



## **TECHNICAL NOTE ON INTERNATIONAL LAW AND UN POLICY REGULATING AMNESTIES**

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The present technical note aims at informing the current debate in Thailand on the draft Amnesty Bill by setting out the relevant international law and United Nations policy on amnesties.

Any legal measure that has the effect of prospectively barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals in respect of specified criminal conduct or retroactively nullifying legal liability previously established, is considered as an amnesty.

International law and United Nations policy do not oppose the granting of amnesties per se, but they both prescribe limits on the lawful and permissible scope of an amnesty. Under international law and under United Nations policy, amnesties are impermissible if they:

- (a) Prevent prosecution of individuals who may be criminally responsible for genocide, war crimes, crimes against humanity (“international crimes”) or other gross violations of human rights, including gender-specific violations; or
- (b) Violate the right of victims to an effective remedy.

Genocide, war crimes and crimes against humanity are authoritatively defined in articles 6, 7 and 8 of the Rome Statute for the International Criminal Court. The category of gross violations of human rights is widely recognized to include: (i) the non-derogable rights of the International Covenant of Civil and Political Rights as enumerated in article 4(2) and clarified by the UN Human Rights Committee in its General Comment 29; (ii) the category of peremptory norms that cannot be subject to reservations as clarified by the Human Rights Committee in General Comment 24; and (iii) a number of minimum core obligations as enumerated by the UN Committee on Economic, Social and Cultural Rights in its General Comment 3 and affirmed in several following Comments including 12, 13, 14, 15, 17, 18, 19, and 21.

The category of gross violations of human rights therefore includes the following: to engage in extrajudicial, summary or arbitrary executions; to torture; to subject persons to cruel, inhuman or degrading treatment or punishment; to arbitrarily arrest and detain persons; to deny the right to a fair trial, including to presume a person guilty unless he proves his innocence; to commit enforced disappearance; to deny freedom of thought, conscience and religion; to

execute pregnant women or children; to engage in slavery; to permit the advocacy of national, racial or religious hatred; to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language; or, to deprive one of essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education.

States are obliged to ensure the investigation and prosecution of gross human rights violations constituting crimes under international law. This is explicitly required by some human rights treaties, and under international humanitarian law for acts amounting to war crimes. The obligation to investigate and prosecute gross human rights violations also corresponds to the duty on States to ensure an effective remedy, which is clearly established in, for example, the International Covenant on Civil and Political Rights(article 2(3)(a)). Both the obligation to investigate and prosecute and the obligation to ensure an effective remedy also have customary international law status and are therefore binding on all States even if not party to the relevant instruments.

An effective remedy encompasses both access to justice and reparation for harm suffered (see, e.g. Basic Principles and Guidelines on the Right to a Remedy and Reparation). The Human Rights Committee has interpreted article 2(3)(a) of the Covenant to require States parties to take effective steps to investigate violations of human rights recognized as criminal and to bring to justice those who are responsible for these violations, as well as to provide an effective remedy to the victims. When gross violations of human rights have been committed, disciplinary and administrative remedies do not adequately satisfy the obligation on States to provide an effective remedy. In its General Comment 31, the Human Rights Committee further stated, “*As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.*”

In light of these international law obligations, it is therefore essential that the scope of any amnesty law is defined clearly and with certainty, particularly with respect to the conduct that will be subject to amnesty. Further in this regard, an amnesty law must clearly exclude all categories of conduct that, under international law and United Nations policy, should be subject to investigation and, where the evidence warrants, prosecution, and for which victims must receive prompt and effective remedy. As noted above, these categories of conduct are those that constitute international crimes (war crimes, crimes against humanity, genocide) and other gross human rights violations, including the gender-specific instances of these offences.

For further information, please refer to:

*Rule of Law Tools for Post-Conflict States, Amnesties*, which sets out international standards, guidance and examples from around the world:

[http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf)

*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*:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

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