



Personal Liberty and Rights of the arrested persons

Introduction

In the recent past we have documented a multitude of incidents where human rights activists and citizens were arrested, detained for long periods and denied bail repeatedly. The Constitution of Zimbabwe, read together with other laws, promotes the right to personal liberty and also provides rights for accused, arrested and detained persons. These rights are acknowledged and expressed in section 49, 50 and 70.

What is the Right to Personal Liberty

According to Section 49 of the Constitution of Zimbabwe, (1) Every person has the right to personal liberty, which includes the right (a) not to be detained without trial; and (b) not to be deprived of their liberty arbitrarily or without just cause. In line with the right to personal liberty, any person arrested for an alleged offence or for the purposes of being brought to court, must be brought to court within 48 hours, and if not, section 50 (3) provides that, the accused person must be released immediately.

What is Bail and its purpose?

Bail is when a person charged with a criminal offence is released from custody while awaiting their trial. An individual can be released with or without conditions that they must follow during their release. Not everyone who is charged with a crime receives bail.

The *Constitution of Zimbabwe* recognizes reasonable bail as a general rule and the denial of bail as an exception, therefore BAIL IS A HUMAN RIGHT, though not absolute.

When the police lawfully detain an accused person, the decision to grant bail is made by a magistrate or judge at a bail hearing. These are legal proceedings where the court determines whether a person should be granted bail or detained in custody until their trial, based on the considerations set out in the law.

What does the law say about BAIL?

Entitlement to bail is enshrined in section 50(1)(d) of the Constitution of Zimbabwe. It states, on the **Rights of arrested and detained persons**, that (1) Any person who is arrested (d) must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention.



This is a fundamental right premised on a key tenet of Zimbabwe's criminal justice system, which stipulates that an accused person is presumed innocent until proven guilty. This basic principle has found expression in s 70(1)(a) of the Constitution.

Rights of arrested and detained persons

In addition to personal liberty and the right to bail, arrested and accused persons also have a host of constitutional rights expressed. Some of the key rights are as follows:

Section 50:

(1) Any person who is arrested (a) must be informed at the time of arrest of the reason for the arrest; and (b) must be permitted, without delay—(i) at the expense of the State, to contact their spouse or partner, or a relative or legal practitioner, or anyone else of their choice; and (c) must be treated humanely and with respect for their inherent dignity.

Detained persons additionally (d) must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention.

Conclusion

The Zimbabwe Peace Project, concerned with the human rights situation in Zimbabwe, notes a worrying trend in the justice system where human rights defenders and political activists are continually denied bail and are held in detention for long periods before trial. In some instances the arrested persons in politically motivated incidents are held in maximum prisons for offenses not deemed grave, raising a concern about the fairness and concern of human rights in the justice system. This was evident during the period prior and during the Southern African Development Community (SADC) Summit held in August in Zimbabwe. ZPP therefore urges the justice system, the Zimbabwe Human Rights Commission as a public protector, and other relevant government arms concerned with the justice system to prioritise the rights of accused persons, investigate any breaches and promote accountability and fairness.

For more information and inquiries:

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