



UNDERSTANDING THE DRAFT CONSTITUTION

*A series of leaflets to inform you of the contents of the
Final Draft Constitution*

No. 3

The Declaration of Rights [Chapter 4]

Introduction

Chapter 4 of the final Draft Constitution sets out fundamental human rights and freedoms. Of importance to note is that apart from the civil and political rights, which are a feature of the current Constitution, the draft has introduced economic, social and cultural rights. The significance of having fundamental human rights enshrined in the Constitution is that such rights are claimable and a person whose rights are infringed can seek protection of such rights in a court of law.

Chapter 4 of the Draft Constitution binds all natural persons (living beings) and juristic persons (legal entities such as companies) and is applicable to them. In addition, juristic persons are entitled to rights and freedoms set out in the chapter. It is the duty of all persons – natural or juristic – to respect, protect, promote and fulfil the rights and freedoms set out in the Constitution. Courts are required to use and respect international law when deciding cases.

Fundamental Human Rights and Freedoms

Right to life

The right to life is recognized under the Draft Constitution. It is limited by the fact that the death penalty may be imposed if a person is convicted of murder in aggravating circumstances. However, the death penalty may not be imposed on the following persons:

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- Someone who was less than 21 years when the offence was committed
- Someone who is more than 70 years old
- A woman.

The right to life is also extended to unborn babies in that a law is to be passed prohibiting abortion except in accordance with that law.

Right to personal liberty

Every person has the right to personal liberty, which extends to the right not to be detained without trial or without unjust cause. Furthermore, no person may be imprisoned for failing to fulfil a contractual obligation.

Right of arrested and detained persons

The rights in this section include:

- the right to be informed of the reason for arrest or detention
- the right to legal representation
- not being compelled to make an admission or confession
- to remain silent, to be brought before court promptly, to contact next of kin
- not to be deprived of one's liberty unduly
- to challenge the lawfulness of the arrest or detention and to be treated humanely and with respect.

In addition, any person who is arrested or detained must be taken to court as soon as possible and in any event not later than 48 hours after the arrest or detention began, whether or not the period ends on a Saturday, Sunday or public holiday. If a person is not brought to court within that period they should be released immediately.

Any arrest which contravenes this particular provision is considered as an illegal arrest and an application can be made to the court for the release of the person detained and such person can also seek for compensation for unlawful arrest.

Right to human dignity

Every person has inherent dignity in their private and public life and the right to have that dignity respected and protected.

Right to personal security

This right includes the right to freedom from all forms of violence from public or private sources, to make decisions concerning reproduction and not to be

Certain rights are incapable of limitation and these include the right to life (except for the death sentence), the right to human dignity, the right not to be tortured or subjected to cruel, inhuman or degrading punishment or treatment; the right not to be placed in slavery or servitude, and the right to a fair trial.

Limitations during public emergency

This section states that in addition to the limitations permitted in the general limitation clause, a law published in the *Government Gazette* may provide measures to deal with situations that might arise during a period of public emergency. However, such law must not impose any limitation which is greater than that which is strictly required by the emergency. In addition, such a law may not permit an unlawful act by any Government body or other person or limit, permit or authorize the violation of any of the rights listed in the previous section as being incapable of limitation.

Conclusion

In conclusion the following can be highlighted:

Some strengths of the Draft Constitution

- It introduces an expanded or broader bill of rights which includes economic, social and cultural rights.
- Certain rights are incapable of limitation.
- It includes rights of vulnerable groups such as children, those with disabilities and women.
- It has a general limitation clause and there are very few claw back clauses compared to the current Constitution. Claw back clauses are provisions that have the effect of withdrawing a right by stating circumstances in which the right can be limited.

Weaknesses

- The draft still retains the death penalty
- It provides that the death penalty will not be imposed on women, which actually amounts to unfair discrimination against men.

Rights of persons with disabilities

The State must take appropriate measures having regard to availability of resources to ensure that persons with disabilities realise their full potential including measures:

- to enable them to become self-reliant
- to enable them to live with their families and participate in social, creative or recreational activities
- to protect them from all forms of exploitation and abuse
- to give them access to medical, psychological and functional treatment
- to provide special facilities for their education; and
- to State funded education and training where they need it.

Rights of liberation war veterans

War veterans are those who fought in, who assisted the fighters or who were detained or restricted for political reasons during Zimbabwe's war of liberation. They are entitled to due recognition for their contribution to the liberation of Zimbabwe and to suitable welfare such as pensions and access to basic health care. An Act of Parliament must make provision for these entitlements.

Enforcement of Rights

Any person acting for himself or another, in the interests of a group or class or persons in the public interest, has the right to approach a court alleging that a fundamental right or freedom of Chapter 4 is being or is likely to be infringed. The court may then grant appropriate relief.

Limitations of Fundamental Human Rights and Freedoms

Limitations of rights and freedoms

Fundamental rights and freedoms are not absolute in the sense that they have to be exercised with due regard to the rights and freedoms of others. The fundamental rights and freedoms may be limited only in terms of a law and to the extent that the limitation is reasonable and justifiable in a democratic society taking into account all relevant factors.

The section sets out several factors which must be considered, including whether the limitation is necessary in the interests of the public, nature of right or freedom concerned and nature and extent of limitation.

subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue without their informed consent.

Freedom from torture or cruel, inhuman or degrading treatment or punishment

No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.

Freedom from slavery or servitude

No person may be subjected to slavery or servitude.

Freedom from forced or compulsory labour

No person may be made to perform forced or compulsory labour.

Equality and non-discrimination

Every person is equal before the law and both women and men have the right to equal opportunities in all spheres, be it political, economic, cultural or social.

Every person has the right not to be treated in an unfair discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender and marital or social status whether born in or out of wedlock.

A person will be considered to have been unfairly discriminated against if:

- They are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or
- Other people are accorded directly or indirectly a privilege or advantage which they are not accorded.

The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination and no such measure is to be regarded as unfair.

Right to privacy

Every person has the right to privacy, which includes the right not to have their property, homes or premises entered and searched without their permission, their possessions seized, the privacy of their communications infringed or their health condition disclosed.

Freedom of assembly and association

Every person has the right to freedom of assembly and association and the right not to assemble or associate. A person cannot be forced to belong to an association or attend a meeting or gathering.

Freedom to demonstrate and petition

People are entitled to demonstrate and petition but should do so peacefully.

Freedom of conscience

Every person has the right to freedom of conscience which includes:

- Freedom of thought, opinion, religion or belief and the freedom to practice and give expression to the same whether in public or private.
- Parents and guardians of minor children have the right to determine in accordance with their beliefs, the moral and religious upbringing of their children but they should not prejudice the rights of children to education, health, safety and welfare.

Freedom of expression and freedom of media

Every person has the right to freedom of expression which includes freedom to seek, receive and communicate ideas and other information.

- In addition there is also freedom of artistic expression, scientific research, creativity and academic freedom
- Freedom of press and other media of communication should be guaranteed and journalists do not have to reveal the sources of their information
- Broadcasting and other electronic media of communication can be freely established as long as they comply with necessary licensing procedures
- State owned media of communication must be impartial, free to determine their own content and give fair opportunity for representing opinions and views, which may be contrary to those of the Government
- Freedom of expression and freedom of the press do not include the encouragement of violence, hatred or malicious injury to a person's reputation.

Access to information

Every citizen or resident of Zimbabwe, including the Zimbabwean press and

Elaboration of Certain Rights

This particular section in the draft elaborates certain rights and freedoms to ensure greater certainty as to the application of these rights and freedoms.

Rights of women

- Every woman has the same rights as men and such rights include equal opportunities in political, economic and social activities
- Women also have the same rights as men regarding custody and guardianship of children
- All laws, customs, tradition and cultural practices that infringe the rights of women conferred by the Constitution are invalid with regard to the infringement.

Rights of children

Every child (anyone under 18 years) has the following rights:

- to equal treatment before the law
- to a name
- to a birth certificate
- to parental care or appropriate alternative care
- to be protected from all forms of abuse
- to health, education, nutrition and shelter
- not to be recruited into a militia force or take part in armed conflicts
- not to be forced to take part in any political activity
- not to be detained except as a measure of last resort; and
- if so detained, it should be for a short period, separately from adult persons, with appropriate treatment and conditions.

In every matter concerning the child, a child's best interests are paramount. Children are entitled to adequate protection by the courts.

Rights of the elderly

Every person over the age of 70 years has the right to receive:

- assistance from the State and the family
- health and medical assistance from the State
- financial support by way of social security and welfare from the State.

Freedom from arbitrary eviction

No person may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances.

Right to education

Every citizen and or permanent resident of Zimbabwe has a right to:

- A basic State funded education – including adult basic education, and
- Further education which the State, through reasonable legislative and other measures, must make progressively available and accessible.

Every person has the right to establish and run independent educational institutions but they must not discriminate on any of the grounds laid out in the Constitution.

The State must within its available resources take steps to ensure progressive realisation of this right.

Right to health care

Every citizen has the right to basic health care, including the right to reproductive health care.

Every person living with a chronic illness has the right to access basic health care services for the illness. No person may be refused emergency medical treatment in any health care institution.

The State must take reasonable measures, within its available resources, to achieve the progressive realisation of this right.

Right to food and water

Every person has the right to safe clean water and sufficient water. The State should therefore take reasonable legislative and other measures within the limits of the resources available to it, to achieve the progressive realisation of this right.

Marriage rights

Every person who has attained the age of 18 has the right to marry and start a family. No person may be compelled to enter into marriage against their will. Persons of the same sex are prohibited from marrying each other.

other media, has the right to access information held by any Government body or any other person where the information is required in order to exercise or protect a right or in the interests of public accountability.

All people are entitled to the correction or deletion of incorrect, untrue or misleading information held by the State, Government agencies or institutions relating to them.

Provision is made for legislation to be put in place which gives effect to such rights and such legislation may restrict access to certain information in the interests of defense, public security, professional confidentiality. Such restriction should be fair and justifiable in a democratic society.

Language and culture

Every person has the right to use a language of their choice and exercise their culture, but such exercise should not be inconsistent with the enjoyment of others' rights as outlined in the Constitution. The Draft Constitution recognises 16 languages.

Freedom of profession, trade or occupation

Every person has the right to choose and carry on any profession, trade or occupation, but the practice of a profession, trade or occupation may be regulated by law.

Labour rights

- Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage
- Every employee is entitled to fair conditions of work
- Every person, save for members of the security services, has the right to form and join a trade union or employee's association of choice
- Every person, except members of the security services, has the right to participate in collective job action, which includes the right to strike, sit in and withdraw their labour but a law may restrict the exercise of this right in order to maintain essential services
- Women and men have a right to equal remuneration for similar work
- Women are entitled to maternity leave on full pay for a period of at least 3 months.

Freedom of movement and residence

Every Zimbabwean citizen has the right to enter Zimbabwe, cannot be expelled from Zimbabwe and the right to a passport or other travel document.

Every Zimbabwean citizen and anyone else who is legally in Zimbabwe has the right to move freely within the country, reside in any part of the country and leave the country.

Political rights

Every citizen of Zimbabwe has the right to:

- free, fair and regular elections; and
- make political choices freely.

Subject to the Constitution the right to:

- Form, join, and participate in the activities of a political party or organisation of their choice
- Campaign freely and peacefully for a political party or cause
- Participate in peaceful political activities or gatherings or groups.

Every Zimbabwean citizen who is 18 years and over has the right to vote and stand for election for public office. To promote multi-party democracy, an Act of Parliament must provide for the funding of political parties.

Right to administrative justice

Every person has a right to administrative conduct that is lawful, efficient and fair and to be informed promptly and in writing the reasons for conduct which adversely affect a right, freedom, interest or legitimate expectation.

Right to a fair hearing

- Every person has the right to a fair and public hearing and trial within a reasonable time before an independent and impartial court
- Every person has the right to access the courts and to choose to be represented by a legal practitioner before any court, tribunal or forum.

Rights of accused persons

Any person accused of an offence has rights that include the following rights:

- To be presumed innocent until proved guilty
- To be promptly informed of the charge
- To be given adequate time and facilities to prepare a defence
- To legal representation of their choice
- To have the proceedings of the matter interpreted in a language they

understand

- To be present when tried
- To present evidence and to challenge any produced evidence
- To have the case appealed or reviewed
- To have evidence obtained in a manner that violates the Bill of rights excluded under certain circumstances.

Property rights

- Every person has the right to acquire, hold, occupy, use, transfer, pledge as collateral, lease or dispose of all forms of property either individually or in association with others.
- Every person has a right not to be compulsorily deprived of their property unless the deprivation is in terms of a law of general application and in the public interest. Where property is so acquired reasonable notice is to be given and fair and adequate compensation is to be paid. The person whose property is being acquired has the right to challenge the acquisition or the amount of compensation awarded before a competent court. It is, however, important to note that this right is subject to provisions dealing with Agriculture land which is outlined below.

Right to agricultural land

The State may compulsorily acquire land for purposes of land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources or the relocation of affected people.

No compensation is payable for land compulsorily acquired under the Constitution or under the land reform programme. Compensation is payable for any improvements made upon the land before its acquisition. Compensation for land is the responsibility of the former colonial master, Britain.

Environmental rights

The State must take reasonable and legislative measures within its available resources to ensure the enjoyment of environmental rights which rights are as follows:

- Right to an environment that is not harmful to their health or well being
- Right to have the environment protected for the benefit of present and future generations.