

The Declaration of Rights (Part 2)

In this New Year and as a follow up to last month's edition of the Human Rights Monthly, we give you the last six of the freedoms and rights protected in the Declaration of Rights in Zimbabwe's Constitution. The Human Rights Forum once again would like to express its appreciation to the Legal Resources Foundation for permitting this important information to be utilized in this Human Rights Monthly.

1 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 Constitution than an ordinary law. Two thirds of all the members of Parliament have to agree with the change. But many people think that even this is too easy and that it should be much harder to change the Constitution or at least the more important parts of it – particularly the Declaration of Rights. In Namibia, for example, the Declaration of Rights may not be changed at all except to increase the rights of the people. Most countries require that a change to the constitution must also be referred to the people as a whole, instead of leaving the decision only to members of Parliament.

Protection from arbitrary search

No one may be searched without his/her consent and no one is obliged to allow any one else onto his premises

➤ *Limitations or exceptions*

Persons may be searched and someone may lawfully come onto your property without your consent for the following reasons:

- parents may search their children
- investigation of crimes
- the lawful acquisition of property
- a local authority may enter land to assess for purposes of rates and taxes
- the enforcement of civil judgements of the courts

Note: a woman may only be searched by another woman or by a medical doctor

Protection of the law

This includes

- the right to fair trial
- the right to be presumed innocent
- the right to defend oneself in court
- the right not to be tried for same offences twice
- the right not to have to give evidence at one's trial
- the right to trial within a reasonable time

➤ *Limitations or exceptions*

Some of the exceptions are;

- laws can prevent the disclosure of certain evidence on the grounds of privilege, etc
- an accused person may be required to prove some facts
- members of armed forces can be tried by a civil court even if they have already been tried by a military court
- inferences can be drawn from the fact that an accused person refuses to answer questions or give evidence at his trial

Protection of freedom of conscience

This means, among other things:

- **freedom of thought**
- **freedom of religion**
- **the right not to have to attend religious ceremonies other than one's own at school**
- **the right not to have to take an oath in conflict with one's conscience**
- **the right of a religious community to give religious instruction at a school run by that community**

➤ *Limitations or exceptions*

- 1) parents may allow their children to attend religious instruction, etc of other faiths
- 2) laws may provide for standards of instruction at religious schools (other than in religious instruction) (so the Government can set curricula, etc)

Freedom of expression

This means the right to hold opinions, to express ideas and pass on ideas and information. It also means freedom from interference with correspondence. Religious denominations and other groups may establish schools.

➤ *Limitations or exceptions*

The general freedom of expression can be limited as follows.

- laws may protect reputation of others (defamation laws)
- information received in confidence may be protected (e.g. official secrets)
- laws may regulate telephones and broadcasting
- laws may prohibit people from sending things other than letters in their mail
- laws may regulate schools in the interest of pupils

Freedom of assembly and association

Everyone has the right to assemble freely and associate with other persons. This includes the right to form and join political parties or trade unions or other associations. The right to join an association includes the right not to be compelled to join any association

➤ *Limitations or exceptions*

The freedom of assembly and association may be limited as follows:

- parents may control the right of association of their children
- laws in the interests of public order may impose reasonable restrictions (the Supreme Court has held that requiring police permission for meetings, etc is not justifiable)
- laws may require the registration of companies, partnerships, etc but not of political parties or trade unions
- the right of assembly etc does not imply that there is a right to use sidewalks, roads or other public thoroughfares for that purpose

- public servants, policemen and soldiers may have their right to join parties or trade unions limited

Freedom of movement

Everyone has the right to enter and leave Zimbabwe, to move about freely, to reside where he/she wants, and to be free from expulsion. No law may provide for the expulsion of a citizen or prevent a citizen from entering the country

➤ *Limitations or exceptions*

The right to freedom of movement can be limited as follows:

- being held in lawful detention is not a breach of the right
- restrictions in interests of defence, public health, etc may be imposed
- restrictions may be imposed on convicted criminals or on persons awaiting trial or extradition or in order to secure the attendance of persons required as witnesses
- restrictions may be imposed on non citizens or on people who are not permanent residents (but the Supreme Court has held that restrictions on the spouses of citizens are restrictions on the citizens and therefore are not allowed)
- restrictions may be imposed on right of residence in communal land of people who are not tribes people

Protection from discrimination

No law may discriminate on grounds of race, tribe, place of origin, political opinions, colour, creed (religious belief) or gender

➤ *Limitations or exceptions*

Some forms of discrimination are allowed:

- family and personal matters may discriminate;
- the application of customary law in cases between Africans only (but not between persons of other races) is allowed;
- non citizens and persons who are not permanent residents may be required to have work permits;
- qualifications for posts in public service etc are permitted (other than qualifications based on race, tribe, etc.);
- tribespeople may be given privileges in respect of communal land; and
- a law that discriminates between males and females is permitted where it takes due account of the physical differences between males and females or where it is in the interests of defence, public safety or public morality. For example, a law could provide that only males be called up for military service.

How are constitutional rights enforced?

The Declaration of Rights is enforced in three ways.

1. **Parliamentary Legal Committee** – This is a committee of legally qualified members of Parliament. They have to examine every Bill submitted to Parliament and every statutory instrument in the *Government Gazette*, as well as draft Bills and statutory instruments, to see whether they think the Bill or statutory instrument contravenes the Declaration of Rights, and report accordingly to Parliament or the Ministry concerned.
2. **Supreme Court** – If anyone thinks that the Declaration of Rights is being contravened or is likely to be contravened in respect of him/her, he/she may apply directly to the Supreme Court on his/her behalf.
3. **Other Courts** – If a person thinks that someone is violating or has violated his/her rights under the Declaration of Rights, he/she does not have to go to the Supreme Court for redress. He/she can apply to the High Court or a Magistrates Court for an order directing the person who is violating his/her rights to stop doing so or to pay damages.

2 Zimbabwe Human Rights NGO Forum Member Focus:

The Zimbabwe Human Rights NGO Forum is a coalition of 17 Non-Governmental Organisations in Zimbabwe working towards the elimination of organised violence in the country. The *Human Rights Monthly* carries a brief narrative on the activities of one of its members in each issue to help readers understand the activities of the coalition and the services offered by each member NGO. This month we feature *Zimbabwe Association of Doctors for Human Rights*.

Zimbabwe Association of Doctors for Human Rights (ZADHR)

Background Information

Zimbabwe Association of Doctors for Human Rights was set up by a group of doctors in Zimbabwe in 2002. The Association campaigns for the observance of the provisions of the Universal Declaration of Human Rights with special focus on health rights and provides medical assistance to victims of human rights abuses.

Its objectives are:

To secure in Zimbabwe and throughout the world the observance of the provisions of the Universal Declaration of Human Rights and other international human rights treaties. This is in recognition of the doctors' professional obligation to advocate for the human rights of all to access good quality health services, and to bring the skills of the medical profession to the aid of victims of human rights abuses.

How does ZADHR achieve its objectives?

- Defending the rights of health professionals who are members of the association and supporting medical colleagues who are persecuted because of their adherence to medical ethics as defined by the World Medical Association.
- Defending the rights of all members who are persecuted due to their conscientiously held beliefs, regardless of politics, religion or ethnic origin.
- Promoting the education of health professionals about international human rights, their protection, and the medical and psychological sequelae of human rights abuses.
- Monitoring the ethics and responsibilities of doctors concerning human rights issues including:
 - Documenting and investigating cases where doctors have participated in human rights abuses such as the use of medical skills in torture.
 - Investigating and exposing the falsification of medical evidence in relation to those whose rights have been violated.
- Documenting human rights abuses, using doctors' medical skills to observe and record the psychological and physical effects of these abuses.
- Making representations on behalf of those medical practitioners who have been subject to threats, intimidation or actual violation of their human rights.

The postal Address for ZADHR is **P.O BOX CY 2415, Causeway, Harare**. E-mail: zadhr@mweb.co.zw or humanrights@zadhr.org

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