



# United States Department of State TRANSITIONAL JUSTICE INITIATIVE AMNESTIES



## WHAT ARE AMNESTIES?

Amnesties are measures that have the effect of barring future criminal prosecutions—and, in some cases, civil or administrative actions—against certain individuals or groups for specific criminal conduct committed before the amnesty’s adoption. An amnesty can also nullify legal liability that had been previously established. Amnesties do not prevent legal liability for conduct that has not yet taken place.

## WHY AMNESTIES MAY BE CONTEMPLATED DURING A TRANSITION

In transitional contexts, amnesties might be generally considered:



**As a tool for justice.** Amnesties may be employed to right the wrongs of the past regime to benefit individuals who were imprisoned or otherwise accused of committing purely political crimes or acts during war that did not amount to war crimes. These types of amnesties should be considered in a transition out of armed conflict. Indeed, Additional Protocol II of the Geneva Conventions actively encourages the broadest possible amnesty for such crimes after non-international armed conflicts.



**As a tool of political expediency.** Amnesties may also be used to help end conflict by providing assurances to political actors and members of an armed or security force that they will not be held to account for certain past crimes. These types of amnesties are sometimes considered a “quick fix” to the problem of addressing historical crimes, and they can exacerbate, rather than reconcile, community divisions. Such amnesties may also weaken respect for public institutions and the rule of law by providing impunity for criminal conduct. Moreover, providing these types of amnesties for serious atrocities may raise legal concerns under national or international law. Many amnesties that have been employed in transitional settings have not stood the test of time in the face of legal and political challenges.

## FORMS OF AMNESTIES

- **Self amnesty** is when perpetrators or responsible institutions grant themselves or their members immunity from prosecution, often on the eve of a political transition.
- **Blanket amnesty** is an amnesty that covers a broad category of serious perpetrators and abuses without requiring the beneficiary to satisfy any conditions to enjoy impunity.
- **Conditional amnesty** requires that a perpetrator satisfy certain conditions before s/he is granted amnesty (such as providing a confession or revealing the truth about an event).
- **De facto or effective amnesty** can be granted through laws, decrees, or regulations that do not explicitly rule out prosecutions or civil actions but have the same effect.

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## CONCERNS AND CONSIDERATIONS



- **Who decides on amnesty?** Amnesties may be considered as part of a peace negotiation between parties to a conflict. Yet the victims of the crimes committed by such groups are rarely at the table or part of the decision-making process. Without the approval of victims, amnesties—especially for violent crimes—run the risk of perpetuating conflict and exacerbating the grievances of victimized communities.
- **Will amnesties end conflict or sustain it?** Amnesties in transition are often considered a politically expedient way to end conflict and concomitantly the suffering of those affected by the conflict. While an amnesty may be helpful in achieving such short-term goals, one must also consider how it will affect long-term peace and stability as well as overall reconciliation. In particular, architects of a transitional program involving an amnesty should consider a range of questions including: How will victims feel about the amnesty? Is it denying them justice? What effect will it have on peoples' respect for public institutions and rule of law moving forward? How will this affect the ability to ensure long-term stability?
- **Are they necessary?** Amnesties may not be necessary if there are alternative measures that could help end the conflict without as many negative consequences. Some countries have alternatively used collective plea bargaining or diversion programs (the disposition of a criminal charge without a criminal trial), such as offering reduced sentences for positive behavior (disarmament, cease-fires, truth-telling, community service, etc.) by fighting parties.
- **Are they legal under domestic law?** Many countries have constitutions or laws that may limit the ability of governments to provide amnesty for certain crimes. Domestic constitutions may also declare that a state has a duty to comply with treaties to which it is a party, some of which include obligations to ensure punishment of specific offenses either by instituting criminal proceedings in their own courts or sending the suspect to another appropriate jurisdiction for prosecution.
- **Are they permissible under international law?** The question of what types of amnesties may be permissible under international law is not settled. Amnesties for the most serious crimes—including genocide, crimes against humanity, slavery, torture, and other gross violations of human rights, and war crimes—have been considered impermissible by various UN bodies and have been found to be contrary to international law in decisions by regional and international courts.

## ALTERNATIVES TO AMNESTY

- **Reduced sentences and other forms of diversion.** Some countries have offered reduced sentences for those complicit in conflict-related crimes under the condition that beneficiaries meet certain criteria, including turning themselves in, giving up their arms, committing to acts of community service, and disclosing the entire truth about the acts they were engaged in during the conflict.
- **Community reconciliation processes.** Some countries have established processes to deal with lower-level non-violent crimes (such as non-violent property crimes) using customary justice or local community mechanisms. These mechanisms generally require the perpetrator to admit to his/her crimes and openly seek forgiveness from the community and his/her victims. The local community leaders then decide on the punishment, which often involves community service or service to the victims and is enforced and monitored at the community level.

## AMNESTY AND TRUTH COMMISSIONS



- **Truth commissions** generally do not provide amnesties. The only truth commission that had the power to offer amnesty was the South Africa Truth and Reconciliation Commission (TRC), which required perpetrators to meet stringent conditions to be considered for amnesty under its truth-for-amnesty provision. This model has been criticized, both by some who worked within the commission as well as those outside, some of whom argue that the truth-for-amnesty process required disproportionate resources to administer, did not provide the intended truth-seeking benefits, and made an implicit promise, which did not come to fruition, that those who were implicated in crimes but were denied amnesty would be prosecuted.
- **Truth commissions** may be empowered to recommend amnesties, especially for non-serious crimes, so long as the recommendations of the commission are not mandatory. This allows these commissions to consider creative solutions to dealing with difficult issues such as how to deal with child soldiers who are both victims and perpetrators.