



African Commitments to Human Rights: A review of eight NEPAD countries

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Introduction and summary

The principal aim of this paper, a summary of a more comprehensive study, is to monitor progress in the field of human rights in order to determine whether the states reviewed have taken concrete steps to domesticate the relevant standards to which they have committed themselves, to determine the level of the actual enjoyment of these human rights commitments within the national sphere, and to provide specific information on the legal and *de facto* situation in the countries concerned.

The countries reviewed are: Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda. These eight countries were chosen because they have all signed up to the African Peer Review Mechanism (APRM); they are central contributors to the New Partnership for Africa's Development (NEPAD); and they represent a good geographical spread on the African continent. The time period is from the end of the Cold War until the present time. This report is a

summary of a longer monograph of the same name, published separately by the African Human Security Initiative (AHSI). Both this paper and the more comprehensive monograph upon which it is based are available at www.africanreview.org.

The rights addressed are personal safety and security, encompassing the right to life; freedom from arbitrary arrest and detention; and freedom from torture, cruel, inhuman or degrading treatment or punishment. Within the theme of personal safety and security we also looked at security issues affecting children and refugees, since the African Union (AU) has a charter and convention in force which specifically address these two vulnerable groups. Other themes addressed are access to justice and freedom of expression.

Our study does not rank or prioritise rights. 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 non-justiciable, or otherwise.

1 Giliane Cherubin-Doumbia worked on behalf of the Institute for Human Rights and Development in Africa (IHRDA) as a research intern on this project. Thanks are extended to the other AHSI partners and to IHRDA director, Alpha Fall, for their input and comments.

THE AFRICAN HUMAN SECURITY INITIATIVE (AHSI)

AHSI is a network of seven African Non-Governmental research organisations that have come together to measure the performance of key African governments in promoting human security. The project is inspired by a wish to contribute to the ambitions of the New Economic Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). Whereas the APRM process has defined a comprehensive set of objectives, standards, criteria and indicators that cover four broad areas, AHSI only engages with one of the four, namely issues of political governance in so far as these relate to human security. Within this area, each AHSI partner has identified a set of key commitments that African leaders have entered into at the level of OAU/AU heads of states meetings and summits. A "shadow review" of how these commitments have been implemented in practice has then been conducted. Eight countries have

been chosen for review, namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda. All eight are members of NEPAD and have acceded to the APRM. While not constituting an exhaustive list of human security challenges in Africa, the AHSI Network selected the following seven clusters of commitments: human rights, democracy and governance; civil society engagement; small arms and light weapons; peacekeeping and conflict resolution; anti-corruption; and terrorism and organised crime. The AHSI partners are the South African Institute for International Affairs (SAIIA), the Institute for Human Rights and Development in Africa (IHRDA), the Southern Africa Human Rights Trust (SAHRIT), the West African Network for Peace (WANEP), the African Security Dialogue and Research (ASDR), the African Peace Forum (APFO) and the Institute for Security Studies (ISS).

The project is funded by the UK Department for International Development (DFID)

The link between human security and human rights

Human security refers to the secure access of human beings to the conditions that most contribute to their flourishing. The value of the concept is that it helps us to focus squarely on human beings and to realise that traditional concerns for the security of the state, and for security against external or internal threats, cannot be viewed as ends in themselves but rather as means that must be judged according to whether and to what extent they contribute to (or indeed detract from) the interests of human beings.

We propose that the relationship between human security and human rights is as follows: human security requires, at a minimum, secure access to the essential requirements for an adequate human life, and these essential requirements are, in turn, specified by the conception of human rights.

Regional human rights standards

All of the countries under review have signed on to the APRM and have committed themselves to the principles set forth in the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance. Accordingly, they 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; and
- "the other international obligations and undertakings entered in the context of the United Nations".²

Of these, the Constitutive Act of the AU, the Grand Bay Declaration and Plan of Action (April 1999), Kigali Declaration (May 2003), the CSSDCA Solemn Declaration and Memorandum of Understanding

(MOU), (June 2002) and the NEPAD Declaration set out general aspirations.

Specific provisions are found in the African Charter on Human and Peoples' Rights, which was adopted by the Organisation of African Unity (OAU) on 17 June 1981 and entered into force on 21 October 1986.

Acceptance of regional human rights standards

All of the countries under review are state parties to the African Charter. Senegal, Nigeria and Uganda were among the first states to ratify the Charter, having done so in 1982, 1983 and 1986 respectively. The last states to become a party to the Charter were South Africa and Ethiopia, having done so in 1996 and 1998 respectively.

Article 62 of the Charter stipulates that periodic state reports on the human rights situation in a country are to be submitted every two years. Of the states under review, at the time of writing, Algeria, Ghana and Uganda owe one report, Ethiopia and South Africa owe two, Nigeria owes five reports and Kenya owes six reports.

The establishment of an African Court on Human and Peoples' Rights is a milestone for human rights in Africa and will hopefully provide the necessary components that the regional human rights system has been lacking; that is, decisions that are binding as well as an enforcement mechanism. Among the states reviewed, Algeria, Senegal, South Africa and Uganda have ratified the Protocol establishing the African Court on Human and Peoples' Rights.

Article 26 of the African Charter encourages the creation of national institutions to promote and protect human rights. All of the countries under review, except Ethiopia,³ have some form of national institution in place to address human rights issues. Three of the countries – Ghana, South Africa and Uganda – have made provisions for a national human rights institution in their constitutions.

The right to personal safety

Under the rubric of the "right to personal security", 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 were reviewed.

² Declaration on Democracy, Political, Economic and Corporate Governance, NEPAD, Assembly of heads of state and government, 38th Ordinary Session of the OAU, 8 July 2002, AHG/235 (XXXVIII), Annex I, paras. 3 and 4.

³ The Legal Affairs Committee of the House of Peoples' Representatives published a draft document on the establishment of a Human Rights Commission and Office of the Ombudsman in three main local languages and distributed it to the public, but these bodies have still not been formed.

Extrajudicial killings

All of the countries in this study guarantee the right to life in their national constitutions.⁴ However, extrajudicial, summary or unlawful killings are a problem in Algeria, Ethiopia, Nigeria, South Africa, Kenya and Uganda.

In Nigeria and Kenya and, on a much smaller scale, Ghana and South Africa, criminal suspects are often the victims of unlawful killings.

In Ethiopia, Algeria, Nigeria and Senegal, most unlawful killings occur in the context of conflict between government forces and armed opposition or terrorist groups, which will be addressed below. However, there were also reports of excessive use of force against peaceful protesters by Ethiopian, Algerian and Nigerian state authorities.

Other circumstances in which unlawful killings occur at the hands of security forces include execution by firing squad of suspected criminals, death while in custody, or simply outright killings. In Uganda, these types of deaths reportedly occur at the hands of Ugandan Peoples' Defence Force (UPDF) soldiers, the police, the Joint Anti-Terrorism Task Force (JATF), and the Chieftaincy of Military Intelligence (CMI).⁵ Police in Ethiopia were also responsible for outright killings.⁶ In Nigeria, police have killed civilians in retaliatory attacks for the deaths of fellow police officers.

Disappearances are a problem in Algeria, Senegal, Uganda and Ethiopia. Algeria can be said to have the most disconcerting problem in the area of disappearances, with the government said to be responsible for thousands of disappearances, most of which occurred in the early 1990s. Also problematic in Algeria are the long-term detentions at undisclosed locations, lasting from weeks or months, in which family members are not given any information on the detainee's whereabouts.⁷ In Senegal, there are allegations that approximately 100 civilians considered to be "rebels" disappeared at the hands of state authorities in the Casamance region between 1997 and 2000. Most of these disappearances have remained unresolved.⁸

In Ethiopia, there are reports of 39 disappearances at the hands of security forces in the past 10 years;

however, as in Algeria, the more widespread problem is that of long-term, unacknowledged detentions.⁹ In Uganda, most disappearances take the form of abductions by the rebel Lord's Resistance Army (LRA); however, short-term disappearances, in the form of incommunicado detention by government security forces, have also been reported.¹⁰ People have also disappeared under Uganda's Operation Wembley.

Death due to extremely harsh prison conditions has occurred in Ethiopia, Ghana, Kenya, Nigeria and Uganda.

In Uganda, Algeria, South Africa, Ethiopia, Nigeria and Senegal, where deaths and disappearances occur at the hands of vigilante, terrorist or rebel groups, the state is still responsible for protecting persons living within its jurisdiction. In Algeria, terrorist groups were responsible for over 1,300 civilian deaths in 2002, although this figure decreased to 250 in 2003. In Nigeria, vigilante groups are responsible for the deaths of numerous suspected criminals. Vigilante groups in South Africa have flagrantly disregarded the law, operated with impunity and caused several hundred deaths and injuries. In Ethiopia, unlawful killings numbered between 1,000 and 1,500 in 2002, primarily in the Oromiya and Somali regions, where the government is engaged in armed conflict with the Oromo Liberation Front (OLF) and *Al-Ittihad Al-Aslamiya*.¹¹

Women in Ghana who have been accused of witchcraft have been lynched, even killed, by members of their own communities.

Arbitrary arrest and detention

The constitutions providing the most substantive rights to arrested and detained persons are those of South Africa, Uganda, Nigeria, Ghana, Ethiopia and, to a much lesser extent, Algeria, which provides the right to a medical examination at the request of the detained person and the right to contact family members immediately upon being arrested or detained. Senegal and Algeria provide for the rights of accused and detained persons in their national penal codes.

Algeria, Ethiopia, Uganda and Nigeria all have a problem relating to arresting and detaining people for

4 Ethiopia guarantees this right in art. 15 of its Constitution, Ghana in art. 13(1), Kenya in art. 71(1) and 72(1), Nigeria in art. 31(1), Senegal in art. 7, South Africa in art. 11 of its Bill of Rights, and Uganda in art. 22(1). Algeria's Constitution is less specific than the others, upholding the fundamental rights and liberties of man and the citizen, as well as upholding the "inviolability" of the human person.

5 Overview of human rights issues in Uganda, Human Rights Watch, <http://hrw.org/english/docs/2004/01/21/uganda6981_text.htm> (accessed on 11 April 2004).

6 Country report on human rights practices – Ethiopia, *op cit*, 2004.

7 Amnesty International 2003 report – Algeria, *ibid*.

8 Senegal: Putting an end to impunity: a unique opportunity not to be missed, Amnesty International, AFR 49/001/2002, April 2002.

9 Country reports on human rights practices – Ethiopia, US Department of State, Bureau of Democracy, Human Rights and Labor, February 2004.

10 Country reports on human rights practices – Uganda, US Department of State, Bureau of Democracy, Human Rights and Labor, February 2004.

11 Country reports on human rights practices – Ethiopia, *op cit*.

long periods without issuing formal charges against such persons. Uganda, Kenya, Nigeria, Ghana and Senegal have problems relating to pre-trial detention. Ghana, Kenya and Nigeria have problems respecting to remand prisoners who are not, but probably should have been, accorded bail and who are, instead, returned to detention.

In Algeria, secret and unacknowledged detentions may last for days, weeks, even months with government and judicial authorities denying knowledge of detainees until they are brought before the court or, alternatively, released.¹²

In Ethiopia, it has been reported that, in smaller towns, people have been detained for indefinite periods of time, without access to judges and oftentimes with their whereabouts left unknown for several months.¹³

Nigeria's constitutional standards are not respected in terms of arrested and detained persons. Police in Ghana have been accused of acting as debt collectors for local businessmen and of arresting citizens in exchange for bribes.¹⁴ There are also reports that Ghanaian authorities often detain persons past the 48-hour limit provided for in Ghana's constitution and that arrests are made without a warrant.¹⁵

Prolonged pre-trial detention

In Ethiopia, it has been reported that hundreds of officials from the former Derg regime have been imprisoned for more than a decade and are still awaiting trial.¹⁶ In Kenya, reports show that arbitrary arrests and detentions remain a problem and that those in pre-trial detention often remain in jail for several years.¹⁷ Uganda has also been criticised for lengthy pre-trial detention, with reports of these detentions lasting for several years.

In Senegal, it is reported 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.¹⁸ According to the South African Human Rights Commission (SAHRC), prisoners awaiting trial before regional courts in South Africa wait an average of six months.

It has been reported that approximately one-third of the prison population in Ghana are remand prisoners.

In Nigeria, those accused of bailable offences are denied the opportunity to be released on bail and the provision for bail is often applied arbitrarily. Reports have noted that more than one-third of the prison population is awaiting trial.

Freedom from torture, and cruel, inhuman or degrading treatment

All of the countries under review prohibit torture and cruel or degrading treatment in their constitutions. South Africa's Constitution is unique, however, in that it stipulates that this prohibition applies to both private *and* public sources.

Torture of suspected criminals, detainees and convicted persons

Torture is a problem in all of the countries under review, with criminal suspects and detainees being particularly vulnerable. It is a very serious problem in Algeria, Uganda, Ethiopia, Ghana, Kenya and Nigeria.

In Algeria, persons being held in secret detention and primarily suspected of terrorist activity are most often subjected to torture and ill-treatment such as beatings, whippings, use of cigarette butts on bare skin, cuttings and electrical shocks.

In Uganda, as in Algeria, suspects are often tortured and subjected to ill-treatment when detained in unregistered facilities known as "safe houses" which were established in 2001. In Kenya, allegations of torture by Kenyan authorities are widespread and security forces are said to use torture during interrogations – against pre-trial detainees and convicted prisoners.

In Ethiopia, political prisoners often bear the brunt of torturous acts by state authorities, such as being tortured with melted plastic dropped on the legs and chest,¹⁹ beatings,²⁰ being forced to run barefoot and being made to crawl on their knees and elbows on gravel and sand.²¹

In Nigeria, police, anti-crime task forces, armed vigilante groups and the military have all been accused of using torture against criminal suspects,

12 Amnesty International report 2003 – Algeria, *op cit*.

13 Country reports on human rights practices – Ethiopia, *op cit*.

14 *Ibid*.

15 Country reports on human rights practices – Ghana, US Department of State, Bureau of Democracy, Human Rights and Labor, 31 March 2003.

16 Overview of human rights issues in Ethiopia, Human Rights Watch, January 2004, http://hrw.org/english/docs/2004/01/21/ethiop6983_txt.htm (accessed 11 April 2004).

17 Country reports on human rights practices – Kenya, *op cit*.

18 Country reports on human rights practices – Senegal, *op cit*.

19 Country reports on human rights practices – Ethiopia, *op cit*, 2004.

20 *Ibid*.

21 Overview of human rights issues in Ethiopia, Human Rights Watch, 2004. http://hrw.org/english/docs/2004/01/21/ethiop6983_txt.htm (accessed on 11 April 2004).

protestors and prisoners. Police often use torture to extract confessions or bribes from suspected criminals.²²

In Ghana, customs officials reportedly beat citizens and beating of suspects is said to be widespread throughout the country.²³

In South Africa, the Independent Complaints Directive (ICD) reported over 20 cases of torture and 16 rapes allegedly committed by police officers between April 2002 and March 2003.

No recent cases of torture have been reported in Senegal; however, in the 1990s, state authorities were accused of using torture on women, political opponents and others in police custody.²⁴

Harsh prison conditions

Harsh and inadequate prison conditions are a problem in most of the countries under review, with only Algeria meeting basic international requirements. Overcrowding is a problem in the other seven countries. Access to medical care is severely limited in all of the countries under review. Most of the countries do not provide adequate meals to prisoners.

Conclusion: Personal safety and security

Most of the countries have major flaws in ensuring the guarantee of these rights. Most disconcerting and problematic is the lack of respect for the right to life, freedom from arbitrary arrest and detention, and freedom from torture and cruel, inhuman or degrading treatment. Post-9/11 measures that have been put in place by some the countries under review, notably Kenya, Uganda and Algeria – which already had anti-terrorism measures in place – are equally disconcerting because of the implications that these measures have for the respect for these specific human rights.

Yet, while serious problems remain, states seem to be taking more responsibility for their human rights records. Algeria's commitment to address the mass disappearances that occurred in the 1990s is a major step forward, as are Kenyan President Kibaki's efforts to address human rights issues. The creation of a National Reconciliation Commission in Ghana to address past human rights abuses, record the truth and heal the Ghanaian community is also a positive step in the effort to instil greater respect for human rights.

Personal safety and security of vulnerable groups: Children and refugees

Security of children

Of the states under review, all except Ghana have ratified the African Charter on the Rights and Welfare of the Child. All of the states under review have signed and ratified the UN Convention on the Rights of the Child.

Among the countries under review, Ethiopia, South Africa, Ghana and Uganda provide protection to children in their national constitutions. Senegal, Algeria, Nigeria and Kenya do not provide constitutional protection and it was not determined whether national legislation specifically addressing children existed.

Harmful cultural practices against children

It has been estimated that in Africa today, the number of living women who have been subjected to some form of female genital mutilation (FGM) ranges from 100 to 130 million. It seems most pervasive in Ethiopia, Ghana, Nigeria, Senegal and Kenya.

In Ghana, *Trokosi* continues to be practised in the Volta and Great Accra regions of the country, affecting several thousand young girls. The practice involves the handing over of virgin girls to fetish priests as atonement for sins or crimes that were committed by a family member of the young girl – even a family member who is deceased.

In Ethiopia, abductions, rape and subsequent forced marriage of girls are common, particularly in rural parts of the country. The abduction usually occurs as a way of compelling the woman into a forced marriage. Forced marriage is also a problem in Ghana, Nigeria and Uganda.

Child soldiers

Of the countries under review, the use of child soldiers is currently a problem in Uganda. Child soldiers were also used in Ethiopia during its border war with Eritrea.

In Uganda, the LRA has been abducting young boys and using them as soldiers or guards.

Child labour

Most child labour practised in the countries under review is in the informal sectors where there is less

²² Security forces in Nigeria: Serving to protect and respect human rights?, Amnesty International, AFR 44/023/2002, December 2002.

²³ Country reports on human rights practices – Ghana, *op cit*, 2003.

²⁴ Senegal: Putting an end to impunity, *op cit*.

government regulation. Children work in numerous informal employment areas, including as domestics, porters, ticket sellers, fare collectors, taxi hustlers, shoe shiners, etc.

In Ethiopia, the International Labour Organisation (ILO) found that children between 5 and 17 years of age worked an average of 32,8 hours a week and that approximately 13 per cent of children between 5 and 9 years old worked from 58 to 74 hours per week. In Ghana, children work as miners and in the fishing industry. In Nigeria, over 12 million children are engaged in some form of economic activity and there is an active trade of children into neighbouring countries to work in the agricultural sector.

In Uganda, child labour is a serious problem with children in urban areas working as sellers, in the sex industry or as beggars. Children are also used to smuggle goods along the Kenyan and Tanzanian borders. In Senegal, primarily in the urban centres, children are commonly forced to work as beggars.

The most extreme form of child labour was found in Uganda where young girls are often abducted by the LRA and used as servants and as sex slaves to the rebels.

Child trafficking

In five of the countries under review, children are trafficked to work in the sex industry.

In Algeria, armed groups reportedly kidnap young women and girls, raping them and forcing them into servitude until their release. Similarly, in Uganda, and on a much larger scale, young women and girls are abducted by the LRA and forced into servitude – many of them, upon having reached sexual maturity, being used as sex slaves and subsequently given to rebel soldiers as wives. Beyond the LRA's practices, other children in Uganda are being trafficked and sexually exploited. In Ethiopia, girls are taken from rural areas to work as child prostitutes in urban areas such as Addis Ababa. This is also a problem in Kenya. In Nigeria, children are trafficked to neighbouring countries to engage in prostitution. In South Africa, the trafficking of children into the country to work in the sex industry is a huge business with the number of affected children reaching almost 30,000.²⁵

It has been reported that children from the southern and Oromiya regions of Ethiopia are trafficked into other regions to work as servants. In Uganda, LRA forces abduct young girls to work as servants. In Ghana,

children are trafficked in and out of the country and used as farm workers, labourers and servants. Within Ghana, boys from rural areas are trafficked to work in fishing communities or in mines. Girls are most often trafficked to work as servants and to assist local traders.

Security of refugees

All of the countries under review have ratified the OAU Convention Governing Specific Aspects of Refugee Problems in Africa, which was adopted in 1969 and entered into force in 1974. All of the countries under review have either acceded or succeeded to the UN Refugee Convention and its Protocol, the last accession having been that of South Africa in 1996. Ethiopia and Uganda both signed the Convention with reservations, Uganda having made numerous reservations concerning the rights that a host state must accord to refugees.²⁶

The two African countries with the highest refugee populations, Uganda and Kenya, have no current national laws in place for granting refugee status.²⁷ Among the countries under review, South Africa, Ghana, Nigeria and Ethiopia have the most elaborate national refugee schemes, with laws and national boards on hand to deal specifically with refugee matters.

Non-refoulement and asylum in practice

Among the countries under review, Uganda and Kenya have the highest refugee populations, each hosting 217,000 and 250,000 refugees respectively. Ethiopia hosts approximately 140,000 refugees. Algeria hosts about 85,000 refugees. The other countries also host refugees, albeit on a much smaller scale.

None of the countries under review has a record of forced repatriation of refugees. However, there have been accounts of refugees being harassed, tortured or even killed in the country of asylum, which demonstrates a lack of protection mechanisms by the host country.

In Kenya, problems arise from lack of clear and concise national legislation on refugees, the government's lack of involvement in refugee matters (with virtually all the responsibility being placed in the hands of the United Nations High Commissioner for Refugees) and the government's tacit encampment policy.

As is the case with the Sudanese in Kenya, the Ugandan government grants *prima facie* refugee

25 Country reports on human rights practices – South Africa, *op cit*, 2004.

26 Information on Ethiopia and Uganda's reservations to the Convention Relating to the Status of Refugees is available at <http://www.unhcr.ch/html/menu3/b/treaty2ref.htm> (accessed on 23 March 2004).

27 Uganda still follows the 1960 Control of Aliens and Refugees Act, a law that has been said to treat refugees as a threat.

status to persons fleeing Sudan. However, refugee rights advocates claim that other asylum seekers face the greatest danger when seeking refugee status.

Ethiopia hosts approximately 140,000 refugees, predominantly from Sudan and Somalia, with the Administration for Refugee and Returnee Affairs (ARRA) handling refugee matters in co-operation with the United Nations High Commissioner for Refugees (UNHCR). A problem faced by refugees hosted by Ethiopia is their confinement to semi-arid areas that are unsuitable for subsistence farming.

The ethnic Sahwari of Western Sahara comprise the majority of Algeria's 85,000 refugee population. As in Uganda, Kenya and Ethiopia, refugees live in designated refugee camps located in remote desert areas of the country where conditions are harsh and inadequate for any subsistence farming.²⁸

South Africa hosts approximately 65,000 refugees and asylum seekers. Refugees and asylum seekers in South Africa live in urban areas, rather than in remote rural camps. Only about 2,000 refugees receive humanitarian aid. As in the case with urban refugees living in Kenya and Uganda, urban refugees in South Africa are often harassed by government officials owing to a lack of identity documents or because of the non-recognition of these documents by officials.

Senegal hosts approximately 45,000 refugees. Approximately 40,000 of these are from Mauritania, having been expelled from Mauritania between 1989 and 1990.

Ghana has a fairly liberal policy for accepting West African refugees and hosts approximately 45,000 refugees, the majority being from neighbouring Liberia.

Nigeria hosts significantly fewer refugees, approximately 9,000, but still maintains a National Commission for Refugees, established in 1989, to handle refugee matters. It has also been designated to address issues of internally displaced persons.

Conclusion: Personal safety and security of children and refugees

Both of these groups still face serious safety and security issues in the countries under review. Children are still vulnerable to various harmful cultural and traditional practices, and to various forms of economic exploitation.

Refugees are extremely vulnerable to rights violations and are often viewed as not worthy of rights that even closely parallel those of citizens or residents. It is clear that host states must improve the process of asylum, and provide better protection and security for

refugees. Host states should also improve the location of refugee camps so that those refugees may have the opportunity to become self-sufficient, rather than having to rely on donor aid. Host states should make an increased commitment to providing refugees with a life that resembles that of citizens and residents.

Freedom of expression

If taken at face value, all of the countries under review, with the exception of Algeria and Ethiopia, guarantee a free and independent press. In Algeria, radio and television are government-owned. In Ethiopia, the government controls all radio and broadcast media, and there are no independent radio stations. Governments have not restricted internet access in any of the countries under review.

While all of the countries under review guarantee the right to freedom of expression in their constitutions, many of the states, notably Algeria, Ethiopia and Kenya, have imposed laws which greatly infringe the right to freedom of expression.

Media repression

In Algeria, at least six different prosecutions occurred in 2002 under the harsh 2001 penal law. In Ethiopia, journalists continue to undergo harassment, threats, detention or arrest by state authorities.

In Kenya, harassment and arrests of members of the media continue under the new administration, albeit on a smaller scale than occurred under the regime of President Moi.

In Uganda, journalists have been harassed, threatened, arrested and detained by police. The government has cited national security arguments to suppress news related to the government's ongoing battle with the LRA. In Nigeria and Senegal, there have been reports of journalists being harassed and assaulted by police because of criticism of the government.

Harassment of members of the media has not been reported in Ghana and South Africa.

Suppression of protests, demonstrations and marches

The countries under review with the harshest practices in relation to the suppression of protests, demonstrations and marches are Algeria, Ethiopia, Uganda and Nigeria.

In Algeria, a 2001 decree prohibits demonstrations in the capital, Algiers. While demonstrations, marches

28 See World Refugee Survey, <http://www.refugees.org/world/countryrpt/africa/2003/algeria.cfm> (accessed on 3 May 2004).

and protests have been allowed in other parts of the country, it has been reported that state authorities use excessive force and violence to disperse event participants.

In Ethiopia, more than 200 peaceful protestors were killed by police in 2002.²⁹ In Nigeria, state authorities have acted harshly against demonstrators, for example, during public protests against the rising price of fuel in 2003, police shot dead up to 20 protestors.³⁰

In Uganda, any activities that interfere with the Movement system are prohibited. Opposition groups are often denied permission to hold public meetings. When opposition groups do hold meetings or events, police often disrupt or disperse them.

In Kenya, organisers of public meetings must give advance notice to local police about planned gatherings. Police have arrested individuals and dispersed events for which prior permission had been obtained. Reports have cited the use of excessive force by state authorities to disperse strikes and demonstrations.

Ghana, Senegal and South Africa show more tolerance for public gatherings and events. Ghana has imposed a ban on university campus demonstrations, but this ban has never been enforced.

Political parties, non-governmental organisations and other groups

Under Algeria's 1992 Emergency Law, all political parties must obtain approval from the Ministry of the Interior before they can be established.

In Ethiopia, the Ethiopian Teachers Association (ETA), which has been critical of the government's education policies, has been under severe government pressure. 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 older union.

In Nigeria, while most group affiliations are respected, government authorities continue to harass members of both the Movement for the Actualisation of the Sovereign State of Biafra (MASSAB) and the Movement for the Survival of the Ogoni People (MOSOP).

In Uganda, the Uganda Law Council prohibits lawyers from participating in radio talk shows or making any public statement on legal matters without prior permission from the Council.

In Ghana, Kenya and Senegal, freedom of association appears unfettered. However, one can anticipate that the Suppression of Terrorism Bill in Kenya will have negative repercussions on the exercise of this right.

Conclusion: Freedom of expression

Of greatest concern after conducting this review is the suppression of peaceful demonstrations, marches, and protests. Also of concern is the persecution that journalists undergo, as well as the self-censorship that journalists impose on themselves as a way of avoiding arrest, harassment, threats or beating by governments.

Access to justice

All of the countries under review have constitutional or other national legislation, such as penal codes, addressing the rights of accused persons, most of them meeting the basic requirements set out in article 7 of the African Charter.

The question of whether state-funded legal aid is an essential element of fair hearings is left vague by the African Charter, but common sense and a growing trend in international law point the same way, suggesting that lack of legal counsel for indigent defendants charged with the most serious crimes will necessarily infringe defendants' right to a fair trial.

The eight countries surveyed fall into two broad categories – those that have constitutional or statutory provisions for state-funded counsel and those that merely guarantee the right to counsel where the defendant pays for such services. Even those states that provide for legal aid frequently lack the funding and human capacity to ensure that these guarantees are consistently implemented.

Of the eight countries surveyed, South Africa and Ghana are the most successful at providing not only for the presumption of innocence but also for the legal assistance to make this presumption effective. South Africa generally respects the constitutional provisions for the presumption of innocence of criminal defendants,³¹ and the Bill of Rights provides for equal access to the courts, a fair trial, the right to appeal, the right to an interpreter during trial, the right to choose one's legal counsel and the right to have legal counsel provided by the state when "substantial injustice would otherwise result".³²

Likewise, the right to be presumed innocent, to choose one's counsel and to be provided with counsel

29 Amnesty International report 2003 – Ethiopia, *op cit*.

30 Overview of human rights issues – Nigeria, *op cit*.

31 Constitution of South Africa, art. 34 and 35(3).

32 *Ibid*.

when necessary are generally respected in Ghana, although financial resources and legal skills are at more of a premium than in South Africa.

The situation is less favourable to defendants in Uganda. A class of countries – Algeria, Nigeria, Kenya, Ethiopia and Senegal – have even less ambitious provisions. Their constitutions provide for the right to legal counsel but, by implication, only where defendants can pay for it. In other words, the constitutional right is confined to the state's non-interference with a defendant's choice. Some of these countries do have mechanisms to provide state legal aid in criminal cases, but none guarantees defence counsel consistently.

Most of the states under review are facing obstacles to ensuring access to justice. Some simple facts limit access for individuals who are poor: courts do not function in rural areas where many individuals live; formal court procedures present obstacles to people who are illiterate; and it is necessary to pay lawyers to act as interlocutors and court fees when launching cases.

A consequence is that, in most rural areas, traditional forms of conflict resolution, such as councils of village elders, continue to operate without any support or intervention from national governments. Of the countries under review, those where traditional courts are most used are Ethiopia, Ghana, Kenya and Nigeria. In Ethiopia, the law recognises some religious and customary courts, including Shari'a courts and councils of elders. Shari'a courts are also recognised in Nigeria, where Shari'a is in force in 12 of the country's 36 states. In Ghana, community tribunals have been used, but were replaced by law in 2003.

Traditional courts are most problematic where they act in criminal cases, because they do not follow the procedural requirements for fair trials. An example of this is the use of Shari'a courts in criminal cases in Nigeria.

Impunity

Failure to prosecute certain individuals for crimes, known as "impunity", is a breach of this principle, generally occurring in countries in which human rights abuses are committed by state agents. The most serious problems of impunity, not coincidentally, are in countries that have experienced civil wars or civil unrest which have resulted in an active role for security forces and consequent opportunities for them to commit human rights abuses. In situations

of armed conflict, it is easy for the state to maintain that all abuses were committed by the other side, yet we know this is not always the case and lack of investigations can encourage future abuses by security forces.

In Uganda, where the war in the north of the country against the rebel LRA continues, the army and the Joint Anti-Terrorism Task Force (JATF) have committed acts violating the country's obligations to protect human rights, such as execution of individuals suspected of being rebels, torture and detention of civilians.

In Algeria, President Bouteflika has stated, on more than one occasion, that he would bring to justice security forces who were accused of killing more than 90 protesters in 2001, but up to the present time no trials have taken place.³³ In both Algeria and Uganda, lack of resources for investigation may be a factor in impunity, but so is the lack of enthusiasm and political will for documenting abuses that may have been committed by state agents. The continuing organised attacks by rebel groups of course create an extremely difficult environment in which security forces must operate; yet it must be emphasised that, for obligations such as protecting the right to life and prohibition of torture, even war does not permit these derogations.

In Senegal, the government of President Wade, elected in 2002, vowed to put an end to impunity, but there has still been no proper investigation of the large-scale human rights abuses committed by the security forces and by the armed rebels in Casamance over the past decade.³⁴

Although Nigeria does not suffer from organised civil conflict on a similar scale to the countries above, outbreaks of communal violence around the country have resulted in abuses by the army and police who are called in to keep the peace. Police and security forces are known to employ excessive force and are rarely held legally accountable for their actions.

In Ethiopia, the government admitted wrongdoing in the deaths of approximately 40 student protesters who were killed in 2001 by police quelling demonstrations at Addis Ababa University. However, no one has been charged or prosecuted in relation to these deaths. In Kenya, the chief abuses by the police are in respect of suspects in detention. Few, if any, police have been charged in relation to such deaths.

Ghana and South Africa do not appear to have significant impunity problems.

³³ World report 2003 – Algeria, Human Rights Watch, *op cit*.

³⁴ Amnesty International report – 2003, Senegal, *op cit*.

Amnesty

One special, explicit form that impunity may take is amnesty laws, which legally exempt certain individuals from prosecution for certain crimes. Amnesty laws are common in order to counteract the threat of prosecution as a disincentive for combatants to lay down arms following periods of armed conflict. However, the use of amnesty laws remains controversial, and some civil society and victims' organisations maintain that amnesty can never be legally given for the most serious crimes. Failing to apply the law equally to all individuals may deprive victims and their families of their access to justice.

The most famous test of this principle came about in South Africa, where individuals who had committed crimes under the apartheid regime were promised non-prosecution in return for their testimony before the Truth and Reconciliation Commission (TRC).

In Algeria, the state has undertaken several measures of unclear effect to grant thousands of armed groups exemption from prosecution in 1999–2000,³⁵ and justified these as measures of peace and reconciliation. Uganda passed an Amnesty Act in 2000. This law offered amnesty, without restrictions, to all LRA fighters who surrendered.

Senegal reported in the mid-1990s that an amnesty law prevented investigation into “past events” in Casamance, but lack of recent invocation of this law leads us to conclude that it is no longer in force or, even if it has not been formally repealed, is no longer being applied.

In countries without a history of civil conflict – Ethiopia, Ghana, Kenya and Nigeria – there was no occasion for amnesty laws to arise.

Conclusion: Access to justice

At the moment, it is doubtful whether most of the countries reviewed have enough lawyers to guarantee counsel to all, even if the state were willing and able to pay. The bright spot is the growing number of non-governmental organisations who are taking up problems of legal aid. Conscientious states will take every opportunity to work together with non-governmental organisations and donors to extend these services, as far as possible, and at minimal cost to state coffers.

Impunity is a problem in all countries, but is of relatively high visibility and thus most responsive to both domestic and international pressure. Although halting impunity does require material resources, it is even more a problem of political will, and thus possible to change more rapidly. Ghana and South Africa, both countries relatively free of impunity today, were rife with impunity just a decade ago.

Conclusion

The findings in this study are problematic, yet encouraging. Senegal and South Africa seem to have the best overall human rights situations, with Algeria, Ethiopia, Uganda and Nigeria among the most serious human rights violators. Kenya and Ghana fall somewhere in between. Yet none of the countries under review has a completely clean human rights record. It is obvious that most of the states reviewed still have significant hurdles to overcome if they want to show a sincere commitment to the promotion, protection and guarantee of human rights.

States need to make strong efforts to educate and train their agents, particularly police and security forces. Where allegations of human rights violations are made, they must be investigated and officials reprimanded and prosecuted where violations are found. States should also make a concerted effort to address past human rights atrocities where they have occurred. This might entail removing impunity and amnesty laws to make way for prosecutions, or establishing commissions to create factual and precise accounts of past atrocities. Without this, citizens, particularly victims, will lack confidence in the state.

The willingness to create national institutions to address human rights problems that are of a particularly acute nature in certain states and an increased willingness to prosecute human rights perpetrators, who are often state officials, are two very encouraging signs. It is hoped that AU states will continue in their efforts to engage in serious human rights discourse and that each state will continue to address the many human rights problems that plague their individual states and the African continent as a whole.

³⁵ Amnesty International, *Algeria: Truth and justice obscured by the shadow of impunity*, 8 November 2000.