:text=The%20Humanitarian%20Strategy%20for%202024,through%20greater%20efficiency%20and%20effectiveness> (accessed 15 October 2024).

<sup>226</sup> 'Obstacles to access and continuity of education for children in situations of forced displacement in the Central Sahel region-Mali, UNHCR Regional Office for West and Central Africa, November 2023' Wathinotes educational systems, 2024 <https://www.wathi.org/wathinotes-education-irlande/obstacles-a-lacces-et-a-la-continuite-de-leducation-pour-les-enfants-en-situation-de-deplacement-force-dans-la-region-du-sahel-central-mali-bureau-regional-du-hcr-pour-lafrique/> (accessed 29 September 2024).

<sup>227</sup> As above.

others had to abandon their posts.<sup>228</sup> In 2018, 91 percent of internal displacements in Nigeria were caused by Boko Haram.<sup>229</sup>

In 2019, an in-depth study of education needs in north-east Nigeria highlighted the devastating impact of armed conflict on the education sector. Of the 260 school sites assessed, 28 percent had suffered damage caused by artillery fire, bullets or shrapnel, 20 percent had been deliberately set on fire, 32 percent had been looted and 29 percent were located close to areas of clashes between armed groups and armed forces. These alarming figures testify to the vulnerability of schools and the constant threat to the right to education in this region.<sup>230</sup> These acts of violence have not only deprived thousands of children of their right to education but have also endangered the lives of teachers and pupils.

#### 4.5.2 Financial challenge

In Mali, the lack of financial resources for education plans and policies for displaced children is a major obstacle to achieving the objectives. Indeed, the 2024 report on the monitoring of Mali's humanitarian response mentions that chronic underfunding is an obstacle to the implementation of interventions.<sup>231</sup> These underfunding forces humanitarian actors to make difficult choices, sometimes limiting the amount of aid available in order to favour the most vulnerable populations, particularly those living in remote areas. The report states that only 4 percent of the funding needed for education has been raised. Similarly, only 147,000 of the 1.4 million children targeted have been reached. It is well established that war generates high costs, and in times of conflict, governments' financial resources dwindle. This budgetary pressure directly affects other essential sectors, such as health and education, compromising the satisfaction of people's basic needs. This situation contributes to the underfunding and lack of budget allocated to humanitarian response.

In the case of Nigeria, the lack of funding is also a brake on emergency education for the IDC. In 2023, only 5 percent of the required funds were raised by the education cluster.<sup>232</sup> In addition

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<sup>228</sup> 'Nigeria: Northeast Children Robbed of Education' Human Rights Watch, 2016 <https://www.hrw.org/news/2016/04/11/nigeria-northeast-children-robbed-education> (accessed 4 October 2024).

<sup>229</sup> 'Nigeria — Displacement Report 24' DTM 2018 <https://dtm.iom.int/reports/nigeria-%E2%80%94-displacement-report-24-august-2018> (accessed 4 October 2024).

<sup>230</sup> SO Ezera 'Access to Education for Internally Displaced Children in IDP Camps in Nigeria' (2021) <https://beninjes.com/index.php/bjes/article/view/80> (accessed 15 October 2024).

<sup>231</sup> 'Follow-up to the 2024 humanitarian response plan-Mali' OCHA, Octobre 2024 <https://www.unocha.org/publications/report/mali/mali-suivi-de-la-reponse-humanitaire-janvier-juin-2024#:~:text=Les%20r%C3%A9gions%20centrales%20et%20du,aux%20chiffres%20de%20d%C3%A9cembre%202023.> (accessed 03 October 2024).

<sup>232</sup> Global Education Cluster-Nigeria <https://www.educationcluster.net/country/nigeria> (accessed 15 October 2024).

to the under-funding of emergency education, corruption and lack of transparency are the main challenges facing the IDC education sector. This problem was highlighted by the education cluster in one of its 2024 reports on education in emergencies.<sup>233</sup> These practices divert essential resources, reducing children's access to quality education and exacerbating inequalities.

#### 4.5.3 Access to Education

The unstable security situation seriously compromises effective access to education for displaced people in Mali. In May 2022, 23 percent of the country's schools were closed, i.e. 1,958 establishments, affecting more than 587,000 children and almost 1,000 teachers.<sup>234</sup> These school closures considerably limit access to education, particularly for IDC, who are more affected because of their vulnerability. What's more, even in IDP camps, access to adequate educational infrastructure is often inadequate. The glaring lack of teaching staff and trainers directly affects the quality of education that could be offered to displaced children, where schools are available.<sup>235</sup> At the same time, the dilapidated state of educational infrastructure and the shortage of teaching materials create an environment that is not conducive to quality learning, thus compromising the continuity of education for displaced children.

Access to education for IDPs in Nigeria is limited due to school closures and inadequate infrastructure. In Borno State, around 867 schools remain closed, and even in accessible areas, 6 percent of schools have ceased to operate this year due to conflict.<sup>236</sup> In IDP camps, access to schools is minimal: only 18 percent of households have all their children at school, while 35 percent have never enrolled their children. What's more, the infrastructure available is inadequate, with only 31 percent of schools having enough classrooms, leading to overcrowding and affecting the quality of teaching. Continuity of education is also compromised by economic constraints, with children often having to drop out of school to contribute to subsistence

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<sup>233</sup> 'Nigeria Education in Emergencies Working Group' UNICEF; Save the Children (2024) [https://reliefweb.int/report/nigeria/nigeria-education-emergencies-working-group-eiewg-sector-strategic-plan-2024-2026?\\_gl=1\\*1dqa8nr\\*\\_ga\\*MTM4MzA3NTkxMy4xNzA3NzQxMDE4\\*\\_ga\\_E60ZNX2F68\\*MTcyOTAyMDUzOS40NS4xLjE3MjkwMjEwNDMuNjAuMC4w](https://reliefweb.int/report/nigeria/nigeria-education-emergencies-working-group-eiewg-sector-strategic-plan-2024-2026?_gl=1*1dqa8nr*_ga*MTM4MzA3NTkxMy4xNzA3NzQxMDE4*_ga_E60ZNX2F68*MTcyOTAyMDUzOS40NS4xLjE3MjkwMjEwNDMuNjAuMC4w) (accessed 14 October 2024).

<sup>234</sup> n 214 as above.

<sup>235</sup> EF Sissoko 'Security Challenges and Access to Education in Central Mali: Case of the Mopti Region' (2023) p 122 <https://pasas-minka.fr/en/resources/download/561> (accessed 5 October 2024).

<sup>236</sup> 'Joint Education Needs Assessment Northeast Nigeria (November 2023)' Education Cluster <https://reliefweb.int/report/nigeria/joint-education-needs-assessment-northeast-nigeria-november-2023#:~:text=The%202023%20Multidimensional%20Child%20Poverty,promote%20early%20marriage%20and%20childbearing.> (accessed 15 October 2024).

activities. These obstacles severely limit access to a stable and appropriate educational environment for displaced children.<sup>237</sup>

## **4.6. Innovative solutions and good practices**

### **4.6.1. Mali**

In the north of Mali, nomadic schools have been set up to help people keep up with their movements. These schools are intended not only for children from nomadic communities, but also for IDC. This flexible model makes it possible to guarantee access to education, even in mobile contexts.

The *NORAD* inclusive education project, implemented by Handicap International in collaboration with the Malian government, supports the education of 200 refugee and displaced children, promoting their inclusion in 33 mainstream schools and six special schools. In addition, thanks to Handicap International's *Inclusive Education in the Sahel* and 'Inclusive Safe-school' projects, 350 internally displaced and refugee children have benefited from access to education in a safe environment adapted to their specific needs.<sup>238</sup>

Another essential aspect is the regular collection of data on IDPs and IDC conducted by the International Organization for Migration (IOM) and the Malian Ministry of Health. This data provides an accurate overview of the situation, enabling the authorities and organisations to take more appropriate decisions to overcome the obstacles to education. On average, these data collections are carried out twice a year in localities hosting IDPs and include information on the reasons why children do not have access to education in their host areas. For example, in 2023, data collection on the education of IDPs showed that 52 percent of camps in Mali have some IDPs attending school<sup>239</sup> compared to 49 percent in 2022.<sup>240</sup> It can be observed that the situation has slightly improved, and this observation is possible thanks to data collection. These statistics make it possible not only to monitor progress, but also to target interventions where

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<sup>237</sup> As above.

<sup>238</sup> 'Inclusion-Mali' Global Education Monitoring Report 2022 <https://education-profiles.org/sub-saharan-africa/mali/~inclusion> (accessed 01 October 2024)

<sup>239</sup> DTM Report-Mali April 2023 [https://db.dnds.ml/media/reports/DTM\\_Avril\\_2023\\_F5OJJvM.pdf](https://db.dnds.ml/media/reports/DTM_Avril_2023_F5OJJvM.pdf) (accessed 4 October 2024)

<sup>240</sup> DTM Report-Mali August 2022 [https://db.dnds.ml/media/reports/DTM\\_Aout\\_2022.pdf](https://db.dnds.ml/media/reports/DTM_Aout_2022.pdf) (accessed 4 October 2024)



they are most needed. Ongoing data collection also helps to detect trends and gaps, and to direct resources towards projects that facilitate equitable access to education for displaced children.

#### 4.6.2 Nigeria

In an effort to improve coordination in the area of emergency education for IDC, the Nigerian government adopted a number of texts starting in 2021. These are legislative texts that clarify and specify the roles of the various institutions involved in the administration and coordination of this area. This is one of Nigeria's major victories in realising the right to education for IDC. The first text is the National policy on IDPs as we saw above.<sup>241</sup>

The second text is the National Commission for Refugees, Migrants and IDPs Act which establishes a commission for the protection of the rights of IDPs as well as the rules coordinating relations between the commission and other institutions.<sup>242</sup> The commission is responsible for providing solutions for IDPs, especially IDC,<sup>243</sup> by collaborating with other MDAs for IDPs and IDC<sup>244</sup> and by establishing regulations and guidelines.<sup>245</sup> Although it has a function of protecting rights, the commission is also empowered to provide temporary humanitarian solutions to improve the living conditions of IDPs and IDC.<sup>246</sup> The commission also advises the government and MDAs on the rights and needs of IDPs, while developing and organizing programs for the protection and promotion of the rights of IDPs.

### 4.7. Lessons learned

Burkina Faso could draw inspiration from Mali's initiative on nomadic schools, designed to follow the movements of communities. This flexible and adapted approach enables IDCs and nomadic children to continue their learning despite frequent displacement.

The NORAD and Inclusive Education in the Sahel projects are inclusive education projects that aim to create an educational environment accessible to all, addressing the specific needs of IDC and the marginalised. By adopting similar initiatives, Burkina Faso could strengthen access to education for IDC, thus ensuring continuous education adapted to the realities of their living conditions.

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<sup>241</sup> n 31 as above.

<sup>242</sup> n 30 as above, sections 1,2&3.

<sup>243</sup> As above, section 28(1)a.

<sup>244</sup> As above, section 28(1)b.

<sup>245</sup> As above, section 28(2).

<sup>246</sup> n 30 as above, section 29(3).

The practice of collecting data every two years, which is considered good practice in Mali, could be particularly beneficial for Burkina Faso. By adopting a similar approach, Burkina Faso could strengthen its monitoring of IDC and improve education planning based on real needs on the ground. Regular and targeted data collection would help to better understand the situation of IDPs and to develop appropriate responses to ensure more effective access to education for these vulnerable children.

Finally, Burkina Faso should adopt Nigeria's example and enact legislation that clearly defines the rights and needs of IDPs, particularly those of IDC. Furthermore, in order to improve the coordination of interventions in favour of IDPs and IDC, Burkina Faso should put in place a law that designates the different actors and their role in the humanitarian response and regulate relations between the various national entities involved in the humanitarian field and IDP management.

#### **4.8. Conclusion**

This chapter draws lessons from the experiences of Mali and Nigeria in realising the right to education for IDC. For Mali, the legislative, policy, and strategic framework that has been put in place was examined, showing that the country has developed strong strategies to enable access to education for IDC. This analysis revealed that Burkina Faso could benefit from adopting and implementing strategies similar to those of its Malian neighbour, but with a greater focus on ensuring their funding.

Regarding Nigeria, it is evident that the country has put in place solid legislation and created institutions in the hope of protecting and realising the right to education for IDC. However, the lack of coordination and collaboration among these institutions hinders the achievement of education goals for IDC.

## Chapter 5: Conclusion and Recommendations

The aim of this research was to determine whether Burkina Faso is complying with its obligations to fulfil, respect and protect the right to education of IDPs and IDC. After analysing the international obligations and standards to which the State is subject, and the measures put in place to comply with them and ensure the effectiveness of the right to education for IDPs, the study concludes that the right to education is not fully realised in Burkina Faso.

In fact, the country does not fully comply with international and regional standards relating to education for IDPs, thereby compromising the attainment of this fundamental right. Although free and compulsory education has been introduced in state schools, the lack of infrastructure is a major obstacle for IDPs. Furthermore, Burkina Faso has not brought its legislation in line with its international commitments to protect the rights of IDPs and IDC. Secondly, the State spends more money on fighting terrorism than on assistance and the realisation of the rights of IDPs and IDC. Thirdly, the research has enabled the understanding that the failure of Burkina Faso to provide education for IDPs is also due to the social and cultural burdens placed on internally displaced girls in particular. These include the phenomena of forced marriage and early marriage of girls.

In addition, although remedies exist for failure to respect IDPs' right to education, the reality is quite different. The people of Burkina Faso have little confidence in their judicial system, and the geographical remoteness of judicial institutions accentuates the lack of justiciability of IDC's right to education.

This research takes into account the experiences of Mali and Nigeria which, like Burkina Faso, are facing the displacement of their populations as a result of terrorism. The Malian experience shows that the country has put in place innovative strategies and programmes to guarantee access to education for IDPs. With regard to Nigeria's experience, we note that the country has established institutions to assist and protect the realisation of IDPs' right to education. In addition, Nigeria has a strong legislation for the protection of IDPs and the right to education for IDPs. Nigeria has brought its legislation into line with its international obligations, both in terms of education and the protection of IDPs' rights.

Finally, the analysis of the causes of failure in the realisation of the right to education, as well as the lessons learned from the experiences of Mali and Nigeria and the recommendations that follow, can contribute to strengthening the effectiveness of the guarantee of this right for IDPs in practice.

## Recommendations

Burkina Faso must bring its practices into line with international standards for the protection of IDPs' right to education. To achieve this, it is essential that:

The Burkina Faso parliament:

- Adopts a children's code that includes the rights of IDPs.
- Adopts a law on IDPs to comply with Burkina Faso's international commitments to protect IDPs rights and prevent forced displacement.

The government and ministries must

- Ensure the accessibility, availability, adaptability and acceptability of free and compulsory primary education for all IDPs.
- Protect IDPs' right to education against interference from armed terrorist groups and socio-cultural obstacles, such as child marriage, that prevent children from attending school.
- Include in its annual budget a budget earmarked for education in emergency situations, to be used for the education of IDPs.
- Create an institution to assist and protect IDPs and IDC.
- Ensure that IDPs have access to psychological support to help them overcome trauma.
- Support the issuing of civil status documents for IDPs who do not have them.

The Ministry of Education should:

- Build more public schools to promote access to free education for IDPs, and ensure that these schools are built close to IDP camps and housing sites.
- Increase the capacity of schools by building new classrooms (temporary or permanent).
- Adopt all necessary measures to reduce drop-out rates among IDPs.
- Mapping IDP pupils by school to better identify the movement or trajectory of IDC so that they can be better monitored.
- Develop innovative teaching approaches to meet the specific educational needs of children living in areas under the influence of armed groups. In close collaboration with local communities, it would be appropriate to adapt existing programmes, particularly those taught in Koranic schools, in order to guarantee access to quality education and broaden the knowledge of these children.

- Recruit more qualified teachers and train them in inclusive education, taking into account the educational needs of IDC.
- Include public schools that take in IDC in capacity-building initiatives linked to the teaching methods developed in emergency situations.
- Ensure that there are no related schooling costs for IDC, such as the cost of school uniforms or fees for parents.
- Provide school supplies and equipment to IDC.
- Ensure that all IDC have access to school food. A study carried out by JENA showed that running school canteens contributes 13 percent to making the school environment an enchanting one.<sup>247</sup>
- Set up special school programmes for nomadic IDC such as mobile schools, so that these children still have access to education even during their migration. These schools could be equipped with appropriate teaching materials, and teachers trained to work in contexts of crisis or displacement could be assigned to them. As well as ensuring continuity of education, mobile schools could also provide a safe space for children.
- The Ministry should promote and expand distance learning programmes such as radio, prioritising them in areas of high-security challenge, to enable children trapped in terrorist-occupied localities to access education.
- Providing IDC with educational tablets containing offline teaching resources, as is done in Ghana with the Asanka tablets.<sup>248</sup> These tablets enable pupils to learn without an Internet connection, with content adapted to their level.
- Provide solar lamps in certain areas to enable IDC to study at night.

Civil society organisations should:

- Organise more advocacy in favour of IDPs rights and IDC right to education
- Raise awareness among local people and inform IDPs of their rights.
- Offer and organise free legal advice to IDPs who intend to take legal action to seek redress for the harm they have suffered.

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<sup>247</sup> n 1 as above.

<sup>248</sup> FJ Cava 'Ghana: Learning online even without internet access' 2023 <https://www.globalpartnership.org/blog/ghana-learning-online-even-without-internet-access> (accessed 05 November 2024).

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