

# Thematic Report: Individual Rights<sup>1</sup>



*Funding provided by  
the United States Government*

## I. Introduction

### *Overview*

International human rights law imposes obligations on states to respect, protect, and fulfill human rights guarantees. The duty to respect human rights imposes upon states an obligation to refrain from actions that curtail human rights, the duty to protect mandates that the state prevent individuals from suffering human rights abuses, and the duty to fulfill means that states must take affirmative actions to guarantee the enjoyment of a number of basic human rights. Part II of this report (Ratification of and Accession to Regional Human Rights Treaties) thus notes a number of international and regional human rights instruments that the countries listed have ratified or acceded to. Please note that this is not a comprehensive list of international human rights instruments; nor does it note treaties that the countries have signed but not ratified. This Part also addresses how the countries incorporate international law into their domestic regimes.

A strong rights-based system can be an effective prophylactic against TIP and vulnerability to TIP, because it imposes upon the state responsibilities to protect against abuses relating to forced labor, slavery, and abrogations of the right to freedom of movement. Conversely, a weak human rights system, both in terms of law and its enforcement, increases TIP vulnerability; for example, non-discrimination provisions that exclude certain groups from legal protection or legal identity lead to their marginalization. Where members of such groups are forced underground, they become targets for traffickers. Where adequate provisions regarding equality and non-discrimination are poorly enforced, a lack of access to justice may have the same effect. Part III discusses how the countries delineate their guarantees of equality and non-discrimination, and what groups may be excluded from Constitutional protection.

TIP risks may be reduced when foreigners—whether or not they are lawfully present in a country—are guaranteed similar rights to citizens. For instance, guaranteeing refugees or other non-citizens a right to a legal identity helps to grant them legal visibility, gives them access to government services and commodities that require paperwork, and renders them less vulnerable to exploitation. Part IV (Rights of Foreigners and Stateless People) discusses the extent to which non-citizens and refugees are guaranteed certain rights by law.

Individuals who are guaranteed their fundamental civil and political rights have less vulnerability to TIP, and a greater ability to protect themselves from trafficking, migrant smuggling, and forced labor. Justiciable human rights guarantees including the rights to be free from slavery, servitude, or cruel and unusual treatment or punishment provide a legal basis for individuals to challenge state-sanctioned TIP; guaranteeing the right to a fair trial theoretically gives TIP victims or those at risk

---

<sup>1</sup> The statements and analysis contained within this report are the work of the American Bar Association Rule of Law Initiative, which is solely responsible for its content. The views expressed herein should not be construed as representing the policy of the ABA. This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.

of TIP greater access to legal remedies. Justiciable labor rights, such as the right to form or join a labor union, or the right to choose one's employment, directly address the trafficking risk environment. Guaranteeing certain protections to children or youth—such as the right to education—helps to mitigate the trafficking and forced labor risks faced by young people who are hemmed in by poverty and forced into manual and unskilled labor jobs, especially in countries that supply labor. Other freedoms, such as the freedom to marry and/or found a family, may help to limit the exposure of women and girls to TIP by way of forced or fraudulent marriage. Part V discusses a number of civil and political rights that are enumerated in the countries' Constitutions; please note that these may not be comprehensive lists of such rights, and that national constitutions may protect other social, economic, and cultural rights not noted here. Additionally, legal provisions do not necessarily mean that all rights are adequately enforced in practice.

However, no human rights guarantee is meaningful unless it is enforceable in practice. Thus, it is important to track whether a state has human rights ombudsmans or commissions that have authority to accept and investigate complaints regarding human rights violations (see Part VI), and review whether such bodies are accessible to people in practice.

The statements and analysis contained herein are the work of the American Bar Association's Rule of Law Initiative (ABA ROLI). They address, by and large, the *de jure* legal framework in Eritrea, Ethiopia, Ghana, Lesotho, Malawi, Namibia, Uganda, and Zambia. This Report is based primarily on desk review of freely and publicly-available laws and reports, supplemented in portions by the knowledge of ABA ROLI's local affiliates. Please note that the materials discussed in this Report capture only the legislative and policy framework of the relevant countries; *de facto* implementation of these laws may be at issue in some, if not all, of these states.

## II. Ratification of and Accession to International and Regional Human Rights Treaties

|  | Eritrea | Ethiopia | Ghana | Lesotho | Malawi | Namibia | Uganda | Zambia |
|--|---------|----------|-------|---------|--------|---------|--------|--------|
| <u>International Treaties</u>  |         |          |       |         |        |         |        |        |
| <b>ICCPR<sup>2</sup></b>   | X       | X        | X     | X       | X      | X       | X      | X      |
| <b>ICESCR<sup>3</sup></b>  | X       | X        | X     | X       |        | X       |        | X      |
| <b>CEDAW<sup>4</sup></b>   | X       | X        | X     | X       | X      | X       | X      | X      |
| <b>CAT<sup>5</sup></b>   | X       | X        | X     | X       | X      | X       | X      | X      |
| <b>CRC<sup>6</sup></b>   | X       | X        | X     | X       | X      | X       | X      | X      |
| <b>ICERD<sup>7</sup></b>   | X       |          | X     | X       | X      | X       | X      | X      |
| <b>CRPD<sup>8</sup></b>  |         | X        |       | X       |        | X       |        |        |
| <b>Refugee Convention<sup>9</sup></b>                                      |         | X        | X     | X       | X      | X       | X      | X      |
| <u>Regional Treaties</u>   |         |          |       |         |        |         |        |        |
| <b>Banjul Charter<sup>10</sup></b>   | X       | X        | X     | X       | X      | X       | X      | X      |
| <b>African Charter on the Rights and Welfare of the Child<sup>11</sup></b> | X       |          | X     | X       | X      |         | X      | X      |
| <b>Maputo Protocol<sup>12</sup></b>  |         | X        | X     |         |        | X       | X      |        |
| <b>Refugees in Africa<sup>13</sup></b>                                     |         |          |       | X       | X      | X       | X      | X      |

<sup>2</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>3</sup> International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>4</sup> Convention on the Elimination of All Forms of Discrimination against Women, Sep. 3, 1981, 1249 U.N.T.S. 13.

<sup>5</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>6</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>7</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195.

<sup>8</sup> Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

<sup>9</sup> Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

<sup>10</sup> African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58.

<sup>11</sup> African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49

<sup>12</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sep. 13, 2000, 1 Afr. Hum. Rts. L.J. 40.

<sup>13</sup> Convention Governing the Specific Aspects of Refugee Problems in Africa, Sep. 10, 1969, 1001 U.N.T.S. 45.

## ***Domestic Incorporation of International Law***

### Eritrea

ABA ROLI was unable to locate any publicly-available information regarding Eritrea's rules regarding the incorporation of international law into domestic law.

### Ethiopia

Once ratified by the state under the procedure laid out in the Constitution, international and regional treaties and binding legal instruments become laws of the land.

### Ghana

As a dualist state, Ghana "is required to ratify a treaty internationally and then proceed to ratify the treaty, in accordance with the Constitution" in order for it have the effect of domestic law.<sup>14</sup> ABA ROLI has not confirmed whether this second level of domestic ratification has occurred for all the treaties listed above.

### Lesotho

Lesotho is a dualist state; as such, treaties are not automatically self-executing in Lesotho law. Once agreements have been concluded between Lesotho and any foreign governments, the Cabinet is obliged to sign the agreement, and then approval is sought of the King. The King's approval produces an Instrument of Ratification, which must then be passed by an Act of Parliament for the treaty to enter into force in Lesotho law.<sup>15</sup>

### Malawi

Malawi is a dualist state, and as a result any treaty that has been entered into since the passage of the Constitution cannot have legal effect in the country without a ratifying act of Parliament.<sup>16</sup> However, any international agreement into which Malawi had entered prior to this point will be considered national law, unless an act of Parliament so provides.<sup>17</sup> All customary international law is to be considered national law, unless it is contrary to the Constitution or an act of Parliament.<sup>18</sup>

### Namibia

---

<sup>14</sup> REPUBLIC OF GHANA TREATY MANUAL 3, *available at* <http://legal.un.org/avl/documents/scans/GhanaTreatyManual2009.pdf?teil=II&j> (last visited July 17, 2017).

<sup>15</sup> See OECD, GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES PEER REVIEWS: LESOTHO 2016 94 (2016), *available at* <https://books.google.com/books?id=M65wDQAAQBAJ&printsec=frontcover#v=onepage&q&f=false> (last visited Aug. 3, 2017).

<sup>16</sup> Constitution of Malawi, 1994, art. 211, *available at* [https://www.constituteproject.org/constitution/Malawi\\_1999.pdf](https://www.constituteproject.org/constitution/Malawi_1999.pdf) (last visited July 23, 2017) [hereinafter MALAWI CONST.].

<sup>17</sup> *Id.* at art. 211(2).

<sup>18</sup> *Id.* at art. 211(3).

The Namibian Constitution provides that all rules of public international law that would otherwise be binding on Namibia form part of the Namibian law, unless otherwise provided by a Parliamentary act.<sup>19</sup> Treaties signed after the passage of the Constitution must be approved specifically by parliament.<sup>20</sup>

### Uganda

In general, Uganda is a dualist state; as a result, treaties must be specifically incorporated into national law in order to have national effect.<sup>21</sup> The Ugandan constitution is silent on the subject of ratification,<sup>22</sup> but the Ratification of Treaties Act generally lays out the procedure by which Ugandan treaty ratification occurs.<sup>23</sup> ABA ROLI researchers have been unable to determine whether all of the treaties listed above have gone through this secondary ratification procedure.

### Zambia

Zambia is a dualist state, and thus treaties do not automatically take the effect of domestic law once signed. However, as of 2013, no Zambian law provided guidelines on how international instruments may be effectively incorporated, and as a result there did not at that time appear to be a “clear legal obligation” to do so.<sup>24</sup> ABA ROLI has not determined whether this state of affairs has changed since 2013.

---

<sup>19</sup> Namibia, Constitution of 1990, art. 144, *available at* [https://www.constituteproject.org/constitution/Namibia\\_2010.pdf?lang=en](https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en) (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

<sup>20</sup> *Id.* at art. 32(3)(e); *see also* Onkmetse Tshosa, *The Status of International Law in Namibian National Law: A Critical Appraisal of the Constitutional Strategy*, 2 Namib. L.J. 3 (2010), *available at* [http://www.kas.de/upload/auslandshomepages/namibia/Namibia\\_Law\\_Journal/2010\\_1/NLJ\\_section\\_1.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Namibia_Law_Journal/2010_1/NLJ_section_1.pdf) (last visited July 31, 2017).

<sup>21</sup> Judy Obitre-Gama, *The Application of International Law into National Law, Policy and Practice* (2000) at 8, *available at* <http://www.who.int/tobacco/media/en/JUDY2000X.pdf?ua=1> (last visited July 19, 2017).

<sup>22</sup> *Id.* at 9.

<sup>23</sup> Ratification of Treaties Act of 1998, *available at* <https://www.ulii.org/ug/legislation/consolidated-act/204> (last visited July 19, 2017).

<sup>24</sup> JOYCE SHEZONGO-MACMILLAN, ZAMBIA: JUSTICE SECTOR AND THE RULE OF LAW 4 (Mar. 2013), *available at* [http://www.osisa.org/sites/default/files/afrimap\\_zambia\\_justice\\_main\\_report\\_web\\_5july.pdf](http://www.osisa.org/sites/default/files/afrimap_zambia_justice_main_report_web_5july.pdf) (last visited Aug. 5, 2017).

### III. Legal Guarantees of Equality and Non-Discrimination

#### Eritrea

The Constitution of 1997 (the Ratified Constitution) has not been fully implemented. However, it does lay out a number of human rights guarantees, including rights to equality and non-discrimination.<sup>25</sup>

Specifically, the Ratified Constitution states that all persons are equal under the law, and explicitly prohibits discrimination on several bases, including race, ethnic origin, language, color, gender, religion, disability, age, political view, or social or economic status or any other improper factors.<sup>26</sup> The National Assembly also has the power to enact laws to eliminate inequalities existing in Eritrean society, and while not expressly stated, the Ratified Constitution does appear to grant the National Assembly the power to enact affirmative action laws.<sup>27</sup>

The Ratified Constitution also contains several articles that promote gender equality and women's empowerment. The Preamble states that "the struggle for independence, human rights and solidarity, based on equality and mutual respect, generated by such struggle will serve as an unshakable foundation for our commitment to create a society in which women and men shall interact on the bases of mutual respect, solidarity and equality."<sup>28</sup> It also states that any act that violates the human rights of women, or limits or otherwise thwarts their role and participation, is prohibited.<sup>29</sup>

The Ratified Constitution does not explicitly prohibit discrimination on the basis of gender identity or expression, sexual orientation, or birth, although it is possible that such discrimination could be covered under "any other improper factors."<sup>30</sup>

#### Ethiopia

The Ethiopian Constitution guarantees the right to equality before the law, and equal protection by the law without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth, or other status.<sup>31</sup> The constitution further addresses the responsibility of the government to support, on the basis of equality, the growth, and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Ethiopian constitution.<sup>32</sup>

---

<sup>25</sup> Constitution of Eritrea (1997), art. 14, *available at* <http://confinder.richmond.edu/admin/docs/Eritrea1997English.pdf> (last visited July 22, 2017) [hereinafter ERITREA CONST.].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at Preamble.

<sup>29</sup> *Id.* at art. 7.

<sup>30</sup> *Id.* at art. 14.

<sup>31</sup> A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, no. 1 of 1995, art. 9(4), *available at* [https://www.constituteproject.org/constitution/Ethiopia\\_1994.pdf?lang=en](https://www.constituteproject.org/constitution/Ethiopia_1994.pdf?lang=en) (last visited July 21, 2017) [hereinafter ETHIOPIA CONST.].

<sup>32</sup> *Id.* at art. 25.

Though Article 25 explicitly prohibits sex-based discrimination, it does not do so on the basis of gender, gender identity, or gender expression.<sup>33</sup> However, Ethiopia does specifically enshrine women’s rights in the Constitution by specifically providing for the equality of men and women in the enjoyment of constitutional rights, and by entitling women to affirmative measures to remedy the legacy of inequality and discrimination.<sup>34</sup> In particular, Article 35 grants women the right to full consultation in the formulation of national development policies, the designing and execution of projects, particularly in the case of projects affecting the interests of women.<sup>35</sup>

### Ghana

The Constitution of Ghana recognizes that all persons are equal before the law, and discrimination on the basis of gender, race, color, ethnic origin, religion, creed, or social or economic status is prohibited.<sup>36</sup> The Constitution does protect against discrimination based on disability,<sup>37</sup> but sexual orientation or gender identity are not explicitly named as prohibited grounds for discrimination.

The Labor Act of 2003 provides that equal pay shall be given for equal work,<sup>38</sup> and the Public Health Act and Mental Health Acts of 2012 provide for non-discrimination in treatment of patients and employees.<sup>39</sup> These build further protections against discrimination in specific areas.

### Lesotho

The Lesotho Constitution guarantees “every person in Lesotho” their fundamental human rights, regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>40</sup>

### Malawi

The Malawi Constitution provides that all persons have equal status before the law and the only justifiable limitations to lawful rights are those necessary to ensure peaceful human interaction in an open and democratic society. Discrimination is prohibited on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, or other status.<sup>41</sup>

---

<sup>33</sup> *Id.* at art. 25.

<sup>34</sup> *Id.* at art. 35.

<sup>35</sup> *Id.*

<sup>36</sup> GHANA CONST. art. 17(1), *available at* [https://www.constituteproject.org/constitution/Ghana\\_1996.pdf?lang=en](https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en) (last visited July 17, 2017) [hereinafter GHANA CONST.].

<sup>37</sup> *Id.* at art. 29.4.

<sup>38</sup> Labor Act 651 of 2003, § 68, *available at* <http://www.ilo.org/legacy/english/inwork/cb-policy-guide/ghanalabouract2003section109.pdf> (last visited July 17, 2017).

<sup>39</sup> Public Health Act 851 of 2012, § 42, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha136559.pdf> (last visited July 17, 2017); Mental Health Act 846 of 2012, § 54, *available at* <http://www.refworld.org/pdfid/528f243e4.pdf> (last visited July 17, 2017).

<sup>40</sup> Lesotho, Constitution of 1993, § 4, *available at* [https://www.constituteproject.org/constitution/Lesotho\\_1998.pdf?lang=en](https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en) (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

<sup>41</sup> MALAWI CONST., *supra* note 16, at art. 20.

## Namibia

The Namibian Constitution prohibits discrimination on the basis of sex, social origin, race or ethnicity, color, and religion: “No persons may be discriminated against on the grounds of sex, race, color, ethnic origin, religion creed or social or economic status.”<sup>42</sup>

Furthermore, the State must enact legislation to ensure the equality of women.<sup>43</sup> The Affirmative Action Employment Act of 1998 and Amendments Act of 2007 set up an affirmative action program for women. In government, in 2014, the ruling SWAPO party committed to filling half of its seats in parliament with women, and also committed to what it calls a “zebra system,” whereby if a minister is a woman, the deputy minister will be a man, and vice versa.<sup>44</sup>

## Uganda

The Constitution of Uganda establishes that all persons are equal before the law, and prohibits discrimination on the basis of “sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability,”<sup>45</sup> where discrimination is defined only as “different treatment to different persons” on the basis of one of these enumerated characteristics.<sup>46</sup> Notably, Ugandan law not only fails to establish sexual orientation as a protected class, legislators have made repeated attempts to strengthen anti-homosexuality provisions in the law.<sup>47</sup>

The Constitution additionally obliges the state to “ensure gender balance and fair representation of marginali[z]ed groups on all constitutional and other bodies,”<sup>48</sup> and explicitly provides for welfare for the elderly.<sup>49</sup>

All Constitutional provisions are to be read consistently with the provision on equality and non-discrimination.<sup>50</sup>

## Zambia

The Zambian Constitution provides that, subject to exceptions discussed below, no law shall make any provision that is discriminatory either of itself or in its effect.<sup>51</sup> “Discrimination” is defined in

---

<sup>42</sup> NAMIBIA CONST., *supra* note 19, at art. 10.

<sup>43</sup> *Id.*

<sup>44</sup> Alexander O’Riordan, *Namibia’s ‘zebra’ politics could make it stand out from the global herd*, THE GUARDIAN (July 8, 2014), <https://www.theguardian.com/global-development/2014/jul/08/namibia-gender-equality-zebra-politics>.

<sup>45</sup> UGANDA CONST., art. 21(1)-(2), *available at* [https://www.constituteproject.org/constitution/Uganda\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Uganda_2005.pdf?lang=en) Constitution (last visited July 19, 2017) [hereinafter UGANDA CONST.].

<sup>46</sup> *Id.* at art. 3.

<sup>47</sup> *See, e.g.*, Chris Johnston, *Uganda Drafts New Anti-Gay Laws*, THE GUARDIAN (Nov. 8, 2014), <https://www.theguardian.com/world/2014/nov/08/uganda-drafts-anti-gay-laws-prison-promotion-homosexuality> (last visited July 19, 2017).

<sup>48</sup> UGANDA CONST., *supra* note 45, at Objective VI.

<sup>49</sup> *Id.* at Objective VII.

<sup>50</sup> *Id.* at art. 5.

<sup>51</sup> Zambia Constitution of 1991, art. 23, *available at* [https://www.constituteproject.org/constitution/Zambia\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Zambia_2009.pdf?lang=en) (last visited Aug. 5, 2017) [hereinafter ZAMBIA CONST.].

the Constitution as affording different and inferior treatment to different persons attributable, wholly or mainly, to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour, or creed.<sup>52</sup>

However, persons who are not citizens of Zambia are not necessarily guaranteed equal treatment with respect to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law”.<sup>53</sup> Furthermore, while the Constitution will void laws that discriminate on the basis of gender, this does not apply when customary law governs personal matters such as marriage, children, divorce, or inheritance; thus, with respect to such personal matters, the rights of women may be abridged in practice.<sup>54</sup>

---

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> USAID COUNTRY PROFILE: PROPERTY RIGHTS AND RESOURCE GOVERNANCE: ZAMBIA 5 (2016), *available at* [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_Zambia\\_Profile.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Zambia_Profile.pdf) (last visited Aug. 5, 2017).

## IV. Rights of Foreigners and Stateless Individuals

### Eritrea

With respect to nationality, the Ratified Constitution states that any person born of an Eritrean father or mother is an Eritrean by birth and that foreign citizens may acquire Eritrean citizenship pursuant to law.<sup>55</sup> However, the Ratified Constitution does not appear to explicitly protect the rights and freedoms of foreigners, asylum seekers, refugees, or stateless persons, and ABA ROLI has been unable to determine whether Eritrea has passed any laws that would establish the rights and duties of refugees or stateless individuals.

### Ethiopia

Individuals who are recognized as refugees under the terms of the Refugee Proclamation have a number of rights, including: (1) the right to remain within Ethiopia; (2) the right to be issued with identity and travel documents; (3) the right to obtain employment, wages, and education commensurate with the rights of other non-citizens.<sup>56</sup> The refugee law permits asylum-seekers' families to enter and remain in the country until such time as the primary asylum-seeker's status is decided;<sup>57</sup> however, ABA ROLI has been unable to determine whether Ethiopian law otherwise specifically lays out the rights and duties of non-citizens.

### Ghana

A person who is granted refugee status in Ghana is entitled to all the rights, and subject to all the duties, laid out in international law.<sup>58</sup> For example, refugees are to be issued identity cards, residence permits, and UN travel permits, where appropriate.<sup>59</sup> To the extent that refugees are granted resident status, they may be eligible to apply for insurance under the National Health Insurance Scheme, which covers a variety of outpatient and inpatient services including oral, eye, maternity, and emergency care.<sup>60</sup>

The Constitution recognizes that all persons have an equal right to education.<sup>61</sup> This encompasses a right to free and compulsory primary education, "generally available" secondary education, and tertiary education, which is to be made "equally accessible to all on the basis of capacity."<sup>62</sup> While no specific mention of foreign citizens and stateless people is made under this provision, the fact that "all" people are granted the right to education arguably grants non-citizens these rights.

---

<sup>55</sup> *Id.* at art. 3.

<sup>56</sup> Refugee Proclamation No. 409 of 2004, § 21, *available at* <https://chilot.files.wordpress.com/2012/10/proc-no-409-2004-refugee.pdf> (last visited July 21, 2017).

<sup>57</sup> *Id.* at § 12(1).

<sup>58</sup> Refugee Law P.N.D.C.L. 305D of 1992, § 11, *available at* <http://laws.ghanalegal.com/acts/id/550/refugee-law> (last visited July 17, 2017).

<sup>59</sup> *Id.*

<sup>60</sup> *See Benefits Package*, NATIONAL HEALTH INSURANCE SCHEME, <http://www.nhis.gov.gh/benefits.aspx> (last visited July 17, 2017).

<sup>61</sup> GHANA CONST., art 25.

<sup>62</sup> *Id.*

## Lesotho

The Constitution does not explicitly provide for the rights of foreigners and stateless individuals; however, to the extent that constitutional rights apply regardless of national origin, it would appear that such individuals' rights are Constitutionally-protected. Furthermore, the Constitution states that the State must "take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in society to enable them to participate fully in all spheres of public life."<sup>63</sup>

Lesotho's Refugee Act does not appear to make specific provisions for the rights or duties of refugees or stateless persons.<sup>64</sup>

## Malawi

Certain provisions of law limit the rights of foreigners, such as a foreigner's eligibility to obtain petroleum licenses.<sup>65</sup> However, ABA ROLI has been unable to determine the full scope of the laws that limit the rights of foreigners.

Malawi's Refugee Act generally follows the minimum requirements of the Refugee Convention and Protocol and the OAU Convention; however, this document does not lay out the rights of refugees beyond the right of *non-refoulement*.<sup>66</sup> Malawi has entered reservations to Article 22(1) of the Refugee Convention; as such, it does not recognize that refugees must be accorded the same treatment as nationals with respect to elementary education.<sup>67</sup> The Act also expressly restricts refugees' right to freedom of movement, and the right to engage in economic activity.<sup>68</sup>

## Namibia

The Constitution provides for the granting of asylum to persons who reasonably fear persecution on the grounds of their political beliefs, race, religion, or membership in a particular social group.<sup>69</sup> The Namibia Refugees (Recognition and Control) Act outlines the rights and duties of recognized refugees and protected persons.<sup>70</sup>

Notably, this law does not grant refugees freedom of movement outside reception areas,<sup>71</sup> and despite the fact that the Refugee Convention is incorporated into the law by reference, a number of other rights that should be granted under the Refugee Convention (such as the right to employment

---

<sup>63</sup> LESOTHO CONST., *supra* note 40, at § 26.

<sup>64</sup> See Refugee Act, No. 18 of 1983, *available at* <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85619/95951/F736164096/LSO85619.pdf> (last visited Aug. 3, 2017).

<sup>65</sup> Petroleum Exploration and Production Act, no. 2 of 1983, art. 13(a), *available at* <http://www.eisourcebook.org/cms/Malawi%20Petroleum%20Act.pdf> (last visited July 23, 2017).

<sup>66</sup> Refugee Act of 1989, *available at* <http://www.refworld.org/docid/3ae6b4f28.html> (last visited July 23, 2017) [hereinafter Refugee Act].

<sup>67</sup> Levi Duma Mvula, Refugee Status Determination and Rights in Malawi 10 (2010), <https://www.rsc.ox.ac.uk/files/files-1/dp-rsd-malawi-2010.pdf> (last visited July 23, 2017).

<sup>68</sup> *Id.* at 11.

<sup>69</sup> NAMIBIA CONST., *supra* note 19, at art. 97.

<sup>70</sup> Namibia Refugees (Recognition and Control) Act, No. 41 of 1999, *available at* <http://www.refworld.org/docid/3ae6b59ac.html> (last visited July 31, 2017).

<sup>71</sup> *Id.* at § 20.

on equal terms with other non-citizens) appear not to be granted under Namibia's statute.

### Uganda

An individual who is granted refugee status in Uganda is entitled to all the rights, and subject to all the duties, of any other noncitizen "in similar circumstances".<sup>72</sup> Refugees are to be issued identity cards and travel documents,<sup>73</sup> and generally have the right to freely move within Uganda.<sup>74</sup>

Refugees are entitled to be treated in a non-discriminatory way,<sup>75</sup> and there are no restrictions on their access to the Ugandan court system.<sup>76</sup> Refugees must be given the same treatment as Ugandan citizens with respect to access to primary education.<sup>77</sup>

### Zambia

The Constitution of Zambia does not appear to reserve fundamental rights to the citizens of the country.<sup>78</sup>

With respect to the rights of refugees and stateless individuals, Zambia has recently passed a new Refugees Act, which incorporates into domestic law the terms of the Refugee Convention.<sup>79</sup> The lays out a number of rights for refugees, including the right to own Zambian property, the right to access the court system upon the same terms as a citizen, and the right to primary education.<sup>80</sup> Refugees must be issued with identity cards, and it appears that they must also be issued with travel documentation.<sup>81</sup>

ABA-ROLI researchers were unable to identify information regarding whether Zambian law explicitly protect the rights and freedoms of foreign citizens and stateless people.

---

<sup>72</sup> The Refugees Act of 2006, § 29, *available at* <http://www.judiciary.go.ug/files/downloads/Act%20No.%2021of%202006%20Refugees%20Act2006.pdf> (last visited July 19, 2017).

<sup>73</sup> *Id.* at §§ 31(1), 29(1)(a).

<sup>74</sup> *Id.* at § 30.

<sup>75</sup> *Id.* at §§ 29(1)(c).

<sup>76</sup> *Id.* at §§ 29(1)(h).

<sup>77</sup> *Id.* at §§ 29(e)(iii).

<sup>78</sup> ZAMBIA CONST., *supra* note 51, at art. 11.

<sup>79</sup> *President Lungu approves Progressive New Law on Refugees Living in Zambia*, LUSAKATIMES.COM (June 22, 2017), <https://www.lusakatimes.com/2017/06/22/president-lungu-approves-progressive-new-law-refugees-living-zambia/> (last visited Aug. 5, 2017).

<sup>80</sup> Refugees Act No. 1 of 2017, art. 41(3), *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Refugees%20Act%20No.%201%20of%202017.pdf> (last visited Aug. 5, 2017).

<sup>81</sup> *Id.* at arts. 47, 50.

## V. State Human Rights Guarantees

### Eritrea

The Ratified Constitution recognizes a number of fundamental civil and political rights, including:

- the right to life;<sup>82</sup>
- the right to liberty;<sup>83</sup>
- the right to privacy, including the right to be free from unreasonable search and seizure;<sup>84</sup>
- the right to freedom of thought, conscience, religion, and belief;<sup>85</sup>
- the right to free speech and expression, including the freedom of the press and other media, and the right of access to information;<sup>86</sup>
- the rights to peaceful assembly and freedom of association;<sup>87</sup>
- the right to freedom of movement, including the right to move freely throughout the country, and the right to leave and return to Eritrea;<sup>88</sup>
- the right to marry;<sup>89</sup>
- the right to equality before the courts;<sup>90</sup>
- the right to a fair trial, including a number of rights for those accused of criminal offenses;<sup>91</sup>
- the right to a legal remedy;<sup>92</sup> and
- the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.<sup>93</sup>

Eritrea does not appear to guarantee the right to a legal identity, or the right to self-determination.

However, the Civil Code establishes the right to be free from imprisonment for an inability to fulfill contractual obligations.<sup>94</sup>

The Ratified Constitution explicitly prohibits discrimination in education, stating that every citizen should have equal access to education, and that the State will endeavor, within the limit of its resources, to make education services available to all citizens.<sup>95</sup> Eritrea also provides free education

---

<sup>82</sup> *Id.* at art. 15.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at art. 18.

<sup>85</sup> *Id.* at art. 19; *see also* Civil Code of the State of Eritrea, arts. 14-15 [hereinafter Civil Code].

<sup>86</sup> ERITREA CONST., *supra* note 25, at art. 19.

<sup>87</sup> *Id.*, *but see, e.g.*, Martin Plaut, *Divided and Dispersed, Eritrea Opposition Struggles to Harness Spirit of Resistance*, *The Guardian* (Aug. 19, 2015, 7:15 AM), <https://www.theguardian.com/politics/2015/aug/19/inside-eritrea-political-opposition-threat-isaias-afwerki> (last visited July 22, 2017) (noting that political parties aside from the ruling party have been abolished).

<sup>88</sup> ERITREA CONST., *supra* note 25, at art. 19, *but see, e.g.*, U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT: JUNE 2016* 165, *available at* <https://www.state.gov/documents/organization/258879.pdf> (last visited July 22, 2017) (noting that strict exit controls limit the ability of Eritreans to legally leave the country).

<sup>89</sup> ERITREA CONST., *supra* note 25, at art. 22.

<sup>90</sup> *Id.* at art. 14.

<sup>91</sup> *Id.* at art. 17.

<sup>92</sup> *Id.* at art. 28.

<sup>93</sup> *Id.* at art. 16.

<sup>94</sup> Civil Code, *supra* note 85.

<sup>95</sup> ERITREA CONST., *supra* note 25, at art. 21.

at all levels, and basic education (elementary and middle school) is compulsory.<sup>96</sup> The National Education Policy from the Ministry of Education also addresses educational strategies with respect to illiteracy, school dropouts, adult education, vocational training, and skills acquisition.<sup>97</sup>

The Ratified Constitution guarantees the right of all citizens to equal access to health services, within the limit of the State's resources.<sup>98</sup> Additionally, the National Health Policy's guiding principles include promoting equity in the provision of health services, including the distribution of costs and benefits of health services to all people, regardless of their location, ethnicity, gender, age, social, economic, cultural, and political status.<sup>99</sup>

The National Health Policy also states that budget allocation of the sector is based on the special needs of vulnerable groups and addresses the special needs of individuals living with HIV. The Policy aims to prevent new HIV infections through targeted interventions, and reduce the personal and social impact of HIV infection and AIDS, including protection of the rights of people living with HIV. ABA ROLI notes that Eritrea's National Action Plans for Health also calls for the provision of low-cost or free healthcare services to all Eritrean citizens.<sup>100</sup>

## Ethiopia

The Constitution of Ethiopia recognizes a number of fundamental civil and political rights, including:

- the right to life;<sup>101</sup>
- the right to security of person and liberty;<sup>102</sup>
- the right to privacy, including the right “not to be subjected to searches of [one’s] home, person or property, or the seizure of any property under [one’s] personal possession.”;<sup>103</sup>
- the right to freedom of expression and/or speech;<sup>104</sup>
- the right to freedom of assembly, “to demonstrate together with others peaceably and unarmed, and to petition”;<sup>105</sup>
- the right to freedom of association;<sup>106</sup>
- the right to freedom of movement;<sup>107</sup>
- the right to marry;<sup>108</sup>

---

<sup>96</sup> Education Policy and Data Center, Eritrea, <http://www.epdc.org/country/Eritrea> (last visited July 22, 2017).

<sup>97</sup> MINISTRY OF EDUCATION, ERITREA: NATIONAL EDUCATION POLICY (Feb. 2003), *available at* <http://www.eritreaembassy-japan.org/data/National%20Education%20Policy%20Feb%202003.pdf> (last visited July 22, 2017).

<sup>98</sup> ERITREA CONST., *supra* note 25, at art. 21.

<sup>99</sup> STATE OF ERITREA, MINISTRY OF HEALTH, NATIONAL HEALTH POLICY (Mar. 2010), [http://www.who.int/medical\\_devices/survey\\_resources/health\\_technology\\_national\\_policy\\_eritrea.pdf](http://www.who.int/medical_devices/survey_resources/health_technology_national_policy_eritrea.pdf) (last visited July 22, 2017).

<sup>100</sup> *Id.*

<sup>101</sup> ETHIOPIA CONST., *supra* note 31, at art. 25.

<sup>102</sup> *Id.* at art. 15.

<sup>103</sup> *Id.* at art. 26.

<sup>104</sup> *Id.* at art. 29(2).

<sup>105</sup> *Id.* at art. 30.

<sup>106</sup> *Id.* at art. 31.

<sup>107</sup> *Id.* at art. 32.

<sup>108</sup> *Id.* at art. 34.

- the right to self-determination up to secession;<sup>109</sup> and
- the right to access to justice,<sup>110</sup> including the right of an accused to a public trial by an ordinary court of law within a reasonable time after having been charged.<sup>111</sup>

While the constitution does not specifically provide for the right to fair trial, the risk of unfair trial is one of the grounds for requesting change of venue under the Criminal Procedure Code.<sup>112</sup>

Other laws also guarantee certain civil and political rights. For instance, the Family Code provides that “[a] valid marriage shall take place only when the spouses have given their free and full consent.”<sup>113</sup> Freedom from torture is guaranteed by the Convention Against Torture, which is considered as an integral part of the law of the land by virtue of Article 9(4) of the Ethiopian constitution.

The constitution does not guarantee the right to freedom from imprisonment for inability to fulfill contractual obligation, nor does it provide for a right to legal identity.

The Ethiopian constitution does not explicitly prohibit discrimination in the area of health services, but the country has specific policies and strategies in place to address the needs of persons with disabilities. These strategies include the Proclamation Concerning the Rights of Persons with Disabilities in Employment,<sup>114</sup> which guarantees the rights of persons with disabilities. The Ethiopian National Plan of Action of Persons with Disabilities (2012-2020) addresses these individuals’ needs for comprehensive rehabilitation services, equal opportunities for education, skills training and work, and full participation in the lives of their families, communities, and nation.<sup>115</sup> In addition, the national health care policy provides a fee waiver scheme and a standardized package of exempt services.<sup>116</sup>

Ethiopia provides access to free primary education.<sup>117</sup> Ethiopia also has a strategy to address illiteracy and adult education, vocational training, and skills acquisition. <sup>118</sup> Still, the Ethiopian

---

<sup>109</sup> *Id.* at art. 39.

<sup>110</sup> *Id.* at art. 37.

<sup>111</sup> *Id.* at art. 20.

<sup>112</sup> The Criminal Procedure Code Proclamation, Proclamation No. 185 of 1961, § 106, *available at* <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82480/90332/F700418419/ETH82480.pdf> (last visited July 21, 2017) [hereinafter Criminal Procedure Code].

<sup>113</sup> The Revised Family Code, Proclamation No. 213 of 2000, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70033/102961/F-660764117/ETH70033%202.pdf> (last visited July 21, 2017).

<sup>114</sup> Right to Employment of Persons with Disability Proclamation No. 548 of 2008, *available at* <http://www.refworld.org/docid/4ba79d7b2.html> (last visited July 21, 2017).

<sup>115</sup> MINISTRY OF LABOUR AND SOCIAL AFFAIRS, NATIONAL PLAN OF ACTION OF PERSONS WITH DISABILITIES (2012-2021) (2012), *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94528/110953/F-1258023553/ETH94528.pdf> (last visited July 21, 2017).

<sup>116</sup> U.S. AGENCY FOR INT’L DEV., AFRICAN STRATEGIES FOR HEALTH, HEALTH FINANCING PROFILE: ETHIOPIA (2016), [http://www.africanstrategies4health.org/uploads/1/3/5/3/13538666/country\\_profile\\_-\\_ethiopia\\_us\\_letter.pdf](http://www.africanstrategies4health.org/uploads/1/3/5/3/13538666/country_profile_-_ethiopia_us_letter.pdf) (last visited July 21, 2017).

<sup>117</sup> THE WORLD BANK & UNICEF, ABOLISHING SCHOOL FEES IN AFRICA: LESSONS FROM ETHIOPIA, GHANA, KENYA, MALAWI, AND MOZAMBIQUE (2009), *available at* [http://www.unicef.org/publications/files/Aboloshing\\_School\\_Fees\\_in\\_Africa.pdf](http://www.unicef.org/publications/files/Aboloshing_School_Fees_in_Africa.pdf) (last visited July 21, 2017).

<sup>118</sup> *See, e.g.*, MINISTRY OF EDUCATION, THE NATIONAL ADULT EDUCATION STRATEGY, *available at* [http://www.moe.gov.et/policies-and-strategies/-/asset\\_publisher/jjLkqMz1P19T/document/id/50418?inheritRedirect=false&redirect=http%3A%2F%2Fwww](http://www.moe.gov.et/policies-and-strategies/-/asset_publisher/jjLkqMz1P19T/document/id/50418?inheritRedirect=false&redirect=http%3A%2F%2Fwww)

constitution does not explicitly prohibit discrimination in education.

Regarding health care benefits, Social Health Insurance Proclamation No. 690/2010 sets forth the benefits guaranteed to both private and public sector employees. To be eligible for disability benefits, Ethiopian citizens must be assessed with an incapacity for normal gainful employment, provided they have at least 10 years of service.<sup>119</sup>

## Ghana

The Constitution of Ghana recognizes a number of fundamental civil and political rights, including:

- the right to life;<sup>120</sup>
- the right to personal liberty;<sup>121</sup>
- the right to a fair trial, by judge or jury;<sup>122</sup>
- the right to a legal remedy, and access to the High Court for redress;<sup>123</sup>
- the right to be free from torture and cruel, inhuman, or degrading treatment or punishment;<sup>124</sup>
- the right to freely assemble and associate, including the right to participate in workplace decision-making and the right to form or join labor unions;<sup>125</sup>
- the right to political participation;<sup>126</sup>
- the right to free speech and expression, as well as the right to freedom of conscience, thought, and religion;<sup>127</sup>
- the right to privacy of home, property, correspondence or communication;<sup>128</sup>
- the right to move freely within Ghana;<sup>129</sup> and
- the right to be free from slavery or forced or compulsory labor.<sup>130</sup>

The Constitution does not establish an explicit right to marry or found a family, but does allow Parliament to enact laws on marriage and family.<sup>131</sup>

---

w.moe.gov.et%2Fpolicies-and-strategies%3Fp\_p\_id%3D101\_INSTANCE\_jjLkqMz1P19T%26p\_p\_lifecycle%3D0%26p\_p\_state%3Dnormal%26p\_p\_mode%3Dview%26p\_p\_col\_id%3Dcolumn-1%26p\_p\_col\_pos%3D1%26p\_p\_col\_count%3D2 (last visited July 21, 2017).

<sup>119</sup> U.S. SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY OFFICE OF RETIREMENT AND DISABILITY POLICY, SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD: AFRICA, 2013, <https://www.ssa.gov/policy/docs/progdesc/ssptw/2012-2013/africa/ethiopia.html> (last visited July 21, 2017).

<sup>120</sup> GHANA CONST., *supra* note 36, at art. 13.

<sup>121</sup> *Id.* at art. 14.

<sup>122</sup> *Id.* at art. 19.

<sup>123</sup> *Id.* at art. 33.

<sup>124</sup> *Id.* at art. 15.

<sup>125</sup> *Id.* at arts. 24(3), 36(11).

<sup>126</sup> *Id.* at art. 21.

<sup>127</sup> *Id.* at art. 21.

<sup>128</sup> *Id.* at art. 18.

<sup>129</sup> *Id.* at art. 21.

<sup>130</sup> *Id.* at art. 16.

<sup>131</sup> *Id.* at art. 17.

## Lesotho

The Constitution of Lesotho provides for the following civil and political rights:

- the right to life;
- the right to personal liberty;
- the right of freedom of movement and residence;
- freedom from inhuman treatment;
- freedom from slavery and forced labor;
- freedom from arbitrary search or entry;
- the right to respect for private and family life;
- the right to a fair trial for criminal charges, and to a fair determination of his civil rights and obligations;
- freedom of conscience, expression, assembly, and association;
- freedom from discrimination; and
- the right to participate in government.<sup>132</sup>

## Malawi

The Constitution of Malawi recognizes a number of fundamental civil and political rights, including:

- The right to life;<sup>133</sup>
- The right to personal liberty;<sup>134</sup>
- The right to be protected against torture and/or cruel and inhuman treatment;<sup>135</sup>
- The right to be protected from slavery, servitude and forced labor;<sup>136</sup>
- The right to privacy;<sup>137</sup>
- Rights in the criminal justice system;<sup>138</sup>
- The right to free expression, religion, and association, which encompasses press freedoms;<sup>139</sup>
- The right to freedom of movement and residence;<sup>140</sup>
- The right to education, specifically primary education;<sup>141</sup>
- The right to marry and start a family;<sup>142</sup>
- The right to engage in economic activity, to work and to pursue a livelihood;<sup>143</sup>
- The right to vote and to stand for election for public office.<sup>144</sup>

---

<sup>132</sup> See generally LESOTHO CONST., *supra* note 40.

<sup>133</sup> MALAWI CONST., *supra* note 16, at art. 16.

<sup>134</sup> *Id.* at art. 18.

<sup>135</sup> *Id.* at art. 19(3).

<sup>136</sup> *Id.* at art. 27.

<sup>137</sup> *Id.* at art. 21.

<sup>138</sup> *Id.* at art. 42.

<sup>139</sup> *Id.* at arts. 32-36.

<sup>140</sup> *Id.* at art. 39.

<sup>141</sup> *Id.* at art. 25.

<sup>142</sup> *Id.* at art. 22.

<sup>143</sup> *Id.* at art. 29.

<sup>144</sup> *Id.* at art. 40(3).

## Namibia

The Namibian Constitution provides for the following civil and political rights:

- the right to a fair trial;<sup>145</sup>
- the right to equality before the law;<sup>146</sup>
- the right to life;<sup>147</sup>
- the right to a legal identity;<sup>148</sup>
- the right to be free from from torture and/or cruel, inhuman, or degrading treatment or punishment;<sup>149</sup>
- the right to liberty;<sup>150</sup>
- the right to privacy;<sup>151</sup>
- the right to freedom of thought, conscience, and/or religion;<sup>152</sup>
- the right to free speech and expression;<sup>153</sup>
- the right to peaceful assembly and the freedom of association;<sup>154</sup> and
- the right to marry.<sup>155</sup>

The Constitution provides for the right to education for “all persons.”<sup>156</sup>

ABA ROLI researchers were not able to identify any laws providing for free or subsidized healthcare.

## Uganda

The Constitution of Uganda recognizes a number of fundamental civil and political rights, including:

- The right to life;<sup>157</sup>
- The right to personal liberty;<sup>158</sup>
- The right to be protected against torture and/or cruel and inhuman treatment;<sup>159</sup>
- The right to be protected from slavery, servitude and forced labor;<sup>160</sup>
- The right to privacy;<sup>161</sup>
- Rights in the criminal justice system;<sup>162</sup>

---

<sup>145</sup> NAMIBIA CONST., *supra* note 19, at art. 12.

<sup>146</sup> *Id.* at art. 10.

<sup>147</sup> *Id.* at Preamble.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at art. 8.

<sup>150</sup> *Id.* at art. 7.

<sup>151</sup> *Id.* at art. 13.

<sup>152</sup> *Id.* at art. 21.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at art. 14.

<sup>156</sup> *Id.* at art. 97.

<sup>157</sup> UGANDA CONST., *supra* note 45, at art. 22.

<sup>158</sup> *Id.* at art. 23.

<sup>159</sup> *Id.* at art. 24.

<sup>160</sup> *Id.* at art. 25.

<sup>161</sup> *Id.* at art. 27.

- The right to free expression, religion, and association;<sup>163</sup>
- The right to freedom of movement;<sup>164</sup>
- The right to education, specifically primary education;<sup>165</sup>
- The right to marry and start a family;<sup>166</sup>
- The right to participate in affairs of government;<sup>167</sup>
- The right to work, practice a profession, carry on a lawful business, and join a union;<sup>168</sup>
- The right of access to information, except where such a right would infringe upon national security or the privacy of another individual;<sup>169</sup> and
- The right to vote for those over 18 years of age.<sup>170</sup>

The Constitution specifically provides that the state must take affirmative action in favor of groups that have been marginalized on the basis of gender, age, disability, or for “reasons of history”.<sup>171</sup> Women, children, persons with disabilities, and minorities are also specifically protected under the Constitution.<sup>172</sup>

Notwithstanding these protections, the Constitution permits measures “reasonably justifiable for dealing with a state of emergency.”<sup>173</sup> Certain fundamental human rights and freedoms—specifically, the rights to be free from torture and slavery, and justice rights including the right to a fair hearing and the right to an order of habeas corpus—are exempt from these provisions. In spite of Constitutional guarantees, however, many of these enumerated rights are not uniformly enforced.

### Zambia

The Constitution of Zambia guarantees a number of fundamental civil and political rights, including:

- the right to life;<sup>174</sup>
- the rights to liberty and security of person;<sup>175</sup>
- the right to fair trial;<sup>176</sup>
- freedom from torture;<sup>177</sup>
- freedom of movement;<sup>178</sup>

---

<sup>162</sup> *Id.* at art. 28.

<sup>163</sup> *Id.* at art. 29.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at art. 30.

<sup>166</sup> *Id.* at art. 31.

<sup>167</sup> *Id.* at art. 38.

<sup>168</sup> *Id.* at art. 40.

<sup>169</sup> *Id.* at art. 41.

<sup>170</sup> *Id.* at art. 59.

<sup>171</sup> *Id.* at art. 32.

<sup>172</sup> *Id.* at arts. 33-36.

<sup>173</sup> *Id.* at art. 46.

<sup>174</sup> ZAMBIA CONST., *supra* note 51, at arts. 11-12.

<sup>175</sup> *Id.* at art. 11.

<sup>176</sup> *Id.* at art. 18.

<sup>177</sup> *Id.* at art. 15.

<sup>178</sup> *Id.* at art. 22.

- the right to free expression, thought, conscience and religion;<sup>179</sup>
- the right to be protected from slavery and forced labor,<sup>180</sup> including the rights of young people to be free from exploitation;<sup>181</sup>
- criminal justice rights, including the right to know the charges against one in a language one understands, the right to a fair trial, and the right to legal counsel;<sup>182</sup>
- freedom of peaceful assembly and association;<sup>183</sup> and
- freedom from arbitrary or unlawful interference with one's privacy or property.<sup>184</sup>

---

<sup>179</sup> *Id.* at arts. 19-20.

<sup>180</sup> *Id.* at art. 14.

<sup>181</sup> *Id.* at art. 24.

<sup>182</sup> *Id.* at art. 26.

<sup>183</sup> *Id.* at art. 21.

<sup>184</sup> *Id.* at art. 17.

## VI. State Human Rights Bodies

### Eritrea

ABA-ROLI researchers have not identified whether Eritrean law requires the establishment of any institutions with specific mandates to protect human rights and freedoms.

### Ethiopia

The Ethiopian Human Rights Commission (EHRC) investigates human rights violations and produces thematic reports.<sup>185</sup> The EHRC reported to Parliament that in 2014-2015, it had accepted 1,254 human rights grievances and investigated 259 cases.<sup>186</sup> Furthermore, the EHRC provides counseling and negotiation services, and refers grievances for handling by relevant government offices.<sup>187</sup> The EHRC has a specific Commissioner for the affairs of women and children.<sup>188</sup>

### Ghana

The Commission on Human Rights and Administrative Justice (CHRAJ) functions as a national human rights institution, an Ombudsman's office and an anti-corruption agency.<sup>189</sup> It is Ghana's principal human rights body, and is tasked with investigating complaints of human rights violations, denials of enjoyment of rights, inappropriate administrative actions and decisions of public institutions and public officials, and corruption in public institutions or by public officials.<sup>190</sup>

### Lesotho

Lesotho has a number of state institutions that carry mandates to protect human rights and freedoms.

The primary human rights body is the Constitutionally-established Office of the Ombudsman, which investigates "action[s] taken by any officer or authority in the exercise of the[ir] administrative functions . . . in cases where it is alleged that a person has suffered injustice."<sup>191</sup> The Ombudsman has investigatory authority over malfeasance and nonfeasance by government entities that cause human rights violations.<sup>192</sup>

The Police Complaints Authority (PCA), established under the aegis of the Police Act, is an independent oversight body that addresses complaints against the police.<sup>193</sup> It is established under the Ministry of Home Affairs, and reports directly to the Minister or the Police Commissioner. While

---

<sup>185</sup> See, e.g., Ethiopia Human Rights Commission (EHRC), <http://www.nanhri.org/wp-content/uploads/2016/04/ETHIOPIA-1.pdf> (last visited July 21, 2017).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> See *generally Home*, COMMISSION ON HUMAN RIGHTS & ADMINISTRATIVE JUSTICE GHANA, <http://www.chrajghana.com/> (last visited July 17, 2017).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at § 135(1)(a).

<sup>192</sup> *About Us*, OFFICE OF THE OMBUDSMAN, <http://www.ombudsman.org.ls/> (last visited Aug. 3, 2017).

<sup>193</sup> MAMOSEBI PHOLO, LESOTHO: JUSTICE SECTOR AND THE RULE OF LAW 98 (Mar. 2013), *available at* [http://www.osisa.org/sites/default/files/afrimap\\_lesotho\\_justice.pdf](http://www.osisa.org/sites/default/files/afrimap_lesotho_justice.pdf) (last visited Aug. 2, 2017).

the PCA may accept public complaints at any district police station, and presumably conduct investigations into police misconduct, as of 2013 the law provided that the PCA could not institute prosecutions without the permission of the Minister of Home Affairs.<sup>194</sup>

As of June 2016, Lesotho had also enacted a bill establishing a Human Rights Commission into law.<sup>195</sup> However, two NGOs filed a constitutional law case against the establishment of the Commission, arguing that the law gave the Prime Minister of Lesotho too much power in appointing commission members; as of the end of the reporting period for the U.S. Department of State's 2016 Human Rights Report, this body had not yet been established.<sup>196</sup>

### Malawi

The Constitution establishes a Human Rights Commission,<sup>197</sup> and grants it the authority to investigate human rights violations.<sup>198</sup> However, the Human Rights Commission's role is purely investigatory, and the body has no judicial or legislative power.<sup>199</sup>

### Namibia

The Constitution and the Ombudsman Act of 1990 require the establishment of a human rights ombudsman.<sup>200</sup> One of the mandates of the Ombudsman is to investigate allegations of breaches of human rights.<sup>201</sup> Article 25 of the Constitution states that:

Aggrieved person who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.<sup>202</sup>

### Uganda

Uganda has a Human Rights Commission, established under the aegis of the Constitution.<sup>203</sup> The Commission is charged with investigating human rights violations and monitoring the

---

<sup>194</sup> *Id.*

<sup>195</sup> U.S. DEP'T OF STATE, LESOTHO 2016 HUMAN RIGHTS REPORT 18, <https://www.state.gov/documents/organization/265480.pdf> (last visited Aug. 3, 2017).

<sup>196</sup> *Id.*

<sup>197</sup> MALAWI CONST., *supra* note 16, at art. 129.

<sup>198</sup> *Id.*

<sup>199</sup> *About Us*, MALAWI HUMAN RIGHT COMMISSION, *available at* <https://web.archive.org/web/20170103162253/http://www.hrcmalawi.org/about.html> (last visited July 23, 2017).

<sup>200</sup> NAMIBIA CONST., *supra* note 19, at art. 89; Ombudsman Act, No. 7 of 1990, § 2, *available at* [http://www.chr.up.ac.za/chr\\_old/indigenous/documents/Namibia/Legislation/Ombudsman%20Act.pdf](http://www.chr.up.ac.za/chr_old/indigenous/documents/Namibia/Legislation/Ombudsman%20Act.pdf) (last visited July 31, 2017).

<sup>201</sup> *Mandates of the Office of the Ombudsman*, OMBUDSMAN NAMIBIA 2, <https://www.ombudsman.org.na/mandates-of-the-office-of-the-ombudsman/2/> (last visited July 31, 2017).

<sup>202</sup> NAMIBIA CONST., *supra* note 19, at art. 25.

<sup>203</sup> UGANDA CONST., *supra* note 45, at art. 52(1).

government's compliance with the country's international human rights obligations.<sup>204</sup> To this end, the Commission is required to publish and submit annual human rights reports to Parliament.<sup>205</sup> It also has the same power as a court of Uganda to order persons to appear, produce documents or records relevant to the Commission's investigations, and issue contempt citations.<sup>206</sup> Furthermore, the Commission has the authority to order a number of remedies for human rights violations, although persons retain the right to appeal the Commission's decisions to the High Court of Uganda.<sup>207</sup>

## Zambia

The Constitution of Zambia envisions the creation of a national Human Rights Commission.<sup>208</sup> The Commission is established under the terms of the Human Rights Commission Act,<sup>209</sup> and charges it with investigating human rights violations, "maladministration of justice", and proposing effective measures to limit and prevent human rights abuses.<sup>210</sup> The Commission is further specifically charged with inspecting conditions in detention facilities, and rehabilitating victims of human rights abuses.<sup>211</sup>

The Commission has broad investigatory powers, including the power to subpoena persons and records, question any person on any matter under investigation, and compel the disclosure of information.<sup>212</sup> While the Commission is authorized to recommend punishments for officers found to have perpetrated human rights abuses, the release of individuals from detention, and the payment of compensation to victims of rights abuses or their families,<sup>213</sup> it is not clear whether it has prosecutorial powers or the powers of a court of law to actively hand down legally-binding sentences.

---

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at art. 52(2).

<sup>206</sup> *Id.* at art. 53(1).

<sup>207</sup> *Id.* at art. 53(3).

<sup>208</sup> ZAMBIA CONST., *supra* note 51, at art. 125.

<sup>209</sup> Human Rights Commission Act, No. 39 of 1996, *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/Human%20Rights%20Commission%20Act.pdf> (last visited Aug. 5, 2017).

<sup>210</sup> *Id.* at arts. 9(a)-(c).

<sup>211</sup> *Id.* at arts. 9(d)-(e).

<sup>212</sup> *Id.* at art. 10(2)(a)-(c).

<sup>213</sup> *Id.* at arts. 10(2)(d), 10(4).