

ARTICLE 48

ACCESS TO JUSTICE

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.



THE STATE SHALL ENSURE ACCESS TO JUSTICE FOR ALL PERSONS AND, IF ANY FEE IS REQUIRED, IT SHALL BE REASONABLE AND SHALL NOT IMPEDE ACCESS TO JUSTICE.

For any concerns or complaints: Mobile: 0711944555/ 0732529995
Email: statelawofficecomplaints@kenya.go.ke

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ARTICLE 49

RIGHTS OF ARRESTED PERSONS



1. An arrested person has the right
 - (a) to be informed promptly, in language that the person understands, of
 - i. the reason for the arrest;
 - ii. the right to remain silent; and
 - iii. the consequences of not remaining silent;
 - (b) to remain silent;
 - (c) to communicate with an advocate, and other persons whose assistance is necessary;
 - (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
 - (e) to be held separately from persons who are serving a sentence;
 - (f) to be brought before a court as soon as reasonably possible, but not later than
 - i. twenty-four hours after being arrested; or
 - ii. if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
 - (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
 - (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
2. A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

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ARTICLE 51

RIGHTS OF PERSONS DETAINED, HELD IN CUSTODY OR IMPRISONED



1. A person who is detained or held in custody or imprisoned under the law retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.
2. A person who is detained or held in custody is entitled to petition for an order of habeas corpus.

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REGULATIONS ON WRITING STATEMENT UNDER INQUIRY



1. Constitutional Rights (Article 49 & 50 – Constitution of Kenya, 2010)

- **Right to remain silent:** Not to be compelled to make any confession or admission that could be used in evidence against the person; (Article 49(1)(d)).
- **Right to legal representation:** You can have a lawyer present when writing a statement (Article 49(1)(c), 50(2)(g)).
- **Right against self-incrimination:** You cannot be forced to confess to a crime (Article 50(2)(i)).



2. How a Statement is Written (Under Police Standing Orders)

1. **Voluntary Basis:** The person must write the statement voluntarily—no threats, inducement, or torture should be used.
2. **Language:** The statement must be recorded in a language the person understands.
3. **Written in First Person:** The individual should write or dictate the statement in the first person ("I...").
4. **Caution Before Statement (for suspects):**
 - The police must issue a caution before taking a statement from a suspect.
 - A typical caution is: "You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."
5. **Signing the Statement:**
 - The person must read and sign the statement after confirming its accuracy.
 - If the person is illiterate, it must be read to them in a language they understand and a thumbprint may be used.
6. **Witnessed by Officer:**
 - The recording officer must sign the statement and indicate time, date, and location.
 - A witness may be present, especially in the case of confessions.



3. Confessions & Statements Under Inquiry (Evidence Act – Sections 25A & 26)

- Confessions by suspects are only admissible in court if made:
 - o Before a magistrate, or
 - o Before a police officer of the rank of Chief Inspector or above, and
 - o In the presence of a third party (e.g., a lawyer, parent, or independent adult).

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ARTICLE 50 Fair Hearing

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

Every accused person has the right to a fair trial, which includes the right -

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| To be presumed innocent until the contrary is proved; | To remain silent, and not to testify during the proceedings; |
| To be informed of the charge, with sufficient detail to answer it; | To be informed in advance of the evidence the prosecution intends to reply on, and to have reasonable access to that evidence; |
| To have adequate time and facilities to prepare a defence; | To adduce and challenge evidence; |
| To a public trial before a court established under this Constitution; | To refuse to give self-incriminating evidence; |
| To have the trial begin and conclude without unreasonable delay; | To have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial; |
| To be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed; | To appeal to, or apply for review by, a higher court as prescribed by law. |
| To choose, and be represented by, an advocate, and to be informed of this right promptly; | Not to be convicted for an act of omission that at the time was committed or omitted was not-
(i) an offence in Kenya or
(ii) a crime under international law; |
| To the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been charged between the time that the offence was committed and the time of sentencing; | Not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted; |

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ARTICLE 24

Limitation of rights and fundamental freedoms

When can a right be limited?

- Nature of the right
- Importance of the limitation's purpose
- Nature & extent of the limitation
- No prejudice to others' rights
- Is the limitation proportional & least restrictive?

What makes a limitation legally valid?

- Expressly stated in law**
Law must specifically state intention and extent.
- Clear and specific**
Law must clearly define what right is being limited.
- Not harming the core right**
Law cannot destroy the core of the right.

Who must justify the limitation?

- The State or person seeking the limitation must prove it meets all these conditions in court or tribunal**

Application for Muslim personal law

- Equality rights may be limited only as 'strictly necessary' for Muslim personal matters (e.g. Marriage, inheritance) before Kadhis' Courts



Application to security forces and National Police Service

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