

# Right to personal safety and security

Under the rubric of “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. These are among the rights that put human security in the utmost jeopardy.

## 3.1 Right to life

The relationship of the right to life to human security should be obvious. If one constantly has to live with the fear that one’s life can be taken arbitrarily or summarily by one’s government, one cannot meaningfully participate in society. Therefore, without the respect for right to life, there cannot be an honest discussion of human security.

The general commitment used is article 4 of the Constitutive Act of the AU, which states that the AU and its members will uphold the “respect for the sanctity of human life”. The specific commitment used to evaluate the countries under review is article 4 of the African Charter on Human and Peoples’ Rights which states that: “[h]uman 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.”

In its elaboration of article 4, the African Commission has included summary and extrajudicial killings within the definition of right to life. In a communication against Burkina Faso, the Commission said that forced disappearances were a violation of the right to life.<sup>30</sup> The Commission also interpreted that forced hiding due to credible fear of persecution by state

30 Communication 204/97, *Mouvement Burkinabe des Droits de L’Homme et des Peuples*, Burkina Faso, 14th annual activity report of the OAU, para. 42.

authorities, was a violation of the right to life.<sup>31</sup> 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.<sup>32</sup>

With that in mind, the indicators used in evaluating the right to life in the eight states under review were:

- Is the right to life guaranteed in the state constitution?
- Are summary or extrajudicial killings carried out by government authorities?
- Are disappearances and/or abductions a problem in the country?
- Are there cases of death due to conditions of imprisonment or detention occurring within the country?
- Are violations of the right to life committed by vigilante, terrorist, rebel groups or criminals?

### 3.1.1 Constitutional protections

All of the countries in this study guarantee the right to life in their national constitutions.<sup>33</sup> Despite this guarantee, some of the countries under review, notably Nigeria and Kenya, provide for constitutionally-authorized exceptions to this guarantee. The Nigerian constitution stipulates that the right to life will not have been violated if death results from the use of force “as is reasonably necessary for the defence of any person from unlawful violence or for the defence of property; in order to effect a lawful arrest or to prevent the escape of a person lawfully

31 Communication 205/97, Kazeem Aminu/Nigeria, 13th annual activity report of the OAU, para. 18.

32 Jointly-considered communication numbers 54/91 Malawi African Association / Mauritania; 61/91 Amnesty International / Mauritania; 98/93 Ms Sarr Diop, Union Inter-africaine 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 activity report of the OAU, para. 120.

33 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.

detained, or for the purpose of suppressing a riot, insurrection or mutiny.”<sup>34</sup> Unfortunately, Nigerian state authorities have used this provision to lawfully apply extreme and deadly force against criminal suspects in cases of civil unrest and inter-ethnic violence, resulting in the deaths of hundreds of persons.<sup>35</sup>

Very similar to Nigeria’s exceptions to the right to life guarantee, Kenya’s Constitution considers that no violation has been committed if one “dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case”. This includes: in the defence of any person from violence or for the defence of property; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; for the purpose of suppressing a riot, insurrection or mutiny; in order to prevent the commission by that person of a criminal offence; or if the person dies as the result of a lawful act of war.<sup>36</sup>

Until recently, section 49(2) South Africa’s 1977 Criminal Procedure Act performed a function very similar to the Nigerian and Kenyan constitutional provisions, making it lawful for deadly force to be used by the police or by anyone else, when used against a fleeing suspect. In fact, the provision allowed the “unrestricted use of deadly force” in such circumstances. The Constitutional Court ruled in 2002 that section 49(2) was a violation of the right to life, stating 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.

34 Constitution of the Federal Republic of Nigeria, art. 33(2) (a) to (c).

35 Country report on human rights practices – Nigeria, US Department of State, Bureau of Democracy, Human Rights, and Labor, 31 March 2003.

36 Constitution of the Republic of Kenya, art. 71.

### 3.1.2 Extrajudicial, summary or unlawful killings

Extrajudicial, summary or unlawful killings are a problem in Algeria, Ethiopia, Nigeria, South Africa, Kenya and Uganda.

In Nigeria, Kenya, South Africa, and on a much smaller scale, Ghana, criminal suspects are most often the victims of unlawful killings. In Nigeria, police and anti-crime units were responsible for over 1,200 killings of suspected criminals in 2002 and 2003.<sup>37</sup> The federal anti-crime task force, Operation Fire for Fire, has also been responsible for numerous unlawful killings, using lethal force on suspected criminals.<sup>38</sup> One hundred days after Operation Fire for Fire began in March 2002, over 200 criminal suspects had been killed by police.<sup>39</sup> State-supported vigilante groups in Nigeria, such as the Bakassi Boys, are also responsible for unlawful killings, choosing to kill suspected criminals rather than hand them over to the police.<sup>40</sup> In Kenya, extrajudicial killings are being carried out in the name of terrorism and crime.<sup>41</sup> Between January and June of 2003, more than 50 extrajudicial killings occurred during the apprehension of criminal suspects.<sup>42</sup> Kenya's Suppression of Terrorism Bill is also being used to exonerate police officers and security agents from criminal punishment when "reasonable force" is used and results in the death or injury of persons. Reasonable force is not defined in the Bill.<sup>43</sup> South Africa's Independent Complaints Directorate (ICD),

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

37 Country report on human rights practices – Nigeria, US Department of State, Bureau of Democracy, Human Rights and Labor, 24 February 2004.

38 Country report on human rights practices – Nigeria, *op cit*, 2003 and 2004.

39 Security forces in Nigeria: serving to protect and respect human rights, Amnesty International, AFR 44/023/2003.

40 *Ibid.* Also see World Report 2003 – Nigeria, Human Rights Watch <<http://www.hrw.org/wr2k3/africa8.html>> (accessed on 13 April 2004).

41 Quarterly human rights report, Kenya Human Rights Commission, April–June 2003, 5(2).

42 *Ibid.*

43 Torture status report 2003, Independent Medico Legal Unit , Kenya, <<http://www.imlu.org>>, (accessed on 12 April 2004).

a statutory oversight body, reported over 217 deaths while in police custody and 311 deaths resulting from police action, such as during arrests, between 2002 and 2003. The ICD reported that 88 per cent of those deaths occurred by shooting.

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. In Ethiopia, where unlawful killings numbered between 1,000 and 1,500 in 2002, approximately 250 killings were of demonstrators. In March 2002, over 200 demonstrators were killed in the south-western town of Teppi while protesting administrative boundary changes. Other demonstrators were shot when protesting educational and taxation policies.<sup>44</sup> In Algeria, hundreds of protestors have been killed by state authorities.<sup>45</sup> Between April 2001 and March 2002, it is reported that Algerian authorities killed hundreds of people in the Kabylie region, who were protesting the police shootings of two students.<sup>46</sup> In Nigeria, reports assert that Nigerian police and military take advantage of generalised violence and disorder to kill civilians.<sup>47</sup> In November 2002, during riots between Muslims and Christians in the Kaduna region, the police and military killed dozens of people.<sup>48</sup> In July 2003, Nigerians protesting rising fuel prices were killed by police in Lagos, Port Harcourt and parts of Abuja.<sup>49</sup>

Other circumstances in which unlawful killings occur at the hands of security forces, include death by firing squad of suspected criminals, death while in custody or just outright killings. In Uganda, these types of deaths

44 Amnesty International report 2003 – Ethiopia <<http://web.amnesty.org/web/web.nsf/print/eth-summary-eng> (accessed on 11 April 2004).

45 Amnesty International report 2003 – Algeria <<http://web.amnesty.org/web/web.nst/print/dza-summary-eng> (accessed on 11 April 2004).

46 Country report on human rights practices – Algeria, US Department of State, Bureau of Democracy, Human Rights and Labour (2003 and 2004).

47 Overview of human rights issues in Nigeria, Human Rights Watch, [http://hrw.org/english/docs/2004/01/21/nigeri6976\\_text.htm](http://hrw.org/english/docs/2004/01/21/nigeri6976_text.htm) (accessed on 11 April 2004).

48 *Ibid.*

49 *Ibid.*

reportedly occur at the hands of UPDF soldiers, police, the Joint Anti-Terrorism Task Force (JATF) and the Chieftaincy of Military Intelligence (CMI).<sup>50</sup> Deaths also occurred at the hands of Operation Wembley<sup>51</sup> personnel, which included members of the CMI, the Internal Security Organisation (ISO), volunteers, informants and the Ugandan Peoples' Defence Force (UPDF). The Ugandan Human Rights Commission reported the deaths of at least nine people who were arrested under Operation Wembley and subsequently killed while in custody.

Police in Ethiopia were also allegedly responsible for outright killings.<sup>52</sup> In Nigeria, the death penalty is applied in states following Shari'a law as punishment for what the regional and international community would consider "non-serious crimes" such as adultery. Also in Nigeria, police have killed civilians in retaliatory attacks for the deaths of fellow police officers. In 1999 and 2002, hundreds of civilians were killed in Benou and Bayelsa States under such conditions.<sup>53</sup>

### 3.1.3 Disappearances/abductions

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 which primarily occurred in the early 1990s. Allegations of disappearances against state forces number as high as 12,000, but the government maintains that the number of unsolved disappearances ranges between 4,700 and 4,880.<sup>54</sup> The government has made a commitment to investigate these disappearances, entrusting the National

50 Overview of human rights issues in Uganda, Human Rights Watch, <[http://hrw.org/english/docs/2004/01/21/uganda6981\\_text.htm](http://hrw.org/english/docs/2004/01/21/uganda6981_text.htm)> (accessed on 11 April 2004).

51 Operation Wembley is an anti-violent crime operation that was created in response to public outcry over high crime rates in Kampala. It was replaced in January 2003, by the Violent Crime Crack Unit (VCCU).

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

53 Security forces in Nigeria, *op cit*.

54 Country Reports on Human Rights Practices – Algeria, *op cit*. Also Amnesty International 2003 Report – Algeria, <<http://web.amnesty.org/we/web.nsf/print/dza-summaryeng>> (accessed on 11 April 2004). Also Human Rights Watch world report 2003 – Algeria, <<http://www.hrw.org/wr2k3/mideast1/html>> (accessed on 13 April 2004).

Consultative Commission for the Promotion and Protection of Human Rights with the task of resolving them. They assert that over 3,000 of the disappeared have been accounted for. Still, more than 1,000 disappeared persons remain unaccounted for. 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.<sup>55</sup> In Senegal, there are allegations that approximately 100 civilians considered to be "rebels" were disappeared by state authorities between 1997 and 2000 in the Casamance region. Most of these disappearances have remained unresolved.<sup>56</sup>

In Ethiopia, there are reports of 39 disappearances by security forces in the past ten years. However, similar to Algeria, the more widespread problem is that of long-term, unacknowledged detentions.<sup>57</sup> 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.<sup>58</sup> People have also been disappeared under Uganda's Operation Wembley.

State-sponsored disappearances are not a problem in South Africa, Kenya, Ghana or Nigeria. However, vigilante groups in Nigeria, which have received tacit support from the government, are reportedly responsible for disappearances of suspected criminals.

### 3.1.4 Death due to harsh prison conditions

Death due to extremely harsh prison conditions occurred in Ethiopia, Ghana, Kenya, Nigeria and Uganda. In Ghana, it is reported that more than 100 prisoners died in custody in 2002 from malnutrition and disease. In Uganda, harsh prison conditions, including malnutrition, overcrowding,

55 Amnesty International 2003 report – Algeria, *Ibid.*

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

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

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

and diseases spread due to unsanitary conditions, contributed to the deaths of almost 300 inmates in 2003.<sup>59</sup> In Kenya, approximately 45 people died from torture while in police custody and hundreds of prisoners died due to life-threatening prison conditions. In Nigeria, harsh and life-threatening prison conditions contributed to deaths of many prisoners and suspected criminals. Harsh treatment by Nigerian authorities also contributed to custodial deaths.<sup>60</sup> Harsh and poor prison conditions contributed to some deaths in Ethiopian prisons.

### 3.1.5 Acts committed by vigilante, terrorist, rebel groups or criminals

The African Commission has held that violations of the Charter will be deemed to have occurred “if a state neglects to ensure the rights in the African Charter ... even if the State or its agents are not the immediate cause of the violation.”<sup>61</sup> It further held that even in the case of deaths not committed by government forces, governments “have the responsibility to protect all people residing under its jurisdiction”.<sup>62</sup> In a case against Sudan, the Commission noted that in the case of a civil war, civilians are particularly vulnerable and “the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law”.<sup>63</sup> Thus, within the regional human rights system, states have a duty to protect the rights of persons within their jurisdictions. The state is not absolved of responsibility where it not the actual perpetrator of certain violations.

In the case of Uganda, Algeria, South Africa, Ethiopia, Nigeria and Senegal – where deaths and disappearances occur at the hands of criminals, vigilante, terrorist or rebel groups – the state still maintains a

<sup>59</sup> *Ibid.*

<sup>60</sup> Country reports on human rights practices – Nigeria, *op cit.*

<sup>61</sup> Communication 74/92 *Commission National des Droits de l’Homme et des Libertés/Chad*, 9th annual activity report of the OAU, 1995–1996, para. 20.

<sup>62</sup> Communication 48/90 Amnesty International, 50/91 *Comité Loosli Bachelard*, 52/91 Lawyers Committee for Human Rights, 89/93 Association of Members of the Episcopal Conference of East Africa/Sudan, 13th annual activity report of the OAU, 1999–2000, para. 50.

<sup>63</sup> *Ibid.*

responsibility to protect persons living within its jurisdiction. The large scale deaths of civilians in these countries, particularly in Uganda where the LRA was responsible for approximately 3,000 deaths in 2003, demonstrates an unwillingness or inability of the state to provide adequate protection. The LRA is also responsible for over 8,500 abductions since 2002. In addition to LRA-instigated deaths, vigilante groups in Uganda have also killed persons suspected of theft, adultery or witchcraft. In Algeria, terrorist groups were responsible for over 1,300 civilian deaths in 2002. Fortunately, this number decreased to 250 in 2003. Terrorist groups in Algeria are also responsible for abducting women and girls to be used as sex slaves.

In Nigeria, vigilante groups such as the Bakassi Boys, are responsible for the deaths of numerous suspected criminals. Similar to Nigeria, vigilante groups in South Africa, such as the People against Gangsterism and Drugs (PAGAD) and Mapogo-a-Mathamaga, have flagrantly disregarded the law and caused several hundred deaths and injuries. In Ethiopia, where unlawful killings numbered between 1,000 and 1,500 in 2002, these deaths occurred primarily in the Oromiya and Somali regions where the government is engaged in armed conflict with the Oromo Liberation Front and *Al-Ittihad Al-Aslamiya*.<sup>64</sup>

Although not carried out by terrorist, vigilante or rebel groups, women in Ghana who have been accused of witchcraft have been lynched, even killed, by their own communities. While the Criminal Code of Ghana protects women who are accused of witchcraft, this remains a problem in the country. Many women are forced to flee their village rather than face violence from their fellow villagers. This forced expulsion has been viewed as a violation of the right to life according to the African Commission's elaboration of the right to life principle.

In South Africa, the extremely high murder rate is an indication of the state's inability to provide adequate protection to persons under its jurisdiction. In 2002 alone, 21,738 people were murdered – a ratio of 47,8 per 100,000 of the population. Although this number has dropped from 26,832 murders in 1994 these figures remain shockingly high.<sup>65</sup>

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

65 South African crime statistics on <<http://www.iss.org.za/CJM/stats0903/index.htm>> (accessed on 3 May 2004).

## 3.2 Freedom from arbitrary arrest and detention

The specific commitment to freedom from arbitrary arrest and detention is contained in article 6 of the African Charter on Human and Peoples' Rights which states: "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 interpreted article 6 of the Charter "to permit arrests only in the exercise of powers normally granted to the security forces of a democratic society".<sup>66</sup> It further asserted that a written decree which allows for individuals to be arrested for vague reasons, and not for proven acts, was not in conformity with the spirit of the African Charter.<sup>67</sup> The Commission has also stated that detention without charge is contrary to the Charter.<sup>68</sup>

The indicators used in this review were as follows:

- Does the state provide clear national laws, such as constitutional or legislative provisions, for the protection of arrested and detained persons?
- From the moment that a deprivation of liberty occurs, are basic safeguards in place for the arrested or detained person?
- Are persons often arrested and detained for long periods of time without charge?
- Are lengthy pre-trial detentions a problem in the country?
- Are persons charged with bailable offences often remanded to prison, and comprising a significant part of the country's prison population?

<sup>66</sup> Communication 48/90 Amnesty International, Sudan, *op cit*, para. 59.

<sup>67</sup> *Ibid.*

<sup>68</sup> Communication 140/94, 141/94, 145/ 95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda, Nigeria, 13th annual activity report of the OAU, 1999–2000, para. 51.

### 3.2.1 National legislation

According to the Robben Island Guidelines issued by the OAU, arrested and detained persons should be guaranteed the following basic safeguards:

- The right to inform a relative, or appropriate third person, of the detention;
- The right to an independent medical examination;
- The right of access to a lawyer; and
- Notification of the above rights in a language that the detained person understands.

The constitutions providing the most substantive rights to arrested and detained persons are those of South Africa, Uganda, Nigeria, Ghana,

**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.**

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.

Article 45 of the Algerian Constitution addresses the rights of those taken into custody, stating that detention for questioning cannot exceed 48 hours, giving the right to persons under questioning to contact family members immediately, and providing for a medical examination at the termination of detention if requested by the detained person. However, the Constitution also provides for prolonged detention, “under conditions specified by the 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 12 days.

Article 17 of the Constitution of Ethiopia prohibits arbitrary arrest and detention, stating that no person may be subjected to arbitrary arrest or be detained without a charge or conviction against him”.<sup>69</sup> According to

<sup>69</sup> Constitution of the Federal Democratic Republic of Ethiopia, art. 17.

Ethiopia's Criminal Procedure Code, for non-serious offences, persons detained must be informed of the charges against them within 48 hours and then be offered bail. For serious offences, persons detained may be held for 14 days during which time authorities conduct their investigations. Persons can be held for an additional 14 days while investigations continue.

Freedom from arbitrary arrest and detention is addressed in articles 14(1) and 14(2) of Ghana's Constitution, which guarantee the right to personal liberty and which address the rights of arrested, restricted or detained persons. The Constitution guarantees detainees the right to be informed immediately of the charges against them, in a language that they understand, and also provides the right to a lawyer of their choice. It further requires that detained, arrested, or restricted persons be brought before a court within 48 hours. The Constitution also stipulates that if not tried within a "reasonable" time, the arrested, detained or restricted person should be released, either unconditionally or upon reasonable conditions. Compensation is also stipulated in cases of unlawful arrest, detention or restriction.

Kenya's Constitution states that persons arrested or detained should be brought before a court within 24 hours and within 14 days if the crime is one that is punishable by death.<sup>70</sup> The Constitution also provides for the release "either unconditionally or upon reasonable conditions" of a person arrested or detained if such a person is not tried "within a reasonable time", for persons charged with an offence other than one punishable by death.<sup>71</sup> Finally, the Constitution provides for compensation to those persons who are unlawfully arrested or detained.<sup>72</sup> Despite these clauses, the constitutionally-accepted time frame for a lawful detention in Kenya seems to be unclear, based on article 72(b) of the same chapter, which states that persons arrested or detained shall be brought before a court "as soon as is reasonably practicable".<sup>73</sup> This wording could potentially allow for a detention of any duration, provided that authorities offer a

70 Constitution of the Republic of Kenya, chapter V, art. 72(3)(b).

71 *Ibid*, chapter V, art. 72(5).

72 *Ibid*, chapter V, art. 72(6).

73 *Ibid*.

“reasonable” explanation. The Suppression of Terrorism Bill of 2003 extends detention time, even allowing for incommunicado detention where access to family members, and to counsel, is prohibited.<sup>74</sup>

The Constitution of Nigeria addresses the right to personal liberty and the rights of arrested and detained persons under article 35 and its subsections. It states that arrested and detained persons have the right to “remain silent or avoid answering any question” until having spoken to a legal practitioner of his or her choice. The Constitution also requires that such persons be informed in writing, in a language that he or she understands, within 24 hours of his or her arrest or detention. Arrested or detained persons must be brought before a court “within a reasonable time”, which is defined as one day in any place where there is a court of competent jurisdiction within a 40 kilometre radius. For those not residing within such areas, the Constitution allows for a two-day limit or “such longer period” as the court considers reasonable. It further stipulates that one charged with an offence and detained while awaiting trial, shall not be kept in detention for a period longer than the maximum period of imprisonment prescribed for the offence. Finally, the Constitution calls for compensation and a public apology when arrest or detention has been deemed unlawful.

Senegal’s Constitution does not make specific mention of the right to be free from arbitrary arrest and detention, nor does it contain specific provisions regarding the rights of accused and detained persons. However, article 6 guarantees the right to physical integrity. Senegalese penal procedure allows for a 48-hour detention without charge, which can be extended for up to 96 hours with the authorisation of a public prosecutor or judge. If the person is suspected of crimes against the state, this period of 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. There is a system of bail, but it 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.

<sup>74</sup> Torture report 2003, Independent Medico Legal Unit, Kenya, *op cit*.

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 without just cause; and the right not to be detained without trial.<sup>75</sup> 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 interest 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 or her 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.

Article 23(1) of the Constitution of Uganda provides that no person shall be deprived of personal liberty and accords several guarantees to arrested or detained persons. It provides that arrested or detained persons must be kept in a place authorised by law and must be informed for the reasons for

<sup>75</sup> Constitution of the Republic of South Africa. Under 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.

his or her arrest, restriction or detention and of his or her right to have a lawyer of his or her choice. The arrested or detained person must also be brought before a court within 48 hours. Next of kin of the arrested or detained person should be informed “as soon as practicable”. Next of kin, a lawyer and a 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.

### 3.2.2 Prolonged or illegal detention without charge

In Algeria, numerous reports claim that plain-clothed officials, failing to identify themselves, arrest people and prohibit families from learning the detained person’s whereabouts for varying lengths of time.<sup>76</sup> Secret and unacknowledged detentions last for days, weeks, even months with government and judicial authorities denying knowledge of these secret detentions until the person is brought to court or is released.<sup>77</sup> Prolonged detentions have reportedly lasted from 8 to 18 months.

In Ethiopia, human rights representatives report a greater lack of respect for human rights outside of Addis Ababa, such as in small towns and in rural areas of the country. This is the case with freedom from arbitrary detention, 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.<sup>78</sup> In the Oromiya region of Ethiopia, teachers have suffered the brunt of government harassment, being detained for indefinite amounts of time on accusations of being Oromiya Liberation Front (OLF) sympathisers. Reports claim that thousands of persons remain in detention without charge in Ethiopia, some of these detentions lasting for years.<sup>79</sup> Reports note that in the spring of 2002, 1,700 people were being

<sup>76</sup> Human Rights Watch world report 2003 – Algeria, Human Rights Watch, <<http://www.hrw.org/>> (accessed on 13 April 2004).

<sup>77</sup> Amnesty International report 2003 – Algeria, *op cit*.

<sup>78</sup> Country reports on human rights practices – Ethiopia, *op cit*.

<sup>79</sup> *Ibid*.

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.<sup>80</sup>

Nigeria's 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 and deny access to counsel and family members. Police have been accused of demanding payment before detained and arrested persons can be taken to court. Nigerian authorities have also been accused of making arrests in an attempt to collect bribes.<sup>81</sup> Reports also allege that Nigerian police even place the friends and relatives of wanted suspects in detention in order to encourage suspects to surrender.<sup>82</sup> Vigilante groups, which are tacitly or officially endorsed by state governments, also practice illegal detentions.<sup>84</sup>

Similar to Nigeria, police in Ghana have been accused of acting as debt collectors for local businessmen, arresting citizens in exchange for bribes.<sup>84</sup> There are also reports that Ghanaian authorities often detain persons past the 48-hour limit provided for in the Constitution and that arrests are made without warrant.<sup>85</sup>

In Uganda, the 2002 anti-violent crime operation, Operation Wembley, which became the Violent Crime Crack Unit (VCCU) in January 2003, was responsible for over 400 arrests between June 2002 and August 2002.<sup>86</sup> Many of these people were arrested by persons who did not have the legal authority to do so and were detained in unofficial places. Furthermore, their rights as detained persons were not respected, including access to family and to a medical doctor.<sup>87</sup>

80 World report 2003 – Ethiopia, <<http://www.hrw.org/wr2k3/africa5.html>> (accessed on 12 April 2004).

81 Overview of human rights issues in Nigeria, *op cit*.

82 Country Reports on human rights practices – Nigeria, *op cit*.

83 Amnesty International 2003 Report – Nigeria

<<http://web.amnesty.org/web/web.nsf/print/nga/summary-eng>> (accessed on 13 April 2004).

84 *Ibid*.

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

86 State of pain: Torture in Uganda, Human Rights Watch, March 2004, 16(4) (a), p 50.

87 *Ibid*.

### 3.2.3 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.<sup>88</sup> Those charged with corruption, and who are accused of being members of armed opposition groups, have also lingered in Ethiopian prisons.<sup>89</sup>

In Kenya, reports show that arbitrary arrests and detentions remain a problem and that many suspects are held for months or years before being brought before a court. Those in pre-trial detention often remain in jail for several years.<sup>90</sup>

Uganda has been criticised for the lengthy pre-trial detention with reports of these detentions lasting for several years. It is reported that pre-trial detainees comprise 70 per cent of the prison population and that these detentions last between two and three years.<sup>91</sup>

In Senegal, it has been 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.<sup>92</sup> Recently it was reported that some suspected criminals have been awaiting trial for four to ten years.<sup>93</sup> Non-governmental organisation representatives also spoke of prisoners without counsel who lingered for long periods in prison.

According to the South African Human Rights Commission, local prisoners awaiting trial before regional courts, wait an average of six months. Those awaiting trial before higher courts, wait approximately one year. In extreme cases, the wait lasted up to two years. Between 1995 and 2000, the percentage of unsentenced prisoners in prison increased by 164 per cent and only saw its first decrease between 2000 and 2001.<sup>94</sup>

88 Overview of human rights issues in Ethiopia, Human Rights Watch, January 2004, <[http://hrw.org/english/docs/2004/01/21/ethiop6983\\_txt.htm](http://hrw.org/english/docs/2004/01/21/ethiop6983_txt.htm)>, (accessed on 11 April 2004).

89 *Ibid.*

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

91 Country report on human rights practice – Uganda, *op cit.*

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

93 *Communiqué de Presse: Mettre un terma à la détention illégalement prolongée!*, RADDHO, 6 March 2004.

94 The number of unsentenced prisoners in prison decreased by seven per cent between 2000 and 2001. <<http://www.iss.org.za/CJM/Corrections.html>> (accessed on 3 May 2004).

### 3.2.4 Remand prisoners

In Ghana, courts seem to exercise unlimited discretion in determining the amount of bail, or in remanding people to prison without charge for indefinite periods. It has been reported that approximately one-third of the prison population of Ghana are remand prisoners.

In Kenya, the Kenya Human Rights Commission noted that excessive bail fines contribute to long-term detentions. Many persons arrested, including those charged with minor offences, cannot afford these fines and are forced to remain in police custody. While this situation might not necessarily be viewed as one of illegal detention, the constitutional right to be released “upon reasonable conditions”<sup>95</sup> 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.<sup>96</sup>

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. Detainees are often held for long periods of time with no one being aware of their whereabouts. Reports have noted that more than one-third of the prison population is awaiting trial.

In Ethiopia, bail is often denied where there is only a minimal risk of flight.

## 3.3 Freedom from torture, cruel, inhuman or degrading treatment

Similar to the right to life, and freedom from arbitrary arrest and detention, freedom from torture, cruel, inhuman or degrading treatment is a fundamental right, one that must be protected if human security is to be achieved in society.

<sup>95</sup> Constitution of Kenya, chapter V, art. 72(5).

<sup>96</sup> Seventh Report, Standing Committee on Human Rights, Kenya, May 2003.

The specific commitments to this right are contained in article 5 of the African Charter and the OAU Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines). Article 5 of the African Charter states that all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. The African Commission has stated that this article also encompasses acts which humiliate the individual, or which force the person to act against his or her will or conscience.<sup>97</sup>

The Robben Island Guidelines, which were adopted by the OAU in February 2002, reinforce Africa's commitment to end the practice of

**The Guidelines forbid derogation of this right under any circumstances. It also excludes the use of necessity, national emergency or public order as justification for the use of torture.**

torture by state authorities and aim 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 1 of the UN Convention Against Torture 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. 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 or public order as justification for the use of torture.

Taking the Charter and Commission interpretations, as well as the Robben Island Guidelines, into consideration, the indicators used in this review were as follows

- Do constitutional protections exist against such acts?
- Has the state ratified the UN Convention against Torture and

<sup>97</sup> Communication 17/94, 139/94, 154/96, 161/97 International PEN, Constitutional Rights Project, Interights and Civil Liberties Organisation (on behalf of Ken Saro-Wiwa Jr./ Nigeria, 12th annual activity report of the OAU, 1998–1999, para. 79.

recognised the competency of the United Nations Committee against Torture as stipulated under paragraph 1 of the Robben Island Guidelines?

- Is torture, cruel, degrading or inhuman treatment practised by state authorities?
- Does the state have guidelines in place for the treatment of detained persons that are in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, as stipulated under Part II, paragraph 33 of the Robben Island Guidelines?

### 3.3.1 Constitutional protections

All of the countries under review prohibit torture, cruel or degrading treatment in their constitutions. Algeria's article 34(2) prohibits any form of physical or moral violence or breach of dignity. Article 6 of Senegal's constitution recognises the right to physical integrity. Article 16 of the Constitution of Ethiopia protects persons from bodily harm while article 18 prohibits inhuman treatment including the right to protection from cruel, inhuman, or degrading treatment or punishment. The remaining constitutions all specifically address the prohibition of torture, cruel, inhuman or degrading treatment.<sup>98</sup> South Africa's constitution is unique however, in that it stipulates that this prohibition applies to both public *and* private sources.

### 3.3.2 Ratification of the UN Convention Against Torture and recognition of competency of the UN Committee Against Torture

Paragraph 1(b) of the Robben Island Guidelines stipulates that all African states should ratify the United Nations Convention for the Elimination of Torture and Other Forms of Cruel, Inhuman and Degrading Treatment. It further encourages states to recognise the competency of the United

<sup>98</sup> These guarantees are found in Ghana's Constitution art. 15(2), Kenya's Constitution art. 74(1), Nigeria's Constitution art. 34(1)(a), South Africa's Bill of Rights art. 12(1) and 12(2), and Uganda's Constitution art. 24.

Nations Committee against Torture to hear allegations of torture against the participating state. Of the states under review, Ethiopia and Kenya acceded to the Convention in 1994 and 1997 respectively, with the remaining countries all having ratified it. Additionally, Algeria, Senegal, and South Africa have submitted themselves to the competency of the Committee Against Torture, recognising the competency of the Committee to hear allegations of torture against it.

### 3.3.3 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, where the government has stated that the systematic use of torture is not practiced, persons being held in secret detention and primarily suspected of terrorist activity, are most often subject to torture and ill-treatment. State authorities reportedly use beatings with fists, batons, belts, iron bars and rifle butts. Whippings, use of cigarette butts on bare skin, cuttings and electrical shocks have also been reported. The “chiffon” method, whereby a dirty rag which might be doused with chemicals is placed over the nose and mouth to induce choking, is also reported to be one of the most commonly used methods of torture in Algeria. This method is preferred because it leaves no physical marks or traces on the individual’s body.<sup>99</sup>

In Uganda, similar to Algeria, suspects are often tortured and subjected to ill-treatment when detained in unregistered facilities known as “safe houses”, which were established in 2001. Suspects are primarily political opponents and persons suspected of rebel activity. Methods of torture allegedly include hanging suspects upside down with their hands and feet tied (for hours or days), and beatings with wooden and metal rods, cables, hammers or sticks with protruding nails. “Water torture” is also used – the victim lies face up while a water spigot is opened directly into his mouth.<sup>100</sup>

99 Country reports on human rights practices – Algeria, 2003–2004, *op cit*.

100 State of pain: Torture in Uganda, Human Rights Watch, 29 March 2004.

Males are kicked severely in the genital area and women have been gang raped. In addition to acts committed by government authorities, thousands of civilians have been exposed to torture, cruel, inhuman or degrading treatment at the hands of LRA forces. These acts include abducting children to be used as servants, sex slaves, soldiers and guards. Persons who refuse to do what they are told are subjected to torture, even death, if they do not carry out LRA orders. Mobs in Uganda also use torture against suspected criminals.

In Kenya, allegations of torture by Kenyan authorities are also widespread and security forces are said to use torture during interrogations, on pre-trial detainees and on convicted prisoners. Reports allege over 200 allegations of torture by Kenyan state authorities with most of those acts occurring in police stations before suspects had even been charged. Commonly used methods practiced by police include: hanging persons upside down for long periods; genital mutilation; electric shocks; and submersion of one's head in water.<sup>101</sup> Kenya's Independent Medico Legal Unit (IMLU) reports that torture is widespread and where implicated, police often do not record victim statements, nor do they issue the victim's official medical reports.<sup>102</sup>

In Ethiopia, political prisoners often bear the brunt of torturous acts by state authorities. In 2003, an All Ethiopian Unity Party (AEUP) member was detained for several days by police and tortured with melted plastic dropped on his legs and chest.<sup>103</sup> AEUP members have also been beaten by state officials following meetings.<sup>104</sup> Journalists and religious group members have been subject to torture, cruel, degrading or inhuman treatment by Ethiopian authorities. For example, in February 2003, more than 30 members of a church group were arrested and taken to a police training camp. For two days, they were beaten, forced to run barefoot and made to crawl on their knees and elbows on gravel and sand.<sup>105</sup>

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

101 Country reports on human rights practices – Kenya, *op cit*, 2004.

102 Torture status report, the Independent Medico Legal Unit, Kenya, *op cit*.

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

104 *Ibid*.

suspects, protestors and prisoners. Police often use torture to extract confessions or bribes from suspected criminals.<sup>106</sup> Reports assert that 77 per cent of the prison population has alleged torture in cells, beatings by police and threats with weapons. It is also reported that excessive use of force is used in mediating inter-ethnic or inter-communal conflict and to suppress demonstrations and other protests.<sup>107</sup>

In Ghana, even customs officials reportedly beat citizens and beatings of suspects is said to be widespread throughout the country.<sup>108</sup> Vigilante style groups, as well as communities accusing women of being witches, have also been accused of torturing criminal suspects and suspected witches.<sup>109</sup>

In South Africa, the ICD reported over 20 cases of torture and 16 rapes 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.<sup>110</sup>

### 3.3.4 Harsh prison conditions

Under the right to life, we addressed harsh prison conditions that have led to deaths. However, those conditions also fall under violations of the right to be free from torture, cruel, inhuman or degrading treatment. The African Commission has found that where a complainant was detained for ten months under an extremely bright light; denied bathroom facilities; and subject to physical and mental torture, a violation of article 5 had occurred.<sup>111</sup> It also found that in a case concerning the imprisonment of current African Commissioner, Vera Chirwa and her late husband Orton

105 Overview of human rights issues in Ethiopia, Human Rights Watch, 2004. <[http://hrw.org/english/docs/2004/01/21/ethiop6983\\_txt.htm](http://hrw.org/english/docs/2004/01/21/ethiop6983_txt.htm)> (accessed on 11 April 2004).

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

107 *Ibid.*

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

109 *Ibid.*

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

111 Communication 232/99 John D. Ouko/Kenya, 14th annual activity report of the OAU, 2000–2001, at paras. 22 and 23.

Chirwa, conditions of overcrowding; excessive solitary confinement; shackling in the cell; extremely poor quality of food; and denial of access to adequate medical care, were in violation of article 5.<sup>112</sup> The Commission has even held that prohibiting contact with one's family or refusing to inform one's family of the arrested or detained person's whereabouts, is inhuman treatment "of both the detainee and the family concerned" and in violation of article 5.<sup>113</sup>

The Robben Island Guidelines call for application of the United Nation's Minimum Standard Rules for the Treatment of Prisoners. These Minimum Standard Rules address standards for adequate accommodation, hygiene, food and medical services. However, the appalling prison conditions found in many of the countries under review – which constitute cruel, inhuman and degrading treatment under article 5 of the African Charter – are a clear indication that the Minimum Standards are not being applied.

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 all the other seven countries. Access to medical care is severely limited in all of the countries under review, even Algeria. Most of the countries do not provide adequate meals to prisoners. Some also lack an adequate supply of water.

In Kenya, prison conditions are a major problem. Prisoners are kept in solitary confinement past the allowed time. They are denied contact with family and counsel, or forced to pay bribes in order to do so. There is extreme overcrowding, unsanitary conditions and lack of access to proper medical care. The Standing Committee on Human Rights, now the Kenya National Commission on Human Rights, reported that in one prison, prisoners had not had access to running water in five years. It has also reported the use of electric shocks on prisoners, and exposure to strong artificial lighting for extremely long periods of time. Female prisoners have

112 Communication 68/92, 78/92, Amnesty International, (on behalf of Orton and Vera Chirwa) Malawi, 8th annual activity report of the OAU, 1994–1995, para. 7.

113 Communication 48/90 Amnesty International, 50/91 Comité Loosli Bachelard, 52/91 Lawyers Committee for Human Rights, 89/93 Association of Members of the Episcopal Conference of East Africa/Sudan, 13th annual OAU activity report, 1999–2000, para. 54.

114 Special report on the inspection of Kenyan prisons, Standing Committee on Human Rights, Kenya, 6th special report, April 2002.

also been stripped naked and confined to flooded cells for up to a week.<sup>114</sup>

In Nigeria, prison conditions are extremely harsh with inadequate facilities, severe overcrowding and inadequate access to medical care. Only those inmates with money, or relatives, willing to bring them food, have adequate meals. Most inmates sleep on concrete floors.<sup>115</sup>

In Ethiopia, prisons are overcrowded and conditions are very poor, with families either having to provide food for relatives, or inmates having to buy their food from vendors. Prison conditions are considered unsanitary and medical assistance is inadequate. Deaths have occurred due to these conditions.<sup>116</sup>

In Ghana, prisons are severely overcrowded and conditions are often life-threatening. To relieve overcrowding the President released over 2,000 first time offenders in 2003, who had less than one year of their sentence remaining. Prison camps, where conditions were similar to house arrest, were also established for those having committed minor offences. Prisoners depend on family for food and medicine. In 2003, over 100 prisoners died from disease.<sup>117</sup>

In Uganda, prisons are severely overcrowded and conditions are considered to be harsh and life-threatening. Visits with family members are limited, and juvenile offenders are often kept in prison with adults due to inadequate space in juvenile facilities.

Senegal and South Africa also have poor prison conditions. In South Africa, detention facilities housing illegal immigrants are also affected by the same problems as prisons, such as severe overcrowding and unhygienic conditions. Prisoners in South Africa have also been exposed to extreme violence by fellow inmates and gangs.<sup>118</sup>

### 3.3.5 Other targeted groups

In Ethiopia and Algeria, demonstrators and political meeting participants

115 Country reports on human rights practices – Nigeria, *op cit*, 2004.

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

117 Country reports on human rights practices – Ghana, *op cit*, 2004.

118 Overview of human rights issues in South Africa, Human Rights Watch, <[http://hrw.org/english/docs/2003/12/31/safric7010\\_txt.htm](http://hrw.org/english/docs/2003/12/31/safric7010_txt.htm)> (accessed on 11 April 2003).

are beaten and attacked by state authorities. In Ethiopia, members of the Ethiopia Unity Party (AEUP) have reportedly been beaten after having attended AEUP meetings. Members of religious groups have been beaten and tortured during peaceful assemblies. In Algeria, the Kabylie community has been particularly affected by police violence in recent years.

Journalists have been the target of torture, cruel, inhuman or degrading treatment in many of the countries under review. In Kenya, street children have been beaten and abused by state authorities. In South Africa, immigrants detained in detention centres have reportedly been abused by security personnel.

In Nigeria, the application of Shari'a law in the northern states of the country, whereby people are often subjected to cruel, inhuman and degrading punishment, such as amputation for theft and caning for fornication and public drunkenness, is problematic.

In Uganda, UPDF forces have been accused of raping internally displaced persons and women living in protected villages. Night commuters, often women and children who travel to urban centres after dark in order to seek protection from the LRA, are commonly raped.

### 3.4 Conclusion

The rights that have been addressed, under the rubric of personal safety and security, are among the most fundamental rights that must be ensured and protected if human security is to become a reality in the states under review, and throughout the African continent. As it has been observed, most of the countries have major flaws in ensuring the guarantee of these rights. Most disconcerting and problematic are the disrespect for the right to life, freedom from arbitrary arrest and detention, and freedom from torture, cruel, inhuman or degrading treatment. Post-9/11 measures that have been put in place by some 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 on the respect for these human rights in particular.

Algeria, Ethiopia, Uganda, Nigeria all have problems as it relates to

detaining people for long periods, without issuing formal charges against them. Uganda, Kenya, Nigeria, Ghana, South Africa and Senegal have problems as it relates to pre-trial detention. Ghana, Kenya and Nigeria have problems as it relates to remand prisoners – prisoners who are not, but probably should have been, accorded bail and who are instead returned to detention.

Yet, while serious problems remain, states seem to be taking more responsibility for their human rights records. For example, Algeria's commitment to address the mass disappearances that occurred in the

**While serious problems remain, states seem to be taking more responsibility for their human rights records.**

1990s is a major step in addressing one of the country's major human rights concerns. Kenyan President Kibaki's efforts to address human rights issues, particularly opening up prisons to the media and non-governmental organisations and initiating prison reform, are encouraging. Involvement of the public and civil society in drafting Kenya's new constitution should also be

lauded. 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. Ghana's attempts to address the harsh and life-threatening prison conditions that exist in the country are significant. Human rights education of government authorities and willingness on the part of some states to prosecute its authorities for violations of human rights are very important steps that many of the states under review have taken.

Further, it is hoped that states will continue to take responsibility for their actions while also making increased efforts to protect and ensure the rights of people who are under attack by terrorist, rebel and other armed groups.