

Provisions of the Constitutions on the Relevant Human Rights

- **Right to Life**
- **Rights to Liberty**
- **Prohibition on Torture**
- **Right to a Fair Trial**

BOTSWANA

Provisions of the Constitution for Human Rights

i. Right to Life

Article 4 Protection of right to life

- (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.
- (2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) of this section if he dies as the result of the use, to such extent and in such circumstance as are permitted by law, of such force as is reasonably justifiable:-
 - a. for the defense of any person from violence or for the defense of property;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. for the purpose of suppressing a riot, insurrection or mutiny; or
 - d. in order to prevent the commission by that person of a criminal offence,

or he dies as the result of a lawful war.

ii. Right to Liberty

Article 5 Protection of right to liberty

- (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say-
 - (a) in execution of the sentence or order of court, whether established for Botswana or some other country, in respect of a criminal offence of which he has been convicted;
 - (b) in execution of the order of a court of record punishing him for contempt of that or another court;
 - (c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law;
 - (d) for the purpose of bringing him before a court in execution of the order of a court;
 - (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana;

- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Botswana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Botswana or for the purpose of restricting that person while he is being conveyed through Botswana in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Botswana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Botswana in which, in consequence of any such order, his presence would otherwise be unlawful.

2. Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

3. Any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of the court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana, and who is not released, shall be brought as soon as is reasonably practicable before a court; and if any person arrested or detained as mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

4. Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

iii. **Rights to be Protected from Torture etc**

Article 7 Protection from inhuman treatment

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the former Protectorate of Bechuanaland immediately before the coming into operation of this Constitution.

iv. Right to Fair Trial

Article 10 Provisions to secure protection of law

1. If any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognised by law.
2. Every person who is charge with a criminal offence-
 - (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;
 - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

3. When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within reasonable time after judgement a copy for the use of the court.
4. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
5. No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
6. No person shall be tired for a criminal offence if he shows that he has been pardoned for that offence.
7. No person who is tried for a criminal offence shall be compelled to given evidence at the trial
8. No person shall be convicted of a criminal offence unless that offence is defined and the penalty is therefore prescribed in a written law;
9. Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognised by law and shall be independent and impartial; and where proceedings for

such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

10. Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, shall be held in public.
11. Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority-
 - (a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or
 - (b) maybe empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

CAMEROON

Provisions of the Constitution for Human Rights

- **Right to Life**

Preamble: "every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances"

- **Right to Liberty**

Preamble: "freedom and security shall be guaranteed to each individual, subject to respect for the rights of others and the higher interests of the State"

- **Prohibition of Torture**

Preamble: "Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment"

- **Right to Fair Trial**

Preamble: "The law shall ensure the right of every person to a fair hearing before the courts; - every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence"

- **Application of the Death Penalty**

Provisions regarding the death penalty are dealt with in the Cameroon Penal Code.

- **Clemency/Mercy Pardon**

Article 8 (functions of the President): "(7) He shall exercise the right of clemency after consultation with the Higher Judicial Council.

- **Saving Clauses**

Article 9: "(1) The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law."

- **Application of International Law**

Article 43: “The President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the Legislative Power as defined in Article 26 above shall be submitted to Parliament for authorization to ratify”

Article 44: “Where the Constitutional Council finds a provision of a treaty or of an international agreement unconstitutional, authorization to ratify and the ratification of the said treaty or agreement shall be deferred until the Constitution is amended”

Article 45: “Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement”

GHANA

Provisions of the Constitution for Human Rights

i. Right to Life

Chapter 5, Article 13

(1) No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.

(2) A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances.-

(a) for the defence of any person from violence or for the defence of property; or

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purposes of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission of a crime by that person.

ii. Right to Liberty

Chapter 5, Article 14

(1) Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law -

(a) in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted; or

(b) in execution of an order of a court punishing him for contempt of court; or

(c) for the purpose of bringing him before a court in execution of an order of a court; or

(d) in the case of a person suffering from an infectious or contagious disease, a person of unsound mind, a person addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; or

(e) for the purpose of the education or welfare of a person who has not attained the age of eighteen years; or

(f) for the purpose of preventing the unlawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of that person from Ghana or for the purpose of restricting that person while he is being lawfully conveyed through Ghana in the course of his extradition or removal from one country to another; or

(g) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana.

(2) A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.

(3) A person who is arrested, restricted or detained -

(a) for the purpose of bringing him before a court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before a court within forty-eight hours after the arrest, restriction or detention.

(4) Where a person arrested, restricted or detained under paragraph (a) or (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released wither unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(5) A person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation from that other person.

(6) Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment.

(7) Where a person who has served the whole or a part of his sentence is acquitted on a appeal by a court, other than the Supreme Court, the court may certify to the Supreme Court that the person acquitted be paid compensation; and the Supreme Court may, upon examination of all the facts and the certificate of the court concerned, award such compensation as it may think fit; or, where the acquittal is by the Supreme Court, it may order compensation to be paid to the person acquitted.

iii. **Right to be Protected from Torture etc**

Chapter 5, Article 15

(1) The dignity of all persons shall be inviolable.

(2) No person shall, whether or not he is arrested, restricted or retained, be subjected to -

(a) *torture or other cruel, inhuman or degrading treatment or punishment;*

(b) *any other condition that detracts or is likely to detract from his dignity and worth as a human being.*

(3) A person who has not been convicted of a criminal offence shall not be treated as a convicted person and shall be kept separately from convicted persons.

(4) A juvenile offender who is kept in lawful custody or detention shall be kept separately from an adult offender.

iv. **Right to Fair Trial**

Chapter 5, Article 19

(1) A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

(2) A person charged with a criminal offence shall -

(a) in the case of an offence other than high treason or treason, the punishment for which is death or imprisonment for life, be tried by a judge and jury and -

(i) where the punishment is death, the verdict of the jury shall be unanimous; and

(ii) in the case of life imprisonment, the verdict of the jury shall be by such majority as Parliament may by law prescribe;

(b) in the case of an offence tried by a Regional Tribunal the penalty for which is death, the decision of the Chairman and the other panel members shall be unanimous;

- (c) be presumed to be innocent until he is proved or has pleaded guilty;
- (d) be informed immediately in a language that he understands, and in detail; of the nature of the offence charged;
- (e) be given adequate time and facilities for the preparation of this defence;
- (f) be permitted to defend himself before the court in person or by a lawyer of his choice;
- (g) be afforded facilities to examine, in person or by his lawyer, the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on the same conditions as those applicable to witnesses called by the prosecution;
- (h) be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial; and
- (i) in the case of the offence of high treason or treason, be tried by the High Court duly constituted by three Justices of that Court and the decision of the Justices shall be unanimous.

(3) The trial of a person charged with a criminal offence shall take place in his presence unless;-

- (a) he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial; or
- (b) he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the court orders him to be removed for the trial to proceed in his absence.

(4) Whenever a person is tried for a criminal offence the accused person or a person authorised by him shall, if he so requires, be given, within a reasonable time not exceeding six months after judgement, a copy of any record of the proceedings made by or on behalf of the court for the use of the accused person.

(5) A person shall not be charged with or held to be guilty of a criminal offence which is founded on an act or omission that did not at the time it took place constitute an offence.

(6) No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.

(7) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(8) Notwithstanding clause (7) of this article, an acquittal of a person on a trial for high treason or treason shall not be a bar to the institution of proceedings for any other offence against that person.

(9) Paragraphs (a) and (b) of clause (2) of this article shall not apply in the case of a trial by a court-martial or other military tribunal.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.

(12) Clause (11) of this article shall not prevent a Superior Court from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed.

(13) An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution, be established by law and shall be independent and impartial; and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(14) Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public.

(15) Nothing in this article shall prevent an adjudicating authority from excluding from the proceeding persons, other than the parties to the proceedings and their lawyers, to such an extent as the authority-

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen or the protection of the private lives of persons concerned in the proceedings.

(16) Nothing in, or done under the authority of, any law shall be held to be inconsistent with or in contravention of, the following provisions

(a) paragraph (c) of clause (2) of this article, to the extent that the law in question imposes upon a person charged with a criminal offence, the burden of providing particular facts; or

(b) clause (7) of this article, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of the force, except that any court which tries that member and convicts him shall, in sentencing him to any

punishment, take into account any punishment imposed on him under that disciplinary law.

(17) Subject to clause (18) of this article, treason shall consist only-

(a) in levying war against Ghana or assisting any state or person or inciting or conspiring with any person to levy war against Ghana; or

(b) in attempting by force of arms or other violent means to overthrow the organs of government established by or under this Constitution; or

(c) in taking part or being concerned in or inciting or conspiring with any person to make or take part or be concerned in, any such attempt.

(18) An act which aims at procuring by constitutional means an alteration of the law or of the policies of the Government shall not be considered as an act calculated to overthrow the organs of government.

(19) Notwithstanding any other provision of this article, but subject to clause (20) of this article, Parliament may, by or under an Act of Parliament, establish military courts or tribunals for the trial of offences against military law committed by persons subject to military law.

(20) Where a person subject to military law, who is not in active service, commits an offence which is within the jurisdiction of a civil court, he shall not be tried by a court-martial or military tribunal for the offence unless the offence is within the jurisdiction of a court-martial or other military tribunals under any law for the enforcement of military discipline.

(21) For the purposes of this article, "criminal offence" means a criminal offence under the laws of Ghana.

KENYA

Provisions of the Constitution for Human Rights Right to Life

Chapter V: Protection of Fundamental Rights and Freedoms of the Individual

i. Right to Life

71. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in those cases hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case-

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or
(d) in order to prevent the commission by that person of a criminal offence, (e) if he dies as a result of a lawful act of war.

ii. Right to Liberty

72. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

(a) in execution of the sentence or order of a court whether established for Kenya or some other country in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of the High Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(c) in execution of the order of a court made to secure the fulfillment of an obligation imposed on him by law;

(d) for the purpose of bringing him before a court in execution of the order of a court;

(e) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Kenya;

(f) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is or is reasonably suspected to be of unsound mind, addicted to drugs or alcohol, or a vagrant for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Kenya or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya in the course of his extradition or removal as a convicted prisoner from one country to another; or (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during a visit that he is permitted to make to a part of Kenya in which, in consequence of the order, his presence would otherwise be unlawful.

(2) A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) A person who is arrested or detained—

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from commencement of detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of having committed, or being about to commit, an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where a person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connexion with those proceedings or that offence save upon the order of a court.

(5) If a person arrested or detained as mentioned in subsection (3) (b) is not tried within a reasonable time. then, without prejudice to any further proceedings that may be against him, he shall, unless he is charged with an offence punishable by death, be released either temporarily or upon reasonable conditions, including such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial. (6) A person who is unlawfully arrested or detained by another person shall be entitled to compensation therefrom that other person.

iii. Right to be Protected from Torture etc

74. (1) No person shall be subject to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Kenya on 11th December, 1963.

iv. Right to Fair Trial

77. (1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty; (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence with which he is charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and (d) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has offered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for a criminal offence, the accused person or a person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed, in a written law: Provided that nothing in this subsection shall prevent a court from punishing a person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) A court or other adjudicating authority prescribed by law for the determination of the existence or extent of a civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by a person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings: or (b) may by law be empowered or required to do in the interests of defence, public safety or public order-

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of-

(a) subsection (2) (a) to the extent that the law in question imposes upon a person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding a trial and conviction or acquittal of that member under the disciplinary law of that force. so, however, that a court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in lawful detention.

(14) Nothing contained in subsection (2) (d) shall be construed as entitling a person to legal representation at public expense.

(15) In this section "criminal offence" means a criminal offence under the law of Kenya.

LESOTHO

Provision of The Constitution for Human Rights

CHAPTER II PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

4. Fundamental human rights and freedoms

(1) Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, that is to say, to each and all of the following -

- (a) the right to life;
- (b) the right to personal liberty;
- (c) freedom of movement and residence;
- (d) freedom from inhuman treatment;
- (e) freedom from slavery and forced labour;
- (f) freedom from arbitrary search or entry;
- (g) the right to respect for private and family life;
- (h) the right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations;
- (i) freedom of conscience; freedom of expression;
- (k) freedom of peaceful assembly;
- (l) freedom of association;
- (n) freedom from discrimination;
- (o) the right to equality before the law and the equal protection of the law; and
- (p) the right to participate in government,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

(2) For the avoidance of doubt and without prejudice to any other provision of this Constitution it is hereby declared that the provisions of this Chapter shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity (whether by virtue of any written law or otherwise) as in relation to things done or omitted to be done by or on behalf of the Government of Lesotho or by any person acting in the performance of the functions of any public office or any public authority.

i. Right to Life

5. Right to life

(1) Every human being has an inherent right to life. No one shall be arbitrarily deprived of his life.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as

the result of the use of force to such extent as is necessary in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence

or if he dies as the result of a lawful act of war or in execution of the sentence of death imposed by a court in respect of a criminal offence under the law of Lesotho of which he has been convicted.

ii. **Right to Liberty**

6. Right to personal liberty

(1) Every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorised by law in any of the following cases, that is to say -

- (a) in execution of the sentence or order of a court, whether established for Lesotho or for some other country in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of the court punishing him for contempt of that court or of a tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Lesotho;
- (f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Lesotho, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Lesotho or for the purpose of restricting that person while he is being conveyed through Lesotho in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Lesotho or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Lesotho in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained -

(a) for the purpose of bringing him before a court in execution of the order of a court; or
(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within forty-eight hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any Proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person or from any Other person or authority on whose behalf that other person was acting.

iii. **Right to Protection from Torture etc**

8. Freedom from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to extent that the law in question authorises the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.

iv. **Right to Fair Trial**

12. Right to fair trial, etc.

(1) if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in language that he understands and in adequate detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires of such reasonable fee as may be prescribed by law, and subject to payment judgement a copy for the use of the be given within a reasonable time after by or on behalf of the accused person of any record of the proceedings made court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall be tried again for that offence or for any other criminal offence of which he could have a been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within reasonable time.

(9) Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority -

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -

(a) subsection (2)(a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of accused persons are to be paid their expenses out of public funds; or

(c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), subsections (2)(d) and (e) and subsection (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in subsection (2)(d) shall be construed as entitling a person to legal representation at public expense.

(14) In this section "criminal offence" means a criminal offence under the law of Lesotho.

MALAWI

Provisions of the Constitution for Human Rights

44. Limitations on Rights

1. There shall be no derogation, restrictions or limitation with regard to –

- b. the right to life;
- c. the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
- d. the prohibition of genocide;
- e. the prohibition of slavery, the slave trade and slave-like practices;
- f. the prohibition of imprisonment for failure to meet contractual obligations;

- g. the prohibition on retrospective criminalization and the retrospective imposition of greater penalties for criminal acts;
- h. the right to equality and recognition before the law;
- a. the right to freedom of conscience, belief, thought and religion and to academic freedom; or
- i. the right to *habeas corpus*.

i. **Right to life**

Chapter IV Human Rights

16. Every person has the *right to life* and no person shall be arbitrarily deprived of his or her life:

Provided that the execution of the death sentence imposed by a competent court on a person in respect of a criminal offence under the laws of Malawi of which he or she has been convicted shall not be regarded as arbitrary deprivation of his or her right to life.

ii. **Right to Liberty**

iii. **Right to Protection from Torture etc**

Chapter IV Human Rights

18. Every person has the right to personal liberty.

19. Human Dignity and Personal Freedoms

1. The dignity of all persons shall be inviolable.
2. In any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
3. *No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment.*
4. No person shall be subject to corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State.
5. No person shall be subjected to medical or scientific experimentation without his or her consent.
6. Subject to this Constitution, *every person shall have the right to freedom and security of person*, which shall include the right not to be-detained without trial;
 - a. detained solely by reason of his or her political or other opinions; or
 - imprisoned for inability to fulfill contractual obligations.

iv. **Right to Fair Trial**

41. Access to Justice and Legal Remedies

3. Every person shall have a right to recognition as a person before the law.
4. Every person *shall have access to any court of law or any other tribunal* with jurisdiction for final settlement of legal issues.

7. Every person *shall have the right to an effective remedy by a court of law or tribunal* for acts violating the rights and freedoms granted to him by this Constitution or any other law.

42. Arrest, detention and Fair Trial

1. Every person who is detained, including every sentenced prisoner, shall have the right –

a. to be informed of the reason for his or her detention promptly, and in a language which he or she understands;

b. to be detained under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the State;

c. to consult confidentially with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State;

d. to be given the means and opportunity to communicate with, and to be visited by, his or her spouse, partner, next-of-kin, relative, religion counsellor and a medical practitioner of his or her choice;

e. to challenge the lawfulness of his or her detention in person or through a legal practitioner before a court of law; and

f. to be released if such detention is unlawful.

2. Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right –

a. promptly to be informed, in a language which he or she understands, that he or she has the right to remain silent and to be warned of the consequences of making any statement;

b. as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;

c. not to be compelled to make a confession or admission which could be used in evidence against him or her;

d. save in exceptional circumstances, to be segregated from convicted persons and to be subject to separate treatment appropriate to his or her status as an unconvicted person;

e. to be released from detention, with or without bail unless the interests of justice require otherwise;

f. as an accused person, to a fair trial, which shall include the right –

i. to public trial before an independent and impartial court of law within a reasonable time after having been charged;

ii. to be informed with sufficient particularity of the charge;

iii. to be tried in a language which he or she understands or, failing this, to trial and not to testify during trial;

iv. to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

- v. to be represented by a legal practitioner of his or her choice or, where it is required in the interests of justice, to be provided with legal representation at the expense of the State, and to be informed of these rights;
- viii. to be presumed innocent and to remain silent during plea proceedings or not to be prosecuted again for a criminal act or omission of which he or she has previously been convicted or acquitted;
 - i. to have recourse by way of appeal or review to a higher court than the court of first instance;
 - ii. to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her, at the expense of the State, into a language which he or she understands; and
- i. to be sentenced within a reasonable time after conviction;
- g. in addition, if that person is a child, to treatment consistent with the special needs of children, which shall include the right -
 - ii. not to be sentenced to life imprisonment without possibility of release;
- iv. to be imprisoned only as a last resort and for the shortest period of time;
- v. to be separated from adults when imprisoned, unless it is considered to be in his or her best interest not to do so, and to maintain
 - i. to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;
 - ii. to be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role; and
- vi. to be dealt with in a form of legal proceedings that reflects the vulnerability of children while fully respecting human rights and legal safeguards.

NIGERIA

Provisions of The 1999 Constitution for Human Rights

i. Right to Life

Section 33

- (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
- (2) A person shall not be regarded, as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -
 - (a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.

ii. Right to Liberty

Section 35

(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law –

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means –

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

(7) Nothing in this section shall be construed –

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

iii. Right to Protection from Torture etc

Section 34

(1) Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of -

(i) normal communal or other civic obligations of the well-being of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

iv. Right to Fair Trial

Section 36

(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for

that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

SIERRA LEONE

Provisions of The Constitution for Human Rights

CHAPTER III — THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental human rights and freedoms of the individual

15. Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following—

- a. life, liberty, security of person, the enjoyment of property, and the protection of law;
- b. freedom of conscience, of expression and of assembly and association;
- c. respect for private and family life, and
- d. protection from deprivation of property without compensation;

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others, or the public interest.

i. Right to Life

Protection of Right to Life

16. (1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be

regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—

- a. for the defence of any person from unlawful violence or for the defence of property; or
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- c. for the purpose of suppressing a riot, insurrection or mutiny; or
- d. in order to prevent the commission by that person of a criminal offence; or
- e. if he dies as a result of a lawful act of war.

i. **Right to liberty**

Protection from arbitrary arrest or detention

17. (1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say —

- a. in consequence of his unfitness to plead to a criminal charge; or
- b. in the execution of a sentence or order of a Court whether in Sierra Leone or elsewhere in respect of a criminal offence of which he has been convicted; or
- c. in the execution of an order of the High Court or the Court of Appeal or the Supreme Court or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal or commission of inquiry as the case may be; or
- d. in the execution of an Order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or
- e. for the purpose of bringing him before a court or tribunal, as the case may be, in execution of the order of a court; or
- f. upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or
- g. in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or
- h. for the purpose of preventing the spread of an infectious or contagious disease; or
- i. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- j. for the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings thereto.

(2) Any person who—

- a. is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest, and in any event not later than twenty-four hours, of the facts and grounds for his arrest or detention;
- b. is arrested or detained shall be informed immediately at the time of his arrest of his right of access to a legal practitioner or any person of his choice, and shall be

permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

(3) Any person who is arrested or detained in such a case as is mentioned in paragraph (e) or (f) of subsection (1) and who is not released shall be brought before a court of law—

- b. within ten days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and
- c. within seventy-two hours of his arrest in case of other offences;

and if any person arrested or detained in such a case as is mentioned in the said paragraph (f) is not tried within the periods specified in paragraph (a) or (b) of this section, as the case may be, then without prejudice to any further proceedings which may be brought against him he shall be released either unconditionally or upon reasonable conditions, including in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

ii. Right to Protection from Torture etc

Protection from Inhuman Treatment

20. (1) No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any kind of punishment which was lawful immediately before the entry into force of this Constitution.

iii. Right to Fair Trial

Provision to secure protection of law

23. (1) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other authority prescribed by law for the determination of the existence or extent of civil rights or obligations shall be independent and impartial; and where proceedings for such determination are instituted by or against any person or authority

or the Government before such court or authority, the case shall be given fair hearing within a reasonable time.

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection, to the extent that the law in question imposes on any person charged as aforesaid the burden of proving particular facts.

(5) Every person who is charged with a criminal offence—

- a. shall be informed at the time he is charged in the language which he understands and in detail, of the nature of the offence charged;
- b. shall be given adequate time and facilities for the preparation of his defence;
- c. shall be permitted to defend himself in person or by a legal practitioner of his own choice;
- d. shall be afforded facilities to examine in person or by his legal practitioner the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- e. shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question prohibits legal representation in a Local Court.

(6) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall if he so requires, and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event not more than three months after trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission, which did not, at the time it took place, constitute such an offence.

(8) No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the court of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provisions of this section, other than subsections (7) and (8), to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists before or during that period of public emergency.

(11) In paragraphs (c) and (d) of subsection (5), the expression "legal practitioner" means a person entitled to practise as a Barrister and Solicitor of the High Court.

KINGDOM OF SWAZILAND

Provisions of the Draft Constitution for Human Rights

At the time of writing the Draft Constitution was awaiting Royal Assent.

- **Protection of the Right to Life**

Article 16

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.

(2) The death penalty shall not be mandatory

(3) A sentence of life imprisonment shall not be less than twenty five years.

(4) Without prejudice to any liability for a contravention to any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:-

- a. for the defense of any person from violence or for the defense of property;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. for the purpose of suppressing a riot, insurrection or mutiny; or
- d. in order to prevent the commission by that person of a criminal offence,

(5) Abortion is unlawful except -

- (b) on medical or therapeutic grounds including where a doctor certifies that –
 - (i) continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman;
 - (ii) continued pregnancy will constitute a serious threat to the mental health of the woman;
 - (iii) there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;
- (c) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a female idiot or imbecile; or
- (d) on such other grounds as Parliament may prescribe.

- **Protection of the Right to Personal Liberty**

Article 17

- (1) A person shall not be deprived of his personal liberty save as may be authorized by law in any of the following cases -
- (k) in execution of the sentence or order of a court, whether established for Swaziland or another country, or of an international court or tribunal in respect of a conviction of a criminal offence;
 - (l) in execution of the order of a court of record punishing him for contempt of that court or of another court or tribunal;
 - (m) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law;
 - (n) for the purpose of bringing that person before a court in execution of the order of a court;
 - (o) upon reasonable suspicion of his having committed , or being about to commit, a criminal offence under the law in force in Swaziland;
 - (p) in the case of a person who has not attained age of eighteen years, for the purpose of his education or welfare;
 - (q) for the purpose of preventing the spread if an infectious or contagious disease;
 - (r) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
 - (s) for the purpose of preventing the unlawful entry of that person into Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while he is being conveyed through Swaziland in the course of his extradition or removal as a convicted prisoner from one country to another; or
 - (t) to such extent as may be necessary in the execution of a lawful order -
 - (i) requiring that person to remain within a specified area within Swaziland or prohibiting him from being within such an area,
 - (ii) reasonably justifiable for the taking of proceedings against that person relating to the making of any such order; or
 - (iii) reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Swaziland in which, in

consequence of any such order, his presence would otherwise be unlawful.

2. Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and of the right of that person to a lawyer chosen by that person...

3. Any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of the court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence

Shall, unless sooner released, be brought without undue delay before a court.

4. Where a person arrested or detained pursuant to the provisions of subsection (3), is not brought before a court within forty-eight hours of his arrest or from the commencement of his detention, the burden of proving that the provisions of subsection (3) have been complied with shall rest upon any person alleging that compliance.

5. Where any person is brought before a court in execution of the order of a court in any proceedings or upon reasonable suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

6. Where a person is arrested or detained –

(a) the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the arrest or detention and place of the arrest or detention

(b) the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access and confidentiality to that person; and

(c) that person shall be allowed reasonable access to medical treatment, including, at the request and the cost of that person, access to private medical treatment.

7. If a person is arrested or detained as mentioned in subsection 3 (b) then, without prejudice to any further proceedings that may be brought against that person, that person shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

8. Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person or from any other person or authority on whose behalf that other person was acting.

9. Where a person is convicted and sentenced to a term of imprisonment for an offence, any period that person has spent in lawful custody in respect of that offence before completion of the trial of that person shall be taken into account in imposing the term of imprisonment.

- **Protection form inhuman and degrading treatment**

Article 19

(1) The dignity of every person is inviolable

(2) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

- **Right to Fair Hearing**

Article 22

(1) In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law.

(2) A person who is charged with a criminal offence shall be-

(g) presumed to be innocent until that person is proved or has pleaded guilty;
(h) informed as soon as reasonably practicable, in a language which that person understands and in sufficient detail, of the nature of the offence or charge;

(i) entitled to legal representation at the expense of the government in the case of any offence which carries a sentence of death or imprisonment for life;

(j) shall be given adequate time and facilities for the preparation of his defence;

(k) permitted to present a defence before the court either directly person or through a legal representative chosen by that person;

(l) afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance of witnesses to testify on behalf of that person on the same conditions as those applying to witnesses called by the prosecution; and

(m) permitted to have without payment the assistance of an interpreter if that person cannot understand the language used at the trial of the charge,

(3) Except with the consent of the person concerned and for the purposes of subsection (2), the trial shall not take place in the absence of that person unless that person acts so as to render the continuance of the proceedings in his presence impracticable and the court has ordered that person to be removed and the trial to proceed in the absence of that person.

(4) Where a person is tried for any criminal offence, the accused person or any person authorised by the accused person shall, if the accused person or person authorised by the accused person so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) A person shall not be charged or held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute an offence.

(6) A penalty shall not be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(7) A person who has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which that person could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(8) A person shall not be tried for a criminal offence where that person has been pardoned for that offence.

(9) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial

(10) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

- (11) All proceedings of every court or adjudicating authority shall be held in public.
- (12) Notwithstanding the provisions of subsection (11), a court or adjudicating authority, -
- (a) may, unless it is otherwise provided by Act of Parliament, exclude from its proceedings persons other than the parties and their legal representatives to such extent as the court or other adjudicating authority may consider necessary-
 - (i) in circumstances where publicity may unduly prejudice the interests of defence, public safety, public order, justice or public morality or would prejudice the welfare of persons under the age of eighteen years or as the court may deem appropriate; or
 - (ii) in interlocutory proceedings;
 - (b) shall, where it is so prescribed by law that is reasonably required in the interests of defence, public safety, public order, justice or public morality or would prejudice the welfare of persons under the age of eighteen years or the protection of the private lives of the persons concerned in the proceedings, exclude from its proceedings persons, other than the parties and their legal representatives, to such extent as is so prescribed.
- (13) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of -
- (a) subsection (2) (a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
 - (b) subsection (2) (e) to the extent that the law in question prohibits legal representation before a Swazi Court or before any Swazi court hearing appeals from such a court;
 - (c) subsection (2) (f) to the extent that the law in question imposes conditions that should be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
 - (d) subsection (7) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying and convicting that member shall in sentencing that member to any punishment take into account any punishment awarded under that disciplinary law.
- (14) In the case of a person who is held in lawful detention, the provisions of subsections (1), (2) (e) and (f) and (3) shall not apply in relation to the trial of that person for a criminal offence under the law regulating the discipline of persons held in such detention.
- (15) In this section “criminal offence” means a criminal offence under the law of Swaziland, and “proceedings” in relation to a court or adjudicating authority includes the announcement of the decision of the court or adjudicating authority.

- **Application of the Death Penalty**

Article 16

No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.

- **Clemency/Mercy**

Article 79

(1) The King may, in respect of any person sentenced to death or life imprisonment

- (a) grant a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or
- (d) remit the whole or part of that sentence, penalty or forfeiture otherwise due to the Government on account of that offence.

(2). In the exercise of the powers conferred upon him by subsection (1), the king shall act on the advice of a Committee on the Prerogative of Mercy made up of two persons appointed by the King drawn from the King's Advisory Council, the Attorney-General, the Minister responsible for justice and a suitably qualified medical practitioner recommended by the Minister responsible for health and appointed by the King.

(3). The King shall designate one of the members of the Committee as chairman.

(4). The Committee may act notwithstanding any vacancy in its membership or the absence of any member, and the validity of the transaction of business by the Committee shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(5). Whenever any person has been sentenced to death by any court in Swaziland other than a court-martial, the chairman shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as the chairman may require, to be taken into consideration at the meeting of the Committee so that the Committee may advise the King whether or not to exercise the powers in terms of subsection (1).

(6) The provisions of this section shall not apply in relation to any conviction by a court established under a law of a country other than Swaziland that has jurisdiction in Swaziland and another Government or an international organization relating to the presence of Swaziland of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.

(7) Nothing in this section shall be construed as precluding an Act of Parliament from making provision of general application under which any sentence of imprisonment shall be reduced where such conditions (being conditions relating to good behavior by the person on whom the sentence was imposed whilst serving that sentence) as are prescribed are fulfilled.

Derogations during public emergency

38. (1) Without prejudice to the power of Parliament to make provision in any situation or the provisions of section 39, nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of any provision of this Chapter to the extent that the law authorises the taking, during any period of public emergency, of measures that are reasonably justifiable for dealing with the situation that exists during that period.

(2) A law that is passed during a period of public emergency and is expressly declared to have effect only during that period shall have effect in terms provided in the section of this Chapter under which that law is passed.

39. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms -

- (a) life, equality and security of person;
- (b) the right to fair hearing;
- (c) freedom from slavery or servitude;
- (d) the right to an order in terms of section 36 (1); and
- (e) freedom from torture, cruel, inhuman or degrading treatment or punishment.

Saving clauses and interpretation

40. (1) Save as may otherwise be expressly indicated, nothing contained in section 22 (2) or section 37 (8) shall be construed as entitling a person to legal representation at public expense.
- (2) Nothing contained in section 21, 25 or 26 shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to the communication or association with other persons or as to the movements or residence of those officers.
- (3) In relation to a person who is a member of a disciplined force of Swaziland, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 16, 18, or 19.
- (4) Measures taken in relation to a person who is a member of a disciplined force of a country with which Swaziland is at war and any law, to the extent that it authorises the taking of any of those measures shall not be held to be inconsistent with or in contravention of any of the provisions of this Chapter.
- (5) The provisions of section 37 (8) do not apply in the case of a detained or restricted person who is a citizen of a country which is at war with Swaziland or has been engaged in hostilities against Swaziland in association with or on behalf of that country or otherwise assisting that country...

Application of International law.

International relations

236. (1) In dealing with other nations, Swaziland shall –
- (a) promote and protect the interests of Swaziland;
 - (b) observe and promote the policy of non-interference in the internal affairs of other nations;
 - (c) promote the principle of peaceful settlement of international disputes;
 - (d) endeavour to uphold the principles, aims and ideals of
 - the United Nations,
 - the Commonwealth,
 - the African Union,
 - the Southern African Development Community,
 - other international organizations of which Swaziland is a member.
- (2) Swaziland shall conduct its international affairs directly or through officers of the Government in accordance with the accepted principles of public or customary international law and diplomacy in a manner consistent with the national interest.

Diplomatic representation

237. (1) Subject to the provisions of section 187, the King shall appoint and remove from office the diplomatic representatives of Swaziland to other countries and international organisations.
- (1) The King may receive envoys accredited to Swaziland.

International agreements

238. (1) The Government may execute or cause to be executed an international agreement in the name of the Crown.
- (2) An international agreement executed by or under the authority of the Government shall be subject to ratification and become binding on the government by -
- (a) an Act of Parliament; or
 - (b) a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament.
- (3) The provisions of sub-section (2) do not apply where the agreement is of a technical, administrative or executive nature or is an agreement which does not require ratification or accession.
- (4) Unless it is self-executing, an international agreement becomes law in Swaziland only when enacted into law by Parliament.
- (5) Accession to an international agreement shall be done in the same manner as ratification under sub-section (2).
- (6) For the purposes of this section, "international agreement" includes a treaty, convention, international agreement or arrangement.

TANZANIA

- **The Right to Life**

Article 14

"Every person has the right to live and to the protection of his life by the society in accordance with law".

- **The Right to Liberty**

Article 13(d)

Every person is entitled to respect for the dignity of his personal liberty and he shall not be deprived of such liberty save in accordance with the procedure permitted by law in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

- **Prohibition of Torture**

Article 13(e)

"No person shall be subjected to torture or inhuman or degrading treatment".

- **Right to Fair Trial**

Article 13(6)

For the purposes on ensuring equality before the law, the state shall make provisions:

that every person shall, when his rights and obligations are being determined, be entitled to a fair hearing by the court of law or other body concerned and be guaranteed the right of appeal or to another legal remedy against the decisions of courts of law and other bodies which decide on his rights or interests founded on statutory provisions;

- **Presidential Clemency**

Article 45

- (a) grant a pardon to any person convicted by a court of law of any offence, and he may grant such pardon unconditionally, or on conditions, subject to law;
- (b) grant any person a respite, either indefinitely, or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for any offence, or remit the whole or part of any penalty of fine or forfeiture of property belonging to a convicted person which would otherwise be due to the United Republic on account of any offence

- **Saving Clauses**

The Tanzania Constitution guarantees human rights in its Article 12-28 by one hand. However, these rights can be taken away by another hand by virtue of Article 30(2) of the constitution which stipulates in clear terms as follows:

- (a) "It is here by declared that the provisions contained in this part of this Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purposes of ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;
- (b) ensuring the defense ,public safety, public order, public morality, public health rural and urban development planning ,the exploitation and utilization of minerals or the increase and development of property or any other interests for the purposes of enhancing the public benefit;
- (c) ensuring the execution of a Judgment or order of a court given or made in any civil or criminal matter;
- (d) protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings prohibiting the disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;

- (e) imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country: or
- (f) enabling any other thing to be done which promotes, or preserves the national interest in general.

- **Implementation of Death Penalty**

Section 26 of the Tanzanian Penal Code provides that 'when any person is sentenced to death, the sentence shall direct that he shall suffer death by hanging'.

- **Application of International law**

Article 63(3) (e) of the Tanzania Constitution empowers the National Assembly to "deliberate upon and ratify all treaties and agreements to which the United republic is party and the provisions of which require ratification." Moreover, Article 9(f) of the Constitution, requires all state authorities within Tanzania mainland and Zanzibar, while exercising the duties to respect the 1948 Universal Declaration of Human Rights. The Declaration guarantees each person's right to protection from deprivation of life, and categorically states that no one shall be subjected to cruel or degrading punishment.

UGANDA

Provisions of the Constitution for Human Rights

i. **Right to Life**

Protection of Right to Life

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

(2) No person has the right to terminate the life of an unborn child except as may be authorised by law.

i. **Right to Liberty**

Protection of personal liberty

23. (1) No person shall be deprived of personal liberty except in any of the following

(a) in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted; or of an order of a court punishing the person for contempt of court;

(b) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;

(c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda;

(d) for the purpose of preventing the spread of an infectious or contagious disease;

(e) in the case of a person who has not attained the age of eighteen years, for the purpose of the education or welfare of that person;

(f) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community;

(g) for the purpose of preventing the unlawful entry of that person into Uganda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Uganda or for the purpose of restricting that person while being conveyed through Uganda in the course of the extradition or removal of that person as a convicted prisoner from one country to another; or

(h) as may be authorised by law, in any other circumstances similar to any of the cases specified in paragraphs (a) to (g) of this clause.

(2) A person arrested, restricted or detained shall be kept in a place authorised by

(3) A person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice.

(4) A person arrested or detained-

(a) the purpose of bringing him or her before a court in execution of an order of a court;
or

(b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

(5) Where a person is restricted or detained-

(a) the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention;

(b) the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and

(c) that person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment.

(6) Where a person is arrested in respect of a criminal offence-
(a) the person is entitled to apply to the court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable:

(b) in the case of an offence which is triable by the High Court as well as by a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days;

(c) in the case of an offence triable only by the High Court the person shall be released on bail on such conditions as the Court considers reasonable, if the person has been remanded in custody for three hundred and sixty days before the case is committed to the High Court.

(7) A person unlawfully arrested, restricted or detained by any other person or authority, shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority.

(8) Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.

(9) The right to an order of habeas corpus shall be inviolable and shall not be suspended.

ii. **Right to Protection from Torture etc**

Respect for human dignity and protection from inhuman treatment

24. No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.

iii. **Right to Fair Trial**

28. (1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and

impartial court or tribunal established by law.

(2) Nothing in clause (1) of this article shall prevent the court or tribunal from excluding the press or the public from all or any proceedings before it for reasons of morality, public order or national security, as may be necessary in a free and democratic society.

(3) Every person who is charged with a criminal offence shall-

(a) be presumed to be innocent until proved guilty or until that person has pleaded guilty;

(b) be informed immediately, in a language that the person understands of the nature of the offence;

(c) be given adequate time and facilities for the preparation of his or her defence:

(d) be permitted to appear before the court in person or at that person's own expense, by a lawyer of his or her choice;

(e) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State;

(f) be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial:

(g) be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.

(4) Nothing done under the authority of any law shall be held to be inconsistent with-

(a) paragraph (a) of clause (3) of this article, to the extent that the law in question imposes upon any person charged with a criminal offence, the burden of proving particular facts;

(b) paragraph (g) of clause (3) of this article, to the extent that the law imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused are to be paid their expenses out of public funds.

(5) Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person so conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed and the trial to proceed in absence of that person.

(6) A person tried for any criminal offence, or any person authorized by him or her, shall, after the judgment in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law.

(7) No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

(8) No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.

(9) A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence, shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal

(10) No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence.

(11) Where a person is being tried for a criminal offence, neither that person nor the spouse of that person shall be compelled to give evidence against that person.

(12) Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

Right to just and fair treatment in administrative decisions

42. Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

Zambia

PART III PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL

Article 11. [Fundamental rights and freedoms]

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

i. Right to Life

Article 12. [Protection of right to life]

(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(2) No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case --

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;

(d) in order to prevent the commission by that person of a criminal offence.

i. Right to liberty and security

13. [Protection of right to personal liberty]

(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;

- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained --

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

ii. **Right to Protection from Torture etc**

Article 15. [Protection from inhuman treatment]

No person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment.

iii.

Right to Fair Trial

Article 18. [Provisions to secure protection of law]

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence --

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description

that the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority --

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of --

(a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;

(c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) clause (2) to the extent that it is shown that the law provides that --

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and

(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;

(e) clause (2) to the extent that it is shown that the law provides that a trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;

(f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (2) and clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in detention.

(14) In its application to a body corporate clause (2) shall have effect as if the words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article "criminal offence" means a criminal offence under the law in force in Zambia.

ZIMBABWE

Provisions of the Constitution for Human Rights

i. Right to Life

Section 12

Protection of right to life

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable in the circumstances of the case—

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or

(d) in order to prevent the commission by that person of a criminal offence;

or if he dies as the result of a lawful act of war.

(3) It shall be sufficient justification for the purposes of subsection (2) in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the appointed day.

ii. Right to Liberty

Section 13

Protection of right to personal liberty

(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the cases specified in subsection (2).

(2) The cases referred to in subsection (1) are where a person is deprived of his personal liberty as may be authorised by law—

(a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Zimbabwe or elsewhere, in respect of a criminal offence of which he has been convicted;

(b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of Parliament punishing him for a contempt;

[Paragraph as amended by s.26 of Act 31 of 1989 - Amdmt No.9]

iii. **Right to Protection from Torture etc**

Section 15

Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of subsection (1) on the ground that it is degrading.

(3) No moderate corporal punishment inflicted—

(a) in appropriate circumstances upon a person under the age of eighteen years by his parent or guardian or by someone in loco parentis or in whom are vested any of the powers of his parent or guardian; or

(b) in execution of the judgement or order of a court, upon a male person under the age of eighteen years as a penalty for breach of any law;

shall be held to be in contravention of subsection (1) on the ground that it is inhuman or degrading.

[Subsection as inserted by s.5 of Act 30 of 1990 - Amdmt No.11]

(4) The execution of a person who has been sentenced to death by a competent court in respect of a criminal offence of which he has been convicted shall not be held to be in contravention of subsection (1) solely on the ground that the execution is carried out in the manner prescribed in section 315(2) of the Criminal Procedure and Evidence Act [Chapter 59] as that section existed on the 1st October, 1990.

[Subsection as inserted by s.5 of Act 30 of 1990 - Amdmt No.11. As at the 1st October, 1990, section 315(2) of the Criminal Procedure and Evidence Act [Chapter 59 of 1974] provided that "where sentence of death is carried out, the person sentenced shall be hanged by the neck until he is dead".]

(5) Delay in the execution of a sentence of death, imposed upon a person in respect of a criminal offence of which he has been convicted, shall not be held to be a contravention of subsection (1).

[Subsection as inserted by s.2 of Act 9 of 1993 - Amdmt No.13]

(6) A person upon whom any sentence has been imposed by a competent court, whether before, on or after the date of commencement of the Constitution of Zimbabwe Amendment (No.13) Act, 1993, in respect of a criminal offence of which he has been convicted, shall not be entitled to a stay, alteration or remission of sentence on the ground that, since the sentence was imposed, there has been a contravention of subsection (1).

[Subsection as inserted by s.2 of Act 9 of 1993 - Amdmt No.13]

iv. **Right to Fair Trial**

Section 18

Provisions to secure protection of law

(1) Subject to the provisions of this Constitution, every person is entitled to the protection of the law.

[Subsection as amended by s.3 of Act 4 of 1993 - Amdmt No.12]

(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(3) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself in person or, save in proceedings before a local court, at his own expense by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or, save in proceedings before a local court, by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(4) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(6) No person who shows that he has been tried by a competent court for a criminal offence upon a good indictment, summons or charge upon which a valid judgement could be entered and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save—

- (a) where a conviction and sentence of the High Court or of a court subordinate to the High Court are set aside on appeal or review on the ground that evidence was admitted which should not have been admitted or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure; or

[Paragraph as amended by s.9 of Act 15 of 1990 - Amdmt No.10]

- (b) otherwise upon the order of the Supreme Court or the High Court in the course of appeal or review proceedings relating to the conviction or acquittal.

[Paragraph as amended by s.3 of Act 4 of 1993 - Amdmt No.12]

(7) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(8) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(9) Subject to the provisions of this Constitution, every person is entitled to be afforded a fair hearing within a reasonable time by an independent and impartial court or other adjudicating authority established by law in the determination of the existence or extent of his civil rights or obligations.

[Subsection as amended by s.3 of Act 4 of 1993 - Amdmt No.12]

(10) Except in the case of a trial such as is referred to in subsection (14) or with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent—

(a) the court or other adjudicating authority from excluding from the proceedings, except the announcement of its decision, persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(i) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings; or

(ii) may by law be empowered or required so to do in the interests of defence, public safety, public order or the economic interests of the State;

or

(b) the court from excluding from proceedings preliminary to trial in respect of a criminal offence persons other than the accused person and his legal representative when so required by law, unless the accused person otherwise requests.

(12) Notwithstanding anything contained in subsection (4), (10) or (11), if in any proceedings before such court or other adjudicating authority as is referred to in subsection (2) or (9), including any proceedings by virtue of section 24, a certificate in writing is produced to the court or other authority signed by a Minister that it would not be in the public interest for any matter to be publicly disclosed, the court or other authority shall make arrangements for evidence relating to that matter to be heard in camera and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

(13) Nothing contained in or done under the authority of any law shall be held to be in contravention of—

(a) subsection (2), (3)(e) or (9) to the extent that the law in question makes reasonable provision relating to the grounds of privilege or public policy on which evidence shall not be disclosed or witnesses are not competent or cannot be compelled to give evidence in any proceedings;

(b) subsection (3)(a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(c) subsection (3)(e) to the extent that the law in question imposes reasonable conditions which must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) subsection (6) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the appropriate disciplinary law, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law; or

(e) subsection (8) to the extent that the law in question authorises a court, where the person who is being tried refuses without just cause to answer any question put to him, to draw such inferences from that refusal as are proper and to treat that refusal, on the basis of such inferences, as evidence corroborating any other evidence given against that person.

(14) In the case of a person who is held in lawful detention, the provisions of subsection (2) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention, save that the case of such person shall be afforded a fair hearing within a reasonable time, and the person or authority conducting the trial shall be regarded as a court for the purposes of this section.

(15) For the purposes of this section, a local court shall not be regarded as not being an independent and impartial court by reason of—

(a) the fact that a member of the court has an interest in the proceedings because of his position in the tribal society; or

(b) the traditional or customary tribal practices and procedures.