

Zimbabwe Country Summary Card

RIGHT TO COUNSEL	
Right to Counsel	<ul style="list-style-type: none"> • The accused shall be permitted to defend themselves or, at their own expense, get a legal representative of their own choice (s 18 (3)(d) Constitution) • If the accused cannot afford a legal representative, a magistrate can deem it necessary and desirable in the interest of justice to certify that such a person have this assistance (Legal Aid Act, part III s 10(1) (a),(b) 1996) • Every person charged with an offence may make his defence at his trial and have the witnesses examined or cross-examined by a legal practitioner representing him (part XII, s 191 (a) CPEA)
INTERROGATION AND INVESTIGATION	
Search and Seizure	<ul style="list-style-type: none"> • When searching without a warrant, police officers shall not enter any dwelling without the consent of the occupier (part VI, s 54(2) CPEA) • The State may seize any article -which is concerned in or is on reasonable grounds believed to be concerned in, the commission or suspected commission of an offence - which it is on reasonable grounds believed may afford evidence of the commission or suspected commission of an offence - which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence (part VI, s 49 (a-c) CPEA) These articles may only be seized by virtue of a warrant (part VI, s 50 CPEA) • A police officer may search any person or premises and consequently seize an article without a warrant if: - the person concerned consents to it - if he believes on reasonable grounds that a warrant would have been issued to him or that the delay in obtaining one would prevent the seizure or defeat the object of the search. For more exceptions see (part VI, s 51 (1-3) CPEA)
Search of person	<ul style="list-style-type: none"> • A peace officer or other person arresting any person under this Part may search that person, and shall place in safe custody all articles, other than necessary wearing apparel, found on him (part V, div C, s 41 (2) CPEA)
ARREST AND DETENTION	
Arrest	<ul style="list-style-type: none"> • No one may be arrested arbitrarily, that is to say there must be a reasonable suspicion that he or she has committed a criminal offence (section 13 (2)(e) Constitution). • An officer can arrest any person committing an offense in his presence, any person who a police officer reasonably suspects of having committed an offense, any person whom he finds attempting to commit an offense or clearly manifesting intent to do so (part V, div A, s 25 (a-c) CPEA). • Arrested persons must be told promptly why they have been arrested and they must be allowed to contact a legal practitioner of their choice without delay (section 13 (3) Constitution) • Arrested persons must be brought before a court without undue delay so that the court can investigate the legality of their arrest and detention (section 13(4) Constitution) • When arrested without a warrant, the accused must be taken as soon as possible to a police station or charge

	<p>office (part V, div A, s 32 (2) CPEA).</p> <ul style="list-style-type: none"> • Every person charged with a criminal offense shall be informed as soon as reasonably practicable, in a language he understands and in detail, of the nature of the offense charged (s 18 (3)(b) Constitution)
Detention	<ul style="list-style-type: none"> • If a person who has been arrested and detained is not brought to trial within a reasonable time, he or she must be released from detention (section 13 (4) Constitution) • A person may not be detained for more than 48 hours, or not more than 96 if there is a holiday or a Sunday within a 48 hour period (part V, div A, s 32 (2) (3) CPEA) • There are civil remedies under habeas corpus as detention in an illegal facility is unlawful (Moll v Commissioner of police 1983 ZLR 238 (Zimbabwe HC))
Right to bail	<ul style="list-style-type: none"> • Bail would be granted by a magistrate who has the power to grant bail for any offense, except for an offense specified by the third schedule (part IX, s 116, CPEA)- Third schedule offences are set out in (part XXI, s 389 CPEA) • A person may be admitted to bail or have his conditions of bail altered at any time after he has appeared in court on a charge and before sentencing, unless the court is of the view that it is in the interests of justice that he be kept in custody (part IX, s 116 (1)(a) and (7) CPEA). • An accused is entitled to apply verbally or in writing to the judge or magistrate before whom he is appearing to be admitted to bail immediately or may make such application in writing to a judge or magistrate part IX, s 117(1) CPEA).
Conditions of Detention	<ul style="list-style-type: none"> • No person shall be subjected to torture or to inhuman or degrading punishment or other such punishment (s 15 (1) Constitution)
TRIAL	
Right to a fair trial	<ul style="list-style-type: none"> • Every person is entitled to a fair hearing within a reasonable time by an independent and impartial court (s 18 (9) Constitution)
Presumption of Innocence	<ul style="list-style-type: none"> • Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty; (s. 18 (3) (a) Constitution)
Admissibility of Confessions	<ul style="list-style-type: none"> • Any confession of the commission of an offence shall be admissible in evidence against the accused if proved to have been freely and voluntarily made without having been unduly influenced, whether it was made before or after his arrest, during a preparatory examination or after committal and whether reduced into writing or not (part XIV, s. 256 (1) CPEA) • A confession of the offence with which the accused is being charged, proved to have been made by him, will stand in court if some other evidence can prove that he actually committed that offence (part XIV, s 273 CPEA) • Where a statement has not been confirmed with the magistrate under (part VIII, s 113 CPEA), the onus rests on the state to prove beyond reasonable doubt that the statement was made freely and voluntarily and without undue influence.

Cross-Examination	<ul style="list-style-type: none"> • Every person charged with an offence may make his defence at his trial and have the witnesses examined or cross-examined by a legal practitioner representing him (part XII, s 191 (a) CPEA)
Age of Culpability	<ul style="list-style-type: none"> • A child below the age of seven years shall be deemed to lack criminal capacity and shall not be tried for or convicted of any crime which he or she is alleged to have committed before attaining that age (ch. II, part I, s 6 CLCRA) • Children between 7 and 14 years of age lack the capacity to form the intention necessary to commit a crime (ch. II, part I, s 7 (a) CLCRA) • No person who is of or over the age of fourteen years shall be presumed to lack the capacity to form the necessary intention to commit any crime (ch. II, part I, s 8 CLCRA)
Competency of Witnesses	<ul style="list-style-type: none"> • It shall be competent for the court in which any criminal case is depending or, in the case of a preparatory examination, the magistrate, to decide upon all questions concerning the competency and compellability of any witness to give evidence (part XIV, div C, s 245 CPEA) • Any accused person, and the wife or husband, as the case may be, of an accused person, shall be a competent witness for the defence at every stage of the proceedings, whether the accused person is charged solely or jointly with any other person: Provided that— (i) an accused person shall not be called as a witness, except upon his own application; (ii) the wife or husband of an accused person shall not be called as a witness for the defence, except upon the application of the accused person. (part XIV, div C, s 248 (1) CPEA) • No person appearing or proved to be afflicted with idiocy or mental disorder or defect or labouring under any imbecility of mind arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while under the influence of any such malady or disability. (part XIV, div C, s 246 CPEA)
Sentencing	<ul style="list-style-type: none"> • ...A court may impose the following punishments upon a convicted offender— (a) in the case of the High Court, sentence of death, where the offender is convicted of an offence referred to in section three hundred and thirty-seven;(b) imprisonment for life; (b1) imprisonment for a determinate period; (c) extended imprisonment in terms of section three hundred and forty-six; (d) a fine; (d1) community service; (e) where the convicted person is a male person under the age of eighteen years, corporal punishment (f) putting the convicted person under recognizance with conditions (part XVIII, s 336 (1), (a) to (e) CPEA) • Sentence of death for murder- (part XVIII, div A, s 337 CPEA) Persons upon whom death sentence may not be passed -The High Court shall not pass sentence of death upon an offender who a) is a pregnant woman; or (b) is over the age of seventy years; or (c) at the time of the offence, was under the age of eighteen years. (part XVIII, div A, s 338 CPEA)