

### Rights of veterans of the liberation struggle [Section 84]

Veterans of the liberation struggle 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.

*Veterans of the liberation struggle are entitled access to health care and medical treatment regardless of ability to pay. There must be a system to cater for those that cannot afford to pay for their medical care*

### Enforcement of fundamental human rights and freedoms [Section 85]

1. Any of the following persons, namely –
  - (a) any person acting in their own interests;
  - (b) any person acting on behalf of another person who cannot act for themselves;
  - (c) any person acting as a member, or in the interests, of a group or class of persons;
  - (d) any person acting in the public interest;
  - (e) any association acting in the interests of its members;is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.

*Parents, guardians, legal representatives, clubs, associations or trade unions are entitled to approach a court if they can afford the costs or approach the Zimbabwe Human Rights Commission, which now incorporates functions of the Public Protector, to lodge complaints regarding the violation of their fundamental rights and freedoms.*

### Limitation of rights and freedoms [Section 86]

- (3) The fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors, including:
  - (a) the nature of the right or freedom concerned;
  - (b) the purpose of the limitation, in particular whether it is necessary in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest;
  - (c) the nature and extent of the limitation;

- (d) the need to ensure that the enjoyment of rights and freedom by any person does not prejudice the rights and freedoms of others.
- (e) the relationship between the limitation and its purpose in particular whether it imposes greater restrictions on the right or freedom concerned that are necessary to achieve its purpose; and
- (f) whether there are any less restrictive means of achieving the purpose of the limitation.

### Limitation of rights and freedoms [Section 86]

- (3) No law may limit the following rights enshrined in this Chapter, and no person may violate them –
  - (a) the right to life, except to the extent specified in Section 48;
  - (b) the right to human dignity;
  - (c) the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment;
  - (d) the right not to be placed in slavery or servitude;
  - (e) the right to a fair trial;
  - (f) the right to obtain an order of habeas corpus as provided in Section 50(7)(a).

*These rights are absolute and cannot be limited or violated under any circumstances..*

### Limitations during public emergency [Section 87]

- (4) No law that provides for a declaration of a State of Emergency, and no legislative or other measure taken in consequence of such a declaration, may
  - (a) indemnify, or permit or authorise an indemnity for, the State or any institution or agency of the government at any level, or any other person, in respect of any unlawful act; or
  - (b) limit any of the rights referred to in Section 86(3), or authorise or permit any of those to be violated.

*These limitations ensure that crimes are not committed using the state of public emergency as a defence. The rule of law must be observed and upheld even in a state emergency. For the avoidance of doubt, committing a crime or an unlawful act following a command or order from superior authorities will not be accepted as a defence at law.*

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# Health Rights

Zimbabwe Constitution Amendment (No. 20) Act 2013



## HEALTH RIGHTS IN THE CONSTITUTION

### Duty to respect fundamental human rights and freedoms [Section 44]

The state and every person, including juristic persons, and every institution and agency of the government at every level must respect, protect, promote and fulfill the rights and freedoms set out in this chapter.

*Every natural person, company and government institution has the responsibility to observe, uphold, defend and enforce these rights and freedoms against any person, company or state agency*

### Right to Life [Section 48]

An Act of Parliament must protect the lives of unborn children, and that Act must provide that pregnancy may be terminated only in accordance with that law.

*A Termination of Pregnancy Act already exists and provides for termination when the pregnancy endangers the life of the woman, there is a risk of child born with severe physical or mental handicap or where a foetus is conceived as a result of unlawful intercourse such as rape or incest.*

### Rights of arrested and detained persons [Section 50]

(1) Any person who is arrested - (b) must be permitted without delay at their own expense, to consult in private with a legal practitioner and a medical practitioner of their choice;(5)(b) has the right to conditions of detention that are consistent with human dignity, including the opportunity for physical exercise and the provision at state expense of adequate nutrition, accommodation, ablution facilities, personal hygiene, appropriate reading material and medical treatment.

*Arrested and detained persons must have access to a medical practitioner of their choice at their own expense if they so desire and the State shall provide conditions of detention that meet adequate health care standards.*

### Right to personal security [Section 52]

Every person has the right to bodily and psychological integrity which includes the right not to be subjected to medical or scientific experiments or to the extraction or use of their bodily tissue, without their informed consent.

*No person can be made a subject of medical or scientific experiments without their knowledge and express permission or agreement to participate in the experiment.*

### Right to privacy [Section 57]

Every person has the right to privacy, which includes the right not to have their health condition disclosed.

*Confidentiality is a cardinal principle of health care practice since whatever is disclosed in a doctor-client relationship is privileged information and therefore the legal circumstances that may limit the right to privacy leading to the disclosure of medical condition must be explained to the affected persons.*

### Freedom of Conscience [Section 60]

(3) Parents and guardians of minor children have the right to determine, in accordance with their beliefs, the moral and religious upbringing of their children, provided they do not prejudice the rights to which their children are entitled under this Constitution, including their rights to education, health [right to immunisations, blood transfusion, medical treatment] safety and welfare.

*This right ensures that minor children are protected against the religious beliefs of their parents and guardians and ensures that children have access to basic health care services such as immunisations, blood transfusions and other necessary medical treatment*

### Environmental rights [Section 73]

Every person has the right to an environment that is not harmful to their health or wellbeing.

*This right is meant to protect people from health hazards of environmental pollution caused by individuals, companies or agencies of the State that may result in infectious disease outbreaks, development of cancers, chronic respiratory diseases, etc.*

### Right to health care [Section 76]

1. Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.
2. Every person living with a chronic illness has the right to have access to basic health-care services for the illness.
3. No person may be refused emergency medical treatment in any health-care institution.
4. The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this Section.

*The right to health care is to ensure every person has access to basic health care and medical treatment for all ailments, emergency medical conditions, chronic illnesses and for reproductive related conditions especially in pregnancy. The State must make all efforts, including progressive increments of health annual budgets and crafting other health-care financing instruments, in order to fulfill this fundamental right. Reducing the health annual budget is a retrogression and violation of this Constitution.*

### Right to food and water [Section 77]

Every person has the right to-

- a) Safe, clean and potable water; and
- b) sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

*This right ensures that every person has access to water free of infectious diseases, free from environmental chemical contamination and suitable for human consumption. The right also ensures that every person has access to adequate food at all times even in cases of a drought situation.*

### Rights of the children [Section 81]

Every child, that is to say every boy and girl under the age of eighteen years, has the right (f) to education, health care services, nutrition and shelter.

*This right entitles every child access to health care services and nutritious food regardless of social status or ability to pay for the services. There must be a system in place to cater for those who cannot afford to pay for their health care.*

### Rights of the elderly [Section 82]

People over the age of seventy years have the right- (b) to receive health care and medical assistance from the State

*The elderly are entitled to receive health care and medical assistance from the State regardless of ability to pay. A system must be in place to cater for those that cannot afford to pay for themselves. Geriatric specialists and wards must be made available and accessible.*

### Rights of persons with disabilities [Section 83]

The State must take appropriate measures, within the limits of resources available to it, to ensure that persons with disabilities realise their full mental and physical potential, including measures- (c) to give them access to medical, psychological and functional treatment.

*Persons with disabilities are entitled to access health care and medical treatment regardless of ability to pay. There must be a system to cater for those that cannot afford to pay for themselves. Health institutions must be physically accessible to persons using wheel chairs and for those with other disabilities.*