Amnesty International and International Commission of Jurists' Comments on the Steering Committee for Human Rights' (CDDH) "Possible Issues for inclusion in a political declaration" (Doc. CDDH(2026)01)

8 January 2026

Amnesty International and the International Commission of Jurists (ICJ) are grateful for the opportunity to give their views on the Steering Committee for Human Rights' (CDDH) document CDDH(2026)01 "Possible Issues for inclusion in a political declaration", of 6 January 2026. The present submission is limited to selected aspects of the issues identified in the document and does not address all elements that may arise in the context of a future political declaration. As a general principle, Amnesty International and the ICJ recall that the European Convention on Human Rights and its Protocols establish binding legal obligations on the Contracting Parties to secure the rights defined therein to everyone within their jurisdiction without discrimination, that certain Convention rights, including under Article 3, are absolute and non-derogable, and that the Convention does not permit the exclusion of specific groups or categories of persons from its protection. Amnesty International and the ICJ further recall that the prohibition of torture and inhuman or degrading treatment or punishment constitutes a peremptory norm of international law (jus cogens).

1. Comments on possible basic elements and issues proposed for inclusion in section II paragraph 5:

- **CDDH(2026)01, page 3 - Object and purpose of the Convention** – *Reaffirm the States Parties' rejection of attacks at high political levels on the rights protected by the Convention and the judgments of the Court seeking to safeguard them.* (Reykjavik)

Amnesty International and ICJ support the inclusion of language rejecting political attacks on the Convention system. The proposed inclusion also reflects the views and concerns expressed by the Council of Europe's Commissioner for Human Rights.[1]

- **CDDH(2026)01, page 3 - Subsidiarity/ margin of appreciation -** *Invite the Court, when examining cases related to asylum and immigration, to assess and take full account of the effectiveness of domestic procedures and, where these procedures are seen to operate fairly and with respect for human rights, to avoid intervening except in the most exceptional circumstances.* (Izmir)

Amnesty International and ICJ recommend that this paragraph be deleted, as it is inconsistent with the rule of law, with the separation of powers, with the right to petition the Court, with the non-discrimination principle, as well as with the right to equality before the law and to equal protection of the law without discrimination, and thus antithetical to the Convention system as a whole. Moreover, it is inappropriate to single out and propose a distinct treatment by the Court of issues related to one area of law. The language proposed appears to press the Court to apply a lower standard of review to cases related to asylum and immigration, intervening only "in the most exceptional circumstances". The proposed language suggests not only an interference with the Court's task to interpret the Convention rights

[1] Commissioner for Human Rights, "Attacks on the Human Rights of migrants put all our rights at risk", June 2025 https://www.coe.int/en/web/commissioner/-/attacks-on-the-hr-of-migrants-put-all-our-rights-at-risk

independently and develop its case-law; it also seeks, without justification, to single out asylum and immigration cases as meriting a lesser standard of review by the Court.[2]

- **CDDH(2026)01, page 3 - Shared responsibility** - *Underline the need to secure an effective, focused and balanced Convention system, where the States Parties effectively implement the Convention at national level, and where the Court can focus its efforts on identifying serious or widespread violations, systemic and structural problems, and important questions of interpretation and application of the Convention*. (Copenhagen)

Amnesty International and ICJ recommend that language that mischaracterizes the remit and role of the Court, seeking to limit it is not included. In calling for a more "focused and balanced" Convention system, the Copenhagen declaration (which is the source of the language proposed for inclusion) appears to misconstrue the meaning and purpose of the principle of subsidiarity as allowing or even requiring the Court to limit or delegate aspects of its material jurisdiction to the State Parties. Such ideas were rejected by the longer-term review conducted by the CDDH in 2014-2015. We recall that subsidiarity is not about challenging the authority of the Court in respect of its scrutiny of Convention compliance by States. It is also not about an allocation of jurisdiction on Convention rights and issues between State Parties and the Court. Rather, subsidiarity reflects the respective responsibilities of State Parties to implement Convention rights and provide effective remedies when those rights are violated and of the Court to supervise this implementation, in relation to the whole range of Convention rights. Narrowing the scope of the review by Court runs counter to the idea that human rights should be applied in a consistent manner throughout the Council of Europe region. We also recall that the level of effort and resources required of the Court is dependent on the effectiveness of the implementation of the Convention by State Parties.[3]

- **CDDH(2026)01, page 5 - Migration/ States' rights & responsibilities** *Stress the importance of States Parties' managing and protecting borders, which may include putting arrangements in place at their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements.* (Case-law)

Amnesty International and ICJ understand that the case law relied upon for the language proposed for inclusion consists only of the case of *N.D. & N.T. v. Spain*, nos. 8675/15 & 8697/15, para. 168.[4] We recommend integrating this reference with complementary principles, expressed by the Court in para.

[2] The above position is based on the stance expressed by Amnesty International and others in: The AIRE Centre, Amnesty International, the European Human Rights Advocacy Centre, the European Implementation Network, Fair Trials, the International Commission of Jurists, Open Society Justice Initiative and the World Organisation Against Torture (OMCT), Joint NGO Response to the Draft Copenhagen Declaration 13 February 2018, https://www.icj.org/wp-content/uploads/2018/02/Europe-JointNGO-Response-Copenhagen-Declaration-Advocacy-2018-ENG.pdf

[3] The position expressed in the above paragraphs is based on: Joint NGO Response to the Draft Copenhagen Declaration 13 February 2018, cited above.

[4] "168. With this in mind, the Court stresses the importance of managing and protecting borders and of the role played in that regard, for those States concerned, by the Schengen Borders Code, which provides that "[b]order control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control" and "should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations" (recital 6, see paragraph 45 above). For that reason, the Contracting States may in principle put arrangements in place at their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements."

171[5] and 184[6] of the same judgment. **Amnesty International and ICJ therefore suggest to add the following element**:

- **Stress that the domestic rules governing border controls may not render inoperative or ineffective the rights guaranteed by the Convention and the Protocols thereto. (Case law)**

- **CDDH(2026)01, page 5 -** Recall the States Parties' right to establish their own immigration policies, potentially in the context of bilateral cooperation or in accordance with their obligations stemming from membership of the European Union. (Case law).

Amnesty International and ICJ recall that the Court has found that "States […] cannot evade their own responsibility by relying on obligations arising out of bilateral agreements with other countries" (*M.A. and Z.R. v. Cyprus,* para. 91. Also, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, para. 129).

- **CDDH(2026)01, page 5 -** "**Migration/ extradition (Article 3)** *Recall that the Convention does not purport to be a means of requiring the States Parties to impose Convention standards on other States, such that treatment which might violate Article 3 of the Convention because of an act or omission of a Contracting State might not attain the minimum level of severity which is required for there to be a violation of Article 3 in an expulsion or extradition case."* (case law)

- *Welcome the Court's caution in finding that removal from the territory of a State Party would be contrary to Article 3 of the Convention.* (case law)

Amnesty International and ICJ regret to note that the only references to standards on Article 3 proposed for inclusion are aimed at limiting the application of this provision and could be interpreted as an attempt to improperly and unduly seeking to influence the Court's independent determination of cases before it.

In all cases, we submit that, while recalling the limits and a high threshold existing for the application of Article 3, the prospective political declaration should also acknowledge the fundamental importance

[5] "171. In that regard it should be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among many other authorities, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 136, ECHR 2005-XI; *Hirsi Jamaa and Others*, cited above, § 175; and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 272, 13 September 2016). The Court has also emphasised, like UNHCR, the link between the scope of Article 4 of Protocol No. 4 as defined by the Grand Chamber, and that of the Geneva Convention and of the principle of *non-refoulement* (see *Sharifi and Others*, cited above, § 211). *Hence, the domestic rules governing border controls may not render inoperative or ineffective the rights guaranteed by the Convention and the Protocols thereto, and in particular by Article 3 of the Convention and Article 4 of Protocol No. 4*." Emphasis added.

[6] "184. For its part, the Court has not hitherto ruled on the distinction between the non-admission and expulsion of aliens, and in particular of migrants or asylum-seekers, who are within the jurisdiction of a State that is forcibly removing them from its territory. For persons in danger of ill-treatment in the country of destination, the risk is the same in both cases, namely that of being exposed to such treatment. Examination of the international and EU law materials referred to above supports the Court's view that the protection of the Convention, which is to be interpreted autonomously (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 48, ECHR 2009; *Del Río Prada v. Spain* [GC], no. 42750/09, § 81, ECHR 2013; and *Allen v. the United Kingdom* [GC], no. 25424/09, § 95, ECHR 2013) cannot be dependent on formal considerations such as whether the persons to be protected were admitted to the territory of a Contracting State in conformity with a particular provision of national or European law applicable to the situation in question. The opposite approach would entail serious risks of arbitrariness, in so far as persons entitled to protection under the Convention could be deprived of such protection on the basis of purely formal considerations, for instance on the grounds that, not having crossed the State's border lawfully, they could not make a valid claim for protection under the Convention. *States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions cannot go so far as to render ineffective the protection afforded by the Convention, and in particular by Article 3* (see, *mutatis mutandis*, *M.S.S. v. Belgium and Greece*, cited above, § 216, and *Amuur v. France*, 25 June 1996, § 43, *Reports* 1996-III)." Emphasis added.

of this provision and the obligations it imposes upon States, especially where there is an "arguable complaint" that a return decision would result in a real risk of a violation of the said provision.

Amnesty International and ICJ recommend that the following language is also included among the basic elements of the political declaration:

- **Recall that "the prohibition of inhuman or degrading treatment, enshrined in Article 3 of the Convention, is one of the most fundamental values of democratic societies. It is also a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention" (*Ilias & Ahmed v. Hungary* [GC], no. 47287/15, para. 124)**
- **Recall that Article 3 enshrines an absolute right and "makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation" (*Chahal v. The United Kingdom*, No. 22414/93, para. 79)[7] and that both the prohibition of torture and the principle of non-refoulement constitute peremptory norms of public international law (as per: International Law Commission, Report of the Seventy-first Session, Chapter V. Peremptory norms of general international law (jus cogens), 2019, A/74/10, as stated in the annex to CDDH(2026)01 under para. 29)**

2. Comments on the appendix:

Amnesty International and ICJ bring to the attention of the CDDH the following references to the principle of the harmonious interpretation of the Convention with other instruments of international law, that complement the references already included. Specifically:

- **"[…] as the Court has made clear on many occasions, the Convention must be interpreted in harmony with the other rules of international law of which it forms part. In *Varnava and others* […], for example, it held that Articles 2 and 5 of the Convention should be interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law which play an indispensable and universally-accepted role in mitigating the savagery and inhumanity of armed conflict" (*Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 719).[8]**
- **"172. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969. Pursuant to the Vienna Convention, the Court must establish the ordinary meaning to be given to the terms in their context and in the light of the object and purpose of the provision from which they are taken. It must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions. Thus the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take**

[7] This principle is included in the annex to the CDDH(2026)01 at para. 28.
[8] Cited in https://ks.echr.coe.int/documents/d/echr-ks/focus-on-immigration

into account any relevant rules and principles of international law applicable in relations between the Contracting Parties" (*N.D. & N.T. v. Spain*, nos. 8675/15 & 8697/15, para. 172).

Amnesty International and ICJ submit that there are instances where the quality of the asylum procedures and access to such procedures in either a Member State or a third state of return can form part of the Court's assessment. This is particularly the case where an asylum-seeker alleges a real risk of refoulement upon transfer from a EU member State to another or to a third country.[9]

[9] *Ilias and Ahmed v. Hungary*, no. 47287/15, para.139; *M.A. and Z.R. v. Cyprus*, no. 39090/20, para. 94.