



## Support for the draft Global Principles on National Security and the Right to Information

5 December 2012

### Amnesty International supports the draft Global Principles

Amnesty International supports current drafts of the Global Principles on National Security and the Right to Information as prepared by the Open Society Justice Initiative (OSJI) in consultation with a wide range of actors.<sup>1</sup>

The Global Principles have the potential to be a credible and effective form of guidance to governments, civil society and individuals, if the text is consistent with international human rights standards and at the same time realistic about legitimate national security interests of states. Amnesty International believes that the approach taken by the draft Global Principles can satisfy both of these criteria. Amnesty International will continue to participate in the process of finalizing the draft Global Principles with the objective of ensuring that the final version remains consistent with international human rights standards.

### Background

The Parliamentary Assembly of the Council of Europe has affirmed the general guiding principle in this area that, "information and evidence concerning civil, criminal or political liability of the state's representatives for human rights violations are not and must not be considered worthy of protection as state secrets."<sup>2</sup>

Other more specific relevant standards include:

- The right of victims of violations of human rights and humanitarian law to an effective remedy. This includes rights of access to investigations and proceedings, and the right ultimately to have the truth about the violations disclosed and publicly acknowledged by the authorities.<sup>3</sup>
- The right of society as a whole to the truth about human rights violations.<sup>4</sup>
- The rights of detainees and those with a specific interest in their well-being to certain basic information necessary to prevent arbitrary detention, torture or other cruel, inhuman or degrading treatment, and enforced disappearance or other forms of secret detention.<sup>5</sup>
- The right to fair trial of a person who is the subject of criminal proceedings.<sup>6</sup>

- The right of everyone to “seek, receive and impart information” as an aspect of freedom of expression, subject only to such restrictions as are demonstrably justified pursuant to, amongst other things, national security.<sup>7</sup>
- The right of government employees in certain circumstances to reveal, in the public interest, wrongdoing that would otherwise be concealed (particularly, though not exclusively, violations of human rights), as an aspect of freedom of expression.<sup>8</sup>

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<sup>1</sup> I.e. the draft circulated to the Committee (current as of 18 November 2012) with some further clarifying amendments that have been discussed with OSJI.

<sup>2</sup> Parliamentary Assembly of the Council of Europe (PACE), Resolution 1562 (2007), para 9 and Recommendation 1801 (2007), para 3. The PACE Committee on Legal Affairs and Human Rights report on ‘Abuse of State Secrecy and National Security: Obstacles to Parliamentary and Judicial Scrutiny of Human Rights Violations’, (16 September 2011, Doc. 12714) states that “to make scrutiny more effective, it should first be made clear, through legislation or judicial interpretation, that secrets relating to individual criminal or political responsibility for crimes and/or serious human rights violations are not covered by laws designed to protect state secrets and national security” (para 53). See also report of the Special Rapporteur on counter-terrorism and human rights, Human Rights Council, UN Doc A/HRC/10/3 (4 February 2009), paras 58-63, 75. And see PACE, Resolution 1838(2011), 6 October 2011, para 4; and PACE, Recommendation 1983(2011), 6 October 2011, para 2.1.

<sup>3</sup> E.g. UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147 (21 March 2006), Principles 11, 22, 24. Human Rights Committee, General Comment No 31 [The Nature of the General Legal Obligation Imposed on States Parties to the Covenant], UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), paras 15, 16, 20. Committee against Torture, General Comment no 3 [redress for victims of torture, article 14], UN Doc CAT/C/GC/3 (19 November 2012), para 16.

<sup>4</sup> See e.g. UN Human Rights Council, resolution 9/11 ‘Right to the truth’, UN Doc A/HRC/RES/9/11 (24 September 2008); resolution 12/12, UN Doc A/HRC/RES/12/12 (1 October 2009). UN General Assembly, resolution 65/196, UN Doc A/RES/65/196 (21 December 2010). Inter-American Court of Human Rights, *Gomes Lund et al. (“Guerrilha do Araguaia”) v Brazil*, Series C No 219 (24 November 2010), paras 200-202, and 230.

<sup>5</sup> See e.g. Declaration on the Protection of All Persons from Enforced Disappearance, UN General Assembly Resolution 47/133 (18 December 1992); International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entry into force 23 December 2010). Human Rights Committee, General Comment No 20 [Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment], UN Doc A/47/40 pp 193-195 (10 March 1992). UN Human Rights Council, “Joint study on global practises in relation to secret detention in the context of countering terrorism” by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances, UN Doc A/HRC/13/42 (19 February 2010). Committee against Torture, General Comment no 2 [prevention of acts of torture, article 2], UN Doc CAT/C/GC/2 (24 January 2008), para 13.

<sup>6</sup> E.g. art 14 ICCPR, art 6 ECHR. Human Rights Committee, General comment no. 32 [fair trial, article 14], UN Doc CCPR/C/GC/32 (23 August 2007), para 33.

<sup>7</sup> Art 19 ICCPR, art 10 (ECHR); Human Rights Committee, General Comment no 34 [Freedoms of Opinion and Expression], UN Doc CCPR/C/GC/34 (12 September 2011).

<sup>8</sup> See e.g. PACE Resolution 1729 (2010); Art 19 (ICCPR), art 10 (ECHR); European Court of Human Rights, jurisprudence summarized in *Heinisch v. Germany*, App 28274/08 (21 July 2011), paras 43-50, 62-70.