

# CURRENT DEVELOPMENTS

## CONSTITUTIONAL HUMAN RIGHTS LAW IN AFRICA

### I INTRODUCTION

There is an increasing body of literature available on the international legal protection of human rights in Africa, through the United Nations system and the African regional system. There can be little doubt about the importance of the international protection of human rights, but it remains of a subsidiary nature. The first line of defence of human rights norms is the domestic systems of the different countries.

It is consequently a matter of concern that very little work is being done to monitor the development of mechanisms for the protection of human rights on the national level on the continent in a systematic way. While the position in some individual countries has been the subject of studies, there is hardly any literature available giving a comparative overview of domestic legal provisions dealing with human rights across the African continent, not even on the entry level of constitutional comparison. This is part of a broader pattern in terms of which African courts very rarely refer to each other, but rather look for authority to Europe and North America.

This study tries to address this situation, by giving an overview of the constitutional recognition of human rights norms in all the countries of Africa. The aim with this article is to provide researchers who wish to engage in the gigantic task of comparing the domestic practice of human rights in African countries on all levels (through constitutional human rights legislation, national human rights institutions, court cases etc) with a starting point, and to identify some of the contours of the territory to be covered in such a broader study.

An issue of much current attention is the impact of international human rights treaties at the domestic level. It has been pointed out that one of the ways in which these treaties have their strongest impact is the indirect avenue of having their standards included within national constitutions.<sup>1</sup> In addition to the objective outlined above, this study attempts to trace the extent to which this has been done in African constitutions. The international instruments that will be considered are the Universal Declaration of Human Rights 1948 (UDHR), International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR),

<sup>1</sup> C Heyns & F Viljoen *The Impact Of United Nations Human Rights Treaties On The Domestic Level* (2002) 5.

International Covenant on Civil and Political Rights 1966 (ICCPR), and the African Charter on Human and Peoples' Rights 1981 (ACHPR).

As it turns out, this is a particularly opportune time to engage in such a study. At the regional level, the African Union (AU) recognises human rights as one of its objectives or principles; the African Human Rights Court is in the process of being established, and all the constitutions of African countries now recognise the concept of human rights. Human rights are indeed the idea of our time, also in Africa and the acceptance of the idea should be traced by the research community.

The limitations of this study should be recognised and spelled out at the start. The study focuses only on the formal recognition of human rights norms in African constitutions and does not look into how well these rights and obligations are complied with (or not complied with) on the ground, or how they have been interpreted by the courts or the executive. The rights are essentially taken at face value as they appear in the constitutions. The study is quantitative in that incidences of the formal recognition of the rights in question are traced.

A further limitation relates to the fact that for practical purposes the rights as formulated in the different constitutions have had to be grouped into broad categories that are based generally on how the rights are presented in some of the principal international human rights treaties relevant to Africa. In certain cases rights may fit into more than one category.

Statements to the effect that a certain number of constitutions recognise a certain right should also, for another reason, be viewed with caution before they are regarded as a reflection of the legal position of human rights in the country. Other, non-constitutional, parts of the legal system may protect the norm in question even if the constitution does not recognise it. (For example fair trial may be guaranteed in ordinary legislation, or a national human rights commission may similarly have been created through such legislation even if the constitution is silent on these issues.) This study does not cover such non-constitutional parts of the law.

It is our contention that the study undertaken here remains of value, in spite of its narrow focus on the formal acceptance of these norms and provisions in the constitutions of the countries in question. The fact that a certain norm or provision has found its way into the constitution of a country reflects — or should reflect — a certain priority that has been given to that provision or norm. By including certain norms in its constitution, a state notifies its population and the world at large that it is willing to be judged according to those norms. It is hoped that studies such as the current one may help to stimulate and facilitate the process of accountability of states in terms of the norms they have chosen to include in their constitutions.

In the case of international human rights treaties, the argument is

sometimes made that those norms were adopted by states as a result of international pressure, and as such do not reflect a commitment entered into on a voluntary basis. The same argument can conceivably be made in respect of domestic constitutions, but would entail a much more comprehensive surrender of sovereignty, and would in most cases be less credible. States essentially have two options in this context — to be willing to be judged in terms of the norms in their constitutions, or not to be taken seriously.

In essence, then, this study provides an overview of the standards that African states have set for themselves and to which they attach sufficient weight to have them included in their constitutions. Any comprehensive study of all aspects of human rights compliance in Africa would have to start with this kind of overview or at some point in time cover it, as the different layers of human rights protection are examined. Viewed in that light, the study poses a challenge to other researchers: we have examined the first layer, and here are our results. We hope this will be taken further.

It is also hoped that this study will enable judges, practicing lawyers and researchers to include comparisons with African constitutions in their work.

In what follows some general provisions of the constitutions under consideration which are not necessarily part of the human rights provisions are first discussed. A comparative overview of general provisions specifically relevant to human rights is then provided (application, interpretation, limitation and derogation). Thereafter, the recognition of specific rights is compared. The article therefore examines for the most part the bills of rights of the different constitutions (and the preambles where relevant) and the sections on principles of state policy. Other sections of the constitution are cited for example with regard to provisions on citizenship, the right to vote and the right to property. A summary of the frequency with which the specific rights are recognised, and the extent to which individual African countries recognise these rights, is provided in tabular form at the end.

This study covers the constitutional provisions available to the authors up to January 2006.<sup>2</sup>

2 The main sources used were C Heyns & M Van der Linde (eds) *Human Rights Law in Africa* vol 2 (2004) (published in French as *Recueil Juridique Des Droits De l'Homme en Afrique* with P Tavernier (ed)); AP Blaustein & GH Flanz (eds) *Constitutions of the Countries of the World* (2006), the holdings of the Oliver Tambo Law Library of the University of Pretoria <<http://www.up.ac.za/asservices/ais/law/africa.htm>> and the Centre for Human Rights website <[http://www.chr.up.ac.za/hr\\_docs\\_country.html](http://www.chr.up.ac.za/hr_docs_country.html)>. Students and alumni from various African countries at the Centre for Human Rights also assisted with access to constitutional texts, as did various foreign embassies in South Africa. Constitutions were also sourced from various websites.

## II PROVISIONS IN AFRICAN CONSTITUTIONS RELEVANT TO HUMAN RIGHTS

All the countries of Africa now have written constitutions.<sup>3</sup> A review of the human rights-related provisions of the constitutions of the 53 countries of Africa reveals that all these constitutions now recognise, in one way or another, the concept of human rights although the means and consequences of constitutional recognition differ greatly.

The bills of rights of 26 countries (mostly, although not exclusively, former British colonies) are explicitly justiciable,<sup>4</sup> containing provisions that specifically enable aggrieved persons to seek redress from courts. Botswana (sec 18), Cape Verde (arts 18, 20), Egypt (art 57), Eritrea (art 28), The Gambia (secs 5, 37), Ghana (arts 2, 33), Guinea-Bissau (art 30) Kenya (sec 84), Lesotho (art 22), Liberia (art 26), Malawi (arts 9, 15, 46(2)), Mauritius (sec 17), Mozambique (arts 69, 70, 79), Namibia (arts 5, 25), Nigeria (sec 46), São Tomé & Príncipe (art 19), Senegal (art 91), Seychelles (art 46), Sierra Leone (sec 28(1)), South Africa (sec 38), Sudan (art 34), Swaziland (sec 35), Tanzania (art 30(3)), Uganda (art 50), Zambia (art 28) and Zimbabwe (sec 24). Eighteen constitutions (mostly those of former French or Belgian colonies), contain rights that are not explicitly justiciable.<sup>5</sup> Nine constitutions contain an elaboration of rights in which no mention is made of judicial oversight in the event of the

3 These countries (and the year the constitution was promulgated) are Algeria (1996), Angola (1992), Benin (1990), Botswana (1999), Burkina Faso (1991), Burundi (2004), Cameroon (1996), Cape Verde (1992), Central African Republic (1994), Chad (1996), Comoros (2001), Congo (2002), Côte d'Ivoire (2000), Democratic Republic of Congo (2006), Djibouti (1992), Egypt (1971 amended 1980), Equatorial Guinea (1991), Eritrea (1997), Ethiopia (1995), Gabon (1991), The Gambia (1996), Ghana (1992), Guinea (1990), Guinea-Bissau (1984), Kenya (1963), Lesotho (1993), Liberia (1986), Libya (1969), Madagascar (1992), Malawi (1994), Mali (1992), Mauritania (1991), Mauritius (1968), Morocco (1972), Mozambique (2004), Namibia (1990), Niger (1999), Nigeria (1999), Rwanda (2003), São Tomé & Príncipe (1975), Senegal (2001) Seychelles (1993), Sierra Leone (1991), Somalia (Transitional Charter 2004) South Africa (1996), Sudan (1998), Swaziland (2006), Tanzania (1977), Togo (1992), Tunisia (1959), Uganda (1995), Zambia (1991) and Zimbabwe (1980). Western Sahara is not a member of the United Nations but is a member of the African Union. It does not have a constitution and is not referred to in this study. The authors were not able to obtain the post 2002 amendments to the constitutions of Central African Republic and Tunisia, which may extend to human rights provisions.

4 Explicitly justiciable bills of rights contain provisions that specifically enable aggrieved persons to seek redress from courts. Botswana (sec 18), Cape Verde (arts 18, 20), Egypt (art 57), Eritrea (art 28), The Gambia (secs 5, 37), Ghana (arts 2, 33), Guinea-Bissau (art 30) Kenya (sec 84), Lesotho (art 22), Liberia (art 26), Malawi (arts 9, 15, 46(2)), Mauritius (sec 17), Mozambique (arts 69, 70, 79), Namibia (arts 5, 25), Nigeria (sec 46), São Tomé & Príncipe (art 19), Senegal (art 91), Seychelles (art 46), Sierra Leone (sec 28(1)), South Africa (sec 38), Sudan (art 34), Swaziland (sec 35), Tanzania (art 30(3)), Uganda (art 50), Zambia (art 28) and Zimbabwe (sec 24).

5 Algeria (art 139), Angola (arts 43, 121), Benin (arts 114, 121), Burkina Faso (art 125), Burundi (arts 60, 228), Central African Republic (art 78), Chad (art 148), Comoros (art 31), Congo (art 135) Democratic Republic of Congo (art 150), Djibouti (art 75), Gabon (art 83), Guinea (art 9), Mali (arts 81, 85), Niger (art 99), Rwanda (art 44), Somalia (art 4) and Togo (art 99).

violation of rights.<sup>6</sup> Two countries recognise human rights only in the Preamble<sup>7</sup> while the rest recognise human rights also in bills of rights and in some cases also in directive principles of state policy and similar sections.

Civil and political rights are on the whole significantly more widely protected than socio-economic rights in African constitutions. Though recognition of the latter rights is generally within the bill of rights, some constitutions recognise socio-economic rights as principles of state policy (Egypt, Lesotho, Nigeria, Sierra Leone, Sudan), while in some constitutions recognition is both in the bill of rights as well as in principles of state policy (Eritrea, Ethiopia, The Gambia, Ghana, Guinea-Bissau, Liberia, Malawi, Namibia, Swaziland, Tanzania, Uganda and Zambia).

### (a) General constitutional provisions

The principle of constitutional supremacy, in terms of which the constitution is the highest law of the land, is recognized in 44 constitutions.<sup>8</sup>

Popular sovereignty, or the concept that the people are the source of political power, is recognized in 45 countries.<sup>9</sup> Remarkably, the phrase 'government of the people, by the people and for the people', which originated from Abraham Lincoln's Gettysburg Address in 1863, is to be found in 15 African constitutions, mainly of francophone countries.<sup>10</sup>

6 Cameroon, Côte d'Ivoire, Equatorial Guinea, Ethiopia, Libya, Madagascar, Mauritania, Morocco, and Tunisia.

7 Cameroon and Comoros.

8 Algeria (preamble), Angola (art 154), Benin (preamble, art 3), Burkina Faso (art 167), Burundi (preamble, art 48), Cape Verde (art 3(2)(3)), Chad (preamble), Comoros (art 35), Congo (art 150), Côte d'Ivoire (preamble, art 99), Djibouti (art 78), Equatorial Guinea (art 94(e)), Eritrea (art 2(3)), Ethiopia (art 9), Gabon (art 85), The Gambia (sec 4), Ghana (art 1(2)), Guinea (preamble), Guinea-Bissau (art 8), Kenya (sec 3), Lesotho (sec 2), Liberia (art 2), Libya (art 34), Madagascar (art 121), Malawi (arts 4, 5, 10), Mali (arts 26, 121), Mauritania (art 87), Mauritius (sec 2), Morocco (arts 58, 81), Mozambique (art 2(4)), Namibia (art 1(6)), Niger (preamble), Nigeria (sec 1), Rwanda (preamble, art 200), Seychelles (art 5), Sierra Leone (sec 171(15)), Somalia (art 3), South Africa (secs 1, 2), Sudan (art 34), Swaziland (sec 2), Togo (preamble, art 159), Uganda (art 2), Zambia (art 1(3)) and Zimbabwe (sec 3).

9 Algeria (art 6), Angola (art 3), Benin (art 3), Burkina Faso (art 32), Burundi (art 7), Cameroon (art 2), Cape Verde (art 3(1)), Central African Republic (art 18), Chad (art 3), Comoros (art 3), Congo (art 3), Côte d'Ivoire (art 31), Democratic Republic of Congo (art 5), Djibouti (art 3), Egypt (art 3), Equatorial Guinea (art 2), Eritrea (art 1(4)), Ethiopia (art 8), Gabon (art 3), The Gambia (sec 1(2)), Ghana (art 1(1)), Guinea (art 2), Guinea-Bissau (art 2), Liberia (art 1), Libya (art 1), Madagascar (art 6), Malawi (art 12), Mali (art 26), Mauritania (art 2), Morocco (art 2), Mozambique (art 2), Namibia (art 1(2)), Niger (art 5), Nigeria (sec 14(2)(a)), Rwanda (art 2), São Tomé & Príncipe (art 6(2)), Senegal (art 3), Sierra Leone (sec 5(2)(a)), Somalia (art 1.1), Sudan (art 4), Tanzania (art 8(1)(a)), Togo (art 4), Tunisia (art 3), Uganda (art 1) and Zambia (art 1(2)).

10 Algeria (art 11), Benin (art 2), Burundi (art 6), Central African Republic (art 18), Chad (art 7), Congo (art 2), Côte d'Ivoire (art 30), Djibouti (art 1), Gabon (art 2), Guinea (art 1), Mali (art 25), Niger (art 4), Rwanda (art 1), Senegal (art 1) and Togo (art 2).

The concept of self-determination of the population as a whole is implicitly recognised in the provisions on popular sovereignty referred to above. The constitutions of Algeria and Guinea-Bissau recognise the right of ‘all peoples’ to self-determination.<sup>11</sup> A right to self-determination of a sub-section of the population is protected explicitly only in the Ethiopian Constitution where the reference is to the right of ‘every nation, nationality and people’ in Ethiopia to self-determination, including secession.<sup>12</sup>

Ten constitutions recognise a state religion: nine recognise Islam,<sup>13</sup> and one, Christianity.<sup>14</sup>

A total of 49 constitutions recognise the independence of the courts,<sup>15</sup> 22 provide for electoral commissions,<sup>16</sup> 19 for an ombudsman or public protector<sup>17</sup> and 12 constitutions provide for national human rights institutions.<sup>18</sup> ‘Peoples’ rights’, on the other hand, which enjoy such prominence in the African Charter on Human and Peoples’ Rights, are only reflected in seven constitutions.<sup>19</sup>

Remarkably, 16 African constitutions recognise a right of resistance, should the constitution or constitutional values be overthrown.<sup>20</sup>

11 Algeria (art 27) and Guinea-Bissau (art 18(2)).

12 Art 39.

13 Algeria (art 2), Comoros (preamble), Djibouti (preamble), Egypt (art 2), Libya (art 2), Mauritania (art 5), Morocco (art 6), Somalia (art 8) and Tunisia (art 1).

14 Zambia (preamble).

15 Algeria (art 138), Angola (arts 120, 127), Benin (art 125), Burkina Faso (art 125), Burundi (art 209), Cameroon (art 37(2)), Cape Verde (art 210), Central African Republic (art 75), Chad (art 146), Comoros (art 28), Congo (art 137), Côte d’Ivoire (art 101), Democratic Republic of Congo (art 149), Djibouti (art 71), Egypt (arts 65, 165, 166), Equatorial Guinea (art 83), Eritrea (arts 10, 48(2)), Ethiopia (art 78(1)), Gabon (art 68), The Gambia (sec 120(3)), Ghana (arts 125, 127), Guinea (art 80), Guinea-Bissau (art 95), Lesotho (sec 118), Libya (art 28), Madagascar (art 99), Malawi (secs 9, 103), Mali (art 81), Mauritania (art 89), Morocco (art 82), Mozambique (art 217(1)), Namibia (art 78), Niger (art 98), Nigeria (sec 17(2)(e) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (arts 60, 140), São Tomé & Príncipe (art 104), Senegal (art 88), Seychelles (art 119), Sierra Leone (sec 8(2)(c) of the Fundamental Principles of State Policy and sec 120(3)), Somalia (art 55), South Africa (sec 165(2)), Sudan (arts 99, 101), Swaziland (sec 62 of the Directive Principles of State Policy and sec 141), Tanzania (sec 107A), Togo (art 113), Tunisia (art 65), Uganda (art 128), Zambia (art 91) and Zimbabwe (sec 79B).

16 Burundi (art 89), Democratic Republic of Congo (art 211), Eritrea (art 58), Ethiopia (art 102), The Gambia (sec 42), Ghana (art 43), Kenya (sec 41), Liberia (art 89), Malawi (sec 75), Mauritius (sec 38), Nigeria (secs 153, 285), Rwanda (art 180), Seychelles (art 115 provides for an Electoral Commissioner), Sierra Leone (sec 32), Somalia (art 68), South Africa (sec 181), Sudan (sec 128), Swaziland (sec 90), Tanzania (sec 74), Uganda (art 60), Zambia (art 76) and Zimbabwe (sec 61).

17 Angola (art 142), Burundi (art 237), Cape Verde (art 20), Congo (art 163), Côte d’Ivoire (art 115), Ethiopia (art 55(15)), The Gambia (sec 163), Lesotho (sec 134), Malawi (sec 120), Mauritius (sec 96), Mozambique (art 256), Namibia (art 89), Rwanda (art 182), Seychelles (art 143), Sierra Leone (sec 146), South Africa (sec 181), Togo (art 154), Uganda (art 223) and Zimbabwe (sec 107).

18 Congo (art 167), Ethiopia (art 55(14)), Ghana (art 216), Malawi (sec 129) Niger (art 33), Rwanda (art 177), South Africa (sec 181), Swaziland (sec 163), Tanzania (sec 129), Togo (art 152), Uganda (art 51) and Zambia (art 125).

19 Benin (art 11), Cameroon (preamble), Ethiopia (arts 39, 43), Madagascar (art 35), South Africa (sec 31), Sudan (art 27) and Uganda (art 36).

20 Benin (arts 19, 66), Burkina Faso (art 167), Cameroon (preamble), Cape Verde (art 19), Chad (preamble), Congo (art 10), Democratic Republic of Congo (art 28), The Gambia (art 6), Ghana (art 3) Guinea (art 19), Mali (art 121), Mozambique (art 80), Niger (art 13), Rwanda (art 48), Togo (arts 21, 45, 150) and Uganda (art 3(5) & (6)).

**(b) General provisions of specific relevance to human rights**

Most constitutions contain certain general provisions that are specifically applicable to human rights, such as those dealing with the application, interpretation, limitations and derogation of rights.

*(i) Application clauses*

None of the international instruments cited contains application clauses. The bills of rights in 13 African constitutions contain application clauses.<sup>21</sup> All of them provide that they bind the organs of state (including the judiciary, legislature and executive), and all except Burundi, Cape Verde and Ethiopia also bind natural and juristic persons. Only two bills of rights explicitly provide that they apply to 'all law'.<sup>22</sup>

*(ii) Interpretation clauses*

Articles 4 and 5 in the ICESCR and ICCPR respectively prohibit the interpretation of Covenant provisions for the destruction of any of the rights and freedoms contained in the Covenant, or greater limitation than provided for therein. The African Commission on Human and Peoples' Rights is empowered by art 60 of the ACHPR to draw inspiration from international law on human and peoples' rights, including various African as well as UN instruments. Twenty-one bills of rights in African constitutions contain interpretation clauses.<sup>23</sup> Twelve of these clauses refer to the use of international human rights law in the interpretation of the bill of rights.<sup>24</sup> These constitutions typically declare either that the protected rights do not preclude the protection of other rights not explicitly provided for, or that the bill of rights must be interpreted with due regard to international law and international treaties to which the state is a party.<sup>25</sup>

21 Burundi (art 48), Cape Verde (arts 15, 16), Democratic Republic of Congo (art 60), Ethiopia (art 13), The Gambia (sec 17), Ghana (art 12), Lesotho (sec 4(2)), Malawi (sec 15), Mozambique (art 56), Namibia (art 5), South Africa (sec 8), Swaziland (sec 14(2)) and Uganda (art 20).

22 Mozambique and South Africa.

23 Angola (art 21), Botswana (sec 19), Cape Verde (art 17), Equatorial Guinea (art 14), Eritrea (art 29), Ethiopia (art 13), The Gambia (sec 38), Guinea-Bissau (art 28), Kenya (sec 86), Lesotho (sec 24), Mauritius (sec 19), Mozambique (arts 42, 43), São Tomé & Príncipe (art 17), Seychelles (arts 47-49), Sierra Leone (sec 30), Somalia (art 14), South Africa (sec 39), Swaziland (sec 39), Uganda (art 45), Zambia (art 32) and Zimbabwe (sec 26).

24 Angola, Cape Verde, Equatorial Guinea, Eritrea, Ethiopia, Mozambique, São Tomé & Príncipe, Seychelles, Somalia, South Africa and Uganda.

25 The interpretation clauses of the other nine bills of rights are largely technical in nature and relate to the definition of terms and the interpretation of actions by certain categories of persons such as members of the armed forces (Botswana, The Gambia, Kenya, Lesotho, Mauritius, Sierra Leone, Swaziland, Zambia and Zimbabwe).

Nineteen constitutions provide that treaties and agreements lawfully ratified and published assume a superior position to domestic law.<sup>26</sup> Several constitutions contain provisions relating to the incorporation of treaties into domestic law through the enactment of laws.<sup>27</sup>

Eighteen constitutions incorporate provisions of international human rights instruments in their preambles,<sup>28</sup> all of them except Equatorial Guinea explicitly make reference to the ACHPR, and seven of these declare the preamble to be an integral part of the constitution.<sup>29</sup> Four constitutions explicitly incorporate the provisions of international human rights instruments that the respective states have ratified into their bills of rights, three (Angola, Benin, Burundi) of which explicitly incorporate the ACHPR.<sup>30</sup> International agreements binding on Namibia form part of the law of Namibia.<sup>31</sup> Self-executing provisions of agreements that have been approved by the respective Parliaments of South Africa and Swaziland become law in the respective jurisdictions without having to be enacted in national legislation.

### (iii) *General limitation clauses*

Article 4 of the ICESCR sets out conditions under which rights may be limited while articles 5 of both the ICESCR and ICCPR prohibit the restriction of the rights and freedoms recognised in any country on the basis that they are not recognised by the respective international instruments. In the case of the ACHPR, art 27(2) has been interpreted by the African Commission to serve the role of a general limitation clause.<sup>32</sup> All 53 African constitutions contain rights that are subject to internal limitations (see the discussion below of the specific rights). In addition, 25 constitutions contain general clauses in terms of which limitations on all rights may be imposed, in some cases through laws of

26 In most cases this superiority is made subject to the observance by the other party of the treaty. Benin (art 147), Burkina Faso (art 151), Burundi (art 292), Cameroon (art 45), Central African Republic (art 69), Chad (art 222), Comoros (art 10), Congo (art 185), Democratic Republic of Congo (art 215), Djibouti (art 37), Guinea (art 79), Madagascar (art 82(3)), Mali (art 116), Mauritania (art 80), Niger (art 132), Rwanda (art 190), Senegal (art 98), Togo (art 140) and Tunisia (art 32).

27 Malawi (sec 211), Nigeria (sec 12), Seychelles ((art 64) treaties also become binding upon a resolution of a majority of members of the National Assembly or where written law authorises the president to execute a treaty), South Africa (sec 231), Swaziland (sec 238) and Zimbabwe (sec 111B). The constitutions of six countries (Burundi (art 292), Cape Verde (art 12), Egypt (art 151), Gabon (art 114), Mozambique (art 18(1)) and Togo (art 138)) provide for ratified international treaties to enter into force within those countries upon publication provided those treaties have entered into force internationally.

28 Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal and Togo.

29 Burkina Faso, Cameroon, Chad, Comoros, Congo, Senegal and Togo.

30 Angola (art 21), Benin (Preamble, art 7), Burundi (art 19) and Togo (art 50).

31 Art 144.

32 *Media Rights Agenda and Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 68.



general application,<sup>33</sup> and in the interests of, for example, national security, public safety, public health or morals, public order or for the protection of the rights and freedoms of others.<sup>34</sup> Five constitutions provide that rights may be limited in as far as is justifiable in an open and democratic society.<sup>35</sup>

*(iv) Derogation clauses*

Article 4 of the ICCPR sets out conditions under which derogation of rights may be permitted. Articles 5 of both the ICESCR and ICCPR prohibit derogations from the rights and freedoms recognised in any country on the basis that they are not recognised in the respective instruments. Derogation from the observance (that is, their suspension) of some fundamental rights during times of emergency is provided for in 28 constitutions.<sup>36</sup> Some rights however, are non-derogable, in the sense that they may not be suspended, not even during times of emergency. Rights that may not be derogated from as stipulated in these constitutions include the right to life (recognised in 10 constitutions);<sup>37</sup> non-retroactivity of laws (7);<sup>38</sup> the rights of an accused person to defence (7);<sup>39</sup> freedom of conscience and religion (7);<sup>40</sup> freedom from slavery, slave trade and forced labour (7);<sup>41</sup> the right to non-discrimination (7);<sup>42</sup> freedom from torture, and cruel, inhuman and degrading treatment or punishment (6);<sup>43</sup> the right to personal integrity (5);<sup>44</sup> specified fair trial

33 Eritrea, Namibia, South Africa and Tunisia.

34 Angola (art 52), Botswana (sec 3), Burundi (art 47), Cape Verde (art 17(5)), Eritrea (art 26), Guinea (art 22), Guinea-Bissau (art 31), Kenya (sec 70), Lesotho (sec 4(1)), Malawi (sec 44), Mauritius (sec 3), Mozambique (art 56(2),(3),(4)), Namibia (art 22), Nigeria (sec 45(1)), Rwanda (art 43), So Tomé & Príncipe (art 18), Sierra Leone (sec 15), South Africa (sec 36), Swaziland (sec 14(3)), Tanzania (art 30), Togo (art 14), Tunisia (art 7), Uganda (art 43), Zambia (art 11) and Zimbabwe (sec 11).

35 Malawi, Nigeria, Rwanda, South Africa and Uganda.

36 Angola (art 52), Botswana (sec 16), Cape Verde (arts 26, 269), Chad (art 87), Democratic Republic of Congo (art 61), Equatorial Guinea (art 41), Eritrea (art 27), Ethiopia (art 93), The Gambia (sec 35), Ghana (art 31), Guinea-Bissau (art 29), Kenya (sec 83), Lesotho (sec 21), Liberia (art 86), Malawi (sec 45), Mauritius (sec 18), Mozambique (art 282), Namibia (art 24), Nigeria (sec 45), So Tomé & Príncipe (art 18), Seychelles (art 43), South Africa (sec 37), Sudan (art 132), Swaziland (secs 37, 38), Tanzania (art 31), Uganda (arts 44, 46), Zambia (art 25) and Zimbabwe (sec 25).

37 Angola, Cape Verde, Chad, Democratic Republic of Congo, Guinea-Bissau, Namibia, Nigeria, Seychelles, South Africa and Swaziland.

38 Angola, Cape Verde, Eritrea, The Gambia, Guinea-Bissau, Nigeria and Seychelles.

39 Angola, Cape Verde, Democratic Republic of Congo, Guinea-Bissau, Namibia, Seychelles and Sudan.

40 Angola, Cape Verde, Democratic Republic of Congo, Eritrea, Guinea-Bissau, Namibia and Seychelles.

41 Democratic Republic of Congo, Namibia, Seychelles, South Africa, Sudan, Swaziland and Uganda.

42 Eritrea, Ethiopia, Namibia, Seychelles, South Africa, Sudan (on the basis of race, sex, or religious creed) and Swaziland.

43 Democratic Republic of Congo, Ethiopia, South Africa, Sudan, Swaziland and Uganda.

44 Angola, Cape Verde, Chad, Guinea-Bissau and Swaziland.

rights (5);<sup>45</sup> the right to dignity (4);<sup>46</sup> personal identity (3);<sup>47</sup> civil capacity (3);<sup>48</sup> citizenship (3);<sup>49</sup> protection against double jeopardy (3);<sup>50</sup> the enforceability of rights by courts (2);<sup>51</sup> the right to remain silent and to be informed of reason for arrest (2);<sup>52</sup> specified rights of children (2);<sup>53</sup> the right to culture (2);<sup>54</sup> protection against compulsion to give evidence (1);<sup>55</sup> non-imprisonment for debts (1);<sup>56</sup> the rights of the family (1);<sup>57</sup> the right to administrative justice (1);<sup>58</sup> freedom of expression (1);<sup>59</sup> freedom of association (1);<sup>60</sup> the presumption of innocence (1);<sup>61</sup> the right to habeas corpus (1)<sup>62</sup> and the right to self-determination (1).<sup>63</sup>

Thirteen constitutions contain specific provisions dealing with the rights of persons detained under emergency powers.<sup>64</sup>

### III SPECIFIC RIGHTS

As mentioned earlier, there is no universally accepted list of human rights or a shared consensus on the scope and nature of the different human rights. The categorisation of rights consequently remains contested. In what follows, we have tried to use a fairly widely accepted list of human rights to establish to what extent they are recognised in African constitutions drawing mostly on the International Bill of Rights and the ACHPR. It should be recognised however, that different formulations and categorisations of rights would give different results as to their prevalence in African constitutions.

The rights with the most general acceptance in African constitutions are set out first and those with the lowest level of acceptance last.

45 Namibia, Seychelles, South Africa, Swaziland and Uganda.

46 Eritrea, Namibia, Seychelles and South Africa.

47 Angola, Cape Verde and Guinea-Bissau.

48 Angola, Cape Verde and Guinea-Bissau.

49 Angola, Cape Verde and Guinea-Bissau.

50 The Gambia, Namibia and Seychelles.

51 Namibia and Swaziland.

52 Seychelles and South Africa.

53 Namibia and South Africa.

54 Ethiopia and Namibia.

55 The Gambia.

56 Democratic Republic of Congo.

57 Namibia.

58 Namibia.

59 Namibia.

60 Namibia.

61 Sudan.

62 Uganda.

63 Ethiopia.

64 Botswana (sec 16), The Gambia (sec 36), Ghana (art 32), Kenya (sec 83), Lesotho (sec 21), Malawi (sec 45), Mauritius (sec 18), Seychelles (art 43), Sierra Leone (sec 29), South Africa (sec 37), Uganda (art 47), Zambia (art 26) and Zimbabwe (sch 2 sec 2 under secs 25, 31J). The Constitution of Malawi allows for derogation only with respect to a limited number of rights: freedom of expression, information, movement, assembly, the prohibition against detention without trial and the period within which arrested persons should be arraigned in court.

The rights with universal endorsement in the 53 constitutions of African countries are equality and non-discrimination; opinion and expression; movement; privacy and property.

**(a) Right to equality and non-discrimination**

The right to equality and non-discrimination is protected in the UDHR, ICCPR, ICESCR and the ACHPR.<sup>65</sup>

The constitutions of all the countries surveyed recognise the right to equality and non-discrimination in one form or another.<sup>66</sup>

In some constitutions equality is mentioned in relation to equality before the law and in relation to rights and duties,<sup>67</sup> while in other constitutions equality is couched in terms of protection from discrimination.<sup>68</sup> Seventeen constitutions, like the ICCPR, mention both equality and non-discrimination in the same provision<sup>69</sup> while seven others, like the ACHPR, contain two separate provisions dealing with equality and non-discrimination.<sup>70</sup>

The ‘prohibited’ or ‘forbidden grounds’ of discrimination most often cited are religion/creed/belief (present in 44 constitutions);<sup>71</sup> sex/gender

65 UDHR (arts 2, 7), ICCPR (arts 2, 3, 26), ICESCR (art 3) and ACHPR (arts 2, 3, 19).

66 Algeria (arts 29, 31), Angola (art 18), Benin (art 26), Botswana (sec 15), Burkina Faso (art 1), Burundi (art 22), Cameroon (preamble), Cape Verde (arts 1, 23), Central African Republic (art 5), Chad (arts 13, 14), Comoros (preamble), Congo (art 8), Côte d’Ivoire (art 2), Democratic Republic of Congo (arts 11-14), Djibouti (arts 1,10), Egypt (art 40), Equatorial Guinea (arts 13(c), 15), Eritrea (art 14), Ethiopia (art 25), Gabon (art 2), The Gambia (sec 33), Ghana (art 17 in the Bill of Rights and art 35(5) of the Directive Principles of State Policy), Guinea (arts 1, 8), Guinea-Bissau (arts 23, 24), Kenya (secs 70, 82), Lesotho (secs 18, 19 in the Bill of Rights and sec 26 of the Principles of State Policy), Liberia (art 11(c)), Libya (art 5), Madagascar (art 8), Malawi (sec 20), Mali (art 2), Mauritania (art 1), Mauritius (sec 16), Morocco (art 5), Mozambique (arts 35, 36), Namibia (art 10), Niger (art 8), Nigeria (sec 17(2)(a) of the Fundamental Objectives and Directive Principles of State Policy and sec 42 in the Bill of Rights), Rwanda (Preamble, art 9(4) of the Fundamental Principles and arts 11, 16 in the Bill of Rights), São Tomé & Príncipe (art 14), Senegal (art 7), Seychelles (art 27), Sierra Leone (sec 8(2) of the Fundamental Principles of State Policy and sec 27 in the Bill of Rights), Somalia (art 15), South Africa (sec 9), Sudan (art 21), Swaziland (sec 20), Tanzania (sec 9(1)(g) of the Fundamental Objectives and Directive Principles of State Policy and secs 12(1), 13 in the Bill of Rights), Togo (art 11), Tunisia (art 6), Uganda (art 21), Zambia (art 23) and Zimbabwe (sec 23).

67 Benin, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d’Ivoire, Djibouti, Egypt, Gabon, Guinea, Guinea-Bissau, Liberia, Libya, Madagascar, Mauritania, Morocco, Mozambique, Niger, São Tomé & Príncipe, Senegal, Somalia and Togo.

68 Botswana, Kenya, Lesotho, Malawi, Mauritius, Zambia and Zimbabwe.

69 Algeria, Burkina Faso, Burundi, Egypt, Eritrea, Ethiopia, The Gambia, Ghana, Malawi, Mali, Namibia, Seychelles, South Africa, Sudan, Swaziland, Tanzania and Uganda.

70 Angola, Democratic Republic of Congo, Equatorial Guinea, Lesotho, Nigeria, Rwanda and Sierra Leone.

71 Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

(44);<sup>72</sup> race (41);<sup>73</sup> place of origin or birth (34);<sup>74</sup> political opinion (32);<sup>75</sup> ethnic group/tribe (28);<sup>76</sup> social status (24);<sup>77</sup> colour (23);<sup>78</sup> birth/family/ancestry (18);<sup>79</sup> wealth/property/economic status (18);<sup>80</sup> language (17);<sup>81</sup> opinion (8);<sup>82</sup> conscience/philosophical conviction/ideology (8);<sup>83</sup> physical or mental disability (8);<sup>84</sup> nation/nationality (5);<sup>85</sup> level of education/intellect (5);<sup>86</sup> culture (4);<sup>87</sup> age (3);<sup>88</sup> place of residence (3);<sup>89</sup> region (3);<sup>90</sup>

- 72 Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Djibouti, Equatorial Guinea, Guinea-Bissau, Egypt, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.
- 73 Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Rwanda, São Tomé & Príncipe, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.
- 74 Angola, Benin, Botswana, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Djibouti, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Sierra Leone, Swaziland, Tanzania, Togo, Zambia and Zimbabwe.
- 75 Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritius, Mozambique, Niger, Nigeria, São Tomé & Príncipe, Sierra Leone, Somalia, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.
- 76 Angola, Botswana, Burkina Faso, Burundi, Central African Republic, Congo, Democratic Republic of Congo, Egypt, Equatorial Guinea, Eritrea, Ghana, Guinea, Kenya, Liberia, Malawi, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.
- 77 Algeria, Angola, Benin, Burundi, Cape Verde, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Ghana, Guinea-Bissau, Mauritania, Mozambique, Namibia, Niger, Rwanda, Senegal, Swaziland, Tanzania, Togo and Uganda.
- 78 Angola, Botswana, Burkina Faso, Burundi, Eritrea, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mali, Mauritius, Mozambique, Namibia, Rwanda, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.
- 79 Algeria, Burkina Faso, Cape Verde, Central African Republic, Democratic Republic of Congo, Ethiopia, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mozambique, Senegal, Somalia, South Africa, Swaziland, Togo and Uganda.
- 80 Angola, Burkina Faso, Cape Verde, Congo, Eritrea, Ethiopia, The Gambia, Ghana, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Rwanda, Sudan, Swaziland, Togo and Uganda.
- 81 Burkina Faso, Burundi, Cape Verde, Congo, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, The Gambia, Guinea, Lesotho, Malawi, Mali, Rwanda, Somalia and South Africa.
- 82 Algeria, Ethiopia, Gabon, The Gambia, Guinea, Lesotho, Malawi and Rwanda.
- 83 Angola, Burundi, Cape Verde, Congo, Guinea-Bissau, São Tomé & Príncipe, South Africa and Togo.
- 84 Burundi, Eritrea, Malawi, Rwanda, South Africa, Swaziland, Uganda and Zimbabwe.
- 85 Ethiopia, The Gambia, Lesotho, Malawi and Tanzania.
- 86 Angola, Congo, Guinea-Bissau, Madagascar and Mozambique.
- 87 Democratic Republic of Congo, Guinea-Bissau, Rwanda and South Africa.
- 88 Eritrea, South Africa and Swaziland.
- 89 Congo, Democratic Republic of Congo and Kenya.
- 90 Burkina Faso, Central African Republic and Rwanda.

marital status (2);<sup>91</sup> profession/occupation (2);<sup>92</sup> caste (2);<sup>93</sup> clan (1);<sup>94</sup> HIV/AIDS status or other incurable ailment (1);<sup>95</sup> pregnancy (1);<sup>96</sup> and sexual orientation (1).<sup>97</sup>

Most constitutions identify an exhaustive list of prohibited grounds of discrimination, but the Constitutions of Burundi, Equatorial Guinea, Eritrea, The Gambia, Lesotho, Seychelles and South Africa contain open-ended lists and as a result, allow for additional prohibited grounds. The Constitutions of Malawi and Mauritania expressly provide that discrimination shall be criminally punishable by the courts.

The meaning of the terms 'discriminate' or 'discriminatory' is elaborated in the Constitutions of Botswana, The Gambia, Ghana, Kenya, Lesotho, Mauritius, Sierra Leone, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. While some provisions on the right to equality contain internal qualifiers, for example by stating that 'unfair' discrimination is prohibited (such as in the Constitutions of Botswana, The Gambia, Ghana, Kenya, Lesotho, Mauritius, Nigeria, Seychelles, Sierra Leone, South Africa, Swaziland, Uganda, Zambia and Zimbabwe), others merely assert a right against discrimination generally. The Constitutions of Chad, Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Mozambique, São Tomé and Príncipe, Senegal and Togo explicitly provide for equality between women and men.

Separate references to the rights of persons with disabilities are to be found in 25 constitutions,<sup>98</sup> references to the rights of the aged are

91 South Africa and Zambia.

92 Ghana and Mozambique.

93 Burkina Faso and Mauritius.

94 Rwanda.

95 Burundi.

96 South Africa.

97 South Africa.

98 Benin (art 26), Burkina Faso (art 18), Cameroon (preamble), Cape Verde (art 75), Congo (art 30), Côte d'Ivoire (art 6), Democratic Republic of Congo (art 49), Ethiopia (art 41(5)), Gabon (art 1(8)), The Gambia (sec 31), Ghana (art 29 in the Bill of Rights and art 37(2)(b) of the Directive Principles of State Policy), Guinea (art 17), Lesotho (sec 33 of the Principles of State Policy), Malawi (sec 13(g) of the Principles of National Policy), Mozambique (arts 68, 125), Niger (art 19), Nigeria (sec 16(2)(d) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 14), Senegal (art 17), Seychelles (art 36), Sierra Leone (sec 8(3)(f)), Somalia (art 26), Swaziland (sec 30 in the Bill of Rights and sec 60(6) of the Directive Principles of State Policy), Togo (art 33) and Uganda (art 35 in the Bill of Rights and art XVI of the National Objectives and Directive Principles of State Policy ).

contained in 25 constitutions,<sup>99</sup> while references to the rights of women are included in 13 constitutions.<sup>100</sup>

The term 'affirmative action' is used in three constitutions.<sup>101</sup> In 11 constitutions, while the term is not used, the same result is achieved through provisions for the implementation of legislation, policies and programmes aimed at redressing imbalances, or the granting of privilege or advantage that is reasonably justifiable in a democratic society, and other similar formulations.<sup>102</sup>

### (b) Freedom of opinion and expression

Freedom of opinion and expression as protected in the UDHR, ICCPR and the ACHPR includes the right to seek, receive and impart information and disseminate opinions through various media.<sup>103</sup> The ICCPR formulation of the right narrowly defines the limitations to the right specifying the instances where the right may be restricted, as compared to the ACHPR, which broadly provides that such limitations must comply with 'the law' (interpreted by the African Commission on Human and Peoples' Rights to mean that this should be done through domestic law that complies with international standards).<sup>104</sup>

All fifty-three African constitutions provide for a right to, or rights applicable to, freedom of opinion and expression.<sup>105</sup>

99 Benin (art 26), Burkina Faso (art 18), Cameroon (preamble), Cape Verde (art 76), Congo (art 30), Côte d'Ivoire (art 6), Democratic Republic of Congo (art 49), Ethiopia (art 41(5)), Gabon (art 1(8)), Ghana (art 37(2) of the Directive Principles of State Policy), Guinea (art 17), Malawi (sec 13(j) of the Principles of National Policy) Mozambique (art 124), Namibia (art 95(f) of the Principles of State Policy), Niger (art 19), Nigeria (secs 16(2)(d) and 17(3)(f) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 14), São Tomé & Príncipe (art 53), Senegal (art 17), Seychelles (art 36), Sierra Leone (sec 8(3)(f)), Somalia (art 26), Swaziland (sec 60(5) of the Directive Principles of State Policy), Togo (art 33) and Uganda (art VII of the National Objectives and Directive Principles of State Policy).

100 Cameroon (preamble), Democratic Republic of Congo (art 14), Ethiopia (art 35), The Gambia (sec 28), Ghana (art 27), Malawi (sec 13(a) of the Principles of National Policy and sec 24 in the Bill of Rights) Namibia (art 95(a) of the Principles of State Policy), Senegal (arts 17, 19), Sierra Leone (sec 8(3) of the Fundamental Principles of State Policy), Somalia (art 26), Sudan (art 15 of the Directive Principles), Swaziland (sec 28) and Uganda (art 33).

101 Ethiopia (art 35), Uganda (art 32) and Zimbabwe (sec 23(3)(g)).

102 Botswana (sec 15(4)(e)), Ghana (art 17(4)), Kenya (sec 82(4)(d)), Lesotho (sec 18(4)(e)), Malawi (sec 20(2)), Namibia (art 23(2)), Sierra Leone (sec 27(4)(g)), South Africa (sec 9(2)), Swaziland (sec 20(5)), Uganda (art 21(4)) and Zambia (art 23(4)(e)).

103 UDHR (art 19), ICCPR (art 19) and ACHPR (art 9).

104 *Civil Liberties Organisation (in respect of Bar Association) v Nigeria* (2000) AHRLR 186 (ACHPR 1995).

105 Algeria (art 41), Angola (art 32), Benin (art 23), Botswana (sec 12), Burkina Faso (art 8), Burundi (art 31), Cameroon (preamble), Cape Verde (arts 28, 47), Central African Republic (art 13), Chad (art 27), Comoros (preamble), Congo (art 19), Côte d'Ivoire (arts 9, 10), Democratic Republic of Congo (art 23), Djibouti (art 15), Egypt (art 47), Equatorial Guinea (art 13(b), (i)), Eritrea (art 19(2)), Ethiopia (art 29), Gabon (art 1(2)), The Gambia (sec 25(1)(a)), Ghana (art 21(1)(a)), Guinea (art 7), Guinea-Bissau (art 44), Kenya (sec 79), Lesotho (sec 14), Liberia (art 15), Libya (art 13), Madagascar (art 10), Malawi (sec 35), Mali (art 4), Mauritania (art 10), Mauritius (sec 12), Morocco (art 9(b)), Mozambique (art 48),

Thirty-three African constitutions provide for the right to freedom of expression in more or less similar fashion to the ICCPR,<sup>106</sup> while 15 constitutional provisions resemble that of the ACHPR, in particular with regard to the limitations imposed.<sup>107</sup> Out of the 53 constitutions that provide for this right, 23 also protect the right to (access to or be provided with) information.<sup>108</sup>

Thirty-four constitutions provide internal limitations to this right. The grounds for these limitations include the interests of defence; public safety; public order; public morality or public health (24),<sup>109</sup> reputation; the rights and freedoms of others including the right to privacy (20);<sup>110</sup> preventing disclosure of information received in confidence, maintaining independence of courts, regulating telephony, wireless broadcasts, television and/or exhibition of films (10);<sup>111</sup> restrictions on public officers (10);<sup>112</sup> prohibition of incitement to violence, propaganda for war, racism, xenophobia and other discrimination (6);<sup>113</sup> protection of children and youth (3);<sup>114</sup> and contempt of court or incitement to an offence (2).<sup>115</sup>

Freedom of the press is recognised together with the right to freedom of expression in the UDHR, but is not provided for explicitly in either the

Namibia (art 21(1)(a)), Niger (art 23), Nigeria (sec 39), Rwanda (art 34), São Tomé & Príncipe (art 28), Senegal (arts 8, 10), Seychelles (art 22), Sierra Leone (sec 25), Somalia (art 19, 20), South Africa (sec 16), Sudan (art 25), Swaziland (sec 24), Tanzania (sec 18), Togo (art 25), Tunisia (art 8), Uganda (art 29(1)(a)), Zambia (art 20) and Zimbabwe (sec 20).

106 Botswana, Burundi, Cape Verde, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Eritrea, Ethiopia, Gabon, The Gambia, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritius, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

107 Angola, Benin, Burkina Faso, Cameroon, Congo, Djibouti, Egypt, Equatorial Guinea, Mali, Mauritania, Morocco, Mozambique, São Tomé & Príncipe and Togo.

108 Benin (art 8), Burkina Faso (art 8), Cape Verde (arts 28, 45, 47), Comoros (preamble), Congo (art 19), Côte d'Ivoire (art 7), Democratic Republic of Congo (art 24), Eritrea (art 19(3)), Ethiopia (art 29(2)), Ghana (art 21(1)(f)), Liberia (art 15(b),(c)), Madagascar (art 11), Malawi (sec 37), Mozambique (arts 48, 105), Rwanda (art 34), Senegal (art 8), Seychelles (art 28), Somalia (art 20), South Africa (sec 32), Tanzania (sec 18(2)), Uganda (art 41), Zambia (art 20) and Zimbabwe (sec 20).

109 Botswana, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Gabon, The Gambia, Kenya, Lesotho, Libya, Madagascar, Mauritius, Namibia, Niger, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, Togo, Zambia and Zimbabwe.

110 Botswana, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Ethiopia, Kenya, Lesotho, Liberia, Madagascar, Mauritius, Rwanda, Senegal, Seychelles, Sierra Leone, Swaziland, Togo, Zambia and Zimbabwe.

111 Botswana, Kenya, Lesotho, Mauritius, Nigeria, Seychelles, Sierra Leone, Swaziland, Zambia and Zimbabwe.

112 Botswana, Kenya, Lesotho, Mauritius, Nigeria, Seychelles, Sierra Leone, Swaziland, Zambia and Zimbabwe.

113 Angola, Cape Verde, Côte d'Ivoire, Ethiopia, Ghana and South Africa.

114 Cape Verde, Ethiopia and Rwanda.

115 The Gambia and Namibia.

ICCPR or the ACHPR. A total of 35 African countries explicitly protect this right.<sup>116</sup>

### (c) Freedom of movement

The UDHR, ICCPR and ACHPR all enshrine the right to freedom of movement.<sup>117</sup> The right to freedom of movement encompasses freedom to choose residence, freedom to exit any country and to return to an individual's own country and the right to asylum under given conditions. The ACHPR contains, in addition, a prohibition against mass expulsion of non-nationals.

All 53 African constitutions provide for at least one of the elements related to the right to freedom of movement as enshrined in the international instruments.

Fifty constitutions provide for the right to freedom of movement within the state and freedom of residence in one formulation or another.<sup>118</sup> The right of entry into one's country and exit from any country is guaranteed in 39 constitutions;<sup>119</sup> 32 include a prohibition against unlawful expulsion or extradition<sup>120</sup> and 18 constitutions provide for the right to asylum.<sup>121</sup>

116 Angola (art 35), Benin (art 24), Burkina Faso (art 8), Cameroon (preamble), Cape Verde (art 59), Central African Republic (art 13), Chad (art 27), Comoros (preamble), Congo (art 19), Democratic Republic of Congo (art 24), Egypt (art 48), Eritrea (art 19(2)), Ethiopia (art 29(3)), The Gambia (sec 25(1)(a)), Ghana (art 21(1)(a)), Guinea-Bissau (art 44A), Liberia (art 15(b)), Madagascar (art 10), Malawi (sec 36), Mali (art 7), Mozambique (art 48), Namibia (art 21(1)(a)), Nigeria (sec 39), Rwanda (art 34), São Tomé & Príncipe (art 29), Senegal (art 8, 11), Sierra Leone (sec 25), Somalia (art 20), South Africa (sec 16(1)), Sudan (art 25), Swaziland (sec 24), Togo (art 26), Tunisia (art 8), Uganda (art 29(1)(a)) and Zambia (art 20).

117 UDHR (arts 13, 14), ICCPR (arts 12, 13) and ACHPR (art 12).

118 Algeria (art 44), Angola (art 25), Benin (art 25), Botswana (sec 14), Burkina Faso (art 9), Burundi (arts 25, 33), Cameroon (preamble), Cape Verde (art 50), Central African Republic (art 4), Chad (art 43, 44), Comoros (art 7), Congo (art 16, 21), Democratic Republic of Congo (art 30), Djibouti (art 14), Egypt (art 50), Equatorial Guinea (art 13(d)), Eritrea (art 19 (8), (9)), Ethiopia (art 32), Gabon (art 1(3),(11)), The Gambia (sec 25(2), (3)), Ghana (art 21(1)(g)), Guinea (art 10), Kenya (sec 81), Lesotho (sec 7), Liberia (art 13), Madagascar (art 10, 12), Malawi (sec 39), Mali (art 5), Mauritania (art 10), Mauritius (sec 15), Morocco (art 9(a)), Mozambique (art 55), Namibia (art 21 (1)(g)-(i)), Niger (art 24), Nigeria (sec 41), Rwanda (art 23), São Tomé & Príncipe (art 32), Senegal (arts 8, 14), Seychelles (art 25), Sierra Leone (sec 18), Somalia (arts 14, 23), South Africa (sec 21), Sudan (art 23), Swaziland (sec 26), Tanzania (sec 17), Togo (art 22), Tunisia (art 10), Uganda (art 29(2)), Zambia (art 22) and Zimbabwe (sec 22).

119 Algeria, Angola, Benin, Botswana (entry), Burundi, Cape Verde, Chad, Congo, Democratic Republic of Congo, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia (exit), Uganda, Zambia and Zimbabwe.

120 Algeria (art 68), Angola (art 27), Botswana (sec 14), Burkina Faso (art 3), Burundi (art 49), Cape Verde (arts 36, 37), Central African Republic (art 5), Côte d'Ivoire (art 12), Democratic Republic of Congo (art 30), Egypt (arts 51, 53), Ghana (art 21(1)(g)), Guinea-Bissau (art 34), Kenya (sec 81), Lesotho (sec 7), Liberia (art 13(b)), Libya (art 11), Mali (art 12), Mauritania (art 22), Mauritius (sec 15(1)), Mozambique (art 67), Niger (art 15), Nigeria (sec 41), Rwanda (arts 24, 25), São Tomé & Príncipe (art 40), Seychelles (art 25), Sierra Leone (sec 18), Somalia (art 23), Swaziland (sec 26), Tanzania (sec 17), Togo (arts 23, 24) Tunisia (art 11) and Zimbabwe (sec 22).

121 Algeria (art 69), Angola (art 26), Burkina Faso (art 9), Burundi (art 50), Cape Verde (art 38), Chad (art 46), Congo (art 15), Côte d'Ivoire (art 12), Democratic Republic of Congo (art 33), Egypt (art 53), Guinea (art 11), Mali (art 12), Mauritania (art 21), Namibia (art 97) and Rwanda (art 25), São Tomé & Príncipe (art 40(a)), Somalia (art 23) and Tunisia (art 17).



The Constitution of the Democratic Republic of the Congo enshrines the principle of non-refoulement of refugees and prohibits deportation to a state where the refugee risks torture, or cruel, inhuman or degrading treatment.

#### (d) Right to privacy

Both the UDHR and the ICCPR protect the right to privacy but curiously, given its wide endorsement in the national constitutions of African countries, this right is not mentioned explicitly in the ACHPR.<sup>122</sup>

All 53 African constitutions surveyed protect this right in one form or another.<sup>123</sup>

The right to privacy is understood here to also include the right to secrecy of correspondence and private communication, as well as the inviolability of one's domicile and property. Constitutional provisions in 20 countries provide protection against searches of one's person<sup>124</sup> while eight constitutions include the right to the protection of one's honour and reputation, as is the case in the UDHR and ICCPR.<sup>125</sup> Twelve constitutions protect these rights in separate provisions,<sup>126</sup> while ten other constitutions protect only the inviolability of domicile and property.<sup>127</sup> Several constitutions provide for searches to be carried out only with judicial authorization,<sup>128</sup> and/or in circumstances specified within the provision.<sup>129</sup>

Twenty-three constitutions limit the scope of the right to privacy by

122 UDHR (art 12) and ICCPR (art 17).

123 Algeria (arts 39, 40), Angola (art 44), Benin (arts 20-21), Botswana (sec 9), Burkina Faso (art 6), Burundi (arts 28, 43), Cameroon (preamble), Cape Verde (arts 42-44), Central African Republic (arts 13, 14), Chad (arts 17, 42, 45), Comoros (preamble), Congo (arts 14, 20), Côte d'Ivoire (art 4), Democratic Republic of Congo (arts 29, 31), Djibouti (arts 12, 13), Egypt (arts 44, 45), Equatorial Guinea (art 13(g)), Eritrea (art 18), Ethiopia (art 26), Gabon (art 1(5), (6), (12)), The Gambia (sec 23), Ghana (art 18(2)), Guinea (art 12), Guinea-Bissau (arts 34A, 38), Kenya (sec 76), Lesotho (secs 10, 11), Liberia (art 16), Libya (art 12), Madagascar (art 13), Malawi (sec 21), Mali (art 6), Mauritania (art 13(3)), Mauritius (sec 9), Morocco (arts 10, 11), Mozambique (arts 41, 68), Namibia (art 13), Niger (arts 20, 22), Nigeria (sec 37), Rwanda (art 22), São Tomé & Príncipe (arts 23, 24), Senegal (arts 13, 16), Seychelles (art 20), Sierra Leone (sec 22), Somalia (14(3), 16), South Africa (sec 14), Sudan (art 29), Swaziland (sec 22), Tanzania (sec 16), Togo (arts 28, 29), Tunisia (art 9), Uganda (art 27), Zambia (art 17) and Zimbabwe (sec 17).

124 Botswana, Eritrea, Ethiopia, The Gambia, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Namibia, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

125 Algeria (art 39), Angola (art 20), Burundi (art 43), Cape Verde (art 40), Equatorial Guinea (art 13(e)), Ethiopia (art 24), Guinea-Bissau (art 34A) and Mozambique (art 41).

126 Algeria, Benin, Cameroon, Cape Verde, Chad, Congo, Djibouti, Egypt, Morocco, Niger, Senegal and Togo.

127 Botswana, Central African Republic, Comoros, Côte d'Ivoire, Kenya, Lesotho, Libya, Mauritius, Zambia and Zimbabwe.

128 Algeria, Cameroon (correspondence), Cape Verde, Central African Republic, Egypt, Gabon (domicile), The Gambia, Guinea, Guinea-Bissau, Liberia, Madagascar, Mozambique, Namibia (person, domicile), São Tomé & Príncipe, Senegal (domicile), Seychelles (correspondence) and Somalia (domicile).

129 Botswana, Central African Republic, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Mauritius, Namibia, Senegal (domicile), Seychelles, Sierra Leone, Swaziland, Zambia and Zimbabwe.

subjecting it to general provisions of law.<sup>130</sup> Where separate provisions exist for privacy of domicile and correspondence or communication, limitations are in some cases found in respect of privacy of domicile but not correspondence.<sup>131</sup> Several constitutions protect the freedom from interference with correspondence together with freedom of expression.<sup>132</sup>

The Constitution of Angola protects the good name and reputation of every citizen in the same provision that protects human dignity, rather than in the provision that protects the right to privacy.<sup>133</sup> In the constitutions of Equatorial Guinea<sup>134</sup> and Ethiopia<sup>135</sup> the right to a good name and reputation stands alone. The constitutions of Cape Verde<sup>136</sup> and Mozambique<sup>137</sup> regulate the utilisation and protection of personal data. The Constitution of Eritrea permits interference with the right to privacy where there is 'reasonable cause'.<sup>138</sup>

### (e) Rights relating to property

Rights relating to property are provided for in the UDHR<sup>139</sup> and the ACHPR<sup>140</sup> but not in the ICCPR or ICESCR. The omission of the protection of rights related to property in the covenants is normally attributed to ideological differences about the role of property and capitalism during the cold war. Given the influence of socialist ideas in many parts of Africa, the wide recognition of such a right in both the ACHPR and African constitutions is perhaps surprising.

Rights relating to property are protected in all 53 African constitutions.<sup>141</sup>

130 Angola, Burkina Faso, Burundi, Cameroon (domicile), Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Guinea-Bissau, Libya, Madagascar, Mali, Morocco, Mozambique, Niger, Rwanda, São Tomé & Príncipe, Senegal (correspondence), Sudan, Tanzania, Togo (domicile) and Tunisia.

131 Algeria, Benin, Chad, Guinea, Morocco and Togo.

132 Botswana (sec 12), Central African Republic (art 13), Kenya (sec 79), Lesotho (sec 14), Liberia (art 15), Mauritius (sec 12), Sierra Leone (sec 25), Swaziland (sec 24), Tanzania (sec 18), Zambia (art 20) and Zimbabwe (sec 20).

133 Art 20.

134 Art 13(e).

135 Art 24.

136 Art 44.

137 Art 71.

138 Art 18.

139 Art 17.

140 Art 14.

141 Algeria (art 52), Angola (art 10), Benin (art 22), Botswana (sec 8), Burkina Faso (arts 15, 25), Burundi (art 36), Cameroon (preamble), Cape Verde (art 68), Central African Republic (art 14), Chad (arts 17, 41), Comoros (preamble), Congo (art 17), Côte d'Ivoire (art 15), Democratic Republic of Congo (art 34), Djibouti (art 12), Egypt (arts 29, 34 of Economic Constituents of Society), Equatorial Guinea (art 29), Eritrea (art 23), Ethiopia (art 40), Gabon (art 1(10)), The Gambia (sec 22), Ghana (arts 18(1), 20, 22 in the Bill of Rights and art 36(7) of the Directive Principles of State Policy), Guinea (art 13), Guinea-Bissau (art 12 of the Fundamental Principles), Kenya (sec 75), Lesotho (sec 17), Liberia (arts 11(a), 22-24), Libya (art 8), Madagascar (art 34), Malawi (sec 28), Mali (art 13), Mauritania (art 15), Mauritius (sec 8), Morocco (art 15), Mozambique (art 82), Namibia (art 16), Niger (art 21), Nigeria (secs 43, 44), Rwanda (arts 29, 31), São Tomé & Príncipe (arts 46), Senegal (arts 8, 15), Seychelles (art 26), Sierra Leone (sec 21), Somalia (art 27), South Africa (sec 25), Sudan (art 28), Swaziland (sec 19), Tanzania (sec 24), Togo (art 27), Tunisia (art 14), Uganda (art 26), Zambia (art 16) and Zimbabwe (secs 16, 16A, 16B).

The rights recognised in these constitutions are generally entrenched in two kinds of provisions; one recognises a positive right to own property and another enshrines a negative right not to be deprived of property. Provisions in 37 national constitutions guarantee the right to own property and set out conditions under which expropriation may take place.<sup>142</sup> Constitutions of 10 other countries enshrine only the right not to be deprived of property and set out conditions under which expropriation may take place.<sup>143</sup> The constitutions of 4 countries state that the right to property is guaranteed without further explanation.<sup>144</sup> The Constitutions of Côte d'Ivoire and Ghana protect both the right to own property and the right not to be deprived of property. Compensation for expropriation of property, though not mentioned in the ACHPR, is provided for in 46 constitutions.<sup>145</sup>

#### **(f) Right to a fair trial**

Fifty-one constitutions in Africa recognise the right to a fair trial.<sup>146</sup> The exceptions are Comoros and Morocco.

This right covers a wide range of principles as elaborated in the UDHR, ICCPR and ACHPR.<sup>147</sup> African constitutions entrench this right in varying degrees of detail, with some constitutions attempting to

142 Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Comoros, Congo, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Egypt, Eritrea, Ethiopia, Gabon, Guinea, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Togo and Uganda.

143 Botswana, Chad, The Gambia, Kenya, Lesotho, Mauritius, Sierra Leone, South Africa, Zambia and Zimbabwe.

144 Algeria, Angola, Guinea-Bissau and Tunisia.

145 Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

146 Algeria (arts 45-49), Angola (arts 36, 41), Benin (arts 16-19), Botswana (sec 10) Burkina Faso (arts 3-5), Burundi (arts 40-42), Cameroon (preamble), Cape Verde (arts 21, 29-35), Central African Republic (arts 1, 3), Chad (arts 21-26), Congo (art 9), Côte d'Ivoire (arts 20-22), Democratic Republic of Congo (arts 17-21), Djibouti (art 10), Egypt (arts 66-72), Equatorial Guinea (art 13(i),(j),(m)-(s)), Eritrea (art 17), Ethiopia (arts 19-23), Gabon (arts 1(4), (23)), The Gambia (arts 19(2)-(6), 24), Ghana (arts 14, 19), Guinea (art 9), Guinea-Bissau (arts 32(4), 33, 35(4-6)), Kenya (secs 72, 77), Lesotho (sec 12), Liberia (arts 20, 21), Libya (art 31), Madagascar (art 13), Malawi (sec 42), Mali (arts 9-11), Mauritania (art 13(1),(2)), Mauritius (sec 5(2)-(8), 10), Mozambique (arts 56-62), Namibia (art 12), Niger (arts 15-17), Nigeria (sec 36), Rwanda (arts 19-21), São Tomé & Príncipe (arts 36-39), Senegal (art 9), Seychelles (art 19), Sierra Leone (sec 23), Somalia (art 17), South Africa (secs 34, 35), Sudan (art 32), Swaziland (sec 21), Tanzania (sec 13(6)), Togo (arts 15-19), Tunisia (arts 12, 13), Uganda (art 28), Zambia (art 18) and Zimbabwe (sec 18).

147 UDHR (arts 10, 11), ICCPR (arts 14, 15) and ACHPR (art 7).

include nearly all the principles in the ICCPR,<sup>148</sup> while others recognise only a small number of the principles.<sup>149</sup>

The principles that appear the most consistently in African constitutions are the presumption of innocence; the right of accused persons to defend themselves in person or by a legal representative; and the right not to be tried for an act that did not constitute an offence at the time it was committed.<sup>150</sup> The injunction that punishment is personal and can only be imposed on the offender, found in the ACHPR, is found in nine constitutions.<sup>151</sup>

Related rights such as the right of access to justice<sup>152</sup> and the right to administrative justice<sup>153</sup> are provided for in 16 and 11 constitutions respectively.

### **(g) Rights related to liberty and security of the person**

The international instruments provide for the right to liberty and security of the person, by prohibiting arbitrary arrest or detention.<sup>154</sup> The ICCPR goes further to specify the conditions that govern the arrest and detention of persons, including being informed of the reasons for arrest and charges; being brought promptly before a judge or similar officer within reasonable time; trial without reasonable delay or release; decisions about lawfulness of arrest or detention and compensation in the event of unlawfulness.

The right to liberty and security of the person and related rights are recognised in 51 African constitutions (the exceptions being Libya and Tunisia).<sup>155</sup>

148 Botswana, Democratic Republic of Congo, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Mauritius, Namibia, Nigeria, São Tomé & Príncipe, Seychelles, Sierra Leone, Somalia, South Africa, Swaziland, Uganda, Zambia and Zimbabwe.

149 Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea, Guinea-Bissau, Liberia, Libya, Madagascar, Mali, Mauritania, Niger, Senegal, Sudan and Togo.

150 The constitutions of Algeria (defence), Congo (retroactivity), Eritrea (defence), Gabon (retroactivity), Guinea (innocence & retroactivity), Madagascar (innocence), Mauritania (defence), Senegal (innocence), Somalia (retroactivity) Tanzania (defence) and Tunisia (defence) are among the few that do not contain all three of these principles.

151 Burkina Faso, Chad, Democratic Republic of Congo, Egypt, Libya, Mali, Mozambique, Rwanda and Tunisia.

152 Burkina Faso (art 4), Burundi (art 38), Cape Verde (art 21), Congo (art 41), Côte d'Ivoire (art 20), Ethiopia (art 37), The Gambia (sec 25(1)(f)), Ghana (art 23), Guinea (art 9), Libya (art 30), Malawi (sec 41), São Tomé & Príncipe (art 19), South Africa (sec 34), Sudan (art 31), Togo (art 19) and Uganda (art 42).

153 Congo (art 41), Democratic Republic of Congo (art 27), Eritrea (art 24), The Gambia (sec 25(1)(f)), Ghana (art 23), Malawi (sec 43), Namibia (art 18), São Tomé & Príncipe (art 59), South Africa (sec 33), Swaziland (sec 33) and Uganda (art 42).

154 UDHR (arts 3, 9), ICCPR (arts 9, 10, 11) and ACHPR (art 6).

155 Algeria (arts 34, 35, 47, 48), Angola (arts 37-39), Benin (arts 15, 16, 18), Botswana (secs 3, 5), Burkina Faso (arts 2, 3), Burundi (arts 25, 39), Cameroon (preamble), Cape Verde (arts 29, 30), Central African Republic (arts 1, 3), Chad (art 17), Comoros (preamble), Congo (art 9), Côte d'Ivoire (arts 2, 21, 22), Democratic Republic of Congo (arts 17, 18), Djibouti (art 10), Egypt (arts 41, 42), Equatorial Guinea (art 13(m)), Eritrea (arts 15, 17), Ethiopia (arts 14, 16, 17, 19), Gabon (art 1(23)), The Gambia (sec 19(1)), Ghana (art 14), Guinea (art 9), Guinea-

Article 10 of the ICCPR explicitly provides for the right to humane treatment for those deprived of their liberty. Eight constitutions echo this provision.<sup>156</sup> Provisions in African constitutions on the right to liberty and security of the person can also be categorised into those that detail conditions under which arrest and detention should be carried out (25 constitutions)<sup>157</sup> and those that merely prohibit arbitrary arrest and detention subject to law (22 constitutions).<sup>158</sup>

Several constitutions provide a specific time limit within which arrested persons should be brought before a judge, usually 48 hours,<sup>159</sup> and in some cases specific provision is made for the right to habeas corpus.<sup>160</sup>

The Constitutions of Malawi, Rwanda and Seychelles prohibit detention for civil or commercial matters, or inability to fulfil contractual obligations.

#### (h) Freedom of association

This right is recognised in the UDHR in article 20, the ICCPR in article 22 and the ACHPR in article 10. Freedom of association includes the right to form political parties and trade unions.

The right to freedom of association and related rights are recognised in a total of 50 African constitutions.<sup>161</sup> The exceptions are Angola, Côte d'Ivoire and Libya.

The constitutions of 42 African states explicitly recognise the right to

Bissau (arts 33), Kenya (sec 72), Lesotho (sec 6), Liberia (arts 11(a), 20, 21(c)), Madagascar (art 13), Malawi (secs 18, 19(6), 42), Mali (art 1), Mauritania (art 13(2)), Mauritius (sec 5), Morocco (art 10), Mozambique (arts 59, 64, 66) Namibia (arts 7, 11), Niger (arts 11,15), Nigeria (sec 35), Rwanda (art 18), São Tomé & Príncipe (arts 35, 38), Senegal (art 7), Seychelles (art 18), Sierra Leone (sec 17), Somalia (art 16), South Africa (secs 12, 35), Sudan (arts 20, 30), Swaziland (sec 16), Tanzania (secs 15, 16), Togo (arts 13, 15, 16), Uganda (art 23), Zambia (arts 11, 13, 26) and Zimbabwe (sec 13).

156 Democratic Republic of Congo, Egypt, Liberia, Malawi, Mozambique, South Africa, Sudan and Togo.

157 Algeria, Angola, Benin, Botswana, Cape Verde, Democratic Republic of Congo, Eritrea, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Seychelles, Sierra Leone, South Africa, Swaziland, Uganda, Zambia and Zimbabwe.

158 Burkina Faso, Burundi, Cameroon, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Guinea, Guinea-Bissau, Madagascar, Mauritania, Morocco, Niger, Rwanda, São Tomé & Príncipe, Senegal, Sudan, Tanzania and Togo.

159 Algeria, Benin, Cape Verde, Democratic Republic of Congo, Eritrea, Ethiopia, The Gambia (72 hours), Ghana, Kenya (24 hours, or for capital offences 14 days), Lesotho, Liberia, Malawi, Mali, Namibia, Nigeria (1 day or more depending on the distance of the competent court from the detention area), Seychelles (24 hours), Sierra Leone (72 hours, or for capital offences 10 days), Somalia, South Africa, Swaziland and Uganda.

160 Angola, Cape Verde, Equatorial Guinea, Eritrea, Ethiopia, Liberia, Malawi, Mozambique, São Tomé & Príncipe, Seychelles, South Africa, Togo and Uganda.

161 Algeria (arts 41, 43), Benin (art 25), Botswana (sec 13), Burkina Faso (art 21), Burundi (art 32), Cameroon (preamble), Cape Verde (art 28), Central African Republic (art 12), Chad (art 27), Comoros (preamble), Congo (art 21), Democratic Republic of Congo (art 37), Djibouti (art 15), Egypt (arts 55, 56), Equatorial Guinea (art 13(k)), Eritrea (art 19(6)), Ethiopia (art 31), Gabon (art 1(13)), The Gambia (sec 25(1)(e)), Ghana (art 21(1)(e)), Guinea (art 10),

form trade unions;<sup>162</sup> 22 recognise this right in the context of freedom of association.<sup>163</sup> Seven recognise the right not to be compelled to join an association.<sup>164</sup>

None of the three international instruments cited explicitly provides for the right to establish and be a member of a political party. Nevertheless, this right is protected in various forms in 45 African constitutions.<sup>165</sup> In addition to recognising that limitations on this right are necessary in all democratic societies, 21 constitutions provide that parties founded on religious, linguistic, racial, sexual, corporate, regional or other divisive basis or advocating such divisions or violence are prohibited.<sup>166</sup> Importance is also placed on political parties respecting national unity and sovereignty.<sup>167</sup>

The bill of rights of Cape Verde guarantees to all political parties' access to the public media, while that of Malawi guarantees sufficient funds for any political party that secures more than one-tenth of the national vote in elections to parliament.

Guinea-Bissau (art 44), Kenya (sec 80), Lesotho (sec 16), Liberia (art 17), Madagascar (art 10), Malawi (sec 32), Mali (art 5), Mauritania (art 10), Mauritius (sec 13), Morocco (art 9(c)), Mozambique (art 52), Namibia (art 21(1)(e)), Niger (art 24), Nigeria (sec 40), Rwanda (art 35), São Tomé & Príncipe (art 34), Senegal (arts 8, 12), Seychelles (art 23), Sierra Leone (sec 26), Somalia (arts 14, 21, 22), South Africa (sec 18), Sudan (art 26), Swaziland (sec 25) Tanzania (sec 20), Togo (art 30), Tunisia (art 8), Uganda (sec 29(1)(e)), Zambia (art 21) and Zimbabwe (sec 21).

162 Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo (art 38), Djibouti, Ethiopia, The Gambia, Ghana, Guinea-Bissau, Kenya, Liberia, Lesotho, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

163 Botswana, Burkina Faso, Cameroon, Comoros, Djibouti, The Gambia, Ghana, Kenya, Liberia, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Seychelles, Sierra Leone, Sudan, Swaziland, Tunisia, Uganda, Zambia and Zimbabwe.

164 Liberia, Malawi, São Tomé & Príncipe, Seychelles, Swaziland, Tanzania and Zimbabwe.

165 Algeria (art 42), Angola (art 2) Benin (art 5), Burkina Faso (art 13), Burundi (art 76), Cameroon (art 3), Cape Verde (arts 56, 57), Central African Republic (art 19), Chad (art 4), Comoros (art 6), Congo (art 53), Côte d'Ivoire (art 13, 14), Democratic Republic of Congo (art 6), Djibouti (art 6), Egypt (art 5), Equatorial Guinea (art 1), Eritrea (art 19(6)), Ethiopia (art 38), Gabon (art 1(13)), The Gambia (sec 25(1)(e)), Ghana (sec 21(3)), Guinea (art 3), Guinea-Bissau (art 4), Kenya (sec 1A), Liberia (arts 77, 79-80), Madagascar (art 14), Malawi (sec 40(1)), Mali (art 28), Mauritania (art 11), Morocco (art 3), Mozambique (arts 74-77), Namibia (arts 17(1), 21(1)(e)), Niger (art 9), Nigeria (sec 40), Rwanda (art 52), São Tomé & Príncipe (art 62), Senegal (art 4), Seychelles (art 23(1)), Sierra Leone (sec 35), Somalia (arts 14, 21), South Africa (sec 19(1)), Sudan (art 26(2)), Tanzania (sec 3, 20), Togo (art 6-8) Uganda (art 71) and Zambia (art 21).

166 Algeria, Burkina Faso, Burundi, Cape Verde, Congo, Côte d'Ivoire, Djibouti, Gabon, Guinea, Guinea-Bissau (art 4(4)), Liberia, Madagascar, Mozambique, Niger, Rwanda, Senegal, Sierra Leone, Somalia, Tanzania, Togo and Uganda.

167 Algeria, Angola, Benin, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Gabon, Guinea, Guinea-Bissau (art 4(4)), Liberia, Madagascar, Mali, Mauritania, Mozambique, Niger, Rwanda, Senegal and Togo.

**(i) Freedom of thought, conscience and religion**

Articles 18 of both the UDHR and of the ICCPR protect the right to freedom of thought, conscience and religion. The right is protected in article 8 of the ACHPR.

Fifty African constitutions provide for the right to freedom of thought, conscience, religion and related rights.<sup>168</sup> The exceptions are Comoros, Guinea-Bissau and Somalia.

In some constitutions, the right extends to the practice, manifestation and propagation of one's religion or belief;<sup>169</sup> the establishment of religious educational institutions or provision of religious education;<sup>170</sup> the right to choose or change religion or belief;<sup>171</sup> and the establishment of religious and philosophical institutions.<sup>172</sup> Ten constitutions prohibit anyone from being compelled to take any oath, or to take an oath in a manner contrary to their religion or belief and prohibits further, in places of education, the requirement that learners receive religious instruction, or take part in or attend a religious ceremony relating to a religion other than their own.<sup>173</sup>

Internal limitation clauses authorise infringement of this right based on respect for national security, morality, public order, safety and health

168 Algeria (art 36), Angola (art 45), Benin (art 23), Botswana (sec 11), Burkina Faso (art 7), Burundi (art 31), Cameroon (preamble), Cape Verde (arts 28, 48), Central African Republic (art 8), Chad (art 27), Congo (art 18), Côte d'Ivoire (art 9), Democratic Republic of Congo (art 22), Djibouti (art 11), Egypt (art 46), Equatorial Guinea (art 13(f)), Eritrea (art 19(1),(4)), Ethiopia (art 27), Gabon (art 1(2)), The Gambia (sec 25(1)(b),(c)), Ghana (art 21(1)(b),(c)), Guinea (arts 7, 14), Guinea-Bissau (art 44), Kenya (sec 78), Lesotho (sec 13), Liberia (art 14), Madagascar (art 10), Malawi (secs 33, 34), Mali (art 4), Mauritania (art 10), Mauritius (sec 11), Morocco (art 6), Mozambique (art 54), Namibia (art 21(1)(b),(c)), Niger (arts 8, 23), Nigeria (sec 38), Rwanda (art 33), São Tomé & Príncipe (art 26), Senegal (arts 8, 24), Seychelles (art 21), Sierra Leone (sec 24), South Africa (sec 15), Sudan (art 24), Swaziland (sec 23), Tanzania (sec 19), Togo (art 25), Tunisia (art 5), Uganda (art 29(1)(b),(c)), Zambia (art 19) and Zimbabwe (sec 19).

169 Botswana, Cape Verde, Central African Republic, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Kenya, Lesotho, Liberia, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

170 Botswana, Cape Verde, Ethiopia, Kenya, Lesotho, Mauritius, Mozambique, Nigeria, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Swaziland, Togo, Zambia and Zimbabwe. Sec 29 of the Constitution of South Africa protects the right to education. The right to establish religious educational institutions is implicit in this provision.

171 Botswana, Kenya, Lesotho, Mauritius, Nigeria, Seychelles, Sierra Leone, Sudan, Swaziland, Zambia and Zimbabwe.

172 Benin, Guinea, Mozambique, Senegal and Togo.

173 Botswana, Kenya, Lesotho, Mauritius, Seychelles, Sierra Leone, South Africa, Sudan, Zambia and Zimbabwe.

(26);<sup>174</sup> the rights of others (18);<sup>175</sup> the separation of religion and state (3);<sup>176</sup> fundamentalism and intolerance (2);<sup>177</sup> prohibition of the misuse of religion for political purposes (1);<sup>178</sup> and respect for standards for educational institutions (1).<sup>179</sup>

The 10 African countries that have a state religion (mentioned above) nevertheless enshrine the right to freedom of thought, conscience and religion, except in Comoros, Libya and Mauritania where only freedom of opinion and thought is guaranteed.

Some constitutions include unique aspects of the right to freedom of thought, conscience and religion. The Constitution of Cape Verde guarantees religious assistance in hospitals, assistance institutions, prisons and in the armed forces, as well as the right to conscientious objection. The latter right is also guaranteed in Mozambique's Constitution. The Constitutions of The Gambia, Ghana, Malawi, Namibia and Uganda include academic freedom as part of freedom of thought, conscience and belief. Sierra Leone and South Africa guarantee academic freedom as part of the right to freedom of expression.

#### **(j) Freedom from torture and cruel, inhuman and degrading treatment or punishment**

The right to freedom from torture, and cruel, inhuman and degrading treatment or punishment and rights that are potentially applicable in this regard are protected in the UDHR,<sup>180</sup> ICCPR,<sup>181</sup> and ACHPR.<sup>182</sup>

The constitutions of 49 African countries recognise this right.<sup>183</sup>

174 Angola, Botswana, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Gabon, The Gambia, Kenya, Lesotho, Madagascar, Mauritius, Namibia, Niger, Senegal, Seychelles, Sierra Leone, Sudan, Swaziland, Tanzania, Togo, Tunisia, Zambia and Zimbabwe.

175 Botswana, Cape Verde, Chad, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Kenya, Lesotho, Liberia, Madagascar, Mauritius, Seychelles, Sierra Leone, Sudan, Swaziland, Togo, Zambia and Zimbabwe.

176 Benin, Ethiopia and Togo.

177 Central African Republic and Rwanda.

178 Congo.

179 Zimbabwe.

180 Art 5.

181 Art 7.

182 Art 5.

183 Algeria (art 34), Angola (art 23), Benin (arts 18-19), Botswana (art 7), Burkina Faso (art 2), Burundi (art 25), Cameroon (preamble), Cape Verde (art 27), Central African Republic (art 3), Chad (art 18), Congo (art 9), Côte d'Ivoire (art 3), Democratic Republic of Congo (art 16), Djibouti (art 16), Egypt (arts 42, 43), Equatorial Guinea (art 13(a)), Eritrea (art 16(2)), Ethiopia (art 18(1)), Gabon (art 1(1)), The Gambia (sec 21), Ghana (art 15(2)), Guinea (art 6), Guinea-Bissau (art 32), Kenya (sec 74), Lesotho (sec 8), Liberia (art 21(e)), Madagascar (art 17), Malawi (sec 19(3)-(5)), Mali (art 3), Mauritania (art 13(4)), Mauritius (sec 7), Mozambique (art 40), Namibia (art 8(2)(b)), Niger (art 12), Nigeria (sec 34(1)(a)), Rwanda (art 15), São Tomé & Príncipe (art 22), Senegal (art 7), Seychelles (art 16), Sierra Leone (sec 20), Somalia (art 16(4)), South Africa (sec 12(1)), Sudan (art 20), Swaziland (sec 18), Tanzania (sec 13(6)(e)), Togo (art 21), Uganda (art 24), Zambia (art 15) and Zimbabwe (sec 15).



Five constitutions explicitly pronounce acts of torture, and cruel, inhuman or degrading punishment or treatment to be punishable offences<sup>184</sup> and two of them also absolve persons ordered to carry out such acts from the responsibility of obeying such orders.<sup>185</sup>

A total of 11 constitutions link the right to be free from torture, and cruel, inhuman and degrading treatment or punishment with the right to human dignity, as provided in the ACHPR.<sup>186</sup> Fourteen constitutions safeguard the right to dignity as a distinct right.<sup>187</sup> The right to be free from unwanted medical or scientific experimentation is guaranteed in the Constitutions of Egypt, Malawi, Rwanda and South Africa.<sup>188</sup>

The right to freedom from torture, and cruel, inhuman or degrading punishment or treatment is, in the Constitutions of Cape Verde and Mozambique, linked with the abolition of the death penalty.<sup>189</sup>

### (k) Freedom of assembly

The right to freedom of assembly is protected in 47 constitutions.<sup>190</sup>

The UDHR recognises the right to both peaceful assembly and association and prohibits compulsion to belong to an association.<sup>191</sup> The ICCPR and the ACHPR protect the freedom of assembly in nearly similarly worded provisions.<sup>192</sup> These provisions subject the right to freedom of assembly to the limitations of national security, public safety, public order, protection of public health or morals or the protection of

184 Benin, Central African Republic, Djibouti, Mali and Togo.

185 Benin and Togo.

186 Algeria, Egypt, Eritrea, Ghana, Namibia, Nigeria, Seychelles, Sudan, Swaziland, Tanzania and Uganda.

187 Angola (art 20), Burundi (art 21), Côte d'Ivoire (art 2), Equatorial Guinea (art 13(a)), Ethiopia (art 24), Ghana (art 15 in the Bill of Rights and art 35(4) of the Directive Principles of State Policy), Guinea (art 5), Madagascar (art 17), Malawi (sec 19(1), (2)), Nigeria (sec 34 in the Bill of Rights and sec 17(2)(b) of the Fundamental Objectives and Directive Principles of State Policy), Sierra Leone (sec 8(2)(b) of the Fundamental Principles of State Policy), South Africa (sec 10), Tanzania (sec 12(2) in the Bill of Rights and sec 9(1)(a) of the Fundamental Objectives and Directive Principles of State Policy) and Togo (art 11).

188 The constitutions of Egypt and Rwanda guarantee freedom from torture and the right to be free from medical or scientific experimentation in separate provisions. The Constitution of South Africa guarantees both in the same provision.

189 On the death penalty see n 219 below.

190 Algeria (art 41), Angola (art 32), Benin (art 25), Botswana (art 13), Burundi (art 32), Cameroon (preamble), Cape Verde (art 52), Central African Republic (art 8), Chad (art 27), Comoros (preamble), Congo (art 21), Côte d'Ivoire (art 11), Democratic Republic of Congo (arts 25, 26), Egypt (art 54), Equatorial Guinea (art 13(k)), Eritrea (art 19(5)), Ethiopia (art 30), The Gambia (sec 25(1)(d)), Ghana (art 21(1)(d)), Guinea (art 10), Guinea-Bissau (art 44), Kenya (sec 80), Lesotho (sec 15), Liberia (art 17), Madagascar (art 10), Malawi (sec 38), Mali (art 5), Mauritania (art 10), Mauritius (sec 13), Morocco (art 9(b)), Mozambique (art 51), Namibia (art 21(1)(d)), Niger (art 24), Nigeria (sec 40), Rwanda (art 36), São Tomé & Príncipe (art 33), Senegal (art 8), Seychelles (art 23), Sierra Leone (sec 26), Somalia (art 19), South Africa (sec 17), Swaziland (sec 25), Tanzania (sec 20), Togo (art 30), Tunisia (art 8), Uganda (art 29(1)(d)), Zambia (art 21) and Zimbabwe (sec 21).

191 Art 20.

192 ICCPR (art 21) and ACHPR (art 11).

the rights and freedoms of others. The constitutions of 21 countries approximate these provisions,<sup>193</sup> while 14 others merely provide for limitations under conditions fixed by law.<sup>194</sup>

### (l) Right to work and rights in work

So far the focus has been on civil and political rights. A total of 46 constitutions protect rights related to work, generally regarded as belonging to the category of socio-economic rights.<sup>195</sup> These rights are also provided for in one form or another in the international instruments.<sup>196</sup>

The right to work, seen as the right of everyone to have the opportunity to earn a living through work freely chosen or accepted, is protected in 23 countries.<sup>197</sup> Related rights include fair and equal remuneration for equal work, sufficient to provide a decent living;<sup>198</sup> safe

193 Botswana, Chad, Comoros, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Togo, Uganda Zambia and Zimbabwe.

194 Angola, Benin, Burundi, Cameroon, Cape Verde, Central African Republic, Egypt, Mali, Mauritania, Morocco, Mozambique, Niger, São Tomé & Príncipe and Senegal.

195 Algeria (arts 55, 56), Angola (arts 33, 46), Benin (arts 8, 30), Burkina Faso (arts 18-21), Burundi (arts 54, 57), Cameroon (preamble), Cape Verde (arts 60-66), Central African Republic (arts 9, 10), Chad (arts 28, 31, 32), Comoros (preamble), Congo (arts 24, 28), Côte d'Ivoire (arts 7, 17), Democratic Republic of Congo (art 35), Djibouti (art 15), Egypt (art 13 in the Social and Moral Constituents), Equatorial Guinea (art 25), Eritrea (art 21(3),(5)), Ethiopia (arts 41(1),(6),(7), 42), Gabon (art 1(7)), The Gambia (sec 216 (6) of the Directive Principles of State Policy), Ghana (art 24 in the Bill of Rights and art 36(10) & (11) of the Directive Principles of State Policy), Guinea (art 18), Guinea-Bissau (arts 36-37A), Lesotho (secs 29-31 of the Principles of State Policy), Liberia (art 8 of the Principles of State Policy and art 18 in the Bill of Rights), Libya (art 4), Madagascar (arts 27, 29, 31, 32), Malawi (secs 29, 31), Mali (arts 17, 19, 20), Morocco (arts 12, 13), Mozambique (arts 84-87), Namibia (art 95(c), (i) of the Principles of State Policy), Niger (arts 25, 26), Nigeria (sec 17(3)(a)-(c), (e) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (arts 37, 38), São Tomé & Príncipe (arts 41, 42), Senegal (arts 8, 25), Seychelles (art 35), Sierra Leone (sec 8(3)(a)-(c) of the Fundamental Principles of State Policy), Somalia (arts 14, 18), South Africa (sec 23), Swaziland (sec 32), Tanzania (secs 9(1)(e) and 11 of the Fundamental Objectives and Directive Principles of State Policy and secs 22, 23 in the Bill of Rights), Togo (arts 37, 39), Uganda (art 40) and Zambia (art 112(c), (j) of the Directive Principles of State Policy).

196 UDHR (art 23), ICESCR (arts 6, 7, 8) and ACHPR (art 15).

197 Algeria (art 37), Angola (art 46(3)), Burkina Faso (art 16), Cape Verde (art 41), Central African Republic (art 11), Chad (art 58), Comoros (preamble), Congo (art 27), Côte d'Ivoire (arts 16, 17), Democratic Republic of Congo (art 35), Equatorial Guinea (art 26), Eritrea (arts 19(7), 21(3)), Ethiopia (art 41(2)), Lesotho (sec 29), Madagascar (art 37), Mali (art 14), Mauritania (art 10), Morocco (art 15), Mozambique (art 84(2)), Namibia (art 21(1)(j)), São Tomé & Príncipe (art 31), Senegal (art 8) and South Africa (sec 22).

198 Angola, Benin, Burkina Faso, Burundi, Cape Verde, Chad, Democratic Republic of Congo, Egypt, Ghana, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mozambique, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, Swaziland, Togo and Uganda.

and healthy working conditions;<sup>199</sup> rest, leisure and reasonable limitation of working hours, with periodic holidays with pay;<sup>200</sup> and equal opportunity for promotion.<sup>201</sup>

While 42 constitutions recognise the right to form trade unions (see freedom of association above), this right is recognized in 27 countries in the context of the right to work.<sup>202</sup> Twenty-nine constitutions provide for the right to strike.<sup>203</sup>

The constitutions of Angola, Cape Verde, Egypt, Equatorial Guinea, Libya, Madagascar, Mali Mozambique and São Tomé and Príncipe provide for work both as a right and a duty. The Constitution of Somalia recognises the right to a pension.

Twelve constitutions provide for the right to sports, physical education and leisure, which might be associated with the right to rest and leisure.<sup>204</sup>

### (m) Right to education

The right to education, internationally one of the most widely recognised socio-economic rights, receives recognition in 45 African constitutions.<sup>205</sup>

199 Algeria, Angola, Burkina Faso, Burundi, Cape Verde, The Gambia, Ghana, Guinea-Bissau, Lesotho, Liberia, Malawi, Mozambique, Nigeria, São Tomé & Príncipe, Senegal, Seychelles, Sierra Leone, Swaziland, Uganda and Zambia.

200 Algeria, Angola, Cape Verde, Central African Republic, Congo, Ethiopia, The Gambia, Ghana, Lesotho, Mozambique, Nigeria, São Tomé & Príncipe, Seychelles, Sierra Leone, Somalia, Swaziland and Uganda.

201 Lesotho.

202 Algeria, Angola, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Ethiopia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mozambique, Niger, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, South Africa, Swaziland, Togo and Uganda.

203 Algeria (art 57) Angola (art 34), Benin (art 31), Burkina Faso (art 22), Burundi (art 37), Cameroon (preamble), Cape Verde (art 66), Central African Republic (art 10), Chad (art 29), Congo (art 25), Côte d'Ivoire (art 18), Democratic Republic of Congo (art 39), Djibouti (art 15), Equatorial Guinea (art 13(k)), Ethiopia (art 42(1)(b)), Guinea (art 18), Guinea-Bissau (art 37A), Madagascar (art 33), Mali (art 21), Mauritania (art 14), Morocco (art 14), Mozambique (art 87), Niger (art 26), Rwanda (art 39), São Tomé & Príncipe (art 42(1)(f)), Senegal (art 25), Somalia (art 19), South Africa (sec 23(2)(c)) and Togo (art 39).

204 Angola (art 49), Burkina Faso (art 18), Cape Verde (art 79), Eritrea (art 9(13) of the National Objectives and Directive Principles), Ethiopia (art 41(9)), The Gambia (sec 216(7) of the Directive Principles of State Policy), Ghana (art 37(5) of the Directive Principles of State Policy), Mozambique (art 93), São Tomé & Príncipe (art 55), Sudan (art 13 of the Directive Principles), Swaziland (sec 60(7) of the Directive Principles of State Policy) and Uganda (art XVII of the National Objectives and Directive Principles of State Policy).

205 Algeria (art 53), Angola (art 49), Benin (arts 8, 12-14, 40), Burkina Faso (arts 18, 27), Burundi (art 53), Cameroon (preamble), Cape Verde (arts 49, 77), Central African Republic (art 7), Chad (art 35), Comoros (preamble), Congo (art 23), Côte d'Ivoire (art 7), Democratic Republic of Congo (arts 43-45), Egypt (arts 18-21 of the Social and Moral Constituents), Equatorial Guinea (art 23), Eritrea (art 21(1)), Ethiopia (art 41(4) in the Bill of Rights and art 90(1) of the National Policy Principles and Objectives), Gabon (art 1(16), (18), (19)), The Gambia (sec 30 in the Bill of Rights and sec 217 of the Directive Principles of State Policy), Ghana (art 25 in the Bill of Rights and art 38 of the Directive Principles of State Policy), Guinea-Bissau (art 16 of the Fundamental Principles and art 41 in the Bill of Rights),

This right is protected in the UDHR, ICESCR, and ACHPR.<sup>206</sup> The full realisation of the right is described in more detail in the ICESCR to mean the provision of compulsory and free primary education that is generally available and accessible; progressively free secondary education that is equally accessible; progressively free higher education; fundamental education for those who did not complete the whole period of their primary education; the development of a system of schools at all levels; and an adequate fellowship system and improved material conditions for teaching staff.<sup>207</sup>

Twenty-three constitutions provide for free and/or compulsory basic or primary education,<sup>208</sup> while 22 provide for state provision of education as well as private participation in education provision.<sup>209</sup> Twelve constitutions provide for free or progressively free education.<sup>210</sup> An emphasis on secular public education is found in five constitutions,<sup>211</sup> while four constitutions make the state solely responsible for the provision of education<sup>212</sup> and two constitutions make religious education mandatory.<sup>213</sup>

Access to all levels of education is protected in the Constitutions of Cape Verde, Congo, Gabon, Liberia, Mozambique, São Tomé and Príncipe, Seychelles, South Africa, Tanzania, and Uganda. The right of parents or legal guardians to choose for their children education that conforms to their religious and moral convictions is recognised in four constitutions.<sup>214</sup>

Lesotho (sec 28 of the Principles of State Policy), Liberia (art 6 of the Principles of National Policy), Libya (art 14), Madagascar (arts 23-25), Malawi (sec 13(f) of the Principles of National Policy and in the Bill of Rights at sec 25), Mali (arts 17, 18), Morocco (art 13), Mozambique (art 88), Namibia (art 20 in the Bill of Rights and art 95(k) of the Principles of State Policy), Niger (art 11), Nigeria (sec 18 of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 40), São Tomé & Príncipe (arts 30, 54), Senegal (arts 8, 21-23), Seychelles (art 33), Sierra Leone (sec 9 of the Fundamental Principles of State Policy), Somalia (art 24), South Africa (sec 29), Sudan (art 12 of the Directive Principles), Swaziland (sec 60(8) of the Directive Principles of State Policy), Tanzania (sec 11(1) of the Fundamental Objectives and Directive Principles of State Policy), Togo (art 35), Uganda (art 30 in the Bill of Rights and art XVIII of the National Objectives and Principles of State Policy) and Zambia (art 112(e) of the Directive Principles of State Policy).

206 UDHR (art 26), ICESCR (arts 13, 14) and ACHPR (art 17).

207 The constitutions of The Gambia, Ghana and Lesotho closely approximate the formulation of the ICESCR. In other countries, the constitutional recognition of these aspects of the right is varied.

208 Algeria, Benin, Cameroon, Cape Verde, Chad, Congo, Democratic Republic of Congo, Egypt, Equatorial Guinea, Libya, Madagascar, Malawi, Namibia, Nigeria, Rwanda, São Tomé & Príncipe, Seychelles, Sierra Leone, Somalia, South Africa, Swaziland, Togo and Uganda.

209 Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Ghana, Libya, Madagascar, Malawi, Mali, Namibia, São Tomé & Príncipe, Seychelles, Somalia, South Africa and Uganda.

210 Algeria, Benin, Chad, Congo, Democratic Republic of Congo, Egypt, The Gambia, Libya, Madagascar, Mali, Nigeria and Togo.

211 Burkina Faso, Chad, Ethiopia, Gabon and Mali.

212 Algeria, Benin, Cameroon and Egypt.

213 Egypt and Somalia.

214 Democratic Republic of Congo, Gabon, Madagascar and Seychelles.

The Constitution of Cape Verde elaborates on the purposes of education as well as the duties of the state in order to guarantee this right. Education is both a constitutional right and duty in Libya and Mozambique. It is the duty of the state, as enshrined in the bills of rights of Benin and the Democratic Republic of Congo, to ensure education on the fundamental rights contained in the constitution. This education should also cover international human rights instruments ratified by these states, particularly as part of the training for police, armed forces and other security services. In South Africa, the security services 'must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic'.<sup>215</sup>

#### (n) Right to life

The right to life is protected in the UDHR, ICCPR, and ACHPR.<sup>216</sup> Forty-four African constitutions protect the right to life.<sup>217</sup>

Twenty constitutions prohibit the arbitrary deprivation of life, and in some cases, list circumstances in which causing death would not be considered to be a violation of the right to life, including where infliction is sanctioned by law (as would be the case in respect of the death penalty).<sup>218</sup>

The abolition of the death penalty is provided for as part of the right to life in the Constitutions of Angola, Cape Verde, Côte d'Ivoire, Mozambique, Namibia, São Tomé and Príncipe and Seychelles. Thirteen constitutions protect the right to life without providing exceptions or further explanation as to what constitutes this right, opening the provisions to judicial interpretation.<sup>219</sup>

215 Sec 199(5).

216 Art 3, art 6 and art 4 respectively.

217 Angola (arts 20, 22), Benin (art 15), Botswana (secs 3, 4), Burkina Faso (art 2), Burundi (art 24), Cameroon (preamble), Cape Verde (art 27), Central African Republic (art 3), Chad (art 17), Congo (art 7), Côte d'Ivoire (art 2) Democratic Republic of Congo (art 16), Djibouti (art 10), Equatorial Guinea (art 13(a)), Eritrea (art 15), Ethiopia (arts 14, 15), The Gambia (sec 18(1)), Ghana (art 13), Guinea (art 6), Guinea-Bissau (art 37), Kenya (sec 71), Lesotho (sec 5), Liberia (art 11(a)), Malawi (secs 16, 17), Mali (art 1), Mauritius (sec 4), Mozambique (art 40), Namibia (art 6), Niger (art 11), Nigeria (sec 33), Rwanda (arts 12, 13), São Tomé & Príncipe (art 21), Senegal (art 7), Seychelles (art 15), Sierra Leone (sec 16), Somalia (art 16), South Africa (sec 11), Sudan (arts 20, 33), Swaziland (sec 15) Tanzania (sec 14), Togo (art 13), Uganda (art 22), Zambia (art 12) and Zimbabwe (sec 12).

218 Botswana, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Rwanda, Sierra Leone, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

219 Benin, Burkina Faso, Burundi, Cameroon, Chad, Congo, Djibouti, Guinea, Liberia, Mali, Niger, Senegal and South Africa. See Dirk van Zyl Smit *The Death Penalty* (2004) 4 *African Human Rights LJ* 1, 15. The author discusses the Constitutional Court of South Africa's interpretation of sec 9 (right to life) of the interim Constitution (Constitution of the Republic of South Africa, Act 200 of 1993) in *S v Makwanyane* 1995 (3) SA 391 (CC), the case in which the death penalty was found by the Constitutional Court to be unconstitutional.

The Constitution of Guinea-Bissau prohibits the imposition of the death penalty but does not protect the right to life generally.

**(o) Right to participate in government and to vote**

The right to participate in government is protected in the UDHR, ICCPR and ACHPR.<sup>220</sup> This right is widely understood to include the right to vote. A total of 43 constitutions recognise this right in one form or another.<sup>221</sup>

The right to participate in government is recognised in these terms in 19 constitutions.<sup>222</sup> Twelve constitutions provide for the right to participate in government and the right to vote in a single provision<sup>223</sup> while nine constitutions provide for the right to vote as distinct from the right to participate in government.<sup>224</sup> The Constitution of Madagascar provides for the right to participate in government but not the right to vote.

The right to vote is not always provided for within the bill of rights; in some cases the provision appears in other sections of the constitution, such as sections on 'The State and Sovereignty' or 'Elections'.<sup>225</sup> The formulation of provisions relating to this right differs and explicit reference is not always made to the 'right to vote'. In certain constitutions, universal suffrage or the eligibility criteria for voting provide the basis from which the right can be derived.<sup>226</sup>

220 UDHR (art 21), ICCPR (art 25) and ACHPR (art 13).

221 Algeria (art 50), Angola (art 28), Benin (art 6), Burkina Faso (art 12), Burundi (arts 8, 86), Cameroon (art 2), Cape Verde (art 54), Central African Republic (art 18), Chad (art 6), Comoros (art 4), Côte d'Ivoire (art 33), Democratic Republic of Congo (art 5), Djibouti (art 5), Egypt (art 62), Eritrea (arts 20, 30), Ethiopia (art 38), Gabon (art 4), The Gambia (secs 26, 39), Ghana (art 42), Guinea (art 2), Guinea-Bissau (art 47), Lesotho (sec 20), Liberia (art 77(b)), Madagascar (art 15), Malawi (sec 40(3)), Mali (art 27), Mauritania (art 3), Mauritius (sec 44), Morocco (art 8), Mozambique (art 73), Namibia (art 17(2)), Niger (art 7), Rwanda (art 8), São Tomé & Príncipe (art 57), Senegal (art 3), Seychelles (arts 24, 113), Sierra Leone (sec 31), South Africa (sec 19(3)), Swaziland (sec 85), Tanzania (sec 5), Togo (sec 5), Tunisia (art 20), and Uganda (art 59).

222 Angola (art 28), Burkina Faso (art 12), Burundi (art 51), Cape Verde (arts 41, 54, 55), Egypt (art 14 of the Social and Moral Constituents and art 62 in the Bill of Rights), Eritrea (art 7(4) of the Democratic Principles), Ethiopia (art 38), The Gambia (sec 26), Lesotho (sec 20), Madagascar (art 15), Malawi (sec 40(1)(c)), Mauritania (art 12), Namibia (art 17), Rwanda (art 45), São Tomé & Príncipe (arts 56, 58), Seychelles (art 24), South Africa (sec 19(3)), Tanzania (art 21) and Uganda (art 38).

223 Angola, Burkina Faso, Cape Verde, Egypt, Ethiopia, The Gambia, Lesotho, Malawi, Mozambique, Namibia, Seychelles and South Africa.

224 Burundi (art 51), Democratic Republic of Congo (art 5), Eritrea (art 7(4) of the Democratic Principles), Mauritania (art 12), São Tomé & Príncipe (art 56), Somalia (art 14), Tanzania (art 21), Tunisia (art 20) and Uganda (art 38).

225 Benin, Burundi, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Gabon, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Mauritius, Morocco, Niger, Rwanda, São Tomé & Príncipe, Senegal, Sierra Leone, Swaziland, Tanzania, Togo, Tunisia and Uganda.

226 Algeria, Benin, Burkina Faso, Cape Verde, Chad, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Morocco, Mozambique, Niger, Senegal Togo and Tunisia.

The Constitution of Angola makes it both a right and duty for eligible citizens to vote, while that of Uganda makes it a duty of every eligible citizen to register as a voter.

**(p) Right to protection of the family (children and the youth)**

The International Bill of Rights and the African Charter recognise the right to protection of the family.<sup>227</sup> The elements of this right include rights to and in marriage, protection of the family as a unit as well as a special emphasis on the protection of the rights young persons, mothers and children. A total of 42 African constitutions recognise at least one of these elements.<sup>228</sup>

Children's rights are to be found in 37 countries,<sup>229</sup> and the rights of the youth in 22 constitutions.<sup>230</sup>

Eighteen constitutions recognise the right to enter into marriage with

227 UDHR (art 16), ICCPR (art 23), ICESCR (art 10) and ACHPR (art 18).

228 Algeria (art 58), Angola (art 29), Benin (art 26), Burkina Faso (art 23), Burundi (art 30), Cameroon (preamble), Cape Verde (art 81), Central African Republic (art 6), Chad (art 37), Comoros (preamble), Congo (arts 31, 32), Côte d'Ivoire (art 5), Democratic Republic of Congo (art 40), Egypt (art 9 of the Social and Moral Constituents), Equatorial Guinea (arts 21, 24), Eritrea (art 22(1)), Ethiopia (art 34(3)), Gabon (art 1(14)), The Gambia (secs 27, 29), Ghana (art 28 in the Bill of Rights and art 37(2)(b) of the Directive Principles of State Policy), Guinea (art 16), Guinea-Bissau (art 25), Lesotho (sec 32 of the Principles of State Policy), Madagascar (arts 20, 21), Malawi (sec 13(i) of the Fundamental Principles and sec 22 in the Bill of Rights), Mauritania (art 16), Mozambique (art 119-121), Namibia (art 14), Niger (arts 18, 19), Nigeria (sec 17(3)(h) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 27), São Tomé & Príncipe (arts 25, 50), Senegal (art 17), Seychelles (art 32), Sierra Leone (sec 8(3)(f)), Somalia (art 25), South Africa (sec 28), Sudan (art 15 of the Directive Principles), Swaziland (sec 27 in the Bill of Rights and sec 60(5) of the Directive Principles of State Policy), Togo (art 31), Uganda (art XIX of the National Objectives and Directive Principles of State Policy ) and Zambia (art 24).

229 Angola (art 30), Benin (art 26), Burkina Faso (art 24), Burundi (arts 30, 44-46), Cape Verde (art 73), Central African Republic (art 6), Chad (art 38), Comoros (preamble), Congo (art 31-34), Côte d'Ivoire (art 6), Democratic Republic of Congo (art 41), Equatorial Guinea (art 22), Eritrea (art 22(3)), Ethiopia (arts 36, 41(5)), Gabon (art 1(16)), The Gambia (sec 29), Ghana (art 28 in the Bill of Rights and art 37(2)(b) of the Directive Principles of State Policy), Guinea (art 16), Guinea-Bissau (art 40), Lesotho (sec 32 of the Principles of State Policy), Madagascar (art 23), Malawi (sec 13(h) of the Principles of National Policy and in the Bill of Rights at sec 23), Mozambique (art 47), Namibia (art 15), Niger (art 19), Nigeria (sec 17(3)(f) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 28), São Tomé & Príncipe (art 51), Senegal (art 20), Seychelles (art 31), Sierra Leone (sec 8(3)(f)), South Africa (sec 28), Sudan (art 14 of the Directive Principles of State Policy), Swaziland (sec 29), Togo (arts 31, 36), Uganda (art 34) and Zambia (art 24).

230 Angola (art 31), Cameroon (preamble), Cape Verde (art 74), Central African Republic (art 6), Chad (art 39), Comoros (preamble), Côte d'Ivoire (art 8), Democratic Republic of Congo (art 42), Gabon (art 1(17)), Guinea (art 17), Guinea-Bissau (art 40), Lesotho (sec 32 of the Principles of State Policy), Mozambique (art 123), Niger (art 19), Nigeria (sec 17(3)(f) of the Fundamental Objectives and Directive Principles of State Policy), São Tomé & Príncipe (art 52), Senegal (art 20), Seychelles (art 31), Sierra Leone (sec 8(3)(f)), Sudan (art 14 of the Directive Principles), Togo (art 36) and Zambia (art 24).

free consent;<sup>231</sup> the rights of mothers are to be found in 12 constitutions;<sup>232</sup> the right to marry and found a family is protected in eight countries;<sup>233</sup> and equal rights within marriage are protected in eight constitutions.<sup>234</sup>

According to the constitutions of Angola, Burkina Faso, Cape Verde, Central African Republic, Chad, Democratic Republic of Congo, Eritrea, Guinea, Madagascar, Niger, Rwanda, São Tomé and Príncipe, Senegal, Somalia and Togo, parents have the right and duty to educate their children. The duties of children within the family are elaborated in seven constitutions.<sup>235</sup>

Equality of children born within or outside marriage is emphasised in the Constitutions of Central African Republic, Congo, Malawi, São Tomé and Príncipe and Togo. Domestic violence is prohibited in the Constitution of Cape Verde. The Constitution of Rwanda recognises only monogamous, heterosexual marriages, and those of Burundi, Democratic Republic of Congo, Seychelles and Uganda recognise only heterosexual marriages.

#### **(q) Right to culture**

The right to culture and related rights potentially applicable to this right are recognised in the four international instruments.<sup>236</sup> This right as enshrined in the international instruments includes the right to freely participate in cultural life, to enjoy the arts and share in scientific advancement and the protection of interests in scientific, literary or artistic production. In addition, state parties are required to take steps for the conservation, development, and diffusion of science and culture, to respect freedom of scientific research and creative activity, as well as to recognise the benefits to be derived from international co-operation in scientific and cultural fields.

231 Burkina Faso (art 23), Burundi (art 29), Cape Verde (art 46), Chad (art 38), Democratic Republic of Congo (art 40), Eritrea (art 22(2), (3)), Ethiopia (art 34(1), (2)), The Gambia (sec 27), Malawi (sec 22), Mozambique (art 119(3)), Namibia (art 14(1), (2)), Niger (art 19), Nigeria (sec 17(3)(h)), Rwanda (art 26), São Tomé & Príncipe (art 25), Senegal (art 18), Swaziland (sec 27(2)) and Uganda (art 31).

232 Benin, Congo, Equatorial Guinea, Guinea-Bissau, Madagascar, Mozambique, Niger, Rwanda, São Tomé & Príncipe, Seychelles, Sudan and Swaziland.

233 Democratic Republic of Congo, Eritrea, Ethiopia, Malawi, Namibia, São Tomé & Príncipe, Swaziland and Uganda.

234 Angola, Eritrea, Ethiopia, Namibia, Rwanda, São Tomé & Príncipe, Senegal and Uganda.

235 Algeria, Burkina Faso, Cape Verde, Democratic Republic of Congo, Eritrea, Guinea and Somalia.

236 UDHR (art 27), ICCPR (art 27), ICESCR (art 15) and (ACHPR art 22).



A total of 41 African constitutions recognise a right to culture.<sup>237</sup>

This right is protected in various ways. The constitutions in question emphasize among other things the freedom and promotion of artistic, scientific and technical creation as well as the protection of such works;<sup>238</sup> the protection of cultural, historical and architectural heritage;<sup>239</sup> the freedom of individuals and communities to promote, enjoy, practice and maintain their culture including the use of their own languages as well as national languages;<sup>240</sup> to benefit from scientific progress;<sup>241</sup> and the right to formal and informal education on culture.<sup>242</sup>

The constitutions of Cape Verde and Sierra Leone set out in detail state responsibilities towards the realisation of the right. The Constitution of Ghana prohibits cultural practices that dehumanise or are injurious to the physical or mental well-being of an individual, while that of South Africa prohibits the exercise of the rights inconsistently with the provisions of the bill or rights.

#### **(r) Right to health**

The right to health is recognised in the UDHR,<sup>243</sup> ICESCR<sup>244</sup> and ACHPR.<sup>245</sup>

237 Algeria (art 38), Angola (art 49), Benin (arts 8, 10, 11), Burkina Faso (arts 28, 30), Burundi (art 58), Cape Verde (arts 53, 78), Central African Republic (art 7), Chad (art 33), Congo (art 22), Côte d'Ivoire (art 7), Democratic Republic of Congo (art 46), Egypt (art 16 of the Social and Moral Constituents), Equatorial Guinea (art 6), Eritrea (art 21(4)), Ethiopia (art 41(9) and art 91 of the National Policy Principles and Objectives), Gabon (art 1(18)), The Gambia (sec 32 in the Bill of Rights and sec 218 of the Directive Principles of State Policy), Ghana (art 26 in the Bill of Rights and art 39 of the Directive Principles of State Policy), Guinea (art 19), Guinea-Bissau (art 17 of the Fundamental Principles and arts 42, 43 in the Bill of Rights), Lesotho (sec 35 of the Principles of State Policy), Liberia (art 5(b) of the General Principles of National Policy), Madagascar (art 26), Malawi (section 26), Mali (art 8), Mauritania (art 10), Mozambique (art 94), Namibia (art 19), Nigeria (sec 21 of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 50), São Tomé & Príncipe (art 55), Senegal (art 8), Seychelles (art 39), Sierra Leone (sec 12 of the Fundamental Principles of State Policy), Somalia (art 24(6)), South Africa (secs 30, 31), Sudan (art 27), Swaziland (sec 60(10) of the Directive Principles of State Policy), Togo (art 40), Uganda (art XXIV of the National Objectives and Directive Principles of State Policy and art 37 in the Bill of Rights ) and Zambia (art 112(g) of the Directive Principles of State Policy ).

238 Algeria (art 38), Burkina Faso (art 28), Burundi (art 58), Cape Verde (arts 28, 53), Central African Republic (art 13), Chad (art 34), Congo (art 29), Democratic Republic of Congo (art 46), Egypt (art 49), Equatorial Guinea (art 6), Eritrea (art 9(c) of the National Objectives and Directive Principles), Ethiopia (art 41(9)), Guinea-Bissau (art 42), Lesotho (sec 35 of the Principles of State Policy), Madagascar (art 26), Mali (art 8), Mauritania (art 10), Mozambique (art 94), Nigeria (sec 21 of the Fundamental Objectives and Directive Principles of State Policy), São Tomé & Príncipe (arts 27, 45), South Africa (sec 16(1)(c), (d)) and Sudan (art 12 of the Directive Principles).

239 Cape Verde, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Ghana, Madagascar, São Tomé & Príncipe, Seychelles and Uganda.

240 Benin, The Gambia, Ghana, Malawi, Namibia, South Africa, Sudan, Uganda and Zambia.

241 Lesotho and Madagascar.

242 Swaziland.

243 Art 25.

244 Art 12.

245 Art 16.

The right is provided for, in various formulations, in the constitutions of 39 African countries.<sup>246</sup> In most cases, the right is recognised without further elaboration.

The right to health is enshrined in the ICESCR in greater detail than in the other two instruments. The right is protected in article 12 of the ICESCR as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The realisation of this right includes the reduction of the still-birth rate, infant mortality and the healthy development of the child; improvement of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions which would assure to all medical service and attention in the event of sickness.

The elements contained in the ICESCR are not widely recognised explicitly in African constitutions, as most constitutions do not elaborate on the content of the right. Five countries guarantee as part of the right to health, access to medical services;<sup>247</sup> four countries recognise the reduction in infant deaths and the healthy development of the child;<sup>248</sup> four countries include the prevention, treatment and control of diseases;<sup>249</sup> and one country, environmental and industrial hygiene.<sup>250</sup> The constitutions of Angola, Cape Verde, Congo, São Tomé and Príncipe, and Seychelles support private initiatives in the provision of healthcare. Two constitutions refer to the promotion of public health.<sup>251</sup>

### (s) Rights to the environment

Neither the UDHR nor the ICESCR provides for rights to the environment. However, the ACHPR recognises in art 24 the right to a healthy, clean environment as a peoples' right.

246 Algeria (art 54), Angola (art 47), Benin (art 8), Burkina Faso (arts 18, 26), Burundi (art 55), Cape Verde (art 70), Comoros (preamble), Congo (art 30), Côte d'Ivoire (art 7), Democratic Republic of Congo (art 47), Egypt (arts 16, 17 of the Social and Moral Constituents), Equatorial Guinea (sec 22), Eritrea (art 21(1)), Ethiopia (art 41(4) in the Bill of Rights and art 90(1) of the National Policy Principles and Objectives), Gabon (art 1(8)), The Gambia (sec 216(4) of the Directive Principles of State Policy), Guinea (art 15), Guinea-Bissau (art 15 of the Fundamental Principles and art 39 in the Bill of Rights), Lesotho (sec 27 of the Principles of State Policy), Libya (art 15), Madagascar (art 19), Malawi (sec 13(c) of the National Principles of National Policy), Mali (art 17), Mozambique (art 89), Namibia (art 95(b) of the principles of state policy), Niger (art 11), Nigeria (sec 17(3)(d) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 41), São Tomé & Príncipe (art 49), Senegal (art 8), Seychelles (art 29), Sierra Leone (sec 8(3)(d)), Somalia (art 26), South Africa (sec 27(1)(a),(3)), Sudan (art 13 of the Directive Principles), Swaziland (sec 60(8) of the Directive Principles of State Policy), Togo (art 34), Uganda (art XX of the National Objectives and Directive Principles of State Policy) and Zambia (art 112(d)).

247 The Gambia, Lesotho, Seychelles, South Africa and Uganda.

248 Angola, Equatorial Guinea, Lesotho and Seychelles.

249 Algeria, Guinea, Lesotho and Seychelles.

250 Lesotho.

251 São Tomé & Príncipe and Sudan.

Thirty-three constitutions in Africa enshrine rights to the environment, widely regarded as a third generation right.<sup>252</sup>

The realisation of rights to the environment find expression in various ways in African constitutions, including through the rational and sustainable exploitation of environmental resources in ten constitutions;<sup>253</sup> the conservation and protection of national species of flora and fauna and the maintenance of ecological balance in five constitutions;<sup>254</sup> the adoption of policies and legislation and other measures in five constitutions;<sup>255</sup> the promotion of environmental education in three constitutions;<sup>256</sup> preventing pollution and degradation in three constitutions;<sup>257</sup> and fighting desertification and the effects of drought in one constitution.<sup>258</sup>

The constitutions of Angola, Benin, Chad, Congo, Democratic Republic of Congo and Niger explicitly make damage to the environment punishable by law. It includes damage through importation, burial, and dumping of foreign toxic waste, and any act that jeopardises environmental conservation. The storage, handling, removal, transportation, importation, burying and discharge of toxic waste and pollutants are made subject to regulation by law in the constitutions of Benin, Chad, Congo, Democratic Republic of Congo, Namibia and Niger.

The protection of the environment is recognised as a duty for all as part of the right to the environment in 14 constitutions.<sup>259</sup> The

252 Angola (art 24), Benin (arts 27-29), Burkina Faso (art 29), Burundi (art 35), Cameroon (preamble), Cape Verde (art 72), Chad (arts 47, 48), Comoros (preamble), Congo (arts 35-37), Côte d'Ivoire (art 19), Democratic Republic of Congo (arts 53-55), Ethiopia (art 44 in the Bill of Rights and art 92 of the National Policy Principles and Objectives), Gabon (art 1(8)), Ghana (art 36(9) of the Directive Principles of State Policy), Guinea (art 19), Lesotho (sec 36 of the Principles of State Policy), Madagascar (art 39), Malawi (sec 13(d) of the Principles of National Policy), Mali (art 15), Mozambique (art 90), Namibia (art 95(l) of the Principles of State Policy), Niger (art 27), Nigeria (sec 20 of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 49), São Tomé & Príncipe (arts 48, 49), Senegal (art 8), Seychelles (art 38), South Africa (sec 24), Sudan (art 13 of the Directive Principles), Swaziland (sec 60(11) of the Directive Principles of State Policy), Togo (art 41), Uganda (art XXVII of the National Objectives and Directive Principles of State Policy and art 39 in the Bill of Rights) and Zambia (art 112(h) of the Directive Principles of State Policy).

253 Burundi, Cape Verde, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, Sudan and Uganda.

254 Angola, Malawi, Namibia, South Africa and Uganda.

255 Cape Verde, Mozambique, Rwanda, Seychelles and South Africa.

256 Cape Verde, Seychelles and Uganda.

257 Malawi, South Africa and Uganda.

258 Cape Verde.

259 Benin, Burkina Faso, Cameroon, Cape Verde, Comoros, Congo, Democratic Republic of Congo, Ethiopia, Madagascar, Mali, Mozambique, Niger, Rwanda and São Tomé & Príncipe.

Constitutions of Congo and Ethiopia provide for compensation to those adversely affected by pollution or environmental destruction resulting from economic activity or by state programmes under this right.

**(t) Freedom from slavery and forced labour**

The right to freedom from slavery and forced labour is provided for in the UDHR, ICCPR and ACHPR.<sup>260</sup> Somewhat surprisingly, considering the history of the continent, this right is recognised explicitly in only 29 African constitutions.<sup>261</sup>

Like the ACHPR, which does not include a prohibition of compulsory labour, the constitutions of Burkina Faso, Burundi, Chad and Niger prohibit only slavery. The constitutions of Mozambique and Tanzania prohibit forced labour but do not mention slavery or the slave trade.

**(u) Right to social security**

While the right to social security is recognised in the UDHR and the ICESCR, it is not explicitly mentioned in the ACHPR.<sup>262</sup>

The right to social security and related rights are recognised in 29 African constitutions.<sup>263</sup>

The situations stipulated for which social security or assistance is guaranteed in African constitutions include old age (17);<sup>264</sup> disability

260 UDHR (art 4), ICCPR (art 8) and ACHPR (art 5).

261 Botswana (sec 6), Burkina Faso (art 2), Burundi (art 26), Chad (art 20), Congo (art 26), Côte d'Ivoire (art 3), Democratic Republic of Congo (art 16), Eritrea (art 16(3)), Ethiopia (art 18(2)-(4)), The Gambia (sec 20), Ghana (art 16), Kenya (sec 73), Lesotho (sec 9), Liberia (art 12), Malawi (sec 27), Mauritius (sec 6), Mozambique (art 84(3)), Namibia (art 9), Niger (art 12), Nigeria (sec 34), Seychelles (art 17), Sierra Leone (sec 19), South Africa (sec 13), Sudan (art 20), Swaziland (sec 17), Tanzania (sec 25(2)), Uganda (art 25), Zambia (art 14) and Zimbabwe (sec 14).

262 UDHR (arts 22, 25) and ICESCR (art 9).

263 Algeria (art 59), Angola (art 47), Burkina Faso (art 18), Cape Verde (art 69), Chad (art 40), Democratic Republic of Congo (art 36), Egypt (art 17 of the Social and Moral Constituents), Eritrea (art 21(2)), Ethiopia (art 90(1) of the National Policy Principles and Objectives), Gabon (art 1(8)), The Gambia (sec 216(5) of the Directive Principles of State Policy), Ghana (art 37(6) of the Directive Principles of State Policy), Guinea (art 17), Guinea-Bissau (art 37(3)), Madagascar (art 30), Mali (art 17), Mozambique (art 95), Namibia (art 95(f), (g) of the Principles of State Policy), Nigeria (sec 17(3)(g) of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (art 14), São Tomé & Príncipe (art 43), Seychelles (art 37), Somalia (art 26), South Africa (sec 27(1)(c)), Sudan (art 11 of the Directive Principles), Tanzania (sec 11(1) of the Fundamental Objectives and Directive Principles of State Policy), Togo (art 33), Uganda (art XIV of the National Objectives and Directive Principles of State Policy ) and Zambia (art 112(f) of the Directive Principles of State Policy ).

264 Angola, Burkina Faso, Cape Verde, Chad, Egypt, Gabon, Ghana, Guinea, Madagascar, Mozambique, Namibia, Rwanda, Somalia, Sudan, Tanzania, Togo and Zambia.

(15);<sup>265</sup> incapacity to work/unemployment (9);<sup>266</sup> illness (3);<sup>267</sup> disadvantage (3);<sup>268</sup> orphanhood (3);<sup>269</sup> widowhood (3);<sup>270</sup> maternity (2);<sup>271</sup> childcare (2);<sup>272</sup> and indigence (2).<sup>273</sup>

The Constitution of Rwanda provides for assistance to be granted to genocide survivors, and the constitutions of Angola,<sup>274</sup> Egypt<sup>275</sup> and Somalia<sup>276</sup> protect the rights of war victims and veterans.

#### (v) Right to nationality

The right to nationality, which is protected in the UDHR and ICCPR,<sup>277</sup> but not in the ACHPR, is recognised in 28 African constitutions.<sup>278</sup>

In 11 constitutions the right is to be found in the bill of rights.<sup>279</sup> Certain constitutions determine the conditions for acquiring or losing nationality.<sup>280</sup> In other cases it is to be found in parts of the constitution other than the bill of rights<sup>281</sup> while others merely subject conditions for acquiring or losing nationality to law.<sup>282</sup>

#### (w) Right to development

Of the four international instruments mentioned, only the ACHPR

265 Angola, Cape Verde, Burkina Faso, Chad, Gabon, Guinea, Madagascar, Mozambique, Rwanda, São Tomé & Príncipe, Somalia, Sudan, Tanzania, Togo and Zambia.

266 Algeria, Angola, Cape Verde, Chad, Democratic Republic of Congo, Egypt, Guinea-Bissau, Namibia and Seychelles.

267 Cape Verde, São Tomé & Príncipe and Tanzania.

268 Namibia, Rwanda and Zambia.

269 Cape Verde, São Tomé & Príncipe and Somalia.

270 Cape Verde, São Tomé & Príncipe and Somalia.

271 Angola and Gabon.

272 Angola and Gabon.

273 Namibia and Rwanda.

274 Art 48.

275 Art 15 of the Social and Moral Constituents.

276 Art 26(b).

277 UDHR (art 15) and ICCPR (art 24).

278 Algeria (art 30), Angola (art 19), Burundi (arts 12, 34), Cape Verde (art 39), Comoros (art 5), Congo (art 12), Democratic Republic of Congo (art 10), Equatorial Guinea (art 12), Eritrea (art 3), Ethiopia (art 33), Ghana (arts 6-10), Kenya (secs 87-98), Lesotho (secs 37-43), Liberia (arts 27-28), Malawi (art 23), Mauritius (secs 20-27), Mozambique (art 5), Namibia (art 4), Nigeria (art 25-32), Rwanda (art 7), Seychelles (arts 7-14), Somalia (art 10), South Africa (sec 20), Sudan (art 22), Togo (art 32), Uganda (arts 9-19), Zambia (arts 4-10) and Zimbabwe (secs 4-10).

279 Algeria, Angola, Burundi, Cape Verde, Congo, Democratic Republic of Congo, Ethiopia, Malawi, South Africa, Sudan and Togo.

280 Cape Verde, Democratic Republic of Congo, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Mauritius, Namibia, Nigeria, Rwanda, Seychelles, Somalia, Sudan, Uganda, Zambia and Zimbabwe.

281 Comoros, Equatorial Guinea, Eritrea, Ghana, Kenya, Lesotho, Liberia, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Somalia, Uganda, Zambia and Zimbabwe.

282 Algeria, Angola, Burundi, Comoros, Congo, Equatorial Guinea, Eritrea, Mozambique and Togo.

recognises this right.<sup>283</sup> The right to development is an African invention, and is widely associated with claims made by Africa against the international community.

Twenty-four African constitutions recognise the right to development or related rights.<sup>284</sup>

Fourteen countries refer to this right in terms of the free development of the person,<sup>285</sup> thus an individual right, while nine others protect it as a collective right.<sup>286</sup> The constitutions of Burundi and Malawi protect the right both in respect of individuals and collectives.

#### (x) Right to an adequate standard of living

The right to an adequate standard of living is recognised in the UDHR and the ICESCR,<sup>287</sup> but not in the ACHPR. This right comprises the right to housing,<sup>288</sup> the right to food,<sup>289</sup> the right to water<sup>290</sup> and the right to clothing, which are rights protected by a total of 14 African countries.

The right to clothing is not protected in any constitution in Africa. The Constitution of the Democratic Republic of Congo protects the right to electricity.<sup>291</sup>

283 Art 22. The term 'right to development' was first coined in 1972 by Keba Mbaye of Senegal, former vice-president of the International Court of Justice, < <http://www.theworldpoliticforum.org/a2.php?id=52> > .

284 Angola (art 20), Benin (art 9), Burkina Faso (art 14), Burundi (arts 52, 56), Cameroon (preamble), Cape Verde (art 40), Central African Republic (art 2), Chad (art 19), Congo (art 7), Côte d'Ivoire (art 7), Democratic Republic of Congo (arts 16, 58), Equatorial Guinea (art 13(a)), Ethiopia (art 43), Gabon (art 1(1)), Ghana (art 37(2)(a) of the Directive Principles of State Policy), Guinea (art 6), Liberia (art 7 of the Principles of National Policy), Madagascar (art 17), Malawi (sec 30), Niger (art 14), Senegal (art 7), Tanzania (art 9(1)(i) of the Fundamental Objectives and Directive Principles of State Policy), Togo (art 12) and Uganda (art XI of the National Objectives and Principles of State Policy).

285 Angola, Benin, Cape Verde, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Guinea, Madagascar, Niger, Senegal and Togo.

286 Burkina Faso, Democratic Republic of Congo, Equatorial Guinea, Ethiopia, Ghana, Liberia, Tanzania and Uganda.

287 UDHR (art 25) and ICESCR (art 11).

288 Burkina Faso (art 18), Cape Verde (art 71), Democratic Republic of Congo (art 48), Ethiopia (art 90(1) in the National Policy Principles and Objectives), The Gambia (sec 216(4) of the Directive Principles of State Policy), Mali (art 17), Nigeria (sec 16(2)(d) of the Fundamental Objectives and Directive Principles of State Policy), São Tomé & Príncipe (art 48), Seychelles (art 34), South Africa (sec 26), Uganda (art XIV of the National Objectives and Directive Principles of State Policy) and Zambia (art 112(d) in the Directive Principles of State Policy).

289 Democratic Republic of Congo (art 47), Ethiopia (art 90(1) of the National Policy Principles and Objectives), The Gambia (sec 216(4) of the Directive Principles of State Policy), Malawi (sec 13(b) of the Principles of National Policy), Namibia (art 95(j) of the Principles of State Policy), Nigeria (sec 16(2)(d) of the Fundamental Objectives and Directive Principles of State Policy), South Africa (sec 27(1)(b)) and Uganda (art XXII of the National Objectives and Directive Principles of State Policy).

290 Democratic Republic of Congo (art 48), Ethiopia (art 90(1) of the National Policy Principles and Objectives), The Gambia (sec 216(4) of the Directive Principles of State Policy), South Africa (sec 27(1)(b)), Uganda (art XXI of the National Objectives and Directive Principles of State Policy) and Zambia (art 112(d)).

291 Art 48.

*(i) The right to housing and shelter*

A total of 12 constitutions recognise this right. The right to housing is protected in terms of the suitability, adequacy, decency and habitability of the housing in seven constitutions,<sup>292</sup> and in terms of access in three constitutions.<sup>293</sup> The Constitution of Cape Verde sets out the duties of public authorities in order to fulfil the right to housing, while São Tomé and Príncipe makes the state responsible for the planning and execution of a housing policy. The Constitution of South Africa, as part of the right to housing, prohibits arbitrary evictions.

*(ii) The right to food and nutrition*

This right is protected in eight constitutions. The constitutions of Ethiopia, The Gambia, Nigeria and South Africa enshrine the right to food in terms of sufficiency, adequacy and suitability; Malawi and Namibia refer to levels of nutrition while the Constitution of Uganda refers to adequacy of food and proper nutrition. The Constitution of the Democratic Republic of Congo protects the right to food security.

*(iii) The right to clean, safe water*

The right to water is recognised in six constitutions in Africa. The constitutions of the Democratic Republic of Congo, Ethiopia, The Gambia, Uganda and Zambia protect the right to 'clean and safe' water, while that of South Africa provides for 'sufficient' water.

**(y) Rights of minorities**

The rights of minorities are protected in the ICCPR in art 27. None of the other instruments (UDHR, ICESCR, ACHPR) protect this right.

Only three African constitutions protect minority rights making specific reference to 'minorities'.<sup>294</sup>

The Constitution of Cameroon protects the rights of minorities and indigenous populations; the rights of vulnerable groups and minorities receive protection in the Constitution of the Democratic Republic of Congo; while the Constitution of Uganda specifies the rights of minorities to participation in decision-making processes. In South Africa, although the term 'minorities' is not used, the rights of cultural, religious and linguistic communities are protected.<sup>295</sup>

292 Democratic Republic of Congo, The Gambia, Nigeria, Seychelles, South Africa, Uganda and Zambia.

293 Ethiopia, The Gambia and South Africa.

294 Cameroon (preamble), Democratic Republic of Congo (art 51) and Uganda (art 36).

295 Sec 31.

### (z) Other rights

Various constitutions recognise as rights some unique entitlements that do not find protection as such in international instruments, such as the right of inheritance/succession;<sup>296</sup> the right to indemnity/compensation;<sup>297</sup> the property rights of spouses;<sup>298</sup> the rights of war victims and veterans;<sup>299</sup> the right to access computerised data;<sup>300</sup> the right to establish co-operatives;<sup>301</sup> the rights of consumers;<sup>302</sup> and the rights of the sick.<sup>303</sup>

## IV DUTIES

The notion of duties, which is also found in the African Charter, is present in 40 African constitutions.<sup>304</sup> The African Charter enshrines duties in Chapter II.<sup>305</sup> These provisions elaborate duties imposed on individuals towards their families, society, the state, other legally recognised communities and the international community. The UDHR stipulates that everyone has duties to the community.<sup>306</sup> Neither the ICCPR nor the ICESCR places any duties on the individual.

Duties in African constitutions vary widely. They frequently include the duty to protect and defend the country and to ensure peace and

296 Algeria (art 52), Burkina Faso (art 25), Congo (art 17), Guinea-Bissau (art 14 of the Fundamental Principles), Madagascar (art 20), Mauritania (art 15(2)) and Mozambique (art 83).

297 Algeria (art 49), Cape Verde (art 20(2)) and São Tomé & Príncipe (art 60).

298 Ghana (art 22), Liberia (art 23) and Swaziland (sec 34).

299 Angola (art 48) and Egypt (art 15 of the Social and Moral Constituents).

300 Cape Verde (art 44) and Mozambique (art 71).

301 So Tomé & Príncipe (art 44).

302 Cape Verde (art 80).

303 Ghana (art 30).

304 Algeria (arts 60-66), Angola (arts 28, 46), Benin (arts 32-37), Burkina Faso (arts 10, 17), Burundi (arts 62-74), Cameroon (preamble), Cape Verde (arts 82-85), Central African Republic (arts 15, 16), Chad (arts 49-54), Congo (arts 43-50), Côte d'Ivoire (arts 23-28), Democratic Republic of Congo (arts 62-67), Djibouti (art 17), Egypt (arts 33, 39, 58-62), Equatorial Guinea (arts 16-20, 23, 25), Eritrea (art 25), Gabon (art 1(21)), The Gambia (sec 220 of the Directive Principles of State Policy), Ghana (art 41 of the Directive Principles of State Policy), Guinea (arts 16, 20), Guinea-Bissau (art 35), Libya (arts 4, 14, 16), Madagascar (arts 18, 39), Mali (arts 15, 16, 19, 22-24), Mauritania (arts 17-19), Morocco (arts 16-18), Mozambique (arts 45, 46, 84, 88, 90), Niger (arts 19, 28-30), Nigeria (sec 24 of the Fundamental Objectives and Directive Principles of State Policy), Rwanda (arts 46-49), São Tomé & Príncipe (arts 63, 64), Senegal (art 20), Seychelles (art 40), Sierra Leone (sec 13 of the Fundamental Principles of State Policy), Sudan (arts 7, 10, 35), Swaziland (sec 63 of the Directive Principles of State Policy), Tanzania (arts 25-28, 29(5)), Togo (arts 31, 42-50), Tunisia (arts 15, 16), Uganda (arts 3(4), 17 in the Bill of Rights and art XXIX of the National Objectives and Directive Principles of State Policy) and Zambia (art 113 of the Directive Principles of State Policy).

305 Arts 27-29.

306 Art 29.



national unity (35);<sup>307</sup> the duty to respect the constitution and the law (27);<sup>308</sup> the duty to pay taxes and other public expenditure (24);<sup>309</sup> the duty to respect others and their rights (18);<sup>310</sup> the duty to respect public and private property (18);<sup>311</sup> the duty to work (17);<sup>312</sup> and the duty of respect for the environment (13).<sup>313</sup>

The Constitution of Congo makes it a duty for public officials to declare their assets and saving is a public duty in Egypt.

## V CONCLUSION

As was said at the outset the above presents an overview of rights that states consider as being paramount, and undertake to guarantee for their citizens. The numbers provided relate to the formal recognition of these concepts, not their practical implementation. In many instances, these constitutions reflect undertakings that are not translated into reality; it may reflect *opinio juris* but not necessarily state practice.

Nevertheless, the overview does provide some indication of the ideals posed by African states for themselves. The fact that states recognise these ideals could provide a useful starting point for them being held responsible to achieve these ideals, provided the gap between promise and practice does not become too wide, which it may be in many cases. The challenge remains how to translate theory into practice, promise into reality.

The study also raises issues of universality. The universality of human rights is often viewed as the approach in terms of which there is a single set of human rights norms that applies to everyone in the world. It is

307 Algeria, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Gabon, The Gambia, Ghana, Guinea, Libya, Mali, Morocco, Mozambique, Niger, Nigeria, Rwanda, São Tomé & Príncipe, Seychelles, Sierra Leone, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda and Zambia.

308 Algeria, Benin, Burundi, Cape Verde, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Gabon, The Gambia, Ghana, Guinea, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Seychelles, Sierra Leone, Sudan, Swaziland, Tanzania, Togo and Uganda.

309 Algeria, Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ghana, Guinea, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, São Tomé & Príncipe, Sudan, Togo, Tunisia, Uganda and Zambia.

310 Algeria, Benin, Burundi, Cape Verde, Congo, Democratic Republic of Congo, Equatorial Guinea, Eritrea, The Gambia, Ghana, Guinea, Nigeria, Rwanda, Sierra Leone, Swaziland, Tanzania, Togo and Uganda.

311 Algeria, Benin, Burundi, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Egypt, The Gambia, Ghana, Mauritania, Niger, Sierra Leone, Sudan, Swaziland, Tanzania, Togo and Uganda.

312 Angola, Benin, Burundi, Cape Verde, Congo, Equatorial Guinea, The Gambia, Ghana, Libya, Mali, Mozambique, Rwanda, Seychelles, Sierra Leone, Swaziland, Tanzania and Uganda.

313 Cape Verde, Chad, Côte d'Ivoire, The Gambia, Ghana, Madagascar, Mali, Mozambique, Rwanda, Seychelles, Sudan, Swaziland and Uganda.

submitted that such an approach reflects only one aspect of the meaning of universality. For human rights norms to be truly universal they must also reflect the global experience and standards relating to human rights. In other words, universality does not only relate to the scope of application of certain norms, but also to the inclusivity of their origins.

The 53 countries of Africa represent more than a quarter of the countries of the world. As a result the imperative is not only for African states to take the human rights provisions in their constitutions more seriously, but also for the international community, in formulating international human rights norms, to do likewise.

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\* The authors would like to thank the following people for their comments on various drafts and aspects of this article: Frans Viljoen, Stu Woolman, Joshua Koltun, Erika de Wet, Cheryl Saunders, Mianko Ramaroson, Magnus Killander and Paul Tavernier. Thanks are also due to Tina Rossouw, Emily Laubscher and the LLM Class of 2006 of the Centre for Human Rights, University of Pretoria.

**Table 1: Frequency of recognition of the different rights**

	RIGHTS	NO OF CONSTITUTIONS
1.	Right to equality and non-discrimination — <i>Rights of the aged</i> — <i>Rights of persons with disabilities</i> — <i>Rights of women</i>	53 (25) (25) (13)
2.	Freedom of opinion and expression — <i>Freedom of the press</i> — <i>Right to information</i>	53 (35) (23)
3.	Freedom of movement — <i>Freedom of residence</i> — <i>Right to entry and exit</i> — <i>Prohibition against unlawful expulsion</i> — <i>Right to asylum</i>	53 (50) (39) (32) (18)
4.	Right to privacy	53
5.	Rights relating to property	53
6.	Right to a fair trial — <i>Right of access to justice</i> — <i>Right to administrative justice</i>	51 (17) (11)
7.	Rights related to liberty and security of the person — <i>Right to humane treatment of those deprived of liberty</i>	51 (8)
8.	Freedom of association — <i>Right to form trade unions</i>	50 (22)
9.	Freedom of thought, conscience and religion	50
10.	Freedom from torture, and cruel, inhuman and degrading treatment or punishment — <i>Right to dignity</i>	49 (21)
11.	Freedom of assembly	47
12.	Right to work and rights in work — <i>Right to strike</i> — <i>Right to form trade unions</i>	46 (29) (27)
14.	Right to education	45
13.	Right to life — <i>Prohibition of arbitrary deprivation of life</i> — <i>Prohibition of death penalty</i>	44 (20) (7)
15.	Right to participate in government and to vote — <i>Right to vote</i>	43 (21)
16.	Right to protection of the family — <i>Rights of children</i> — <i>Rights of youth</i>	42 (37) (22)
17.	Right to culture	41
18.	Right to health	39
19.	Rights to the environment	33
20.	Freedom from slavery and forced labour	29
21.	Right to social security	29

22.	Right to nationality	28
23.	Right to development	24
24.	Right to an adequate standard of living — <i>Right to housing and shelter</i> — <i>Right to food and nutrition</i> — <i>Right to clean, safe water</i>	14 (12) (8) (6)
25.	Rights of minorities	3

**Table 2: Extent to which African constitutions recognise the rights listed in Table 1**

	NAME OF COUNTRY	NUMBER OF RIGHTS RECOGNISED
1.	Democratic Republic of Congo	25
2.	Uganda	25
3.	Ethiopia	24
4.	Cape Verde	23
5.	Malawi	23
6.	Namibia	23
7.	Seychelles	23
8.	South Africa	23
9.	Burkina Faso	22
10.	Burundi	22
11.	Ghana	22
12.	Mozambique	22
13.	Nigeria	22
14.	Togo	22
15.	Zambia	22
16.	Angola	21
17.	Chad	21
18.	Congo	21
19.	Eritrea	21
20.	The Gambia	21
21.	Lesotho	21
22.	Rwanda	21
23.	São Tomé and Príncipe	21
24.	Benin	20
25.	Côte d'Ivoire	20
26.	Guinea	20
27.	Madagascar	20
28.	Mali	20
29.	Niger	20
30.	Senegal	20
31.	Swaziland	20

32.	Algeria	19
33.	Cameroon	19
34.	Equatorial Guinea	19
35.	Liberia	19
36.	Sierra Leone	19
37.	Sudan	19
38.	Central Africa Republic	18
39.	Egypt	18
40.	Gabon	18
41.	Guinea- Bissau	18
42.	Somalia	18
43.	Tanzania	17
44.	Comoros	15
45.	Mauritius	15
46.	Kenya	14
47.	Mauritania	14
48.	Zimbabwe	14
49.	Botswana	13
50.	Djibouti	13
51.	Morocco	12
52.	Tunisia	10
53.	Libya	10