



Dedicated to people-centred justice

# **Access to justice in areas of Burkina Faso with high security challenges: Cases of Nouna, Fada N’Gourma, Bogandé, Diapaga and Dori**

## **Executive summary of the report**







This study addresses the issue of access to justice in the context of current terrorist violence in Burkina Faso, focusing on populations that are themselves hard-to-reach and for whom physical access to a court becomes difficult if not impossible, thus relying essentially on traditional justice mechanisms. This study not only fills a research gap, but poses a new challenge to thinking about access to justice.

## The Mission

The current situation of insecurity, which has disrupted the normal functioning of justice services and led to the closure or relocation of certain judicial instances, has had a considerable impact on the ordinary life of these populations. The aim of the study is to map the justice problems that emerge or are exacerbated as a result of the vacuum left by the departure of the State's control and surveillance services, to identify and question both the types of conflict that emerge in the communities and the social categories that become vulnerable in the absence of this State regulation, as well as to identify the ways in which disputes are managed. These findings will give rise to recommendations that will be annexed to the report, and be applicable not only to target communities that no longer have access to justice, but also to those populations in areas where

remoteness from justice services has always existed. Finally, this study will inform and align with the priorities of the Ministry of Justice on access to justice for hard-to-reach populations.

## Methodology

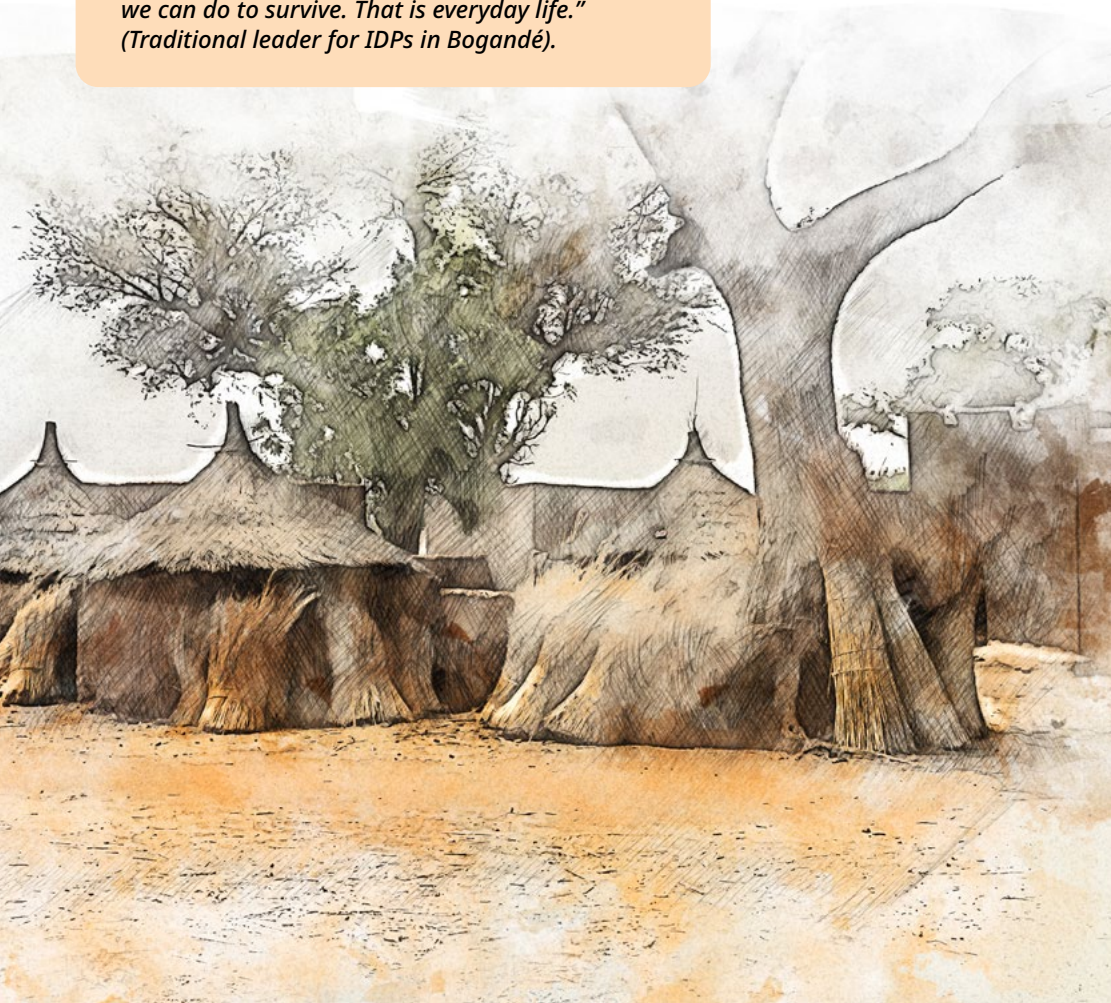
The initial phase of the study lasted approximately ten days, and involved collecting diverse information on the different locations and relevant stakeholders. This information gathering aimed to ensure the research tools were optimally suited for the specific context of the study.

To minimize the various risks associated with the security situation, interviewers were recruited based on their residence within the survey areas, and the training took place via WhatsApp conferences. Data collection for the field survey involved 05 localities in 03 regions of Burkina Faso, among those most affected by the security crisis. These included the région de l'Est, with the towns of Fada N'Gourma, Diapaga and Bogandé; the Sahel region, with the town of Dori; and the town of Nouna in the Boucle du Mouhoun region. The field survey was initially planned for three weeks but extended significantly beyond that timeframe, beginning with the exploratory phase. For this study, a total of 330 individual interviews and 20 focus groups were conducted.



## 1. The current context underscores the urgent need to address the psychosocial and intercommunity divide created by the security and humanitarian crisis

*"At night we don't sleep, we only think about what we can do to survive. That is everyday life."  
(Traditional leader for IDPs in Bogandé).*



The advent of GAT (Armed Terrorist Groups) violence in the affected localities has led to an upheaval in individual and collective modes of existence, the scale of which is often underestimated from secure urban centers. The ruptures are often so violent and painful that people living in these areas feel as if the world around them is collapsing.

Terror sets in when you've experienced an encounter with the GAT, or when the fear of their incursion into the locality where you've taken refuge dominates your daily concerns. In affected localities, the disruption of ordinary existence makes it impossible to project into the future.

In addition to the violent loss of human life, the terrorist crisis has disrupted the economy. The GAT have prevented farming activities, forcing women to ensure the survival of their families. This new reality calls for vocational retraining and the search for capital to support income-generating activities.

Many localities are also experiencing an influx of internally displaced persons (IDPs). To grasp the depth of distress experienced by these displaced populations, we must understand they abandoned their homes and villages in a great hurry and with tremendous fear, fleeing for their lives.

The Social Action department of the Ministry of Humanitarian Action and certain non-governmental organizations are confronted with cases of psychological disorders on a daily basis. The first measure taken after the IDPs have been counted and identified is to provide psychosocial care by trained social workers. However, given the extent of the traumatic dimension of the events experienced by IDPs and the communities faced with insecurity, the question of psychological trauma is likely to become one of the central issues of the post-crisis period.

## The problems of coexistence are a source of tension and latent conflict

*"With the arrival of the IDPs, there are certain IDPs who indulge in activities that are not to the liking of the local populations, such as the abusive cutting of green wood, the collection of sand (...) which concerns the destruction of the plant cover, the abusive collection of sand and rubble. That came with the crisis...just as the disputes arising from the management of water sites are due to the security situation, particularly with the massive arrival of IDPs"*  
(Member of the Special Delegation, Bogandé).



The cohabitation of diverse social groups generates a range of problems that vary in intensity from one locality to another. Dori, Fada N’Gourma and Nouna host populations, while Bogandé and Diapaga are places of arrival and departure. Land conflicts (theft of livestock, fraudulent sales, exploitation of land) are frequent, exacerbated by the scarcity of land and demographic growth due to the security crisis. The influx of IDPs puts pressure on common resources, leading to confrontations over their use. Notwithstanding the well-known hospitality of Burkinabè communities, the crisis, marked by scarcity, hunger, and moral distress, has put their impetus for hospitality to the test.

Neighborhood problems have been identified and may be explained by the arrival of internally displaced populations with differing cultures and habits, leading to tensions linked to lifestyles and negative perceptions of these differences, particularly in terms of hygiene and encroachment on living space.

Lastly, the insecurity caused by the GAT has profoundly destroyed the social fabric, creating widespread mistrust between individuals and communities. The GAT strategy of attacking certain villages and sparing others, creates suspicion and tension between communities. This atmosphere of suspicion translates into mutual fear, social isolation and a reluctance to interact, even between neighbors. This situation is further exploited by some to settle old disputes and spread malicious rumors, further damaging social cohesion and potentially complicating the return to peace.



## 2. The dysfunction of the public justice system reveals the need to adapt and streamline legal procedures

*"The concerned person may come in the morning for a simple rectification, and it happens that until the very evening he can't see the prosecutor, because the list is so long that he may leave without [seeing him]. It's heartbreaking! The visits are a real problem. There are people who have their children, their parents there, but it's difficult for them to go and visit...we don't even have time to receive them...it's so crowded"*  
(Judicial actor).



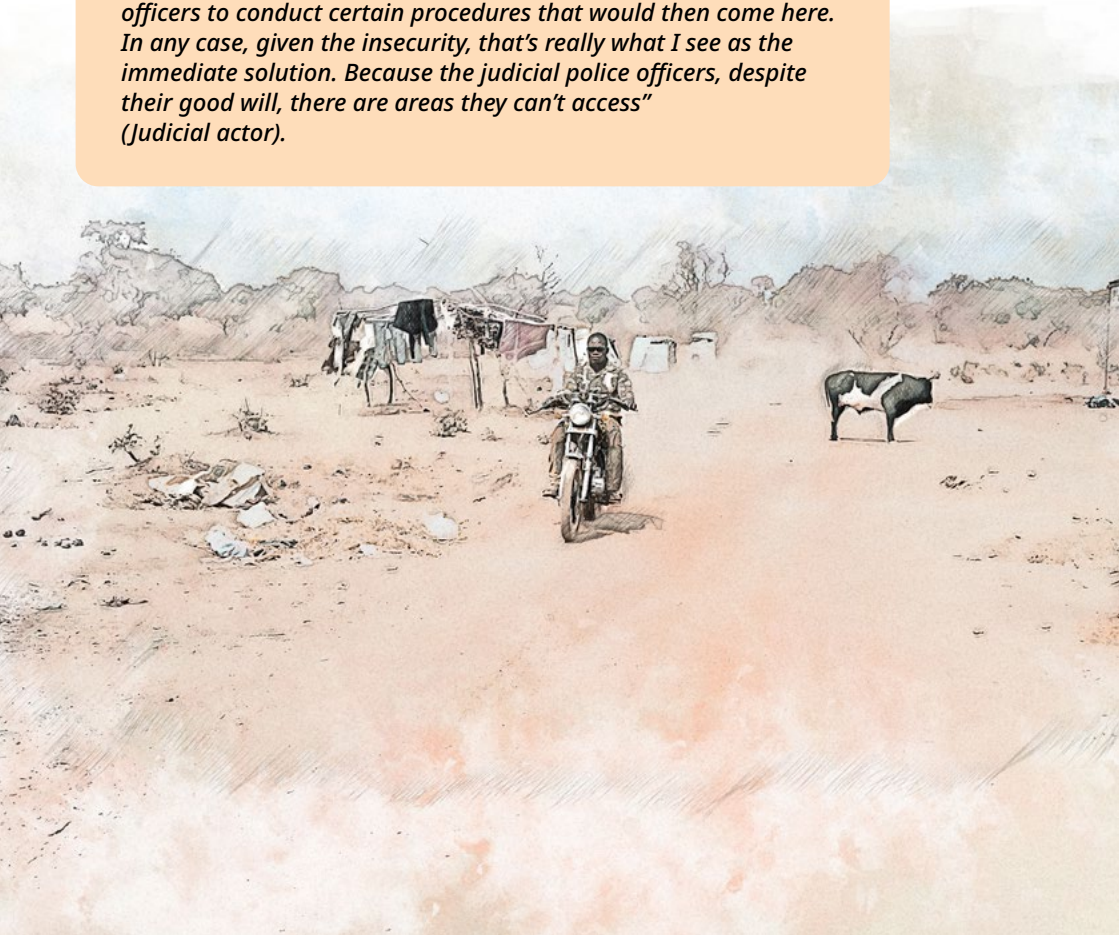
The direct threats and incursions of the GAT have gradually made working conditions untenable for the Bogandé, Diapaga, Dori and Nouna High Courts (TGI), leading to their relocation to safer areas. This dysfunction of the judicial services has direct repercussions on the ability to maintain law and order in the affected localities. The difficulty of conducting hearings and investigations in order to hold trials has led to a significant increase in the number of people detained in prisons. At the same time, the reduction in the number of court staff, forced to rotate, has made it difficult for prisoners' families and relatives to exercise their visiting rights.

The crisis has also led to the virtual suspension of the legal aid system, which is crucial for vulnerable people's access to justice. The malfunctioning of the district courts, due to threats and relocation, has disrupted the procedure for applying and granting legal aid. The scarcity of cases can be explained by the decline in economic and social activity, but above all by practical difficulties linked to security. Thus, although theoretically available, legal aid is de facto inaccessible in the areas most affected by insecurity.

This delocalization has led to a reorganization enabling the work of justice actors to continue, at least in those segments of the judicial chain which can be accommodated. For minor offences such as theft, out-of-court settlements under the supervision of the police or gendarmerie are tending to develop. Whereas for more serious crimes, where arrest and transfer are risky, public action is initiated but the execution is deferred, pending military operations to secure the arrest. Although pragmatic, these solutions can lead to a feeling of impunity or impotence of justice among the population, representing a real dilemma for judicial actors and potentially harming the public order.

### 3. Faced with the challenge of delocalization, it is imperative to pursue and deepen digitalization efforts

*"The advantage of [Name of locality], is we're lucky that the telephone networks work, the internet works. So we work with the judicial police officers. The State provides a mechanism, we provide a mechanism...so we can easily do our hearings without any problem...we know there's a room dedicated to hearings...we do videoconferencing, and that allows the judicial police officers to conduct certain procedures that would then come here. In any case, given the insecurity, that's really what I see as the immediate solution. Because the judicial police officers, despite their good will, there are areas they can't access" (Judicial actor).*



Similar to the challenges posed by COVID-19 in 2020, the current insecurity situation necessitates that administrations within the TGI demonstrate adaptability and inventiveness. For justice matters, in addition to the isolation of actors, there is the question of the conditions of normative validity of acts and procedures. How can we guarantee the legality of an act produced according to new methods that have not yet been integrated into recognized procedural provisions, in this case the use of NTIC (New Information and Communication Technologies)?

In response to these difficulties, the TGI are looking for innovative solutions, such as videoconferencing for remote hearings, to overcome the isolation of the actors and the challenges associated with relocation.

While the telephone is already a central communication tool between the public prosecutor's office and judicial police officers, its use for formal hearings raises questions of legal validity and authenticity of the minutes of the proceedings. However, the implementation of these innovative solutions depends on the reliability of the network and quality of the equipment.

In addition, important legal questions have arisen concerning the recording of hearings, the publicizing of proceedings and the assistance of counsel to their clients at a distance, requiring in-depth reflection to guarantee the efficiency and fairness of justice in this new context.



#### 4. The scale of the needs and expectations for justice that are emerging today demonstrate the need to strengthen existing community justice systems

*"I wanted a criminal record and a certificate of nationality. But I had to go to Fada to get these documents. At the time, the roads were still passable. Had I been delayed, I wouldn't have been able to sit my exam. If the courts were there, I'd get the documents quickly and go and sit my exam"*  
(Male, DI, student, resident, Diapaga).



The relocation of the courts not only means the loss of an administrative service, but also the absence of an institution essential to social order. Justice needs in these areas include access to administrative documents and dispute resolution. Access is no longer a question of physical distance from the courts, as even people living close to relocated tribunals have difficulty getting there safely. This situation directly affects citizens in urgent need of official documents such as certificates of nationality and criminal records, bringing them face-to-face with the reality of relocation.

The crisis has also exacerbated gender-based violence (GBV) both within and outside families. The precariousness and tensions linked to the security crisis have led to domestic violence, with women as the main victims of their husbands' distress, leading to an increase in divorce rates. Religious leaders try to keep couples together, while human rights organizations note that intra-family GBV is often managed at community level. Women also suffer assaults outside the home, often by members of armed terrorist groups during their travels, leaving them traumatized and without immediate recourse to justice. In addition, a local practice of female abduction, sometimes consensual, exists between communities, including internally displaced populations. Although culturally rooted, this practice

constitutes violence against young girls and wives, giving rise to family conflicts and requiring the intervention of state services for mediation.

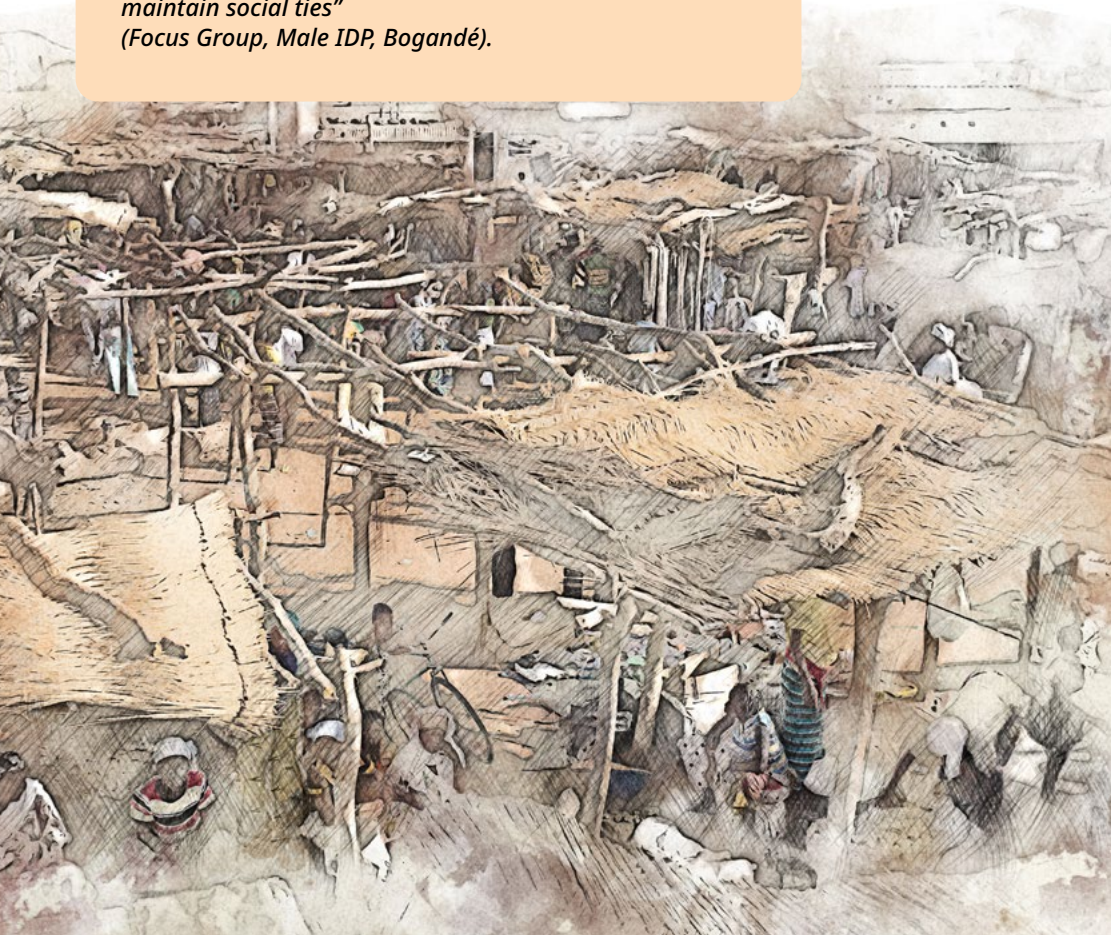
The absence of the courts is keenly felt by the local population, who find themselves deprived of recourse to settle their disputes. The police and gendarmerie, who are the first point of contact, are limited in their actions without the relay of the public prosecutor, which can lead to a feeling of impunity and encourage certain reprehensible behaviors. What's more, the feeling that the justice system is absorbed by major security problems leaves minor interpersonal conflicts unresolved. The impossibility of bringing people to trial quickly on remand, due to the relocation of the courts, also creates a sense of injustice. Finally, arrests carried out without any information on the charges, places of detention or responsible authorities give rise to deep anguish and a feeling of total lack of recourse for families. The lack of communication about the fate of those arrested is particularly painful and experienced as a daily injustice.

The consequences of this limitation of legal action, where the absence of the courts forces us to remain at the stage of the police or gendarmerie, while waiting for better days, give rise, according to some, to a feeling of impunity.



## 5. In a context of high insecurity, social regulation through mediation, conciliation and intercession promotes the integration of customary mechanisms within the justice system

*"In the name of cohesion, I'll go and see the chief first, so that he can try to resolve the problem, which will help maintain social ties"*  
(Focus Group, Male IDP, Bogandé).



In the absence of courts in the areas studied, peacekeeping relies on traditional figures, notably elders, the family and "wise men", whose role is reinforced. These authorities mainly settle intra-family conflicts and property disputes. The family remains the first port of call in the event of difficulties or incidents requiring help and support, appearing as an essential refuge in distressing situations. Religious figures also constitute another regulatory mechanism, helping to maintain or re-establish peaceful relations within localities, notably through mediation.

With displacement, we see the emergence, in addition to the customary authority, of the figure of the state administrative structure, in this case the Social Action department, and the police or gendarmerie. In fact, the Social Action department and human rights organizations are the main recourse bodies for IDPs.

Beyond these forms of recourse, there are specific regulatory "mechanisms" in certain localities, whose mode of operation is semi-formalized. The Conseil de dialogue et de médiation (CDM), for example, was created in the eastern region at the onset of the security crisis by elders and resource persons to prevent clashes and maintain social cohesion. It brings together leaders of the community's main religions, as well as representatives of social groups (rougas, youth, women, farmers,

customary chiefs, FDS, VDP). The CDM acts as a mediation and conciliation institution, organizing spaces for dialogue and training young people in the tools of social networking to counter violent messages and spread messages of peace.

Certain localities, such as Diapaga, have been able to maintain their customary "wise men" body. This body is specifically dedicated to settling disputes submitted to the customary chieftdom. The Diapaga Vestibule existed long before the security crisis, but its function was reinforced by the upheavals in the locality. The Vestibule was established to strengthen social cohesion and cultivate a sense of togetherness between different social strata, in a context of traditional and security challenges. It brings together old and young from different lineage classes, traditional chiefs and community leaders, thereby seeking a balanced representation of society.

While not considered a mediation body in the strict sense of the term, the police and gendarmerie, in the absence of the TGI, are very often called upon to play a mediation or dispute resolution role, which seems to suit the context of these high insecurity areas.

The Social Action department of the Ministry of Humanitarian Action has had to occupy a multifunctional position. Already on the front line in welcoming IDPs and organizing food aid and support, the Social Action



department gradually took on a role in mediating, conciliating or guiding the resolution of conflicts that arose both between IDPs and between them and the local population, while continuing its traditional activities of managing issues relating to the difficulties encountered in families and homes. The Social Action department usually receives complaints about various problems arising in the course of married life, or cases of GBV. It is usually when the problems cannot be resolved within the family that the Social Action department becomes the second port of call. In this way, those services are at the heart of various mediation, conciliation and referral initiatives.

The crisis situation that forced the relocation of the courts and saw customary authorities take over the role of justice and regulation, appears in this respect as major proof of the vitality of customary authorities and systems in village areas. Although strong when it asserts itself, the recognition of legitimacy in the traditional environment can be complex and sensitive. When it is called into question, an uncertain future emerges. However, the situation of vagueness and conflictuality in the

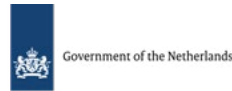
traditional world always constitutes a danger of deflagration, because rules and mechanisms are always flexible and open to interpretation (this is the essential characteristic of customary norms). Today, the need for justice reform cannot be disputed. Yet the problem is not to choose between one system or the other (customary or modern). Modern law expresses a dimension of coexistence that is the result of historical experiences of nation-building, involving the renunciation of certain values, principles and practices of the past, and stemming from multiple compromises between communities and between the desire to preserve ancestral cultures and the need to build a modern Burkinabè identity.

**Link to the full report (in French)**





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