

The rights of an accused or suspect



The constitution of Zimbabwe provides that a person accused or suspect of a crime has the right to be presumed innocent until proved guilty.¹[1] Whether he committed that offence or not is a matter to be determined by a court, and until that happens the presumption of innocence operates in his favour.²[2] The rights of an accused or suspects in relation to; arrest, remand, bail, trial and post-trial are discussed in this article.

Rights When Arrested

The rights of an arrested person are provided for in the Criminal Procedure and Evidence Act Chapter 9:07 (CPEA) and the Constitution of Zimbabwe Amendment (No. 20) Act.

1. Once arrested you have the right to be informed of your rights as well as the reason why you are being arrested in terms of section 50(1)(a) of the Constitution.
2. You are allowed without delay to make a call to either your spouse, relative, or lawyer and to consult privately with a lawyer or doctor as provided for under Section 50 (1) (b) of the Constitution.
3. You have the right to remain silent. The right to silence means that you must not be compelled to make a confession or admission as protected under section 50(4) of the Constitution.

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4. You have a right to liberty. Section 50(2) and (3) of the Constitution and Section 32 (2) of the CPEA provide that an arrested person must be released within 48 hours after their arrest unless they have been released earlier or brought before a court.
5. If you are arrested or detained for the purpose of bringing you before a court; or for an alleged offence and are not released you must be brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest took place or the detention began, as the case may be, whether or not the period ends on Sunday or a public holiday as provided for in Section 32 (3) of the CPEA.
6. Section 39A of the CPEA provides that where for purposes of assisting the police with an investigation a person attends voluntarily at a police station or charge office or voluntarily accompanies a police officer to a police station or charge office without having been arrested—they shall be entitled to leave the police station or charge office at will unless they are placed under arrest. In which case they shall be informed promptly that they are under arrest if a decision is taken to arrest him or her on reasonable suspicion that he or she has committed an offence.
7. When it is desired to search or examine the body of a woman in terms of this section, such search or examination, unless made by a medical officer, shall be made only by a woman and shall be conducted with strict regard to decency and, if there is no woman available for such search or examination who is a police officer or a prison officer, the search or examination must be made by any woman specially named for the purpose by a peace officer.³[3]
8. Any finger-prints, palm-prints, footprints or photographs and the records of any steps taken during the arrest shall be destroyed if you are found not guilty at trial or your conviction is set aside by a superior court or the Prosecutor-General declines to prosecute you or the charge against you is withdrawn.⁴[4]
9. If detained following an arrest you have the right to be visited by anyone you choose including your lawyer under section 50(5)(c) of the Constitution.
10. You have the right to be given adequate time and facilities to prepare a defence in terms of Section 70(1)(b) of the Constitution. This encompasses the right of your defence lawyer to be given adequate time to prepare the defence and to request a postponement of the case where more time is reasonably required to prepare the defence.

Remand

Remand is a request made by the state when it is not yet sufficiently prepared to bring a case to trial due to ongoing police investigations. The State may request that the accused or suspect be remanded either in custody or out of custody. Section 165 of the CPEA provides that any court before which a criminal trial is pending may, if it is necessary postpone trial from time to time. However, the magistrate may not order the postponement of a trial for a period in excess of fourteen days without consent from the accused.

During remand proceedings the State must allege facts that constitute a crime and justify a reasonable suspicion that the accused committed the crime.⁵[5] Despite the onus to prove reasonable suspicion being on the State, it does not have to show guilt beyond a reasonable doubt or on a balance of probabilities. ⁶[6]

Bail

Bail is a way of allowing a person who has been remanded for trial at a later date to remain at liberty until his trial. To grant bail means to allow a person to enter into a contract or undertaking (called “a recognisance”) whereby he remains at liberty in consideration for his paying or guaranteeing to pay a sum of money if he fails to appear in court at the date, time and place appointed for his trial or further remand.

Once bail is granted, the accused person should not be deprived of his liberty until his bail bond is terminated, unless he breaches any conditions under which bail was granted, and the State has an implied obligation to allow him to remain at liberty so long as he abides by those conditions.⁷[7]

A person who is in custody in respect of an offence is entitled to be released on bail at any time after he or she has appeared in court on a charge and before sentence is imposed, unless the court finds that it is in the interests of justice that he or she should be detained in custody.⁸[8]

The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established, where there is a likelihood that the accused when released on bail, will:

- endanger the safety of the public or any particular person or will commit an offence; or
- not stand their trial or appear to receive sentence; or
- attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- undermine or jeopardise the objectives or proper functioning of the criminal justice system; or
- there is the likelihood that the release of the accused will disturb the public order or undermine public peace or security.⁹[9]

Bail may be granted in two ways; the accused may be permitted to deposit a sum of money or any other property (e.g. title deeds to his house) as security for his appearing in court for his trial¹⁰[10] or the accused (and, sometimes, one or more sureties) may be required to enter into

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recognizances, i.e. a written undertaking or bond by which they agree to pay the court a specified sum of money if the accused fails to comply with the conditions of his bail.¹¹[11]

Trial

Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court. Reasonable time depends on the circumstances of the case, and it is not possible to lay down a specific period that would be unreasonable in all cases.¹²[12]

To constitute a violation of the right to trial within a reasonable time, the delay must be "extraordinary."¹³[13] In one case a period of four years and seven months was considered unreasonable¹⁴[14] and in another case, a period of seven years was viewed as "extraordinary".¹⁵[15] Much depends on the reason for the delay, as well as the extent of the delay.¹⁶[16] The right to a fair trial includes the right to be represented at their own expense by a lawyer of their own choice.

Even if the accused cannot afford a lawyer the Constitution under section 70(1)(e) and (f) states that if there is a likelihood of an injustice to the accused during the trial then the State at its own expense must provide the accused with a lawyer.

Evidence

An important power given to the Police is that of search and entry of premises and the seizure of articles required for a trial. All searches are *prima facie* unlawful and the onus is on the person conducting the search to justify it.¹⁷[17] Like arrests, searches can be effected with or without a warrant. Unlike the case of arrests, however, the law encourages the police to conduct searches with a warrant rather than without.

A warrant should also specify the alleged crime that gives rise to its issue, and the alleged offender; failure to do so will invalidate it.¹⁸[18] A search warrant is "executed" when the search or seizure authorised by it is carried out. A warrant must be executed by day unless the person issuing it authorises in writing its execution by night.¹⁹[19]

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A search may be conducted without a warrant with the consent of the person concerned; if the police officer believes on reasonable grounds that a search warrant would be issued to him if he applied for one, and that delay in obtaining a warrant would prevent the seizure of the article or defeat the object of the search.²⁰[20] Documents that are privileged, e.g. documents that record communications between a lawyer and his client, may not be seized.²¹[21]

If the police obtain evidence illegally for example through illegal searches or monitoring of communications in violation of the accused's right to privacy, this evidence is considered unlawful and must be excluded in criminal trials if allowing the evidence to be given would render the trials unfair or would be detrimental to the administration of justice or the public interest.²²[22]

Post-trial Rights

Once convicted and sentenced the accused has the right to appeal to a higher court against the conviction and sentence as provided under section 70(5) of the Constitution. Where a magistrate sentences a person to a period of imprisonment of more than 12 months, or a fine of more than level 6 (ZWL\$ 60,000), the clerk of the court must send the record of the case to the registrar of the High Court within one week after the sentence was imposed.²³[23]

The accused must be informed of his right to send a statement on review. If the accused is aggrieved by the sentence in a case that is subject to automatic review, he may deliver a statement to the clerk of the court, within three days after the sentence was passed, setting out his reasons for considering the sentence excessive. This statement is sent on review with the record and is taken into account by the reviewing judge.²⁴[24]

If the accused was represented by a legal practitioner or is a company, the record will not be sent for review unless the legal practitioner or the company's representative requests the clerk of court, in writing and with reasons and within three days after sentence was imposed, to send the record for review.²⁵[25] Similarly, where less than 12 months imprisonment or a fine of less than level 6 was imposed on the accused, he may request the clerk of court, in writing and with reasons and within three days after sentence was imposed, to send the record for a review of the sentence.²⁶[26]

Conclusion

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In conclusion when one is accused or a suspect in a case, they have basic rights that should not be violated from their arrest up to the end of their trial, appeal and review. These rights are observed by officers of the law throughout the legal proceedings. Innocent or not, you should know your rights, in case you or a family member become an accused or suspect.

If you or a loved one is arrested or a suspect in a case contact our qualified team of lawyers at **JPLP** to ensure that your rights are not violated.

1. Section 70(1)(a) of the Constitution of Zimbabwe Amendment (No. 20) Act
2. *S v Micklethwait* (CRB B 2673/02) [2003]
3. Section 41 (4) Criminal Procedure and Evidence Act [Chapter 9:07]
4. Section 41 (5) Criminal Procedure and Evidence Act [Chapter 9:07]
5. *Attorney-General v Blumears & Anor* 1991(1) ZLR 118 (S)
6. *Smyth v Ushewokunze & Anor* 1997 (2) ZLR 544 (S),
7. Lansdown & Campbell S.A. Criminal Law & Procedure vol 5 p. 311.
8. Section 117(1) Criminal Procedure and Evidence Act [Chapter 9:07]
9. Section 117(2) Criminal Procedure and Evidence Act [Chapter 9:07]
10. Section 131 Criminal Procedure and Evidence Act [Chapter 9:07]
11. Section 118 Criminal Procedure and Evidence Act [Chapter 9:07]
12. *Smyth v Ushekowunze & Anor* 1997 (2) ZLR 544 (S)
13. *Fikilini v Attorney-General* 1990 (1) ZLR 105 (S).
14. *In re Mlambo* 1991 (2) ZLR 339 (S).
15. *In re Masendeke* 1992 (2) ZLR 5 (S).
16. Linington Constitutional Law of Zimbabwe p. 400.
17. *S v Pogrund* 1974 (1) SA 244 (T) at 247.
18. Minister of Safety & Security v van der Merwe & Ors 2011 (5) SA 61 (CC)
19. Section 50(3)(b) of the Criminal Procedure and Evidence Act [Chapter 9:07]
20. Section 51(1) of the Criminal Procedure and Evidence Act.
21. *Jeewa & Ors v Receiver of Revenue, Port Elizabeth, & Ors* 1995 (2) SA 433 (SE)
22. Section 70(3) of the Constitution; *R v Mabuya* 1927 CPD 181.
23. Section 57(1) of Magistrates Court Act [Chapter 7:10].
24. Section 59 of the Magistrates Court Act [Chapter 7:10].
25. Section 57 of the Magistrates Court Act [Chapter 7:10].
26. Section 57(3) of the Magistrates Court Act [Chapter 7:10].



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