



An Arrest in Burkina Faso

General Information

The information contained in this document is provided for guidance only. Although some of the information concerns legal issues, this should not be taken as legal advice. Questions concerning the interpretation of the laws of Burkina must be addressed by specialists, including lawyers and jurists in Burkina Faso.

Being arrested in a foreign country in general can be a frightening experience because of the uncertainty about how the criminal justice system works. If you are arrested, the consular officer at the U.S. Embassy will visit regularly and follow your case to ensure your health and safety.

It should be noted, however, that while you are staying in Burkina Faso you are subject to the laws of the country. If at any time you happen to be faced with a problem of justice, the Embassy cannot represent you or intervene in your case while proceedings are ongoing through the judicial system. We encourage you to hire a lawyer who will look after your interests. The Embassy cannot recommend a particular lawyer, but it can provide you with a list of local lawyers registered with the Burkina bar association.

Judicial Procedure in Criminal Matters in Burkina Faso

Laws and regulations of Burkina Faso in criminal matters apply equally to any person who commits an offense in Burkina Faso, whether the person is of foreign nationality or is Burkinabè. If arrested you might not have the same protections you would have had if in the United States, but you should not be treated in a discriminatory manner because of your nationality.

Any violation of the criminal law is punishable by either a fine or by imprisonment, or both. Some penalties may be subject to expulsion; a ban on residing in or visiting Burkina Faso. U.S. citizens arrested in Burkina are subject to Burkina Faso's court proceedings for arrest, prosecution, and judgment.

Your Rights

The law of Burkina Faso gives you certain rights while your judicial proceedings are ongoing. For example, you have the right:

- ❖ To be visited by a consular officer of the United States after your arrest. While your case is ongoing, a consular officer will visit you periodically to ensure your safety and your health. He/she may act as an intermediary for the exchange of letters or other communications between you and your loved ones. The Embassy can also arrange a trust account where your friends/relatives can deposit money that can then be disbursed from time to time to pay all the expenses you would be facing.
- ❖ To have a lawyer who will give you the necessary assistance in accordance with applicable laws. The lawyer should explain the rules of procedures required by law and the possibilities and conditions of bail with or without sureties that can be offered to you.

- ❖ To have reasonable medical care during your detention in police custody or in a prison.
- ❖ To visits in accordance with applicable prison regulations.

Article 36 of the Vienna Convention provides that the host government must notify a foreign national arrestee without delay of the arrestee's option to communicate with his or her consular officials and must notify the consular officials without delay if the arrestee so requests. However, it is up to you to make it known that you are a U.S. citizen. In the case of persons with dual nationality (that is they are citizens of the United States and Burkina Faso), consular officers do not have a right to consular access, however the host government will likely contact the U.S. Embassy as a courtesy if the arrested person makes their U.S. citizenship known.

Arrest

Depending on the needs of the investigation, police officers can question you and hold you in custody for up to seventy-two hours, even without a warrant. This period may be extended for an additional forty-eight hours with the authorization of the Attorney General. At the time of your arrest, the police will inform you of the reasons of your arrest and the presumptions that affect you. The police will also proceed with taking testimonies of any person who can provide information on the facts.

Seventy-two hours after being in custody, you have the right to request a medical examination.

Prosecution

After your arrest, the police will prepare a report of the preliminary investigation which includes your testimony and that of any witnesses or victims. They will also prepare a summary of the alleged facts against you, as well as the nature of the offense. You will be asked to read your statement and make observations, if necessary, before signing.

Once the police investigation is complete, you will be brought before a magistrate, namely the Attorney General (Procureur du Faso), who will review your case. The Attorney General can either close your file without further action, in which case you will be released; or he can prosecute you. In the case that you are prosecuted, he can release you, detain you until the day of the trial, or send your case to the judge. The judge may release you or issue a warrant to send you to prison for the purposes of his investigation. During this period, you have the right to make requests for bail, but generally a judge will not release you if he/she suspects you may leave the country. When you go before the judge, you must express any concerns you may have about your health, safety, treatment by the police, etc.

It is strongly advisable to hire a local lawyer to help you with your case. Attorneys' fees in Burkina Faso vary, but are usually reasonable compared to U.S. rates. However, if you cannot afford the services of a lawyer when you are judged for criminal acts, the Burkina Faso government shall appoint a lawyer to defend you.

Judgment

Once you are brought before the judge, a trial usually takes place the same day, unless one of the parties requests dismissal for a reason that the judge finds acceptable. In the United States, many cases never go to trial because the defendant can enter a “plea bargain” with the Attorney General. However, plea bargaining is generally not allowed in Burkina Faso. Therefore, once the file is enrolled for the trial, the defendant is tried and the verdict can be delivered the same day or at a later time.

Conviction

If you are found not guilty, you will be released. If you are found guilty, the judge will sentence you. The law prescribes a minimum sentence and a maximum sentence for each offense. If you are sentenced to time in prison, you will be credited with the time spent in custody before trial.

Appeal

After the verdict, you have the opportunity to appeal within fifteen days. An appeal is introduced in the form of a statement addressed to the clerk of the court where the trial took place. If you are detained, you can send your intention to appeal through the superintendent of the prison or your lawyer can submit it on your behalf. The Court of Appeal will retry your case and may either confirm the decision of the trial court, or reverse it. However, because the law has not made any provisions regarding the period of time within which the Court of Appeal must rule, before forwarding a case to the higher court, the lower court judge first writes up the court decision, and a clerk then gets the file in order. Therefore, in practice, it may take a relatively long time before the Court of Appeal rules on a case.

Prison Conditions

In Ouagadougou, there are two prisons; the “Maison d’Arrêt et de Correction de Ouagadougou” (MACO) and the high security prison. Every major city has a prison. Life in prison in Burkina Faso is very different and might shock you. All of the country’s prisons are overcrowded with poor living conditions and hygiene. As in most prisons, one’s safety is a daily concern for inmates. Please tell the consular officer if you are mistreated or abused.

Food and Amenities

Only one meal is served daily, which is prepared by prisoners. However, parents or friends can bring food to inmates. The Embassy can, if necessary, provide nutritional supplements, newspapers, or magazines to you. In the case that you have a specific diet, the Embassy will ensure that you have nutritional supplements and/or prescribed medications as necessary.

Visits

You have the right to be visited in compliance with applicable prison regulations. Visitors must have a permit issued by the Attorney General or the judge, as appropriate. The consular officer will visit you regularly (usually once a month) to ensure that your case is ongoing and to ensure your well-being. The consular officer will also speak to your lawyer to stay informed of the overall status of your case file.

Transportation

The prison will provide transportation for you from place of detention to the court or the judge/Attorney General's office.

Release from Prison

The judge can release you before the day of your trial. Otherwise, if after the trial you are acquitted or sentenced to a term of imprisonment with suspension, you will be released the same day. Otherwise, you will be released after completing your sentence.