

ANGOLA

Human Rights Guarantees in the Revised Constitution

Introduction

In March 1991 Angola's People's Assembly approved a law which partially revised the country's Constitution introducing a multi-party political system and providing increased human rights safeguards. The Constitution is to be revised further after consultation with the political parties set up under the new system. This report contains the text of a memorandum recommending increased constitutional human rights safeguards which Amnesty International submitted to the government in February 1991. This report also describes amendments in the revised Constitution which affect human rights and summarizes Amnesty International's recommendations for the inclusion of additional human rights safeguards during the next stage of revision.

Since its independence in 1975 Angola has been ruled by the *Movimento Popular da Libertação de Angola* (MPLA), People's Movement for the Liberation of Angola¹. Throughout this period there has been conflict between the government and the *União Nacional para a Independência Total de Angola* (UNITA), National Union for the Total Independence of Angola. On 31 May 1991 President José Eduardo dos Santos and Jonas Savimbi, the UNITA leader, signed an agreement to end the conflict. Under the terms of the agreement President José Eduardo dos Santos will govern the country until elections are held in late 1992².

¹ In 1977 the MPLA became the MPLA-Partido do Trabalho (Workers' Party).

² The "Washington Accord" (part of the agreement between the government and UNITA) point 2.

In the past, both the government and UNITA have been responsible for serious human rights violations against prisoners, including captured combatants and others suspected of political opposition³. It is important that the Constitution should provide strong human rights guarantees to prevent human rights violations in the future.

In its memorandum to Angola's National Commission for the Revision of the Constitutional Law, Amnesty International was concerned principally with constitutional protection for those rights and freedoms which relate to the organization's objectives. Amnesty International works for the release of prisoners of conscience - anyone who has been imprisoned, detained or otherwise physically restricted on account of his or her political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour or language, provided he or she has not used or advocated violence. Amnesty International works for fair and prompt trials for all political prisoners, including those who may have used or advocated violence. It campaigns against the use of torture or other cruel, inhuman or degrading treatment or punishment in all cases, and is unconditionally opposed to the use of the death penalty. Amnesty International bases its work on the principal foundations of international human rights law - the Universal Declaration of Human Rights and other international standards which have been developed from the provisions contained in the Universal Declaration. Copies of the standards cited were appended to Amnesty International's memorandum to the National Commission for the Revision of the Constitutional Law but are not included in this version⁴. The purpose of Amnesty International's memorandum to the National Commission for the Revision of the Constitutional Law was to provide a commentary on the minimum requirements of international human rights law with reference to rights and freedoms within the organization's area of concern so that the revised Constitution would be consistent with relevant internationally recognized human rights standards.

In many instances, the discussions surrounding constitutional revisions which have taken place in numerous countries have concentrated more on the provisions concerning the form and administration of government than on constitutional guarantees of human rights. The aim of this report is to stimulate wide public discussion about the human rights

³ Details of human rights violations over the years have been described in Amnesty International's annual reports. Two examples of gross violations which are still the subject of Amnesty International's concern and investigation are the extrajudicial executions of large numbers of prisoners, probably several thousands, arrested after an unsuccessful coup attempt in Luanda in May 1977, and the reported killing by UNITA of some of its own members, some of whom were allegedly burnt alive in 1982 and 1983.

⁴ Copies of Amnesty International's compilation of international human rights standards in English or Portuguese may be obtained on request from Amnesty International, International Secretariat, 1 Easton Street, London, WC1X 8DJ.

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provisions of Angola's Constitution to ensure that the final Constitution contains the strongest possible human rights guarantees and that these guarantees are implemented by legislation and in practice.

No law is, of itself, sufficient to prevent violations of human rights. However, if individuals are aware of their constitutional rights they are more likely to be able to claim and enjoy them. Constitutions are usually the most comprehensive and accessible means by which ordinary individuals can understand:

- what their rights and freedoms are;
- how these rights and freedoms may be limited in order to protect the rights and freedoms of other individuals or groups;
- how and where individuals can seek justice if other individuals or public officials violate their rights and freedoms.

The following text of Amnesty International's memorandum to the National Commission for the Revision of the Constitutional Law contains, at the end of each section, a note on the changes subsequently announced to Angola's Constitution in March 1991, together with Amnesty International's most recent recommendations for further amendments to increase protection for constitutional rights, freedoms and guarantees during the next stage of revision. Reference is also made to two draft laws published in the daily newspaper, Jornal de Angola, on 6 March 1991: the Law on the State of Siege and the State of Emergency and the Law on the Right of Assembly and Demonstration. A table comparing relevant articles of the previous and present Constitutions and a summary of Amnesty International's recommendations are appended at the end of this report.

**TEXT OF AMNESTY INTERNATIONAL'S
MEMORANDUM TO THE
NATIONAL COMMISSION FOR THE REVISION OF THE
CONSTITUTIONAL LAW**

dated 6 February 1991

Amnesty International has learned that on 9 November 1990 the Permanent Commission of the People's Assembly approved a resolution to establish a commission to revise Angola's Constitution. The revised Constitution, according to a text presented at the Third Congress of the MPLA-Workers' Party, will increase recognition and protection of individual rights and freedoms. The Constitution is to be revised in two phases, the first of which is to be completed in March 1991, and will be submitted to the general public for debate before it is finally adopted.

The purpose of this memorandum from Amnesty International is to offer, for the consideration of those responsible for drafting the revised Constitution, some observations concerning the protection of those rights and freedoms which fall within Amnesty International's mandate, and to make recommendations on the basis of our experience in this field. Amnesty International hopes that the strongest possible guarantees will be introduced into the revised Constitution to protect the human rights of present and future generations of Angolans.

In the past Amnesty International has submitted similar recommendations to the authorities in various countries where major constitutional or legislative revisions are being undertaken. We have sometimes acted at the request of the authorities concerned and at other times on our own initiative. For example, in the last two years we have submitted recommendations to the appropriate authorities in Namibia, South Africa, Benin, Burkina Faso, Albania, Hong Kong, Jordan, Laos, Nepal, Pakistan, the USSR and Vietnam.

Amnesty International's recommendations to constitutional or legislative drafting bodies reflect the organization's objectives. Amnesty International works for the release of prisoners of conscience, that is, anyone who has been imprisoned, detained, or otherwise physically restricted on account of his or her political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour or language, provided he or she has not used or advocated violence. Amnesty International works for fair and prompt trials for all political prisoners, including those who may have used or advocated violence. It campaigns against the use of

torture or other cruel, inhuman or degrading treatment or punishment in all cases, and is unconditionally opposed to the use of the death penalty.

Amnesty International bases its work on the principal foundations of international human rights law - the Universal Declaration of Human Rights (1948) and other international standards which have been developed from the provisions contained in the Universal Declaration. These include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which entered into force in 1976, and which have been ratified, respectively, by 92 and 97 countries; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987 and has been ratified by 55 countries; and the Organization of African Unity's African Charter on Human and Peoples' Rights, which entered into force in October 1986 and has been ratified by more than 40 countries.

Although Angola is not yet a party to these international and regional treaties⁵, we are basing our recommendations upon the relevant provisions contained in these and other instruments, which are increasingly accepted by the international community as basic minimum standards for the protection of human rights. Copies of the standards cited in this memorandum are appended. If Angola's revised Constitution conforms to these instruments it will increase the protection of universally recognized human rights in Angola in the future. It will also facilitate the ratification of the international human rights treaties, a step which we hope will be taken by the Government of Angola as soon as possible.

1. General observations

Before considering specific rights and freedoms it is appropriate to comment on a general, but fundamental issue -- the need to ensure that individuals and groups can enjoy their rights and freedoms without impinging on the rights and freedoms of other individuals or groups. In all constitutions rights and freedoms are subject to certain restrictions under law. However, some constitutions, including Angola's present Constitution, allow wide scope for subsidiary legislation or for executive government organs to restrict the rights and freedoms it guarantees to an extent inconsistent with internationally recognized human rights standards.

The International Covenant on Civil and Political Rights admits restrictions only with respect to certain specified rights and strictly limits such restrictions. For example, the right to

⁵ Amnesty International has recently learned that Angola became a party to the African Charter on Human and Peoples' Rights on 9 October 1990.

freedom of expression may be subject to certain restrictions but these may "only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others" or "(b) For the protection of national security or of public order (ordre public), or of public health or morals". We urge that the Angolan Constitution not permit restrictions to be imposed on the rights enumerated in the Constitution that go beyond those permissible under such international standards. We recommend that the Constitution ensures that no law or regulation and no action by executive agencies of government may abolish or abridge the fundamental rights and freedoms contained in the Constitution.

Under the Constitution currently in force in Angola, the People's Assembly may, under Article 38 (1), declare a state of siege or emergency and define the extent to which constitutional guarantees may be suspended. The current Constitution does not lay down the conditions under which a state of siege or emergency may be declared: nor does it exempt from suspension even those fundamental rights and freedoms which, under international law, may not be suspended under any circumstances.

We urge, with regard to any provisions for a state of siege or emergency which may be included in the revised Constitution, that these be clearly defined and that the imposition of a state of siege be restricted to the most exceptional circumstances. The International Covenant on Civil and Political Rights provides in Article 4 that states may only derogate from the provisions of the Covenant "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", and even then permissible measures of derogation may only be those "strictly required by the exigencies of the situation".

While some derogation from certain provisions guaranteeing civil and political rights is not absolutely prohibited by international standards in times of public emergency, there are some rights which are so fundamental that they may never be derogated from in any circumstances, even in a state of public emergency. These non-derogable rights, enumerated in Article 4(2) of the International Covenant on Civil and Political Rights, include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion. Amnesty International recommends that the Angolan Constitution should contain guarantees to ensure that even in times of emergency these fundamental rights may never be suspended in any circumstances.

Article 36 of the revised Constitution states:

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The exercise of citizens' rights, liberties and guarantees may be suspended or limited in a State of Siege declared under the terms of the present Law and other ordinary legislation.⁶

In no case will the State of Siege or State of Emergency affect the right to life, the right to personal integrity and identity, civil status, citizenship and the non-retroactivity of penal law, the right of accused persons to defence and the freedom of conscience and religion.

Specific law will regulate states of exception, namely the State of Siege and the State of Emergency.

Amnesty International urges that the Constitution should forbid the imposition of any restriction on the rights enumerated in the Constitution that go beyond those allowed by the International Covenant on Civil and Political Rights. It should clearly provide that no law or regulation and no action by executive agencies of government may abolish or abridge the fundamental rights and freedoms contained in the constitution.

Amnesty International welcomes the protection of specific rights and freedoms during a state of siege or emergency, including the right of accused persons to defence, afforded by Article 36 of the revised Constitution. A draft Law on the State of Siege and the State of Emergency (see page 32) defines the conditions under which these states of exception may be declared. (Amnesty International is, however, concerned that the provisions for detained or restricted persons under the draft law on the State of Siege and the State of Emergency do not conform fully to Article 4 of the International Covenant on Civil and Political Rights.)

Amnesty International recommends that Article 36 of the revised Constitution (and relevant Articles of the Law on the State of Siege and State of Emergency Law) be made consistent with Article 4 of the Covenant on Civil and Political Rights and in particular:

- that Article 36 should clarify that during a state of siege or emergency rights or freedoms may only be suspended or limited to the extent strictly required by the exigencies of the situation;
- that Article 36 expressly include the prohibition against torture or other cruel, inhuman or degrading treatment among the guarantees which may not be affected by a state or siege or emergency;
- that Article 36 clarify that neither a state of siege nor a state of emergency may be declared except in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed;

Amnesty International also recommends that all Articles of the revised Constitution which refer to rights that may never be suspended should contain a clear statement to this effect.

⁶ All quotations from the Constitution are Amnesty International's translations.

2. Protection of the Right to Life

The right to life, guaranteed by Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights, is the most fundamental of all human rights. Amnesty International considers the death penalty to be incompatible with full respect for the right to life, as well as the right not to be subjected to cruel, inhuman or degrading punishment. In our view it is inherently unjust and arbitrary, however heinous the crime for which it is provided and however scrupulous the procedures by which it is enforced. Most murders are crimes of "hot-blood", while the death penalty is perforce the systematic deprivation of life in "cold-blood".) The risk of error is inescapable, yet the penalty is irrevocable. The overwhelming conclusion from studies on the topic is that there is no reliable evidence that the death penalty achieves a purpose of avoiding other serious harm, for example, by deterring the crimes for which it is available. There is some evidence, albeit inconclusive, that it can actually contribute to such crimes. It may certainly distract societies from seeking more effective means to combat serious crime.

Over the past decade Amnesty International has regularly opposed the use of the death penalty in Angola: it has noted the decrease in the numbers of people sentenced to death in recent years and welcomed the commutation by President Jose Eduardo dos Santos of 50 death sentences in June 1989. Amnesty International was encouraged to note that the proposal for constitutional amendments presented to the Third Congress of the MPLA-PT in December 1990 included a provision guaranteeing the inviolability of human life.

If Angola's new Constitution were to include a positive affirmation guaranteeing the right to life and declaring that the death penalty will never be allowed this would reinforce the government's declared Policy of Clemency and National Harmonization. Such a step would be consistent with an increasing trend within the international community towards abolition. In the past two years Namibia, Mozambique, São Tomé and Príncipe, the Czech and Slovak Federative Republic, Ireland, Hungary, Cambodia, New Zealand, Romania and Andorra have abolished the death penalty. Indeed, nearly half the countries in the world have abolished the death penalty in law or practice for all but the most exceptional crimes, such as war crimes. An important manifestation of this trend is the adoption on 15 December 1989 by the United Nations (UN) General Assembly of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

We recommend that the National Commission for the Revision of the Constitution include a provision abolishing the death penalty among the draft amendments to the Constitution.

We understand, of course, that the draft revision of the Constitution is to be submitted to public debate before it is promulgated. In the event of an eventual decision to exclude

abolition of the death penalty from the final text of the revised Constitution, we urge that the Constitution leave the way open to abolition, not least to authorize abolition without requiring an amendment to the Constitution in the event of a future political decision to abolish capital punishment. If the revised Constitution does not abolish the death penalty for all crimes we suggest that, at the very least, in accordance with Article 6 of the International Covenant on Civil and Political Rights, the Angolan Constitution might contain a provision that nothing in the Constitution shall be invoked to delay or to prevent the abolition of the death penalty in future. We also recommend that the Constitution should provide the strictest possible procedural and substantive guarantees including those contained in Article 6 of the International Covenant on Civil and Political Rights:

- the death penalty may be imposed only for the most serious crimes (Article 6(2));
- its imposition must conform to the other provisions of the International Covenant on Civil and Political Rights which include guarantees for a fair trial including a right of appeal to a higher court (Articles 6(2) and 14);
- anyone sentenced to death shall have the right to seek pardon or commutation of the sentence (Article 6(4));
- the death penalty may not be imposed on persons under 18 and may not be carried out on pregnant women (Article 6(5)).

Further safeguards to protect the rights of those facing the death penalty are contained in the UN Economic and Social Council (ECOSOC) safeguards guaranteeing protection of the rights of those facing the death penalty (annex to ECOSOC resolution 1984/50 (1984) (ECOSOC safeguards) and the Council's resolution 1989/64 (1989) (Implementation of the ECOSOC Safeguards). These are appended to this memorandum.

Article 18 of the revised Constitution is identical to Article 17 of the previous Constitution, except that the word "Nation" replaces the word "People". It states:

The State protects individuals and human dignity. All citizens have the right to the free development of their personality within the respect due to the rights of others and to the superior interests of the Angolan Nation. The Law will protect the life, liberty, personal integrity, the good name and reputation of every citizen.

Amnesty International most strongly urges that the death penalty should be abolished.

3. The prohibition against torture and cruel, inhuman or degrading treatment or punishment

Although the principles of human dignity and the right to physical integrity are acknowledged by the constitutions of most countries in the world, the use of torture is widespread. While legislation alone cannot prevent torture it is, nevertheless, essential that the law, including the Constitution as the most fundamental law, should contain the strongest possible safeguards against this crime. We therefore urge the National Commission for the Revision of the Constitution to introduce into the Constitution a clear statement that torture and other cruel, inhuman or degrading treatment or punishment will not be tolerated under any circumstances, and that any evidence which is established to have been obtained as a result of torture shall not be invoked as evidence in any proceeding except against a person accused of using torture, as evidence that torture occurred.

In international human rights law the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment cannot be derogated from in any circumstances. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force in 1987 states, in Article 2(2): "No exceptional circumstances whatever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture." Paragraph 3 states: "An order from a superior officer or a public authority may not be invoked as a justification of torture." The International Covenant on Civil and Political Rights provides in Article 4 that the prohibition of torture may never be suspended in any circumstances (see Section 1 above).

Article 18 of the revised Constitution (see above) declares that the Law will protect personal integrity but it does not specifically forbid torture and other cruel, inhuman or degrading treatment or punishment.

Amnesty International urges that the Constitution clearly state that torture and other cruel, inhuman or degrading treatment or punishment will not be tolerated under any circumstances in accordance with the recommendations in Section 3 of its memorandum.

4. Fundamental freedoms

We urge that every effort be made to ensure that the chapter of the Constitution which enumerates basic rights incorporate all the fundamental rights and freedoms recognized by the universally accepted international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The following observations concern those rights and freedoms.

4.1 Freedom of thought, conscience and religion

Article 25 of Angola's current Constitution states: "Freedom of conscience and belief are inviolable. The People's Republic of Angola recognizes the equality of all religions and guarantees religious practices which are compatible with public order and the national interest".

The fundamental rights to freedom of thought, conscience and religion are guaranteed by Article 18 of the Universal Declaration of Human Rights. Article 18 of the International Covenant on Civil and Political Rights states, in paragraph 1: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching."

International standards permit no restrictions on this right (except in respect of the freedom "to manifest" one's religion). It is one of the rights that are non-derogable and may not be suspended in any circumstances.

Article 7 of the previous Constitution states:

The People's Republic of Angola is a lay State, where there is complete separation between the State and religious institutions. All religions will be respected and the State will protect churches and places and objects of worship as long as they conform to the Laws of the State.

Article 7 of the revised Constitution is the same except that the word "All" is omitted.

Article 29 of the revised Constitution is almost identical to Article 25 of the previous Constitution. It states:

Freedom of conscience and belief are inviolable. The Angolan State recognizes the equality of all religions and guarantees their practices as long as they are compatible with public order and the national interest.

In Amnesty International's view, to guarantee the right to freedom of conscience and belief only to the extent that their practices are "compatible with public order and the national interest" gives the State wide powers to restrict this right.

Amnesty International recommends that the Constitution permit no greater restriction on the rights guaranteed by Articles 7 and 29 other than that permitted by Article 18(3) of the International Covenant on Civil and Political Rights which states: "*Freedom to manifest*

one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The Covenant permits no derogation from the right to freedom of thought, conscience and religion in any circumstances."

4.2 Freedom of expression, information and association

We understand that the amendments currently under consideration include a provision for freedom of information and the press. In this context we would draw your attention to Article 19(2) of the International Covenant on Civil and Political Rights which states that freedom of expression includes the 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 medium ..."

We also urge that the Angolan Constitution should make it clear that any restrictions placed on any of these rights should be only such as are provided by law and are necessary for the respect of the fundamental rights and freedoms of others and to protect public safety, order, health or morals.

In the revised Constitution the freedoms of expression, information and association have been substantially increased.

Article 22 *The freedoms of expression, assembly, demonstration, association, the press and all other forms of expression are guaranteed.*

Groups whose aims or activities are inconsistent with the constitutional order, penal laws or (upset mutual) understanding among peoples, and those who pursue, even indirectly, political objectives through organizations of a military, para-military or militarized character are forbidden.

Article 23 *The right to professional and trade union organization is free, the Law is to guarantee the way it is exercised.*

All citizens have the right to organize and to take part in trade union activities, including the right to form and the freedom to join trade unions.

The Law will provide workers' elected representatives with adequate protection against any form of conditioning, compulsion or limitation on the exercise of their duties.

Article 24 *Workers have the right to strike.*

Specific laws will regulate the exercise of the right to strike and the limitations concerning necessary services and activities in the interests of indispensable social needs.

Lock-out is prohibited.

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Article 25 *The freedom of the press is guaranteed and cannot be subjected to any censorship of a political, ideological or artistic nature.*

The Law will regulate the way in which freedom of the press is exercised and make adequate provision for preventing and repressing the abuse (of this freedom).

Amnesty International welcomes the substantially increased rights under Articles 22 to 25 of the revised Constitution but is concerned that the limitations clauses in Articles 22 and 25 could permit the suppression of the non-violent exercise of internationally recognized rights.

Amnesty International notes that under Article 4.1 of the draft law published in the Jornal de Angola on 7 March 1991 on the Right of Assembly and Demonstration that these rights may be limited if the objective of an assembly or demonstration is to offend "the honour and consideration due to the organs of National Sovereignty". In Amnesty International's experience, offences against honour or good name have often been broadly defined or interpreted to allow for the imprisonment of people who are peacefully exercising their right to freedom of expression.

Amnesty International again recommends the inclusion in the Constitution of a statement to the effect that any limitation of these rights may only be such as are provided by law and are necessary in a democratic society for the protection of the rights and freedoms of others and to protect public safety, order, health or morals.

4.3 Freedom of movement and protection from "refoulement"

The Constitution currently in force in Angola does not guarantee freedom of movement. We recommend that the right of everyone to liberty of movement and freedom to leave any country, including one's own, and to return to one's own country be included in the Angolan Constitution. These rights are recognized in Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights.

With regard to aliens living lawfully within a country, Article 13 of the International Covenant on Civil and Political Rights provides that no one may be expelled except in pursuance of a decision reached in accordance with law and, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his or her expulsion and to have his or her case reviewed by, and be represented for the purpose before, the competent authority.

The revised Constitution contains no provision concerning the right to freedom of movement and the right not to be subjected to refoulement⁷.

Amnesty International recommends that these rights be included during the next revision of the Constitution.

5. Safeguards for those deprived of their liberty

5.1 General principles

The current Angolan Constitution, under Article 23, states that no citizen may be imprisoned and tried except in accordance with the law and all accused are guaranteed the right to defence.

Amnesty International urges that provisions in the revised Constitution concerning those deprived of their liberty should not provide less protection than those recognized in the international standards. In particular, we recommend that the Constitution provide at least the minimum safeguards contained in Article 9 of the International Covenant on Civil and Political rights including:

- a positive prohibition of arbitrary arrest and detention;
- the right of anyone arrested to be informed, at the time of arrest, of the reasons for his or her arrest and to be informed promptly of any charges against him or her;
- that anyone arrested or detained on a criminal charge shall be brought promptly (or within a specific period, for example, 48 hours⁸) before a judge or other officer authorized by law to exercise judicial power⁹ and shall be entitled to trial within a reasonable time or to release;

⁷ In 1981 and 1982 respectively Angola acceded to the UN Convention relating to the Status of Refugees (1951) and ratified the OAU Convention Governing Specific Aspects of Refugee Problems (1969). Both conventions prohibit the expulsion or return (refoulement) of refugees or asylum seekers as defined in the conventions.

⁸ With regard to the principle that all prisoners should be referred to a judicial authority "promptly" after their arrest, the Human Rights Committee, the monitoring body established under the International Covenant on Civil and Political Rights, stated in its General Comment on Article 9 of the International Covenant on Civil and Political Rights that "delays must not exceed a few days" (paragraph 2).

⁹ The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in December 1988, defines "a judicial or other authority" as one under law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

- that anyone who is deprived of his or her liberty by arrest or detention or anyone acting on his or her behalf shall be entitled to take proceedings (for example under *habeas corpus* or *amparo* procedures) in order that the court may decide without delay on the lawfulness of the detention and order his or her release if the detention is not lawful;
- that anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

The present provisions of Angolan law allowing the security forces to hold suspects for up to 90 days without referring them to a judicial authority (Law No. 4-D/80 of 25 June 1980) is inconsistent with the requirement that anyone arrested or detained on a criminal charge must be brought promptly before a judge. This requirement has been amplified by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 11 states: "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law" (paragraph 1).

The Body of Principles also provides, in Principle 19, that detained or imprisoned persons shall have the right "to be visited by and to correspond with, in particular, members of their families and adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations".

We therefore recommend that the revised Constitution should also include the right of all detainees to prompt access to legal counsel and to their families.

We urge that the rights mentioned above should be applicable, under the revised Constitution, to all those lawfully deprived of their liberty in any circumstances.

Article 26 of the revised Constitution is identical to Article 23 of the previous constitution.

Article 26 *No citizen may be imprisoned and tried except under the terms of the law and all accused persons are guaranteed the right to defence.*

Article 27 introduces the right to habeas corpus which, although not formally abolished, was effectively suspended from 1975 onwards.

Article 27 *To counter abuse of power by illegal arrest or detention the person affected or any citizen may petition a competent court for habeas corpus.
The Law will regulate the exercise of the right to habeas corpus.*

Amnesty International welcomes the inclusion in the Constitution of the right to habeas corpus.

Amnesty International recommends that the Constitution should specifically forbid arbitrary arrest and detention and that the rights of detainees should conform to those required under international human rights law as summarized in Section 5.1 above.

5.2 Administrative detention

Some countries make provisions for administrative detention which are applicable either in certain circumstances or to a certain category of prisoners. In Angola, the security services have exercised the power to detain suspects administratively for indefinite periods or for periods determined by them without reference to a judicial or other authority as defined under Section 5.1 above. Other detainees arrested under Law No. 4-D/80 of 25 June 1980 have been held in conditions amounting to administrative detention. According to Article 12.3 of this law, certain detainees, including those suspected of politically motivated offences, may be held incommunicado for up to 90 days for questioning before they are referred to a judicial authority to be formally charged. In practice, such detainees have been held under the effective control of the security authorities and many have been held incommunicado for much longer than even the 90-day limit.

In Amnesty International's experience the use of administrative detention or long-term detention which is not supervised by a "judicial or other authority" as defined above (hereafter referred to as "administrative detention"), by circumventing the safeguards of the criminal justice system, denies those detained any possibility of a fair trial. It also frequently facilitates other forms of human rights violations including arbitrary detention, torture and other cruel, inhuman or degrading treatment or even death. Torture is most likely to occur soon after arrest and the risk may be greatly increased if a detainee is held incommunicado and is denied access to a court or to family or legal representatives. Indeed, since administrative detention is an exceptional form of deprivation of liberty that takes place outside the ordinary criminal justice system it should generally not be envisaged in the absence of a declared state of emergency (see Section 1 above), if at all.

The Human Rights Committee¹⁰ has stressed in its General Comment on Article 9 of the Covenant that if administrative detention is used it must be controlled by the other applicable provisions of Article 9 of the Covenant, that is, that it "... must not be arbitrary and must be based on grounds and procedures established by law (paragraph 1), information on the reasons must be given (paragraph 2) and court control of the detention must be available (paragraph 4)".

¹⁰ The body set up under the International Covenant on Civil and Political Rights to monitor implementation of the Covenant.

If it were to be considered necessary to make special provision for administrative detention in Angola's revised Constitution, Amnesty International urges that such provisions also contain essential safeguards for such persons, in particular to prevent incommunicado detention and to ensure that the cases of all such detainees are reviewed regularly by judicial or other independent authorities.

We urge that, at a minimum, any provisions that may permit administrative detention should also ensure that:

- a) The grounds and procedures for ordering such detention should be clearly and specifically established in law and limited to exceptional circumstances. No one may be arbitrarily detained and, in particular, no one may be detained for the peaceful exercise of the rights guaranteed by the Constitution.
- b) All persons arrested under such provisions should be informed at the time of arrest of the specific reasons for their detention.
- c) Such detention should be ordered by or be subject to the effective control of a judicial authority or other authority as defined in (g) below.
- d) Detainees should not be kept in detention without the opportunity within the first hours or days after arrest to appear before an independent judicial or other authority as defined in (g) below in order to have the legality and necessity of their detention assessed.
- e) Detainees should have the right to prompt access to legal assistance of their own choice and to their family.
- f) The legality and necessity of such detention should be subject to frequent periodic review throughout the period of detention.
- g) The authority having the power to review such detention initially after arrest or periodically thereafter should be a judicial authority or one established under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence. The decisions of such an authority should be binding on the executive authorities and directly enforceable.
- h) Notwithstanding the provision of initial and periodic review procedures all detainees should have the right at any time to challenge their detention in court.
- i) In any review proceedings or court proceedings concerning such detention the detainee should be entitled to be present and to be assisted by legal counsel of his or her choice and should be afforded all other essential guarantees for a fair hearing, including a right of appeal to a higher tribunal.

Amnesty International welcomes the provisions to protect the rights of anyone deprived of their liberty contained in the draft State of Siege and State of Emergency Law (see above, pages 7 to 8 and below, page 32) but recommends that the other safeguards set forth under Section 5 of its memorandum should also be included.

Amnesty International recommends that the above-mentioned guarantees, including the establishment of a procedure by which the cases of all restricted or detained persons should be regularly reviewed by a court, be introduced.

6. The Judiciary

The independence of the judiciary is a vital element in the protection of human rights in general. In particular, judicial independence is necessary to ensure respect for certain specific rights including the right of everyone to be treated equally before the law, the right of all those accused of crimes to be presumed innocent until proved guilty and the right to a fair trial. Legal provisions governing the selection, appointment, tenure and dismissal of judges in a country are among the significant factors which determine their independence.

Amnesty International regarded the establishment of the Supreme People's Court in 1990 as a potentially important step in ensuring the independence of the judiciary in Angola. Although we have not yet been able to obtain a copy of the organic law of the Supreme People's Court, we hope that one of its purposes is to ensure the use of established legal procedures throughout the judicial system. Amnesty International has been concerned that the People's Revolutionary Court and the military courts have in the past used procedures which fall short of international standards for fair trial.

The importance of the independence of the judiciary is recognized in Article 14(1) of the International Covenant on Civil and Political Rights, which guarantees everyone the right "to a fair and public hearing by a competent, independent and impartial tribunal established by law". The elements of this right are spelled out in part in the Basic Principles on the Independence of the Judiciary, which were adopted unanimously by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1985. Subsequently, by Resolution 40/32 of 29 November 1985, the UN General Assembly endorsed the Basic Principles and, in a later resolution, 40/146 of 13 December 1985, stated that it welcomed the Basic Principles and invited governments "to respect them and to take them into account within the framework of their national legalisation and practice".

We recommend that guarantees in line with those contained in the Basic Principles be incorporated into the Constitution. In particular, the Constitution should ensure that persons selected for judicial office are persons of integrity, ability and appropriate legal qualifications

or training (Principle 10); that any proceedings to remove judges will require special safeguards including a fair hearing and an independent review of any decision to remove them (Principles 17 and 20); and that judges may only be removed for reasons of incapacity or "behaviour that renders them unfit to discharge their duties" rather than for any form of misconduct irrespective of its effect on their fitness for office (Principle 18).

In the interests of ensuring that the integrity of the judicial system and the independence of the judiciary is fully protected by the Constitution, we urge that the revised Constitution prohibit the creation of courts which would displace the jurisdiction of the ordinary courts. Principle 5 of the Basic Principles on the Independence of the Judiciary states that "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals".

Articles 78, 79, 81 and 83 of the revised Constitution are identical to Articles 73,74, 76 and 78 of the previous Constitution.

Article 78 *The courts guarantee the principles established in the Constitutional Law, assure socialist legality and the protection of the rights and legitimate interests of citizens and of the various bodies and entities.*

Article 79 *The courts repress and combat violations of legality, contribute to the development of the recuperation of delinquents and educate citizens in the free and conscious compliance with socialist laws and morality.*

Article 81 *In the exercise of their functions, the judges are independent and only owe obedience to the law.*

Article 83 *The Supreme People's Court and the Procuradoria-Geral da República (Attorney General's Office) respond to the People's Assembly, to whom they must present annual reports accounting for their activities.*

Amnesty International hopes that the recommendations in Section 6 of its memorandum will be taken into account during the next revision of the Constitution.

7. The right to fair trial

Amnesty International urges that the revised Constitution provide the right of everyone to be tried fairly and without undue delay by a competent, independent and impartial tribunal established by law. Provisions concerning the right to a fair trial should incorporate all the

guarantees recognized by the International Covenant on Civil and Political Rights in its Articles 9, 14 and 15.

In particular we urge that the provisions concerning the right to a fair trial in the Constitution specifically incorporate the following rights for everyone charged with a criminal offence:

- to be presumed innocent until proved guilty according to law;
- to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- to have adequate time and facilities for the preparation of the defence and to communicate with counsel of his or her own choosing;
- to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing (it is important that the right to legal assistance should be available, both during the preparation of the defence and during hearings before judicial authorities or in court and - as the Constitution already allows - defendants should be provided with legal assistance even if they are unable to pay for it);
- to examine, or to have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
- not to be compelled to testify against himself or herself or to confess guilt;
- to have his or her conviction and sentence reviewed by a higher tribunal.

In addition to these procedural guarantees, the International Covenant on Civil and Political Rights provides other substantive guarantees including the right of everyone:

- not to be tried or punished a second time for an offence for which he or she has already been finally convicted or acquitted in accordance with the law;
- not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed; nor to receive a heavier penalty than the one that was applicable by law at the time when the criminal offence was committed;
- to be compensated according to law if he or she has suffered punishment as a result of a miscarriage of justice.

The International Covenant on Civil and Political Rights also provides in Article 14(1) that trials should be public except in certain narrowly defined circumstances and that judgments must be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 26 of the revised Constitution is identical to Article 23 of the previous Constitution. It states:

No citizen may be imprisoned and tried except under the terms of the law and all accused persons are guaranteed the right to defence.

Amnesty International urges that during the next revision of the Constitution the right to a fair trial be specified in detail to include full guarantees for the defence.

8. The Police and Defence Forces and the Prison Service

In view of our concerns in the past that security and custodial officials have not been subject to adequate restraints to ensure that prisoners are properly treated, we urge that a provision binding police and defence force and custodial personnel in the performance of their duties to the observance of international standards be included in the Constitution. These standards include:

- The UN Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in December 1979 - this code applies human rights principles to the tasks of law enforcement officials;
- the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by consensus on 7 September 1990 by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the UN General Assembly in its Resolution 45/121 of 14 December 1990 - these principles elaborate on Article 3 of the Code of Conduct for Law Enforcement Officials, which requires that such officials use force only when strictly necessary and to the extent required for the performance of their duty;
- the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (referred to above);
- the UN Standard Minimum Rules for the Treatment of Prisoners adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council in resolutions of July 1957 and May 1977.

These rules set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

As an additional safeguard against human rights violations by security and custodial officials, the revised Constitution should stipulate that officials should be persons of recognized integrity and competence. It might also provide for the establishment of an independent commission which would review all senior appointments to these services to ensure the suitability of those appointed.

Article 86 of the revised Constitution states:

The Angolan Armed Forces, as an institution of the State, are permanent, regular and not affiliated to any political party, and are responsible for the military defence of the Nation and the guarantee of Constitutional powers.

The Angolan Armed Forces, under the supreme authority of the President of the Republic, obey the competent organs of sovereignty, under the terms of the present Law and other ordinary legislation.

The Angolan Armed Forces are composed exclusively of national citizens whose organization and training is established by Law.

Amnesty International recommends that the Constitution or ordinary legislation should bind not only the army but also the police and the prison service to the observance of international human rights standards governing the performance of their duties.

9. Alternatives to custodial sentences for conscientious objectors to military service

Under Article 19 of Angola's Constitution, participation in national defence is not only a right but also a duty and subsidiary legislation provides prison sentences for those who evade military conscription, even if they have purely conscientious reasons for doing so. In Amnesty International's view, such legislation allows for the imprisonment of people who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives, refuse to perform armed service or participate directly or indirectly in wars or armed conflicts. In Angola Jehovah's Witnesses and others have been detained for their conscientious objection to military service. Amnesty International believes that people who are detained for the non-violent exercise of their

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conscientiously held beliefs are "prisoners of conscience" and it calls for the unconditional release of such prisoners.

We recommend that the National Commission for the Revision of the Constitution consider some formula for the revision of Article 19 of the current Constitution in order to recognize conscientious objection as defined above. At the very least, the revised Constitution should not exclude the possibility of a provision in subsidiary legislation allowing conscientious objectors to perform some form of national service in a field which is not related to the armed forces.

Article 87 of the revised Constitution states:

To participate in the defence of the country's territorial integrity is the supreme and imperative right and duty of every citizen.

Military service is compulsory. The Law will define the way it is exercised.

Amnesty International recommends that alternatives to military service be provided for conscientious objectors.

10. Other provisions to reinforce constitutional rights and freedoms

10.1 Guarantees for restitution of any constitutional right which may be infringed

It is important that the Constitution should specify the ways in which fundamental rights and freedoms are to be protected and enforced. Aggrieved persons who claim that a fundamental right or freedom guaranteed by the Constitution has been infringed or threatened should be entitled by the Constitution to approach a competent court to enforce or protect the right or freedom in question.

Article 78 of the revised Constitution is the same as Article 73 of the previous Constitution. It states:

The courts guarantee the principles established in the Constitutional Law, assure socialist legality and the protection of the rights and legitimate interests of citizens and of the various bodies and entities.

Amnesty International recommends that the Constitution should clarify the way in which individuals may apply to the courts when their rights and freedoms have been violated. It should also empower the courts to make any necessary orders to ensure protection or restitution of violated rights and freedoms and to award appropriate compensation to victims of human rights violations.

10.2 Ombudsman's Office

Many constitutions also provide for the establishment of an Ombudsman who is independent of the government and whose method of appointment, powers and functions are outlined in the Constitution. The duties of the Ombudsman would include investigating alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unlawful, oppressive or unfair treatment of citizens by government officials and other complaints as may be defined by law. The Ombudsman should also have the power to take appropriate action to call for the remedying, correction and reversal of abuses including bringing proceedings in a competent court and making to the appropriate authorities any necessary recommendations for the reform of legislation or practice.

Amnesty International recommends that an independent body to monitor human rights and to help to prevent human rights violations be included in the Constitution.

10.3 The relevance of international human rights law in national law

The current Constitution states, in Article 14, that the People's Republic of Angola respects and applies the principles of the Charters of the United Nations and the Organization of African Unity in respect of friendly international relations. We suggest that, to ensure the greater protection of fundamental rights and freedoms, the revised Constitution should

acknowledge international human rights law as a source of Angolan law. It should also provide, with regard to international human rights treaties to which Angola is or becomes a party, that nothing in the Constitution or other law shall be interpreted to exclude any of the fundamental rights and freedoms contained in these treaties or limit them to a greater extent than is provided for in the treaties. The revised Constitution should also require all courts to enforce such treaties in litigation, even if not invoked by the parties.

Amnesty International welcomes Angola's ratification of the African Charter on Human and Peoples' Rights. It hopes that steps will be taken as soon as possible to ratify the International Covenant on Civil and Political Rights and its Optional Protocols and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International again recommends that the Constitution should provide for international human rights treaties to which Angola is or becomes a party to be fully incorporated into Angolan law.

SUMMARY of AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR THE NEXT REVISION OF THE CONSTITUTION

1. Amnesty International urges that the Constitution should forbid the imposition of any restrictions on the rights enumerated in the Constitution that go beyond those allowed by the International Covenant on Civil and Political Rights. The Constitution should provide that that no law or regulation and no action by executive agencies of government may abolish or abridge the fundamental rights and freedoms contained in the Constitution.

Amnesty International recommends that Article 36 of the revised Constitution (and relevant Articles of the Law on the State of Siege and State of Emergency) be made consistent with Article 4 of the Covenant on Civil and Political Rights and in particular:

- that Article 36 should clarify that during a state of siege or emergency rights or freedoms may only be suspended or limited to the extent strictly required by the exigencies of the situation;

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- that Article 36 expressly include the prohibition against torture or other cruel, inhuman or degrading treatment among the guarantees which may not be affected by a state of siege or emergency;
- that Article 36 clarify that neither a state of siege nor a state of emergency may be declared except in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.

Amnesty International also recommends that all Articles of the revised Constitution which refer to rights that may never be suspended should contain a clear statement to this effect.

2. Amnesty International most strongly urges that the death penalty should be abolished.
3. Amnesty International urges that the Constitution clearly state that torture and other cruel, inhuman or degrading treatment or punishment will not be tolerated under any circumstances.
4. Amnesty International recommends that the right to freedom of conscience and belief should not be subject to any restrictions other than those permitted in Article 18 of the International Covenant on Civil and Political Rights.
5. Amnesty International recommends that the rights to freedom of movement and not to be subjected to refoulement be included in the Constitution.
6. Amnesty International recommends that the Constitution should specifically forbid arbitrary arrest and detention and that the rights of detainees should conform to those required under international human rights law.
7. Amnesty International recommends that the safeguards for persons restricted or detained during a State of Siege or State of Emergency should contain all those guarantees enumerated on pages 17 to 18 above. In particular:
 - detentions or restrictions should be governed by procedures clearly and specifically established in law;
 - they should be subject to the effective control of a competent, impartial and independent judicial authority;
 - the legality and necessity of such detention or restriction should be subject to frequent periodic review by a judicial or other authority throughout the period of detention.
8. Amnesty International recommends that the Constitution incorporate guarantees for the independence of the judiciary including provisions for the selection for judicial office of persons of integrity, ability and appropriate qualifications; guarantees for their security of tenure and against their dismissal for misconduct irrespective of its effect on their fitness for office; and a prohibition of the establishment of courts whose procedures fall short of international standards for fair trial.
9. Amnesty International recommends that the right to a fair trial be specified in detail to include full guarantees for the defence in accordance with Article 14 of the International Covenant on Civil and Political Rights.

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10. Amnesty International recommends that the Constitution or ordinary legislation should provide that all military, police and prison officials be required to respect international human rights standards applicable to their duties.
11. Amnesty International recommends that the Constitution provide alternatives to military service for conscientious objectors.
12. Amnesty International recommends that the Constitution should clarify the way in which individuals may apply to the courts when their rights and freedoms have been violated. It should empower the courts to make any necessary orders to ensure protection or restitution of violated rights and freedoms and to award appropriate compensation to victims of human rights violations.
13. Amnesty International recommends that an independent body to monitor and to help to prevent human rights violations, such as an Ombudsman's office, be established.
14. Amnesty International recommends that the government ratify the International Covenant on Civil and Political Rights and its Optional Protocols and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It further recommends that the Constitution should provide for international human rights treaties to which Angola is or becomes a party to be fully incorporated into Angolan law.

TABLE
Comparison of human rights provisions
in Angola's previous and present Constitutions

Previous Constitution	Present Constitution
<p>2 All sovereignty resides in the Angolan People. The MPLA-Workers' Party constitutes the organized vanguard of the working class and, as a Marxist-Leninist Party, is responsible for the political, economic and social leadership of the State in the efforts to construct Socialist Society.</p>	<p>2 The People's Republic of Angola, as a sovereign, independent State, is founded on national unity, the dignity of the human person, pluralism of expression and of political organization and respect for and guaranteed support of fundamental human rights and liberties for both individuals and members of organized social groups.</p>
<p>7 The People's Republic of Angola is a lay State, where there is complete separation between the State and religious institutions. All religions will be respected and the State will protect churches and places and objects of worship as long as they conform to the Laws of the State.</p>	<p>7 The People's Republic of Angola is a lay State, where there is complete separation between the State and religious institutions. Religions will be respected and the State will protect churches and places and objects of worship as long as they conform to the Laws of the State.</p>
<p>17 The State protects individuals and human dignity. All citizens have the right to the free development of their personality within the respect due to the rights of others and to the superior interests of the Angolan People. The Law will protect the life, liberty, personal integrity, the good name and reputation of every citizen.</p>	<p>18 The State protects individuals and human dignity. All citizens have the right to the free development of their personality within the respect due to the rights of others and to the superior interests of the Angolan Nation. The Law will protect the life, liberty, personal integrity, the good name and reputation of every citizen.</p>
<p>18 All citizens are equal before the law and enjoy the same rights and are subject to the same duties, without distinction of colour, race, ethnic origin, sex, place of birth, religion, level of education or social or economic status.</p> <p>The law will severely punish all acts that may prejudice social harmony or give rise to discrimination or privilege on these grounds.</p>	<p>19 (Unchanged) All citizens are equal before the law and enjoy the same rights and are subject to the same duties, without distinction of colour, race, ethnic origin, sex, place of birth, religion, level of education or social or economic status.</p> <p>The law will severely punish all acts that may prejudice social harmony or give rise to discrimination or privilege on these grounds.</p>
	<p>86 The Angolan Armed Forces, as an institution of the State, are permanent, regular and not affiliated to any political party, and are responsible for the military defence</p>

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	<p>of the Nation and the guarantee of Constitutional powers.</p> <p>The Angolan Armed Forces, under the supreme authority of the President of the Republic, obey the competent organs of sovereignty, under the terms of the present Law and other ordinary legislation.</p> <p>The Angolan Armed Forces are composed exclusively of national citizens whose organization and training is established by Law.</p>
<p>19 To participate in the defence of the country's territorial integrity and to defend and increase revolutionary advances is the supreme and imperative right and duty of every citizen of the People's Republic of Angola.</p>	<p>87 To participate in the defence of the country's territorial integrity is the supreme and imperative right and duty of every citizen.</p> <p>Military service is compulsory. The Law will define the way it is exercised.</p>
<p>22 In the context of the fulfilment of the fundamental objectives of the People's Republic of Angola, the law will protect the right of free expression, assembly and association.</p>	<p>22 The freedoms of expression, assembly, demonstration, association, the press and all other forms of expression are guaranteed.</p> <p>Groups whose aims or activities are inconsistent with the constitutional order, penal laws or (upset mutual) understanding among peoples, and those who pursue, even indirectly, political objectives through organizations of a military, para-military or militarized character are forbidden.</p>
	<p>23 The right to professional and trade union organization is free; the Law is to guarantee the way it is exercised.</p> <p>All citizens have the right to organize and to take part in trade union activities, including the right to form and the freedom to join trade unions.</p> <p>The Law will provide workers' elected representatives with adequate protection against any form of conditioning, compulsion or limitation on the exercise of their duties.</p>
	<p>24 Workers have the right to strike.</p> <p>Specific laws will regulate the exercise of the right to strike and the limitations concerning necessary services and activities in the interests of indispensable social needs.</p> <p>Lock-out is prohibited.</p>
	<p>25 The freedom of the press is guaranteed and cannot be subjected to any censorship of a political, ideological or artistic nature.</p> <p>The Law will regulate the way in which freedom of the press is exercised and make adequate provision for preventing and repressing the abuse (of this freedom).</p>
<p>23 No citizen may be imprisoned and tried except under the terms of the law and all accused persons are</p>	<p>26 (Unchanged) No citizen may be imprisoned and tried except under the terms of the law and all accused persons</p>

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guaranteed the right to defence.	are guaranteed the right to defence.
	<p>27 To counter abuse of power by illegal arrest or detention the person concerned or any citizen may petition a competent court for habeas corpus.</p> <p>The Law will regulate the exercise of the right to habeas corpus.</p>
24 The People's Republic of Angola guarantees individual liberties, namely inviolability of the home and the privacy of correspondence, with the limits especially provided by law.	28 The State guarantees individual liberties, namely inviolability of the home and privacy of correspondence with the limits especially provided by law.
25 Freedom of conscience and belief are inviolable. The People's Republic of Angola recognizes the equality of all religions and guarantees religious practices which are compatible with public order and the national interest.	29 Freedom of conscience and belief are inviolable. The Angolan State recognizes the equality of all religions and guarantees their practices as long as they are compatible with public order and the national interest.
	<p>36 The exercise of citizens' rights, liberties and guarantees may be suspended or limited in a State of Siege declared under the terms of the present Law and other ordinary legislation.</p> <p>In no case will the State of Siege or State of Emergency affect the right to life, the right to personal integrity and identity, civil status, citizenship and the non-retroactivity of penal law, the right of accused persons to defence and the freedom of conscience and religion.</p> <p>Specific law will regulate states of exception, namely the State of Siege and the State of Emergency.</p>
	<p>38 State bodies are organized and function under the following rules:</p> <p>a)...</p> <p>b) in all collegial bodies there will be freedom to discuss, to make proposals and to criticize the activity of any State Body, the minority submitting to the majority.</p>
73 The courts guarantee the principles established in the Constitutional Law, assure socialist legality and the protection of the rights and legitimate interests of citizens and of the various bodies and entities.	78 (Unchanged) The courts guarantee the principles established in the Constitutional Law, assure socialist legality and the protection of the rights and legitimate interests of citizens and of the various bodies and entities.
74 The courts repress and combat violations of legality, contribute to the development of the recuperation of delinquents and educate citizens in the free and conscious compliance with socialist laws and morality.	79 (Unchanged) The courts repress and combat violations of legality, contribute to the development of the recuperation of delinquents and educate citizens in the free and conscious compliance with socialist laws and morality.
76 In the exercise of their functions, the judges are	81 (Unchanged) In the exercise of their functions, the

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independent and only owe obedience to the law.	judges are independent and only owe obedience to the law.
78 The Supreme People's Court and the Attorney General of the Republic respond to the People's Assembly, to whom they must present annual reports accounting for their activities.	83 (Unchanged) The Supreme People's Court and the <u>Procuradoria-Geral da República</u> (Attorney General's Office) respond to the People's Assembly, to whom they must present annual reports accounting for their activities.

Extracts from the draft Law on the State of Siege and the State of Emergency published in the daily newspaper, Jornal de Angola, on 6 March 1991.

Article 3.1. The State of Siege may be declared in cases of verified or imminent acts of invasion by foreign forces or riots which endanger the sovereignty, the independence, the territorial integrity or the constitutional order where these cannot be countered by normal methods available to the State.

Article 5 of this law states:

1. In no case can the declaration of a State of Siege or Emergency affect the rights to life, to personal integrity and identity, to civil status and citizenship, to the non-retroactivity of penal Law, the right of accused persons to defence and the freedoms of conscience and religion.
2. In cases of the suspension of the exercise of rights, freedoms and guarantees the principle of equality and non-discrimination will be respected and the following limits will be observed:
 - a) the detention or house arrest of persons who breach security regulations must be immediately reported to the competent magistrate of the Procuradoria-Geral da República (Attorney General's Office) within the maximum period of 48 hours, counting from the date of the occurrence and the (persons restricted or detained) must be guaranteed the right to habeas corpus;
 - b)
 - c)
 - d) any kind of publication, Radio or Television broadcast, cinema or theatre performance, may be suspended and any publication may be seized but these measures may not constitute any form of previous censorship;
 - e) meetings of the statutory bodies of parties, unions and associations may in no case be dissolved nor may they be required to provide prior notice (of meetings).
3. Citizens whose rights, freedoms and guarantees are violated during the period of the State of Siege or State of Emergency, or (who are affected by) any illicit measure adopted during this period, namely illegal or unjustified privation of liberty, have the general right to compensation.
