



# **Simplified Version of the Declaration of Rights:**

*Constitution of Zimbabwe  
Amendment (No. 20) Act 2013*



## 1. What is the declaration of rights?

The Constitution is the supreme law of the country that sets out how the country must be governed. The Declaration of Rights is set out in Chapter 4 of the Constitution. It sets out the rights and freedoms which the people of Zimbabwe are entitled to.

Human rights are entitlements that we have simply because we are human beings. The rights listed in the Declaration of Rights are constitutional rights and are legally protected. Laws that take away any of these rights shall not be made unless the Declaration of Rights allows for such. Any existing laws that take away any of the rights may be declared invalid. If these constitutional rights are violated, one can sue for damages or take the matter to the Constitutional Court to get justice.

The Declaration of Rights in our new Constitution has both civil and political rights as well as economic, social and cultural rights. It also provides for environmental rights. **Civil and political rights** are rights that a person has as a citizen. Such rights protect a person from uncalled-for abuse by government, other people or organisations. They also ensure one's ability to participate in civil and political life in their country without discrimination or repression. Examples of rights in this group are the right to life, to liberty, not to be tortured, freedom of expression, assembly and association and the right to engage in political activity. Rights in this group are called **first generation rights** because they were the first human rights to be recognized.

**Economic, social and cultural rights** relate to basic necessities of life such as right to work, shelter, food, health, education and own language. These rights are called **second generation rights** because they were recognised after the need for civil and political rights had been clearly established. **Solidarity and group rights** are also referred to as **third generation rights** include right to development, peace and a clean environment.

Rights, duties and responsibilities go together. Each person has the responsibility of respecting the rights of others and the duty to obey the Constitution and other laws in Zimbabwe. As such, some rights in the Declaration of Rights are limited in ways that make sure that the public interest is served and that they do not violate the rights of other people.

## 2. Do other countries have a declaration of rights?

Many countries have declarations of rights in their constitutions. This is the case in most countries that have modern constitutions, for example, South Africa and Namibia.

### **3. What rights are included in the declaration of rights?**

The rights protected in the Constitution are broad to include; civil and political rights; economic, social and cultural rights; a group right; and rights for specific groups. There is clear commitment to human rights, democracy and good governance as referred to in Chapter 1 on founding provisions, Chapter 2 on national objectives, Chapter 3 on citizenship rights and the actual Declaration of Rights, which is Chapter 4. The Declaration of Rights is binding on the State and all legislative, executive and judicial institutions and agencies of government at all levels. It also places duties on natural persons (human beings) and juristic persons (e.g. companies) depending on the nature of the right involved. Both natural and juristic persons are entitled to the rights in the Declaration of Rights.

In applying and interpreting the Declaration of Rights, the courts must take into account the following:

- international law and all treaties and conventions to which Zimbabwe is a party;
- all the provisions of the Constitution, in particular the national objectives and principles set out in Chapter 2; and
- *values that underlie a democratic society based on openness, justice, human dignity, equality and freedom.*

In addition, the courts may consider relevant foreign law, that is, the law of other countries.

#### **3.1 Fundamental human rights and freedoms**

The following are the rights which are stated in our Declaration of Rights:

##### **Right to life**

Every person has the right to life.

However, the Constitution allows for the death penalty to be imposed if a person is convicted of murder in aggravating circumstances. The courts may not sentence the following persons to death:

- anyone who was less than 21 years when the offence was committed;
- anyone who is more than 70 years old; or
- a woman.

Unborn babies also have the right to life. A law is to be passed to outline the situations when abortion will be allowed.

##### **Right to personal liberty**

Every person has the right to personal liberty, which includes the right not to be detained without trial or without just cause. Furthermore, no person may be imprisoned for not doing what they undertook to do in terms of a contract. This means that no one can be imprisoned for failing to pay a debt.

### **Rights of arrested and detained persons**

The rights in this section include the right:

- to be informed of the reason for arrest or detention;
- to legal representation;
- not to be forced to make an admission or confession;
- to be informed of the rights of an arrested or detained person;
- to remain silent;
- to contact their next of kin;
- not to be unduly deprived of their liberty;
- 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. This may not be later than 48 hours after they were arrested or detained, whether or not the period ends on a Saturday, Sunday or public holiday. A person who is not brought to court within that period should be released.

### **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.

This right is heavily emphasized in the Constitution. Not only does it appear as a right on its own in section 51, it is also a part of the founding values and principles in section 3. As already noted, human dignity is one of the values that the court must take into account when interpreting the Constitution.

### **Right to personal security**

Every person has the right to control and make decisions about their bodies and minds. This includes:

- the right to be free from violence;
- the right to make choices concerning reproduction; and
- the right not to be subjected to scientific or medical experimentation, or to the removal or use of bodily tissue without informed consent.

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

No person may be tortured physically or psychologically. No person may be treated or punished in a way that is cruel, inhuman or degrading.

### **Freedom from slavery or servitude**

No person may be treated as a slave or denied the freedom to make choices about their actions or way of life.

### **Freedom from forced or compulsory labour**

No person may be made to perform work that they have not freely chosen to perform.

### **Equality and non-discrimination**

Every person is equal before the law and has the right to equal protection and benefit of the law. Both women and men have the right to equal opportunities in all spheres, whether political, economic, cultural or social. Every person has the right not to be unfairly discriminated against on grounds such 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, economic or social status, disability, age, pregnancy or whether born in or out of wedlock.

The State must take reasonable legislative and other measures to promote the achievement of equality. It must also take measures to protect or advance people or classes of people who have been disadvantaged by unfair discrimination. Such measures shall not be regarded as unfair.

### **Right to privacy**

This right includes the right:

- not to have one's home, premises or property entered without permission;
- not to have one's person, home, premises or property searched without their permission;
- not to have one's possessions seized;
- not to have the privacy of one's communications infringed; and
- not to have one's health condition disclosed.

### **Freedom of assembly and association**

Every person has the right to assemble and to associate with others. This includes 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**

Every person is entitled to demonstrate and to express their grievances through petitions, as long as it is done 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. No person can be forced to take an oath that goes against their belief or religion. Parents and guardians of minor children have the right to determine the moral and religious upbringing of their children in accordance with their beliefs. This should not conflict with children's rights to education, health, safety and welfare. Religious groups may establish institutions where matters of religion are taught.

### **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;
- freedom of artistic expression, scientific research, creativity and academic freedom;

In addition:

- Freedom of press and other media of communication is also 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 neutral or nonpartisan. They must also be free to determine their own content and give fair opportunity for representing opinions and views, which may conflict with government's views.
- Freedom of expression and freedom of the press do not allow people to encourage violence, hatred or malicious injury to a person's reputation. It also does not allow people to invade the privacy of others without good reason.

### **Access to information**

Every citizen or permanent resident of Zimbabwe has the right to access information held by the State where the information is required to hold the State accountable for its actions. This right also applies to artificial persons (such as companies) and to the Zimbabwean media. In addition, everyone has the right to access information held by any person, including the State, where it is needed to enable the exercise or protection a right.

All people are entitled to ask the State, government agencies and related bodies to correct or delete information about them that is incorrect, untrue or misleading.

Legislation must be put in place to give effect to such rights. This legislation may restrict access to certain information in the interests of defense, public

security, and 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 conflict with the enjoyment of others' rights as outlined in the Constitution. The Constitution recognizes the following 16 languages: Chewa, Chibarwe, English, Kalanga, Koisan, Nambya, Ndau, Ndebele, Shangani, Shona, sign language, Sotho, Tonga, Tswana, Venda and Xhosa.

### **Freedom of profession, trade or occupation**

Every person has the right to choose and carry on any profession, trade or occupation. 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 working conditions.
- 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. This includes the right to strike, sit in and withdraw their labour. However, a law may restrict the exercise of this right in order to maintain essential services.
- Women and men have a right to equal pay 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, not to 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; and
- to vote in secret and stand for public office when they reach 18 years.

Subject to the Constitution, Zimbabwean citizens have 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; and
- 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. Every person has a right to be informed promptly and in writing the reasons for conduct that adversely affects a right, freedom, interest or legitimate expectation.

### **Right to a fair hearing**

Every person accused of an offence 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:

- to be presumed innocent until proven 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, and at their expense;
- to have the State assign them a legal representative at its own expense, if necessary to avoid serious injustice;
- 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 appeal their conviction or sentence to a higher court;
- to have their case reviewed by a higher court;
- to have evidence obtained in a manner that violates the Declaration of Rights



- excluded under certain circumstances;
- not to be convicted of an offence or omission that was not an offence when it took place, or is no longer an offence;
  - not to be tried on a matter which they have been previously pardoned, acquitted or convicted; and
  - to be given a copy of the record of trial proceedings within a reasonable time after paying a reasonable fee.

### **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 forcibly deprived of their property, unless this happens in terms of a law of general application and in the public interest. Where property is so acquired, the owner must be given reasonable notice and paid fair and adequate compensation. The body that acquires the property must apply to the courts for an order confirming the acquisition within 30 days of acquiring it. The person whose property is being acquired has the right to challenge the acquisition or the amount of compensation awarded before a competent court. However, this right is limited in the case of agricultural land, which is discussed below.

### **Right to agricultural land**

The State may compulsorily acquire agricultural land for purposes of agricultural settlement, land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources or the relocation of affected people. Once acquired, the land becomes the property of the State with full title.

No compensation is payable for agricultural land compulsorily acquired under the Constitution. However, compensation is payable for any improvements made upon the land before its acquisition.

Compensation for agricultural land compulsorily acquired for settlement is the responsibility of the former colonial power.

### **Environmental rights**

Every person has the right to:

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

The State must take reasonable legislative and other measures to:

- prevent pollution and ecological degradation;
- promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development.

The State is required to take measures to progressively realize these rights.

### **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 permanent resident of Zimbabwe has a right to:

- A basic State funded education including adult basic education.
- Further education provided by the State through reasonable legislative and other measures. The State must progressively make further education 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 that this right is progressively realized.

### **Right to health care**

Every citizen and permanent resident of Zimbabwe has the right to basic health care, including the right to reproductive health care.

Every person living with a long-term 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 progressively realize this right.

### **Right to food and water**

Every person has the right to safe, clean water and sufficient food. The State should therefore take reasonable legislative and other measures within the limits of its available resources, to progressively realize this right.

### **Marriage rights**

Every person over the age of 18 has the right to marry and start a family. No person may be forced to marry or be married against their will. Persons of the same sex may not marry each other.

### **Elaboration of Certain Rights**

This particular section in the Constitution gives more details about certain rights and freedoms to make it easier to understand how they apply.

#### *Rights of women*

- Women have full and equal dignity of the person with men. They have 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. An Act of Parliament may regulate how these rights are to be exercised.
- All laws, customs, tradition and cultural practices that violate women's constitutional rights are invalid with regard to the violation.

#### *Rights of children*

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

- to equal treatment before the law;
- to be given a name and family name;
- to a birth certificate without delay;
- to parental care or appropriate alternative care;
- to be protected from economic and sexual exploitation, child labour, maltreatment, neglect and other forms of abuse;
- to education, health care services, 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 in particular by the

High Court as upper guardian.

#### *Rights of the elderly*

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

- reasonable care and assistance from the State and their families;
- health care and medical assistance from the State; and
- financial support by way of social security and welfare from the State.

The State must take reasonable measures, within its available resources, to progressively realize this right.

#### *Rights of persons with disabilities*

The State must take appropriate measures within its available 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 must be recognized 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 provide for these entitlements.

## **4. Are these fundamental rights limited?**

The new Constitution has a general limitation clause and it has very few 'claw back' clauses compared to the old Constitution. Claw back clauses are provisions that withdraw a right by stating when the right can be limited. The section sets out several factors which must be considered, including whether the limitation is necessary in the interests of the public, the nature of right or freedom concerned, and nature and extent of limitation.

Certain rights cannot be limited and these include the right to life (except in the cases of 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.

In addition to the general limitation clause, the Constitution allows for a law to provide for the limitation of rights in response to a public emergency.

## **5. Can the declaration of rights be changed?**

Yes. The Declaration of Rights is a part of the Constitution, and the Constitution can be changed. However, it is harder to change the Declaration of Rights as opposed to the provisions in the Constitution. Any changes to the Declaration of Rights will need to be submitted to a national referendum.

## **6. How are these constitutional rights enforced and promoted?**

The Constitution provides for a number of ways to ensure that the rights in Chapter 4 are enforced and promoted

- The new Constitution creates the Constitutional Court primarily to deal with constitutional matters and its decisions bind all other courts. However, for the next seven years after the adoption of the new Constitution, the judges who constitute the Supreme Court will also sit to constitute the Constitutional Court.
- If anyone thinks that their rights in terms of the Declaration of Rights are being violated or are likely to be, they may apply directly to the Constitutional Court for redress. The new Constitution also allows any person acting on behalf of another person who cannot go to court, any person acting in the interests of a group or class or persons, or acting in the public interest, or any association acting in its members' interest to approach a court. The person who approaches the court must claim that a fundamental right or freedom of Chapter 4 is being or is likely to be infringed. The court may then grant appropriate relief.
- A person may also ask the judge, magistrate or other presiding officer to refer to the Constitutional Court any question that arises about a possible violation of the Declaration of Rights. The judge or magistrate must comply with the request, unless he/she thinks the request is unfounded or designed to waste time.

The Independent Commissions supporting democracy provided for in the

Constitution are another primary mechanism for promotion and enforcement of rights, specifically the Zimbabwe Human Rights Commission and the Gender Commission. The Commissions can investigate rights violations, but they cannot make binding orders similar to those of a court.