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# *amnesty international*

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## **United Nations General Assembly, 56<sup>th</sup> Session 2001, Draft Comprehensive Convention on International Terrorism: A Threat to Human Rights Standards**

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### **AI Statement to the UN General Assembly**

Amnesty International is deeply concerned that some provisions in the draft Comprehensive Convention on International Terrorism (draft Convention), U.N. Doc. A/C.6/55/1, 28 August 2000<sup>1</sup>, would violate fundamental human rights, and calls for the draft to be amended.

### **Amnesty International's concerns**

#### **A. Overly broad definition of "terrorism" risks violating the right to freedom of expression and the right to association**

Article 2 (3) is dangerously broad and could be used to prosecute persons for the peaceful exercise of freedom of expression and association if they express sympathy for the aims of "terrorist" organizations without endorsing their means. It states that a person commits a "terrorist" offence if he or she, *inter alia*, "[i]n any other way contributes to the commission of one or

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<sup>1</sup>United Nations General Assembly, 56<sup>th</sup> session 2001

more offences referred to in paragraphs 1, 2 or 3 (a) by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned". Thus, a person may be held criminally responsible simply for voicing support for the aims of a "terrorist" group without endorsing the violent means of the group.

**B. Failure to protect the right to seek asylum and not to be subject to *refoulement***

The draft Convention undermines rights of asylum-seekers currently enshrined in international law. Article 7 states that "States Parties shall take appropriate measures, before granting asylum, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds indicating his involvement in any offence referred to in article 2."

The obligations of states with regard to asylum-seekers and refugees, including provisions on exclusion from refugee status, are set out in international instruments including the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. Grounds for exclusion under Article 1(F) of the Refugee Convention include crimes against peace, war crimes or crimes against humanity. The effect of Article 2 and 7 of the draft Convention would be to expand the grounds for exclusion to acts of violence that do not amount to such crimes. Article 2 could be interpreted as considering all acts of armed political groups to be acts of "terrorism", even when they do not violate international humanitarian law. As such the draft Convention would create an obligation on states to prosecute or extradite members of armed political groups for such acts who currently might qualify for asylum.

Further, Article 7 undermines a fundamental procedural safeguard in asylum cases. Currently any decision to exclude someone from refugee status must be made within the context of a full and fair individual process of determination of an asylum claim, in line with relevant international standards such as the 1996 UNHCR *The exclusion clauses: guidelines on their application*. Insisting on a prior screening of all asylum seekers risks criminalizing the concept of refugee and could unnecessarily burden the asylum determination process, given that only a small percentage of applicants would be excluded. The relevant references to these instruments or standards should either be mentioned here and in Article 21, or Article 7 should be dropped.

The draft Convention also fails to recognize the right of all persons not to be subject to *refoulement* to places where they would risk persecution or

other serious human rights abuses, including torture, extrajudicial executions and “disappearances”. Amnesty International also opposes the *refoulement* of persons at risk of being sentenced to death. The principle of *non-refoulement* is set out in a number of international treaties and is generally regarded as a principle of customary international law. Amnesty International believes that the prohibition of *refoulement* applies in all cases where persons are at risk of serious human rights abuses, regardless of whether it may be argued that the person concerned falls outside the scope of the protection afforded by the 1951 Refugee Convention. The principle of *non-refoulement* should be expressly recognized in the Convention, and it should also be recognized as a mandatory ground for refusal of an extradition request.

### **C. Absence of adequate guarantees of the right to fair trial**

The draft Convention fails to provide adequate guarantees of the right to fair trial. For example, Article 12, although it requires that any person taken into custody should be guaranteed fair treatment, expressly refers only to rights under national law of the detaining state and “applicable provisions of international law, including international humanitarian law”. If a state is not a party to the International Covenant on Civil and Political Rights (ICCPR), the due process and fair trial guarantees in Articles 9, 14 and 15 of the ICCPR would not expressly apply. In addition, there is a broad range of human rights guarantees not in the form of treaties which apply to all persons under detention, such as those in the Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors and the Basic Principles on the Independence of the Judiciary, which are intended to apply at all times. Article 10 (5) provides for notice to the state of the person’s nationality, but not to families or to lawyers; often that state may not be the most effective protector of the detainee’s rights. The Convention must include safeguards guaranteeing the right to fair trial.

### **D. Collective punishment and infringement of the right to freedom of association**

Article 9 would permit states to prosecute legal entities, such as trade unions, political parties and other non-governmental organizations, based solely on the commission of a “terrorist” offence by one of its officers. This could result in collective criminal punishment of an organization - and, possibly, its members - for the criminal act of one individual. This article should be deleted.

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