

AU COMMITMENTS TO HUMAN RIGHTS
THE AFRICAN HUMAN SECURITY INITIATIVE
DRAFT 1

**The Institute for Human Rights and Development
In partnership with the Institute for Security Studies**

Note to the reader:

Please keep in mind that

- This is a *rough draft* that only includes a small portion of the actual research and information that we intend to incorporate into the final version. For example, national legislation related to the themes under review needs to be properly addressed. More information from local constituencies also needs to be included. State reports that have been submitted to the African Commission will also be added to the final document.
- Citations have not been properly made and should be ignored at this time.

- Charts and Tables, which we intend to provide, have not yet been incorporated into the draft.
- Bracketed information are reminders/ guides for the author
- Being fully aware of the many grammatical, spelling and structural errors that may exist in this first draft, we hope that criticism will primarily be placed on the substantive aspects of this work.

Chapter 1: Human Rights and Human Security -Thematic framework

Introduction:

The respect for human rights remains at the heart of the search for peace and justice on the African continent. Of much relevance to this search is the concept of human security, which demands, amongst other things, the safeguarding of peoples' vital freedoms. According to one commentator, "realising human rights lies at the core of protecting and empowering people".¹ Lasting stability on the African continent would be difficult to achieve unless people are protected from violent threats to their rights, safety or lives.

The Institute for Human Rights and Development in Africa, under the aegis of the African Human Security Initiative (AHSI), a civil society research network, aims to review the performance of eight States that have pledged themselves to achieve the promotion of respect for and observance of human rights and fundamental freedoms in conformity with standards set at the level of the African Union (AU). The countries to be reviewed, Senegal, Nigeria, Ghana, Kenya, Uganda, South Africa, Ethiopia and Algeria, have also signified their support for the New Partnership for Africa's Development (NEPAD) by signing up to its peer review mechanism (APRM). NEPAD represents an attempt on the part of the continent's leaders to tackle the main problems with which the region is beset, including human rights violations. From our perspective, therefore, the research relates to whether the aforementioned countries have been able to enhance and sustain their commitments to the realisation of human rights.

The Institute will monitor the countries concerned, in order to determine whether they have/are fulfilling the commitments that they had undertaken at AU level. In this concept paper, we will seek to establish the connection between human rights and human security in Africa, indicate the commitments that we have selected for the review exercise, indicate the rationale for the selection of these commitments and propose some indicators that could be used to measure the human rights performance of the countries concerned. The challenge that this research poses, at present, is not so much aligned to the treaties and mechanisms of the African human rights system, as to the question of "operationalising" treaty obligations. It is a matter of quantifying or

¹ Editorial: *Human Security Now*, by Sadako Ogata. The editorial is available on http://www.fordfound.org/news/view_reflection_detail.cfm?reflection_index=28 (accessed on 20 October 2003)

turning the various human rights commitments undertaken by the AU member States into performance indicators.

Linking human rights and human security in Africa:

Current thinking indicates an important linkage between the concepts of human rights and human security: that improved human rights are essential for human security and that human security inevitably leads to improved human rights. The inverse also holds true: grave and massive human rights violations often lead to greater insecurity.

The Independent Commission on Human Security succinctly captures the important connection between human rights and human security thus: “Respecting human rights is at the core of protecting human security...Human rights and human security are therefore mutually reinforcing. Human security helps identify the rights at stake in a particular situation. And human rights help answer the question: How should human security be promoted? The notion of duties and obligations complements the recognition of the ethical and political significance of human security”.²

The Heads of State and Government of the Member States of the Organisation of African Unity, in the Declaration of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) have also cited the importance of security as it relates to human rights. According to this Declaration:

“[S]ecurity should be seen in its wholesomeness and totality including the rights of peoples to live in peace with access to the basic necessities of life, while fully enjoying the rights enshrined in the African Charter on Human and Peoples Rights and freely participating in the affairs of their societies.”³

Further, it states: “The security of a nation must be based on the security of the life of the individual citizens to live in peace and to satisfy basic needs while being able to participate fully in societal affairs and enjoying freedom and fundamental rights.”⁴

[Security] should be a sacred responsibility of all African states- individually and collectively- which must be exercised within the basic framework of the African Charter on Human and Peoples’ Rights and other relevant international instruments.”⁵

Clearly, the State has the primary responsibility for protecting of human rights. In Africa, however, the preponderance of evidence suggests that governments are the most egregious violators of human rights. This argument is subtly echoed by one member of the Commission on Human Security, who emphasises that “individuals also require protection from the arbitrary power of the state, through the rule of law and emphasis on civil and political rights as well as socio-economic rights”.⁶

Violation of human rights interferes with the enjoyment of these rights, a situation that has perpetuated insecurity on the continent. The 1994 genocide in Rwanda, together with recent atrocities in countries like Sierra Leone, Liberia, Burundi, Nigeria and the Democratic Republic of Congo, provide glaring examples of human

² *Human Security Now*, Commission of Human Security (New York, 2003). The report is available on www.humansecurity-chs.org (Accessed on 20 October 2003).

³ CSSDCA Solemn Declaration, at paragraph 10.

⁴ *Id.* at para. 10(b).

⁵ *Id.* at para. 10(c).

⁶ Frene Ginwala, *Rethinking security: An imperative for Africa?*, (Box 1.1), *ibid*

security failures on the continent and also demonstrate the need for stronger overall human rights protection.

For the purpose of this paper, human rights signify personal legal entitlements and liberties, which include prohibitions against certain types of conduct directed against persons by States. In other words, every individual, irrespective of gender, race or other considerations, is entitled to basic fundamental rights and freedoms that should be respected, protected and guaranteed by the State.

Research objectives

The principal aims of this study are to:

1. Monitor progress in the field of human rights since the countries to be reviewed undertook the selected commitments at OAU/AU level in order to determine:
 - Whether the States to be reviewed have taken any concrete steps to domesticate the relevant standards to which they have committed themselves.
 - Whether those who violate these standards are normally held accountable, under the rule of law.
 - Whether the State has mechanisms in place to defend and enforce these standards.
2. Determine the level of the actual enjoyment of these human rights commitments within the national sphere and provide specific information on the legal and *de facto* situation in the countries concerned.

Criteria for the selection of commitments

This initial review will focus on rights of a civil and political, which have also been called “first generation rights”. However, it is not our intention to rank or prioritise rights, which would undoubtedly detract from the universal goal of realising all human rights. The Institute acknowledges that human rights are indivisible and need to be treated in an integrated manner. Rights should therefore be implemented irrespective of whether they are considered positive or negative, justiciable or nonjudiciable, or otherwise.

Accordingly, in selecting the commitments indicated herein, we have considered, amongst other things:

- The unique needs and concerns of the African continent, particularly the needs of the eight countries reviewed. Focus is given to commitments that, if respected, would reflect solutions to endemic problems that are ‘urgent’ in their nature; they must be addressed if Africa is to get out of the current

situation of internecine conflicts and impunity, situations that appear to perpetuate insecurity.

- The reality that universally, the violation of the rights in question does threaten women, children and vulnerable groups⁷, a reality that goes to the core of the issue of human security.
- Time constraints in respect of undertaking proper monitoring of a wide range of civil and political, as well as economic and social rights. It could also be argued that the former are relatively easier to enforce at the supranational level, since, amongst other things, their content is more clearly defined.⁸
- The necessity for the avoidance of duplication of the work of other thematic areas of the study, especially the governance and corruption clusters.

Overall justification for the choice of commitments

Human rights guaranteed at the level of the African Union would be given short shrift if they are not transported from the realm of mere rhetoric. Member States of the African Union have committed themselves to improved human rights and human security for the continent.

There are various instruments that seek to promote the respect for human rights and improved human security on the continent. These instruments, including the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the OAU Refugee Convention, represent high-level commitments undertaken by State parties that have ratified such treaties, to comply, in good faith, with their obligations under the respective treaties. These commitments are also enshrined in a number of other documents, including protocols, declarations and decisions of the African Union.

In the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, in particular, African leaders declared their support for a host of instruments, including the principal human rights treaties and reaffirmed their “full and continuing commitment to these and other decisions of our continental organisation, as well as the other international obligations into which we have entered in the context of the UN”.

Significantly, under the section on Democracy and Good Political Governance, African leaders have emphatically stated:

“9. We are determined to increase our efforts in restoring stability, peace and security in the African continent, as these are essential conditions for sustainable development, alongside democracy, good governance, human rights...

⁷ Refugees, IDP's and migrants.

⁸ See Christoff Heyns, *Civil and Political Rights in the African Charter*, in *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (eds., Malcolm Evans and Rachael Murray, Cambridge University Press, 2002).

“10. In the light of Africa’s recent history, respect for human rights has to be accorded an importance and urgency all of its own. One of the tests by which the quality of a democracy is judged is the protection it provides for each individual citizen and for the vulnerable and disadvantaged groups. Ethnic minorities, women and children have borne the brunt of the conflicts raging on the continent today. We undertake to do more to advance the cause of human rights in Africa generally and, specifically, to end the moral shame exemplified by the plight of women, children, the disabled and ethnic minorities in conflict situations in Africa.

Following the undertaking by African Union member states to rededicate themselves to the respect for human rights and security, the commitments selected for this study are:

1. The right to free expression, inclusive of the freedom of the press
2. The right to personal security, including: the right to life, freedom from arbitrary arrest and detention, freedom from torture and other forms of cruel, inhuman and degrading treatment, security of women, children, refugees and internally displaced persons.
3. Access to justice, inclusive of access to a fair and equitable set of laws, access to popular education about laws and legal procedure and the right to seek redress in an independent and impartial judicial system.

[ADD]

Chapter Two: Methodology of Study

The following study was done in an effort to involve civil society, particularly non-governmental organizations, in the process of reviewing how African states have performed in relation to the commitments they have made under the New Partnership for Africa's Development, or NEPAD. The rights that were addressed are the right to personal safety, which encompassed the right to life, freedom from arbitrary arrest and detention, freedom from torture, cruel, inhuman or degrading treatment or punishment. Within this theme of personal security, we also looked at security issues affecting women, children, refugees and IDPs. The other themes addressed were access to justice as well as freedom of expression. The human rights conditions as they relate to each of those themes were reviewed, in an attempt to understand how those conditions compare to the many regional and international commitments that these countries have made towards human rights.

The countries included in this study are among those that have already agreed to participate in NEPAD's African Peer Review Mechanism (APRM). Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda. Due to time constraints, the other eight countries that have signed on to the APRM which include Burkina Faso, Cameroon, Republic of Congo, Gabon, Mauritius, Mali, Mozambique, and Rwanda, were not included in this initial study.

This initial draft consists primarily of desk research. Human Rights data was taken from human rights monitors, such as Human Rights Watch and Amnesty International. Information was also collected from the United States Department of State, Country Reports of Human Rights Practices, which provided very comprehensive analyses of human rights conditions in all of the countries under review. Country visits were made to Kenya and Ethiopia. More will be undertaken during the editing process.

The study attempts to analyze the regional and international standards that the countries have committed themselves to as compared to national legislation, including the Constitution, Penal Codes, and other relevant national laws. It also looks at how these standards and laws have been implemented in the countries, if at all. Finally it will look at how allegations of human rights violations are addressed by state governments and whether the country provides mechanisms for effective redress of these allegations.

[add]

Chapter III: Commitments of AU Members to Human Rights

Countries that have signed on to the African Peer Review Mechanism states have committed themselves to the principles set forth in the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance⁹ and hence have committed themselves to the following human rights standards:

- The African Charter on Human and Peoples' Rights
- The African Charter on the Rights and Welfare of the Child
- the Protocol on the Establishment of an African Court on Human and Peoples' Rights
- The Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights
- The Conference on Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration
- The Constitutive Act of the African Union
- other decisions of the African Union ,
“*as well as* the other international obligations and undertakings unto which we have entered in the context of the United Nations.”¹⁰ (authors emphasis)

These “other international obligations” include, but are not limited to, the Charter of the United Nations, the Universal Declaration on Human Rights and all conventions relating thereto, “especially the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration”.¹¹

With this in mind, this Chapter will review in more detail the aforementioned documents.

I. Regional Standards

Under the *Constitutive Act of the African Union*, which abrogated and replaced the Charter of the Organisation of African Unity, one of the objectives of the Union and its members is to “promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments”. Since that time, the African Union has issued more elaborate statements regarding their commitment to human rights, the most recent of those being the Kigali Declaration.¹²

The *Kigali Declaration*, which was written at the First African Union Ministerial Conference on Human Rights in Africa in May 2003, set out several objectives for African Union members, objectives that are similar to those that were set out in its

⁹ See Memorandum of Understanding on the African Peer Review Mechanism (“the MOU”), at paragraph 5.

¹⁰ Declaration on democracy, Political, Economic and Corporate Governance, The New Partnership for Africa’s development (NEPAD) at paragraphs 3 and 4.

¹¹ Id. at paragraph 4.

¹² Kigali Declaration, MIN/CONF/HRA/Decl.1 (I) Adopted at the First AU Ministerial Conference on Human Rights in Africa, May 8, 2003.

predecessor, the Grand Bay Declaration and Plan of African (Mauritius Declaration).¹³ These two Declarations are undoubtedly the most elaborate statements made by African states regarding their commitment to human rights.

Among other things, the Declarations call for respect for a state's obligations under international law, as well as respect for regional human rights documents. The Declarations ask that states incorporate principles of the African Charter and its protocols, international humanitarian law, and international human rights law into their domestic legislation.¹⁴ They also highlight the need by States to focus on the rights of certain vulnerable groups such as women and children as well as those of refugees, internally displaced persons (IDPs) and returnees.¹⁵ Further, the declarations call for just, equitable and accessible judiciaries.

The *CSSDCA Solemn Declaration* says that states will “protect and promote respect for Human Rights and Fundamental Freedom, such as the freedom of expression and association” .

The *NEPAD Declaration on Democracy, Political, Economic and Corporate Governance*¹⁶, also incorporates human rights within its framework. The commitment to human rights is reaffirmed, in particular, the commitment to the following regional human rights documents: the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, the Protocol on the Establishment of an African Court on Human and Peoples' Rights, the 1999 Grand Bay Declaration and Plan of Action for the Promotion and Protection of Human Rights.¹⁷ Further NEPAD members undertake to “to work with renewed determination to enforce the rule of law, the equality of all citizens before the law and the liberty of the individual”, as well to enforce and “individual and collective

¹³ Grand Bay Declaration and Plan of Action, CONF/HRA/DECL (I), First Ministerial Conference on Human Rights in Africa, 12-16 April 1999, Grand Bay Mauritius.

¹⁴ Id at para. 25.

¹⁵ Id. at paragraphs 11, 12 and 16 and 18. Paragraph 11: [C]alls upon Member States to recognise forced displacement as a grave violation of fundamental rights to peace, security and dignity, and to take all necessary measures to address the problem. Paragraph 12 : Further calls upon all Member States to implement all the relevant international and African instruments relating to the protection of refugees, internally displaced persons and returnees, and in particular to discharge their obligations under the AU Convention Governing the Specific Aspects of Refugee Problems in Africa. Paragraph 16: Notes with great concern that the rights of women and children in spite of the progress achieved, remain insufficiently protected in many African countries; welcomes the progress made towards the adoption of the Draft Protocol on the Rights of Women in Africa, and calls upon Member States to take all necessary measures for its early adoption, signature and ratification, and upon coming into force, its timely implementation by States Parties to it. Paragraph 18: Calls upon Member States that have not yet ratified the African Charter on the Rights and Welfare of the Child to do so as soon as possible.

¹⁶ Declaration on Democracy, Political, Economic and Corporate Governance, New Partnership for Africa's Development (NEPAD) , AHG/235 (XXXVIII) Annex I.

¹⁷ Id. at para. 3.

freedoms”.¹⁸ Paragraph ten is probably the most poignant in terms of NEPAD’s commitment to human rights. It states:

In light of Africa’s history, respect for human rights has to be accorded an importance and urgency all of its own....We undertake to do more to advance the cause of human rights in Africa, generally and, specifically, to end the moral shame exemplified by the plight of women, children, the disabled and ethnic minorities in conflict situations in Africa.

Finally, under the human rights framework, NEPAD members agreed to:

- Facilitate the development of vibrant civil society organizations, including strengthening human rights institutions at the national, sub-regional and regional levels;
- Support the Charter, African Commission and Court on Human and People’s Rights as important instruments for ensuring the promotion, protection and observance of Human Rights
- Strengthen co-operation with the UN High Commissioner for Human Rights; and
- Ensure responsible free expression, inclusive of the freedom of the press.¹⁹

The African Charter on Human and Peoples’ Rights, also known as the Banjul Charter was adopted by the OAU on June 17, 1981 and entered into force on October 21, 1986. Protocols have also been added to the Charter including the Protocol on the Rights and Welfare of the Child, the Protocol on the Rights of Women in Africa, as well as a Protocol establishing an African Court on Human and Peoples’ Rights. [ADD ADD ADD]

State responsibilities under the African Charter

Article 1 of the Charter calls for recognition of all of the rights, duties and freedoms set forth in the charter by OAU member states. It further requires that states make these rights, duties and freedoms part of their national legislation.²⁰ The Charter incorporates civil and political rights as well as economic and social rights. It also makes provisions for peoples’ rights, as well as outlining duties that both the state and the individual have towards their community and country. As we progress in this paper, we will look at the specific rights and duties enumerated in the Charter as they

¹⁸ Id at para. 7.

¹⁹ Id. at para. 15.

²⁰ African Charter on Human and Peoples’ Rights, Adopted by the OAU on June 17, 1981, Entered into force on October 21, 1986. Article 1 reads: The Member States of the Organisation of African Unity parties to the present Charter shall recognise the rights , duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

relate to the three areas under study: right to personal safety, access to justice, and freedom of expression.

Monitoring Body of the African Charter –the Commission on Human and Peoples Rights

The monitoring body of the African Charter is the African Commission on Human and Peoples' Rights. The Commission was established under Article 30 of the Charter and receives its mandate under Article 45 of the Charter. One of the most used functions of the Commission is the communication procedure set forth under Article 55 of the Charter. Individuals, and non- governmental organizations representing groups or individuals, have used this article to bring allegations of human rights violations against African States. Later we will look at communications that have been brought specifically against the states under review.

Unfortunately, the African Charter has had little influence on the behavior of African States. This is primarily so because of the lack of an enforcement mechanism and, of course, a lack of political will by member states to adhere to the Charter's principles. The Charter itself has also been criticized for the many "clawback clauses" and limitations that it seems to place on most of the rights it enumerates. Throughout the document one can find clauses such as "within the law", " in accordance with the law", "provided that he abides by the law", or "subject to law and order" without any notion as to the standards that such laws must uphold in order to be considered legal and just within a human rights framework. However, in the powers afforded to it under Article 45(3) of the Charter, the Commission has worked extensively on providing proper interpretations of these articles, using relevant international human rights standards. For example, it has determined that no derogations can be made from the Charter, that laws must conform to those that one would find in a democratic society. [CITE DECISIONS]

In one of her numerous articles on the African regional human rights system, author Rachel Murray, sets out the major criticisms of Africa's regional human rights mechanism, namely the African Commission on Human and Peoples' Rights.²¹ Among these criticisms are that Africa's regional human rights mechanism is "ineffective, poorly funded, lacking impartiality and based on ambitious and unenforceable rights".²² The Commission has been criticized for its lack of independence, lack of organization at its bi-annual sessions, as well as its lack of follow up on communications, particularly in the area of implementation of its decisions, but also in the rendering of its decisions. The Commission does not consistently require action on the part of state where a violation, or violations, of the Charter have been found. Even when they do, there is no monitoring of state compliance.²³

²¹ Rachel Murray, The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems, *Africa Human Rights Law Journal*, Vol. 1 No.1, 2001, 1.

²² *Id.* at 1.

²³ See *Id.* at 7.

Despite these criticisms, given its numerous shortcomings, the Commission has rendered over [CHECK] decisions since it began hearing communications. Unfortunately, the lack of accessibility to these decisions creates a lack of awareness of these decisions within Africa and also in the international human rights community. Yet, many of these decisions have made well thought out interpretations of the African Charter's decisions, where the Charter was lacking in clarity.

The African Court of Human and Peoples' Rights

On December 26, 2003, the Protocol Establishing the African Court on Human and Peoples' Rights received the fifteen state ratifications required for its entry into force. Thirty days later, on January 25, 2004 the Protocol was entered into force with judicial nominations and a location to be determined in July of the same year. The establishment of the Court is a milestone for human rights in Africa and will hopefully provide the necessary component that the regional human rights system has been lacking, that is, more ability to enforce its decisions upon states.

Although the Court has yet to be established, one can only hypothesize as to how it will function along with the Commission. However, many believe that the Inter-American system will be used as a template for the African system, since the Inter-American commission uses both a commission and a court to address human rights violation within the Americas. In the Inter-American system, petitions are first brought before the Inter- Commission which is located in Washington D.C. The Commission attempts to resolve the matter between the State and the complainant through the process of friendly settlement. Similar to the African commission, complainants before the Inter- American commission can include individuals, groups of individuals, or NGO representatives. Depending on how this process progresses, after reviewing a petition, the Commission can decide whether to forward the mater to the Inter- American Court, which is located in Costa Rica. Thus, the Commission acts as a filter between petitioners and the Court, in that only it can decide whether a matter will be heard by the Inter – American court.

II. International standards

While the recent regional commitments to human rights by African states should be applauded, States still have a responsibility to abide by international human rights standards, particularly the international texts that they have signed, ratified or acceded to. Respect for these texts is important for many reasons. First, admittedly, many of the human rights texts that has been issued by the African Union and its predecessor, the Organization of African Unity, are merely declaratory in nature, which do not make them binding on states. International human rights texts fill a void where these regional texts lack interpretation or where the African texts are silent. Secondly, respect of international texts demonstrates to the international community that African nations are committed to respecting the same rights, with the same limitations and the same requirements as the rest of the international community.

This includes texts such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as texts that are speak specifically to certain groups or issues, such as the Convention Relating to the Status of Refugees and its Protocol, the Convention

for the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Of course, this also includes commitments to the principles set forth in the United Nations Charter and the Universal Declaration of Human Rights.

Below is a chart indicating which international human rights documents Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa, and Uganda have either signed, ratified or acceded to. **[ADD CHART HERE]** .

Chapter IV: General Background on Countries under Review

[add intro on human rights generally in Africa]

Algeria

Background [add]

Human Rights Watch notes a significant decline in reports of human rights violations in recent years, as compared to the violence that swept through the country in the mid-1990's. Yet it asserts that this is a result of a reduction in political violence rather than of better safeguards against abuse by the state.²⁴

Rights guaranteed in the Constitution

The Constitution of Algeria does little in the way of providing a proper enumeration of the rights to be guaranteed to its citizens and to those under its jurisdiction. Article 32 guarantees fundamental human and citizen's rights and liberties, without specifying exactly what those rights and liberties are. Article 35 states that the law represses infringements against those rights and liberties and violations of physical and moral integrity of a human being.

Where the Constitution is more specific, it protects the private life and honor of the citizen²⁵, guarantees freedom of expression and association²⁶, guarantees a presumption of innocence²⁷, provides the right to compensation if case of miscarriage of justice²⁸. The Constitution also guarantees the right to education²⁹, health³⁰, and work.³¹

Algeria is also a party to the African Charter on Human and Peoples' Rights, has ratified the Protocol to the African Charter establishing an African Court on Human and Peoples Rights, the African Charter on the Rights and Welfare of the Child, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and. It has signed that African Charter on the Rights of Women in Africa. Algeria has also ratified the ICCPR and acceded to its First Optional Protocol, has ratified the Convention on the Rights of the Child, the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and has acceded to the CEDAW. Algeria has also agreed to submit itself to the communication procedures of the CERD and CAT monitoring bodies which are, the Committee on the Elimination of Racial Discrimination and the Committee against Torture, respectively.

²⁴ Human Rights Watch World Report 2003-Algeria, at page 423 (look up proper citation)

²⁵ Article 39 Constitution of Algeria

²⁶ Article 41

²⁷ Article 46

²⁸ Article 49

²⁹ Article 53

³⁰ Article 54

³¹ Article 55

Ethiopia

Background [add]

Individual Rights Guaranteed in the Constitution

The Constitution of Ethiopia provides an extensive number of rights, with Articles 14 through 44 covering rights and freedoms. It divides these rights into six categories: human rights, democratic rights, economic and social rights. It also provides for the right to development, environmental rights and labor rights. Article 13 (2) specifies that the all of the rights and freedoms enumerated in the Constitution should be interpreted in a manner that conforms with the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments that are adopted by Ethiopia.

The human rights enumerated in the Constitution include: the right to life, security of person and liberty, prohibition of inhuman treatment, rights of arrested and accused persons, rights of those in custody and of convicted persons, right to honor and reputation, right to equality before the law, right to privacy, freedom of religion, belief and opinion, right of thought, opinion and expression, right of assembly, demonstration and petition, freedom of association, freedom of movement, right of nationality, marital, personal and family rights, rights of women, rights of children, right of access to justice, right to vote and be elected, rights of nations, nationalities and peoples, right to property, right to livelihood, and right to equal access to social services.

While an adequate and proper enumeration of rights in country's constitution is important, they mean little when the state does not make efforts to promote, protect and guarantee those rights. Throughout this paper we will look at the actual situation ground in Ethiopia and at whether the government actually respects the rights that its Constitution provides.

Ethiopia is a party to the African Charter and has ratified the African Charter on the Rights and Welfare of the Child as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. It has ratified CEDAW, but has only acceded to the ICCPR, CERD, CAT, and the CRC.

Ghana

Background [add]

Individual Rights Guaranteed in the Constitution

Chapter five of the Constitution of Ghana covers fundamental rights and freedoms. It guarantees the right to life, personal liberty and respect for human dignity. It also protects persons from slavery and forced labour. It upholds equality before the law and prohibits discrimination. The Constitution further protects the privacy of the home and other property, and protects individuals from deprivation of property. It guarantees the rights to fair trial, gives the right to free speech, and expression, freedom of thought, conscience and belief, freedom of assembly, association and movement. The Constitution also gives economic, educational and cultural rights. It

further addresses women's and children's rights, as well as rights of the disabled. Finally, the Constitution addresses the rights of persons detained when a state of emergency has been declared. The Constitution also provides great detail as to the extent of each one of the aforementioned rights.

Ghana is a party to the African Charter and has ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. It has ratified the ICCPR and its First Optional Protocol, CERD, CEDAW, CAT, and the CRC.

Kenya

Background [add]

Individual Rights Guaranteed in the Constitution

Chapter Five of Kenya's Constitution is devoted to fundamental rights and freedoms of the individual. Those rights and liberties include: the right to life, the right to personal liberty, protection from slavery and forced labour, freedom from inhuman treatment, freedom of expression, freedom of conscience, freedom of assembly and association, freedom of movement, freedom from racial discrimination, rights of the accused and those in custody, and freedom from arbitrary search and entry.

The Constitution places a limitation on all of these rights providing that they are subject to the rights and freedoms of others and for the public interest. [add] Later in this paper we will look at limitations that are placed on certain rights, such as that of "public interest" and whether they are in accordance with standards of international human rights law.

Kenya is a party to the African Charter, and has ratified the OAU Convention Governing Specific Aspects of Refugee Problems in Africa as well as the African Charter on the Rights and Welfare of the Child. Kenya has ratified the CRC, but has only acceded to the ICCPR, CERD, CAT, and CEDAW.

Nigeria

Background [add]

Individual Rights Guaranteed in the Constitution

Nigeria is a party to the African Charter, has ratified the African Charter on the Rights and Welfare of the Child and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa. It has ratified CEDAW, CAT, and the CRC and has acceded to the ICCPR and CERD.

Senegal

Background [add]

Individual Rights Guaranteed in the Constitution

Senegal's constitution, like Ethiopia's, sets out a long list of rights and freedoms, however it provides little detail as to the actual meaning and scope of these rights and freedoms. These rights and freedoms guaranteed in the Constitution include: freedom of opinion and expression, freedom of the press, freedom of association, meeting and

demonstration, freedom of movement, freedom of religion, philosophy, and culture, the right to education, right to property, right to work, right to know how to read and write, right to health, and right to a healthy environment. These rights are guaranteed under conditions provided for “within the law”.

Under the section entitled marriage and family, the Constitution guarantees certain social security related provisions to the public and to families, particularly to the elderly, the handicapped, families (especially women) living in rural areas. Forced marriage is prohibited and punishable.

Senegal is a party to the African Charter, has ratified the Protocol on the Establishment of an African Court of Human and Peoples’ Rights, the African Charter on the Rights and Welfare of the Child and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Senegal has also ratified the ICCPR and its First Optional Protocol, CERD, CEDAW, CAT and the CRC. Senegal has also agreed to submit itself to the communication procedures of the CERD and CAT monitoring bodies which are, the Committee on the Elimination of Racial Discrimination and the Committee against Torture, respectively.

South Africa

Background [add]

Individual Rights Guaranteed in the Constitution

South Africa’s Bill of Rights goes into great detail about the nature of each of the rights it guarantees. For example the right to freedom and security of person includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way. The right to bodily and physical integrity includes the right to make decisions concerning reproduction; to security in and control over their body; and not to be subjected to medical or scientific experiments without their informed consent. Children’s rights include the right to name and nationality at birth, to family or parental care, to basic nutrition, shelter, basic health care services and social services, to be protected from maltreatment, neglect, abuse or degradation, to be protected from exploitative labour practices, the right not to perform certain work or to provide certain services that are age inappropriate or that place the child at risk, the right not to be detained except as a last resort, only for the shortest period of time, and only with other children, and the right not to be used and to be protected in armed conflicts. Economic, social, and cultural rights include the right to adequate housing, the right to health care services, the right to sufficient food and water, the right to basic education for children and adults, and the right to one’s language and culture. The rights of the arrested and detained are also explained in detail.

The Constitution grants these rights to every person under its jurisdiction and where the rights are specific to citizens, specifies so. Finally the Constitution goes into great detail as to when and, what kinds of, limitations can be placed on these rights.

All of the rights enumerated in South Africa’s constitution are subject to the limitations set forth in Section 36 of the Constitution, which reads:

36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
- a. the nature of the right;
 - b. the importance of the purpose of the limitation;
 - c. the nature and extent of the limitation;
 - d. the relation between the limitation and its purpose; and
 - e. less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

As compared to the lack of definition seen in other Constitutions regarding limitations on rights, South Africa Constitution sets forth a clear and concise standard for the use of limitations.

South Africa is a party to the African Charter and has ratified the Protocol Establishing an African Court of Human and Peoples' Rights. It has also ratified the African Charter on the Rights and Welfare of the Child and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa. South Africa has ratified the ICCPR and acceded to its First Optional Protocol, has ratified, CEDAW, CAT, CERD and the CRC. It has also recognised the competence of the CERD and CAT monitoring bodies, the Committee on the Elimination of Racial Discrimination and the Committee Against Torture, to hear communications against it.

Uganda

Background [add]

Individual Rights Guaranteed in the Constitution

Uganda is a party to the African Charter and has ratified the Protocol Establishing an African Court on Human and Peoples' Rights. It has also ratified the African charter on the Rights and Welfare of the Child and the OAU Convention Governing Specific Aspects of Refugee Problems in Africa. The country is also a party to CEDAW and the CRC. It has acceded to the ICCPR, CERD, and CAT.

For all of the countries under review relevant national legislation will be evaluated in subsequent sections.

Chapter V: RIGHT TO PERSONAL SECURITY

Human security cannot be guaranteed if the personal safety of groups and individuals is not respected. Under the rubric of “right to personal security”, the Institute focused on the right to life, the right to be free from arbitrary arrest and detention, and the right to be free from torture and from other forms of cruel, degrading and inhuman treatment. The Institute also looked at the personal security of certain vulnerable groups, including women, children, refugees, and internally displaced persons (IDPs).

a) RIGHT TO LIFE

Article 4 of the African Charter states that “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

The African Commission in addressing allegations of violations of Article 4, have included within the definition of right to life, summary and extra judicial killings. In a communication against Burkina Faso, the Commission also alludes to forced disappearances as being contrary to the right to life.³² In Kazeem Aminu/Nigeria³³, the Commission also interpreted that forced hiding due to credible fear of persecution by state authorities, was a violation of the right to life.³⁴ Finally, the Commission has also said that the denial of food and medical attention, and subjecting one to torture to the point of death, are violations of Article 4.³⁵

The Human Rights Committee, the monitoring body of the ICCPR, has stated that the right to life includes arbitrary killings and disappearances. It also includes the death penalty when not administered for the most serious of crimes and when applied without a fair trial by an independent tribunal, with the right to review by a higher tribunal.³⁶

³² Communication 204/97 Mouvement Burkinabe des Droits de L’Homme et des Peuples/Burkina Faso, 14th Annual Activity Report of the OAU, at para. 42.

³³ Communication 205/97 Kazeem Aminu/Nigeria, 13th Annual Activity Report of the OAU

³⁴ Id. at paragraph 18.

³⁵ Jointly- considered Communication numbers 54/91 Malawi African Association/ Mauritania; 61/91 Amnesty International/ Mauritania; 98/93 Ms. Sarr Diop, Union Interfricaine des Droits de l’Homme and RADDHO/ Mauritania; 164/07 à 196/97 Collectif des Veuves et Ayants-droit/ Mauritania; 210/98 Association Mauritanienne des Droits de l’Homme/ Mauritania, African Commission on Human and Peoples’ Rights, 13th Annual OUA Activity Report at paragraph 120. Also available in Compilation of Decisions on Communications of the African Commission on Human and Peoples’ Rights, 2nd Edition, The Institute for Human Rights and Development (<http://www.africaninstitute.org>)

³⁶ General Comment 6, Article 6: The Right to Life, Human Rights Committee, A/37/40 (1982) 93 at paragraphs 1-7.

In 1992, the United Nations General Assembly passed the Declaration on the Protection of All Persons from Enforced Disappearances.³⁷ Then in 1998, a draft version of an international convention dealing with disappearances was written.³⁸ While the draft has still not been adopted, the attention that has been placed on enforced disappearances is a clear demonstration of the prevalence of this practice by state authorities. It also shows the international community's concern over the issue and a desire to see the practice ended.

Using these interpretations of the right to life, we will now look into the records of the eight countries under review. The death penalty will not be addressed except where it has been applied arbitrarily, unjustly and for a non-serious crime.

Algeria

As stated earlier, the Constitution of Algeria lacks specificity in dealing with individual rights. However it does guarantee “fundamental human and citizen's rights and liberties”. Yet where it is lacking in specificity, one should look at the regional and international human rights texts that the country has committed itself to.

Of the human rights documents that Algeria has made a commitment to respect and uphold, either through membership, such as the African Union, or ratification, such as the ICCPR, those that provide the best interpretations of the right to life are the African Charter, and its monitoring body, the African Commission on Human and Peoples' Rights, and the ICCPR as well its monitoring body, the Human Rights Committee.³⁹ According to interpretations made by these two monitoring bodies, the right to life clearly included summary and extra judicial killings, forced disappearances, as well as death caused by harsh and extreme circumstances while in the custody of the state.

Human Rights Watch and the U.S. State Department reports no new allegations of disappearances in 2002. However allegations of unsolved disappearances by state forces number as high as 12,000. Yet the Government claims that the number of unsolved disappearances ranges between 4,700 and 4,880.⁴⁰ These involve disappearances that primarily occurred in the 1990's. The Government has made a commitment to investigating these disappearances. However, [add]

³⁷ Declaration on the Protection of All Persons from Enforced Disappearances, A/RES/47/133, December 18, 1992.

³⁸ Draft International Convention on the Protection of All Persons from Forced Disappearance, E/CN.4/Sub.1/1998/19, August 19, 1998.

³⁹ Algeria has acceded to the First Optional Protocol of the ICCPR on December 12, 1989, indicating a willingness to allow itself to be the subject of communications submitted to the Human Rights Committee, the monitoring body of the ICCPR.

⁴⁰ See Country Reports on Human Rights Practices - Algeria, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 31, 2003 at page 5. Also see Human Rights Watch World Report 2003-Algeria, at page 425, available at <http://www.hrw.org> and Amnesty International Report 2003- Algeria, at page 2, available at <http://www.amnesty.org>.

The U.S State Department, in its report, claims that extra judicial killings occurred but that they primarily occurred in clashes between government forces and armed terrorist groups. Yet it also reports that hundreds of civilians were killed in riots in the Kabylie region, when gendarmes used excessive force against them. The riots were sparked by the death of a young man at the hands of gendarmes.⁴¹

Ethiopia

Article 15 of Ethiopia's Constitution guarantees the right to life except as punishment for a serious criminal offense determined by the law. Ethiopia is a party to the African Charter and has acceded to the ICCPR. However, it has not yet incorporated the ICCPR into its national legislation.

[add info from 2004 HRW report]

Amnesty International Reports that in 2002, government forces used excessive force against protesters killing more than 200 people in the Oromiya region alone.⁴² The killings occurred during what were mostly peaceful protests. Amnesty also cites reports of extrajudicial executions primarily in the Oromiya and Somali regions.

The U.S. Department of State reports that unlawful killings by government forces in 2002 numbered between 1000 and 1500.⁴³ They also report cases of people being arrested without warrants and taken to undisclosed locations for weeks or months.⁴⁴ There were also reports of deaths in prisons due to illness and disease.⁴⁵

Ghana

Ghana's constitution upholds the right to life.⁴⁶ Ghana is a party to the African Charter and has also ratified the ICCPR and its First Optional Protocol.

The U.S. Department of State cited no reports of disappearances in 2002.⁴⁷ Prisoners died in custody due to harsh prison conditions. The US State Department reported the deaths of over 130 prisoners due to malnutrition and disease.⁴⁸

Kenya

Articles 71(a) and Articles 72(1) of Kenya's Constitution protect the right to life.

⁴¹ Id. Country Reports on Human Rights Practices- Algeria at page 2.

⁴² Amnesty International Report 2003- Ethiopia at page 1, available at <http://www.amnesty.org> [fix]

⁴³ Country Reports on Human Rights Practices- Ethiopia, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 31, 2003 at page 2.

⁴⁴ Id at page 4.

⁴⁵ Id. at page 6.

⁴⁶ Constitution of the Republic of Ghana, Chapter V, Article 13(1).

⁴⁷ Country Reports on Human Rights Practices- Ghana, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 31, 2003 at page 3.

⁴⁸ Id at page 5.

[Add information from KHRC reports]

Nigeria

The right to life is guaranteed in Article 31(1) of the Nigerian Constitution. However, under 31(2) this right is not deemed to have been violated

“if he dies as a result of the use, to such an extent and in such circumstances as are permitted by law, of such force as is reasonably necessary for

- (a) for the defense of any person from unlawful violence or for the defense of property:
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

[indent]

Nigeria is a party to the African Charter. It has also acceded to the ICCPR.

In the most recent report on human rights conditions in Nigeria in 2003, Human Rights Watch asserts that extra judicial killings remain a “hallmark” of the Nigerian police.⁴⁹ Deadly force by state authorities is primarily used against suspected criminals, and where there is civil unrest or interethnic violence.⁵⁰ Human Rights Watch reports up to twenty police shootings of people protesting the rise in the price of fuel in July 2003. These occurred in Lagos, Port Harcourt, and a suburb of Abuja.⁵¹ In its report for 2002, Human Rights Watch reported over 225 killings of suspected criminals by police forces, as well as the killing or injuring of civilians who were not suspects at all.⁵² The U.S. Department of State reports that the federal anti crime task force, Operation Fire for Fire was primarily responsible for unlawful killings, using lethal force on suspected criminals and also cites killings of over two hundred suspected criminals by the task force and by police.⁵³

The military were also responsible for unlawful killings. One example of this is the October 2001 mass killings of over two hundred civilians by the military in areas surrounding Benou State. State supported vigilante groups, such as the Bakassi boys, were also responsible for unlawful killings.⁵⁴ Rather than turn suspected criminals over to police, vigilante groups would kill them instead.

⁴⁹ Human Rights Overview-Nigeria, Human Rights Watch, January 2004 at page 1. available at <http://www.hrw.org> [get proper site]

⁵⁰ Country Report on Human Rights Practices-Nigeria, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, March 31, 2003 at page 4.

⁵¹ Id

⁵² World Report 2003- Nigeria, Human Rights Watch, available at <http://www.hrw.org> [get specific link]

⁵³ Id.

⁵⁴ Id. at page 5. Also see World Report 2003- Nigeria , Human Rights Watch, available at <http://www.hrw.org> [specify location]

Harsh and life threatening prison conditions contributed to the death of prisoners.⁵⁵ Even suspected criminals die while in custody of unnatural causes, the U.S. State Department says that the principal causes of death are neglect and harsh treatment.⁵⁶

The US Department of State reports no politically motivated disappearances in 2002.⁵⁷ However Amnesty International reports that vigilante groups are responsible for disappearances of suspected criminals.⁵⁸ [check HRW, AMNESTY]

Senegal

The right to life is guaranteed in Article 7 of Senegal's constitution. Senegal is also a party to the African Charter as well as the ICCPR and its First Optional Protocol. Disappearances and extra judicial killings at the hands of Senegalese authorities is not as common and pervasive as in some of the other countries under study. However, there are allegations that civilians, particularly in the Casamance region, have been "disappeared" by state authorities.

Reports of unlawful killings are low but the U.S. Department of State asserts that the Senegalese government is responsible for extra judicial killings, including killings of civilians. These seem to primarily take place in the Casamance region of the country.

[ADD INFORMATION FROM SECTION 5 OF AI IMPUNITY ARTICLE]

South Africa

The right to life is guaranteed under Article 11 of South Africa's Bill of Rights. South Africa is a party to the African Charter. It is also a party to the ICCPR and has acceded to its First Optional Protocol.

Between 2002 and 2003, the Independent Complaints Directive (ICD), a statutory oversight body, received reports of over 217 reports of deaths while in police custody and 311 deaths that resulted from police action, such as arrest.⁵⁹ The ICD also reported that eighty eight percent of those deaths occurred by shooting.⁶⁰ Amnesty International also reports custodial deaths that occurred under "suspicious circumstances".⁶¹

⁵⁵ Id.

⁵⁶ Id. at page 4.

⁵⁷ Id. at page 7.

⁵⁸ Annual Report 2003, Amnesty International, at page 3. available at <http://www.amnesty.org> [get exact link]

⁵⁹ Human Rights Overview- South Africa, Human Rights Watch, January 2004, at page 1. available at <http://www.hrw.org> [specify link] . Also see Country Reports on Human Rights Practices- South Africa, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 31, 2003, at page 2.

⁶⁰ Id. Country Reports on Human Rights Practices at page 2.

⁶¹ Amnesty International 2003 Report- South Africa, Amnesty International, at page. 1. available at <http://www.amnesty.org> [specify link]

In May 2002, South Africa's Constitutional Court ruled that section 49(2) of the 1977 Criminal Procedure Act, was a violation of the right to life. This section allowed the unrestricted use of deadly force by police or any other person against a fleeing suspect. The Court held that potentially lethal force could only be used if there were reasonable grounds for believing that the suspect posed an immediate threat of serious bodily harm or had committed a crime involving the infliction or threatened infliction of serious bodily harm. [from amnesty 2003]

The U.S. Department of State reported no politically motivated disappearances in 2002.

Uganda

The right to life is guaranteed under Chapter IV, Article 22(1) of Uganda's constitution.⁶² Uganda is a party to the African Charter. It has also acceded to the ICCPR.

The U.S. Department of State reports deaths while in custody. They also report excessive use of force during gatherings that resulted in deaths. Harsh prison conditions also resulted in deaths.⁶³

(need HRW, Amnesty annual reports)

b) FREEDOM FROM ARBITRARY ARREST AND DETENTION

Freedom from arbitrary arrest and detention is guaranteed in Article 6 of the African Charter on Human and Peoples' Rights⁶⁴ (hereinafter *African Charter*) which states that: Every individual shall have the right to liberty and to security of person. No one shall be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. The African Commission has stated that Article 6 must be interpreted "as to permit arrests only in the exercise of powers normally granted to the security forces of a democratic society".⁶⁵ They further noted that a written decree that allows for individuals to be arrested simply for vague reasons and not for proven acts, was not in conformity with

⁶² Article 22(1) of the Constitution of the Republic of Uganda states: No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

⁶³ Country Reports on Human Rights Practices- Uganda, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, March 31, 2003 [[get page number](#)]

⁶⁴ Adopted by the Organisation of African Unity on June 17, 1981. Entered into force on October 21, 1986. [[website](#)]

⁶⁵ Communication 48/90 Amnesty International/ Sudan; 50/91 Comite Loosli Bachelard/ Sudan; 52/91 Lawyers Committee for Human Rights/ Sudan; 89/93 Association of Members of the Episcopal Conference of East Africa/ Sudan, 13th Annual Activity Report of the OUA, at paragraph 59.

the spirit of the African Charter.⁶⁶ It has also stated that detention without charge is contrary to that Charter.⁶⁷

This freedom is also guaranteed in Articles 9 the Universal Declaration of Human Rights (hereinafter *Universal Declaration*)⁶⁸ and the International Covenant on Civil and Political Rights (hereinafter *ICCPR*).⁶⁹ While the Universal Declaration is merely of a declaratory nature, not legally binding on states, the ICCPR *does* bind those nations that have ratified the document. Of the eight countries under study, Algeria, Ghana, Senegal, and South Africa have ratified the ICCPR. The other countries Ethiopia, Kenya, Nigeria, and Uganda have acceded to it indicating a willingness to abide by the Convention's principles. These countries are thus responsible for ensuring that this right, as well as all of the other rights enumerated in the ICCPR, is respected, protected and guaranteed.

From time to time, the monitoring Body of the ICCPR, the Human Rights Committee, issues general comments on which elaborate on particular articles of the ICCPR . Countries that are a party to this covenant should also abide by these principles when enumerating their laws. General Comment # 8 makes clear that Article 9 does not simply apply to criminal cases. The Committee asserts that while parts of the Article, part of paragraph 2 and the whole of paragraph 3,⁷⁰ apply to criminal cases, the rest of Article 9 is applicable to all deprivations of liberty such as, but not limited to, “mental illness, vagrancy, drug addiction, educational purposes, and immigration.”⁷¹ Referring to paragraph 3 of Article 9, the Committee also adds that being brought “promptly” before a judge means that delays should not go beyond a few days and that pre-trial detention “should be an exception” and should last for the shortest period possible.⁷² Finally, when preventative detention is used, the same provisions must apply to it including that it “must not be arbitrary must be based on grounds and procedures established by law, information of the reasons for detention must be given, and court control of detention must be available”.⁷³

⁶⁶ Id. at para. 59.

⁶⁷ Communication 140/94, 141/94, 145/ 95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda/ Nigeria, 13 Annual Activity Report of the OAU, 1999- 2000, at paragraph 51.

⁶⁸ Adopted and proclaimed by United Nations General Assembly Resolution 217A (III) on December 10, 1948. Article 9 of the Universal Declaration of Human Rights states: No one shall be subjected to arbitrary arrest or detention or exile. **[add website location?]**

⁶⁹ Adopted by United Nations General Assembly Resolution 2200 A (XXI) of December 16, 1966. Entered into force on March 23, 1976. Article 9(1) reads: Everyone has the right to liberty and security of person. NO one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance with such procedure as are established by law.

⁷⁰ General Comment 8, Article 9, Human Rights Committee (Sixteenth session, 1982), Compilation of General Comments and General recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 8, 1994, paragraph 1.

⁷¹ Id. at paragraph 1.

⁷² Id. at paragraph 2.

⁷³ Id. at paragraph 4.

Finally, although the African Charter does not allow for derogations of rights under any circumstances the ICCPR *does* allow for derogation of this right, but only in specific instances of “public emergency which threatens the life of the nation”.⁷⁴

The United Nations Working Group on Arbitrary Arrest and Detention has issued a *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which also deals with issues of arbitrary arrest and detention*.⁷⁵ These principles includes the right to be promptly informed of the reasons for arrest or detention⁷⁶, effective opportunity to be heard when in detention⁷⁷, right to review of detention⁷⁸, and the right to be promptly informed of his or her rights at the moment of arrest and at the commencement of detention or imprisonment⁷⁹.

Using these criteria and standards, we will look at how the eight countries stand up.

Algeria

Article 48 of the Algerian Constitution addresses the rights of those taken into custody. It states:

- (1) In the field of penal investigation, custody is under judiciary control and cannot exceed forty-eight (48) hours.
- (2) The person held in custody has the right to be immediately in contact with his family.
- (3) The extension of the period of custody can occur, exceptionally, only within the conditions established by the law.
- (4) At the expiry of the period of custody, it is compulsory to proceed to a medical examination of the

⁷⁴ *Id.* at 2. Article 4(1) of the ICCPR states: In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language religion or social origin.

⁷⁵ Created under United Nations General Assembly Resolution 43/173. **[website]**

⁷⁶ *Id.* at 4. Principle 10 states: Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

⁷⁷ *See Id.* at 4. Principle 11(1) states: A person shall not be kept in detention without being given effective opportunity to be heard promptly by a judicial or other authority.

⁷⁸ *Id.* at 4. Principle 11(3) states: A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

⁷⁹ *Id.* at 4. Principle 13 states: Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

person detained if this latter asks for it, and in any cases, this person is informed of this right.

The Constitution does not provide sufficient detail as to actual length of custody as section 3 of Article 48 allows for an extension of length of custody but only says that this can occur “ within conditions established by law”. One of these laws is the Anti Terrorist Law of 1992 which allows for arrests without warrant as well as for a person to be held in custody for up to twelve days. [look this up]

The U.S. Department of State asserts that Algerian security forces generally respect the 12 day period for suspected terrorist and the forty eight hour delay for those suspected of non terrorist acts.⁸⁰ However, other reports claim that people continue to be arrested and detained in a manner that violates Algerian and international law. Human Rights Watch notes that plain clothed officials who fail to identify themselves arrest people and that the families of detained persons are often not given information on the whereabouts of their loved ones for varying lengths of time.⁸¹ Amnesty International reports that “secret and unacknowledged” detentions lasted for days or weeks in places that were often run by the *Departement du renseignement et de la securite* (Department of Information and Security). They further assert the government and judicial authorities denied knowledge of these secret detentions until the person in question was either brought to court or released.⁸² The Department of State also reports that lengthy pretrial detentions remain a problem.⁸³

Ethiopia

Article 17 of the Constitution of Ethiopia prohibits arbitrary arrest and detention. It states that “no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law and that no person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him”.⁸⁴

According to the Criminal Procedure Code, for non- serious offenses, persons detained must be informed of the charges against them within forty-eight hours and then be offered bail. For serious offenses, persons detained may be held for fourteen days during which time authorities conduct their investigations, and then for an additional fourteen days while investigations continue.

According to Ethiopian human rights representatives with whom the Institute met, most human rights issues are aggravated outside of Addis Ababa, in small towns and in rural sectors of the country. This is the case with freedom from arbitrary detention

⁸⁰ Country Reports on Human Rights Practices- Algeria, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003 at page 7.

⁸¹ Human Rights Watch World Report 2003- Algeria, Human Rights Watch, at page 425. Available at <http://www.hrw.org> [specify link]

⁸² Amnesty International Report 2003- Algeria, Amnesty International, at page 2. available at <http://www.amnesty.org> [specify link]

⁸³ Supra note 63 at page 8.

⁸⁴ Constitution of Ethiopia, Article 17. English translation available at http://www.oefre.unibe.ch/law/icl/et00000_.html0

where it has been reported that in smaller towns, people were detained for indefinite amounts of time, without access to judges and oftentimes with their whereabouts left unknown for several months.⁸⁵ In the Oromiya region of Ethiopia, teachers have suffered the brunt of government harassment. The US State Department reports that in 2002, 142 two teachers were detained for indefinite amounts of time, on accusations of being sympathizers of the Oromiya Liberation Front (OLF). This occurred in several other regions as well. However, most of these teachers in those regions were eventually released. The Report also notes that thousands of persons remain in detention without charge, some of these detentions lasting for years.⁸⁶

Human Rights Watch claims that as of March 2002, seventeen hundred people were being held at the Ghimbi central prison in the region of Oromiya and that half of these detainees had been there for five to ten years, many without ever having been charged.⁸⁷ The same report also asserts that hundreds of officials from the former Derg regime, had been imprisoned for more than a decade and were still awaiting trial.⁸⁸

Ghana

[need 2003 amnesty and HRW reports]

Freedom from arbitrary arrest and detention is guaranteed in assumed under article 14(1) of Ghana's Constitution which guaranteed the right to personal liberty and under article 14(2) which addresses the rights of arrested, restricted or detained persons.

The U.S. Department of State reports that authorities often detain persons past the 48 hour limit provided for in the Constitution. It also makes arrests without warrant.⁸⁹ The report also addresses the claim by human rights activists that arrests are often made on Fridays and people detained until Court reopened on Monday.⁹⁰ Courts have unlimited discretion in determining the amount of bail or of remanding people to prison without charge for indefinite periods. These detentions were subject to weekly review by the judiciary. Approximately one third of the prison population in Ghana are remand prisoners.

The same report acknowledges allegations that the Ghanaian police often act as debt collectors for local businessmen, arresting citizens in exchange for bribes.⁹¹

Kenya

⁸⁵ Country Reports on Human Rights Practices- Ethiopia, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 7.

⁸⁶ *Id.* at 7.

⁸⁷ Human Rights Watch World Report, Ethiopia, at page 2. , available at <http://www.hrw.org/wr2k3/africa5.html>

⁸⁸ *Id.* at 2.

⁸⁹ Country Reports on Human Rights Practices- Ghana, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 5.

⁹⁰ *Id.*

⁹¹ *Id.* at 6.

Kenya's Constitution states that persons arrested or detained, having not yet been released, should be brought before a court within 24 hours, and within 14 days if the crime is one that is punishable by death.⁹² The Constitution also provides for the release "either unconditionally or upon reasonable conditions" of a person arrested or detained if such person is not tried "within a reasonable time".⁹³ This is not applicable to persons charged with an offense punishable by death. Finally the Constitution also provides for compensation to those persons who are unlawfully arrested or detained.⁹⁴

Despite these clauses, the Constitutionally accepted time frame for a lawful detention in Kenya seems to be unclear based on Article 72(b) or the same Chapter which states that persons arrested or detained shall be brought before a court "as soon as is reasonably practicable".⁹⁵ This wording could potentially allow for a detention of any duration provided that authorities provide a "reasonable" explanation.

In its Country Report on Kenya, the U.S. State Department asserts that arbitrary arrests and detentions remain a problem in Kenya and that many suspects are held for months or years before being brought before a court. Those in pretrial detention often remain in jail for several years.⁹⁶

The Kenya Human Rights Commission, in a recently issued report on prison conditions, remarks that excessive bail fines also contribute to long term detentions. Many persons arrested, cannot afford these fines and are forced to remain in police custody, including those persons charged with minor offenses. While this situation might not necessarily be viewed as one of illegal detention, the Constitutional right to be released "upon reasonable conditions"⁹⁷ becomes illusory if the cost of bail is not within reach of the average Kenyan.

The Standing Committee on Human Rights, now the Kenya National Commission on Human Rights, in their May 2003 Report, noted that there were "unexplained illegal confinements," "suspiciously high numbers of petty offenders in police cells", and "highly questionable and fabricated non-bailable charges" in Kenya.⁹⁸

In December 2002, Mwai Kibaki was elected to the Presidency, bringing in a new government that is more receptive to creating positive change in the area of human rights. One of the areas in which the government is attempting to bring reform is prisons and within the police. The Vice President is also the Minister in Charge of Prisons, and during meetings with various human rights representatives, the Institute was told that the Vice President is also very receptive to change. Presumably, one of

⁹² Constitution of the Republic of Kenya, Chapter V, Article 72(3)(b), available at

<http://www.kenyaconstitution.org/html/03c.htm>

⁹³ Id at Chapter V, Article 72(5).

⁹⁴ Id at Chapter V, Article 72(6).

⁹⁵ Id.

⁹⁶ Country Reports on Human Rights Practices- Kenya, United States Department of State, Bureau of Democracy, Human Rights, and Labour, March 31, 2003, at page 9.

⁹⁷ See *supra* note 14 at Chapter V, Article 72(5).

⁹⁸ Seventh Report, Standing Committee on Human Rights, May 2003, at page 12.

the areas that will get attention is in the area of those awaiting trial who make up the majority of the prison population. Further, the current government has now allows representatives of human rights NGOs, as well as the media, to access to prisons. Previously, only the Standing Committee on Human Rights (now the Kenya National Commission on Human Rights) had access to prison populations. [CITE ON-SITE INTERVIEWS WITH NGO REPRESENTATIVES]

Nigeria

The Constitution of Nigeria addresses the right to personal liberty and the rights of arrested and detained persons under Article 35 and its subsections.

Human Rights Watch claims that arbitrary arrests are also among the “hallmarks” of the Nigerian police.⁹⁹ It claims that these are often made in attempts to collect bribes.¹⁰⁰ Amnesty International reports that vigilante groups, which are tacitly or officially endorsed by state governments, practice illegal detentions.¹⁰¹

Generally constitutional standards are not respected in terms of arrested and detained persons. The police make arrests without warrants, detain people without informing them of the charges against them, and deny them access to counsel and to family members. Persons accused of bailable offenses are denied the opportunity to be released on bail and the provision for bail is often applied arbitrarily. Detainees are often held for long periods of time with no one being aware of their whereabouts. Police have been accused of demanding payment before detained and arrested persons can be taken to court. Reports have noted that more than one third, or up to eight percent of the prison population is awaiting trial. Police also place the friends and relatives of wanted suspects in detention in order to encourage suspects to surrender.¹⁰²

Senegal

[Get Amnesty and HRW reports]

Although the Constitution does not make specific mention of the rights of arrested and detained persons [check], Article 7 guarantees the right to liberty.

Human Rights NGOs reported that there were fewer arbitrary arrests and detentions in 2002 than in previous years.¹⁰³

⁹⁹ Overview of Human Rights Issues in Nigeria, Human Rights Watch, January 2004.

Available at <http://www.hrw.org> [specify link]

¹⁰⁰ World Report 2003- Nigeria, Human Rights Watch at page 3. Available at <http://www.hrw.org> [specify link]

¹⁰¹ Amnesty International 2003 Report- Nigeria at page 3. Available at <http://www.amnesty.org> [specify link]

¹⁰² Country Reports on Human Rights Practices- Nigeria, U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, March 31, 2003 at page 10.

¹⁰³ Id.

The law allows for a 48-hour detention without charge which can be extended for up to 96 hours with authorization of a public prosecutor. If the person is suspected of crimes against the state, this time may be doubled. During the first 48 hours of detention prisoners do not have access to their families or to an attorney. They only have the right to request a medical examination. The system of bail is rarely used. Once charged the person can be held in custody for up to six months. The investigating magistrate can also request an extension of another six months, which is subject to judicial review on appeal. The U.S. Department of State reports that the time between charging and trial averaged two years and that prisoners were often held in custody for very long periods “unless and until” a court demanded their release.¹⁰⁴

South Africa

The Constitution of South Africa is very specific about the rights of arrested and/or detained persons. Under Article 12(1) everyone has the right to freedom and security including: the right not to be arbitrarily deprived of one's freedom or without just cause, and the right not to be detained without trial.¹⁰⁵

Under Article 35(1), arrested persons have the right to remain silent, to be informed promptly of their rights, the right not to be compelled to incriminate oneself, the right to be brought before a court as soon as is reasonably possible “but not later than 48 hours after arrest, or the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day”. At the first court appearance, arrested persons also have the right to be charged or informed of the reasons of detention, or to be released, and to be released from detention if the interests of justice permits, subject to reasonable conditions.

Under Article 35(2), detained persons, including sentenced prisoners, have the right to be promptly informed of the reasons for his detention, the right to choose and consult with a legal practitioner and to be informed of this right, and to have a legal practitioner assigned to him by the state, at the state's expense, if substantial injustice would otherwise result and to be informed of this right. Detained persons also have the right to challenge the lawfulness of their detention and to be released if the detention is unlawful. Conditions of detention are also addressed in the Constitution which states that those conditions must be “consistent with human dignity” and that provision for adequate accommodation, nutrition, reading material and medical treatment must be made at the state's expense. The detained person also has the right to communicate with their spouse or partner, next of kin, chosen religious counsellor, and chosen legal practitioner.

According to the South African Human Rights Commission, prisoners awaiting trial before regional courts wait an average of six months. Those awaiting trial before

¹⁰⁴ Country Reports on Human Rights Practices- Senegal, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 4.

¹⁰⁵ Constitution of South Africa, Article 12. The right to freedom and to security of person also encompasses the right to be free from all forms of violence from public and private sources, the right to be free from torture, and the right not to be treated or punished in a cruel, inhuman, or degrading way. (get proper citation)

higher courts, wait approximately one year. In extreme cases, the wait lasted up to two years. The U.S. Department of State reports that this is primarily due to an “understaffed, underfunded, and overburdened” judiciary.¹⁰⁶

Uganda

[NEED AMNESTY AND HRW REPORTS]

The Constitution of Uganda provides that no person shall be deprived of personal liberty, but only for the reasons set forth in Article 23(1) which include

- (a) in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted; or of an order of a court punishing the person for contempt of court;
- (b) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;
- (c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda;
- (d) for the purpose of preventing the spread of an infectious or contagious disease;
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of the education or welfare of that person;
- (f) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community;
- (g) for the purpose of preventing the unlawful entry of that person into Uganda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Uganda or for the purpose of restricting that person while being conveyed through Uganda in the course of the extradition or removal of that person as a convicted prisoner from one country to another; or
- (h) as may be authorised by law, in any other circumstances similar to any of the cases specified in paragraphs (a) to (g) of this clause.

¹⁰⁶ Country Reports on Human Rights Practices- South Africa, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 9.

Arrested or detained persons must be kept in a place authorized by law and must be informed for the reasons for his arrest, restriction or detention and of his right to have a lawyer of his or her choice. The arrested or detained person must also be brought before a court within forty- eight hours. Next of kin of the arrested or detained person should be informed “as soon as practicable”. Next of kin, lawyer and doctor should be allowed “reasonable” access to the arrested, restricted or detained person. The arrested or detained person should be allowed access to medical treatment. Persons arrested for a criminal offence have the right to request release on bail. Persons found to have been unlawfully arrested, restricted or detained have the right to compensation. The right to habeas corpus is inviolable. [Need to cite relevant constitutional articles here]

Uganda has been criticised for the lengthy pre-trial detention with reports of these detentions lasting for several years. The U.S. Department of State reports the Ugandan security forces do arrest and detain individuals arbitrarily and in contravention of the Constitution.¹⁰⁷ They also report that pre-trial detainees comprise 70 percent of the prison population and that these detentions last between two and three years.¹⁰⁸

c) FREEDOM FROM TORTURE AND OTHER FORMS OF CRUEL, DEGRADING AND INHUMAN TREATMENT

The following international and regional human rights documents address the right to be free from torture, cruel, inhuman, or degrading treatment or punishment. Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the African Charter. Two documents that are devoted to this right are the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

According to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture is defined as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public

¹⁰⁷ Country Reports on Human Rights Practices- Uganda, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page. 10.

¹⁰⁸ Id. at page 11.

official or other person acting in an official capacity. [Torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanction.¹⁰⁹

All of the countries under review have at least signed the Convention Against Torture (CAT) Even without ratification, a signature by a state implies that the state will do its utmost to abide by the principles in the said convention. Three of these countries under review, Algeria, Senegal and South Africa have also recognized the competence of the United Nations Committee Against Torture to receive and process communications from individuals alleging acts of torture at the hands of their respective governments. Among the states responsibilities under CAT are: [add]

Article 5 of the African Charter states: All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.¹¹⁰ In February 2002, the Organisation of African Unity, now the African Union, adopted Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment in Africa (The Robben Island Guidelines).¹¹¹ The Guidelines reinforce Africa's commitment to end the practice of torture by state authorities and aims specifically to effectively implement Article 5 of the African Charter. The Guidelines encourage the criminalisation of acts of torture within national legal systems as defined by Article I of the Convention Against Torture¹¹² and seek "jurisdictional competence" at the national level, to hear cases involving allegations of torture "in accordance with Article 5(2) of the Convention Against Torture."¹¹³ Further, the Guidelines forbid derogation of this right under any circumstances including war, threat of war, political instability or any other public emergency. It also excludes the use of 'necessity', 'national emergency', 'public order' as justification for the use of torture.¹¹⁴

In addition to the aforementioned human rights standards, the right to be free from torture is now considered *jus cogens*, or a preemptory norm of general international

¹⁰⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations General Assembly Resolution 39/46 of December 1984. Entered into force on June 26, 1987. Article 1

¹¹⁰ Supra note 1.

¹¹¹ Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines),

¹¹² *Id.* at Part I-4 says: States should ensure that acts which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.

¹¹³ *Id.* at Part I-6 states: National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5(2) of the UN Convention against Torture.

¹¹⁴ *Id.* at Parts I -9 and 10. Part 9 reads: Circumstances such as states of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment. Part 10 read: Notions such as "necessity", "national emergency", public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment of punishment.

law. The Vienna Convention of 1969 on the Law of Treaties, in Article 53, defines a “peremptory norm” as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. [cite]. Among these accepted and recognised norms is the right to be free from slavery, genocide, and torture.

Algeria

Article 34(2) of Algeria’s Constitution prohibits any form of physical or moral violence of breach of dignity.

Reports allege that torture by Algerian state authorities is widespread.¹¹⁵ Persons held in secret detention are often subject to torture and ill-treatment.¹¹⁶ Human Rights Watch reports that during interrogations, people were beaten, whipped and submitted to electric shocks.¹¹⁷ The “chiffon” was used, whereby a dirty rag, possibly doused with chemicals was placed over the nose and mouth to induce choking

Ethiopia

Article 16 of the Constitution of Ethiopia protects persons from bodily harm.¹¹⁸ Article 18 prohibits inhuman treatment including the right to protection from cruel, inhuman, or degrading treatment or punishment.¹¹⁹

There were many reports of prisoners, particularly political prisoners being tortured.¹²⁰ Human Rights Watch reports that demonstrators were subject to mistreatment and asserts that in February 2003, at least thirty-four Lideta Church members were arrested during a peaceful meeting. The members were taken to a police training camp where they were beaten, forced to run on bare feet, and to crawl on bare knees and elbows on gravel and sand for many hours each day. This lasted for two days. The report further claims that this type of abuse was common in mass arrests.¹²¹

Ghana

[need recent HRW and amnesty reports]

¹¹⁵ Amnesty International Report 2003- Algeria, Amnesty International at page2. Available at <http://www.amnesty.org> [specify link]. Also see Human Rights Watch World Report 2003- Algeria, Human Rights Watch, at page 423. Available at [get link]

¹¹⁶ See Id. Amnesty International Report 2003- Algeria, at page 2.

¹¹⁷ See Human Rights Watch World Report- Algeria, supra note 99, at page 426.

¹¹⁸ Constitution of Ethiopia.

¹¹⁹ See Id.

¹²⁰ Amnesty International Report 2003- Ethiopia, at page 3. Available at [specify link]. Also see Human Rights Overview - Ethiopia, Human Rights Watch, at page 2. available at <http://www.hrw.org> [specify link]

¹²¹ See Id. Human Rights Overview - Ethiopia, at page 2.

The Constitution of Ghana prohibits torture, cruel, inhuman or degrading treatment at Article 15(2).

The U.S. Department of State cites credible reports of beatings by police and customs officials of prisoners and citizens. They also assert that while unreported, it is believed that the suspects are severely beaten while in police custody.¹²²

Kenya

The Constitution of Kenya prohibits torture or inhuman or degrading punishment or treatment.¹²³ However, many national and international human rights organizations have reported on allegations of torture by Kenyan authorities. The U.S. State Department reports that security forces use torture during interrogations, as well as upon pretrial detainees and convicted prisoners.¹²⁴ The Standing Committee on Human Rights (now the Kenya National Commission on Human Rights), The Kenya Human Rights Commission, and Human Rights Watch all confirm the continuing existence of torture in Kenya.¹²⁵

Many of the conditions found in Kenyan prisons are life-threatening and amount to cruel, inhuman, and degrading treatment. The U.S. Department of State, in their most recent human rights country report, noted the deaths of hundreds of prisoners due to what they call “life- threatening” prison conditions.¹²⁶ These conditions include inadequate access to water, food, unsanitary conditions and inadequate health care leading to widespread (and deadly) disease. Prisoners have also been subject to torture, such as rape.¹²⁷ The Standing Committee on Human Rights, in the first ever published report on prison conditions in Kenya, found that in one prison, there had been no running water for five years and that the prisoners had no clean water to drink or bath.¹²⁸

Nigeria

Torture, cruel, inhuman or degrading treatment is prohibited under Article 34(1)(a) of Nigeria’s Constitution.

¹²² Country Reports of Human Rights Practices, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003 at page 3.

¹²³ Supra note 14 at Chapter V, Article 74(1)

¹²⁴ Supra note 18, at page 5.

¹²⁵ Seventh Report, Standing Committee on Human Rights, May 2003 at page 12. Quarterly Human Rights Report, Kenya Human Rights Commission, April –June 2003, at page 16. Human Rights Watch World Report 2003- Kenya, at page 3. Available at <http://www.hrw.org/wr2k3/africa6.html>

¹²⁶ Country Reports on Human Rights Practices- Kenya, U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, March 31, 2003 at page 4.

¹²⁷ See Id at page 8. Also see Special Report on Inspection of Kenyan Prisons, 6th Special Report, Standing Committee on Human Rights (Kenya), April 2002.

¹²⁸ See Id, Special Report on Inspection of Kenyan Prisons, at page 18.

Human Rights reports allege numerous reports of torture and ill- treatment by police forces during arrest and detention, and against protesters.¹²⁹ Human Rights Watch asserts that police and military took advantage of generalized violence and disorder to kill civilians.¹³⁰ State supported vigilante groups, such as the Bakassi boys, were also responsible for the torture of alleged criminals.¹³¹ In the northern states of Nigeria that are under Shari' a law, people were often subject to cruel, inhuman and degrading punishment, such as amputation for theft, caning for fornication and public drunkenness, and death by stoning for adultery.¹³² Amnesty International reports that the increase in anti- crime forces has caused an increase in the use of torture, cruel, inhuman and degrading treatment while in the custody of government officials.¹³³

Senegal

[need amnesty and HRW reports]

Article 7 of the Constitution of Senegal recognizes the right to security of the individual. However, the U.S. Department of State cites credible reports of beatings of suspects by police and gendarmes during questioning and pretrial detention.

[ADD]

South Africa

The South African constitution prohibits torture, cruel, inhuman or degrading treatment by private or public sources.¹³⁴ However, The Independent Complaints Directive (ICD) reports hundreds of deaths while in police custody or during police action, such as arrests.¹³⁵ One would assume that these deaths are a result of excessive force in the form of torture, cruel, inhuman, and degrading treatment.

Uganda

[need amnesty and hrw reports]

Article 24 of Uganda's Constitution prohibits torture, cruel, inhuman or degrading treatment of punishment.

¹²⁹ Human Rights Overview- Nigeria, Human Rights Watch, January 2004, at page 2. available at <http://www.hrw.org> [specify link]. Also see Country Reports on Human Rights Practices, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 7.

¹³⁰ Human Rights Overview- Nigeria, Human Rights Watch, January 2004, at page 2. available at <http://www.hrw.org> [specify link]

¹³¹ Human Rights Watch World Report 2003- Nigeria, Human Rights Watch, at page 2. available at <http://www.hrw.org> [specify link]

¹³² Id. at page 4. Also see Amnesty International Report 2003- Nigeria, Amnesty International, at page 1. available at <http://www.amnesty.org> [specify link]. Also see U.S. Department of State Country Report Nigeria.

¹³³ Id. Amnesty International Report 2003- Nigeria at page 3.

¹³⁴ Constitution of South Africa, Article 12(1) and (2).

¹³⁵ See Human Rights Overview - South Africa, Human Rights Watch, January 2004. Also see Amnesty International Report 2003- South Africa, Amnesty International. See also Country Reports of Human Rights Practices, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003.

The U.S. Department of State claims that beatings of criminal suspects in an attempt to force confessions, was common and that reports of torture by state authorities were also made.¹³⁶

d) SECURITY OF WOMEN

Although it has not yet entered into force, the Protocol to the African Charter on the Rights of Women in Africa is currently being circulated for state ratification. Of the eight states under review, Algeria, Ghana, Kenya, Nigeria,, Senegal and Uganda have signed the Protocol which indicated a willingness by these states to adhere to the Protocol's principals. The other major human rights document that is devoted to the rights of Women is the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW defines "discrimination against women" as:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹³⁷

Similarly, the Protocol on the Rights of Women in Africa defines "discrimination against women" as

"any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition , enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life".¹³⁸

In studying the both CEDAW and the Women's Protocol, one sees the specificity that encompasses the principles in the Protocol, compared to the generality which encompasses CEDAW. For example, the Protocol addresses "harmful practices" which is defined as "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health dignity, education and physical integrity".¹³⁹ The Protocol also addressed violence against women. Article 4 calls upon states to enact and enforce laws prohibiting violence

¹³⁶ Country Reports on Human Rights Practices- Uganda, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 7.

¹³⁷ Convention on the Elimination of all Forms of Discrimination Against Women, adopted by United Nations General Assembly Resolution 34/180 of December 18, 1979. Entered into force on September 3, 1981, at Article 1.

¹³⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, at article 1.

¹³⁹ Id. at article 1(g).

against women, to punish perpetrators of violence against women, and to create rehabilitation programs for victims. It also calls for states to enact educational programs aimed at ending traditional and cultural beliefs, practices and stereotypes which “legitimize and exacerbate the persistence and tolerance of violence against women”. Article 7 of the Protocol is devoted to separation, divorce, and annulment of marriage. Article 11 addresses the protection of women in armed conflict. [add]

Algeria

Article 32 of the Constitution of Algeria affords the same fundamental human and citizens rights to both women and men.¹⁴⁰ Algeria has acceded to the CEDAW and but has [not] ratified the Protocol to the African Charter on the Rights of Women.

There are reports that terrorists groups kidnapped women and girls for purposes of rape and servitude.¹⁴¹ It is not clear how the government responds to these acts.

Rape is illegal and punishable under Algerian penal law [get code]

[Need info application of SHARIA LAW IN ALGERIA - 1984 Family code, largely based on Shari' a law.]

Ethiopia

Constitutional standards [add]

Ethiopia has ratified CEDAW but has not yet signed of ratified the Protocol to the African Charter on the Rights of Women in Africa.

The personal security of women is a major problem in Ethiopia. Due to societal norms and political will to deal with the problem, Ethiopian women are often the brunt of such forms of violence as rape, forced marriage, and domestic violence without recourse to the legal and penal systems.

Domestic violence

The Ethiopian Women Lawyers Association (EWLA) reports that murder and permanent disability are common results of domestic violence in Ethiopia.¹⁴² Currently Ethiopia has no laws on domestic violence, although a draft amendment is currently under review by the Government. [CITE] Current law in the Penal Code [CHECK] covers “offenses against person and health” and regulates all bodily injuries irrespective of the gender of the victim. However, EWLA reports that women have never been in a position to use this article of the Penal Code against their intimate partners or husbands.¹⁴³

¹⁴⁰ Constitution of Algeria. English translation available at http://www.oefre.unibe.ch/law/icl/ag00000_.html

¹⁴¹ Country Reports on Human Rights Practices, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003 at page 18.

¹⁴² Meaza Ashenafi, Litigating for Sex Equality: Women’s Rights and the Legal System, BERCHI: The Journal of Ethiopian Women Lawyers Association, Vol. 1, No. 3, Summer 2002, at page 101.

¹⁴³ Id. at 101.

Rape

Rape is punishable under Article 589 of Ethiopia's Penal Code [CITE] However, due to the definition given within this article marital rape cannot be considered a criminal offence.¹⁴⁴ In fact under both the old and new family laws, unconditional sexual relationship between married people is mandatory except for medical reasons. Where rape is punishable EWLA notes apathy within the criminal justice system towards victims. They note that the biggest challenge is getting police investigators to understand that rape does not only occur to virgins or to women whose hymens have not yet been broken, but that it can also occur to adult women who have already had sexual relations. Police often require a medical certificate of alleged rape victims, proving that she was a virgin at the time of the rape, before even registering the complaint.¹⁴⁵

Another manner in which men attempt to absolve themselves of responsibility in the matter of rape is in the practice of abduction, which is common in the rural areas of Ethiopia. The abduction usually occurs as a way of compelling the woman into a forced marriage. The woman is forcibly taken from her home and forced by a man to have sexual intercourse. Later, elders go and apologise to the family of the young girl. The girl's family, now having a daughter who is no longer a virgin, and thus less valued in society, then feels compelled to allow the abductor and rapist to marry their daughter. In this way, the man is never pursued for having raped his now- wife. This is part of Ethiopia's Penal Code whereby Article 558 (2) provides: Where the woman carried off is responsible and freely contracts with her abductor a valid marriage, proceedings shall by instituted only where such marriage is subsequently annulled. Then Article 599 of the same code states: Where the victim of rape, indecent assault or seduction or abuse of her state of dependence upon another, freely contracts marriage with the offender, and where such marriage is not declared null and void, no prosecution will follow. Where proceedings have already taken place and have resulted in conviction, the sentence shall terminate forthwith.¹⁴⁶ This provision providing absolution from the crime of abduction, through marriage, is not included in the current draft of the penal code. Hopefully this draft will be enacted into law [MUST CHECK AS TO WHETHER THIS HAS BEEN CHANGED IN PC] .

Female Genital Mutilation

Female Genital Mutilation (FGM) is also a problem faced by Ethiopian women. In a recent survey, the National Committee on Traditional Practices of Ethiopia (NCTPE) found that over seventy percent of the female population was affected by this practice. [SEE UNICEF ARTICLE] FGM is not specifically outlawed in Ethiopia's current Penal Code. However, in a draft version of the Penal Code, FGM is banned.

¹⁴⁴ Article 589 (1) of the Penal Code reads: "whosoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, of having rendered her unconscious, or incapable of resistance, is punishable with rigorous imprisonment not exceeding ten years."

¹⁴⁵ Id. at 102.

¹⁴⁶ Id. at 103.

Ghana

[Relevant constitutional standards].

Ghana has ratified CEDAW and has signed the Protocol to the African Charter on the Rights of Women in Africa.

The U.S. Department of State reports that violence against women is a pervasive problem.¹⁴⁷ The police rarely intervene with domestic disputes and domestic violence goes unreported and cases rarely go before the courts. A special police unit, the Women and Juvenile Unit, handles cases of domestic violence and maintains offices in nine Ghanaian cities. The International Federation of Women Lawyers (FIDA) presented a draft domestic violence bill for eventual consideration by Parliament, however it has yet to be reviewed by this body.

The Criminal Code of Ghana protects women who are accused of witchcraft. IN the past women accused of witchcraft were often lynched or tortured. Now these women are more commonly banished from their community and go to live in “witchcamps”, villages that are inhabited by other women accused of witchcraft. Most of these women are older widowed women. There are no legal sanctions if they return to their villages, however most choose not to out of fear of violence by fellow villagers.

Although the law prohibits female genital mutilation (FGM), the practice is pervasive in Ghana. A survey conducted by the Ministry of Health in the mid to late 1990’s indicated that it was widely practiced by nearly all ethnic groups in northern Ghana.

The Criminal Code also criminalizes indecent assault and forced marriage. [look up]

Kenya

Under the Constitution of Kenya, all persons are afforded the same fundamental rights and freedoms. Kenya has acceded to CEDAW and has signed the Protocol on the Rights of Women in Africa.

Rape and domestic violence are common in Kenya. However it is not clear whether the lack of criminal sanctions for perpetrators is a result of a lack of political will to prosecute perpetrators or whether it is due to a lack of reporting by alleged victims. Police view domestic violence as a private, and not a criminal, matter. In 2000, a domestic violence (Family Protection) bill was presented to Parliament but still has not been passed. [GET UPDATE] FIDA, the International Federation of Women Lawyers, has developed a sensitization training for police, with the aim of better enabling them to deal with gender based issues.

Rape is illegal under Kenyan penal law[look up] and can carry punishments of life imprisonment, but the rate of prosecutions is low.

Certain ethnic groups practice female genital mutilation (FGM) which is common in rural areas.

¹⁴⁷ Country Reports on Human Rights Practices- Ghana, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, March 31, 2003, at page 14.

A December 2001 report issued jointly by the Government and by UNICEF claimed that on FGM had been performed 31 percent of Kenyan women. Two presidential decrees banning FGM were issued under former President Arap Moi and the practice was banned in government controlled hospitals and clinics.

Nigeria

Human Rights Watch asserts that the way in which Shari'a law is applied discriminates against women, particularly in adultery cases. Different evidentiary standards are required in these cases, standards that make it more for a woman to be convicted of the crime rather than a man.¹⁴⁸

Domestic violence is a problem in Nigeria, but police rarely intervene. The Penal Code actually permits men to chastise their wives with physical force, so long as it does not result in “grievous harm”. That is, so long as this abuse does not result in the loss of sight, hearing, speech, facial disfigurement, or other life threatening injuries.

FGM is also practiced and has been banned in some states, but not under federal law. Some reports say that FGM is practiced on at least 50 percent of women, but in the south where it is more prevalent, reports estimate that almost all women undergo this practice.

Trafficking of women for prostitution and labor is also a serious problem, according to Human Rights Watch.

Senegal

Under Article 7 the Constitution of Senegal, women and men are considered equal before the law. Senegal has ratified CEDAW [check above] and signed the Protocol on the Rights of Women in Africa.

Domestic violence is illegal and punishable with fines of up to 500,000 CFA and prison terms of up to five years in Senegal. However it is still widespread in the country. The Canadian Center for International and Development (CECI) undertook a study in the cities of Dakar and Kaolack and found that 87 percent of the five hundred and fifteen women interviewed, had suffered from some form of domestic violence. Police were rare to intervene in such cases and women rarely sought outside of the family.

Rape is also a crime under Senegalese law, punishable with an imprisonment of up to 10 years. Rape trials often result in convictions. Sexual harassment is also punishable by imprisonment and with fines.

Female genital mutilation is a criminal offense punishable with a prison term of up to five year. The Wolof, the ethnic group that comprises the majority of Senegal's

¹⁴⁸ Human Rights Overview- Nigeria , Human Rights Watch, January 2004, at page 3. available at [\[specify link\]](#). Also see Human Rights Watch World Report 2003- Nigeria, Human Rights Watch, at page 4. available at [\[specify link\]](#)

population, do not practice female genital mutilation. However FGM is practiced within other ethnic groups, such as the Mandinka and the Toucouleur. Studies show that approximately 20 percent of the female population under this practice with rates rising up to 50 percent in regions where it is most prevalent.

South Africa

The Bill of Rights in South Africa's Constitution makes it clear that the extensive list of rights enumerated in the Constitution apply to both men and women including the right to security of person¹⁴⁹ as well as the right to bodily and psychological integrity.¹⁵⁰ South Africa has also ratified CEDAW but has not yet signed the Protocol on the Rights of Women in Africa. In August 2001, the Constitutional Court ruled that a woman could be awarded damages on the basis that the Government failed to protect her security. This is a great step for women in showing the state's responsibility to protect the individual from harm, even if the source of that harm is private and not public.

South African law is explicit on domestic violence. It facilitates the serving of protection orders, and instructs police to take victims to a place of safety. Police can also arrest abusers without warrant and seize firearms at the scene. [cite law] The law also protects people who are in common law marriages. Marital rape is also a criminal offense and allows women to obtain injunctions against their husbands. The U.S. Department of State reports high incidences of domestic violence, as well as stalking and harassment by former partners.¹⁵¹ The report also notes lack of effective prosecution of abuse cases as well as the poor treatment of women by doctors, police and judges.¹⁵²

Rape, including marital rape, is a crime, but in most cases, perpetrators go unpunished. The South African Police Services reported that only half of all rapes were reported and less than half of those went to court. Reports note that anywhere from five to nine percent of rape cases resulted in convictions. In 2003, a Sexual Offenses Bill was introduced to Parliament that would remove anomalies from existing laws and that would hopefully increase the number of convictions for crimes against women.

The Government maintains twenty-five shelters for abused women and the South African Police Service (SAPS) maintains twelve family violence, child protection, and sexual offenses units (FCS). The FCS units are to increase victims' confidence in the police and to increase reporting of such crimes. It also carries out training programs, seminars and workshops for members of the police force.

South Africa has a Joint Monitoring Committee on the Quality of Life and Status of Women which consults with NGOs and government officials. IN 2002, the

¹⁴⁹ Constitution of South Africa, Bill of Rights, Article 12(1)

¹⁵⁰ Id. at Article 12(2).

¹⁵¹ Country Reports on Human Rights Practices- South Africa, U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, March 31, 2003 at page 18.

¹⁵² Id.

Committee looked at defects in the domestic violence laws and approved a report that was adopted by the National Assembly. The Committee instituted a monitoring body to keep abreast of issues in this area.

Female Genital Mutilation is not considered to be widespread.

Uganda

Article 31 of the Ugandan Constitution grants the following rights to women:

33. (1) Women shall be accorded full and equal dignity of the person with men.
- (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.
- (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
- (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
- (5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
- (6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution.

Uganda has ratified CEDAW and has signed on the Protocol on the Rights of women in Africa.

There are no specific laws protecting women from abuse or spousal rape, just a general law concerning assault. [\[look up\]](#) Domestic violence is common in Uganda with police officers rarely intervening. [\[see HRW special report\]](#) . Women were the victims of abductions and rape by rebel forces. FGM was practiced by the Sabin and Pokot tribes who were primarily located on the northeastern border.

e) SECURITY OF CHILDREN

The Protocol on the Rights and Welfare of Children in Africa entered into force on November 29, 1999. The international text that is devoted specifically to the rights of the child is the Convention on the Rights of the Child (CRC). [\[compare the protocol and the CRC. Look at specific principles in the Protocol.\]](#)

[NEED TO ADDRESS THE SECURITY OF CHILDREN IN ALL EIGHT COUNTRIES UNDER STUDY: ALGERIA, ETHIOPIA, GHANA, KENYA, NIGERIA, SENEGAL, SOUTH AFRICA AND UGANDA]

f) SECURITY OF REFUGEES and INTERNALLY DISPLACED PERSONS.

[need to add Guiding Principles on internal Displacement]

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa entered into force on June 20, 1974. More recently the Khartoum Declaration was issued, addressing refugee issues in Africa. On an international level, there exists, the Convention Relating to the Status of Refugees and its Protocol. [add]

The Khartoum Declaration, adopted in 1998 by the OAU, also is a series of recommendations to member states. It urges states to “accede, incorporate, and implement” the OAU Convention, the UN Convention Relating to the Status of Refugees and its Protocol, as well other instruments including: the Convention on the Reduction of Statelessness and the African Charter on Human and Peoples Rights.¹⁵³ The recommendations also urge states to extend asylum to all deserving applicants, to adhere to the policy of *non-refoulement*, and to develop rehabilitation programs that would assist in the resettlement of returnees.¹⁵⁴

The OAU Convention uses the definition of refugee that is found in the U.N. Convention Relating to the Status of Refugees which states:

Owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable, or, owing to such fear, unwilling to return to it.¹⁵⁵

The OAU Convention primarily differs from the UN Convention in that the term refugee in the OAU Convention also applies to:

Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge

¹⁵³ Khartoum Recommendations of the OAU, Ministerial Meeting on Refugees, Returnees, and Internally Displaced Persons in Africa, Adopted by the OAU on December 13-13, 1998, in Khartoum, Sudan at section 2.

¹⁵⁴ Id. at 3(a), 3(b), and section 5.

¹⁵⁵ Convention Relating to the Status of Refugees, UN. G.A.Res 429(V) of December 14, 1950, entered into force on April 22, 1954 , at Article 1 A, para. 2.

in another place outside his country or origin or nationality.¹⁵⁶

The OAU Convention also makes provision for “temporary residence” of a refugee and states that in cases where a refugee does not receive a right of residence in a country of asylum, such refugee “may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement”.¹⁵⁷

In the more recent CSSDCA Solemn Declaration, Member states reiterated their commitment to addressing refugee and IDP issues. Paragraph 14(j) states that Members will “address the root causes of the problem of refugees and displaced persons and work towards the mobilization of resources to provides adequate assistance for asylum countries to enable them mitigate [sic] the impact of the refugee burden.

Where the OAU Convention is silent is on the rights of refugees in the host state. While Articles 12 through 34 of the U.N. Convention address the rights that the host state must ensure to refugees including, but not limited to: the right the right of access to courts, the right to property, the right to employment and education, freedom of movement, and the right of association, the OAU Convention says nothing. Yet, all of the states under review have acceded or succeeded to the U.N. Convention. Thus, we believe they should all be held accountable for applying the standards outlined in this text

Other regional and international human rights texts address the right of refugees including the African Charter¹⁵⁸, the Universal Declaration for Human Rights¹⁵⁹ [ALGERIA, GHANA, NIGERIA, SENEGAL, SOUTH AFRICA, UGANDA]

Algeria

[The right of non-refoulement is guaranteed in Article 69 of the Algerian Constitution.]

[ADD]

Ethiopia

While approximately 140,000 refugees live in Ethiopia, little information was found related to the condition of refugees in that country. In its most recent country report, the U.S. State Department cites reports that the Ethiopian Government’s own refugee

¹⁵⁶ Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted on September 10, 1969. Entered into force on June 20, 1974., at Article 1, para. 2.

¹⁵⁷ Id. at Article 2, paragraph 5.

¹⁵⁸ African Charter, Article 12 paragraph 3 states: Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.

¹⁵⁹ Universal Declaration of Human Rights, Article 14, paragraph 1 states: Everyone has the right to see and to enjoy in other countries asylum from persecution.

agency, the Administration for Refugee and Returnee Affairs (ARRA) beat or physically abused refugees living in a refugee camp. The Ethiopian Government had yet to investigate those allegations. The Report also cites allegations of torture of Sudanese refugees by Ethiopian security forces. Most importantly this report cites no allegations of forced repatriation, also known as “*non-refoulement*” an act that often puts refugees in the most danger. ¹⁶⁰ **[CHECK UNHCR AND US REFUGEE COMMITTEE SITES]**

Kenya and refugees

There are approximately 250,000 refugees currently living in Kenya. Over 210,000 of those refugees currently reside in one of two United Nations run refugee camps in Kenya, the Kakuma camp [LOCATION?] and the Dabaab camp, located in Northeastern Kenya.

The Government of Kenya has an encampment policy whereby refugees are required to live in one of two UNHCR-run camps. **[CITE]** Because of its own limitations, the UNHCR provides few, if any, services to those refugees who live outside the camps. The major problem relating to the security of refugees involves the 50,000 or so refugees living outside the camps, such as in the capital city, Nairobi. Human Rights Watch reports.... **[ADD HERE FROM HRW REPORT]**

¹⁶⁰ Country Reports on Human Rights Practices-Ethiopia, U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, March 31, 2003, at page 5.

Chapter 6: Freedom of Expression

Freedom of Expression is guaranteed in Article 9 (2) of the African Charter which states that “[e]very individual shall have the right to express and disseminate his opinions within the law.”

This right is also guaranteed in Article 19 of the ICCPR which states:

(1) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of any kind, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Similarly, Article 19 of the Universal Declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In 2002, the African Commission adopted a Declaration on Freedom of Expression which provides significant interpretation of Article 9 of the African Charter. The Declaration sets out state obligations in respect of this right.¹⁶¹ It elaborates on the right to information¹⁶², as well as issues pertaining to private and public broadcasting and print media.¹⁶³

These standards will be used to evaluate the right to freedom of expression in the countries under review.

Algeria

Despite Article 41 of the Algerian Constitution providing individuals with both freedom of expression and association, the government also reserves the right to fine media outlets said to be insulting the state and to restrict public meetings.

In June of 2001 changes to the Penal Code were made which called for individuals deemed of insulting or injuring the state to be served with high fines and harsh jail sentences (U.S., 2002). Under this law individuals, reporters, publishers and owners of newspaper may be prosecuted for defaming the President, Members of Parliament, judges, members of the military and “any other authority of public order”. At least six different prosecutions occurred under this law in the year 2002 alone (U.S. 2003). This included the prosecution of the editors of three large independent newspapers.

¹⁶¹ Declaration on Principles of Freedom of Expression in Africa, African Commission on Human and Peoples Rights, 2002, at paragraph III.

¹⁶² Id. at para. IV.

¹⁶³ See Id. at paragraphs V, VI and VII.

All radio and television stations are state operated which is reflected throughout the pro-government broadcasting (U.S, 2003).

There have also been reports of harassment of human rights defenders by the Algerian Government (AI 2003). Some have been arrested on politically motivated charges. A spokesperson for the Algerian League for the Defense of Human Rights (Ligue Algerienne de defense des droits de l'homme LADDH) was sentenced to one year in jail on charges of libelling a former mayor and members of the armed forces (HRW 2003). Relatives of “disappeared” persons who attempted to hold the government accountable for the whereabouts of their family members were physically threatened by the state security forces (AI 2003).

The 1992 Emergency Law requires individuals to obtain government permits to hold public meetings. (U.S 2001). These permits are most often granted to political parties and NGOs to hold indoor rallies and rarely to hold outdoors demonstrations. Groups holding rallies outside government offices despite not having permission have been arrested as well as subject to police harassment and brutality. It has been reported that a 2001 protest in the Berber Kabylie region resulted in 50 deaths and government security forces torturing and abusing demonstrators (U.S, 2003). Amnesty International reports that 10 unarmed civilians were killed, and over 60 were arrested and detained for months while protesting government repression in April and March of 2002 (AI 2003).

The Emergency Law also restricts freedom of association by forcing all political parties to obtain the approval of the Interior Ministry before they can be established (U.S. 2001). This ministry reserves the right to deny NGO's licenses and to dissolve any group it regards as a threat to state security or public order. Licensed human rights NGOs that criticize the government are often prohibited to hold public meetings or events (AI 2001). NGO's are prohibited from accepting funds from abroad (U.S. 2002). The Algerian government has consistently denied mission requests to the UN Special Rapporteurs on torture and on extrajudicial, summary and arbitrary executions and the Working Groups on Enforced and Involuntary Disappearances (AI 2003).

Ethiopia

Article 29 of the Ethiopian constitution elaborates on the right to thought, opinion and expression. Although the constitution states that everyone is free to express their opinions without interference it maintains that legal limitations can be implemented in order to assure the safety and respect of individuals.

In 2002 there were a total of 81 newspapers, 22 magazines and 2 news agencies (U.S. 2003). To obtain a license to publish the Ministry of Information and Culture required that a newspaper show a bank balance of \$1,200 at the time of their annual registration. This arbitrary large sum of money restricted smaller papers from publishing. Another measure that limits the amount of licenses granted for publishing is the requirement of permanent residency.

There have been incidences of reporters or publishers being arrested and charged with violating article 10 of the 1992 Press Law for printing “offensive” or “false”

information that could have “negative effects” on society. Approximately 30 journalists had trials pending at the end of December 2002. Article 15(3) of the Press Law gives prosecutors the authority to ban any “illegal press product” although there is no clear definition of what is to be deemed illegal (ARTICLE 19, 2000).

The penal code does however state clearly that defamation is a criminal offence. Article 480 of the penal codes prohibits “false rumours and incitements to breach of the peace” and articles 256 and 278 provide for the offences criticizing the Emperor, the government, national emblems, and interstate institutions.

A recently proposed new press law intends to effectively give the government more authority to censor the press and sanction dissidents (HRW, 2004). The government has accused the Ethiopian Free Journalist Association (EFJA) of opposing proper journalism because the association has publicly objected to the Bill. Subsequently, the EFJA’s registration was suspended and the government had confiscated its bank accounts. In January of 2004 the government intervened in the internal affairs of the private organization when it convened EFJA meetings in order to replace their executive committee which opposed the government’s proposed press law (HRW, 2004b).

There are no strictly independent radio stations and the only television station was government operated (U.S 2002). Religions and political organizations as well as foreigners are prohibited from owning television or radio stations. There are also no private ISPs in the country and internet access is provided by the state run telecommunications company.

A 1999 proclamation on broadcasting services sets out a number of sanctions for breaches of its established content restrictions provisions (ARTICLE 19, 2000). Content restrictions are so wide-ranging that they generally prohibit anyone from broadcasting programmes which may be seen to be controversial. Sanctions include license revocation or suspension. Sanctions also include imprisonment for minor infractions such as prohibited advertisement or forgetting to announce the name of the station or producer at the beginning and end of each programme.

The Ethiopian government has been known to interfere with academic freedom by repeatedly using lethal force to disperse political protest by students, repression of the independent Ethiopian Teacher’s Union, and by denying universities autonomy and controlling activities on campuses (HRW, 2003b). Police often use live ammunition to disperse student protests, often resulting in deaths. In 2002 there were over 20 deaths of unarmed students, five of which were officially acknowledged. In 2001 40 students were killed at a Addis Ababa University (AAU) protest and thousands were arrested. The administration for this school is government dominated and has banned all student unions and student newspapers. The government has promised to grant AAU autonomy over ten years ago but has yet to do so.

The Ethiopian Teachers Association (ETA) which has been critical of the governments education policies, has been the subject of harmful government harassment. Many of the union’s members and leaders of been arrested and the association’s property and bank accounts have been confiscated on occasion. In 1997 the ETA leader was assassinated and shortly thereafter, the government created a new

association with the same name forbidding teachers to associate with the first old union. Hundreds of teachers have been arrested, fired, or threatened as a result of being critical of the government.

Despite the fact that the constitution provides for the right to assemble freely, the government requires groups to obtain permits and to give notice of intentions to hold public meetings or demonstrations. There is often long unexplained delays in the issuing of such permits (U.S, 2003). University students are forbidden to form associations on the basis of ethnic affiliation.

The government also has a reputation for imposing restrictions upon and shutting down NGOs that are not subordinate to government agencies and government-sponsored programs (HRW, 2001). In 2001 the founder of the Ethiopian Human Rights Council, and another fellow activist were arrested on the grounds that they incited student protests. Their government search their houses, seized documents and closed the human rights council office. Also in 2001, 27 members of the Human Rights League were acquitted after being arrested in 1997 on charges of supporting the Oromo Liberation Front. Ultimately the League was shut down and its members silenced. Monitoring groups that have become inactive due to government harassment include the Ogaden Human Rights Committee, the Solidarity Committee for Ethiopian Political Prisoners, and the Oromo Ex-Prisoners for Human Rights. The Ethiopian government continues to refuse to grant an Amnesty International representative a visa to enter the country (AI, 2003). Supporters of registered political opposition parties are also reported to have been victims of threats and assaults (HRW, 2004).

Ghana

Article 22 of chapter five of the Constitution outlines the rights guaranteed by the Republic of Ghana in respect to the freedom of expression. Specifically, this article calls for freedom of speech, freedom of the press, freedom of thought and consciousness, freedom of religion, academic freedom, the right to participate in demonstrations, the right to association and the right to take part in trade union activities. For the most part, the state respects these rights and freedoms.

The Government of Ghana has recently been allowing more control over print and electronic media to be transferred to the private sector (U.S, 2003). Although the government generally respects freedom of the press there have been accusations that government officials pressure state run media outlets to reduce their coverage of opposition parties. However, government owned media has reported extensively on accusations of government corruption and there have been anti-government editorials published in state newspapers.

In 2001 the criminal code was amended to revoke Criminal Libel and Seditious Laws that had prohibited reporting intending to injure the reputation of the State. Formally such offences merited a maximum of ten years imprisonment. The Criminal Libel and Seditious laws had previously been the source of international controversy and scrutiny. Amnesty International has reported on over 150 criminal and civil libel actions that have been brought against the independent press in the past (AI 1999).

The National Communications Authority (NCA) reports that Accra has 1 government owned FM radio stations as well as 12 private ones (U.S, 2003). Outside the capital there are approximately 40 FM radio stations across the country, most of which are privately owned. In 2002 there were two semi-private television stations that broadcast in the Greater Accra, Eastern, and Ashanti regions, as well as three cable networks broadcasting in the Greater Accra Region, two of which also broadcast in Kumasi. One private television station also broadcasts from Kumasi. There were more than 10 operating ISPs.

The NCA is the body responsible for administering bandwidth and broadcast media licenses (U.S, 2003). Media organizations have criticized the impartiality of this body seeing as how the Minister of Communications is also the Chairman of the NCA. The selection of the board members was also criticized, as proper consultation with the Council of State did not take place although the NCA Act requires it. Some believe that the NCA should be independent from the Ministry in order to avoid conflicts of interests.

Kenya

Under the former administration of President Daniel arap Moi freedom of expression was guaranteed in theory but was severely restricted as the government broadly interpreted its laws in contradiction of the rights established within the constitution (U.S., 2003). Moi's government was known to have harassed, physically beaten, threatened and arrested members of the independent media on numerous occasions. Journalists were also often among the people violently dispersed at demonstrations that criticized the government.

On May 8th, 2002 a controversial media bill was passed (U.S., 2003). This Bill doubled the price of the bond publishers are required to purchase before printing any materials. It also required them to deposit copies of their material with a registrar two weeks before expected distribution. There was a penalty of the equivalent of \$256 for those who sold or distributed any materials that were not registered or bonded.

Government oppression of its critics had also extended to individual police officers (U.S., 2003). It has been reported that three police officers were fired in 2002 for holding a private political discussion in which it was stated that the government would not be re-elected. The officers were found guilty of compromising their political neutrality by affiliating with a political group which is a violation of the Police Act.

In 2001 the then President ordered that all speeches made by politicians be monitored by police. The Constitution prohibits debate on public issues being reviewed by the courts. In that same year two opposition Members of Parliament were arrested for allegedly threatening to kill the President during their speeches in a meeting.

The government controlled Kenya Broadcasting Corporation (KBC) had maintained a monopoly as it was the only broadcaster with a national network of broadcast and cable television, and of FM and AMM radio and short-waved broadcasts. The KBC was the only domestic news source to reach the population living outside the capital as the 12 independent media companies only operated in Nairobi. The former

government was notorious for delays in issuing licenses to independent broadcasters and was accused of shutting down broadcast companies for disguised politically motivated reasons. Among a number of positive human rights developments that have taken place since the election of the new government in December 2002 was the licensing of new independent radio and television broadcasters (HRW, 2004). However the KHRC emphasizes that existing regulation of broadcasting media remains overly restrictive and must be amended. The former government did not restrict internet access, however, and there were approximately 20 privately run ISPs (U.S., 2003).

Despite various major improvements since the establishment of the recent government new legislation has been introduced to significantly hinder the promotion of freedom of expression. In 2003 the government tabled the Presidential Retirement Bill intending to silence former presidents from making political statements (HRW, 2004). It has also been reported that the son of the former president, who was an elected Member of Parliament, was prevented from addressing his constituency in a public market. In the first instance, armed policemen forbade him. He continued to be barred for subsequent weeks.

The NARC government have also been involved with attempts to silence the Press and political activists. The Kenyan Human Rights Commission has stated that despite increased freedom of the press since the new government took power there have still been numerous reports of intimidation and killings of journalists (KHRC, 2003b). The KHRC notes that the sketchy killings may suggest involvement of public officials. Human Rights Watch reports that an Editor with the East African Standard has been arrested in October of 2003 when his paper published excerpts of a leaked police report (HRW 2004). The controversial report contained information about the murder of a politician who was associated with a group that had been publicly complaining about the new government's failure to fully implement the memorandum of understanding it had entered into with the other parties of the coalition. A Catholic priest was also arrested for trying to meet with the vice-president while leading a protest against land-grabbing.

Although many deem the NARC administration as NGO friendly due to the appointment of certain political activists to government positions, the new government has not refrained from interfering with the work of human rights defenders. Much of this interference stems from the common misconception that the NGOs are no longer needed to criticize the new well-intentioned government. There have even been calls from civil society for NGOs to stop complaining and start assisting the government realize its campaign promises (KHRC, 2003a).

The KHRC reports that the government, the Central Organisation of Trade Unions (COTU) and the Federation of Kenya Employers (FKE) were accusing workers rights NOGs of causing strikes at the Export Processing Zones (EPZ). At the beginning of 2003 this government-union coalition took out press advertisements to insist that they themselves were the sole institutions responsible for workers rights and that it was illegal for people to get involved with trade union matters if they were not registered as a union. The KHRC is reminiscent of how COTU's history of affiliation with the KANU government and labels this recent attempt to keep NGOs away from the labour sector a "blatant manipulation of interest" (KHRC, 2003a). There was also an

incident in which the mayor of Nairobi publicly attacked NGOs working with street families, claiming that they were unprincipled (KHRC, 2003b).

The new government is also guilty of intruding on peaceful protests in attempts to stop demonstrations that are critical of their regime (KHRC, 2003a). However, unlike the KANU administration, the NARC government for the most part refrained from using violence to break up peaceful protests.

Nigeria

Since Nigeria's 1999 transition to civilian rule there has been significant gains made in terms of freedom of expression. Individuals are generally able to express themselves freely. Criticism of the government is wide spread throughout the Nigerian media. For the most part the government tolerates this criticism although there have been various serious incidences of repression and harassment of the members of the press as well as private citizens.

Media Rights Agenda, an NGO in Lagos, has recorded more than fifty cases of violations of freedom of the press and freedom of expression in Nigeria (HRW, 2003b). Many of these were incidences of harassment and intimidation and a few were cases of physical assault by the police. A number of methods have been used in attempts to conceal government abuses and to silence reporters critical of the state. Authorities have been known to order the media not to report on certain incidents, newspaper offices have been raided by police, reporters denied entry into the country, people have been physically prevented from taking pictures or filming, and journalists have been expelled from reporting in specific areas.

The period leading up to the 2003 elections was marked by severe intolerance on the part of the government. Attempts were being made to silence the political opposition parties and their supporters. Human Rights Watch tells of several hundred people lost their lives to politically motivated crimes in the year prior to the election, and at least one hundred dies during the election period (HRW, 2003b). It was reported that most major political parties hired armed groups to threaten their opponents. Several government opponents also appeared to be victims of politically motivated arrests during the pre-election period. Although many were released after the vote the harassment and arrests of opposition parties and their supporters did not stop post election.

Organized political opposition have also been prevented from holding rallies (HRW, 2003b). On more than one occasion individuals were arrested, prior to ANPP rallies in the city of Kano, in an attempt to break up the gatherings. The police justified the arrests by claiming that the individuals didn't have permits or that the rallies were a threat to public security. In general, Nigerian police forces, as well as State Security Service (SSS) have used vicious tactics to disperse non-violent demonstrations (HRW, 2003b). These abuses have not been limited to political opposition but have also been against journalists, protesters and innocent citizens passing by. Extreme cases have resulted in extra-judicial killings.

Human Rights activists and NGOs have also been victims of government intimidation tactics. Human Rights Watch has documented the case of a representative of the Civil

Liberties Organization (CLO) who was threatened and intimidated by a group of police officers regarding a letter the CLO had sent to the Inspector General of Police regarding human rights abuses. The Centre for Law Enforcement Education (CLEEN) and the World Organisation Against Torture have also been victims of government interference. The two organizations had jointly published a book documenting targeted killings in Nigeria “entitled “Hope Betrayed? A report on impunity and state-sponsored violence in Nigeria.” Several hundred copies of the book were confiscated at customs in Lagos due to their political undertones and many of the human rights activists her contributed to the compilation were brought in for questioning by the SSS. The SSS also visited the CLO and CLEEN offices to question staff members about the book. Citizens thought to have been assisting Human Rights Watch with their work have also been subjected to intimidation intense interrogations or have been arrested. (HRW, 2003b). Later that month a program officer for the Movement for the Survival of Ogoni People (MOSOP) organisation was arrested and questioned at the airport about why he was traveling to the UN Human Rights Commission in Geneva.

The SSS has also been restricting the freedom of movement of human rights activists (HRW, 2003b). In December of 2002 several members of civil society had their passports confiscated and were thus prohibited from traveling. Activists who had their passports seized or were prevented from traveling abroad were associated with organizations such as the Pan-African Movement, the Centre for Democracy and Development, the National Association of Democratic Lawyers, Women’s Aid Collective, and the Alliances of Africa (AI, 2002) .

Generally speaking Nigerian government does not restrict internet access although the Nigerian Communications Commission (NCC) has failed to make available the procedures for granting licenses (Media Rights Agenda & ARTICLE 19, 2001). The Commission has absolute discretion to grant or to deny applicants licenses. Section 12(2) of Decree no. 75 of 1 992 states that the Commission can “defer consideration of any application for as long as it seems fit”. The NCC can also impose any kind of limitation on any license granted and has broad discretionary powers to revoke licenses. Unfortunately, there is no forum or procedure to appeal NCC decisions. only Nigerian citizens can be granted telecommunications operating licenses. There is one government owned ISP operating along with dozens of private providers (U.S, 2003). There are approximately 22 private radio stations and 7 private television stations.

Senegal

A wide range of views and opinions is available to the public in Senegal. Views are often expressed that criticize the government policy and officials. However there have been some reports of intimidation or harassment of members of the media by government officials.

It has been described on several occasions that the Senegalese government has tried to keep journalists from reporting on the Casamance conflict (U.S, 2003). In 2000 the government issued warnings that journalists publishing communications from the MFDC would be prosecuted under the penal code as it would be considered an attempt to derail the peace process.

Authorization is required prior to holding a demonstration and the government usually grants them without delay (U.S., 2003). However, in the past the government has denied authorization to opposition parties and to few other applicants citing security concerns. Associations must register with the Ministry of the Interior, but the Ministry registers groups for as long as their association clearly states its purpose and do not violate the law.

In December 2002, police used tear gas to violently disperse a demonstration by angry family members of victims of the fatal ferry accident (U.S., 2003). Police officers who reportedly assaulted a cameraman during the incident were later detained during an investigation into the incident. Police have also forcibly dispersed student protests using tear gas and in January of 2001, one student was killed and a Commission was formed to investigate the incident.

While radio is the most important source of news outside of urban areas, there are 20 privately owned radio stations throughout the country (U.S., 2003). 15 were commercial broadcasters and 5 were community stations. There were no privately owned television stations. There are at least 9 ISPs in the country and the government does not restrict internet access.

South Africa

Chapter 2 of the South African Constitution includes freedom of expression, assembly and association as rights guaranteed by the state. Article 16(2) of the constitution explicitly states that these rights do not extend to promoting hatred based on ethnicity, race, gender, or religion. It was under this subsection that a song deemed hateful towards Indians was banned by (U.S., 2003).

For the most part these rights are respected but there have been reports of police using unnecessary violence to disperse peaceful protests. In March of 2003 police used water cannons on 70 demonstrators that were urging the government to provide antiretroviral treatment for people living with HIV/AIDS (HRW, 2003d). In 2002 police detained 70 activists during the World Summit of Sustainable Development and charged them under apartheid era laws prohibiting participation in public demonstrations (AI, 2003). Although the charges were later dropped one of the detainees was denied medical treatment and suffered from a miscarriage while in detention.

The government uses legislative means to promote media diversity although several laws exist to limit the publication of news relating to police, national defence, prisons and mental institutions (U.S., 2003). The Criminal Procedures Act may also provide for a mechanism to demand that reporter reveal their sources.

The Foreign Publications Board has the authority to ban material from entering the country. This board often banned or edited books, magazines, movies or videos, mostly because the materials were deemed pornographic.

The South African Broadcasting Corporation, a government owned media outlet controlled most of the television and radio stations in the country. Although the

SABC editorial content remained independent from the government in theory, critics charged that many of the executives had been appointed due to allegiance with the government and not necessarily due to their media expertise (U.S., 2003). Aside from two pay-per-view companies, there is only one private television station in the country, reaching 10% of the population. There are over 80 private radio stations, and the government regularly issues community radio licenses.

The Minister of Communications is ultimately responsible for awarding telecommunication licenses. Internet access was unrestricted for those who could afford the service. In November of 2002 Parliament passed the Regulations of Interception and Provision of Communication-Related Information Bill. This legislation allows the state to monitor all telecommunications systems for criminal investigations, including cell phones, the Internet, and e-mail.

Uganda

Occasionally, people are arrested for criticizing the government despite the fact that the constitution provides for freedom of expression and of the press (U.S., 2003). The media in Uganda is mostly uncensored and even the government-run newspaper have been known to criticize the State.

There have however been cases of intimidating the media and police sometimes harass journalists by detaining them for hours (U.S., 2003). In November of 2002 the President ordered the media to stop interviewing “exiled political dissidents” such as the opposition leader.

In 2002 a new anti-terrorist law restricted the freedom of the press severely (AI, 2003). The legislation calls for the imprisonment of journalists who are seemingly supporting terrorist activities. This has resulted in journalists that are critical of the government being accused of being terrorists.

In 2002 police shut down the independent Monitor newspaper, seized materials from their office, and arrested a journalist and two editors on charges of publishing false information that caused a security threat (U.S., 2003). In 1997 a journalist and senior editor of the same paper were charged with printing false information under section 50 of the Penal Code (AI, 2004). Although the trial court acquitted them, they filed a joint petition at the constitutional court in 2002 as they believed that their right to freedom of expression had been violated. In February 2004 Supreme Court decision, on an appeal of the constitutional court ruling, it was declared that section 50 of the Penal Court is unconstitutional. The Supreme Court ruled that the offence of “publication of false news” is void.

A media law requires broadcast and print journalists to hold a university degree in journalism or the equivalent (U.S., 2003). This law also gives the Media Council authority to suspend any newspaper and deny people access to government information. Editors have been charged with publishing pornographic material.

The constitution restricts freedom of assembly for political groups (HRW, 2001). Under Uganda’s “no party” system, all citizens are forced to belong to the government’s grassroots “Movement”. Political parties are permitted to exist but under

article 269 of the constitution it is illegal for parties to partake in normal political party activities (AI, 2002b). It is unconstitutional for political parties to hold national conventions, endorse candidates, issue platforms, or open branch offices outside the capital (U.S., 2003). The Political Organizations Act (POA) also restricts parties from operating or campaigning at district levels or below. The POA also requires parties to submit the names and addresses of at least 50 members of at least one third of all districts in the country.

There have been reports of soldiers intimidating political opposition and disrupting their rallies (U.S., 2003). In January of 2002 one person was killed when police disrupted a Uganda's People Congress rally. Three party members were arrested at that rally but later released due to lack of evidence. In February of the same year another man was killed when police forces fired into a crowd celebrating an election victory. Permits are not required to hold public meetings but government authorities must be informed of such meetings in advance (U.S., 2003). Police do retain the right to deny groups to hold rallies, but most requests are granted.

Non-Governmental Organization Registration Bill requires NGOs to register with the NGO Board, which is made up of representation of the ministry of internal affairs as well as other ministries (HRW, 2001). Not only are NGOs required to register with the board but they must obtain a special permit before they can function. These permits are granted at the discretion of the Board and the Minister of Internal Affairs can arbitrarily the form or length of the permits. In September of 2002 the NGO Board deregistered 25 groups in the name of the public good (U.S., 2003). A Human Rights Watch report describes this Bill as allowing "the government, through its control of the NGO board, virtually limitless powers to interfere with legitimate NGO activities and, effectively, to order the closure of any NGO deemed to have criticized the government or its policies" (HRW, 2001).

There are at least 50 private radio stations operating throughout the country. There are approximately 4 local television stations and more than 12 private television stations available through satellite. There are several commercial uncensored ISPs.

Chapter VII: Access to Justice
[NOT ADDRESSED IN DRAFT]

- Equality before the courts, fair and public hearings, independent and impartial tribunals, habeas corpus, legal aid.
- STANDARDS: African Charter, ICCPR, Principles and Guidelines on the Rights to Fair Trial and Legal Assistance in Africa [add]
- COUNTRIES: ALGERIA, ETHIOPIA, GHANA, KENYA, NIGERIA, SENEGAL, SOUTH AFRICA, UGANDA

Chapter VIII: Arguments Advanced by States for Not Respecting Human Rights How much weight should these be given?

States put forth various arguments to explain their lack of respect for human rights and their inability to properly address human rights in their countries. The following section will attempt to address some of those reasons including states of emergency, such as the one that Algeria has imposed since 1992, public threats and national security arguments, as well as arguments of culture, religion, and tradition.

The African Charter differs from other human rights documents on this issue is that it does not accept any reasons as legitimate reasons for derogating from rights, including states of emergency, public threats, and national security. However, most of the international community *does* allow for the derogation of rights under certain circumstances and we believe that these should be addressed as potentially valid reasons depending on how the limitations are applied to various rights.

[ADD]

**Chapter IX: Conclusion- Overall Adherence to Human Rights
Commitments
Where AU countries under study stand.**

Based on the research conducted thus far, none of the eight countries under review have extraordinary human rights records. This section to look at how these countries have attempted, if at all, to address allegations of human rights violations and at what they are, or are not, currently doing to improve respect for human rights in their states. It will also look at some of the man made obstacles that make human rights illusory in some of the countries under study.

Questions to consider under this section:

1. Does the country's legislation contain many unexplained "clawback" or limitation clauses that make rights illusory or easily derogable?
2. In addressing violations of mass human rights abuses, what has the state done?
I.e.:
 - ✓ A Truth and Reconciliation Commission (South Africa),
 - ✓ National Reconciliation Commission (Ghana).
 - ✓ Human Rights Violations Investigative Commission (Nigeria)
 - ✓ National Consultative Commission for the Protection and Promotion of Human Rights (Algeria)
3. In addressing what might be considered issues that are closely tied to culture and tradition, such as violence against women or right to life and to personal security under Shari'a law, what mechanisms/programs has the country put in place?
4. Does the country have a national human rights commission? Ombudsmen?
5. Have cases against the states been brought before the African Commission on Human and Peoples' Rights, or other UN monitoring bodies? If so, has the country implemented the decisions of those bodies?
6. Does the country have amnesty laws that prohibit victims from seeking redress for?