

Access to justice

This chapter will examine access to justice, a vital aspect of human rights, and therefore a vital component of human security. The ability to go to court for remedies of human rights abuses is itself a right, one that is essential to safeguarding all others.

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General AU commitments to access to justice include the Grand Bay Declaration's paragraph 4, which recognises the need for an "independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost". Paragraph 5 of the Kigali Declaration calls

upon states to guarantee "independence, accessibility, affordability and due process of the justice system". Specific commitments include: articles 7 and 13(2) of the African Charter, as well as the OAU Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa. Article 7 speaks of the "right to have one's cause heard", which for our purposes may be considered a synonym for access to justice. It specifies that the right to have one's cause heard comprises:

- (a) the right to an appeal to competent national organs against acts of violating his or her fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
- (b) the right to be presumed innocent until proven guilty by a competent court or tribunal;
- (c) the right to defence, including the right to be defended by counsel of his or her choice; and
- (d) the right to be tried within a reasonable time by an impartial court or tribunal.

Access to justice is composed of numerous different elements, many of which are not addressed in the African Charter. The OAU Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa fills this void by making concrete and specific interpretations of state obligations to provide fair and public hearings by independent and impartial tribunals. It also addresses judicial training; *locus standi*, the role of prosecutors; access to counsel and to legal aid; the independence of lawyers; the rights of arrested and detained persons; traditional courts; the rights of victims; and the right to an effective remedy. These texts enshrine the principle that access to justice, in the form of an independent legal system, is essential to democratic societies.

Notwithstanding the fact that states' obligations are relatively well-defined, they are challenging to guarantee, for they require an extensive social and institutional infrastructure. Ensuring an independent judiciary, for example, requires much more than non-interference from the other branches of government. It requires a long-term commitment to legal education, as well as substantial financial resources to – among other elements – hold judges' salaries at a level that will reduce their vulnerability to financial pressure. Similarly, providing the right to counsel, which usually takes the form of legal aid, for all those accused of crimes, is a burden even for developed countries – costly as it is in terms of funding and skills.

States are coming to understand, however, that well-functioning, impartial legal institutions are important factors in economic development. A competent judicial system is a prime indicator of a state's seriousness in abiding by rules-based regimes. It contributes to the broad project of human security, as well as the more narrowly-defined one of human rights.

The indicators used in reviewing the eight states were as follows:

- Are persons tried in fair, public, independent and impartial courts or tribunals?
- Is the right to counsel guaranteed?
- Is the state's judiciary accessible and affordable, as stipulated in the Grand Bay and Kigali Declarations?

- Have military or special tribunals, which do not conform to regional human rights standards, been established in the country?
- Are there impunity or amnesty laws that prevent victims from obtaining justice?

Exhaustive information is not given on each of these aspects in every country. Rather, this study highlights the chief areas of difficulty that countries have in meeting their access to justice obligations.

6.1 Fair and public hearings by competent, independent and impartial bodies¹⁶³

The OAU Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa specify that persons charged with crimes are entitled to fair and public hearings by independent and impartial tribunals. Fair hearings encompass “equality of arms” between parties; equality of all persons; equality of access; respect for the inherent dignity of the human being; adequate opportunity to prepare a case; right to counsel; right to the assistance of an interpreter where necessary; right to appeal; right to an outcome without undue delay; and the right to have an outcome that is based solely on the evidence presented.¹⁶⁴

The breadth of public hearings should be clear: it involves inclusion of the public and the media and is important for ensuring that the standards of fairness in hearings are adhered to. On this issue, the principles and guidelines state that the exclusion of the public and media should only occur if the judicial body determines that it is “in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence” or “for reasons of public order or national security in an open and democratic society that respects human rights and the rule of law”.¹⁶⁵

163 Independence of judiciaries is addressed in the AHSI monograph by A Hammerstad, *African commitments to democracy in theory and practise: A review of eight NEPAD countries*, AHSI, Pretoria, 2004, and thus will not be discussed here.

164 Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, African Union, section a2, articles a–j.

165 *Ibid.*, section a3, articles a–i.

Impartial tribunals are those where the judicial body bases its decisions on “objective evidence, arguments, and facts presented before it”. Matters shall be decided “without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason”.¹⁶⁶

6.2 Right to counsel

All of the countries under review have constitutional or other national legislation, such as penal codes, addressing the rights of accused persons – most of them meeting the basic requirements set out in article 7 of the African Charter. However, of the components of a fair hearing, right to counsel is probably the most problematic for many of the countries under review.

The question of whether state-funded legal aid is an essential element of fair hearings is left vague by the African Charter, but the African Commission on Human and Peoples’ Rights, in its capacity to interpret the Charter, says that it is a state’s duty to provide legal aid. Common sense, and a growing trend in international law, point the same way, suggesting that lack of legal counsel for indigent defendants charged with the most serious crimes will necessarily infringe defendants’ right to a fair trial. Indeed, in countries where levels of illiteracy are still high and few have experience with the formal legal system, trained counsel is probably essential to ensure fair trials in all criminal cases.

In its recommendations, the Commission calls upon states that are a party to the African Charter to:

- Urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately-funded public defender and legal aid schemes;
- In collaboration with bar associations and non-governmental organisations, enable innovative and additional legal assistance

¹⁶⁶ *Ibid*, section A5, art. (a).

programmes to be established, including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage, and pro bono representation for accused in criminal proceedings.

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

Of the eight countries surveyed, South Africa and Ghana are the most successful at providing not only for the presumption of innocence, but also for legal assistance to make this presumption effective. South Africa generally respects the constitutional provisions on the presumption of innocence of criminal defendants,¹⁶⁷ and the Bill of Rights provides for equal access to the courts; a fair trial; the right to appeal; the right to an interpreter during trial; the right to choose one's legal counsel; and the right to have legal counsel provided by the state when "substantial injustice would otherwise result".¹⁶⁸ These rights are implemented through the South African Legal Aid Board. Although it is a government-funded institution, the Legal Aid Board relies

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heavily on non-governmental resources. In 1994, the Board entered into partnership agreements with five universities, to engage law graduates to staff public defender clinics representing those charged with crimes. Provincial law societies have supported and supplemented the state's efforts to provide indigent defence.

Likewise, the right to be presumed innocent, to choose one's counsel and to be provided with counsel when necessary are generally respected in Ghana – although financial resources and legal skills are at more of a

¹⁶⁷ *Ibid.*

¹⁶⁸ Constitution of South Africa, art. 34 and art. 35(3).

premium than in South Africa. Defendants have a right to be represented by an attorney (at public expense if necessary). In practice, authorities generally respect these safeguards. The constitution also guarantees accused citizens the right to adequate time to prepare their defence, and the right to an interpreter for court proceedings (article 19).

The situation is less favourable to defendants in Uganda. The Constitution provides that “justice shall be done to all irrespective of their social or economic class” (article 126(2)(a)). Article 27 of the Constitution provides for arrested or detained people to have the right to be presumed innocent; be given adequate time and facilities to prepare their defence; the right to choose their own counsel; and the right to have interpretation provided for them at no cost during their trial. However, one group generally deprived of these rights is soldiers tried in military courts, who rarely have access to lawyers. Civilians that have been arrested through the Violent Crime Crack Unit, or by its predecessor Operation Wembley, have also been deprived of a fair hearing, having been tried by court martial.

Uganda’s Constitution provides for state-funded counsel for people being accused of crimes punishable by death or life imprisonment. This is a very limited provision, which might avert the gravest injustices if implemented. Lack of funds to provide these services means that lawyers are not always provided, even in these cases. The Uganda Law Society (ULS) operates legal aid clinics in four regional offices, but remains limited due to funding constraints. The Women Lawyers and the Foundation for Human Rights Initiative also provide limited legal aid. Article 9 of the Ugandan Constitution states that the right to an order of habeas corpus is inviolable, but there are reports that those led in military courts do not have access to the right.

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

In Ethiopia, the Constitution provides that persons have the right to a fair trial; to be presumed innocent; to legal counsel of their choice; and to be provided with legal representation at their own expense. However, in practice, lengthy pre-trial detention is common, and sometimes detainees are allowed little, or no, contact with their legal counsel. In practice, defendants do not enjoy their constitutional right of presumption of innocence. The public defender's office does provide legal counsel to some indigent defendants, but its scope remains severely limited.

In Algeria, the Constitution provides that defendants are presumed innocent until proven guilty, have the right to legal council and have the right to appeal their convictions. However, the Algerian state tends to disrespect defendants' rights despite the above constitutional provisions.¹⁶⁹ There are no constitutional provisions guaranteeing the right to state-funded counsel or language interpretation and there is no mention of habeas corpus rights. Even when lawyers are approached by the state or the accused to serve as counsel, some refuse to accept cases of security-related offences, for fear of retribution from the security forces. For example, defence lawyers for members of the banned Islamist party FIS suffered harassment, death threats and arrest. The harassment, threats and arrests were clearly sanctioned by the state. In effect, the state in these cases undermined the right to counsel.

In Nigeria, military rule in the 1990s saw serious violations of the right to counsel, even where defendants could afford to pay. A defendant's right to counsel in high-visibility cases and before special tribunals, was often under pressure – counsel might be disqualified or harassed to make them withdraw. This situation has changed since the advent of democratic civilian rule. Article 36 of the Nigerian constitution entitles every person to not only a fair and impartial trial, but to the right to be presumed innocent, a legal practitioner of his or her choice, the right to an interpreter and the right to adequate time to prepare defence (article 36). The Constitution does not, however, assert that counsel is to be provided for individuals who cannot afford it. We have no statistics for how many individuals thus appear before the Nigerian courts without the assistance of a lawyer, but in criminal cases it is probably a majority.

169 Country reports on human rights practices – Algeria, *op cit*.

The Kenyan Constitution provides for the right to be considered innocent until proven guilty, reasonable time to prepare a defence and for a state-funded interpreter during a trial. Defendants do not have the right to government-provided legal counsel, except in capital cases. For lesser charges, free legal aid is rare. It exists only in Nairobi and other major cities. Thus, poor persons are likely to lack an adequate defence and to be convicted. Although defendants have access to an attorney in advance of trial, defence lawyers do not always have access to government-held evidence.

In Senegal, although defendants have the right to an attorney, the state does not always provide counsel when necessary, due to lack of funding. For the most part, defendants are treated as innocent until proven guilty.

6.3 Equality before the courts

The term “equality” here refers to equal access and equal *application*, not simply equal treatment. This section does not deal with questions of institutional bias on the basis of gender, ethnicity or other factors, in the legal system. Rather, it focuses on obstacles to individuals approaching the courts, and how the legal system treats different kinds of cases or crimes: those involving state actors and those that arise in situations of civil conflict.

6.3.1 Accessibility

Most of the states under review are facing serious obstacles to ensuring access to justice. The simple facts are: in general, courts do not function in rural areas where many individuals live; formal court procedures present obstacles to people who are illiterate; and the necessity to pay lawyers to act as interlocutors, and to pay court fees when launching cases, limits access by individuals who are poor.

Consequently, in most rural areas, traditional forms of conflict resolution, such as councils of village elders, continue to operate without any support or intervention from national governments. This is not necessarily a bad thing. Local conflict-resolution mechanisms are often very effective at ending problems between individuals. Because all proceedings are oral, literacy is not required; neither is legally-trained counsel or money for fees.

The African Commission's Declaration on the Right to a Fair Trial, paragraph 4, says of "traditional courts":

"It is recognised that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population in African countries. However, these courts also have serious shortcomings, which result in many instances in a denial of fair trial. Traditional courts are not exempt from the provisions of the African Charter relating to fair trial."

Of the countries under review, those where traditional courts are most used are Ethiopia, Ghana, Kenya and Nigeria. In Ethiopia, the law recognises some religious and customary courts, including Shari'a courts and councils of elders. Shari'a courts are also recognised in Nigeria, where Shari'a is in force in 12 of the country's 36 states, and in Kenya. These Shari'a courts primarily deal with issues of marriage inheritance; however, in Nigeria these courts are also used in criminal cases. In Ghana, community tribunals have been used, but were replaced by law in 2003. Village and traditional chiefs, while less popular today than in the past, are also used in Ghana to mediate local matters and to enforce customary tribal laws.

Traditional courts are most problematic where they act in criminal cases. As the African Commission's Declaration recognises, such courts do not follow the procedural requirements for fair trials. Where traditional courts do act in criminal cases, they usually do not mete out imprisonment as a punishment. A perfect example of this is the use of Shari'a courts in criminal cases in Nigeria, where application of the law discriminates against women and where punishments, such as death by stoning and amputation of limbs do not meet regional or international human rights standards. The right to legal counsel has also been refused in Nigerian Shari' a courts. Luckily, there has been a trend of quashing sentences made by lower Shari' a courts, when higher courts have found violations of the right to fair hearing.¹⁷⁰

170 Nigeria: Another sentence to death by stoning under new Shari'a penal law quashed on appeal, Amnesty International Press Release, AFR 44/009/2004, 25 March 2004.

While acknowledging the continuing relevance of traditional courts in ensuring access to mechanisms of dispute resolution in rural areas, there is no question that to protect individuals' rights from arbitrary state action, formal, state-organised tribunals are essential, since they alone have jurisdiction over the state. Thus, when individuals want to challenge state action, the lack of local courts, a lack of lawyers and funds, and the formality and bureaucracy of court procedures, often block them.

Beyond the logistical obstacles that impede access to state tribunals, and force many to revert to traditional courts, the countries under review face other problems which make access to fair hearings difficult. These problems include corruption and improper influence by other government branches, and the lack of facilities and staffing to efficiently handle caseloads. Corruption, which is addressed by one of our partners in the AHSI, is a huge problem and creates situations where judicial officials are often bribed to prolong detentions, lose evidence, delay trials, and to render unjust decisions. Inadequate facilities and funding, improperly trained personnel and understaffing contribute to undue delays in most of the countries under review.

6.4 Right to an effective remedy

The OAU Principles and Guidelines set out the state's obligations in terms of providing for an effective remedy. It states that everyone shall have a right to an effective remedy "by competent national tribunals for acts violating rights granted in the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity".¹⁷¹ According to these Principles and Guidelines, an effective remedy encompasses access to justice, reparation for harm suffered and access to the factual information concerning the violations. Impunity and amnesty laws violate the right to an effective remedy and should be addressed, as they often are applied in cases of human rights violations.

171 Principles and Guidelines on the Right to Fair Trial, *op cit*, section c.

6.4.1 Impunity

Equality before the courts means that all individuals are treated equally before the law. Failure to prosecute certain individuals for crimes, known as impunity, is a breach of this principle, generally occurring in countries in which human rights abuses are committed by state agents. The most serious problems of impunity, not coincidentally, are in countries that have experienced civil wars or civil unrest, which have resulted in an active role for security forces and consequent opportunities for them to commit human rights abuses. In situations of armed conflict it is easy for the state to maintain that all abuses were committed by the other side, yet we know this is not always the case and lack of investigations can encourage future abuses by security forces.

In Uganda, where the war in the north of the country against the rebel LRA continues, the army and the Joint Anti-Terrorism Task Force (JATF) have committed acts violating the country's obligations to protect human rights – such as execution of individuals suspected of being rebels, and torture and detention of civilians. Impunity is a particular problem because institutions such as the JATF, the Chieftaincy Military Intelligence (CMI) and the Internal Security Organisation (ISO), are not clearly accountable to normal hierarchies within the army and civilian administrations. Further, none of the Operation Wembley personnel accused of human rights violations have been held accountable for the abuses that they committed in 2002. While, of course, recognising the paramount importance of putting an end to the conflict, Uganda must take every possible measure to ensure that military measures do not cause any additional suffering to civilians and that the presumption of innocence is not abridged.

In Algeria, President Bouteflika has stated, on more than one occasion, that he would bring to justice security forces that were accused of killing more than 90 protesters in 2001, but up to the present time no trials have taken place.¹⁷² The state is still facing violent actions by rebels who have declined the 1999 offer of amnesty. While these rebels perpetrate

¹⁷² World report 2003 – Algeria, Human Rights Watch, *op cit*.

massacres, abductions, extrajudicial executions and incidences of torture, the same have been reported by the security forces, with few or no independent or impartial investigations into any such perpetrations.

In both Algeria and Uganda, a lack of resources for investigation may be a factor in impunity, but so, is the lack of enthusiasm and political will for documenting abuses that may have been committed by state actors. The continuing organised attacks by rebel groups create an extremely difficult environment in which security forces must operate. Yet, it must be emphasised that, for obligations such as protecting the right to life and prohibition of torture, even war does not permit derogations.

In Senegal, the armed conflict in the Casamance region has largely died down in recent years. The government of President Wade, elected in 2002, vowed to put an end to impunity in Senegal, but there has still been no proper investigation into the large-scale human rights abuses committed by the security forces, as well as the armed rebels in Casamance over the past decade.¹⁷³ Approximately 180 people disappeared between 1994 and 2001 – the majority arrested by the security forces. Some security force personnel in the Dakar region have been arrested following accusations of torture and excessive use of force, but have yet to be brought to trial.

Although Nigeria does not suffer from organised civil conflict on such a scale as the countries above, outbreaks of communal violence around the country have resulted in abuses by the army and police, who are called in to keep the peace. The authorities still do not have a good record in bringing human rights violators to justice.¹⁷⁴ Police and security forces are known to employ excessive force and are rarely held legally accountable for their actions. The most prominent recent example of this is the killing of hundreds of people in Odi, Bayelsa State, in November 1999, and of more than 200 people in Benue State in October 2001,¹⁷⁵ by members of the military. No one has yet been brought to justice for these killings.

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

174 Amnesty International, report 2003 – Nigeria, *op cit.*

175 Human Rights Watch, Nigeria: President must end impunity for human rights abusers, Human Rights Watch, Press Release, New York, July 2003.

In Ethiopia, the government admitted wrongdoing in the deaths of approximately 40 student protesters, who were killed in 2001 by police quelling demonstrations at Addis Ababa University. However, no one has been charged or prosecuted in relation to these deaths. The government should be commended for admitting its wrongdoing, but in order to fulfil Ethiopia's obligations, individuals responsible for the killings should be brought before the courts in the usual way.

In Kenya, the chief abuses by police are in respect of suspects in detention. Kenya's then-national human rights institution, the Standing Committee on Human Rights, noted in its 2002 report that detainees were dying due to torture and subsequent lack of medical attention. However, it appears that few, if any, police have been charged in relation to such deaths.

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

6.4.2 Amnesty

However, one special, explicit form that impunity may take is amnesty laws, which exempt, by law, certain individuals from prosecution for certain crimes. The African Commission's Declaration on the Right to a Fair Trial in Africa says in paragraph 7:

"The failure of the state to deal adequately with human rights violations often results in the systematic denial of justice and, in some instances, conflict and civil war. In societies recovering from conflict situations, the right to effective redress and justice is often discarded in favour of political expediency.

The right to fair trial does not permit the use of amnesty to absolve perpetrators of human rights violations from accountability."

The use of amnesty laws remains controversial ...

Failing to apply the law equally to all individuals may deprive victims and their families of their access to justice.

Amnesty laws are common following periods of armed conflict, in order to counteract the threat of prosecution as a disincentive for combatants to lay down arms. However, the use of amnesty laws

remains controversial, and some civil society and victim's organisations maintain that amnesty can never be legally given for the most serious crimes. Failing to apply the law equally to all individuals may deprive victims and their families of access to justice.

The most famous test of this principle came in South Africa, where individuals who had committed crimes under the apartheid regime were promised non-prosecution in return for their testimony before the Truth and Reconciliation Commission (TRC). The TRC was created post-apartheid in an effort to record and reconcile the human rights abuses of that era. The TRC process gave the Commission the power to grant amnesty to individuals who proved that their crimes were political in motive, and who disclosed all the details of the acts in question. When victims' families sued in disagreement of these grants of amnesty, they lost before the Constitutional Court, which found the amnesty provisions compatible with access to justice.

When the Amnesty Committee completed its deliberations in June 2001, it had reviewed 7,094 applications and had granted amnesty or immunity from prosecution to a total of 1,160 people. In May 2002, the President used constitutional powers to grant pardon to 33 prisoners, most of whom were anti-apartheid activists. Some of the individuals who received pardons had already had amnesty applications rejected by the TRC, and these pardons could be seen as undermining the work of the Commission and the reconciliation process.

In Algeria, the state has undertaken several measures of unclear effect to grant thousands of armed groups exemption from prosecution in 1999–2000,¹⁷⁶ and justified these as measures of peace and reconciliation. In July of 1999 the Civil Harmony Law came into effect. Under this law, if members of armed groups surrendered within six months, they would receive reduced sentences, provided they had not raped, killed, caused permanent disabilities or placed bombs in public. It also guaranteed that members of armed groups that surrendered would not face the death penalty or life imprisonment, regardless of what crimes they had committed. Over 5,500 individuals had surrendered under this law before

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

the six month cut off period, but there is no information available regarding how many have been acquitted or convicted of which crimes. Going even further than the Civil Harmony Law, the 10 January Presidential Decree no 2000-03 granted amnesty to certain armed groups, not making any provisions for the exclusion of certain, particularly serious, crimes. It stated that persons whose names were appended to the decree were exempt from prosecution; however, there were no names included in the decree, and the number of individuals who benefited from this decree has never been made public.

Uganda passed an Amnesty Act in 2000. This law offered amnesty to all LRA fighters who surrendered, without restrictions. An Amnesty Commission oversaw the implementation of the Act, which is still in effect. In the first two years of its existence the Amnesty Commission granted amnesty to over 4,700 former rebels, of whom 141 were already in prison on charges of treason. Although the government of Uganda had intended to use the Amnesty Act to encourage rebels to surrender, a recent upswing in the level of violence means that it is being used less, although it has not been repealed.

Indeed, in the past year the Ugandan government seems to have decided not only to bring rebels to justice, but to do so in such a way as to attract international attention. At the end of January 2004, the government made a referral to the Prosecutor of the International Criminal Court, enabling him to launch an investigation into prosecuting war crimes and crimes against humanity relating to the armed conflict in the north.

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

In Ghana, the establishment of the National Reconciliation Commission to address past human rights abuses might be an indication of the government's preference to record the truth but not to prosecute alleged human rights violators, as was done under South Africa's TRC. It should also be noted that Ethiopia, under the Special Prosecutors Office, decided not to consider amnesties at all for former Derg regime members and, instead, has been putting them on trial since 1994.

6.5 Conclusion

Although the obligation for the state to provide legal counsel is fairly clear under the African Commission's interpretation of the African Charter, and all the countries under review recognised in principle the right to counsel, economic circumstances and lack of political will usually deprive defendants of these rights in practice. Political pressures may even prevent individuals from choosing their own counsel – the right most clearly and strongly protected – even where they have the funds to pay.

Providing legal aid for all the indigent defendants will require great financial investment, one beyond the immediate capacity of most states. At the moment, it is doubtful if most of the countries reviewed have enough lawyers to guarantee counsel to all, even if the state were willing and able to pay. On a more positive note, there are a growing number of non-governmental organisations taking up problems of legal aid. Conscientious states will take every opportunity to work together with non-governmental organisations and donors to extend these services as far as possible and at a minimal cost to state coffers. The problem of obstructed access remains a significant issue in all the countries surveyed. In some respects, it may be considered the most serious problem, since it potentially directly affects a majority of the population. It is heartening to note that impunity, although widespread, is on the wane in at least part of the sample. Impunity is a problem in all countries, but is of relatively high visibility and thus most responsive to both domestic and international pressure. States find that their credibility is affected if state agents are not prosecuted for the most egregious human rights violations and most countries reviewed are making at least halting progress at reducing impunity. Although ending impunity does require material resources, it is more a problem of political will, and thus possible to change more rapidly. Ghana and South Africa, both countries relatively free of impunity today, were rife with impunity just a decade ago.

Amnesty laws, while highly problematic, have the most limited application, being present in only half the countries reviewed. They will probably never disappear since they play an important role in resolving civil conflicts; yet they will continue to be controversial and reversible upon political decision.