

***What are fundamental rights?***

The term fundamental rights refers to basic human entitlements or rights aimed at protecting and promoting specific interests of people. These rights are often times identified and entrenched in a country's Constitution. In Zimbabwe, Chapter 4 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 ('the Constitution') contains the Declaration of Rights which sets out the various fundamental rights recognised in Zimbabwe.

These rights include but are not limited to the right to life, the right to personal liberty, the right to freedom of expression, and political rights. These fundamental rights are necessary for the full realisation of human potential and are exercised within different contexts.

Fundamental rights and the electoral process

The focus of this article is on the intersection of fundamental rights and the electoral process. The constitutional provision on political rights state that every Zimbabwean citizen has the right to “*make political choices freely.*” This includes the right “(a) to form, to join, to participate and in the activities of a political party or organisation of their choice; (b) to campaign freely and peacefully for a political party or cause; (c) to participate in peaceful political activity; and (d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.”

Most importantly, Section 67(3) states that “...every Zimbabwean citizen who is of or over 18 years of age has the right — (a) to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret; and (b) to stand for election for public office and, if elected, to hold such office.”

It is thus important to ensure that the electoral process is carried out in a manner that does not violate the letter and principle of the political rights set out above. This is why actions such as the undue influence of voters is criminalised in Zimbabwe's Electoral Act [Cap 2:13]. Furthermore, political rights are not exercised in isolation from other fundamental rights enshrined in the Zimbabwe Constitution.

*Section 48 of the Constitution
Section 49 of the Constitution
Section 61 of the Constitution
Section 67 of the Constitution
Section 67(1)(b) of the Constitution
Section 67(2) of the Constitution*



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Voting is a form of free expression and a manifestation of the voter's right to freely associate with a political entity or party that is best aligned to that particular voter's conscience and beliefs. The existence of other other complementary rights advances the proper and meaningful exercise of political rights. An election cannot be deemed to be free and fair if it was held in an environment that is oppressive to the exercise of fundamental rights such as the right to freedom of assembly and association.

Fundamental rights situation in 2018 general elections

Remarking on the fundamental rights climate in Zimbabwe's 2018 general elections, the African Union Electoral Observer Mission held that “*the 2018 elections were conducted under an improved legal framework that guaranteed fundamental human rights and freedoms such as freedom of association, assembly and expression; ...*” that “*...strengthened the role of Zimbabwe Electoral Commission (ZEC).*”

The African Union submits that more stilll needs to be done in the way of legal and policy reforms related to the electoral process. The African Union's report further states that, “*the legal framework contained several gaps and inconsistencies that could undermine the independence of ZEC and integrity of the electoral process as well as curtail the enjoyments of fundamental rights and freedoms.*”

The African Union's assessment was influenced by the fact that in 2018, Zimbabwe had a supreme Constitution in place that respected political rights and other related fundamental rights. Additionally, the government had made some effort to align laws such as the Electoral Act to the Constitution. However, in actual practice, little had changed in terms of the respect for fundamental rights in the country.

That explains why Zimbabweans still face arrest for crimes such as undermining the authority of the President and abuse of journalistic privilege despite the existence of constitutional guarantees of free speech. These statutory crimes are most likely unconstitutional due to their wide application and broad interpretation yet they still remain in existence. Their continued existence threatens free expression especially on issues relating to political discussions and participation.

The European Union Electoral Observer Mission also found that Zimbabwe's legal reforms were not comprehensive. That Electoral Observer Mission stated that “*the current legal framework still leaves room for restriction of fundamental rights such as freedom of expression or freedom of the media.*”

Another important fundamental right that is of utmost importance to the electoral process, namely the right to a fair trial or the right to be heard. Article 7(1) of the African Charter on Human and Peoples' Rights reads as follows: “*Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.*”

Dispute resolution through the Electoral Court process is an important part of bringing finality to the electoral process. When analysing Zimbabwe's elections related dispute resolution mechanisms, the African Union Electoral Observer Mission found that, “*...electoral disputes and grievances were expeditiously resolved in accordance with the timeframes provided for by the law.*” However, decisions of the High Court (sitting as the Electoral Court) which were largely perceived as fair and constitutionally sound were often set aside or dismissed by the Supreme Court on the basis of technicalities. Thus leading to a perception that the Zimbabwean judiciary is not independent when adjudicating matters of an electoral nature.

Recommendations

In conclusion, the 2018 elections were held under an environment with an improved legal framework that recognised the existence of fundamental rights. There is still however, a lot of work to be done to ensure that the legal framework reforms are actually implemented in a way that promotes the fair enjoyment and exercise of fundamental rights in Zimbabwe.

The exercise of political rights is closely linked to the enjoyment of fundamental rights. There is therefore, need to foster a culture of governance that promotes the exercise of fundamental rights as part of the electoral process. Some recommendations to achieve this include but are not limited to:

- Strengthening the institutional capacity and independence of institutions such as the Electoral Courts, the Zimbabwe Electoral Commission as well as the Zimbabwe Human Rights Commission;
- Legitimate legal reforms carried out in line with the 2013 Constitution as well as human rights principles; and
- Voter education that sets out the close link between fundamental rights and political rights.