

Miranda Warning Equivalents Abroad

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Staff of the Law Library of Congress Global Legal Research Center

SUMMARY This report contains short summaries describing warnings similar to the Miranda warning that are required in 108 jurisdictions around the globe. The summaries are divided into sections based on broad geographic categories: Americas and the Caribbean, East Asia and the Pacific, Europe and Central Asia, Middle East and North Africa, South Asia, and Sub-Saharan Africa.

The warnings specified in the surveyed jurisdictions vary, but typically include the right to remain silent and the right to legal counsel. A number of countries also specify that a person who is arrested or detained has the right to be informed of the reasons for the arrest or detention or of the charges being brought. In some countries, the additional right to have these things explained in a language the detainee understands is explicitly stated. Commonwealth countries have traditionally followed the English Judges' Rules developed in the early twentieth century, and some continue to do so, while many Member States of the European Union (EU) have adopted an EU directive on the issue.

Points of variance among the countries concern the timing of the warning and whether the detainee is told that the fact of remaining silent will or will not be used in legal proceedings.

Countries surveyed that have no Miranda-type warning were not included.

I. Americas and the Caribbean

Antigua and Barbuda

Antigua and Barbuda continue to follow the English Judges' Rules, originally created in 1912 (see England and Wales discussion for details). Individuals that have been charged with, or informed that they may be prosecuted for an offense must be cautioned with the following language: "Do you wish to say anything? 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."¹

Individuals who have been formally charged and need to be questioned further should be cautioned as follows:

I wish to put some question to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.²

¹ OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, NATIONAL PROSECUTION SERVICE, POINTS TO PROVE, <http://www.easterncaribbeanlaw.com/wp-content/uploads/2014/08/Points-to-Prove.pdf> (last visited Apr. 26, 2016), archived at <https://perma.cc/Q5RA-KY85>.

² *Id.*

Argentina

Argentina's Código Procesal Penal de la Nación (Code of Criminal Procedure)³ provides that when making an arrest, police must inform the detainee immediately and in a clear way of his or her rights.⁴ These rights are to appointed counsel of his choice; to be informed of the right to consult with a lawyer and have counsel present at the interrogation; to remain silent and not be required to declare under oath or promise to tell the truth; and to be informed of the charges and evidence against him and warned of the right to remain silent, without an inference of guilt being drawn from such silence.⁵

If these warnings are omitted by the interrogating officer, any declaration or statement made by the detainee may not be used in the trial.⁶

Belize

Belize's Supreme Court of Judicature Act provides that the revised 1964 edition of the English Judges' Rules, further revised and published in Belize on May 29, 2000, should be given full effect and be judicially noticed, but only in regard to interviewing people and obtaining statements from them while they are in police custody.⁷ The caution to be given to individuals upon arrest for an offense is as follows: "You do not have to say anything unless you wish to do so, but what you say may be taken down in writing and given in evidence." The caution does not have to be given if it is impracticable to do so as a result of the suspect's condition or behavior, or if the suspect has already been cautioned immediately prior to arrest.⁸

When a person is formally charged with an offense, the following caution must be given: "Do you wish to say anything in answer to the charge? 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."⁹ Failure to follow these steps may result in any statements made by the accused not being admitted into evidence in court.¹⁰

³ Law 27150 on the Código Procesal Penal de la Nación [Code of Criminal Procedure], BOLETÍN OFICIAL (Dec. 10, 2014), http://www.sajj.gob.ar/docs-f/codigo/Codigo_Procesal_Penal_de_la_Nacion.pdf, archived at <https://perma.cc/E8SJ-UFP8>.

⁴ *Id.* art. 90.k.

⁵ *Id.* art. 64.

⁶ *Id.* art. 73.

⁷ Supreme Court of Judicature Act. cap. 91, s 61 (2000 rev. ed.), <http://www.belizeaw.org/web/lawadmin/index2.html> (select "Chapter 91" from "Chapter" drop-down on left and scroll to section 61), archived at <https://perma.cc/RF44-TJUG>.

⁸ Judges Rules, Rules 4 and 5, 2007, http://www.belizejudiciary.org/web/wp-content/uploads/2012/12/4a_judges_rules.pdf, archived at <https://perma.cc/DKK8-WQ6C>.

⁹ *Id.* Rule 7.1.

¹⁰ *Judge's Rules*, BELIZE LAW, http://www.belizeaw.org/web/e_library/judges_rules.html, archived at <https://perma.cc/DCA7-4HAR>.

Bermuda

Bermuda's Police and Criminal Evidence Act 2006 provides that for an arrest to be lawful, the person arrested must be informed that he is under arrest as soon as is reasonably practicable, along with the grounds for arrest.¹¹ The Act provides that the person arrested must be informed as soon as he is brought into a police station of his right to remain silent, his right to have someone informed of his arrest, and his right to access legal advice.¹²

Bolivia

Bolivia's Código de Procedimiento Penal (Code of Criminal Procedure)¹³ provides that when carrying out an arrest, the police are required to inform the suspect of the reasons for the arrest, the right to remain silent without inference of guilt or prejudice against the suspect, and the right to have access to the assistance of a defense lawyer. Administrative and criminal penalties will apply if these warnings are omitted by the interrogating officer.¹⁴

British Virgin Islands

Article 15(3) of the British Virgin Islands Constitution¹⁵ provides that any person who is arrested must be informed promptly, as prescribed by law, of the reason for his or her arrest or detention and of the right to remain silent, in a language that he or she understands. It appears that the British Virgin Islands continues to implement the English Judges' Rules, although no primary sources have been located to verify this.¹⁶

Canada

Prior to the passage of the Canadian Charter of Rights and Freedoms in 1982,¹⁷ "the right to silence, as a facet of the principle against self-incrimination, was already very much a part of the

¹¹ Police and Criminal Evidence Act 2006, tit. 8, § 27, <http://www.bermulalaws.bm/Laws/Annual%20Laws/2006/Acts/Police%20and%20Criminal%20Evidence%20Act%202006.pdf>, archived at <https://perma.cc/53SV-87R2>.

¹² *Id.* §§ 59–62.

¹³ Ley 1970 on the Código de Procedimiento Penal [Code of Criminal Procedure] (Mar. 25, 1999), available at <http://silep.vicepresidencia.gob.bo/SILEP/masterley/118405>, archived at <https://perma.cc/J22P-P7QV>.

¹⁴ *Id.* art. 296.6.

¹⁵ Virgin Islands Constitution Order 2007, SI 2007/1678, www.bvi.org.uk/files/constitution2007.pdf, archived at <https://perma.cc/3HTD-V34K>.

¹⁶ U.N. Committee Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Ninth Session, Summary Record of the 132nd Meeting, U.N. Doc. No. CAT/C/SR.132, ¶ 17 (Nov. 18, 1992), http://dag.un.org/bitstream/handle/11176/192293/CAT_C_SR.132-EN.pdf?sequence=1&isAllowed=y, archived at <https://perma.cc/R3EP-DQYB>; Ministry of Justice, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, 5th Report by the United Kingdom of Great Britain and Northern Ireland, at 208 (Sept. 6, 2011), <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GBR.5.pdf>, archived at <https://perma.cc/4TAQ-QA3B>.

¹⁷ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c 11 (U.K.), <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>, archived at <https://perma.cc/4AAF-UXYJ>.

common law confessions rule.”¹⁸ However, whether giving a caution was a prerequisite to the admissibility of statements made by a person in response to police questioning while in custody was unsettled for a brief period of time.¹⁹ It was not until the 1949 Supreme Court judgement in *R. v. Boudreau* that it was seen as an important factor in determining the voluntary nature of a possible admission, but not as decisively against the admissibility of such statements.²⁰ This position was reaffirmed by the Supreme Court in 2007.²¹ Prior to the Charter, police cautions were in use, but there does not appear to be any uniformity in the form of caution used in the different provinces of Canada.²²

Though the Charter does not explicitly stipulate the right to silence, the Supreme Court has found the right protected as a principle of fundamental justice under section 7 of the Charter.²³

Section 10(a) of the Charter entitles all people with “the right on arrest or detention . . . to be informed promptly of the reasons therefor” and section 10(b) with the right “to retain and instruct counsel without delay and to be informed of that right.”²⁴ Over the years the Supreme Court of Canada has expanded on what the suspect must be informed of regarding the right to counsel:

As clarified in subsequent cases *R v. Bartle* (1994) and *R v. Brydges* (1990), a legal counsel caution must include the following four requirements: Notify suspects and accused persons of (a) their right to retain and instruct counsel without delay; (b) information about access to counsel free of charge where an accused meets prescribed financial criteria set up by provincial Legal Aid plans; (c) information about access to immediate, although temporary, legal advice irrespective of financial status (“duty counsel”); and (d) basic information about how to access available services which provide free, preliminary legal advice.²⁵

¹⁸ *R. v. Singh*, [2007] 3 SCR 405, ¶ 34, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2390/index.do>, archived at <https://perma.cc/DA3F-ESB4>.

¹⁹ *R. v. K.F.*, 2010 N.S.C.A. 45, ¶ 25, <http://www.canlii.org/en/ns/nsca/doc/2010/2010nsca45/2010nsca45.html>, archived at <https://perma.cc/D3U5-8X2H>.

²⁰ *Boudreau v. The King*, [1949] SCR 262, at 267, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6749/index.do>, archived at <https://perma.cc/8KN5-UF49>.

²¹ *R. v. Singh*.

²² *R. v. K.F.*, ¶ 28.

²³ *R. v. Herbert*, [1990] 2 SCR 151, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/625/index.do>, archived at <https://perma.cc/L8XK-HZ8L>.

²⁴ Canadian Charter of Rights and Freedoms § 10(a) & (b).

²⁵ Sarah J. Chaulk, Brent Snook & Joseph Eastwood, *Measuring Reading Complexity and Listening Comprehension of Canadian Police Cautions*, 37(4) CRIM. J. & BEHAVIOR 453, 462 (Apr. 2010), http://www.mun.ca/psychology/bri/publications/Eastwood_Snook_Chaulk_2010.pdf, archived at <https://perma.cc/66QF-LX93>.

Warnings in Canada typically do not use the phrase “right to remain silent,” but it is usually implied in the Charter and the warnings. The police arrest warnings in Canada, which are based on these rights, vary from one police force to another. The following is an example of cautions given by the Royal Canadian Mounted Police (RCMP):

Right to Silence Caution:

You do not have to say anything unless you wish to do so. You have nothing to hope from any promise of favour and nothing to fear from any threat whether or not you say anything. Anything you say may be used as evidence.

Right to Legal Counsel Caution:

It is my duty to inform you that you have the right to retain and instruct counsel of your choice in private and without delay. Before you decide to answer any question concerning this investigation you may call a lawyer of your choice or get free advice from Duty Counsel. If you wish to contact Legal Aid duty counsel I can provide you with a telephone number and a telephone will be made available to you.²⁶

Cayman Islands

The Cayman Islands are an overseas territory of the United Kingdom and the legal system is therefore based on the English common law, locally enacted statutes, and Orders-in-Council. The 2009 Constitution’s Bill of Rights has a section on personal liberty that includes a subsection on the right to silence and the right to legal counsel, which reads as follows:

(3) Any person who is arrested or detained has the right to remain silent and shall be informed promptly, in a language that he or she understands, of the reason for his or her arrest or detention.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity of communication with his or her parents or guardian; but when a person arrested or detained is unable to retain a legal practitioner of his or her own choice or be represented by a legal practitioner at the public expense in accordance with section 7(2)(d), he or she may be represented, and hold private communication with, such person as the court may approve.²⁷

Section 62(1) of the Cayman Island’s Police Law stipulates that certain information must be given on arrest, which includes that the person arrested “is to be informed that he is under arrest and of the nature of the offence for which he is being arrested as soon as is practicable after his

²⁶ Sarah J. Chaulk, Joseph Eastwood & Brent Snook, *Measuring and Predicting Police Caution Comprehension in Adult Offenders*, 56(3) CAN. J. CRIMINOLOGY & CRIM. JUST. 328 (Apr. 2014), <https://muse.jhu.edu/article/539954/pdf>, archived at <https://perma.cc/6GBD-BYJ6>.

²⁷ Cayman Islands Constitution Order 2009, § 5(3) & (4), <http://www.hsph.harvard.edu/population/womenrights/cayman.constitution.09.pdf>, archived at <https://perma.cc/7M25-Y56N>.

arrest.”²⁸ This is not required, however, “if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.”²⁹ Section 147(1) of the Law provides for the right of silence, stating as follows:

147. (1) A police officer shall, prior to the interview of a person –
(a) whom he suspects to have committed an offence; or
(b) whom he has charged with the commission of an offence,
inform that person that he has the right to remain silent and that, if he exercises his right to remain silent, inferences may be drawn from his silence.

(2) The police officer shall, as soon as is practicable, record in the custody record of a person interviewed that he has been informed of his right to remain silent.³⁰

The words of the caution are: “You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”³¹

Prior to the 2009 Constitution and the updated Police Law, a caution on the right to remain silent was included in the English Judges’ Rules, which applied in the Cayman Islands.³²

Colombia

The Código de Procedimiento Penal (Code of Criminal Procedure)³³ provides that at the time of an arrest, a suspect must be immediately informed of the actions attributable to him or her that form the basis for detention and the authority who ordered it, as well as his or her right to indicate the name of someone who should be informed about the arrest, who should then be immediately informed by the authority ordering the arrest.³⁴ The suspect should also be informed of his/her right to remain silent and that any statement made may be used against him/her; that the suspect is not required to make statements against his/her spouse, permanent companion, or relatives within the fourth degree by blood or second degree by kinship; and the

²⁸ Police Law (2014 Revision) § 62(1), EXTRAORDINARY GAZETTE No. 83 of Nov. 7, 2014, Supp. No. 2, <http://www.gov.ky/portal/pls/portal/docs/1/11527999.PDF>, archived at <https://perma.cc/V5JB-S4GN>.

²⁹ *Id.* § 62(3).

³⁰ *Id.* § 147(1).

³¹ *Arrest and Charge in the Cayman Islands: Police Powers and the Rights of the Accused*, SAMSON & MCGRATH, <http://www.samsonandmcgrath.com/arrest-and-charge-in-the-cayman-islands-police-powers-and-the-rights-of-the-accused> (last visited May 3, 2016), archived at <https://perma.cc/WWN6-FUW3>.

³² Brent Fuller, *Right to Remain Silent Kept Quiet*, CAYMANCOMPASS.COM (Feb. 18, 2009), <http://www.compasscayman.com/caycompass/2009/02/19/Right-to-remain-silent-kept-quiet>, archived at <https://perma.cc/FJW4-T7E8>.

³³ Law 906 on the Código de Procedimiento Penal [Code of Criminal Procedure], DIARIO OFICIAL (Sept. 1, 2004), <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=14787>, archived at <https://perma.cc/9M3P-2CPB>.

³⁴ *Id.* art. 303.

right to a lawyer of his/her choice within as soon as possible. If appointing a lawyer of the suspect's choice is not possible, he/she will be assigned a public defender.³⁵

Costa Rica

Under article 82(e) of the Costa Rican Code of Penal Procedure, when a suspect is detained the judicial police must immediately and in a clear way inform an individual that, among other rights, he/she has the right “[t]o abstain from providing a statement (*abstenerse de declarar*) and if he/she agrees to do so, that his/her counsel be present when making his/her statement, and also that his/her counsel be present in other proceedings in which the attorney's presence is required.”³⁶

Ecuador

Ecuador's Código de Procedimiento Penal (Code of Criminal Procedure)³⁷ provides that at the time of detention the suspect must be informed of the reasons for his or her detention and of the identity of the authority who ordered it and of the agents carrying out the detention and interrogation. The suspect must also be informed of his or her right to remain silent, to seek have a lawyer present, and to communicate with a family member or any other person of his or her choice.³⁸

El Salvador

Under article 275 of El Salvador's Code of Penal Procedure, police officers must inform an individual when he/she is taken into custody of all of his/her rights.³⁹ Article 82 provides a list of the rights of those taken into custody and among them are

- the right to abstain from providing a statement (*abstenerse de declarar*) and the right not to be compelled to provide a self-incriminating statement; and
- the right to be assisted and defended by a counsel designated by him/herself or by a counsel appointed by the court (*defensor público*).

³⁵ *Id.*

³⁶ CÓDIGO PROCESAL PENAL, Ley No. 7594 of April 10, 1996, art. 82(e), LA GACETA (June 4, 1996), http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41297&nValor3=101880&strTipM=TC, archived at <https://perma.cc/E2FE-Y5NM>.

³⁷ CÓDIGO DE PROCEDIMIENTO PENAL [CODE OF CRIMINAL PROCEDURE] REGISTRO OFICIAL (Jan. 13, 2000, rev. ed. 2013), <http://www.registrocivil.gob.ec/wp-content/uploads/downloads/2014/01/este-es-19-C%C3%93DIGO-DE-PROCEDIMIENTO-PENAL-Reglamentos-Generales.pdf>, archived at <https://perma.cc/5PKQ-L6V8>.

³⁸ *Id.* art. 166.

³⁹ CÓDIGO PROCESAL PENAL, Decreto No. 733, arts. 82 & 275 (Oct. 22, 2008), DIARIO OFICIAL (Jan. 30, 2009), <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-procesal-penal> (click on “Descargar”), archived at <https://perma.cc/ZP54-WQHL>.

Guyana

Under the Guyana Criminal Law (Offenses) Act, subject to the provisions of the Act and other relevant statutes, “all the rules and principles of the common law relating to . . . criminal matters, so far as they are applicable to the circumstances of Guyana, [are] in force.”⁴⁰

Although a requirement for a Miranda-type warning during police interrogation has not been identified in Guyanese legislation, it is likely that a warning of the type described in the English Judges’ Rules applies, based on the application of British common law on criminal matters not covered by the Act.⁴¹

Under the Criminal Law (Procedure) Act a similar warning is made by the magistrate following a testimony by the accused at the preliminary inquiry. Accordingly,

. . . the magistrate, if of the opinion that the evidence has established a prima facie case against the accused, shall address him in these words, or to the like effect:

“Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial.”⁴²

Jamaica

In Jamaica the cautioning of suspects is based on the English Judges’ Rules. According to a 2006 decision of the Privy Council, the rules, “classed formally as administrative directions for the guidance of police officers interviewing suspects,”⁴³ have transformed over time into a general requirement “that police officers had to observe . . . if confessions received were to be admitted in evidence.”⁴⁴ Under the Judges’ Rules, which continue to apply in Jamaica, provide as follows:

⁴⁰ Criminal Law (Offenses) Act, Act 18 of 1893, LAWS OF GUYANA Cap. 8:01, *as amended*, available at http://www.oas.org/juridico/spanish/mesicic2_guy_criminal_law_act.pdf, archived at <https://perma.cc/3UMY-WAPQ>.

⁴¹ The requirement for the police to formally give a caution to suspects upon arrest was first introduced in 1912 by the Judges’ Rules. See T.E. St. Johnston, *Judges’ Rules and Police Interrogation in England Today*, 57(1) J. CRIM. L. & CRIMINOLOGY 85, 86, 89 (1966), available at <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5358&context=jclc>, archived at <https://perma.cc/G6S3-VWNU>.

⁴² Criminal Law (Procedure) Act, Act 19 of 1893, *as amended*, § 65(1), LAWS OF GUYANA Ch. 10.01 (rev. ed. 1975).

⁴³ *Shabadine Peart v. The Queen (Jamaica)* [2006] UKPC 5 (14 Feb. 2006), available at <http://www.bailii.org/uk/cases/UKPC/2006/5.html>, archived at <https://perma.cc/KR6E-QOTA>.

⁴⁴ *Id.*

2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”⁴⁵

Although the rules have been replaced in England and Wales by special provisions under the Police and Criminal Evidence Act 1984, they have not been replaced by Jamaican legislative provisions, and, as noted in a 1998 decision of the Privy Council, still “retain considerable importance.”⁴⁶

Mexico

The Mexican Constitution provides that an individual who is suspected of committing a crime has the right to be notified, both at the time of arrest and when appearing before the prosecutor or judge, of the reason for the arrest and the acts of which he/she is accused; of the right to remain silent (which may not be used against him/her); and of other applicable rights, which include the right to be considered innocent until proven guilty and to be adequately defended by an attorney chosen by him/her, or by an attorney appointed by the government in cases where the arrested individual cannot choose or does not want to have counsel.⁴⁷

Montserrat

Montserrat has a combination of constitutional and common-law requirements that police must follow when arresting an individual.⁴⁸ Article 7 of the Constitution of Montserrat specifies the information that must be provided to a suspect upon arrest, and the country continues to follow the common-law case of *Christie v. Leachinsky*,⁴⁹ which provides further information that must be given to a suspect upon his or her arrest.⁵⁰ Montserrat also continues to follow the English

⁴⁵ Practice Note, [1964] 1 All ER 237, [1964] 1 WLR 152 (undated), available at <http://www.lexis.com> (by subscription), archived at <https://perma.cc/H894-R8BP>.

⁴⁶ *Thompson v. The Queen (Saint Vincent and The Grenadines)*, [1998] UKPC 6, [1998] AC 811, <http://www.bailii.org/uk/cases/UKPC/1998/6.html>, archived at <https://perma.cc/HE6D-9HUL>.

⁴⁷ CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES] art. 20(B)(I)–(III), (VIII), DIARIO OFICIAL DE LA FEDERACIÓN (Feb. 5, 1917), available as amended through Jan. 2016 at http://www.diputados.gob.mx/LeyesBiblio/pdf/1_29ene16.pdf, archived at <https://perma.cc/2QAY-UZUV>.

⁴⁸ Montserrat Constitution Order 2010, 2010/2474, art. 7, <http://webcache.googleusercontent.com/search?q=cache:ZZTd7BE1AhYJ:constitution.gov.ms/wp-content/uploads/2010/11/monstitution-order-oct-2010.pdf+&cd=1&hl=en&ct=clnk&gl=us>, archived at <https://perma.cc/KD7A-B6E9>.

⁴⁹ *Christie v. Leachinsky* [1947] 1 All ER 567.

⁵⁰ *Commissioner of Police v. Ottley Labordere*, MC Files C3, 4 & 14 of 2012, <http://www.themontserratreporter.com/wp-content/uploads/2014/01/Magistrate-Court-Judgment.pdf>, archived at <https://perma.cc/U2F6-SUW6>.

Judges' Rules (see England and Wales) for the caution that should be provided to individuals upon arrest.⁵¹

Nicaragua

Under article 232 of Nicaragua's Code of Penal Procedure the police must inform an individual at the moment that he/she is taken in custody, that, among other things

(b) he has the right not to be compelled to testify against himself, or against a spouse or partner of a stable union, or his relatives within the fourth degree of consanguinity or second degree of affinity, and,

(c) he is entitled to be advised by counsel of his choice⁵²

Panama

Articles 22 and 25 of the Panamanian Constitution provide that any arrested person must be immediately and clearly informed of the reasons for the arrest and of his/her rights, which include the right to be presumed innocent until proven guilty, to be assisted by a lawyer during judicial and political proceedings, and not to be compelled to provide statements incriminating him/herself or against his/her spouse or close relatives during criminal proceedings.⁵³ This requirements is also restated in the country's Manual of Police Procedures.⁵⁴

Paraguay

The Constitución Nacional (National Constitution)⁵⁵ of Paraguay provides that at the time of an arrest, the suspect must be informed of the reason for the arrest, the right to remain silent, and the right to have the assistance of a defense attorney of his/her choice. The arresting authority must also provide a written arrest order from the issuing authority and the arrest must be immediately communicated to the suspect's relatives or other persons that he/she indicates. In addition, the suspect has the right to have free communication unless otherwise ordered by the judge in exceptional cases and for a limited time, the right to have an interpreter if necessary, and the

⁵¹ *Id.*

⁵² CÓDIGO PROCESAL PENAL DE LA REPÚBLICA DE NICARAGUA, Ley No. 406 (Nov. 13, 2001), art. 232(1)(b)–(c), LA GACETA (Dec. 21 & 24, 2001), available at <http://www.wipo.int/edocs/lexdocs/laws/es/ni/ni032es.pdf>, archived at <https://perma.cc/XK3V-BZGM>.

⁵³ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ [POLITICAL CONSTITUTION OF THE REPUBLIC OF PANAMA], arts. 22, 25, GACETA OFICIAL 25,176 (Nov. 15, 2004), http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/CONSTITUCIONES_POLITICAS/constitucion_politica.pdf, archived at <https://perma.cc/V36V-X2BX>.

⁵⁴ POLICÍA NACIONAL DE PANAMÁ, MANUAL DE PROCEDIMIENTOS POLICIALES [POLICE PROCEDURES MANUAL] 24, http://www.policia.gob.pa/Procedimientos_policiales.html, archived at <https://perma.cc/V2BD-TLNH>.

⁵⁵ CONSTITUCIÓN NACIONAL [NATIONAL CONSTITUTION] (June 20, 1992), available at http://www.oas.org/juridico/spanish/par_res3.htm, archived at <https://perma.cc/VD8T-QA3R>.

right to be transferred from police authority to a judge's authority within twenty-four hours of the arrest.⁵⁶

Saint Vincent and the Grenadines

Article 3(2) of the Constitution of Saint Vincent and the Grenadines provides individuals who are arrested with the right, within a reasonable period and no later than twenty-four hours after arrest, to be informed of the reasons for the arrest in a language he or she understands and the ability to use communications to consult with a legal practitioner.⁵⁷ There are no specific words contained in the Constitution, Criminal Procedure Code, or Police Act that the police must use when providing this information. It does appear that the English Judges' Rules have been followed in certain instances; however, Saint Vincent's High Court of Justice has held that the England and Wales Police and Criminal Evidence Act 1984 became a part of the laws of Saint Vincent and the Grenadines as a result of Saint Vincent's English Law Act 1989,⁵⁸ and thus it appears that the new caution contained in the Codes of Practice of the England and Wales Police and Criminal Evidence Act may apply to Saint Vincent.

Trinidad and Tobago

A July 2015 decision of the Privy Council confirms that "in 1965 the judges of Trinidad and Tobago adopted the 1964 Judges' Rules [revised version] applicable in England and Wales."⁵⁹ Accordingly,

22. The Judges' Rules contain a number of guiding principles. These include:

(c) that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so.

...

(e) that it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

⁵⁶ *Id.* art. 12.

⁵⁷ CONSTITUTION OF SAINT VINCENT AND THE GRENADINES, cap. 2, 1 LAWS OF SAINT VINCENT AND THE GRENADINES 10 (rev. ed. 1991).

⁵⁸ *Thompson v. Superintendent of Prison et al.*, 1999 No. 447, http://www.eccourts.org/wp-content/files_mf/24.09.99eversleythompsonvsuperintendentofprisonetal.pdf, archived at <https://perma.cc/53RA-VTFU>; Application of English Law Act, cap. 8, 2 LAWS OF SAINT VINCENT AND THE GRENADINES 4 (rev. ed. 1991).

⁵⁹ *Hunte & Khan v. State (Trinidad and Tobago)* (July 16, 2015), Trinity Term [2015] UKPC 33, Privy Council Appeal No. 0088 of 2012, <https://www.jcpc.uk/cases/docs/jcpc-2012-0088-judgment.pdf>, archived at <https://perma.cc/46LF-7P6B>.

The principle set out in para (e) is described as overriding and applicable in all cases.⁶⁰

Additionally, a 2015 Criminal Bench Book issued by the Trinidad and Tobago Judicial Institute of Training, instructs judges to direct jurors as follows:

From the words of the caution ie “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” it is clear that persons who are suspected and accused of having committed an offence have a right to remain silent. It is a right given by law, and he is entitled to stand upon that right and say nothing. And when a person has been accused by the police, and that person says nothing, no adverse inference can be drawn against that person.⁶¹

According to a 2003 report on the Criminal Justice System in Trinidad and Tobago submitted by the Bar Human Rights Committee to the Inter-American Court of Human Rights,

29. The precise text of the caution is as follows:

Do you wish to say anything in answer to the charge? 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.⁶²

The report further provides that

30. . . . A failure to observe the Rules *may*, in the judge’s discretion, lead to evidence being excluded
31. Although not mentioned in the Rules themselves, there is now a recognized practice in the Trinidad Police Service to use what is sometimes called the “short” caution: You are not obliged to say anything but anything you say may be given in evidence.⁶³

Uruguay

The Código de Procedimiento Penal (Code of Criminal Procedure) of Uruguay provides that a person under arrest has the right to be informed of his or her rights by the arresting authority.⁶⁴ These rights include the right to remain silent, the prohibition against self-incrimination, and the right to obtain the advice of a defense lawyer.⁶⁵

⁶⁰ *Id.* ¶ 22.

⁶¹ Ch. 18, “Silence of the Accused, Criminal Bench Book” § 6, JUDICIAL EDUCATION INSTITUTE TRINIDAD AND TOBAGO, CRIMINAL BENCH BOOK 220 (2015), <http://www.ttlawcourts.org/jeibooks/books/tcriminalbenchbook.pdf>, archived at <https://perma.cc/FBT5-5N4U>.

⁶² BAR HUMAN RIGHTS COMMITTEE, REPORT ON THE CRIMINAL JUSTICE SYSTEM IN TRINIDAD AND TOBAGO 6 (2003), <http://www.barhumanrights.org.uk/content/report-criminal-justice-system-trinidad-and-tobago>), archived at <https://perma.cc/ZQA9-GL8J>.

⁶³ *Id.*

⁶⁴ Ley 19293, CÓDIGO DE PROCEDIMIENTO PENAL [CODE OF CRIMINAL PROCEDURE] (Jan. 9, 2015), art. 65(b), available at <http://www.impo.com.uy/bases/leyes/19293-2014>, archived at <https://perma.cc/KL2Q-HL6L>.

⁶⁵ *Id.* art. 64.

II. East Asia and the Pacific

Australia

Australia does not have a federal legislative bill of rights⁶⁶ and there are no nationally-applicable statutory provisions regarding the cautions to be given to persons who are arrested or detained. One publication states that,

[f]or a long time, the common law was the main external source of regulation of police interviews. This was vague and patchy. The common law was supplemented by the Judges' Rules (as they were called in England), which were similarly vague and incomplete, and which lacked the force of law – they were merely guidelines, which had become almost a dead letter by the 1960s. For many years, the Police Commissioner's Instructions or Guidelines (their titles vary around Australia) constituted the only serious attempt to put down in propositional form the rules which governed police dealings with suspects.⁶⁷

More recently, there has been a trend towards the codification of the rights of arrested persons and the requirement to be informed of those rights. At the federal level, the Crimes Act 1914 (Cth), which applies in all states and territories with respect to Commonwealth offenses, requires that an arrestee be informed of his or her right to communicate with a friend, relative, or lawyer.⁶⁸ It also requires that an investigating official “must, before starting to question the person, caution the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence.”⁶⁹ These provisions were included in the Act through amendments made in 1991.⁷⁰

Similar requirements to caution suspects are included in legislation in all states and territories, including the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW),⁷¹ the Police Powers and Responsibilities Act 2000 (Qld),⁷² the Criminal Investigation Act 2006 (WA),⁷³ the

⁶⁶ See *How Are Human Rights Protected in Australian Law?*, AUSTRALIAN HUMAN RIGHTS COMMISSION (2006), <https://www.humanrights.gov.au/how-are-human-rights-protected-australian-law>, archived at <https://perma.cc/RDT6-PXYG>.

⁶⁷ Francine Feld et al., *Criminal Procedure in Australia* 132–33 (2015).

⁶⁸ Crimes Act 1914 (Cth), s 23G, <https://www.legislation.gov.au/Details/C2016C00121>, archived at <https://perma.cc/QX6L-QZM7>.

⁶⁹ *Id.* s 23F.

⁷⁰ Crimes (Investigation of Commonwealth Offences) Amendment Act 1991 (Cth), <https://www.legislation.gov.au/Details/C2004A04134>, archived at <https://perma.cc/67VS-RHBF>.

⁷¹ Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), ss 122 & 123, <http://www.legislation.nsw.gov.au/#/view/act/2002/103/full>, archived at <https://perma.cc/Z543-FJVG>.

⁷² Police Powers and Responsibilities Act 2000 (Qld), ss 418, 420–423, 431. <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PolicePowResA00.pdf>, archived at <https://perma.cc/LW7K-MBQZ>.

⁷³ Criminal Investigation Act 2006 (WA), s 138, [http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28299P/\\$FILE/Criminal%20Investigation%20Act%202006%20-%20%5B03-b0-01%5D.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:28299P/$FILE/Criminal%20Investigation%20Act%202006%20-%20%5B03-b0-01%5D.pdf?OpenElement), archived at <https://perma.cc/UZ9Q-B86R>.

Police Administration Act 1978 (NT),⁷⁴ Crimes Act 1958 (Vic),⁷⁵ Summary Offences Act 1953 (SA),⁷⁶ and the Criminal Law (Detention and Interrogation) Act 1995 (Tas).⁷⁷

In Queensland, for example, under the Police Powers and Responsibilities Regulation 2012 (Qld), a police officer must inform an arrested person “in a way substantially complying” with the following:

You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him or her to be present during questioning.

You also have the right to telephone or speak to a lawyer of your choice to inform the lawyer where you are and to arrange or attempt to arrange for the lawyer to be present during questioning.

If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose.

Is there anyone you wish to telephone or speak to?⁷⁸

The following caution is required with respect to the right to silence:

Before I ask you any questions I must tell you that you have the right to remain silent.

This means you do not have to say anything, answer any question or make any statement unless you wish to do so.

However, if you do say something or make a statement, it may later be used as evidence.

Do you understand?⁷⁹

⁷⁴ Police Administration Act 1978 (NT), s 140, [http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/6a3b78f6505a5d5e69257f46007dd01c/\\$FILE/ATTX2BBW.pdf/Repp014.pdf](http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/6a3b78f6505a5d5e69257f46007dd01c/$FILE/ATTX2BBW.pdf/Repp014.pdf), archived at <https://perma.cc/KWL9-3CBR>.

⁷⁵ Crimes Act 1958 (Vic), ss 464A(3) & 464C, [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTOject_Store/LTOject7.nsf/DDE300B846EED9C7CA257616000A3571/F0DAEBAA20DFCD11CA257B0B00146ED4/\\$FILE/58-6231aa235%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTOject_Store/LTOject7.nsf/DDE300B846EED9C7CA257616000A3571/F0DAEBAA20DFCD11CA257B0B00146ED4/$FILE/58-6231aa235%20authorised.pdf), archived at <https://perma.cc/NW7L-9KAC>.

⁷⁶ Summary Offences Act 1953 (SA), s 79A, <https://www.legislation.sa.gov.au/LZ/C/A/SUMMARY%20OFFENCES%20ACT%201953/CURRENT/1953.55.UN.PDF>, archived at <https://perma.cc/382S-KGGY>.

⁷⁷ Criminal Law (Detention and Interrogation) Act 1995 (Tas), ss 6 & 9, http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=;doc_id=72%2B%2B1995%2BAT%40EN%2B20160427030000:hison=;pdfauthverid=;prompt=;rec=;rtfauthverid=;term=;webauthverid, archived at <https://perma.cc/4E4P-BWCX>; see also Evidence Act 2001 (Tas) s 139, http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=;doc_id=76%2B%2B2001%2BAT%40EN%2B20160427030000:hison=;pdfauthverid=;prompt=;rec=;rtfauthverid=;term=;webauthverid, archived at <https://perma.cc/2VPR-FCTP>.

⁷⁸ Police Powers and Responsibilities Regulations 2012 (Qld), sch 9, s 23(1), <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PolicePowResR12.pdf>, archived at <https://perma.cc/R3GF-V9LY>.

⁷⁹ *Id.* sch 9, s 26(1).

Cambodia

The Cambodian Criminal Procedure Code requires that, when a person is placed in police custody, the police officer must immediately inform the detainee about the right to counsel.⁸⁰ The Code was enacted in 2007. The previous Criminal Procedure Law did not have a similar provision.⁸¹

It appears that neither the 2007 Code nor the previous law provides for the right to remain silent.

Cook Islands

The Cook Islands Constitution states that no enactment shall be construed or applied so as to deprive any person who is arrested or detained “[o]f the right to be informed promptly of the act or omission for which he is arrested or detained, unless it is impracticable to do so or unless the reason for the arrest or detention is obvious in the circumstances,” and “[o]f the right, wherever practicable to retain and instruct a barrister or solicitor without delay.”⁸² The Cook Islands High Court held in a 2002 case that the constitutional right to instruct a lawyer comes “with a companion right to be informed of the existence of the right to instruct a lawyer and to be given advice of those rights as soon as any person was detained or was under de facto arrest.”⁸³ In a 2015 case the Court also acknowledged the applicability in the Cook Islands of the English Judges’ Rules, which state that a person should be cautioned that they are not obliged to answer any questions and that if they do “the questions and answers will be taken down in writing and may be given in evidence.”⁸⁴

⁸⁰ Code of Criminal Procedure (June 7, 2007), arts. 97 & 98, English translation available at http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf, archived at <https://perma.cc/G3U5-T3JZ>.

⁸¹ Law on Criminal Procedure (Jan. 28, 1993), art. 61, English translation available at http://www.wipo.int/wipolex/en/text.jsp?file_id=223119, archived at <https://perma.cc/5LEP-5E4Q>.

⁸² CONSTITUTION OF THE COOK ISLANDS s. 65(1)(c), http://www.paclii.org/ck/legis/num_act/cotci327/, archived at <https://perma.cc/MH3Q-H2BX>. This provision was inserted by section 8 of the Constitution Amendment (No. 9) Act 1980–81, http://www.paclii.org/ck/legis/num_act/ca9a19801981295, archived at <https://perma.cc/R27R-XT4Z>.

⁸³ *Police v. Tutakiau* [2001] CKHC 1, <http://www.paclii.org/ck/cases/CKHC/2001/1.html>, archived at <https://perma.cc/BX5C-UGH3>. The Criminal Procedure Act 1980–1981 also places a duty on an arresting officer to promptly inform the person arrested of the grounds for his arrest, of any charge against him, and “allow him to consult a legal practitioner of his own choice without delay.” Criminal Procedure Act, s. 9(1), http://www.paclii.org/ck/legis/num_act/cpa19801981188, archived at <https://perma.cc/EYP9-U2A7>.

⁸⁴ *Police v. Young* [2015] CKHC 1, at ¶ 23, quoting Rule III.B of the Judges’ Rules, <http://www.paclii.org/ck/cases/CKHC/2015/1.html>, archived at <https://perma.cc/RRB8-SSLR>. The Evidence Act 1968 recognizes the privilege against self-incrimination. Evidence Act 1968, s. 20, http://www.paclii.org/ck/legis/num_act/ea196880, archived at <https://perma.cc/89TT-LTF8>. Failure to give the caution in the case did not lead to the relevant statement of the accused being ruled inadmissible. *Police v. Young*, at ¶¶ 40–48. This was based on section 19 of the Evidence Act 1968, which allows confessions to be admitted in evidence “if the Judge or other presiding officer is satisfied that the means by which the confession was obtained were not in fact likely to cause an untrue admission of guilt to be made.”

Federated States of Micronesia

In all jurisdictions of the Federated States of Micronesia, before questioning a person who has been arrested, the police must advise him or her of certain rights, including the right to speak to counsel, the right to remain silent, the right to have counsel present during questioning, and the right to a public defender.⁸⁵

Fiji

The Fijian Constitution of 2013 provides that “every person who is arrested or detained” has the right “to be informed promptly, in a language the he or she understands,” of “the reason for the arrest or detention and the nature of any charge that may be brought against that person”; “the right to remain silent”; and “the consequences of not remaining silent.”⁸⁶

In addition, this section further states that an arrested or detained person has the right

to communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission.⁸⁷

The section emphasizes that “[w]henver this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.”⁸⁸

Provisions similar to those in the 2013 Constitution regarding the right to consult with a lawyer and the right to refrain from making a statement were included in the 1997 Constitution.⁸⁹ In addition, the English Judges’ Rules, including the requirement for a caution related to remaining silent, continue to be cited by the Fijian High Court.⁹⁰

⁸⁵ 12 FSM Code § 218 (2014), available at <http://fsmlaw.org/fsm/code/code2014/FSMCode2014Tit12Chap02.html> (national law), archived at <https://perma.cc/BN4C-YSDX>; 12 Chuuk State Code § 9028 (2001 draft version), available at http://fsmlaw.org/chuuk/code/title12/T12_CH32.htm#9028, archived at <https://perma.cc/RPG9-39XM>; 17 Kosrae State Code § 17.1106 (1997), available at <http://fsmlaw.org/kosrae/code/title17/t17p02c11.htm>, archived at <https://perma.cc/SB2Q-CYSB>; 62 Pohnpei Code § 2-118 (2012), bibliographic information at <https://lccn.loc.gov/2014217823>; State of Yap v. Fintimag, Crim. Case No. 1996-017 (Aug. 12, 1996), available at http://fmsupremecourt.org/WebSite/yap/decisions/cr_1996_017.htm (decision setting forth Yap law on arrestee’s rights), archived at <https://perma.cc/HU8R-L7UV>.

⁸⁶ CONSTITUTION OF THE REPUBLIC OF FIJI, 2013, s. 13(1)(a), <http://www.paclii.org/fj/Fiji-Constitution-English-2013.pdf>, archived at <https://perma.cc/3Q3W-CS5K>.

⁸⁷ *Id.* s. 13(1)(b).

⁸⁸ *Id.* s. 13(2).

⁸⁹ Constitution (Amendment) Act 1997, ss. 27(1)(c) & 27(3)(a), <http://www.constitutionnet.org/files/1997-constitution.pdf>, archived at <https://perma.cc/889R-4TZB>.

⁹⁰ See *State v Prasad* [1995] FJHC 37, <http://www.paclii.org/fj/cases/FJHC/1995/37.html>, archived at <https://perma.cc/ARM9-ESR4>; *State v. Matakagi* [2003] FJHC 166, <http://www.paclii.org/fj/cases/FJHC/>

Hong Kong

In 1992, the then Secretary for Security of Hong Kong issued the Rules and Directions for the Questioning of Suspects and the Taking of Statements (Rules and Directions), which still apply to the Hong Kong Special Administrative Region of the People's Republic of China after the transfer of sovereignty from the United Kingdom to China in 1997. The 1992 Rules and Directions prescribe that, when being questioned, a suspect must be cautioned not to incriminate him or herself through answering questions if he/she does not wish to do so.⁹¹ Noncompliance with the Rules and Directions may result in the exclusion of answers and statements given in subsequent criminal proceedings.⁹²

According to the 1992 Rules and Directions, in criminal investigations a police officer may question any person regardless of whether that person has been taken into custody.⁹³ As soon as a police officer has evidence that would “afford reasonable grounds for suspecting that a person has committed an offense,” that person must be cautioned before being questioned in connection with that offense and the caution must be in the following form: “You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”⁹⁴

There are two gazetted versions of the caution statement, in English and in Cantonese, and a suggested Putonghua version.⁹⁵

Japan

The Constitution of Japan states “[n]o person shall be arrested or detained . . . without the immediate privilege of counsel.”⁹⁶ The Criminal Procedure Code states that when a police officer “has arrested a suspect upon an arrest warrant . . . , he/she shall immediately inform the

[2003/166.html](https://www.paclii.org/fj/cases/FJHC/2015/212.html), archived at <https://perma.cc/LN75-7RPG>; *State v. Baleilevuka* [2015] FJHC 212, <https://www.paclii.org/fj/cases/FJHC/2015/212.html>, archived at <https://perma.cc/3FH9-USAW>.

⁹¹ Department of Justice and Security Bureau, Legislative Council Panel on Security Rules and Directions for the Questioning of Suspects and the Taking of Statements: Caution Statement, LC Paper No. CB(2)1610/10-11(03) (May 3, 2011), <http://www.legco.gov.hk/yr10-11/english/panels/se/papers/se0503cb2-1610-3-e.pdf>, archived at <https://perma.cc/UYK8-C5TL>.

⁹² Rules and Directions for the Questioning of Suspects and the Taking of Statements issued by the Secretary for Security in 1992 (issued by the Secretary for Security, Hong Kong Gazette No. 40/1992, Special Supplement No. 5, E3, Oct. 2 1992), Note, in BUTTERWORTHS HONG KONG POLICE FORCE HANDBOOK 1, 1 (LexisNexis, 2004).

⁹³ *Id.* Rules § I, at 2.

⁹⁴ *Id.* Rules § II, at 2.

⁹⁵ Department of Justice and Security Bureau, Legislative Council Panel on Security Rules and Directions for the Questioning of Suspects and the Taking of Statements: Caution Statement, LC Paper No. CB(2)754/05-06(04) (Jan. 3, 2006), Annex, <http://www.legco.gov.hk/yr05-06/english/panels/se/papers/se0103cb2-754-04-e.pdf>, archived at <https://perma.cc/29UY-Y9K4>.

⁹⁶ CONSTITUTION OF JAPAN (1946) art. 34, English translation available on the Prime Minister of Japan and His Cabinet website, at http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html, archived at <https://perma.cc/JTX3-QC2V>.

suspect of the essential facts of the suspected crime and the fact that the suspect may appoint defense counsel.”⁹⁷ This provision was included when the Code was enacted in 1948. The previous Criminal Procedure Code (Act No. 75 of 1922) did not have a similar provision.

In cases where the charge against the suspect is punishable with the death penalty, life imprisonment, or imprisonment for more than three years, the police officer must further inform the suspect of the procedure for appointment of counsel when a prosecutor requests further detention of the suspect.⁹⁸ If the suspect was not released but was sent to a prosecutor in the case of such a charge, the prosecutor also informs the suspect of the procedure of appointment of counsel.⁹⁹ These obligations of police officers and prosecutors were established when the Code was amended in 2004 (effective in 2006).¹⁰⁰

The Criminal Procedure Code also states that “the suspect shall, in advance, be notified that he/she is not required to make a statement against his/her will” during interrogation by law enforcement officers investigating a crime.¹⁰¹ This provision was included when the Code was enacted in 1948. The previous Criminal Procedure Code (Act No. 75 of 1922) did not have such a provision.

Kiribati

In Kiribati, the Police Powers and Duties Act 2008 contains a provision on cautioning suspects about their right to remain silent “before the suspect is questioned.”¹⁰² The provision further states that

- (2) The caution must be given in, or translated into, a language in which the suspect is able to communicate with reasonable fluency, but need not be given in writing unless the suspect can not hear adequately.
- (3) If the police officer suspects, on reasonable grounds, that the suspect does not understand the caution, the police officer may ask the suspect to explain the meaning of the caution in his or her own words.
- (4) If necessary, the police officer must further explain the caution.
- (5) If questioning is suspended or delayed, the police officer must ensure that the suspect is aware that he or she still has the right to remain silent and, if necessary, again caution the suspect when questioning continues.

⁹⁷ Act No. 131 of July 10, 1948, amended by Act No. 79 of 2014, art. 203, ¶ 1, English translation as amended by Act No. 74 of 2011 available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=criminal+procedure&ia=03&x=40&y=9&ky=&page=2&vm=02>, archived at <https://perma.cc/L3S7-AM76>.

⁹⁸ *Id.* art. 203, ¶ 3.

⁹⁹ *Id.* art. 204, ¶ 2.

¹⁰⁰ Act to Amend Criminal Procedure Code and others, Act No. 62 of 2004.

¹⁰¹ *Id.* art. 198, ¶ 2.

¹⁰² Police Powers and Duties Act 2008, s. 123(1), http://www.paclii.org/ki/legis/num_act/ppada2008253, archived at <https://perma.cc/ZBC7-NKRD>.

(6) If the police officer cautions a suspect in the absence of someone else who is to be present during the questioning, the caution must be repeated in the other person's presence.

(7) This section does not apply if another law requires the suspect to answer questions put by, or do things required by, a police officer.¹⁰³

The Act also requires a police officer, before he or she starts to question a suspect, to “inform the suspect that the suspect may phone or speak to” a friend or relative or a lawyer in order to inform that person of the suspect's whereabouts and to ask him or her to be present during questioning.¹⁰⁴

Prior to the 2008 Act, it appears that the Kiribati courts referred to the English Judges' Rules with respect to cautioning suspects.¹⁰⁵

Laos

The Law on Criminal Procedure states that, when a law enforcement officer interrogates a suspect to whom the police agency or the prosecutor's office has issued an investigation order, the officer must inform the suspect of applicable rights.¹⁰⁶ The right to counsel is on the list of such suspect's rights.¹⁰⁷ The right to remain silent is not listed. The Law also states that at the time of arrest (whether or not an investigation order was issued), law enforcement must inform the arrestee of his or her rights and obligations.¹⁰⁸

Before the Law on Criminal Procedure was amended in 2012, the previous 2004 Law stated that, “[a]t the beginning of taking testimony from an accused person, the investigator or interrogator shall notify [the accused person] of the charges and explain to the concerned accused person his rights and obligations.”¹⁰⁹ An accused person's rights included the right to “retain and meet with a lawyer or other protector to contest the case.”¹¹⁰

¹⁰³ *Id.* s. 123.

¹⁰⁴ *Id.* s. 114(1).

¹⁰⁵ See *Republic v. Kimaere* [2004] KIHIC 14, <http://www.paclii.org/ki/cases/KIHIC/2004/14.html>, archived at <https://perma.cc/8JTF-GVR4>.

¹⁰⁶ Criminal Procedure Law, No. 17/NA (July 10, 2012), art. 116 (2), Japanese translation available on the Japan International Cooperation Agency website, at [http://gwweb.jica.go.jp/km/FSubject0401.nsf/3b8a2d403517ae4549256f2d002e1dcc/172563f227bf87c449257bc60010b4bb/\\$FILE/☆ラオス刑事訴訟法・2012年改正_\(Ver.1.4\).pdf](http://gwweb.jica.go.jp/km/FSubject0401.nsf/3b8a2d403517ae4549256f2d002e1dcc/172563f227bf87c449257bc60010b4bb/$FILE/☆ラオス刑事訴訟法・2012年改正_(Ver.1.4).pdf), archived at <https://perma.cc/N8BM-9A2R>.

¹⁰⁷ *Id.* art. 65.

¹⁰⁸ *Id.* art. 139.

¹⁰⁹ Law on Criminal Procedure, No. 01/NA (May 15, 2004), art. 43, English translation available on the Embassy of the Republic of Singapore Vientiane website, at <http://www.mfa.gov.sg/content/dam/mfa/images/om/vientiane/Lao%20Law/Crim%20Pro%20Law%20and%20Decree%20Final%20200306.pdf>, archived at <https://perma.cc/W5DP-X7DK>.

¹¹⁰ *Id.* art. 28 (footnote in original omitted).

The older law could not be located, therefore it is not clear when notification of the right to counsel was first introduced.

Malaysia

The Federal Constitution of Malaysia recognizes the right of an arrested person to “consult and be defended by a legal practitioner of his choice.”¹¹¹ Under a provision added in 2007, the Criminal Procedure Code requires a police officer, before commencing any form of questioning of a person arrested without a warrant, to inform the person that he or she may “communicate or attempt to communicate and consult with a legal practitioner of his choice.”¹¹²

Under common law, the Malaysian courts have stated that an arrested person has the right to remain silent and to refuse to answer any questions.¹¹³ The Criminal Procedure Code also provides that “a person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.”¹¹⁴ A police officer examining a person must first inform him or her of this provision.¹¹⁵

A further statutory requirement for a type of caution is contained in section 37A(1) of the Dangerous Drugs Act 1952, which provides that, where a person is charged with an offense under the Act, any statement that he or she has made or makes is admissible at trial, provided that

. . . no such statement shall be admissible or used . . . –

. . .

(b) in the case of a statement made by such person after his arrest, unless the court is satisfied that a caution was administered to him in the following words or words to the like effect—

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence”:

¹¹¹ FEDERAL CONSTITUTION OF MALAYSIA art. 5(3), <http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20%28BI%20text%29.pdf>, archived at <https://perma.cc/H96U-GXJ6>.

¹¹² CRIMINAL PROCEDURE CODE (Act 593), s. 28A(2)(b), as amended to Nov. 2012, http://mpmis.dmpm.nre.gov.my/marine_park_new/module/document_reports/getfiles.php?doc_id=1082, archived at <https://perma.cc/T22K-3NS3>.

¹¹³ See *Mohd Jamail Bin Abdul Ghani v Pendakwa Raya [Public Prosecutor]*, Criminal Appeal No. A-05-42-2010 (Court of Appeals, Putrajaya), ¶ 13 (citing *Alcontra a/l Ambross Anthony v. Public Prosecutor* [1996] 1 MLJ 209), <http://www.kehakiman.gov.my/directory/judgment/file/A-05-42-2010.pdf>, archived at <https://perma.cc/MK26-HVUN>.

¹¹⁴ CRIMINAL PROCEDURE CODE (Act 593), s. 112(2).

¹¹⁵ *Id.* s. 112(3).

Provided that a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of no such caution having been given if it has been given as soon as possible.¹¹⁶

The provision further states that a person accused of an offense under the Act “shall not be bound to answer any questions relating to such case after any such caution as aforesaid has been administered to him.”¹¹⁷

Marshall Islands

In the Marshall Islands, before questioning a person who has been arrested, the police must advise him or her of certain rights, including the right to speak to counsel, the right to remain silent, the right to have counsel present during questioning, and the right to a public defender.¹¹⁸

New Zealand

Section 23 of the New Zealand Bill of Rights Act 1990 provides that

- (1) Everyone who is arrested or who is detained under any enactment—
 - (a) shall be informed at the time of the arrest or detention of the reason for it; and;
 - (b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and

...
- (4) Everyone who is—
 - (a) arrested; or
 - (b) detained under any enactment—for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.¹¹⁹

In addition, persons charged with an offense “have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance.”¹²⁰

The courts in New Zealand traditionally applied the English Judges’ Rules, which were originally written in England in 1912.¹²¹ The Rules provided that “persons in custody should not be questioned without the usual caution being administered.”¹²²

¹¹⁶ Dangerous Drugs Act 1952 (Act 235), s. 37A(1), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20234.pdf> (emphasis in original), archived at <https://perma.cc/98S8-9A5H>.

¹¹⁷ *Id.* s. 37A(2).

¹¹⁸ 32 MARSHALL ISLANDS REV. CODE § 120 (2004), available at http://www.pacii.org/mh/legis/consol_act/cpa188, archived at <https://perma.cc/JM9T-E9N5>.

¹¹⁹ New Zealand Bill of Rights Act 1990, s. 23, <http://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>, archived at <https://perma.cc/2X6N-Q673>.

¹²⁰ *Id.* s. 24(f).

A practice note on police questioning issued by the New Zealand Chief Justice in 2007 provides further instructions regarding the approach to be taken in informing persons of their rights. The practice note supplements the relevant statutes and “is not intended to change existing law on application of the Judges’ Rules in New Zealand and does not preclude further judicial development.”¹²³ It states that “[w]henever a member of the police has sufficient evidence to charge a person with an offence or whenever a member of the police seeks to question a person in custody, the person must be cautioned before being invited to make a statement or answer questions.”¹²⁴ The caution to be given must state that the person “has the right to refrain from making a statement and to remain silent,” that the person “has the right to consult and instruct a lawyer without delay and in private before deciding whether to answer questions and that such right may be exercised without charge under the Police Detention Legal Assistance Scheme,” and that anything the person says “will be recorded and may be given in evidence.”¹²⁵

A multilingual document on the rights cautions to be used by the New Zealand Police states as follows:

The following advice should be provided to people who are arrested or detained, or where police want to question someone where there is sufficient evidence to charge that person with an offence:

- You have been arrested/detained for (give reason)
[OR]
- I am speaking to you about (give reason)
- You have the right to remain silent.
- You do not have to make any statement.
- Anything you say will be recorded and may be given in evidence in court.
- You have the right to speak with a lawyer without delay and in private before deciding whether to answer any questions.
- Police have a list of lawyers you may speak to for free.¹²⁶

An additional rights caution is provided for children and young persons.¹²⁷

¹²¹ See NEW ZEALAND LAW COMMISSION, POLICE QUESTIONING 2, 9 & 12 (Report No. 31, 1994), <http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R31.pdf>, archived at <https://perma.cc/2AQN-KK8N>.

¹²² *Id.*; see also St. Johnston, *supra* note 41.

¹²³ Practice Note on Police Questioning (s30(6) Evidence Act 2006), at 1 (Sian Elias, Chief Justice, July 16, 2007), <https://www.courtsfnz.govt.nz/business/practice-directions-1/high-court/Practice-note-on-Police-questioning.pdf>, archived at <https://perma.cc/G68Z-BDQM>.

¹²⁴ *Id.* at 1.

¹²⁵ *Id.* at 1–2.

¹²⁶ New Zealand Police, Multilingual Rights Caution, caution no. 1 (Aug. 2011), <http://www.police.govt.nz/sites/default/files/publications/police-multilingual-rights-cautions.pdf>, archived at <https://perma.cc/2GPJ-AKYK>.

¹²⁷ *Id.* caution no. 52.

Palau

In Palau, before questioning a person who has been arrested, the police must advise him or her of certain rights, including the right to speak to counsel, the right to remain silent, the right to have counsel present during questioning, and the right to a public defender.¹²⁸

Papua New Guinea

The Constitution of Papua New Guinea requires that a person who is arrested or detained “shall be informed promptly, in a language that he understands, of the reasons for his arrest or detention and of any charge against him,” and “shall be permitted whenever practicable to communicate without delay and in private with a member of his family or a personal friend, and with a lawyer of his choice (including the Public Solicitor if he is entitled to legal aid),” and “shall be informed immediately on his arrest or detention of his rights under this subsection.”¹²⁹

The right to silence during a criminal trial is expressly protected by the Constitution, which states that “[n]o person shall be compelled in the trial of an offence to be a witness against himself.”¹³⁰ The courts have also held that, in Papua New Guinea, “a person suspected of or charged with a criminal offence has a right to silence at all stages of the criminal process from arrest to trial.”¹³¹ In one case, a judge stated that such a right during a formal police interview is

best regarded as being conferred by the underlying law or what used to be known as “the Judges’ Rules”. The right is usually implemented by a police officer issuing a caution at the beginning of the interview, as it was in the present case, in terms such as this:

I am warning you that you do not have to say anything as anything you do say will be taken down in writing and may be given in court as evidence.¹³²

It appears that the wording of the relevant caution may be set out in a police instruction manual. A judge stated in another case that, in the context of showing that a statement or confession was made voluntarily during a police interview, “[t]he accused must understand their position even when it requires the interviewer to use additional words to those set out in his instruction manual and where a doubt remains, to get the accused to express in their own words their understanding of the right to remain silent.”¹³³

¹²⁸ 18 PALAU NAT’L CODE § 217 (1995), http://www.paclii.org/pw/legis/consol_act/cpt18228, archived at <https://perma.cc/27H9-RQCS>.

¹²⁹ CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA (1975), s. 42(2), http://www.paclii.org/pg/legis/consol_act/cotisopng534, archived at <https://perma.cc/K9KU-CP6X>. The right to instruct a lawyer, and to be informed of that right, is also reflected in the Arrest Act 1977, s. 18(1)(c)(iii), http://www.paclii.org/pg/legis/consol_act/aa197796, archived at <https://perma.cc/UUC8-ZW2C>.

¹³⁰ *Id.* s. 37(10).

¹³¹ *Bate v. State* [2012] PGSC; SC1216, ¶ 58, <http://www.paclii.org/pg/cases/PGSC/2012/46.html>, archived at <https://perma.cc/F9XF-L7YM>.

¹³² *Id.* ¶ 59 (emphasis in original omitted).

¹³³ *State v. Balana* [2007] PGNC 12; CR 522 of 2003, ¶ 12, <http://www.paclii.org/pg/cases/PGNC/2007/12.html>, archived at <https://perma.cc/994T-B8VV>.

Philippines

The current Philippines Constitution specifically provides that

[a]ny person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.¹³⁴

Similarly, the previous Philippines Constitution, enacted in 1973, provided the following that “[a]ny person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right.”¹³⁵

The Philippine National Police has indicated that in practice, the wording of the warning delivered to arrested individuals is as follows:

You have the right to remain silent. Any statement you make may be used against you in a court of law in the Philippines. You have the right to have a competent and independent counsel preferably of your own choice. If you cannot afford the services of a counsel, the government will provide you one. Do you understand these rights?¹³⁶

Samoa

The Samoan Constitution provides that “[e]very person who is arrested shall be informed promptly of the grounds of his or her arrest and of any charge against the person and shall be allowed to consult a legal practitioner of his or her choice without delay.”¹³⁷ The duty of an arresting officer with respect to these rights is also reflected in the Criminal Procedure Act 1972.¹³⁸ The courts have stated that “[i]t is well settled that the right to counsel of an accused person arrested by the police should be made clear, and any questioning by the police of the accused shall be on hold for a reasonable time to enable the accused to obtain legal advice.”¹³⁹

¹³⁴ CONST. (1987), art. III, § 12(1), available at http://www.chanrobles.com/article3.htm#_VyJAbUY-V7I, archived at <https://perma.cc/WQ55-9NXX>.

¹³⁵ CONST. (1973), art. IV, § 20, available at http://www.chanrobles.com/1973constitutionofthephilippines.htm#_VyJDdEY-V7I, archived at <https://perma.cc/4BC7-GRBT>.

¹³⁶ Press Release, Philippine National Police, ICRC Turned Over “The New Miranda” and “Anti-Torture” Warning Card for Distribution to PNP Personnel (Feb. 8, 2012), <http://pnp.gov.ph/portal/index.php/press-news-releases/latest-news/602-icrc-turned-over-the-new-miranda-and-anti-torture-warning-card-for-distribution-to-pnp-personnel>, archived at <https://perma.cc/49ME-K6UZ>.

¹³⁷ CONSTITUTION OF THE INDEPENDENT STATE OF SAMOA (1960), as amended to Jan. 1, 2016, s. 6(3), http://www.pacii.org/ws/legis/consol_act/cotisos438, archived at <https://perma.cc/HYW4-JQRJ>.

¹³⁸ Criminal Procedure Act 1972, s. 9(1), http://www.pacii.org/ws/legis/consol_act/cpa1972188, archived at <https://perma.cc/L2PN-C9V5>.

¹³⁹ *Police v. Taelega* [2005] WSSC 17, <http://www.pacii.org/ws/cases/WSSC/2005/17.html>, archived at <https://perma.cc/QR9X-GG5M>.

Under common law, in addition to being informed of his or her right to a lawyer, it appears that an arrested person must also be informed of his or her right to remain silent. The courts have referred to the English Judges' Rules with respect to the requirement for a caution.¹⁴⁰ In a 2005 court decision, reference was made to a "police green card," which spells out both rights in English and Samoan.¹⁴¹

Solomon Islands

The Solomon Islands Constitution of 1978 provides certain rights to persons charged with offenses.¹⁴² Rights provided under common law are also applied by the Solomon Islands courts. A publication of the Royal Solomon Islands Police on criminal law in the country refers to general principles of law established by the courts, including that if a person in custody wishes to consult a lawyer he can do so and is entitled to do so at an early stage of the investigation.¹⁴³

The publication also cites various cases stating that, although not explicit in the Constitution, the right of a suspected person to remain silent is a fundamental right.¹⁴⁴ In the context of the admissibility of confessional evidence, the publication discusses the warnings to be given to suspects. It states that until the early 1980s, the Judges' Rules of the English High Court were applied in the Solomon Islands. These were replaced by rules issued by the Chief Justice of the Solomon Islands as a practice direction in 1982; these rules "are essentially the same as the English rules but have the added advantage of Pidgin translations of the various cautionary statements."¹⁴⁵

The practice direction included the following warning to be given to all persons under arrest or in custody:

If you want to remain silent you may do so. But if you want to tell your side you think carefully about what you say because I shall write what you say down and may tell a court what you say if you go to court. Do you understand?¹⁴⁶

¹⁴⁰ See *In re the Constitution, Talo v. Police* [1994] WSCA 2, <http://www.paclii.org/ws/cases/WSCA/1994/2.html>, archived at <https://perma.cc/LE6Q-6E26>; *Talo v. Police* [1994] WSCA 21, <http://www.paclii.org/ws/cases/WSCA/1994/21.html>, archived at <https://perma.cc/6ZRP-H4E2>.

¹⁴¹ *Police v. Penieli* [2005] WSSC 30, <http://www.paclii.org/ws/cases/WSSC/2005/30.html>, archived at <https://perma.cc/SHX9-Y4QK>.

¹⁴² CONSTITUTION OF THE SOLOMON ISLANDS 1978, s. 10, http://www.paclii.org/sb/legis/consol_act/c1978167, archived at <https://perma.cc/VE4H-RUX9>.

¹⁴³ ROYAL SOLOMON ISLANDS POLICE, CRIMINAL LAW IN SOLOMON ISLANDS (undated), § 7.12.2 (quoting *R v. Lemsatef* [1977] WLR 812), <http://www.paclii.org/sb/criminal-law/ch7-fundamental-rights-and-freedoms.htm>, archived at <https://perma.cc/84XT-JXDH> (last visited Apr. 28, 2016).

¹⁴⁴ *Id.* § 7.13 (quoting *Kim Kae Jun & Crew of Vessel No. 1 New Star v. Director of Public Prosecutions & Commissioner of Police* (unreported Civ. Case No. 423 of 1999)).

¹⁴⁵ *Id.* § 8.14.3 (quoting *Joel Nanango* (unreported Crim. App. Case No. 4 of 1996)), <http://www.paclii.org/sb/criminal-law/ch8-admissability-of-evidence.htm>, archived at <https://perma.cc/7FKJ-JM95>.

¹⁴⁶ *Id.* (quoting Rules by Chief Justice on Interviews in Connection with Crime).

The rules then set out this warning in Pidgin. Further warnings are also to be given if a suspect decides to give a written statement and upon the person being charged with an offense.

South Korea

The Constitution of the Republic of Korea (South Korea) states “[n]o person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel.”¹⁴⁷ The Criminal Procedure Act states that “[w]hen the criminal defendant is detained, he/she shall immediately be informed of the gist of the facts charged and of the facts [sic] that he/she may select a defense counsel.”¹⁴⁸ This provision has existed since the enactment of the Code in 1954.

The Criminal Procedure Act also states as follows:

- (1) A prosecutor or a senior judicial police officer shall inform a criminal suspect of the following matters prior to interrogation:
 1. The suspect has a right to remain silent or make no statement for each question;
 2. Remaining silent cannot be used against the suspect;
 3. A statement made by the suspect by waiving the right to refuse to make a statement can be used as evidence for being guilty in the court;
 4. The criminal suspect has a right to have the assistance of defense counsel, including the counsel's participation in interrogation.
- (2) The prosecutor or senior judicial police officer who informed a criminal suspect of the matters under paragraph (1) shall ask the suspect whether he/she will exercise the right to remain silent and the right to have the assistance of counsel and shall write down the suspect's answer thereof on the protocol. In this case, the suspect shall be required to write down his/her answer in his/her own hand, or if the prosecutor or judicial senior police officer writes down the suspect's answer, then the suspect shall be required to print his/her name and affix his/her seal or write his/her signature on the part that describes his/her answer.¹⁴⁹

This article was added through a 2007 amendment.¹⁵⁰ Before the amendment, the Act since the time of its enactment in 1954 had obligated prosecutors or policeman to inform a suspect of the right to silence before interrogation, but no details like those reflected in the current provision were provided.¹⁵¹

¹⁴⁷ CONSTITUTION OF REPUBLIC OF KOREA (Oct. 29, 1987) art. 12(5), English translation available on the Korea Legislation Research Institute (KLRI) website, at http://elaw.klri.re.kr/eng_service/lawView.do?hseq=1&lang=ENG, archived at <https://perma.cc/G45M-VBS3>.

¹⁴⁸ Criminal Procedure Act, Act No. 341, Sep. 23, 1954, amended by Act No. 12784, Oct. 15, 2014, art. 88, English translation available on the KLRI website, at http://elaw.klri.re.kr/eng_service/lawView.do?hseq=33081&lang=ENG, archived at <https://perma.cc/4SUF-SPNE>.

¹⁴⁹ *Id.* art. 244-3.

¹⁵⁰ Act No. 8496, June 1, 2007.

¹⁵¹ Criminal Procedure Act, Act No. 341, Sept. 23, 1954, art. 200(2).

counsel.¹⁵⁷ These provisions were introduced in a 2004 amendment to the Criminal Procedure Code.¹⁵⁸

Tonga

The Tonga Police Act 2010 sets out safeguards that apply to “any person who is in the company of a police officer for the purpose of being questioned about his knowledge, involvement or participation in the commission of an alleged offence.”¹⁵⁹ This includes a requirement for a police officer to caution the person about his or her right to remain silent if the police officer “has sufficient evidence to charge the person at the time he commences questioning” or if, during the questioning the police officer “believes on reasonable grounds that there is sufficient evidence to charge the person being questioned.”¹⁶⁰

In addition, before questioning a person who has been charged with an offense, the police officer must “inform that person that he may telephone or speak to a relative, friend or law practitioner.”¹⁶¹

Tuvalu

The Tuvalu Police Powers and Duties Act 2009 includes a requirement that, prior to starting to question a suspect, a police officer “must inform the suspect that the suspect may telephone or speak to . . . a lawyer” to inform the lawyer of the suspect’s whereabouts or to ask the lawyer to be present during questioning.¹⁶² The Act also includes a provision that states as follows:

- (1) A police officer must caution a suspect about the suspect’s right to remain silent, before the suspect is questioned.
- (2) The caution must be given in, or translated into, a language in which the suspect is able to communicate with reasonable fluency, but need not be given in writing unless the suspect can not hear adequately.
- (3) If the police officer suspects, on reasonable grounds, that the suspect does not understand the caution, the police officer may ask the suspect to explain the meaning of the caution in his or her own words.
- (4) If necessary, the police officer must further explain the caution.
- (5) If questioning is suspended or delayed, the police officer must ensure that the suspect is aware that he or she still has the right to remain silent and, if necessary, again caution the suspect when questioning continues.

¹⁵⁷ *Id.* §§ 7-1 & 84(2).

¹⁵⁸ Act on Amendment of the Criminal Procedure Code (No. 22) B.E. 2547 (Dec. 5, 2004).

¹⁵⁹ Tonga Police Act 2010, s. 147, http://www.paclii.org/to/legis/num_act/tpa2010127, archived at <https://perma.cc/695Q-RYEC>.

¹⁶⁰ *Id.* s. 148(1).

¹⁶¹ *Id.* s. 149(1).

¹⁶² Police Powers and Duties Act 2009, s. 128(1)(b), http://www.paclii.org/tv/legis/num_act/ppada2009253, archived at <https://perma.cc/C2P8-9ZLY>.

(6) This section does not apply if another law requires the suspect to answer questions put by, or do things required by, a police officer.¹⁶³

The police officer who cautions the suspect must make a written record of “the giving of the information to the suspect” and the suspect’s response.¹⁶⁴ Prior to the 2009 Act, the English Judges’ Rules may have been relevant to the practice of police in Tuvalu with respect to cautioning suspects.¹⁶⁵

III. Europe and Central Asia

Austria

Section 50, paragraph 1 of the Austrian Code of Criminal Procedure¹⁶⁶ mandates that the accused be informed of his or her essential rights “as soon as possible.” These rights are codified in sections 49 and 164 of the Code of Criminal Procedure. The latest possible time to instruct the accused of his or her rights is before the start of the first interrogation by the police,¹⁶⁷ although a failure of the police to do so will not render the statements inadmissible in court.¹⁶⁸

According to section 164, paragraph 1, the accused must be informed before the start of the interrogation that he or she

. . . has the right to make a statement or to remain silent on the matter and to consult a defense attorney beforehand, as long as the access to an attorney is not restricted according to section 59, para. 1 (to prevent an impairment of the investigation or the destruction of evidence). It also needs to be brought to the attention of the accused that any statement may be used in his or her defense, but could also be used as evidence against him or her.¹⁶⁹

Azerbaijan

The Code of Criminal Procedure of 2000 requires that a person detained or arrested be immediately informed of the reasons for detention, the nature of the suspicion or charge, and his/her right not to give a statement and to seek legal aid from defense counsel.¹⁷⁰ The right of

¹⁶³ *Id.* s. 137.

¹⁶⁴ *Id.* s. 139.

¹⁶⁵ See *Simona v. The Crown* [2002] TVHC 1, available at <http://www.pacii.org/tv/cases/TVHC/2002/1.html>, archived at <https://perma.cc/739Q-2NZL>.

¹⁶⁶ STRAFPROZEBORDNUNG 1975 [StPO] [AUSTRIAN CODE OF CRIMINAL PROCEDURE], BGBl. No. 631/1975, <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10002326/StPO%2c%20Fassung%20vom%2026.04.2016.pdf>, archived at <http://perma.cc/D8SD-GCE7>.

¹⁶⁷ *Id.* § 164, ¶ 1.

¹⁶⁸ *Id.* § 166, ¶ 1.

¹⁶⁹ *Id.* § 164, ¶ 1. For a list of all the rights of an accused, see *id.* § 49.

¹⁷⁰ CİNAYET PROSESSUAL MECELLESİ [CODE OF CRIMINAL PROCEDURE] No. 907-IQ of July 14, 2000, art. 14, AZERBAICAN RESPUBLIKASININ QANUNVERICILIK TOPSULU [OFFICIAL GAZETTE OF THE REPUBLIC OF AZERBAIJAN],

the detained or arrested person to be given an immediate explanation of his/her rights and the reasons for being detained or arrested was incorporated into the Constitution of the Azerbaijan Republic in 2009.¹⁷¹

Belgium

Under Belgian law, any person questioned in the context of a criminal investigation must be informed of certain rights and facts, whether the person questioned is a suspect or just a witness.¹⁷² These include the fact that his or her statements may be used as evidence in court and that he or she may not be compelled to self-incriminate.¹⁷³ Additionally, when the person being questioned might be accused of the offense(s) being investigated, he/she must also be informed that, after having given his/her identity, he/she has the right to either make statements, answer questions, or remain silent, as well as the right to consult with an attorney.¹⁷⁴ When a person is being detained by the police, Belgian law also requires that he or she be told of the right to have a trusted person (such as a friend or relative) be informed of the arrest and of the right to medical assistance.¹⁷⁵

These requirements were adopted in 2011,¹⁷⁶ to bring Belgian law in compliance with the holding of a 2008 decision of the European Court of Human Rights, *Salduz v. Turkey*.¹⁷⁷

No. 8/2000, item 585, <http://e-qanun.az/code/14>, archived at <https://perma.cc/VLC7-TWAV> (in Azerbaijani), English translation available at https://www.unodc.org/tldb/pdf/Azerbaijan_Code_of_Criminal_Procedure_Full_text.pdf, archived at <https://perma.cc/3TEU-68BC>.

¹⁷¹ AZERBAIJAN REPUBLICAN CONSTITUTION [CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN], <http://www.president.az/azerbaijan/constitution>, archived at <https://perma.cc/6U6M-KW3M> (in Azerbaijani), English translation available at https://www.constituteproject.org/constitution/Azerbaijan_2009.pdf?lang=en, archived at <https://perma.cc/7NCO-GRDC>.

¹⁷² CODE D'INSTRUCTION CRIMINELLE [CRIMINAL INVESTIGATION CODE] art. 47bis, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1808111730&table_name=loi, archived at <https://perma.cc/C978-KHNF>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Loi du 13 août 2011 modifiant le Code d'instruction criminelle et la loi du 20 juillet 1990 relative à la détention préventive afin de conférer des droits, dont celui de consulter un avocat et d'être assistée par lui, à toute personne auditionnée et à toute personne privée de liberté [Law of August 13, 2011, Amending the Criminal Investigation Code and the Law of July 20, 1990, Regarding Preventive Detention so as to Confer Rights, Including the Right to Consult with and be Assisted by an Attorney, to Any Person Interrogated and Any Person Deprived of Liberty], referred to as "Loi Salduz" [Salduz Law], http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=%28text%20contains%20%28%27%27%29%29&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2011081313&caller=image_a1&fromtab=loi&la=F, archived at <https://perma.cc/39FH-F4JQ>.

¹⁷⁷ *Salduz v. Turkey*, Eur. Ct. H.R. App. No. 36391/02 (Nov. 27, 2008), <http://hudoc.echr.coe.int/eng?i=001-89893>, archived at <https://perma.cc/Q74F-7UHP>.

Bosnia and Herzegovina

A person deprived of liberty in the territory of the Federation of Bosnia and Herzegovina must,

[i]n his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension and, before the first interrogation, be advised that he is not obliged to make a statement nor respond to questions asked, [of] his right to a defense attorney of his own choice as well as [of] the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.¹⁷⁸

Croatia

In Croatia a suspect who is placed under arrest must be given a written statement of his/her rights before the first interrogation takes place. The statement must include the reason for the detention and explicitly inform the detained person that he/she can refuse to answer questions and remain silent.¹⁷⁹ If providing a written statement is not possible, the police must inform the suspect of his/her rights orally at the moment of arrest, and the court must take note of whether this information was provided.¹⁸⁰

Cyprus

In 2014, Cyprus adopted Law No. 185(I)/2014 on the Right to Information in Criminal Proceedings¹⁸¹ in order to transpose European Union Directive 2012/13/EU¹⁸² and to amend Law No. 163(I) of 2005 on the Rights of Persons Who Are Under Arrest and Detention.¹⁸³ Article 3 of Law 163(I), as amended, provides that any person who is arrested by the police must be informed promptly, and in a language he or she understands, of

¹⁷⁸ ZAKONIK O KRIVIČNOM POSTUPKU FEDERACIJE BOSNE I HERCEGOVINE [CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA] art. 5(1), SLUŽBENI GLASNIK BOSNE I HERCEGOVINE [OFFICIAL GAZETTE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA] July 28, 2003, No. 35/03, unofficial consolidated text containing amendments through Jan. 31, 2013, available at <http://www.legislationline.org/documents/section/criminal-codes>, archived at <https://perma.cc/9A8Y-6RTD>, English translation available at <http://www.legislationline.org/documents/section/criminal-codes>, archived at <https://perma.cc/2UYE-2EDA>.

¹⁷⁹ Zakon o kaznenom postupku [Criminal Procedure Act], Consolidated Text, NARODNE NOVINE [OFFICIAL GAZETTE] Dec. 15, 2008, No. 152/08, art. 64(1)(1), <http://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>, archived at <https://perma.cc/4T7U-9GGC>.

¹⁸⁰ *Id.* art. 64(1)(7).

¹⁸¹ Law No. 185(I) 2014 Amending the Law on the Rights of Persons Who Are Under Arrest and Detention of 2005, EPISEMOS EPHEMERIS TES KYPRIAKES DEMOKRATIAS [E.E.K.D.] 2014, I(I):4478, http://www.cylaw.org/nomoi/arith/2014_1_185.pdf, archived at <https://perma.cc/4WYV-EGAY>.

¹⁸² Directive 2012/13/EU of the European Parliament and of the Council of May 22 2013 on the Right to Information in Criminal Proceedings on the Right to Information in Criminal Proceedings, 2013 O.J. (L 142) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>, archived at <https://perma.cc/CB8Y-95H3>.

¹⁸³ Law No. 163(I) 2005, E.E.K.D. Dec. 30, 2005, I(I):4064.

- the reasons for the arrest and detention and the nature of the act of which he or she is accused;
- the right of access to a lawyer;
- any right to legal aid and conditions for receiving such aid;
- the right of access to interpretation and translation services;
- the right to remain silent; and
- the right to be informed of the place of detention.¹⁸⁴

In addition, the police are obliged to provide a Letter of Rights to a person who is arrested, in a language that the person understands.¹⁸⁵ The Letter of Rights contains the above-stated rights and the following additional rights: to have access to the materials for the case, to consult with consular authorities, to have access to urgent medical assistance if needed, to be informed of the maximum lawful detention time, to challenge the lawfulness of the arrest and detention, to obtain a review of the detention, and to be provisionally released.¹⁸⁶

Denmark

Under Danish law, prior to being heard by the police, a suspect must be informed that he or she has the right to remain silent.¹⁸⁷ The police report must specifically state that the suspect was informed of this right.¹⁸⁸ This information must again be relayed to the suspect at the time the suspect is presented in court.¹⁸⁹ Denmark is not bound by Directive 2012/13/EU on the right to information in criminal proceedings, as it has opted out of implementation of certain EU measures relating to justice and home affairs.¹⁹⁰ Denmark is a signatory to the European Convention on Human Rights and is thus bound by its precedent.¹⁹¹ In 1970 the courts found that the hearing record of a person who had not been informed of his right to remain silent could not be used against him.¹⁹²

¹⁸⁴ *Id.* art. 3.

¹⁸⁵ *Id.* art. 7.

¹⁸⁶ *Id.* art. 7(β)(I–VII).

¹⁸⁷ § 752 RETSPLEJELOVEN [CIVIL AND CRIMINAL AND PROCEDURE ACT], Lovbekendtgørelse [LBK] nr 1255 af 16/11/2015, <https://www.retsinformation.dk/forms/r0710.aspx?id=172923>, archived at <https://perma.cc/G7PC-2SSE>.

¹⁸⁸ *Id.*

¹⁸⁹ § 861 Retsplejeloven.

¹⁹⁰ Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2012 O.J. (C 326) 47, Protocol (No. 22) on the Position of Denmark, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>, archived at <https://perma.cc/2XP5-YL46>.

¹⁹¹ *Min Grundlov – Kapitel 08 Borgernes rettigheder* [My Constitution – Chapter 8 Rights of Citizens], FOLKETINGET, <http://www.ft.dk/Dokumenter/Publikationer/Grundloven/Min%20grundlov/Kapitel%2008%20Borgernes%20rettigheder.aspx> (last visited May 2, 2016), archived at <https://perma.cc/7KLL-YWZ2>.

¹⁹² Ugeskrift for retsvæsendet [U]1970 p. 901.

Denmark has had an explicit legal provision on the right to remain silent since 1932.¹⁹³ Earlier provisions on the prohibition of police coercing a statement have been considered to include a right to silence.¹⁹⁴

England and Wales

In England and Wales the police must follow a number of rules after arresting a suspect, which are contained in the Codes of Practices issued under the Police and Criminal Evidence Act 1984.¹⁹⁵

Once a police officer has arrested an individual, the officer must, at the time of arrest, or as soon as reasonably practicable afterwards, inform the person that he/she is under arrest and of the grounds for the arrest.¹⁹⁶ A caution must then be given in the following words, although minor deviations will not constitute a breach of the Code of Practice: “You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”¹⁹⁷

In certain circumstances, the law allows the court to draw adverse inferences from a defendant’s failure or refusal to say anything about his or her involvement in the suspected offence(s).¹⁹⁸

The requirement for the police to formally give a caution to suspects upon arrest was first introduced in 1912 by the Judges’ Rules, which were issued in response to a request from the Chief Constable of Birmingham, who had asked for clarification as to when to use cautions as some judges would not use evidence obtained by police during questioning and others would.¹⁹⁹ For example in the case of *Gavin* the judge held that “when a person is in custody, the police

¹⁹³ LOV OM ÆNDRINGER I OG TILFØJELSER TIL LOV OM RETTENS PLEJE [AMENDMENT ACT TO CIVIL AND CRIMINAL PROCEDURE ACT] AF 11. APRIL 1916 (LOV Nr. 209 af 23/07/1932); *see also* Cirkulære nr. 285 af 27. december 1932 fra Rigsadvokaten til samtlige Statsadvokater, Politidirektøren i København og samtlige Politimestre angaaende de ved Lov af 23. Juli 1932 foretagne Ændringer i Retsplejeloven [Circular No. 285 of December 27, 1932, from the Attorney General to all Lawyers, Police Director of Copenhagen and All Police Chiefs], <http://krim.dk/undersider/straffesager/straffepoces/729-cirkulaere-286-27-12-1932.htm>, archived at <https://perma.cc/MJ99-UV64>.

¹⁹⁴ *See* KARNOV LOVSAMLING cmt. 2396, at 1397 (Stephan Hurwitz ed., 1948).

¹⁹⁵ Police and Criminal Evidence Act 1984, c. 60, <http://www.legislation.gov.uk/ukpga/1984/60>, archived at <https://perma.cc/T2KN-87S4>.

¹⁹⁶ *Id.* c. 60, § 28; Police and Criminal Evidence Act 1984 (PACE) Code G Revised Code of Practice for the Statutory Power of Arrest by Police Officers (applicable from Nov. 12, 2012), ¶ 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117583/pace-code-g-2012.pdf, archived at <https://perma.cc/2PXR-52EX>.

¹⁹⁷ Police and Criminal Evidence Act 1984 (PACE) Code G Revised Code of Practice for the Statutory Power of Arrest by Police Officers ¶ 3.5.

¹⁹⁸ Criminal Justice and Public Order Act 1994 c. 33, §§ 34–37, <http://www.legislation.gov.uk/ukpga/1994/33>, archived at <https://perma.cc/AA2M-8SMY>; *Adverse Inferences*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/a_to_c/adverse_inferences (last visited Apr. 18, 2016), archived at <https://perma.cc/8BUG-FGJF>.

¹⁹⁹ St. Johnston, *supra* note 41.

have no right to ask him questions,”²⁰⁰ whereas in *R v. Thompson* the judge held that any statements obtained from a suspect in custody²⁰¹ were admissible, provided the judge was satisfied that the evidence was not obtained as a result of coercion or inducement.²⁰²

The original caution given to a suspect upon arrest was provided for by Rule III of Judges’ Rules and required that the arresting officer to verbally caution a suspect with the following terms: “Do you wish to say anything? 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.”²⁰³

The Judges’ Rules were administrative in nature, and not following them did not automatically lead to any statements or confessions from being excluded from evidence unless it could be shown that the confession was not made voluntarily. The status of the Judges’ Rules was described in the 1918 case of *R v. Voisin* as follows:

In 1912 the judges, at the request of the Home Secretary, drew up some rules as guidance for police officers. These rules have not the force of law; they are administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners, contrary to the spirit of these rules, may be rejected as evidence by the judge presiding at the trial.²⁰⁴

These rules were revised several times and followed for the next seventy-two years,²⁰⁵ during which time they were adopted by many commonwealth countries where they continued in force long after they were replaced in England and Wales by the Police and Criminal Evidence Act 1984, described above.

European Union

At the European Union (EU) level, Directive 2012/13/EU on the Right to Information in Criminal Proceedings explicitly establishes common minimum standards on the rights of suspects or accused persons.²⁰⁶ Directive 2012/13/EU is based on article 82(2) of the Treaty on the Functioning of the European Union, which requires the establishment of minimum rules on the rights of individuals in criminal proceedings in order to facilitate mutual recognition of

²⁰⁰ *Gavin* (1885) 15 Cox C.C. 656, cited in Dorren McBarnet, *The Royal Commission and the Judges’ Rules*, 8(1) BRITISH J.L. & SOC. 109 (1981), http://www.jstor.org/stable/1409837?seq=1#page_scan_tab_contents, archived at <https://perma.cc/7M6Y-LKUN>.

²⁰¹ *R v. Thompson* [1893] 2 QB 12.

²⁰² *Treatise on the Law of Evidence as Administered in England and Ireland* § 872 (9th ed. 1895).

²⁰³ Geoffrey Wilson, *Cases and Materials on Constitutional and Administrative Law* (2d ed. 1977).

²⁰⁴ *R v. Voisin* [1918] 1 KB 531, 539–40, 13 Cr App Rep 89, [1918–19] All ER Rep 491:

²⁰⁵ The most common version used for commonwealth countries was the 1964 revised version: Practice Note (Judges’ Rules) [1964] 1 All ER 237, [1964] 1 WLR 152 (accessed via Lexis).

²⁰⁶ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2013 on the Right to Information in Criminal Proceedings, 2013 O.J. (L 142) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>, archived at <https://perma.cc/CB8Y-95H3>.

judgments and police and judicial cooperation in criminal matters that have cross-border aspects.²⁰⁷ The scope of the Directive applies to suspects or accused persons from the time such individuals are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offense until the conclusion of the proceedings, including sentencing and the resolution of any appeal.²⁰⁸ The Directive also applies to persons who are presented with a European Arrest Warrant.²⁰⁹ As the Directive clarifies, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.²¹⁰

Miranda-Type Warning

The Directive requires Member States to ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, in compliance with national law:

- Access to a lawyer
- Any free legal advice and the conditions for obtaining such advice
- Information about the nature of the accusation
- Interpretation and translation services²¹¹
- The right to remain silent²¹²

In order for these rights to be exercised effectively, EU Members are obliged to ensure that national authorities provide this information orally or in writing and in a clear language that is understood by the accused or suspected persons, after taking into consideration possible needs of vulnerable persons.²¹³

Letter of Rights on Arrest

The Directive also requires Member States to ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. Suspects or accused

²⁰⁷ *Id.* pmb. ¶ 9.

²⁰⁸ *Id.* art. 1.

²⁰⁹ Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, 2002 O.J. (L 190) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:en:HTML>, archived at <https://perma.cc/R2RU-FA6V>.

²¹⁰ Directive 2012/13/EU, *supra* note 206, pmb. ¶ 19.

²¹¹ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the Right to Interpretation and Translation in Criminal Proceedings, 2010 O.J. (L 280) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0064&from=EN>, archived at <https://perma.cc/DYY7-CF69>.

²¹² Directive 2012/13/EU, *supra* note 206, art. 3, ¶ 1.

²¹³ *Id.* art. 3, ¶ 2.

persons must be given a chance to read the Letter of Rights and to keep it in their possession during their time of detention.²¹⁴

The Letter of Rights must contain the list of rights referenced above, as well as information on additional rights, in compliance with national law, such as access to the materials of the case, consular access, access to urgent medical care, and how long they may be detained before being presented before a judicial authority.²¹⁵

Member States are required to ensure that suspects or accused persons or their lawyers have the right to challenge, in compliance with national procedures, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.²¹⁶ The Directive also requires Member States to provide training for those involved in criminal proceedings, such as judges, prosecutors, police, and judicial staff.²¹⁷

EU Member States were required to comply with this Directive by June 2, 2014.²¹⁸

Finland

Under Finnish law, suspects must be informed of the crime for which they are suspects and of the following rights:

- 1) the right to employ an attorney that they choose,
- 2) the right to [under certain circumstances] receive a public defender,
- 3) the right to [as prescribed in law] receive free legal aid and counsel,
- 4) the right to continue to receive information on the crime he or she is suspected of including any changes to the level of suspicion,
- 5) the right to interpretation as well as translation of important documents [as prescribed in law], [and]
- 6) the right to remain silent and to not cooperate with the investigation of the crime.²¹⁹

In addition, once arrested the suspects have the right to written notice of their rights.²²⁰ The explicit right to remain silent was specifically incorporated in 2013 as part of Finland's

²¹⁴ *Id.* art. 4, ¶ 1.

²¹⁵ *Id.* art. 4, ¶ 2. A sample Letter of Rights is provided in *id.*, Annex I.

²¹⁶ *Id.* art. 8, ¶ 2.

²¹⁷ *Id.* art. 9.

²¹⁸ *Id.* art. 11.

²¹⁹ 4. ch. 16 § FÖRUNDESRÖKNINGSLAG [ACT ON PRELIMINARY INVESTIGATIONS] (Finlands författningssamling [FFS] 22.7.2011/805), <http://www.finlex.fi/sv/laki/ajantasa/2011/20110805>, archived at <https://perma.cc/3G56-3SRE> (translated by author).

²²⁰ *Id.* 4 ch. 17 §.

implementation of article 3 of Directive 2012/13/EU on the right to information in criminal proceedings.²²¹

France

French law requires that when suspects are placed under arrest (*garde à vue*) they must be informed, in a language that they can understand, of

- the right to notify a relative and/or an employer;
- the right to notify consular authorities if the suspect is a foreign national;
- the right to be examined by a doctor;
- the right to an attorney;
- the right to an interpreter if needed;
- the right to see, within the best possible timeframe, certain documents on the procedure against them;
- the right make statements to the public prosecutor (*procureur de la République*) and/or the magistrate deciding on his/her continued custody; and
- the right to either make statements, answer questions, or remain silent.²²²

The suspect must also be informed that he or she is being placed under arrest; how long he or she may be held in custody; and the presumed nature, date, and place of the offense he or she is suspected of committing.²²³ The current requirements were introduced in the French Code of Criminal Procedure in May 2014 as a way to implement a European Union Directive.²²⁴ However, similar requirements had already been introduced into the Code in 2011.²²⁵ Additionally, the Code of Criminal Procedure specifies that no one may be found guilty of a

²²¹ LAG OM ÄNDRING AV FÖRUNDERSÖKNINGSLAGEN [ACT ON CHANGES TO THE ACT ON PRELIMINARY INVESTIGATIONS] (FFS 818/2014), <http://www.finlex.fi/sv/laki/alkup/2014/20140818>, archived at <https://perma.cc/RNL6-DQ4F>.

²²² CODE DE PROCÉDURE PÉNALE [CODE OF CRIMINAL PROCEDURE] art. 63-1, https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=A6C0E5482A55043D15EDE3E8B9D71F11.tpdila14v_1?idArticle=LEGIARTI00029000834&cidTexte=LEGITEXT000006071154&categorieLien=id&dateTexte, archived at <https://perma.cc/CH69-8DX4>.

²²³ Id.

²²⁴ Loi n° 2014-535 du 27 mai 2014 portant transposition de la directive 2012/13/UE du Parlement européen et du Conseil, du 22 mai 2012, relative au droit à l'information dans le cadre des procédures pénales (1) [Law No. 2014-535 of May 27, 2014, Transposing Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings (1)], https://www.legifrance.gouv.fr/affichTexte.do?sessionId=A6C0E5482A55043D15EDE3E8B9D71F11.tpdila14v_1?cidTexte=JORFTEXT000028989964&dateTexte=20140529, archived at <https://perma.cc/N5NB-MW33>.

²²⁵ Loi n° 2011-392 du 14 avril 2011 relative à la garde à vue (1) [Law No. 2011-392 of April 14, 2011, Regarding Police Custody (1)], <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023860729&dateTexte=&categorieLien=id>, archived at <https://perma.cc/QQ8F-SZXD>.

criminal offense solely on the basis of statements made before he or she could consult with an attorney.²²⁶

Georgia

According to the Georgian Code of Criminal Procedure of 2009, upon detention the accused must be informed that he or she may use the services of a defense counsel, remain silent and refuse to respond to questions, and exercise the right against self-incrimination, and that everything the accused says can be used against him/her.²²⁷

Germany

The German Code of Criminal Procedure provides that the accused must be informed of his or her rights before an interrogation by the prosecution, police, or a judge may take place, as well as before an arrest warrant for pretrial detention may be executed.²²⁸

Section 136 of the German Code of Criminal Procedure provides that the accused must be informed of his or her rights before the first interrogation by a judge may take place. Section 163a states that the instructions codified in section 136 must also be given before an interrogation by the police or the prosecution. The judge must instruct the accused of his or her rights even if he/she has already been informed of those rights by the police or prosecution at an earlier interrogation.²²⁹

The right to be informed of one's rights was introduced into the Code of Criminal Procedure in 1964.²³⁰ It was not until 1992, however, that the German Federal Court of Justice recognized the instruction as fundamental with respect to the right against self-incrimination and not simply as a preliminary ritual to an interrogation.²³¹

²²⁶ CODE DE PROCÉDURE PÉNALE, article préliminaire [preliminary article], https://www.legifrance.gouv.fr/affichCode.do?sessionId=65FF5DE4D44D4A6181D85EFB2C789867.tpdila14v_1?idSectionTA=LEGISCTA000006098229&cidTexte=LEGITEXT000006071154&dateTexte=20160421, archived at <https://perma.cc/NL92-4S6K>.

²²⁷ SAKARTVELOS SISKHILIS SAMARTLIS SAPROTSESO KODEKSI [CRIMINAL PROCEDURE CODE OF GEORGIA], No. 1772, Oct. 10, 2009, art. 38, SAKARTVELOS SAKANONMDEBLO MATSNE [LEGISLATIVE HERALD OF GEORGIA] No. 31, Nov. 3, 2009, <https://matsne.gov.ge/ka/document/view/90034> (in Georgian), archived at <https://perma.cc/J42H-FDVE>, English translation available at <https://matsne.gov.ge/en/document/view/90034>, archived at <https://perma.cc/7W69-N6VS>.

²²⁸ STRAFPROZEBORDNUNG [STPO] [CODE OF CRIMINAL PROCEDURE], Apr. 7, 1987, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 1074, 1319, as amended, §§ 114b, 136, 163a, ¶ 4, <http://www.gesetze-im-internet.de/bundesrecht/stpo/gesamt.pdf>, archived at <http://perma.cc/W6TS-US76>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_stpo/german_code_of_criminal_procedure.pdf, archived at <http://perma.cc/W3R5-3NMY>.

²²⁹ German Code of Criminal Procedure § 243, ¶ 5, sentence 1.

²³⁰ Gesetz zur Änderung der Strafprozeßordnung und des Gerichtsverfassungsgesetzes [StPÄG] [Act to Amend the Code of Criminal Procedure and the Courts Constitution Act], Dec. 19, 1964, BGBL. I at 1067, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&jumpTo=bgbl164s1067.pdf.

²³¹ Bundesgerichtshof [BGH] [Federal Court of Justice], 38 ENTSCHEIDUNGEN DES BUNDESGERICHTSHOFS IN STRAFSACHEN [BGHST] [DECISIONS OF THE FEDERAL COURT OF JUSTICE IN CRIMINAL MATTERS] 214, 218 et seq.

The norm states as follows:

At the commencement of the first examination, the accused shall be . . . advised that the law grants him the right to respond to the charges, or not to make any statement on the charges, and the right, at any stage, even prior to his examination, to consult with defence counsel of his choice. He shall further be advised that he may request evidence to be taken in his defence and, under the conditions set out in Section 140 subsections (1) and (2) (mandatory defense), request the appointment of defence counsel in accordance with Section 141 subsections (1) and (3). In appropriate cases the accused shall also be informed that he may make a written statement, and of the possibility of perpetrator-victim mediation.

In addition, section 114b of the German Code of Criminal Procedure mandates that the accused be informed of his/her rights without delay in writing and in a language he/she understands before an arrest warrant may be executed. This provision was introduced into the Criminal Code in 2009 to strengthen the rights of persons in pretrial detention.²³² It was amended in 2012 to implement the requirements of the EU Directive on the Right to Information in Criminal Proceedings.²³³ The provision states that

[t]he arrested accused shall be advised that he

1. shall, without delay, at the latest on the day after his apprehension, be brought before the court that is to examine him and decide on his further detention;
2. has the right to reply to the accusation or to remain silent;
3. may request that evidence be taken in his defence;
4. may at any time, also before his examination, consult with defence counsel of his choice;
- 4a. may, in the cases referred to in Section 140 subsections (1) and (2) (mandatory defense), request the appointment of defence counsel in accordance with Section 141 subsections (1) and (3);
5. has the right to demand an examination by a female or male physician of his choice;
6. may notify a relative or a person trusted by him, provided the purpose of the investigation is not endangered thereby;
7. may, in accordance with Section 147 subsection (7), apply to be given information and copies from the files, insofar as he has no defence counsel; and
8. may, if remand detention is continued after he is brought before the competent judge,
 - a) lodge a complaint against the warrant of arrest or apply for a review of detention (Section 117 subsections (1) and (2)) and an oral hearing (Section 118 subsections (1) and (2));
 - b) in the event of inadmissibility of the complaint, make an application for a court decision pursuant to Section 119 subsection (5); and
 - c) make an application for a court decision pursuant to § 119a subsection (1) against official decisions and measures in the execution of remand detention.

²³² Gesetz zur Änderung des Untersuchungshaftrechts [Act to Amend the Law on Pre-Trial Detention], July 29, 2009, BGBl. I at 2274, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl109s2274.pdf.

²³³ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings, 2012 O.J. (L 142) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0013&from=EN>, archived at <http://perma.cc/XSF7-Q7MR>.

The accused is to be advised of defence counsel's right to inspect the files pursuant to Section 147.

Greece

Law No. 4236/2014²³⁴ on Transposition of Directives 2010/64/EC on the Right of Interpretation and Translation During Criminal Proceedings²³⁵ and Directive 2012/13/EC on the Right to be Informed during Criminal Proceedings²³⁶ provides for the equivalent of Miranda rights in Greece. Article 10 of Law 4236/2014 states that suspects or accused persons are to be informed promptly concerning at least the following rights: (a) access to a lawyer, (b) free legal advice and the conditions for obtaining such advice, (c) the nature of the accusation, (d) interpretation and translation services, and (e) the right to remain silent.²³⁷

The information is provided, orally or in writing, in clear and easily understood language, taking into consideration the special needs of suspects or accused persons who are vulnerable.²³⁸

Suspects or accused persons who are arrested or kept in detention are also given a Letter of Rights, which contains written information on the above rights.²³⁹ Suspects or accused persons are allowed to keep that Letter during the entire time they are detained. In case such persons do not understand Greek, they must be orally informed in a language they understand, and then the Letter of Rights is given in writing in a language the suspects or accused persons understand, without undue delay.²⁴⁰

²³⁴ Law No. 4236/2014, *Gia ten Ensomatose ton Odegion 2010/64/EE tou Evropaikou Koinovouliou kai tou Symvouliou tes 20 Oktovriou 2010 Schetika me to dikaioma se Diermeneia kai Metaphrasi Kata ten Poinike Diadikasia kai 2012/13/EE tou Evropaikou Koinovouliou kai tou Symvouliou tes 22 Maiou 2012 Schetika me to Dikaioma Enemerose sto Plaisio Poinikon Diadikasion kai Alles Diatakseis*, EPHEMERIS TES KYVERNESOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] Feb. 11, 2014, A:33, http://www.et.gr/idoocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEc63YDhn5AeXdtvSoClrL8Yu9oWyR4rBbtI9LGdkF53UIxsx942CdyqxSQYNUqAGCF0IfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwO1oKqSe4BIOTSpEWYhszF8P8UqWb_zFijESXV6iwnUI9W7cTn0SgUt1NSZEGyZHfZOOBRztI4Mzc, archived at <https://perma.cc/M5DH-XPEB>.

²³⁵ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010, on the Right to Interpretation and Translation in Criminal Proceedings, 2010 O.J. (L 294) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>, archived at <https://perma.cc/MZ8U-RMMP>.

²³⁶ Directive 2012/13/EU of the European Parliament and of the Council of May 22, 2012, on the Right to Information in Criminal Proceedings, 2012 O.J. (L 142) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>, archived at <https://perma.cc/ZL95-7QPM>

²³⁷ Law No. 4236/2014, art. 10, ¶ 1.

²³⁸ *Id.* art. 10, ¶ 2.

²³⁹ *Id.* art. 10, ¶ 3.

²⁴⁰ *Id.* art. 10, ¶ 4.

Iceland

Iceland is a signatory to the European Convention on Human Rights, which in article 6 paragraph 1 includes the right to remain silent.²⁴¹ By law persons brought in for questioning have the right to be informed about their rights, including whether they are being questioned as a suspect or a witness.²⁴² The Code of Criminal Procedure requires that arrested persons also have the right to know of which crime they are suspected.²⁴³ In addition, the Police Act specifies the right of those questioned to be informed of why they are being arrested.²⁴⁴ Suspects have a right to remain silent, and persons questioning a suspect must inform him or her of that right.²⁴⁵ Judges, other public officials, and civil servants who unlawfully produce a confession can be sentenced and imprisoned for up to three years.²⁴⁶

Ireland

In the Republic of Ireland, there is no specific constitutional provision that provides for the right against self-incrimination. Instead, the right to silence is provided for at common law and has been a constitutional right; however, it may be limited by legislation. The decision in *State (McCarthy) v. Lennon. & Ors*,²⁴⁷ held that article 38(1) of the Bunreacht Na hEireann (the Irish Constitution) provides a general right against self-incrimination;²⁴⁸ however, this can be and has been limited by legislation. Thus, legislation provides there are certain circumstances in which the court may draw inferences from a suspect who refuses to answer questions. The Supreme Court has held that these inferences are not unconstitutional, as they cannot form the sole basis for conviction.²⁴⁹

The police in Ireland are known as the Garda Síochána. Upon arresting an individual, they must provide them with the following verbal caution: “You are not obliged to say anything unless you

²⁴¹ European Convention on Human Rights (as amended to June 1, 2010), http://www.echr.coe.int/Documents/Convention_ENG.pdf, archived at <https://perma.cc/7WP8-FQY5>; Nicole Atwill, *European Court of Human Rights: France: Rights to Remain Silent and to Be Assisted by a Lawyer*, GLOBAL LEGAL MONITOR (Oct. 18, 2010), <http://www.loc.gov/law/foreign-news/article/european-court-of-human-rights-france-rights-to-remain-silent-and-to-be-assisted-by-a-lawyer>, archived at <https://perma.cc/53DK-V62N>.

²⁴² Regulation No. 651 (2009) art. 3, on the Legal Status of Arrested Persons, Interviews by the Police, etc., https://eng.innanrikisraduneyti.is/media/frettir-2012/B_nr_651_2009_IS.pdf, archived at <https://perma.cc/EYQ9-VRHC>.

²⁴³ LÖG UM MEÐFERÐ SAKAMÁLA [CODE OF CRIMINAL PROCEDURE] (Act. nr. 88 12. júní 2008) art. 28, <http://www.althingi.is/lagas/145a/2008088.html>, archived at <https://perma.cc/YD8P-334E>.

²⁴⁴ POLICE ACT (Act. No. 90, June 13, 1996) art. 16, <https://eng.innanrikisraduneyti.is/laws-and-regulations/english/police/nr/120>, archived at <https://perma.cc/3BQ7-GM69>.

²⁴⁵ CODE OF CRIMINAL PROCEDURE art. 64.

²⁴⁶ GENERAL PENAL CODE (Act No. 19, Feb. 12, 1940) arts. 131 & 132, https://eng.innanrikisraduneyti.is/media/Log_og_reglugerdir/AH1.pdf, archived at <https://perma.cc/ZPK6-STXZ>.

²⁴⁷ *State (McCarthy) v. Lennon. & Ors*, (1936) I.R. 485.

²⁴⁸ IR. CONST., 1937, art. 38^o1, <http://www.irishstatutebook.ie/eli/cons/en/html>, archived at <https://perma.cc/UW73-YNJ9>.

²⁴⁹ *Rock v. Ireland* [1997] 3 IR 484, cited in THE GARDA SÍOCHÁNA GUIDE (7th ed. 2008).

wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”²⁵⁰ This caution continues to follow the English Judges’ Rules, created in 1912, which were implemented when Ireland was still a part of Great Britain.

Italy

Italy’s Legislative Decree No. 101 of 2014,²⁵¹ which entered into effect on August 16, 2014, implements European Union Directive 2012/13/EU, and thus provides for various rights of persons arrested, including Miranda-type rights.

Kazakhstan

In Kazakhstan, upon detaining or arresting a person the prosecuting officer must explain to the suspect what crime he is suspected of, his rights to obtain legal counsel and to remain silent, and that anything he says may be used against him in court. This provision was introduced in 2015 when the new Code of Criminal Procedure came into effect.²⁵²

Liechtenstein

Section 128a of the Liechtenstein Code of Criminal Procedure codifies the right of an arrested person to be informed of his or her rights at the time of the arrest or immediately following the arrest, stating as follows:

[a]t the time of the arrest or immediately following the arrest, the arrested person must be informed of the charges and the reason for the arrest, as well as of his or her right to contact a relative or other person of trust and an attorney, and that he or she has the right to remain silent. It must be brought to his or her attention that a statement may be used in his or her defense, but could also be used as evidence against him or her.²⁵³

²⁵⁰ Criminal Justice (Miscellaneous Provisions) Act, 1997 (Section 6) Regulations, 1997, SI 345/1997, First Schedule, <http://www.irishstatutebook.ie/eli/1997/si/345/made/en/print#>, archived at <https://perma.cc/M8CU-QVQQ>.

²⁵¹ Decreto-Legislativo 1 luglio 2014, n. 101, Attuazione della Direttiva 2012/13/UE sul diritto all’informazione nei procedimenti penali [Legislative Decree No. 101 (July 1, 2014), Implementing European Union Directive 2012/13/UE Concerning the Right to Information in Criminal Proceedings], GAZETTA UFFICIALE, No. 164 (July 17, 2014), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2014-07-01;101>, archived at <https://perma.cc/8GED-HLSR>.

²⁵² UGOLOVNO-PROTSESSUALNII KODEKS RESPUBLIKI KAZAKHSTAN [CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF KAZAKHSTAN] No. 231-V of July 4, 2014, art. 131, VEDOMOSTI PARLAMENTA RESPUBLIKI KAZAKHSTAN [OFFICIAL GAZETTE OF THE REPUBLIC OF KAZAKHSTAN] No. 15-II (2664-II) Aug. 2014, item 88, available at http://online.zakon.kz/Document/?doc_id=31575852#sdoc_params=text=уголовно-процессуальный-кодекс&mode=indoc&topic_id=31575852&spos=1&tSynonym=1&tShort=1&tSuffix=1&sdoc_pos=0 (in Russian), archived at <https://perma.cc/8HX8-4XM5>.

²⁵³ LIECHTENSTEINISCHE STRAFPROZESSORDNUNG [STPO] [LIECHTENSTEIN CODE OF CRIMINAL PROCEDURE], Oct. 18, 1988, LANDESGESETZBLATT NUMMER [LGBL.-NR.] [OFFICIAL LAW GAZETTE NO.] 1988.062, as amended, <https://www.gesetze.li/lilexprod/ifshowpdf.jsp?lgblid=1988062000&version=21&signed=n&tablesel=0>, archived at <http://perma.cc/W259-6NSN> (translation by author).

This norm entered into force on January 1, 2008.²⁵⁴ Failure of the police to provide proper instructions to the accused before an interrogation will not render the statements inadmissible in court, but will result in disciplinary proceedings for the police.²⁵⁵

Luxembourg

Since 1989, Luxembourg law has required that suspects be informed, in writing and in a language that they can understand, of their right to an attorney.²⁵⁶ In December 2014, a bill was submitted in the Luxembourg legislature to implement European Union directives requiring that suspects be informed of additional rights.²⁵⁷ This bill does not yet appear to have become law.

Macedonia

The Macedonian Code of Criminal Procedure requires that a person placed under arrest

be immediately informed, in a language that he understands, of the reasons for being summoned, detained or deprived of liberty, and of any suspicion or criminal charges against him, and of his rights, and the person shall not be asked to give a statement.²⁵⁸

The accused person must also be advised “in a clear manner” about his/her right to remain silent, to consult with a lawyer in private, and to have defense counsel of his/her choice present during the examination.²⁵⁹ However, these rights appear to apply only after a person receives the formal procedural status of a suspect, and it is unclear whether the person must be notified of these additional rights.²⁶⁰

²⁵⁴ Gesetz über die Abänderung der Strafprozessordnung [Act to Amend the Code of Criminal Procedure], Sept. 20, 2007, LGBL. 2007.292, <https://www.gesetze.li/lilexprod/lfshowpdf.jsp?lgblid=2007292000&version=0&signed=n&tablesel=0>, archived at <http://perma.cc/5K9T-GTJ8>.

²⁵⁵ Berichte und Anträge der Regierung an den Landtag des Fürstentums Liechtenstein [BuA] [Reports and Motions of the Government to the Parliament of the Principality of Liechtenstein] No. 49/2007, Apr. 24, 2007, p. 29, <http://bua.gmg.biz/BuA/pdfshow.aspx?nr=49&year=2007>, archived at <http://perma.cc/NUS3-QMHS>.

²⁵⁶ CODE D'INSTRUCTION CRIMINELLE [CRIMINAL INVESTIGATION CODE] arts. 24-1, 39, 52 & 81, http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/cic.pdf, archived at <https://perma.cc/3K8Q-43GS>.

²⁵⁷ Projet de loi renforçant les garanties procédurales en matière pénale [Bill to Reinforce Procedural Guarantees in Criminal Matters], CONSEIL D'ETAT [COUNCIL OF STATE], No. 50.935, http://www.conseil-etat.public.lu/content/conseil_etat/fr/avis/2015/06/02_06_2015/50_935/50935.pdf, archived at <https://perma.cc/F3YY-33T4>.

²⁵⁸ Zakon za krivičnata postapka [Criminal Procedure Law], SLUŽBEN VESNIK [OFFICIAL GAZETTE], Nov. 18, 2010, No. 07-4706, art. 69(1), <http://www.slvesnik.com.mk/Issues/BDBF29F810D5E9468FC65FA542B857B3.pdf> (translation by author), archived at <https://perma.cc/W4AD-8JJD>.

²⁵⁹ *Id.* art. 69(2).

²⁶⁰ *Id.*

Montenegro

Article 5 of the Criminal Procedure Code states that

[p]ersons deprived of liberty by a competent public authority shall be immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, informed that they are not obliged to make a statement, that they have a right to a defence attorney of their own choice and to request that a person of their choosing be informed [of] their deprivation of liberty as well as a diplomatic consular representative of [their country of nationality] or a representative of appropriate international organization if they are stateless persons or refugees.²⁶¹

Netherlands²⁶²

Under the Dutch Code of Criminal Procedure, in all cases in which a suspect is being interrogated, the interrogating judge or official is to refrain from obtaining any statement that cannot be said to have been made freely, and the accused is not obliged to answer the interrogator. The suspect is to be informed of this right to remain silent before the interrogation takes place. The statements of the accused, specifically those that include a confession of guilt, are insofar as possible to be recorded in the person's own words in the interrogation minutes (*procès-verbal*). The communication referred to above, on informing the suspect of his rights, is to be included in the interrogation minutes.²⁶³

The Netherlands has also transformed into domestic law Directive 2012/13/EU.²⁶⁴

Northern Ireland

The caution that must be read by police officers to suspects who have been arrested stems from the English Judges' Rules. These rules have been replaced by the Police and Criminal Evidence

²⁶¹ ZAKONIK O KRIVIČNOM POSTUPKU [CRIMINAL PROCEDURE CODE] art. 5(1), SLUZBENI LIST [OFFICIAL GAZETTE], Aug. 18, 2009, No. 57/09, available at <http://www.legislationline.org/download/action/download/id/1487/file/nc6145416f910ea8eb9d1aa05f34c.htm/preview>, archived at <https://perma.cc/4TNU-47J5>, English translation available at [https://www.icrc.org/ihl-nat.nsf/0/fe3a681d13dc6714c12576e1004879ca/\\$FILE/Criminal%20Procedure%20Code.%20Montenegro.pdf](https://www.icrc.org/ihl-nat.nsf/0/fe3a681d13dc6714c12576e1004879ca/$FILE/Criminal%20Procedure%20Code.%20Montenegro.pdf), archived at <https://perma.cc/FU89-SB83>.

²⁶² At present there are no Law Library of Congress research staff members versed in Dutch. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

²⁶³ WETBOEK VAN STRAFVORDERING [CODE OF CRIMINAL PROCEDURE] (Jan. 15, 1921, as last amended effective Nov. 17, 2015) art. 29 ¶¶ 1–3, <http://wetten.overheid.nl/BWBR0001903/2015-11-17>, archived at <https://perma.cc/6SBB-LHPL>.

²⁶⁴ Wet van 5 november 2014, houdende implementatie van richtlijn nr. 2012/13/EU van het Europees Parlement en de Raad van 22 mei 2012 betreffende het recht op informatie in strafprocedures (PbEU L 142), STAATSBLAD [STB.] No. 433, <https://zoek.officielebekendmakingen.nl/stb-2014-433.html>, archived at <https://perma.cc/4HTG-UNUE>; Besluit van 18 november 2014, houdende regels inzake de schriftelijke mededeling van rechten ten behoeve van aangehouden verdachten (Besluit mededeling van rechten in strafzaken), STB. No. 434 (Nov. 26, 2014) <http://wetten.overheid.nl/BWBR0035803/2015-01-01>, archived at <https://perma.cc/H8WV-CW4V>. For a discussion of EU Directive 2012/13/EU, see European Union summary.

(Northern Ireland) Order 1989, which approximately mirrors England and Wales legislation of the same name.²⁶⁵ Code G of the Code of Practice made under this Order provides that the caution should be read as follows: “You do not have to say anything, but I must caution you that if you do not mention when questioned something which you later rely on in court, it may harm your defence. If you do say anything it may be given in evidence.”²⁶⁶

Norway

Under Norwegian law the police must, at the time of the first questioning, inform a suspect of what crime he or she is suspected of and that he or she has the right to remain silent.²⁶⁷ The suspect must also be informed of the same right the first time he or she meets the court.²⁶⁸ This requirement was established as an implicit duty as part of Norway’s obligations under the United Nations Convention of December 15, 1966, on Civil and Political Rights.²⁶⁹

Norway has contemplated amending the Criminal Procedural Act to explicitly require that police inform the suspect of this right at the time of arrest, but decided against it, instead issuing a written guide on suspects’ rights for the police to present to suspects, which includes the right to remain silent.²⁷⁰ The right is formulated in the negative—i.e., the suspect “does not have a duty to explain himself (speak).”²⁷¹ The right to not self-incriminate (the right to be silent) is not listed on the police website’s list of rights for arrested persons.²⁷² The explicit inclusion of a provision stating the right to be silent in the Criminal Procedure Act and the national regulation (*forskrift*) has been in force since 1986.²⁷³

²⁶⁵ Police and Criminal Evidence (Northern Ireland) Order 1989, No. 1341 N.I. 12, ¶ 30, <http://www.legislation.gov.uk/nisi/1989/1341/contents>, archived at <https://perma.cc/U3T8-EWNZ>.

²⁶⁶ Department of Justice, Police and Criminal Evidence (Northern Ireland) Order 1989, Code G, Code of Practice for the Statutory Power of Arrest By Police Officers (May 2015), ¶ 3.5, <https://www.dojni.gov.uk/sites/default/files/publications/doj/pace-code-g-2015-.pdf>, archived at <https://perma.cc/ZVW6-GYRU>.

²⁶⁷ LOV OM RETTERGANGSMÅTEN I STRAFFESAKER (STRAFFEPROSCESSLOVEN [CRIMINAL PROCEDURE ACT]) (Lov No. [LOV] 1981-05-22-25), § 232 (ch. 5), https://lovdata.no/dokument/NL/lov/1981-05-22-25/KAPITTEL_5-1#KAPITTEL_5-1, archived at <https://perma.cc/HN2M-DCYX>; § 8-1 Forskrift om ordningen av påtalemyndigheten (Påtaleinstruksen [Prosecution Instruction]) (Forskrift [FOR] 1985-06-28-1679), <https://lovdata.no/dokument/SF/forskrift/1985-06-28-1679?q=p%C3%A5taleinstruksen>, archived at <https://perma.cc/267C-ZECY>.

²⁶⁸ CRIMINAL PROCEDURE ACT § 90.

²⁶⁹ *Ot. prp. nr. 81 (1999-2000) Om lov om endringer i straffeloven og straffeprosessloven (bruken av varetektsfengsling mv.)*, REGJERINEN.NO, <https://www.regjeringen.no/no/dokumenter/otprp-nr-81-1999-2000-/id162008/?ch=4> (last visited Apr. 29, 2016), archived at <https://perma.cc/7JD5-DEBP>.

²⁷⁰ Odelstingsproposisjon [Ot. prp.] om lov om endringer i straffeloven og straffeprosessloven (bruken av varetektsfengsling mv.) [Bill on Amendments to the Criminal Act and Criminal Procedure Act (Use of Protective Imprisonment etc.)], Ot.prp. nr. 81 (government series), <https://www.regjeringen.no/contentassets/3d4b39169b3245668436d45f9d4bd3d4/no/pdfa/otp199920000081000dddpdfa.pdf>, archived at <https://perma.cc/E92U-FZX6>.

²⁷¹ CRIMINAL PROCEDURE ACT § 232 (translation by author).

²⁷² *Rettigheter som pågrepet i straffesaker [Rights of Arrested in Criminal Matters]*, POLITI.NO (Aug. 20, 2009), https://www.politi.no/midtre_halogaland/rad_fra_politiet/rettigheter/pagrepet/Tema_369.xhtml, archived at <https://perma.cc/PHX7-KX4T>.

²⁷³ § 232 CRIMINAL PROCEDURE ACT; § 8-1 Prosecution Instruction; see also Innstilling frå Justiskomiteén om rettergangsmåten i straffesaker (Straffeprosessloven), Innst.-O. nr. 37 (1980–81), <http://www.ub.uio.no/om/>

The Criminal Procedural Act of 1887, as amended in 1902 and 1917, provided a right for family members of a suspect to refuse to testify against the suspect in court and required that family members be informed of this right, which was also considered to extend to the suspect himself.²⁷⁴ In 1887 the choice of a suspect to remain silent during court proceedings was interpreted against him, and the judge was forced to inform the suspect of this.²⁷⁵

Poland

Article 244 of the Polish Criminal Procedural Code states that persons placed under arrest must receive a written explanation of their rights before the first police interview is conducted and be asked to sign a document confirming that they understand their rights.²⁷⁶

Romania

Romanian legislation does not provide for a warning at the time of arrest. However, before the interrogation starts, “the suspect and defendant must be informed that they have the right to make no statements whatsoever.”²⁷⁷

Scotland

Scotland currently uses both a statutory and common law approach to the issuance of cautions to individuals who have been arrested. Section 14 of the Criminal Justice and Procedure (Scotland) Act 1995 provides that when a person is arrested he/she is under no obligation to answer any questions other than to provide his/her name, address, date of birth, place of birth, and nationality.²⁷⁸ These are to be replaced shortly with the terms of section three of the Criminal Justice (Scotland) Act 2016, which will go into effect when secondary legislation is

[organisasjon/ujur/ior/forarbejder/straffeprosessloven/dokumenter/INNST-O-37-1980-1981.pdf](https://www.lov.no/organisasjon/ujur/ior/forarbejder/straffeprosessloven/dokumenter/INNST-O-37-1980-1981.pdf), archived at <https://perma.cc/EGX6-C4EW>.

²⁷⁴ STRAFFEPROSSESSLOVEN (LOV 1887-05-01-5) [CRIMINAL PROCEDURE ACT of 1887] §§ 176 & 177.

²⁷⁵ Udkast til Lov om Rettergangsmaaden i Strafsager [Criminal Procedure Bill] § 245, https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1885&paid=5&wid=a&psid=DIVL257&pgid=a_0085&vt=a&did=DIVL261, archived at <https://perma.cc/DL49-ZV9U>.

²⁷⁶ Ustawa z dnia 6 czerwca 1997 r. KODEKS POSTĘPOWANIA KARNEGO [Law of June 6, 1997, CRIMINAL PROCEDURE CODE], *DZIENNIK USTAW RZECZYPOSPOLITEJ POLSKIEJ* [OFFICIAL GAZETTE OF THE POLISH REPUBLIC], Aug. 4, 1997, No. 89/1997, item 555, art. 244(2), <http://dziennikustaw.gov.pl/DU/1997/555>, archived at <https://perma.cc/2TN4-WD5W>.

²⁷⁷ Lege Nr. 135 din 1 iulie 2010 privind CODUL DE PROCEDURĂ PENALĂ [Law No. 135 of July 1, 2010, on the CODE OF CRIMINAL PROCEDURE] art. 10(4), *MONITORUL OFICIAL* [OFFICIAL GAZETTE] July 15, 2010, No. 486, <http://anp.gov.ro/documents/10180/57727/LEGE+Nr.+135+din+1+iulie+2010+privind+Codul+de+procedur%C4%83%20penal%C4%83.pdf/bb83833e-9e80-4822-9ea3-07f4008d7bd1>, archived at <https://perma.cc/AR65-KN7P>, English translation with amendments through Feb. 7, 2014, available at <http://www.legislationline.org/documents/section/criminal-codes>, archived at <https://perma.cc/9HDD-SRUQ>.

²⁷⁸ Criminal Justice and Procedure (Scotland) Act 1995, c. 46, <http://www.legislation.gov.uk/ukpga/1995/46/section/14>, archived at <https://perma.cc/QAW2-4EHW>.

promulgated.²⁷⁹ That section contains similar provisions, providing that when a suspect is arrested the constable must inform the person that he/she need only give his/her name, address, date of birth, place of birth, and nationality, in accordance with section 34 of the same Act. There does not appear to be an official, published version of the police caution used by Scottish Police Officers.²⁸⁰

Serbia

In Serbia persons placed under arrest are entitled to be informed before the first interrogation of the charges against them and that anything they say may be used as evidence in the proceedings.²⁸¹ In addition, they have the right to remain silent, to refrain from answering questions, to present their defense freely, to admit or not to admit their culpability, and to defend themselves on their own or with the professional assistance of defense counsel.²⁸²

Slovakia

In Slovakia a person placed under arrest has the right to receive information about his/her rights orally and in writing by a police officer. The accused has the right to remain silent and not to answer any question that could incriminate him/her.²⁸³

Slovenia

Article 4 of the Slovenian Criminal Procedure Act states that

[a]ny arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.²⁸⁴

²⁷⁹ Criminal Justice (Scotland) Act 2016 ASP 1, <http://www.legislation.gov.uk/asp/2016/1/section/3>, archived at <https://perma.cc/JUC9-JLV3>.

²⁸⁰ Philip B. Glover, *Proceed with Caution(s): A Critique of the Carloway Review's Rejection of Statutory Adverse Inference Provisions in Scottish Criminal Law* n.29, https://www.abdn.ac.uk/law/documents/Proceed_with_Caution.pdf (last visited Apr. 27, 2016), archived at <https://perma.cc/MP7T-9ALX>.

²⁸¹ ZAKONIK O KRIVIČNOM POSTUPKU [CRIMINAL PROCEDURE CODE] art. 68(1), SLUZBENI GLASNIK [OFFICIAL GAZETTE] Sept. 28, 2011, No. 89/2011, English translation available at <http://www.legislationline.org/documents/section/criminal-codes>, archived at <https://perma.cc/L4KB-TYXZ>.

²⁸² *Id.* art. 68(2)–(3).

²⁸³ Zákon č. 301/2005 Zb., Trestny Poriadok [Law No. 301/2005 Collection of Laws, Criminal Procedure] § 34(1), <http://www.zakonypreludi.sk/zz/2005-301>, archived at <https://perma.cc/KTZ2-L4UH>.

²⁸⁴ Zakon o kazenskem postopku. Uradno prečiščeno besedilo [Criminal Procedure Act. Official Consolidated Text] (ZKP-UPB3) art. 4(1), URADNI LIST [OFFICIAL GAZETTE], Jan. 26, 2006, No. 8/2006, <http://www.uradni-list.si/pdf/2006/Ur/u2006008.pdf#/u2006008-pdf>, archived at <https://perma.cc/K6CA-V3QY>, English translation available at <http://www.legislationline.org/documents/section/criminal-codes>, archived at <https://perma.cc/6TJQ-F632>.

Spain

Spain's Ley de Enjuiciamiento Criminal (Law on Criminal Procedure) provides that a suspect must be informed immediately upon arrest and in a clear manner of the reasons for the detention and of his or her fundamental rights, such as the right to remain silent and the right against self-incrimination; the right to communicate to a family member about his or her detention; the right to be assisted by an interpreter free of charge; and the right to legal counsel of his or her choice. If necessary, a public defender may be appointed.²⁸⁵

Sweden

There is no specific language under Swedish law detailing how a police officer must relay a suspect's rights. However, there are provisions related to the information that must be relayed to suspects at the time they are declared to be suspects. At that time, suspects must be informed of the crime of which they are suspected, that they have a right to counsel and that in certain instances they may be entitled to a public defender, that they have a right to gain access to some of the material from the investigation, that they have a right to a translator and to have documents translated, and that they have a right to remain silent with regard to the suspicion of the crime.²⁸⁶ Moreover, suspects have the right to receive the information in writing.²⁸⁷ For lesser crimes, a person can be notified of suspicion of a crime by mail.²⁸⁸

The explicit right to remain silent was incorporated as part of Sweden's implementation of article 3 of Directive 2012/13/EU on the right to information in criminal proceedings in 2013.²⁸⁹

Switzerland

Article 158 of the Swiss Code of Criminal Procedure establishes the right of the accused to be informed of his or her rights before being interrogated by the police or prosecutor.²⁹⁰ Evidence

²⁸⁵ Ley de Enjuiciamiento Criminal [Law on Criminal Procedure] art. 520.2, BOLETIN OFICIAL DEL ESTADO (Sept. 17, 1882; 2015 rev. text) <https://www.boe.es/buscar/pdf/1882/BOE-A-1882-6036-consolidado.pdf>, archived at <https://perma.cc/WS76-XCX2>.

²⁸⁶ 12 § FÖRUNDERSÖKNINGSKUNGÖRELSE [PRELIMINARY INVESTIGATION PROCLAMATION] (Svensk författningssamling [SFS] 1947:948), <https://www.notisum.se/rnp/sls/lag/19470948.htm>, archived at <https://perma.cc/N8AB-Y53X>.

²⁸⁷ *Id.* 12a. §.

²⁸⁸ *Id.* 12b. §.

²⁸⁹ Departementsserie [Ds] 2013:18 Genomförande av Europaparlamentets och rådets direktiv om rätten till information vid straffrättsliga förfaranden [Implementation of European Parliament and Council's Directive on the Right to Information in Criminal Proceedings] (Ministry Report Series) 58, <https://data.riksdagen.se/fil/B8820A52-D314-4EBF-8A8B-C64813811D3D>, archived at <https://perma.cc/7J4X-4X3K>. For a discussion of EU Directive 2012/13/EU, see European Union survey.

²⁹⁰ SCHWEIZERISCHE STRAFPROZESSORDNUNG [STPO] [SWISS CODE OF CRIMINAL PROCEDURE], Oct. 5, 2007, SYSTEMATISCHE RECHTSSAMMLUNG [RS] [SYSTEMIC COLLECTION OF LAWS] 312, art. 158, <https://www.admin.ch/opc/de/classified-compilation/20052319/201601010000/312.0.pdf>, archived at <http://perma.cc/F2B8-45CU>, unofficial English translation available at <https://www.admin.ch/opc/en/classified-compilation/20052319/201601010000/312.0.pdf>, archived at <http://perma.cc/U8XJ-97CL>.

obtained from the accused without the proper instructions is inadmissible in court, without any exceptions.²⁹¹

The provision was introduced in 2007 when a new uniform Federal Swiss Code of Criminal Procedure was enacted to replace the earlier Cantonal Codes of Criminal Procedure.²⁹² It provides that

At the start of the first interview, the police or public prosecutor shall advise the accused in a language that he or she understands:

- a. that preliminary proceedings have been commenced against him or her, and of the offences that are the subject of the proceedings;
- b. that he or she is entitled to remain silent and may refuse to cooperate in the proceedings;
- c. that he or she is entitled to appoint a defence lawyer or if appropriate to request the assistance of a duty defence lawyer;
- d. that he or she may request the assistance of an interpreter.

Turkey²⁹³

Article 147 of Turkey's Code of Criminal Procedure provides for suspects to be informed of their right to appoint a defense counsel and to be told of their legal right not to give any explanation in connection with the charges against them, charges that must be explained to them.²⁹⁴ This provision has been in the new Code since its adoption in 2004. In addition, the Regulations on Apprehension, Detention, and Statement Taking of 2005 refer in article 6 to the need to inform detainees in writing, or immediately verbally if that is not possible, of their right to remain silent about allegations against them and to benefit from counsel.²⁹⁵ At the end of the text of the Regulations is a link to the text of a Ministry of Interior form on the rights of suspects taken into custody; the form sets forth the rights that the suspect enjoys and has a space for his/her signature at the end of the list.²⁹⁶

²⁹¹ SWISS CODE OF CRIMINAL PROCEDURE art. 158, ¶ 2, in conjunction with art. 141, ¶ 1.

²⁹² Botschaft zur Vereinheitlichung des Strafprozessrechts [Message with Regard to the Harmonization of the Law of Criminal Procedure], Dec. 21, 2005, BUNDEBLATT [BBL] [FEDERAL GAZETTE] 1085 (2006), <https://www.admin.ch/opc/de/federal-gazette/2006/1085.pdf>, archived at <http://perma.cc/75UK-6NRL>.

²⁹³ At present there are no Law Library of Congress research staff members versed in Turkish. This summary has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

²⁹⁴ CEZA MUHALEMESİ KANUNU [CODE OF CRIMINAL PROCEDURE], Law No. 5271 (Dec. 4, 2004, as last amended effective Apr. 4, 2015), RESMÎ GAZETE No. 25673 (Dec. 17, 2004), art. 147(1)(c), (e) & (b), respectively, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf>, archived at <https://perma.cc/6SS9-5A22>; CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF TURKEY (2009), available at <http://www.legislationline.org/documents/section/criminal-codes/country/50> (click on hyperlinked title to access text), archived at <https://perma.cc/7JX2-G6HR>.

²⁹⁵ Yakalama, Gözaltına Alma ve İfade Alma Yönetmeliği [Regulation on Apprehension, Detention, and Statement Taking] art. 6, RESMÎ GAZETE, No. 25832 (June 1, 2005), <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.8197&MevzuatIliski=0&sourceXmlSearch>, archived at <https://perma.cc/29DH-V4MX>.

²⁹⁶ *Id.* (click "Yönetmeliğin eklerini görmek için tıklayınız" at end of Regulation text).

An interrogated person must also “be given notice that he may demand collection of exculpatory evidence that would favor him. Questions about his personal status will be asked.”²⁹⁷

Ukraine

Ukraine’s new Code of Criminal Procedure, effective since November 2012, requires the detaining officer to immediately inform a detained person of the grounds for arrest and his/her rights to defense counsel, to remain silent, to receive medical assistance, to inform others of the arrest and his/her whereabouts, and other procedural rights.²⁹⁸

Uzbekistan

In 2008, Uzbekistan amended article 224 of its Code of Criminal Procedure, introducing a requirement for law enforcement officers to explain to a detained person his or her right to make a phone call to a lawyer or a close relative, to have a defense counsel, and to refuse to testify, as well as to inform the detained person that his/her testimony may be used as evidence against him/her in criminal proceedings.²⁹⁹

IV. Middle East and North Africa

Algeria

Algerian law provides that the investigative judge must inform the accused that he or she is free not to make a statement, that he/she has the right to select an attorney, and that if needed the judge will appoint an attorney for him/her.³⁰⁰

Iran³⁰¹

According to a report by Amnesty International, Iran’s amended Code of Criminal Procedure³⁰² “has provisions obligating the authorities to notify individuals of their rights.”³⁰³ The report states as follows:

²⁹⁷ Feridun Yenisey, *Part II. Criminal Procedure Law in Turkey* (May 2015), <https://law.ku.edu/sites/law.ku.edu/files/docs/istanbul/criminal-procedure-istanbul-2015.pdf>, archived at <https://perma.cc/K9U5-R6VD>.

²⁹⁸ KRIMINALNII PROTSESUALNII KODEKS UKRAINI [CODE OF CRIMINAL PROCEDURE OF UKRAINE] No. 4651-VI of Apr. 13, 2012, art. 208, VIDOMOSTI VERKHOVNOI RADI UKRAINI [OFFICIAL GAZETTE OF UKRAINE] 2013, No. 9-10, 11-12, 13, item 88, available at <http://zakon4.rada.gov.ua/laws/show/4651-17>, archived at <https://perma.cc/S3RQ-2U4B> (in Ukrainian), English translation available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f6016>, archived at <https://perma.cc/S5UX-4C6M>.

²⁹⁹ SOBRANIE ZAKONODATELSTVA RESPUBLIKI UZBEKISTAN [OFFICIAL GAZETTE OF THE REPUBLIC OF UZBEKISTAN] No. 52/2008, item 514, available at http://www.lex.uz/pages/GetAct.aspx?lact_id=1420409&ONDATE=01.01.2009%2000#1420530 (in Russian), archived at <https://perma.cc/UQ2E-9K86>.

³⁰⁰ CRIMINAL PROCEDURE CODE No. 66.155 of 1966, art. 100, available at <http://www.wipo.int/edocs/lexdocs/laws/fr/dz/dz030fr.pdf> (in French), archived at <https://perma.cc/RJ2X-DUPC>.

³⁰¹ At present there are no Law Library of Congress research staff members versed in Persian. This report has been prepared by the author’s reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

Article 6 guarantees the rights of the accused, the victim, witnesses and any other relevant individuals involved in a case to be informed of their rights during the proceedings. Article 52 requires “judicial officers” to notify a detainee of their rights as guaranteed under the Code, provide the accused person with a written copy of the notification, and enclose a receipt of the communication in the case file. With the exception of the right to access a lawyer, the Code fails to explicitly list all the rights of which an individual must be notified. Article 190, which acknowledges the right of the suspect to “be accompanied by a lawyer during the preliminary investigations”, obliges the investigator to notify the suspect of this right before the start of the investigation. If the suspect has been summoned, this right should be contained in the summons communicated to the suspect.³⁰⁴

An amendment to note 1 of article 190 states that deprivation of the right to be accompanied by an attorney and not informing the accused of this right may result in disciplinary penalties.

Moreover, according to article 197, “[t]he accused can remain silent. In such cases, the accused person’s refusal to reply or sign their statements will be noted in the minutes.”³⁰⁵

Iraq

The investigative judge must inform the accused that he has the right to remain silent, that no adverse inference shall be drawn from exercising this right, and that he has the right to be represented by an attorney.³⁰⁶

Israel

In accordance with Israel’s Criminal Procedure (Enforcement Authorities) Law, 5756-1996, a person who has been arrested has a right to meet and consult with an attorney.³⁰⁷ According to the Law, the officer responsible for investigations in the police station is not authorized to order a person’s arrest, continuation of arrest, or release on bail without first providing that person an

³⁰² CODE OF CRIMINAL PROCEDURE [CCP], RŪZNĀMEH-I RASMĪ-I JUMHŪRĪ-I ISLĀMĪ-I IRĀN [OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN] (Apr. 23, 2014), arts. 6, 52, 190, & 197, <http://www.rrk.ir/Files/Laws/Ghanoon%2093.02.03.pdf>, archived at <https://perma.cc/L4JM-4YN3>; Amendments to the CCP, OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN (June 22, 2015), <http://www.rrk.ir/Laws/ShowLaw.aspx?Code=5116>, archived at <https://perma.cc/ZUA3-EKT5>.

³⁰³ AMNESTY INTERNATIONAL, *FLAWED REFORMS: IRAN’S NEW CODE OF CRIMINAL PROCEDURE* 33 (Feb. 10, 2016), http://www.amnestyusa.org/sites/default/files/flawed_reforms_-_irans_new_code_of_criminal_procedure.pdf, archived at <https://perma.cc/3TXX-74U8>.

³⁰⁴ *Id.* (footnote in original omitted).

³⁰⁵ *Id.*

³⁰⁶ CRIMINAL PROCEDURE CODE No. 23 of 1971, art. 123(b), <http://www1.umn.edu/humanrts/research/Egypt/Criminal%20Procedures.pdf>, archived at <https://perma.cc/Z7QW-DD5J>.

³⁰⁷ Criminal Procedure (Enforcement Authorities- Arrests) Law, 5756-1996, § 34, SEFER HAHUKIM 5752 No. 1592 p. 338, *as amended*, available on the Nevo Legal Database, at <http://www.nevo.co.il> (by subscription), archived at <https://perma.cc/3BL7-RHDA>.

opportunity to respond.³⁰⁸ The suspect, thus, must be informed that he or she is under no obligation to say anything that could be incriminating and that anything said could serve as evidence against him or her. The suspect must also be informed that refraining from responding to the questions asked by the police might strengthen the evidence against him or her.³⁰⁹

Noncompliance with the warning, however, does not necessarily result in the inadmissibility of the defendant's statements in trial. According to judicial interpretation, although a defendant has a right to be silent and to be represented by an attorney, these rights should be balanced against important public interests, including fighting crime, protecting public and state security, revealing the truth, and protecting victims' rights.³¹⁰ A 2003 decision rendered by the Jerusalem District Court therefore concluded, "[u]nlike in the United States, in Israel the voiding [of a statement made in the absence of proper warning] is not automatic. The legislator in Israel has not adopted the approach applicable in the United States of the 'fruit of the poisonous tree'."³¹¹

Lebanon

In Lebanon the investigative judge must draw the attention of the accused to his or her rights, especially the right to be assisted by an attorney during the investigation. Failure to do so results in the fruits of the investigation not being admitted into evidence.³¹²

Morocco

Under the law of Morocco the investigative judge must inform the accused of his right not to make any statement and to select an attorney, or to have the judge appoint one if the accused demands it.³¹³

Tunisia

In Tunisia the investigative judge must inform the accused of his or her right not to answer except in the presence of an attorney of his/her choice, and an attorney must be appointed for the accused if he or she so demands.³¹⁴

³⁰⁸ *Id.* § 28(a).

³⁰⁹ *Id.*

³¹⁰ Serious Crime 5034/02 State of Israel v. Yarden Morag, (Jerusalem District Court (decision rendered Sept. 17, 2003), available at <http://www.nevo.co.il> (by subscription), archived at <https://perma.cc/RU4T-S7DM>.

³¹¹ *Id.* ¶ 40.

³¹² CRIMINAL PROCEDURE CODE No. 328 of 2001, art. 76, <http://www.pogar.org/publications/ac/compendium/lebanon/criminalization-lawenforcement/crimprocedure-01-ar.pdf> (in Arabic), archived at <https://perma.cc/P5D7-XMCY>.

³¹³ Criminal Procedure Code No. 1-58-261 of 1959, art. 127, <http://www.refworld.org/docid/3ae6b5104.html%20%20Maroc%20127> (in French), archived at <https://perma.cc/ZV27-5TAB>.

³¹⁴ Criminal Procedure Code No. 68-23 of 1968, art. 69, <http://www.droit-afrique.com/upload/doc/tunisie/Tunisie-Code-2010-procedure-penale.pdf> (in French), archived at <https://perma.cc/8AXY-EARL>.

V. South Asia

Afghanistan

Article 31 of the Afghan Constitution stipulates that “[i]mmediately upon arrest, the accused shall have the right to be informed of the nature of the accusation, and appear before the court within the time limit specified by law.”³¹⁵ Article 15 of the Police Law stipulates that when detaining a person in custody the police must inform the person of “the reason and case as soon as the person is detained.”³¹⁶

Afghanistan’s 2004 Interim Criminal Code for Courts, which has now been repealed, stipulated that

[t]he police, the Saranwal and the Court are duty bound to clearly inform the suspect and the accused before interrogation and at the time of arrest about his or her right to remain silent, right to representation at all times by defense counsel, and right to be present during searches, line-ups, expert examinations and trial.³¹⁷

Under article 8 of the new Code of Criminal Procedure, police during an arrest, prosecutors before the start of an investigation, and the pretrial judge are obligated to explain certain rights to the accused or his/her legal representative, and must then record the fact of such notification in a notarized document bearing the accused’s signature and fingerprints.³¹⁸ The rights are stipulated under article 7, and they include the rights to remain silent, to refuse to make any statements, and to have a lawyer.³¹⁹

Bhutan

Procedures for arrest are set out in the Civil and Criminal Procedure Code of 2001.³²⁰ Section 184 of the Code of Bhutan stipulates that “[i]mmediately following arrest, an arrested person shall be informed of the charge for which he/she is being arrested.”³²¹ Also, upon arrest, “the accused must also be informed of his or her right to consult a jabmi [attorney] of one’s choice.”³²²

³¹⁵ CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN (ratified Jan. 26, 2004) art. 31, <http://www.afghanembassy.com/pl/afg/images/pliki/TheConstitution.pdf>, archived at <https://perma.cc/KF5W-HL22>.

³¹⁶ Police Law (Sept. 22, 2005) art. 15, <http://moi.gov.af/Content/files/PoliceLaw.pdf>, archived at <https://perma.cc/25WF-XP7P>.

³¹⁷ INTERIM CRIMINAL PROCEDURE CODE FOR COURTS (2004) art. 5, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86570/97837/F1502271195/AFG86570.pdf>, archived at <https://perma.cc/APD9-3CYA>.

³¹⁸ CRIMINAL PROCEDURE CODE (2014) art. 8, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99021/118021/F333101802/AFG99021%20Per.pdf> (in Dari & Pashto), archived at <https://perma.cc/TNS4-98TV>.

³¹⁹ *Id.* art. 7.

³²⁰ CIVIL AND CRIMINAL PROCEDURE CODE OF BHUTAN (2001), <http://www.judiciary.gov.bt/html/act/Court%20procedure.pdf>, archived at <https://perma.cc/8266-HJSM>.

³²¹ *Id.* § 184.

³²² LUNGSTEN DUBGYUR, CRIMINAL JUSTICE IN BHUTAN: A HANDBOOK ON CRIMINAL PROCEDURE 38 (2006).

Under the Royal Bhutan Police Act, which regulates the Royal Bhutan Police (“the main law enforcement agency in Bhutan”³²³) a police officer must conduct an investigation by fulfilling certain minimum requirements. These include the need to inform the accused of the offense of which he is being charged, to prepare his defense either in person or through an attorney,³²⁴ and to “safeguard the rights of the suspect including the right to remain silent.”³²⁵

India

Article 22(1) of India’s Constitution states that “[n]o person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”³²⁶ The Supreme Court of India in 1997 laid down specific guidelines to be followed when making arrests, including that the person arrested must be made aware of the right “to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.”³²⁷

Article 20(3) of the Constitution states that “[n]o person accused of any offence shall be compelled to be a witness against himself.”³²⁸ Section 25 of the Indian Evidence Act, 1872, stipulates that a confessional statement made by a person to a police officer is inadmissible as evidence against him for the offense.³²⁹ Section 162 of the Code of Criminal Procedure further stipulates that statements made to the police in the course of an investigation, if put in writing, cannot be signed by the person making them and cannot be admitted to an inquiry or a trial for the offense which is being investigated.³³⁰ A form of this confession rule appears to have been included in the Code of Criminal Procedure when it was first enacted in 1861.³³¹ In 1960, the Supreme Court noted that the law in respect to confessions and caution appeared to be as follows: “(1) that no statement made to a police officer by any person was provable at the trial which included the accused person, and (2) that no caution was to be given to a person making a statement.”³³²

³²³ Kinlay Wangdi, Investigation of Criminal Offences in Bhutan (Paper presented at the 155th International Training Course of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Aug. 27–Oct. 2, 2013), http://www.unafei.or.jp/english/pages/RMS/No92_06PA_Wangdi1.pdf, archived at <https://perma.cc/EFP3-V9ZD>.

³²⁴ Royal Bhutan Police Act, 2009, § 91(b), <http://www.rbp.gov.bt/Forms/Police%20Act.pdf> (in English and Dzongkha), archived at <https://perma.cc/KTZ6-LJL3>.

³²⁵ *Id.* § 91(e).

³²⁶ INDIA CONST. art. 22(1), <http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss%286%29.pdf>, archived at <https://perma.cc/BF6W-KWRV>.

³²⁷ D.K. Basu v. State of West Bengal (1997) 1 S.C.C. 216.

³²⁸ INDIA CONST. art. 20(3)

³²⁹ Indian Evidence Act, No. 1 of 1872, § 25, <http://ncw.nic.in/Acts/THEINDIANEVIDENCEACT1872.pdf>, archived at <https://perma.cc/47Q6-388U>.

³³⁰ CODE OF CRIMINAL PROCEDURE, Act No. 2 of 1974, § 162, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814340.pdf>, archived at <https://perma.cc/56U2-6YZA>.

³³¹ CODE OF CRIMINAL PROCEDURE, Act No. 25 of 1861, § 149, <http://bombayhighcourt.nic.in/libweb/oldlegislation/crpc1861/Chapter%209.pdf>, archived at <https://perma.cc/2P5M-G7SL>.

³³² State of U.P. v. Deoman Upadhyaya (1960) A.I.R. 1125.

According to the Code of Criminal Procedure, only a Metropolitan Magistrate or Judicial Magistrate can record confessions and statements made in the course of an investigation.³³³ Prior to recording any confession, the Magistrate must explain to the person making it that “he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.”³³⁴

Pakistan

Article 10(1) of Pakistan’s Constitution states that “[n]o person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”³³⁵

Article 13(b) of Pakistan’s Constitution states that no person “shall, when accused of an offence, be compelled to be a witness against himself.”³³⁶ Section 39 of the Qanun-e-Shahadat (Law of Evidence) Order 1984, stipulates that “no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against person”.³³⁷ Section 162 of the Code of Criminal Procedure further stipulates that, subject to certain provisos, statements made to the police in the course of an investigation, if put in writing, cannot be signed by the person making them and cannot be admitted to an inquiry or a trial for the offense which is being investigated.³³⁸ A form of this confession rule appears to have been included the Code of Criminal Procedure when it was enacted for the first time in 1861.³³⁹

According to the Code of Criminal Procedure, only a Magistrate can record confessions and statements³⁴⁰ made in the course of an investigation. Prior to recording any confession, the Magistrate must explain to the person making it that

he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, questioning the person making, it, he has reasons to believe that it was made voluntarily: and, when he records any confession, he shall make a memorandum at the foot of such record to the

³³³ CODE OF CRIMINAL PROCEDURE, Act No. 2 of 1974, § 164(1).

³³⁴ *Id.* § 164(2).

³³⁵ PAK. CONST. art. 10(1), http://www.na.gov.pk/uploads/documents/1333523681_951.pdf, archived at <https://perma.cc/6WL9-CPYQ>.

³³⁶ *Id.* art. 13(b).

³³⁷ Qanun-e-Shahadat (Law of Evidence) Order, 1984, <http://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>, archived at <https://perma.cc/U8AN-S4QV>.

³³⁸ CODE OF CRIMINAL PROCEDURE, 1898, § 162, available at <http://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf>, archived at <https://perma.cc/Z8VM-22DU>.

³³⁹ CODE OF CRIMINAL PROCEDURE, Act No. 25 of 1861, § 149, <http://bombayhighcourt.nic.in/libweb/oldlegislation/cripc1861/Chapter%209.pdf>, archived at <https://perma.cc/2P5M-G7SL>.

³⁴⁰ CODE OF CRIMINAL PROCEDURE, 1898, § 164(1).

following effect: 'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and. I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed) A.B., Magistrate.³⁴¹

VI. Sub-Saharan Africa

Botswana

Botswana's Criminal Procedure and Evidence Act of 1939 accords detained persons certain rights. Under this law, a confession made to a police officer is not admissible unless "confirmed and reduced to writing in the presence of a magistrate or any other justice who is not a member of the Botswana Police Force."³⁴² This law further states as follows:

- (1.) A policeman may take or cause to be taken any person lawfully detained in his custody before a magistrate or any justice who is not a member of the Botswana Police Force and the magistrate or justice shall give that person the opportunity to make a statement to him in respect of any offence that person is alleged to have committed and, if that person elects to make a statement, the magistrate or justice shall record the same in writing in the language in which it is made or in some other language into which it is duly translated while being made.
- (2.) Before any person makes a statement in terms of this section, the magistrate or justice shall caution him to the effect that he is not obliged to say anything unless he wishes to do so but that should he elect to say anything it will be recorded in writing and may be used in evidence either for or against him.
- (3.) Every statement recorded in accordance with this section shall, whether it amounts or does not amount to a confession of the commission of any offence, be admissible in evidence either for or against the maker thereof at any subsequent trial or preparatory examination in respect of any offence, to the extent that the contents thereof are sufficiently relevant for the purpose of the trial or preparatory examination.
- (4.) Notwithstanding subsection (3), a statement recorded in accordance with this section shall not be admissible in evidence against the maker thereof unless it is proved to have been freely and voluntarily made by him in his sound and sober senses and without having been unduly influenced thereto.³⁴³

It is unclear as to when this language was incorporated into the Criminal Procedure and Evidence Act.

³⁴¹ *Id.* § 164(3).

³⁴² Criminal Procedure and Evidence Act of 1939, § 228, II LAWS OF BOTSWANA, cap. 28:02 (rev. ed. 2013), available on the Promoting Pre-Trial Justice in Africa (PPJA) website, at http://ppja.org/countries/botswana/Botswana%20Criminal%20Procedure%20and%20Evidence.pdf/at_download/file, archived at <https://perma.cc/9D5E-Z8NS>.

³⁴³ *Id.* § 231.

Botswana has in place nonbinding language, based on the English Judges' Rules, that the police are advised to use when providing detainees with a warning, which may be abbreviated or formal. The abbreviated version is: "You are not obliged to say anything unless you wish to do so but whatever you say may be put into writing and given in evidence."³⁴⁴

The formal version is: "Do you wish to say anything? 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."³⁴⁵

Burkina Faso

Before the first hearing by an investigative judge (*juge d'instruction*), a suspect in Burkina Faso must be informed of the acts that he or she is accused of committing, and that he/she is free to not make any statement.³⁴⁶ The suspect must also be informed of his or her right to an attorney.³⁴⁷

Burundi

Burundian law requires that any person arrested or questioned by police or judicial authorities in the context of a criminal investigation be informed of his or her rights, particularly the right to retain counsel, to be assisted by and to freely and confidentially communicate with counsel, and to remain silent in the absence of counsel.³⁴⁸

Cameroon

Before the first hearing before an investigative judge (*juge d'instruction*), a suspect must be informed that he or she has the right to remain silent and the right to the assistance of an attorney, under Cameroonian law.³⁴⁹ This requirement appears to date from at least 2005, when the current Code of Criminal Procedure was adopted.³⁵⁰

³⁴⁴ WILLIAM MOLEBATSII MODISE, A PRACTICAL APPROACH TO CRIMINAL PROCEDURE IN BOTSWANA: CASES AND MATERIALS 161 (2009).

³⁴⁵ *Id.*

³⁴⁶ CODE DE PROCÉDURE PÉNALE [CODE OF CRIMINAL PROCEDURE] art. 111.

³⁴⁷ *Id.*

³⁴⁸ Loi No. 1/10 du 3 avril 2013 portant révision du Code de procédure pénale [Law No. 1/10 of April 3, 2013, Amending the Code of Criminal Procedure] arts. 10, 35, 73, & 95, http://www.assemblee.bi/IMG/pdf/n%C2%B01_10_2013.pdf, archived at <https://perma.cc/Z8AH-JYA9>.

³⁴⁹ CODE DE PROCÉDURE PÉNALE [CODE OF CRIMINAL PROCEDURE] art. 170, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/71813/89563/F-236841017/CMR-71813.pdf>, archived at <https://perma.cc/HNC5-L44Y>.

³⁵⁰ *Id.*

Côte d’Ivoire

Ivorian law requires that any person who is heard by authorities in the context of a criminal investigation, whether he or she is a suspect, victim, or witness, must be informed of the right to the assistance of an attorney (or, in areas where there are no attorneys, the assistance of a friend or relative). This requirement appears to have been adopted in 1998.³⁵¹

Eritrea

Under Eritrea’s Transitional Criminal Procedure Code, a person must be warned of his right to silence upon arrest. The law specifically provides that a person summoned or arrested by the police “shall be informed that he has the right not to answer [the accusation or complaint made against him] and that any statement he may make may be used in evidence.”³⁵²

This provision, which originated in the 1961 Ethiopian Criminal Procedure Code, was introduced in 1991 when Eritrea, which had been part of Ethiopia, decided to continue using Ethiopian laws on a transitional basis, with some modifications, after having obtained its independence. Eritrea adopted the warning that formed part of the 1961 Ethiopian Criminal Procedure Code without any changes.

In 2015, Eritrea enacted a new Criminal Procedure Code. The Code provides that before any person suspected of having committed a crime can be interrogated by the police, the person must “be cautioned that he has the right not to answer any question put to him, that any statement that he may make may be used in evidence against him and that if he wishes he may consult with a lawyer.”³⁵³ The Code further states that if “the suspect asserts his right to silence or to consult with an attorney, the questioning must cease until his requests are complied with.”³⁵⁴ The Code has yet to take effect.³⁵⁵

³⁵¹ *Id.*

³⁵² Transitional Criminal Procedure Law of Eritrea art. 27. The Transitional Criminal Procedure Law of Eritrea constitutes a combined reading of the Ethiopian Criminal Procedure Code, No. 185, GAZETTE EXTRA ORDINARY (Brhanenna Selam Printing Press 1961), available at <http://www.refworld.org/pdfid/492163ac2.pdf>, archived at <https://perma.cc/4GKM-TRLE>, and Eritrean Proclamation No. 5, 1991, 1 GAZETTE OF ERITREAN LAWS (Sept. 15, 1991).

³⁵³ CRIMINAL PROCEDURE CODE OF THE STATE OF ERITREA art. 54 (2015), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101053/121589/F-308052584/ERI101053%20Eng.pdf>, archived at <https://perma.cc/Z2AR-HMYG>.

³⁵⁴ *Id.*

³⁵⁵ Hanibal Goitom, *New Eritrean Codes Now Available to Researchers*, IN CUSTODIA LEGIS (Mar. 7, 2016), <https://blogs.loc.gov/law/2016/03/new-eritrean-codes-now-available-to-researchers>, archived at <https://perma.cc/2SYM-WUU7>.

Ethiopia

The 1961 Criminal Procedure Code provides that a person summoned or arrested by the police “shall be informed that he has the right not to answer [the accusation or complaint made against him] and that any statement he may make may be used in evidence.”³⁵⁶

Prior to 1961, Ethiopia did not have a comprehensive criminal procedure law.³⁵⁷ At the time, the country had fragmented laws in the field, including the Administration of Justice Proclamation and Police Proclamation.³⁵⁸ None of them accorded Miranda-type rights to suspects upon arrest.

Kenya

The Bill of Rights chapter of the 2010 Kenyan Constitution contains certain rights of arrested persons. Article 49 of the Constitution states that

- (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; . . . ³⁵⁹

This right was not contained in previous constitutions of the country and was introduced for the first time in 2010.³⁶⁰

Liberia

The 1984 Liberian Constitution accords those suspected of committing a crime certain rights, stating as follows:

³⁵⁶ CRIMINAL PROCEDURE CODE of 1961 art. 27.

³⁵⁷ STANLEY Z. FISHER, ETHIOPIAN CRIMINAL PROCEDURE: A SOURCEBOOK ix (1969).

³⁵⁸ *Id.*; Administration of Justice Proclamation, No. 2 of 1942, 1 NEGARIT GAZETTA (PROCLAMATIONS) (Apr. 1951); Police Proclamation, No. 6 of 1942, 1 NEGARIT GAZETTE (PROCLAMATIONS) (Apr. 1951).

³⁵⁹ CONSTITUTION OF KENYA art. 49 (2010), available at <https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>, archived at <https://perma.cc/P3ZH-7YLA>.

³⁶⁰ PLO LUMUMBA & LUIS FRANCHESI, THE CONSTITUTION OF KENYA, 2010: AN INTRODUCTORY COMMENTARY 224 (2014); Peter Mwaura, *Kenya: Draft Presents an Arresting Problem—the Right to Silence*, DAILY NATION (Dec. 4, 2009), available at <http://allafrica.com/stories/200912040774.html>, archived at <https://perma.cc/8J7B-8BGY>.

Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law.³⁶¹

The 1947 Constitution did not include language guaranteeing the right to silence of an accused person during police interrogation.³⁶²

Police in Liberia use a suspected/accused statement form for suspects to sign that reads as follows:

I [name] of the above address having been duly cautioned that I have the right to remain silent and that I am entitled to a legal counsel being present at all times whilst being questioned and that any statement made by me may be used as evidence against me in a court of competent jurisdiction. I voluntarily elect to state as follows:³⁶³

Malawi

The Constitution of Malawi states that

[e]very person arrested for, or accused of, the alleged commission of an offence shall . . . have the right—

- a. promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement; [and]
- . . .
- b. not to be compelled to make a confession or admission which could be used in evidence against him or her.³⁶⁴

This provision was introduced with the enactment of the 1994 Constitution; prior to 1994, such a right was unavailable to persons at the time of arrest.³⁶⁵

³⁶¹ CONSTITUTION OF LIBERIA § 21 (1984), available at <http://www.liberlii.org/lr/legis/const/col1984235>, archived at <https://perma.cc/45SA-B8PL>.

³⁶² CONSTITUTION OF LIBERIA (1847), available at <http://www.liberlii.org/lr/legis/const/col1847235>, archived at <https://perma.cc/4M2F-UJBM>.

³⁶³ MINISTRY OF JUSTICE OF LIBERIA, SEXUAL ASSAULT AND ABUSE PROSECUTION HANDBOOK at 66, available at http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf (last visited Apr. 28, 2016), archived at <https://perma.cc/UMR8-GP3X>.

³⁶⁴ CONSTITUTION OF MALAWI § 42 (1994), available at <http://www.wipo.int/edocs/lexdocs/laws/en/mw/mw002en.pdf>, archived at <https://perma.cc/C239-LRXC>.

³⁶⁵ B.P. Wanda, *The Rights of Detained and Accused Persons in Post-Banda Malawi*, 40(2) J. AFR. L 221, 229 (1996).

Mauritania

In Mauritania the investigative judge must inform the accused of his right to select an attorney admitted to practice in Mauritania. This right may be limited where the accused is caught *in flagrante delicto* (in the act of committing a crime).³⁶⁶

Namibia

Namibia's Criminal Procedure Act of 2004 accords suspects of a criminal act certain rights, stating as follows:

- 2) A member of the police conducting an investigation . . . must, before questioning a person reasonably suspected of having committed an offence, give a warning explanation substantially in the following form to that person:
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 - (e) that the person to be questioned not only has the right to remain silent but also has the right to answer questions put to him or her or to give an explanation of his or her conduct or of his or her defence, if any;
 - (f) that the person to be questioned has the right to consult a legal practitioner of his or her own choice before deciding whether or not to remain silent or to answer questions or give an explanation of his or her conduct or defence and that the legal practitioner is entitled to be present during the questioning;
 - (g) that the warning explanation and any statement made in response thereto will be recorded in writing or mechanically and a certified copy of such recording be made available to that person . . . ; and
 - (h) that the warning explanation and any statement made in response thereto may be used in evidence in any criminal proceedings instituted against that person in respect of the offence in question, whether it be against or in favour of that person.
- 3) The provisions of subsection (2) apply, to the extent that they can with the necessary changes be applied, to a person charged with an offence, but before questioning the person so charged the member of the police conducting the investigation must warn that person that he or she is charged with the offence in respect of which he or she is to be questioned.
- 4) A warning explanation given under subsection (2) or (3) and any statement made in response thereto must –
 - (a) be in writing or be reduced to writing; or
 - (b) where, by reason of the urgency of the matter or any other just cause, paragraph (a) cannot at the relevant time be complied with, be recorded in writing by the member of the police as soon as practicable after the questioning of the person suspected or accused of having committed the offence under investigation, and such member must then –

³⁶⁶ CRIMINAL PROCEDURE CODE No. 83.163 of 1983, art. 102, available at <http://www.refworld.org/pdfid/491c21192.pdf> (in French), archived at <https://perma.cc/USK4-UEW3>.

- (i) give the person concerned an opportunity to comment thereon; and
 - (ii) record in writing any comments made under subparagraph (i); or
- (c) where mechanical means are available, be mechanically recorded and as soon as practicable thereafter be transcribed.³⁶⁷

This provision was not part of the South African Criminal Procedure Act of 1977, which applied in Namibia until 2004 when it was repealed by the Criminal Procedure Act of 2004.³⁶⁸ It is likely that the rules that governed arrest in South Africa also governed Namibia even after its independence in 1990.³⁶⁹

It appears that the warning provided to a person by the police differs based on whether the person is being formally charged. If the person is being formally charged, the police reportedly use the following statement: “Do you wish to say anything in answer to the charges? You are not obliged to do so, but wherever [sic] you say will be taken down in writing and may be given in evidence.”³⁷⁰ In instances where the person is not being formally charged and volunteers to provide a statement, the police caution is as follows: “Before you say anything (or, if he has already commenced his statement, “any further”). I must tell you [that you] are not obliged to do so but whatever you say will be taken down in writing and may be given in evidence.”³⁷¹

Nigeria

The fundamental rights chapter of the 1999 Nigerian Constitution accords arrested persons certain rights, including that “[a]ny person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.”³⁷² While the 1979 Constitution included similar language, the 1963 Constitution did not.³⁷³ However, this right may have existed in common law long before its incorporation into the 1979 Constitution; for instance, in 1965, the Supreme Court of Nigeria held that “no defendant is bound to make a statement to the Police.”³⁷⁴

³⁶⁷ Criminal Procedure Act No. 25 of 2004, § 37, GOVERNMENT OF THE REPUBLIC OF NAMIBIA, No. 3358 (Dec. 24, 2004), available at https://www.imolin.org/doc/amlid/Namibia_CrimProcAct.pdf, archived at <https://perma.cc/TRR3-6CQK>.

³⁶⁸ J. NICO HORN, COMMENTARY ON THE CRIMINAL PROCEDURE ACT OF 2004 at 5 (2007).

³⁶⁹ Geraldine Mwanza Geraldo & Isabella (Skeffers) Nowases, *Researching Namibian Law and the Namibian Legal System*, GLOBALEX (Jan. 2013), <http://www.nyulawglobal.org/globalex/Namibia1.html>, archived at <https://perma.cc/A3E2-PVGC>.

³⁷⁰ CLEVER MAPAURE ET AL., THE LAW OF PRE-TRIAL CRIMINAL PROCEDURE IN NAMIBIA 3,939 (2014).

³⁷¹ *Id.*

³⁷² CONSTITUTION OF THE REPUBLIC OF NIGERIA § 35(2) (1999), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>, archived at <https://perma.cc/977K-J2PL>.

³⁷³ CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA § 32 (1979), available at http://www.constitutionnet.org/files/nig_const_79.pdf, archived at <https://perma.cc/Y984-VVP7>; CONSTITUTION OF NIGERIA (1963), <http://www.lawnigeria.com/CONSTITUTIONHUB/Constitution/1963ConstitutionofNigeria.html>, archived at <https://perma.cc/H34R-6YWE>.

³⁷⁴ *Atanda v. Attorney General* [1965] NMLR 225, 227–28.

Rwanda

The Rwandan Code of Criminal Procedure requires that

any person held in custody by the Judicial Police shall be informed of the charges against him/her and his/her rights including the right to inform his/her legal counsel or any other person of his/her choice thereof. Such prerogative shall be indicated in the statement signed by both the Judicial Police Officer and the suspect.³⁷⁵

Senegal

Before his or her first questioning by an investigative judge (*juge d'instruction*), Senegalese law requires that a suspect must be informed of his/her right to an attorney, of the offense(s) of which he/she is accused, and of the right to remain silent.³⁷⁶ This rule appears to have been adopted in 1999.³⁷⁷

South Africa

The 1996 South African Constitution, specifically the chapter on the bill of rights, accords arrested, detained, and accused persons certain rights, including the following:

- (1.) Everyone who is arrested for allegedly committing an offence has the right—
 - (a) to remain silent;
 - (b) to be informed promptly—
 - (i) of the right to remain silent; and
 - (ii) of the consequence of not remaining silent;
 - (c) not to be compelled to make any confession or admission that could be used in evidence against that person. . . .³⁷⁸

The country's 1993 Interim Constitution also included similar language.³⁷⁹ However, the origins of this right in South African common law and statutory law can be traced back over 170 years.³⁸⁰ The earliest statutory origin of this right is located in an 1830 Law of the Cape of Good Hope, which stated,

[a]nd be it further enacted and declared, that any confession of the commission of any Crime or Offence, which shall be proved by competent Evidence to have been made by any Person, accused of such Crime or Offence, whether before or after his apprehension,

³⁷⁵ Law No. 30/2013 of 24/5/2013 Relating to the Code of Criminal Procedure (Rwanda) art. 38, http://www.mini.just.gov.rw/fileadmin/Law_and_Regulations/PPR.pdf, archived at <https://perma.cc/4KDU-JD9M>.

³⁷⁶ CODE DE PROCÉDURE PÉNALE [CODE OF CRIMINAL PROCEDURE] (Senegal) (Sept. 3, 1999) art. 101, http://www.centif.sn/Loi_66-61_du_21_juillet_1965_code_procedure_penal.pdf, archived at <https://perma.cc/KK6A-2YT5>.

³⁷⁷ *Id.*

³⁷⁸ S. AFR. CONST. 1996 § 35.

³⁷⁹ S. AFR. (INTERIM) CONST. 1993 § 25.

³⁸⁰ *S v. Zuma and Others* 1995 (2) SA 642, ¶¶ 12 & 32.

whether on judicial examination, or after commitment, whether reduced into writing or not, shall in every Case be admissible Evidence against such Person; Provided always, that such confession shall be proved to have been freely and voluntarily made by such Person, in his sound and sober sense, and without having been unduly influenced thereby; and provided also, that when such confession shall have been made, on a judicial examination, before any Magistrate, on any criminal charge, such Person shall previously, according to Law, have been cautioned by the said Magistrate, that he is not obliged, in answer to the Charge against him, to make any statement which may criminate himself, and that what he shall then say, may be used in Evidence against him. . . .³⁸¹

³⁸¹ CODE DE PROCEDURE PÉNALE [CODE OF CRIMINAL PROCEDURE] art. 76-1, <http://www.loidici.com/codeprocepenalecentral/codepropenaleavocat.php>, archived at <https://perma.cc/HNH7-2735>.