

# Know Your Rights: Criminal Law in South Africa

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(Public Legal Education Guide)

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## **ZA 1. Introduction**

Being arrested or charged with a crime can be intimidating. Every person in South Africa has **fundamental constitutional rights**, even when accused of an offence.

This guide explains how the **criminal justice process works**, what your **rights are**, and how an **attorney can assist** at every stage — from arrest to trial.

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## **2. Your Constitutional Rights**

Protected by the **Constitution of the Republic of South Africa, 1996**, particularly **Sections 12, 35, and 39**:

### **Key Rights When Accused:**

1. **Right to freedom and security of person** (Section 12).
  2. **Right to remain silent** and not to be compelled to make a confession (Section 35(1)(a)–(c)).
  3. **Right to be brought before court within 48 hours** (Section 35(1)(d)).
  4. **Right to legal representation**, including a legal aid lawyer if you cannot afford one (Section 35(2)(b)).
  5. **Right to be informed of the charge** in a language you understand.
  6. **Right to a fair and public trial** (Section 35(3)).
  7. **Right to appeal or review a conviction or sentence** (Section 35(3)(o)).
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## **3. The Criminal Justice Process — Step by Step**

### **Step 1: Arrest and Detention**

- Police may arrest with or without a **warrant**, depending on the offence (Criminal Procedure Act 51 of 1977).

- Upon arrest, you must be informed of your rights and the reason for arrest.
  - You may not be assaulted, threatened, or forced to confess.
  - You have the **right to contact an attorney** immediately.
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### **Step 2: Police Investigation and Charge**

- The police investigate, take statements, and collect evidence.
  - A **docket** is prepared and handed to the **prosecutor**, who decides whether to prosecute.
  - If the evidence is insufficient, the **case may be withdrawn** or further investigation ordered.
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### **Step 3: Bail Application**

- Within **48 hours**, you must be brought before court.
- You can apply for **bail**, which allows release pending trial.
- Bail is governed by **Sections 58–71 of the Criminal Procedure Act (CPA)**.
- The court considers:
  - The seriousness of the offence,
  - Risk of flight,
  - Interference with witnesses or evidence.

**Tip:** Always have an attorney assist with bail — it can determine whether you await trial at home or in custody.

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### **Step 4: First Court Appearance**

- The **charge is formally read** to the accused.
- The accused may request:
  - **Legal representation,**
  - **Disclosure of the docket,**
  - **Further particulars** of the charge.
- The matter may be postponed for investigation or plea negotiation.

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### Step 5: Further Particulars and Disclosure

- You are entitled to **know exactly what the State alleges**.
- Your attorney can request:
  - **Charge sheet,**
  - **Witness statements,**
  - **Forensic and expert reports,**
  - **Video or photographic evidence.**

This helps prepare your **defence and cross-examination strategy**.

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### Step 6: Representations to the Prosecutor

- Before trial, your attorney can submit **representations** to the **Director of Public Prosecutions (DPP)** or **Senior Public Prosecutor** to:
  - Withdraw or reduce charges,
  - Seek diversion or alternative dispute resolution,
  - Negotiate a plea or warning.

Representations are especially useful where there is insufficient evidence or mitigating circumstances.

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### Step 7: Plea and Trial

- When the trial begins, you are asked to **plead guilty or not guilty**.
  - The **State presents its evidence** first: witnesses, documents, and exhibits.
  - Your attorney may **cross-examine** each witness.
  - The defence then presents its own case — you may testify or remain silent.
  - After arguments, the court delivers a **verdict** of guilty or not guilty.
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### Step 8: Sentencing (If Convicted)

- If found guilty, the court considers factors such as:
  - The nature of the offence,

- Your personal circumstances,
- Previous convictions,
- The interests of society.

Sentences may include:

- Fine,
- Imprisonment,
- Suspended sentence,
- Correctional supervision,
- Community service.

### Step 9: Appeal or Review

- You have a **right to appeal or apply for review** of the conviction or sentence.
- Appeals must be lodged within **14 days** after sentence (can be extended).
- Your attorney prepares the **record, grounds of appeal, and notice of appeal.**

## 4. Key Statutes Governing Criminal Procedure

Act	Title	Purpose
<b>Constitution of South Africa (1996)</b>	Supreme law protecting fundamental rights	Ensures fair trial and due process
<b>Criminal Procedure Act 51 of 1977</b>	Primary law regulating criminal proceedings	Arrests, bail, trials, sentencing
<b>South African Police Service Act 68 of 1995</b>	Governs police conduct and powers	Accountability and lawful arrests
<b>National Prosecuting Authority Act 32 of 1998</b>	Regulates prosecutors and the NPA	Ensures fair and independent prosecution
<b>Legal Aid South Africa Act 39 of 2014</b>	Provides state-funded legal representation	Ensures access to justice

Act	Title	Purpose
<b>Correctional Services Act 111 of 1998</b>	Regulates imprisonment and parole	Human rights compliance in sentencing
<b>Criminal Law Amendment Acts</b>	Address specific offences (e.g., sexual offences, minimum sentences)	Enhance public protection

## 5. Understanding Evidence

Evidence in a criminal trial must be **relevant, admissible, and credible**.

Types include:

- **Oral evidence** (witness testimony),
- **Documentary evidence** (contracts, letters, digital records),
- **Real evidence** (physical exhibits like weapons),
- **Expert evidence** (forensic, medical, ballistic),
- **Circumstantial evidence** (indirect but persuasive).

Illegally obtained evidence (through torture or without warrant) may be excluded under **Section 35(5) of the Constitution**.

## 6. The Role Players in a Criminal Case

Role	Function
<b>Accused</b>	The person charged with an offence
<b>Attorney / Defence Counsel</b>	Represents and defends the accused
<b>Prosecutor (State)</b>	Represents the State and presents evidence
<b>Investigating Officer</b>	Police officer collecting evidence
<b>Magistrate / Judge</b>	Decides guilt and sentence
<b>Court Interpreter</b>	Ensures fair trial in language understood
<b>Witnesses</b>	Provide evidence for prosecution or defence

Role	Function
Clerk / Registrar of the Court	Manages documentation and record-keeping

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## 7. Typical Criminal Court Flow

Stage	Description
Arrest	Police apprehend suspect
Charge	Formal allegation of offence
Bail	Application for release pending trial
Disclosure	Defence receives evidence and particulars
Representations	Request to withdraw or amend charges
Trial	Examination and cross-examination of evidence
Verdict	Guilty or not guilty
Sentencing	Penalty if found guilty
Appeal	Challenge to conviction or sentence

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## 8. Your Rights During Trial

Under **Section 35(3) of the Constitution**, you have the right to:

- A **fair and public hearing**,
  - To **be presumed innocent** until proven guilty,
  - To **adduce and challenge evidence**,
  - To **testify or remain silent**,
  - To have **adequate time to prepare your defence**,
  - To **legal representation**, and
  - To a **record of proceedings** for appeal or review.
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## 9. Why You Should Have an Attorney

A criminal matter can have **life-changing consequences** — imprisonment, criminal record, or loss of employment.

An attorney protects your rights and ensures that **the State acts within the law**.

#### **How Rob Green & Associates Can Assist:**

- Immediate **consultation after arrest**,
- **Bail applications** and urgent court appearances,
- **Analysis of the police docket and evidence**,
- **Representations** to the prosecutor or DPP,
- **Defence strategy and trial preparation**,
- **Cross-examination and argument in court**,
- **Appeal or review applications**.

Legal representation can mean the difference between conviction and acquittal.

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#### **Contact**

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