



Legal Resources
Foundation

Arrest



Know Your Rights

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The right to be free

The Zimbabwean Constitution says that everyone has a right to be free. BUT A person's freedom can be taken away if he has committed a crime or he is lawfully arrested.

What is an arrest?

A person is arrested when he is taken to a police station because he is suspected of having committed a crime.

Who can arrest another person?

- A police officer. All policemen and policewomen have powers to arrest a person under certain circumstances.
- Other government officials, such as judges, magistrates, prison officers, immigration officers, National Parks & Wildlife Officers and some members of the CIO also have powers to arrest people.
- Members of the public. There are some situations in which every person has the right to arrest another person.



When can a person be arrested?

If a police officer thinks a person has committed a crime, he will go to a magistrate or justice of the peace to get permission to arrest him. This permission is a written order called a **warrant**.

How does the police officer get the warrant?

- A police officer gets some evidence that a certain person has committed a crime.
- The policeman goes to a judge or magistrate or justice of the peace to ask for a warrant to be issued.
- The policeman must state what crime he thinks the person has committed. He must also say that he has enough information to suspect that the person has committed it; he does not have to give all the evidence.
- The judge or magistrate or justice of the peace issues a warrant for the suspect's arrest. The warrant is an order instructing all police officers to arrest the person named and bring him before a court to be charged with that specific offence.
- The officer then finds the person, shows him the warrant, and arrests him.

There are also situations in which a policeman or ordinary person can arrest someone without a warrant.

When can a police officer arrest someone without a warrant?

A police officer can arrest someone without a warrant only in special circumstances like the following:

- If he sees someone committing an offence.

- If he has investigated a serious crime such as murder, rape, robbery, theft, or kidnapping and has good evidence to show that a certain person is the criminal, but he believes that if he spends time going to get a warrant the person will escape, hide some evidence, or interfere with witnesses.
- If the person:
 - is found with housebreaking tools without satisfactory explanation.
 - obstructs a police officer or other peace officer who is carrying out his duties.
 - has escaped or attempted to escape from lawful custody.
 - is found in possession of suspected stolen property.
 - is loitering in such a way that the police officer has reason to suspect he has committed or is about to commit a crime.
 - is suspected of being a prohibited immigrant.
 - is suspected of illegally having livestock or produce.

Note: It is unlawful for a police officer to arrest someone because they belong to a particular political party if there is no reason to suspect that they have committed a crime.

Citizen's Arrest

An ordinary person cannot apply for a warrant, but he can arrest a person in the following situations:

- If he sees someone committing or trying to commit a serious offence such as rape.
- If he has a reasonable suspicion that a person has committed a serious offence.

- If he sees a person fighting, in order to stop the fight.
- If he is a property owner and he finds someone committing any offence on his own property.
- If a person offers to sell, pawn or deliver to him any property which he reasonably believes to be stolen or illegally obtained.



Note: Although an arrest by an ordinary person is often called a “citizen’s arrest”, the person does not have to be a citizen.

How does a police officer make an arrest?

- The officer making the arrest puts his hand on the other person’s shoulder and says “You are under arrest”.
- It may be necessary to use handcuffs or other means of controlling the person.
- The officer is allowed to break open a door or window to get into a building or room where the suspect is believed to be. But he must first loudly demand to enter and state the reason. If no one opens for him, he may break in.
- The officer making the arrest is allowed to search the suspect.

Do not resist arrest!

It is a serious offence to resist anyone who is legally arresting you, or to try to escape from being arrested.



The arresting officer is allowed to use force to arrest you or stop you escaping if he suspects you have committed a serious offence. He may use his gun, but he must first warn that he will shoot, and then fire a warning shot in the air or into the ground. After that he may shoot at your legs.

If you are injured or killed while resisting arrest, the police officer may have to show that the force he used was not more than necessary.

If you attack a police officer who is trying to arrest you, the officer has the right to defend himself in whatever way he can.

If you think you are being wrongly arrested, do not resist; you will only put yourself in worse trouble. Go with the police officer to the police station and later you will be able to explain to the court that the arresting officer made a mistake.

Wrongful arrest

If the person carrying out the arrest does not follow the correct procedure or arrests the wrong person, the arrest may be unlawful. If this is proved, it is possible to claim compensation from the government.

- A police officer who makes an unreasonable mistake or who deliberately misuses his power as a police officer can be sued by the person who has been wrongly arrested.

but

- a police officer who genuinely makes a reasonable mistake in arresting someone will be protected from paying compensation.

What happens after you have been arrested?

With a warrant

- The police officer must show you the warrant. If you cannot read, it must be read to you.
- You must be taken **as soon as possible** to a court — at the very latest on the next day that the court sits.
- If the prosecutor is not ready to have the case tried, he must ask the magistrate for a remand. This means you will be brought back to the court at a later date for your trial.

Without a warrant

- The police officer must immediately tell you the reason why you have been arrested.
- He must take you to a police station as soon as possible.
- You may be held at the police station, but you must be taken to a court within 48 hours. If the 48-hour period finishes on a weekend or after 4 pm on a week day, you can be kept until the next court day.
- When you have been arrested the police can only keep you for more than 48 hours if they get a warrant for further detention.
- If the magistrate refuses to grant bail, you will be sent to stay at the remand prison while waiting for the date of your trial.

Citizen's arrest

If you are arrested by a member of the public who is not a police officer, you must be handed over to a police officer as soon as is possible. The procedures followed will be the same as for arrest without a warrant.

At the police station — what can the police do?

- The police are allowed to do the following:
 - take your photograph.
 - take your fingerprints.
 - send you for medical examination in some cases (e.g. rape).If you resist any of these you can be charged with obstructing the police.
- The police will probably ask you for a statement about the crime. As explained later, you do not have to make a statement.
- The police **must not**
 - beat you.
 - refuse to give you food.
 - threaten to detain you unless you admit something.
 - promise to release you if you admit something.
 - force you to admit something in any other way.

- refuse to let you consult your lawyer.

At the police station — What are your rights?

- You must be told in a language you understand what you are accused of doing. This is known as the charge.
- You have the right to consult with your lawyer.
 - This must be allowed “without delay”.
 - You can and should consult your lawyer before making a statement.
 - Your conversation with your lawyer must be private — a guard may watch, but not listen.
 - You must be allowed enough time with your lawyer to prepare for your defence in court.
 - Your lawyer must be informed whenever you are to appear in court.
 - You can choose your lawyer if you can afford to pay him.
 - If you cannot afford a lawyer, you will be given one by the State only if the offence is very serious. To get a lawyer who is paid for by the State, you will need to ask the magistrate when you appear in court to grant **legal aid**.
- You have a right to remain silent instead of making a statement.



A POLICE OFFICER CAN TAKE YOUR FINGERPRINTS

- You do not have to make any statement about the alleged crime to the police.
- It is, however, usually advisable to make a statement; if you keep quiet, there may be a greater suspicion that you are guilty.
- If you have a lawyer, it is wise to consult with him or her before you make any statement.
- The right to make a voluntary statement
 - any statement you make must be made freely without any pressure by the police
 - after making a statement, you may be taken to a court for the statement to be **confirmed**. The magistrate will ask if your statement was made freely. If you were mistreated by the police you must tell the magistrate. If you do not tell the magistrate about any mistreatment, it will be assumed that you made the statement willingly.

Waiting for a trial

Every person accused of a crime must have a trial within a reasonable amount of time. Usually, when the charge is first made, neither the prosecutor nor the accused person is ready for the trial. Hence it will be postponed.

This will allow the police time to finish investigating the case, to identify witnesses, to arrange for a suitable trial date, and also allow the accused person or his lawyer time to prepare the defence.

If you are an accused person waiting for your trial, you may be required to wait in prison or you may be allowed to wait at home.

In prison — on remand

If you are in prison, you are known as a remand prisoner. You are not kept with the prisoners already sentenced to a prison sentence.

At home — on bail

You may be allowed to go home to wait for the trial in the following circumstances:

- if the offence is not too serious.
- if you are unlikely to interfere with witnesses.
- if you are unlikely to run away.

Usually, some money is paid as a guarantee that you will come for the trial. If you come, you get the money back; if you do not come, the State takes the money. Sometimes “free bail” is allowed, such as when an accused person has very little money. He pays nothing and simply promises to come for the trial.

Senior police officers, including the member in charge of a police station, can grant bail and so can magistrates.

The court can postpone a trial for only fourteen days at a time, unless the accused agrees to a longer period. However, the court cannot continue to postpone the trial for ever. Any accused person has a right to a speedy trial, and if the delay becomes unreasonably long, he can make a claim that his constitutional rights are being denied.

What is a police officer not allowed to do?

Sometimes police officers do things which they are not permitted by law to do. If they do any of these things, it may be possible to sue them, and it is also possible that their case against the accused person will fail.

Police officers are not allowed to:

- Use any force against any person unless that person is resisting arrest.

- Steal property belonging to arrested persons. A police officer who takes away stolen or smuggled goods for use as evidence must give a receipt to the person he took them from.
- Force a person to make or sign any statement against his will by use of beatings, threats, deprivation of food or any other form of intimidation.
- Keep a person in police custody longer than the time allowed (normally 48 hours).
- Refuse medical assistance to an arrested person who needs it.

What can you do if your rights are abused?

Do not resist. Make your complaint to the Member-in-Charge at the police station or tell your lawyer if you have one.

- Get the name of the police officer and his or her force number (on the badge).
- Report the incident to the Member-in-Charge at the police station and make a criminal complaint.
- If the Member-in-Charge refuses to take your statement, contact any Human Rights Organisation to assist you.
- If you are taken to court to have your statement confirmed, tell the magistrate.
- When you are free, go to the Clerk of Court at the magistrates court to lay a civil claim for compensation.
- Go to your nearest Legal Advice Centre for assistance.
- Do not delay. If you are suing the police you must notify them within 3 months and make your claim within 6 months.

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About this Pamphlet

Arrest

Have you ever been arrested? Has any friend of yours been arrested? Have you ever seen an arrest taking place in the street? Being arrested can be a frightening experience, whether you have committed a crime or not, but it can be worse if the police do not respect your rights. The purpose of this pamphlet is to let everyone know:

- ⊙ What the powers of the police are concerning arrest and;
- ⊙ What the rights of the public are so that the people's rights will not be taken away by the police.

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