ANGOLA: PROVISIONS OF THE 'DRAFT CRIMINAL CODE' ARE INCOMPATIBLE WITH ANGOLA'S HUMAN RIGHTS OBLIGATIONS

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BRIEFING TO THE NATIONAL ASSEMBLY AND RELEVANT GOVERNMENT MINISTRIES

This document sets out some of Amnesty International's key initial concerns with the Angolan Draft Criminal Code in the context of Angola's international and regional human rights obligations, particularly the African Charter on Human and Peoples' Rights[1] and the International Covenant on Civil and Political Rights[2] (ICCPR). Amnesty International believes the code, as presently drafted, is inconsistent with Angola's international human rights obligations, and that significant revisions are therefore necessary.[3]

SUMMARY OF MAIN CONCERNS

Amnesty International considers that key provisions of the draft criminal code are incompatible with Angola's human rights obligations on the following grounds:

- Many of the provisions of the draft code are drafted in an imprecise and overbroad manner, violating the "legality" requirement for criminal offences. This is often in a manner that breaches the rights to freedom of expression and assembly. These provisions criminalise such a broad range of behaviour that it will be difficult for persons to predict if they are infringing the law and makes such provisions vulnerable to abuse by the authorities.

- Other articles go beyond the permissible limitations to the rights to freedom of expression, association and assembly. The provisions highlighted below could be used to silence dissent by the press, to suppress demonstrations or may have a chilling effect on protests generally, and that could potentially be used to suppress the activities of, for example, peaceful secessionist activists or even human rights defenders.

RELEVANT HUMAN RIGHTS OBLIGATIONS

Freedom of Expression, Assembly and Association

A number of provisions in the draft criminal code constitute restrictions on the right

[1] Acceded to by Angola in 1990.
[2] Acceded to by Angola in 1992.
[3] While this document explains out some of the main issues, the fact a provision is not mentioned in this document does not necessarily mean Amnesty International has no concerns about the text of the provision or how it may be applied in practice. This briefing only addresses the law as drafted, and does not address problems that might occur due to implementation of the law, except insofar as past practice raises specific concerns regarding the potential application of the draft code.

to freedom of expression contained in national[4] and international human rights treaties to which Angola is a party[5]. In 2002, the African Commission on Human and Peoples Rights (ACHPR) stated that "the right to freedom of expression is a fundamental individual human right which is also a cornerstone of democracy and a means of ensuring the respect for all human rights and freedoms".[6]

The draft criminal code also contains a number of provisions that restrict the rights to freedom of assembly and freedom of association[7]. Article 47 of the Angolan Constitution (the Constitution) guarantees the right to, "Freedom of assembly and peaceful, unarmed demonstration… without the need for any authorisation and under the terms of the law", while Article 48 provides for freedom of association. In addition, Article 21 of the International Covenant on Civil and Political Rights (ICCPR) provides that "the right of peaceful assembly shall be recognised", while Article 22 states that "everyone shall have the right to freedom of association with others."[8]

In terms of Article 57 of the Constitution, "The law may only restrict rights, freedoms and guarantees in cases expressly prescribed in the Constitution and these restrictions must be limited to what is necessary, proportional and reasonable in a free and democratic society in order to safeguard other constitutionally protected rights and interests." Article 40 of the Constitution states, "Freedom of expression and information shall be restricted by the rights enjoyed by all to their good name, honour, reputation and likeness, the privacy of personal and family life, the protection afforded to children and young people, state secrecy, legal secrecy, professional secrecy and any other guarantees of these rights, under the terms regulated by law." These provisions of the Constitution go beyond the restrictions

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[4] Article 40 of the Angolan Constitution of 2010 states, "Everyone shall have the right to freely express, publicise and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance or discrimination."

[5] Angola is a party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter). Article 19(2) of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

[6] Declaration of Principles on Freedom of Expression in Africa, Preamble. See also Communication 140/94, 141/94 and 145/95 *Constitutional Rights Project, Civil Liberties Organization and Media Rights Agenda v. Nigeria*, Thirteenth Activity Report 1999-2000, Annex V, para 36. The Human Rights Committee has echoed these statements in Human Rights Committee, General Comment no 34 [Article 19: Freedoms of opinion and expression], UN Doc CCPR/C/GC/34 (12 September 2011), para 2.

[7] For example draft Articles 315 (Rebellion) and 320 (Disruption of the operation of public authorities) discussed in more detail below.

[8] The African Charter on Human and Peoples' Rights contains similar provisions in Articles 10 and 11.

permitted under international law. Under the ICCPR, the rights to freedom of expression, association and assembly can be limited only if "provided by law" and "necessary"[9]:

(a) For respect[10] of the rights or reputations of others;
(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.[11]

The rights to freedom of association and assembly can also be limited on grounds of "public safety".[12]

Requirement of Legality

The Human Rights Committee (the Committee) has said that a restriction "must be formulated to sufficient prevision to enable an individual to regulate his or her conduct accordingly", it must be made accessible to the public, and it may not confer unfettered discretion.[13] Such laws "must also themselves be compatible with the provisions, aims and objectives of the Covenant".[14] Together, these principles are referred to below as the principle of "legality". Although this is in the context of restrictions on freedom of expression under the ICCPR, similar considerations also apply to restrictions on the rights to freedom of assembly and association[15]. Article 7(2) of the African Charter on Human and Peoples Rights (the African Charter) provides that "No one may be condemned for an act or omission which did not

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[9] For rights to freedom of assembly and association, this is "necessary in a democratic society", ICCPR Articles 21 and 22(2). See further under 'Necessary and proportionality to valid objectives' below. Article 9(2) of the African Charter provides that "Every individual shall have the right to express and disseminate his opinions within the law."

[10] For the rights to freedom of assembly and association this reads as the "protection of the rights and freedoms of others", Articles 21 and 22(2), ICCPR.

[11] Article 19(3) ICCPR and Human Rights Committee, General Comment no 34, paras 21 to 49. The African Charter does not contain a limitation for the right to freedom of association save that the individual must "abide by the law" (Article 10(1)), while the right to freedom of assembly is "subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics rights and freedoms of others," for which the broadly the same considerations as for the ICCPR apply.

[12] Articles 21 and 22(2), ICCPR.

[13] Human Rights Committee, General Comment no 34, para 25, similarly interpreted by the African Commission, see Declaration of Principles on Freedom of Expression in Africa, Article II.2.

[14] Human Rights Committee, General Comment no 34, para 26.

[15] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 16; Organisation for Security and Cooperation in Europe, 'Guidelines on Freedom of Peaceful Assembly,2007, paras 30-33, cited with approval by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report of 21 May 2007, UN Doc. A/HRC/20/27, para. B, footnote 7.

constitute a legally punishable offence at the time it was committed."[16] The corresponding requirement is Article 15(1) of the ICCPR which requires "states parties to define precisely by law all *criminal offenses* in the interest of *legal certainty* and to preclude the application of criminal laws from being extended by *analogy*."[17]

Necessity and Proportionality to Valid Objectives

The Human Rights Committee has emphasised, "restrictions must not be overbroad".[18] To comply with the requirement of proportionality any restrictions must among other things "be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected".[19]

The rights to freedom of association and assembly include the additional qualifier that the limitation must be "necessary in a democratic society".[20] This means that for these rights, in addition to a requirement of proportionality, measures to restrict freedom of assembly and association must conform to a minimum democratic standard, and include requirements of pluralism, tolerance and broadmindedness.[21] Additionally, "in no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."[22]

ARTICLES OF PARTICULAR CONCERN

The articles in the draft Criminal Code that Amnesty International is particularly concerned about are Articles 198-199; 278 – 279; 282; 296; 299; 300; 315; 362(2); 365(2); 367; 368; and 371.

Insulting behaviour and defamation (articles 198-199)

Articles 198 and 199 make it an offence for anyone to "offend the honour or besmirch the good name or reputation" of another or to "make judgments on" another persion in a way that "offend[s] their honour or besmirch[es] their reputation".

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[16] Article 15(1) ICCPR contains a similar provision.
[17] Manfred Nowak, CCPR Commentary, 2nd Revised Edition, p. 360. Emphasis in original text.
[18] Human Rights Committee General Comment no 34, para 34.
[19] Human Rights Committee General Comment no 34, para 34. See also Human Rights Committee General Comment no 31, para 6.
[20] Articles 21 and 22(2) ICCPR. See also Human Rights Committee General Comment no 31, para 6.
[21] *Handyside v UK*, ECHR, 7 Dec 1976, Series A No. 24, para 49. See also Nowak, 'CCPR Commentary', 2nd revised edition, 2005, pp. 490-491.
[22] Human Rights Committee General Comment no 31, para 6.

The Human Rights Committee has identified penal defamation laws as a matter of particular concern, urging states to "consider the decriminalization of defamation" in its entirety.[23] Even where states do not decriminalize defamation, the Committee has said, imprisonment is never an appropriate penalty for such offences and, among other things, it may only be considered in the most serious of cases; a defence must always be available of "public interest in the subject matter".[24] Furthermore, the African Commission on Human and Peoples' Rights (the African Commission) has called for states parties to the African Charter to "repeal criminal defamation laws or insult laws which impede freedom of speech to adhere to the provisions of freedom of expression, articulated in the African Charter, the Declaration, and other regional and international instruments."[25]

By criminalising and providing for imprisonment as a punishment, Articles 198 and 199 of the legislation do not comply with these requirements. Specifically, Article 199(4)(c) also does not go as far as that suggested by the Human Rights Committee where it has recommended that "consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice."[26]

Amnesty International is aware of cases where journalists have faced and in some cases been given, prison sentences for writing articles that, for example, made allegations of corruption against a former Minister of Justice,[27] or for publishing satirical cartoons of the President and the Vice-President.[28] As the Human Rights Committee has pointed out, and as discussed further below in relation to articles 312, 313 and 319, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high."[29] Accordingly, Amnesty International is concerned that, if enacted, Articles 198 and 199 may be used in a similar way to

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[23] Human Rights Committee General Comment no 32, para 47.

[24] Human Rights Committee General Comment no 32 para 47.

[25] African Commission, Resolution No. 169: Resolution on Repealing Criminal Defamation Laws in Africa, 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010, available at: http://www.achpr.org/sessions/48th/resolutions/169/.

[26] Human Rights Committee General Comment no 34, para 47.

[27] In October 2007 the Provincial Court of Luanda sentenced Felisberto da Graça Campos, director of the weekly newspaper, Semanário Angolense, to eight months' imprisonment for defamation and injury to a former Minister of Justice (now the Justice Ombudsman). The charges arose from articles published in April 2001 and March 2004 accusing the then Minister of Justice of misappropriating ministry funds.

[28] In 2012, the National Directorate of Criminal Investigation (*Direção Nacional de Investigação Criminal* -DNIC) started an investigation against the newspaper Folha-in relation to the publication on 30 December 2011 of a satirical photo montage of the President, Vice-President, as well as the Head of the Military Bureau. The paper and staff members faced possible charges of criminal defamation.

[29] Human Rights Committee General Comment no 34, para 34.

stifle freedom of speech.

Incitement to commit an offence and public condoning of crime (articles 278 and 279)

Article 278 makes it an offence to "directly incite" an offence at "a public meeting or assembly". Article 279 makes it an offence publicly to "commend, praise or reward" the perpetrator of an offence where it is held to "creat[e] the threat that another offence of the same type will be committed".

The offence in article 279 accordingly does not require that the person actually intend to incite others to commit a similar offence (which would in fact already be covered by article 278); nor does it even require that in fact a subsequent such act is committed. It is not even restricted to statements that commend or praise the *criminal act* itself as opposed to the perpetrator. No defences of any kind are provided for. The provision thus seems extremely overbroad and disproportionate to any legitimate aim. It could potentially seriously restrict the possibility for public political debate and discussion about possible amendments to existing criminal laws.

Amnesty International is concerned how these articles may be applied if enacted, given its experience of cases, and discussions with police authorities, in Angola. In April 2012, Amnesty International spoke with police authorities in Cabinda who appeared to believe that any person expressing any kind of support for *Frente para a Libertação do Enclave de Cabinda* (FLEC) was committing a crime against the security of the State. The same authorities argued that Article 5 of the Constitution[30] provides a basis for the arrest and detention of non-violent protesters demonstrating in favour of autonomy or the independence of Cabinda.

In addition, Amnesty International believes that some of the people arrested following the attack on the Togo football team in January 2010, in particular prisoners of conscience Francisco Luemba and Father Raul Tati, were arrested simply for expressing their opinion about the status of Cabinda. Luemba and Tati have since been released, following the revocation of the law under which they were convicted.

Despite the release of both Luemba and Tuti, both that case and the comments of the police authorities give rise to concerns that articles 278 and 279, and also articles 315 and 362(b) (discussed further below), may be used to similarly suppress freedom of expression in the future.

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[30] Article 5(1) states, "The territory of the Republic of Angola shall be as historically defined by the geographical borders of Angola on 11 November 1975, the date of National Independence." Article 5(6) further provides, "Angolan territory shall be indivisible, inviolable and inalienable, and any action involving the breaking up or separation of its component parts shall be energetically resisted. No part of national territory or the rights of sovereignty which the state exerts over it may be transferred."

Terrorism (article 282)

Article 282 prohibits a number of stipulated "intentional criminal offences" carried out "with intent to prejudice national integrity or independence, to destroy, alter or subvert the working of the State institutions provided for in the Constitution, to force the Angolan authorities to perform or refrain from performing certain acts or to allow such acts to be performed".

The degree to which this article fails to meet the requirements of legality and proportionality can be appreciated by comparing its text with, for instance, the expert views expressed by the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Tterrorism.[31] He has explained that the principle of legality means that legal provisions "must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct."[32]

Similarly, the the United Nations Working Group on Arbitrary Detention (WGAD) has expressed particular concern about "extremely vague and broad definitions of terrorism in national legislation", stating, "[i]n the absence of a definition of the offence or when the description of the acts or omissions with which someone is charged is inadequate … the requirement of a precise definition of the crimes - the key to the whole modern penal system – is not fulfilled and that the principle of lawfulness is thus violated, with the attendant risk to the legitimate exercise of fundamental freedoms."[33]

The Special Rapporteur has further underlined the potential consequences that can result from an overbroad definition. He has stressed that "The adoption of overly broad definitions of terrorism … carries the potential for deliberate misuse of the term … as well as unintended human rights abuses"; and that, "Failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights".[34]

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[31] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Ten areas of best practices in countering terrorism", UN Doc A/HRC/16/51 (22 December 2010) paras 26-28. See also the earlier Report UN Doc E/CN.4/2006/98 (28 December 2005), paras 26-50, 72.
[32] UN Doc E/CN.4/2006/98, 28 December 2005, para. 46.
[33] Working Group on Arbitrary Detention, Report to the Commission on Human Rights, UN Doc E/CN.4/2004/3, 15 December 2003, paras. 64-65.
[34] UN Doc A/HRC/16/51 (22 December 2010) para 26.

The range of conduct defined as terrorism by article 282 is truly sweeping in scope. While other criminal offences form a component part of the definition, a broad range is listed. It would appear to even criminalize the use of the internet or other systems to coordinate peaceful public protest, legitimate trade union action, and other such forms of protected expression (as well as freedoms of assembly and association), in a wide range of contexts.

Further, the requirement that an individual has the "intent to prejudice national integrity or independence to destroy, alter or subvert the working of the State institutions" is also inconsistent with the UN Special Rapporteur's approach. It is not clear what "alter or subvert the working of the State institutions" or "prejudice national integrity or independence" means, but it appears to be a very low threshold and the provision may be open to abuse. In summary, the provision lacks basic elements minimally necessary to ensure definitions of terrorism satisfy the requirements of legality.

The sweeping nature of this provision is reminiscent of articles contained in the now revoked Angolan Law of Crimes against the Security of the State, particularly Article 26. Prior to the revocation of this law Amnesty International expressed concern regarding the vagueness of this article and the fact that it did not enable individuals to foresee whether a particular action was unlawful.[35] This law was used in a number of occasions in Cabinda and the Lundas to suppress the peaceful expression of opinion regarding the independence of these regions.

Article 296 (forgery constituting treason)

This article is misleading in its title, covering a much broader range of activities than just "forgery". Article 296 constitutes a very broad restriction on freedom of expression, penalising with imprisonment anyone "who provides another person with or who makes public… false claims" which, if true, "would be important for the external security of the Republic of Angola or for the Republic of Angola's relations with a foreign power".

The draft article is in some way limited, in that the person must "give the impression that such objects or facts are authentic" and the act must "thereby endanger the independence or integrity of the Republic of Angola". However, it is still overbroad, in that it covers "spurious" as well as "falsified" facts, and is judged on the potential for the claims to "be important for the external security of the Republic of Angola or for the Republic of Angola's relations with a foreign power". Such an assessment is highly subjective, and covering a broad range of statements or claims, and as such could easily be abused by the State to prosecute, for example, those peacefully advocating secession.

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[35] Angola detains rights activists following attack on Togo football team, 19 January 2010; Angola must free prisoners of conscience facing trial over Togo football team attack, 09 July 2010; Angolan activists jailed over attack on Togo football team, 3 August 2010; and Angola political detainees held under non-existent law, 17 January 2011.

The justification for such a restriction (primarily to Article 19 ICCPR) would presumably be on grounds of national security, but it is so imprecisely drafted and broad that it fails the tests of legality, necessity and proportionality.

Article 299 (bringing about a war of reprisals)

There are similar concerns in relation to Article 299 as there are for Article 296. Article 299 infringes the principle of legality under Article 7 of the African Charter[36], in that it sweepingly criminalises "acts likely to bring about a war or reprisals against Angola" (emphasis added).

This provision is very broad. There is no restriction on this article in terms of a requirement of violence, for instance, and determining what acts are likely to bring about a war or reprisals against Angola could be highly subjective, and abused by the State against secessionists, or those making statements advocating for secession.

Article 300 (collaboration with foreign nationals to coerce the Angolan state)

There are similar concerns in relation to Article 300, in particular because the scope of the article is such to include any kind of cooperation with a foreign institution or intermediary. Although the offence defined in the article is limited to cooperation to "coerce the Angolan State to submit to foreign interference", this could be used to chilling effect in terms of restricting honest debate as to the merits or otherwise of Angola being involved or not in a war, in a similar fashion to the concerns described in relation to Article 362(2) below.

Statements made in the media and to Amnesty International directly give rise to further concerns in relation to this article. The 24 March 2012 issue of the '*O Independente*' newspaper claimed that the human rights organizations, *Associação Justiça, Paz e Democracia* and *Fundação Open Society-Angola*, were inciting youth in Luanda to demonstrate in order to meet the agenda of foreign powers to destabilise the country.

Furthermore, Angolan authorities have on a number of occasions informed Amnesty International delegates that the work of Amnesty International constitutes interference in the national sovereignty of Angola. Such instances make this article as drafted particularly concerning in that it could be used to suppress the work of domestic and international human rights organisations and other NGOs in the country, undermining the protection of human rights in the country and freedom of expression.

Offences against the honour of bodies or representatives of foreign States or international organisations, Disrespect for symbols of foreign States or international

[36] Also Article 15(1) ICCPR.

organisations and Disrespect for the State, its symbols and bodies (articles 312, 313 and 319)

Articles 312, 313 and 319 criminalise "insulting and defamatory acts" against representatives of foreign states or international organisations, "remov[al], destr[uction] or damage… to the flag… of a foreign country or international organisation" and "malicious disrespect [to] the Republic of Angola, the President of the Republic or any other public authority". These concern figures in the public and political domain.

The UN Human Rights Committee has said that "the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain".[37] Specifically, "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".[38] Furthermore, the Committee has expressed concern "regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State, and the protection of the honour of public officials."[39]

Articles 312, 313 and 319 are clearly laws in this vein, and thus impermissible limitations on the right to freedom of expression. These provisions are of particular concern in light of the cases where journalists have faced possible prison sentences after, for example, publishing satirical cartoons of the President or Vice-President, or for making allegations against former government ministers (see further above comments on Articles 198-199).

Rebellion (article 315)

Article 315 is very broadly drafted, penalising "any measure directly or indirectly liable to alter the constitutional law, in whole or in part, and subvert the State institutions" (emphasis added). This is a provision with a wide scope that could cover almost any conduct that may have some impact on the "constitutional law", including public statements or critical journalistic pieces on the constitution, or even potentially peaceful demonstrations against the government. Further, it is not clear what "alter[ing] the constitutional law" would entail.

Accordingly Article 315 is not drafted with sufficient precision to be a justifiable limitation to Article 21 ICCPR, or potentially, pursuant to Article 19(3). As discussed further above in relation to articles 278 and 279, Amnesty International has particular reason to believe, based on its discussions with police authorities in Cabinda, and some of the arrests carried out following the attack on the Togo football team in January 2010, that this provision may be used to silence freedom

[37] Human Rights Committee General Comment no 34, para 34.
[38] Human Rights Committee General Comment no 34, para 38.
[39] Human Rights Committee General Comment no 34, para. 38.

of expression, particularly legitimate discussion on the status of Cabinda and the Lundas.

Disruption of the operation of public authorities (article 320)

For similar reasons to those outlined above for Article 315, Article 320 does not fall within the limitations permitted under Articles 19(3) and 20 of the ICCPR. Of particular concern is the breadth of the prohibition, in that it criminalises "disrupt[tion of] the operation of public authorities through disturbances, disorder or rioting" and applies, in Article 320(2), to the "duties of a member of any public authority" (emphasis added). Although it is not clear that this definition applies to Article 320, "rioting" is defined in Article 283(1) as "a turbulent assembly of an indeterminate number of persons likely to endanger public peace"; this definition has a wide remit and does not require violence and intent to cause violence. Article 320 could thus be used to restrict a wide range of different activities, including any peaceful demonstrations or protests that might hinder or "disrupt" the normal activities of the public authorities.

Presumably the objective of this limitation is in the interests of public order and/or national security or public safety, so as to ensure the proper functioning of public authorities and protection for those authorities from violent disruption. However, this sweeping restriction goes far beyond what is necessary in a democratic society (as per Article 20 ICCPR) and is not proportionate. Such a wide-ranging prohibition is unlikely ever to be the least intrusive method to achieve such objectives.

This provision is of particular concern in light of incidents involving state authorities in the peaceful demonstrations calling for the resignation of the president that have taken place since March 2011. These demonstrations have been accompanied by violence against the demonstrators by people suspected to be members of the State Information and Security Services who have infiltrated the crowds, and reportedly damaged property and beat individuals, including journalists.

Demonstrators have alleged that in some cases police have also used violence against the crowds, which appeared to Amnesty International to amount to excessive use of force. Some of those peacefully demonstrating have been arrested and accused of crimes such as ***disobedience, resistance and corporal offences***. During the demonstration in March 2011 police arrested three journalists and 20 demonstrators. They were released uncharged a few hours later. Police authorities stated that the arrests had been precautions to "prevent incalculable consequences."

Following a peaceful demonstration on 3 September 2011, 21 people were arrested and tried. On 12 September a court sentenced five of those arrested to three months imprisonment for disobedience, resistance and "corporal offences"[40]. 13 of

[40] 'Corporal offences' are listed in the Angola Criminal Code.

those arrested were sentenced to 45 days imprisonment, while three were acquitted for lack of evidence. Although all 18 had their convictions overturned by the Supreme Court on 14 October and were released, Amnesty International is concerned that this article as drafted may be used in a similar manner by the authorities to break up peaceful demonstrations and to restrict the right to freedom of assembly.

Condoning of war (article 362(2))

Article 362(2) of the legislation goes beyond the prohibition contemplated by article 20(1) of the ICCPR ("Any propaganda for war shall be prohibited by law") by imposing imprisonment for "condon[ing] war against a State or a people." The Human Rights Committee has stressed, "It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions" and that the particular measures adopted to implement these obligations must still satisfy the requirements of article 19(3).[41] The wording of article 362(2) seems to go well beyond the scope of what is required by the ICCPR, and would seem even to restrict honest political debate about whether any wars that have ever occurred throughout history were or were not justified. Similarly, it may restrict debate as to whether any war currently ongoing even between states to which the person has no connection were or were not justified, or whether a war proposed by the government were or were not justified. As such it does not appear that the provision is proportionate to its aims.

Incitement to discrimination (article 365(2))

Article 365(2) makes it an offence for anyone to "incite acts of violence" against someone on discriminatory grounds, but lacks the requirement of intent to incite violence.

Article 20(2) ICCPR obliges Member States to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", and, as noted above, any such prohibition must still be in accordance with Article 19(3). Article 365(2) is to this extent lacking in sufficient precision so that persons can predict whether their conduct is unlawful (fails the requirement of legality) and further is not demonstrably proportionate to its objective (in relation to fulfilling Article 20(2) and to prevent incitement of hatred).

Genocide (Article 367)

Article 367(1) sets out a definition of genocide as "any person who engages in any" of offences listed in the article "through concerted action with intent to destroy, in whole or in part, a national, ethnic, or religious group." Article 367(2) makes it an offence to carry out "repeated open incitement to hatred against a national, ethnic, racial or religious group with intent to destroy that group".

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[41] Human Rights Committee General Comment no 34, paras 50-52.

The definition of genocide under Article 367 appears to be, in general, in accordance with the definition contained in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (the Convention), Article 4 of the Statute of the International Tribunal for Yugoslavia (the SITY), Article 3 of the Statute of the International Tribunal for Rwanda (the SITR) and Article 6 of the Rome Statute of the International Criminal Court (the Rome Statute) – to which Angola is a signatory state since 1998.[42] Although the four traditionally enumerated groups or protected groups (national, racial, ethnical and religious groups) are covered by Article 367, none of the so-called 'other groups', such as 'political', 'ideological', 'linguistic' or 'social' groups, which some states have incorporated also as protected groups, are covered by Article 367. However, Angola would not contravene any international law obligation by excluding any of the 'other groups' listed above.

The expression 'through concerted action' in the first sentence of the definition of the crime is neither contained in the Convention, nor the Rome Statute, nor the SITY, nor the SITR and adds a new requirement under Angolan law which is not in compliance with its obligation to define the crime as set out in international law. In other words, the requirement 'through concerted action' might exclude in Angolan law an act from amounting to genocide which under international law would be classified as genocide, thus restricting the scope of the definition. National Angolan law must be consistent with international law: the definition of crimes must not be narrower that what it is requested by international law.

Among the 'other acts of genocide' under international law (conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide), only incitement appears to be covered by Article 367 (2). However, draft Angolan law adds the words 'repeated' and 'open' to incitement - thus restricting, and inconsistent with, (by adding a new element to the definition of incitement), Article III of the Convention.

Article IV of the Genocide Convention, which provides that: "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals" does not appear to be included in the draft criminal Code.

Crimes against humanity (Article 368)

Article 368 provides for a definition of a crime against humanity as "any person who commits the following offences against protected persons as part of a widespread or systematic attack directed against a population, or in the context of an international or internal armed conflict, or during the military occupation of a State, territory or part of a territory."

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[42] All of these instruments are authorities on the definition of crimes under international law.

Although Article 368(1) appears to be based on Article 7 of the Rome Statute, there are several points that make it inconsistent with international law. Firstly, the reference to 'protected persons' is from the field of international humanitarian law – indeed is a central element of war crimes – and is not relevant to crimes against humanity. Likewise, the reference to "or in the context of an international or internal armed conflict, or during the military occupation of a State, territory or part of a territory," is also from the perspective of a situation of armed conflict, and should not be applied in reference to crimes against humanity.

Secondly, at (d), the code specifies that the crime against humanity of imprisonment takes place when such an imprisonment or severe deprivation of physical liberty is made in 'in violation of standards and principles of international law', whereas the wording in Article 7(1)(e) of the Rome Statute refers to violation of 'fundamental rules of international law'. The latter language seems to be more in accordance with international law and should be followed.

Thirdly, Article 368 (f), does not include the reference in Article 7 (g) of the Rome Statute to 'or any other form of sexual violence of comparable gravity', which may expand the coverage of such category of crimes; thus Article 368 (f) as drafted is narrower than the definition under international law.

War Crimes (Article 371)

The definition of war crimes contained in article 371 (1) (c), on conscripting or enlisting child soldiers should be amended so as to protect children under the age of 18 years and not, as set out in the provision, 16 years.

CONCLUSION

The issues and provisions cited above are illustrative and not exhaustive examples of problems with the draft Criminal Code and do not necessarily purport to constitute a comprehensive human rights analysis of the draft Code. However, the examples demonstrate clearly that the draft Code must not be passed into law without further detailed review and amendment, as well as consultation with civil society, to ensure its compatibility with Angola's regional and international human rights obligations.

ANGOLA: PROVISIONS OF THE 'DRAFT CRIMINAL CODE' ARE INCOMPATIBLE WITH ANGOLA'S HUMAN RIGHTS OBLIGATIONS

AMNESTY INTERNATIONAL

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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AMNESTY
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BRIEFING TO THE NATIONAL ASSEMBLY AND RELEVANT GOVERNMENT MINISTRIES

This document sets out some of Amnesty International's key initial concerns with the Angolan Draft Criminal Code in the context of Angola's international and regional human rights obligations, particularly the African Charter on Human and Peoples' Rights[1] and the International Covenant on Civil and Political Rights[2] (ICCPR). Amnesty International believes the code, as presently drafted, is inconsistent with Angola's international human rights obligations, and that significant revisions are therefore necessary.[3]

SUMMARY OF MAIN CONCERNS

Amnesty International considers that key provisions of the draft criminal code are incompatible with Angola's human rights obligations on the following grounds:

- Many of the provisions of the draft code are drafted in an imprecise and overbroad manner, violating the "legality" requirement for criminal offences. This is often in a manner that breaches the rights to freedom of expression and assembly. These provisions criminalise such a broad range of behaviour that it will be difficult for persons to predict if they are infringing the law and makes such provisions vulnerable to abuse by the authorities.

- Other articles go beyond the permissible limitations to the rights to freedom of expression, association and assembly. The provisions highlighted below could be used to silence dissent by the press, to suppress demonstrations or may have a chilling effect on protests generally, and that could potentially be used to suppress the activities of, for example, peaceful secessionist activists or even human rights defenders.

RELEVANT HUMAN RIGHTS OBLIGATIONS

Freedom of Expression, Assembly and Association

A number of provisions in the draft criminal code constitute restrictions on the right

[1] Acceded to by Angola in 1990.
[2] Acceded to by Angola in 1992.
[3] While this document explains out some of the main issues, the fact a provision is not mentioned in this document does not necessarily mean Amnesty International has no concerns about the text of the provision or how it may be applied in practice. This briefing only addresses the law as drafted, and does not address problems that might occur due to implementation of the law, except insofar as past practice raises specific concerns regarding the potential application of the draft code.

to freedom of expression contained in national[4] and international human rights treaties to which Angola is a party[5]. In 2002, the African Commission on Human and Peoples Rights (ACHPR) stated that "the right to freedom of expression is a fundamental individual human right which is also a cornerstone of democracy and a means of ensuring the respect for all human rights and freedoms".[6]

The draft criminal code also contains a number of provisions that restrict the rights to freedom of assembly and freedom of association[7]. Article 47 of the Angolan Constitution (the Constitution) guarantees the right to, "Freedom of assembly and peaceful, unarmed demonstration… without the need for any authorisation and under the terms of the law", while Article 48 provides for freedom of association. In addition, Article 21 of the International Covenant on Civil and Political Rights (ICCPR) provides that "the right of peaceful assembly shall be recognised", while Article 22 states that "everyone shall have the right to freedom of association with others."[8]

In terms of Article 57 of the Constitution, "The law may only restrict rights, freedoms and guarantees in cases expressly prescribed in the Constitution and these restrictions must be limited to what is necessary, proportional and reasonable in a free and democratic society in order to safeguard other constitutionally protected rights and interests." Article 40 of the Constitution states, "Freedom of expression and information shall be restricted by the rights enjoyed by all to their good name, honour, reputation and likeness, the privacy of personal and family life, the protection afforded to children and young people, state secrecy, legal secrecy, professional secrecy and any other guarantees of these rights, under the terms regulated by law." These provisions of the Constitution go beyond the restrictions

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[4] Article 40 of the Angolan Constitution of 2010 states, "Everyone shall have the right to freely express, publicise and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance or discrimination."

[5] Angola is a party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter). Article 19(2) of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

[6] Declaration of Principles on Freedom of Expression in Africa, Preamble. See also Communication 140/94, 141/94 and 145/95 *Constitutional Rights Project, Civil Liberties Organization and Media Rights Agenda v. Nigeria*, Thirteenth Activity Report 1999-2000, Annex V, para 36. The Human Rights Committee has echoed these statements in Human Rights Committee, General Comment no 34 [Article 19: Freedoms of opinion and expression], UN Doc CCPR/C/GC/34 (12 September 2011), para 2.

[7] For example draft Articles 315 (Rebellion) and 320 (Disruption of the operation of public authorities) discussed in more detail below.

[8] The African Charter on Human and Peoples' Rights contains similar provisions in Articles 10 and 11.

permitted under international law. Under the ICCPR, the rights to freedom of expression, association and assembly can be limited only if "provided by law" and "necessary"[9]:

(a) For respect[10] of the rights or reputations of others;
(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.[11]

The rights to freedom of association and assembly can also be limited on grounds of "public safety".[12]

Requirement of Legality

The Human Rights Committee (the Committee) has said that a restriction "must be formulated to sufficient prevision to enable an individual to regulate his or her conduct accordingly", it must be made accessible to the public, and it may not confer unfettered discretion.[13] Such laws "must also themselves be compatible with the provisions, aims and objectives of the Covenant".[14] Together, these principles are referred to below as the principle of "legality". Although this is in the context of restrictions on freedom of expression under the ICCPR, similar considerations also apply to restrictions on the rights to freedom of assembly and association[15]. Article 7(2) of the African Charter on Human and Peoples Rights (the African Charter) provides that "No one may be condemned for an act or omission which did not

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[9] For rights to freedom of assembly and association, this is "necessary in a democratic society", ICCPR Articles 21 and 22(2). See further under 'Necessary and proportionality to valid objectives' below. Article 9(2) of the African Charter provides that "Every individual shall have the right to express and disseminate his opinions within the law."

[10] For the rights to freedom of assembly and association this reads as the "protection of the rights and freedoms of others", Articles 21 and 22(2), ICCPR.

[11] Article 19(3) ICCPR and Human Rights Committee, General Comment no 34, paras 21 to 49. The African Charter does not contain a limitation for the right to freedom of association save that the individual must "abide by the law" (Article 10(1)), while the right to freedom of assembly is "subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics rights and freedoms of others," for which the broadly the same considerations as for the ICCPR apply.

[12] Articles 21 and 22(2), ICCPR.

[13] Human Rights Committee, General Comment no 34, para 25, similarly interpreted by the African Commission, see Declaration of Principles on Freedom of Expression in Africa, Article II.2.

[14] Human Rights Committee, General Comment no 34, para 26.

[15] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 16; Organisation for Security and Cooperation in Europe, 'Guidelines on Freedom of Peaceful Assembly,2007, paras 30-33, cited with approval by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report of 21 May 2007, UN Doc. A/HRC/20/27, para. B, footnote 7.

constitute a legally punishable offence at the time it was committed."[16] The corresponding requirement is Article 15(1) of the ICCPR which requires "states parties to define precisely by law all *criminal offenses* in the interest of *legal certainty* and to preclude the application of criminal laws from being extended by *analogy*."[17]

Necessity and Proportionality to Valid Objectives

The Human Rights Committee has emphasised, "restrictions must not be overbroad".[18] To comply with the requirement of proportionality any restrictions must among other things "be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected".[19]

The rights to freedom of association and assembly include the additional qualifier that the limitation must be "necessary in a democratic society".[20] This means that for these rights, in addition to a requirement of proportionality, measures to restrict freedom of assembly and association must conform to a minimum democratic standard, and include requirements of pluralism, tolerance and broadmindedness.[21] Additionally, "in no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."[22]

ARTICLES OF PARTICULAR CONCERN

The articles in the draft Criminal Code that Amnesty International is particularly concerned about are Articles 198-199; 278 – 279; 282; 296; 299; 300; 315; 362(2); 365(2); 367; 368; and 371.

Insulting behaviour and defamation (articles 198-199)

Articles 198 and 199 make it an offence for anyone to "offend the honour or besmirch the good name or reputation" of another or to "make judgments on" another persion in a way that "offend[s] their honour or besmirch[es] their reputation".

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[16] Article 15(1) ICCPR contains a similar provision.
[17] Manfred Nowak, CCPR Commentary, 2nd Revised Edition, p. 360. Emphasis in original text.
[18] Human Rights Committee General Comment no 34, para 34.
[19] Human Rights Committee General Comment no 34, para 34. See also Human Rights Committee General Comment no 31, para 6.
[20] Articles 21 and 22(2) ICCPR. See also Human Rights Committee General Comment no 31, para 6.
[21] *Handyside v UK*, ECHR, 7 Dec 1976, Series A No. 24, para 49. See also Nowak, 'CCPR Commentary', 2nd revised edition, 2005, pp. 490-491.
[22] Human Rights Committee General Comment no 31, para 6.

The Human Rights Committee has identified penal defamation laws as a matter of particular concern, urging states to "consider the decriminalization of defamation" in its entirety.[23] Even where states do not decriminalize defamation, the Committee has said, imprisonment is never an appropriate penalty for such offences and, among other things, it may only be considered in the most serious of cases; a defence must always be available of "public interest in the subject matter".[24] Furthermore, the African Commission on Human and Peoples' Rights (the African Commission) has called for states parties to the African Charter to "repeal criminal defamation laws or insult laws which impede freedom of speech to adhere to the provisions of freedom of expression, articulated in the African Charter, the Declaration, and other regional and international instruments."[25]

By criminalising and providing for imprisonment as a punishment, Articles 198 and 199 of the legislation do not comply with these requirements. Specifically, Article 199(4)(c) also does not go as far as that suggested by the Human Rights Committee where it has recommended that "consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice."[26]

Amnesty International is aware of cases where journalists have faced and in some cases been given, prison sentences for writing articles that, for example, made allegations of corruption against a former Minister of Justice,[27] or for publishing satirical cartoons of the President and the Vice-President.[28] As the Human Rights Committee has pointed out, and as discussed further below in relation to articles 312, 313 and 319, "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high."[29] Accordingly, Amnesty International is concerned that, if enacted, Articles 198 and 199 may be used in a similar way to

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[23] Human Rights Committee General Comment no 32, para 47.

[24] Human Rights Committee General Comment no 32 para 47.

[25] African Commission, Resolution No. 169: Resolution on Repealing Criminal Defamation Laws in Africa, 48th Ordinary Session, held in Banjul, The Gambia, from 10 – 24 November 2010, available at: http://www.achpr.org/sessions/48th/resolutions/169/.

[26] Human Rights Committee General Comment no 34, para 47.

[27] In October 2007 the Provincial Court of Luanda sentenced Felisberto da Graça Campos, director of the weekly newspaper, Semanário Angolense, to eight months' imprisonment for defamation and injury to a former Minister of Justice (now the Justice Ombudsman). The charges arose from articles published in April 2001 and March 2004 accusing the then Minister of Justice of misappropriating ministry funds.

[28] In 2012, the National Directorate of Criminal Investigation (*Direção Nacional de Investigação Criminal* -DNIC) started an investigation against the newspaper Folha-in relation to the publication on 30 December 2011 of a satirical photo montage of the President, Vice-President, as well as the Head of the Military Bureau. The paper and staff members faced possible charges of criminal defamation.

[29] Human Rights Committee General Comment no 34, para 34.

stifle freedom of speech.

Incitement to commit an offence and public condoning of crime (articles 278 and 279)

Article 278 makes it an offence to "directly incite" an offence at "a public meeting or assembly". Article 279 makes it an offence publicly to "commend, praise or reward" the perpetrator of an offence where it is held to "creat[e] the threat that another offence of the same type will be committed".

The offence in article 279 accordingly does not require that the person actually intend to incite others to commit a similar offence (which would in fact already be covered by article 278); nor does it even require that in fact a subsequent such act is committed. It is not even restricted to statements that commend or praise the *criminal act* itself as opposed to the perpetrator. No defences of any kind are provided for. The provision thus seems extremely overbroad and disproportionate to any legitimate aim. It could potentially seriously restrict the possibility for public political debate and discussion about possible amendments to existing criminal laws.

Amnesty International is concerned how these articles may be applied if enacted, given its experience of cases, and discussions with police authorities, in Angola. In April 2012, Amnesty International spoke with police authorities in Cabinda who appeared to believe that any person expressing any kind of support for *Frente para a Libertação do Enclave de Cabinda* (FLEC) was committing a crime against the security of the State. The same authorities argued that Article 5 of the Constitution[30] provides a basis for the arrest and detention of non-violent protesters demonstrating in favour of autonomy or the independence of Cabinda.

In addition, Amnesty International believes that some of the people arrested following the attack on the Togo football team in January 2010, in particular prisoners of conscience Francisco Luemba and Father Raul Tati, were arrested simply for expressing their opinion about the status of Cabinda. Luemba and Tati have since been released, following the revocation of the law under which they were convicted.

Despite the release of both Luemba and Tuti, both that case and the comments of the police authorities give rise to concerns that articles 278 and 279, and also articles 315 and 362(b) (discussed further below), may be used to similarly suppress freedom of expression in the future.

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[30] Article 5(1) states, "The territory of the Republic of Angola shall be as historically defined by the geographical borders of Angola on 11 November 1975, the date of National Independence." Article 5(6) further provides, "Angolan territory shall be indivisible, inviolable and inalienable, and any action involving the breaking up or separation of its component parts shall be energetically resisted. No part of national territory or the rights of sovereignty which the state exerts over it may be transferred."

Terrorism (article 282)

Article 282 prohibits a number of stipulated "intentional criminal offences" carried out "with intent to prejudice national integrity or independence, to destroy, alter or subvert the working of the State institutions provided for in the Constitution, to force the Angolan authorities to perform or refrain from performing certain acts or to allow such acts to be performed".

The degree to which this article fails to meet the requirements of legality and proportionality can be appreciated by comparing its text with, for instance, the expert views expressed by the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Tterrorism.[31] He has explained that the principle of legality means that legal provisions "must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct."[32]

Similarly, the the United Nations Working Group on Arbitrary Detention (WGAD) has expressed particular concern about "extremely vague and broad definitions of terrorism in national legislation", stating, "[i]n the absence of a definition of the offence or when the description of the acts or omissions with which someone is charged is inadequate … the requirement of a precise definition of the crimes - the key to the whole modern penal system – is not fulfilled and that the principle of lawfulness is thus violated, with the attendant risk to the legitimate exercise of fundamental freedoms."[33]

The Special Rapporteur has further underlined the potential consequences that can result from an overbroad definition. He has stressed that "The adoption of overly broad definitions of terrorism … carries the potential for deliberate misuse of the term … as well as unintended human rights abuses"; and that, "Failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights".[34]

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[31] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Ten areas of best practices in countering terrorism", UN Doc A/HRC/16/51 (22 December 2010) paras 26-28. See also the earlier Report UN Doc E/CN.4/2006/98 (28 December 2005), paras 26-50, 72.
[32] UN Doc E/CN.4/2006/98, 28 December 2005, para. 46.
[33] Working Group on Arbitrary Detention, Report to the Commission on Human Rights, UN Doc E/CN.4/2004/3, 15 December 2003, paras. 64-65.
[34] UN Doc A/HRC/16/51 (22 December 2010) para 26.

The range of conduct defined as terrorism by article 282 is truly sweeping in scope. While other criminal offences form a component part of the definition, a broad range is listed. It would appear to even criminalize the use of the internet or other systems to coordinate peaceful public protest, legitimate trade union action, and other such forms of protected expression (as well as freedoms of assembly and association), in a wide range of contexts.

Further, the requirement that an individual has the "intent to prejudice national integrity or independence to destroy, alter or subvert the working of the State institutions" is also inconsistent with the UN Special Rapporteur's approach. It is not clear what "alter or subvert the working of the State institutions" or "prejudice national integrity or independence" means, but it appears to be a very low threshold and the provision may be open to abuse. In summary, the provision lacks basic elements minimally necessary to ensure definitions of terrorism satisfy the requirements of legality.

The sweeping nature of this provision is reminiscent of articles contained in the now revoked Angolan Law of Crimes against the Security of the State, particularly Article 26. Prior to the revocation of this law Amnesty International expressed concern regarding the vagueness of this article and the fact that it did not enable individuals to foresee whether a particular action was unlawful.[35] This law was used in a number of occasions in Cabinda and the Lundas to suppress the peaceful expression of opinion regarding the independence of these regions.

Article 296 (forgery constituting treason)

This article is misleading in its title, covering a much broader range of activities than just "forgery". Article 296 constitutes a very broad restriction on freedom of expression, penalising with imprisonment anyone "who provides another person with or who makes public… false claims" which, if true, "would be important for the external security of the Republic of Angola or for the Republic of Angola's relations with a foreign power".

The draft article is in some way limited, in that the person must "give the impression that such objects or facts are authentic" and the act must "thereby endanger the independence or integrity of the Republic of Angola". However, it is still overbroad, in that it covers "spurious" as well as "falsified" facts, and is judged on the potential for the claims to "be important for the external security of the Republic of Angola or for the Republic of Angola's relations with a foreign power". Such an assessment is highly subjective, and covering a broad range of statements or claims, and as such could easily be abused by the State to prosecute, for example, those peacefully advocating secession.

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[35] Angola detains rights activists following attack on Togo football team, 19 January 2010; Angola must free prisoners of conscience facing trial over Togo football team attack, 09 July 2010; Angolan activists jailed over attack on Togo football team, 3 August 2010; and Angola political detainees held under non-existent law, 17 January 2011.

The justification for such a restriction (primarily to Article 19 ICCPR) would presumably be on grounds of national security, but it is so imprecisely drafted and broad that it fails the tests of legality, necessity and proportionality.

Article 299 (bringing about a war of reprisals)

There are similar concerns in relation to Article 299 as there are for Article 296. Article 299 infringes the principle of legality under Article 7 of the African Charter[36], in that it sweepingly criminalises "acts likely to bring about a war or reprisals against Angola" (emphasis added).

This provision is very broad. There is no restriction on this article in terms of a requirement of violence, for instance, and determining what acts are likely to bring about a war or reprisals against Angola could be highly subjective, and abused by the State against secessionists, or those making statements advocating for secession.

Article 300 (collaboration with foreign nationals to coerce the Angolan state)

There are similar concerns in relation to Article 300, in particular because the scope of the article is such to include any kind of cooperation with a foreign institution or intermediary. Although the offence defined in the article is limited to cooperation to "coerce the Angolan State to submit to foreign interference", this could be used to chilling effect in terms of restricting honest debate as to the merits or otherwise of Angola being involved or not in a war, in a similar fashion to the concerns described in relation to Article 362(2) below.

Statements made in the media and to Amnesty International directly give rise to further concerns in relation to this article. The 24 March 2012 issue of the '*O Independente*' newspaper claimed that the human rights organizations, *Associação Justiça, Paz e Democracia* and *Fundação Open Society-Angola*, were inciting youth in Luanda to demonstrate in order to meet the agenda of foreign powers to destabilise the country.

Furthermore, Angolan authorities have on a number of occasions informed Amnesty International delegates that the work of Amnesty International constitutes interference in the national sovereignty of Angola. Such instances make this article as drafted particularly concerning in that it could be used to suppress the work of domestic and international human rights organisations and other NGOs in the country, undermining the protection of human rights in the country and freedom of expression.

Offences against the honour of bodies or representatives of foreign States or international organisations, Disrespect for symbols of foreign States or international

[36] Also Article 15(1) ICCPR.

organisations and Disrespect for the State, its symbols and bodies (articles 312, 313 and 319)

Articles 312, 313 and 319 criminalise "insulting and defamatory acts" against representatives of foreign states or international organisations, "remov[al], destr[uction] or damage… to the flag… of a foreign country or international organisation" and "malicious disrespect [to] the Republic of Angola, the President of the Republic or any other public authority". These concern figures in the public and political domain.

The UN Human Rights Committee has said that "the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain".[37] Specifically, "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".[38] Furthermore, the Committee has expressed concern "regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of State, and the protection of the honour of public officials."[39]

Articles 312, 313 and 319 are clearly laws in this vein, and thus impermissible limitations on the right to freedom of expression. These provisions are of particular concern in light of the cases where journalists have faced possible prison sentences after, for example, publishing satirical cartoons of the President or Vice-President, or for making allegations against former government ministers (see further above comments on Articles 198-199).

Rebellion (article 315)

Article 315 is very broadly drafted, penalising "any measure directly or indirectly liable to alter the constitutional law, in whole or in part, and subvert the State institutions" (emphasis added). This is a provision with a wide scope that could cover almost any conduct that may have some impact on the "constitutional law", including public statements or critical journalistic pieces on the constitution, or even potentially peaceful demonstrations against the government. Further, it is not clear what "alter[ing] the constitutional law" would entail.

Accordingly Article 315 is not drafted with sufficient precision to be a justifiable limitation to Article 21 ICCPR, or potentially, pursuant to Article 19(3). As discussed further above in relation to articles 278 and 279, Amnesty International has particular reason to believe, based on its discussions with police authorities in Cabinda, and some of the arrests carried out following the attack on the Togo football team in January 2010, that this provision may be used to silence freedom

[37] Human Rights Committee General Comment no 34, para 34.
[38] Human Rights Committee General Comment no 34, para 38.
[39] Human Rights Committee General Comment no 34, para. 38.

of expression, particularly legitimate discussion on the status of Cabinda and the Lundas.

Disruption of the operation of public authorities (article 320)

For similar reasons to those outlined above for Article 315, Article 320 does not fall within the limitations permitted under Articles 19(3) and 20 of the ICCPR. Of particular concern is the breadth of the prohibition, in that it criminalises "disrupt[tion of] the operation of public authorities through disturbances, disorder or rioting" and applies, in Article 320(2), to the "duties of a member of any public authority" (emphasis added). Although it is not clear that this definition applies to Article 320, "rioting" is defined in Article 283(1) as "a turbulent assembly of an indeterminate number of persons likely to endanger public peace"; this definition has a wide remit and does not require violence and intent to cause violence. Article 320 could thus be used to restrict a wide range of different activities, including any peaceful demonstrations or protests that might hinder or "disrupt" the normal activities of the public authorities.

Presumably the objective of this limitation is in the interests of public order and/or national security or public safety, so as to ensure the proper functioning of public authorities and protection for those authorities from violent disruption. However, this sweeping restriction goes far beyond what is necessary in a democratic society (as per Article 20 ICCPR) and is not proportionate. Such a wide-ranging prohibition is unlikely ever to be the least intrusive method to achieve such objectives.

This provision is of particular concern in light of incidents involving state authorities in the peaceful demonstrations calling for the resignation of the president that have taken place since March 2011. These demonstrations have been accompanied by violence against the demonstrators by people suspected to be members of the State Information and Security Services who have infiltrated the crowds, and reportedly damaged property and beat individuals, including journalists.

Demonstrators have alleged that in some cases police have also used violence against the crowds, which appeared to Amnesty International to amount to excessive use of force. Some of those peacefully demonstrating have been arrested and accused of crimes such as ***disobedience, resistance and corporal offences***. During the demonstration in March 2011 police arrested three journalists and 20 demonstrators. They were released uncharged a few hours later. Police authorities stated that the arrests had been precautions to "prevent incalculable consequences."

Following a peaceful demonstration on 3 September 2011, 21 people were arrested and tried. On 12 September a court sentenced five of those arrested to three months imprisonment for disobedience, resistance and "corporal offences"[40]. 13 of

[40] 'Corporal offences' are listed in the Angola Criminal Code.

those arrested were sentenced to 45 days imprisonment, while three were acquitted for lack of evidence. Although all 18 had their convictions overturned by the Supreme Court on 14 October and were released, Amnesty International is concerned that this article as drafted may be used in a similar manner by the authorities to break up peaceful demonstrations and to restrict the right to freedom of assembly.

Condoning of war (article 362(2))

Article 362(2) of the legislation goes beyond the prohibition contemplated by article 20(1) of the ICCPR ("Any propaganda for war shall be prohibited by law") by imposing imprisonment for "condon[ing] war against a State or a people." The Human Rights Committee has stressed, "It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions" and that the particular measures adopted to implement these obligations must still satisfy the requirements of article 19(3).[41] The wording of article 362(2) seems to go well beyond the scope of what is required by the ICCPR, and would seem even to restrict honest political debate about whether any wars that have ever occurred throughout history were or were not justified. Similarly, it may restrict debate as to whether any war currently ongoing even between states to which the person has no connection were or were not justified, or whether a war proposed by the government were or were not justified. As such it does not appear that the provision is proportionate to its aims.

Incitement to discrimination (article 365(2))

Article 365(2) makes it an offence for anyone to "incite acts of violence" against someone on discriminatory grounds, but lacks the requirement of intent to incite violence.

Article 20(2) ICCPR obliges Member States to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", and, as noted above, any such prohibition must still be in accordance with Article 19(3). Article 365(2) is to this extent lacking in sufficient precision so that persons can predict whether their conduct is unlawful (fails the requirement of legality) and further is not demonstrably proportionate to its objective (in relation to fulfilling Article 20(2) and to prevent incitement of hatred).

Genocide (Article 367)

Article 367(1) sets out a definition of genocide as "any person who engages in any" of offences listed in the article "through concerted action with intent to destroy, in whole or in part, a national, ethnic, or religious group." Article 367(2) makes it an offence to carry out "repeated open incitement to hatred against a national, ethnic, racial or religious group with intent to destroy that group".

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[41] Human Rights Committee General Comment no 34, paras 50-52.

The definition of genocide under Article 367 appears to be, in general, in accordance with the definition contained in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (the Convention), Article 4 of the Statute of the International Tribunal for Yugoslavia (the SITY), Article 3 of the Statute of the International Tribunal for Rwanda (the SITR) and Article 6 of the Rome Statute of the International Criminal Court (the Rome Statute) – to which Angola is a signatory state since 1998.[42] Although the four traditionally enumerated groups or protected groups (national, racial, ethnical and religious groups) are covered by Article 367, none of the so-called 'other groups', such as 'political', 'ideological', 'linguistic' or 'social' groups, which some states have incorporated also as protected groups, are covered by Article 367. However, Angola would not contravene any international law obligation by excluding any of the 'other groups' listed above.

The expression 'through concerted action' in the first sentence of the definition of the crime is neither contained in the Convention, nor the Rome Statute, nor the SITY, nor the SITR and adds a new requirement under Angolan law which is not in compliance with its obligation to define the crime as set out in international law. In other words, the requirement 'through concerted action' might exclude in Angolan law an act from amounting to genocide which under international law would be classified as genocide, thus restricting the scope of the definition. National Angolan law must be consistent with international law: the definition of crimes must not be narrower that what it is requested by international law.

Among the 'other acts of genocide' under international law (conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide), only incitement appears to be covered by Article 367 (2). However, draft Angolan law adds the words 'repeated' and 'open' to incitement - thus restricting, and inconsistent with, (by adding a new element to the definition of incitement), Article III of the Convention.

Article IV of the Genocide Convention, which provides that: "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals" does not appear to be included in the draft criminal Code.

Crimes against humanity (Article 368)

Article 368 provides for a definition of a crime against humanity as "any person who commits the following offences against protected persons as part of a widespread or systematic attack directed against a population, or in the context of an international or internal armed conflict, or during the military occupation of a State, territory or part of a territory."

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[42] All of these instruments are authorities on the definition of crimes under international law.

Although Article 368(1) appears to be based on Article 7 of the Rome Statute, there are several points that make it inconsistent with international law. Firstly, the reference to 'protected persons' is from the field of international humanitarian law – indeed is a central element of war crimes – and is not relevant to crimes against humanity. Likewise, the reference to "or in the context of an international or internal armed conflict, or during the military occupation of a State, territory or part of a territory," is also from the perspective of a situation of armed conflict, and should not be applied in reference to crimes against humanity.

Secondly, at (d), the code specifies that the crime against humanity of imprisonment takes place when such an imprisonment or severe deprivation of physical liberty is made in 'in violation of standards and principles of international law', whereas the wording in Article 7(1)(e) of the Rome Statute refers to violation of 'fundamental rules of international law'. The latter language seems to be more in accordance with international law and should be followed.

Thirdly, Article 368 (f), does not include the reference in Article 7 (g) of the Rome Statute to 'or any other form of sexual violence of comparable gravity', which may expand the coverage of such category of crimes; thus Article 368 (f) as drafted is narrower than the definition under international law.

War Crimes (Article 371)

The definition of war crimes contained in article 371 (1) (c), on conscripting or enlisting child soldiers should be amended so as to protect children under the age of 18 years and not, as set out in the provision, 16 years.

CONCLUSION

The issues and provisions cited above are illustrative and not exhaustive examples of problems with the draft Criminal Code and do not necessarily purport to constitute a comprehensive human rights analysis of the draft Code. However, the examples demonstrate clearly that the draft Code must not be passed into law without further detailed review and amendment, as well as consultation with civil society, to ensure its compatibility with Angola's regional and international human rights obligations.