

RESEARCH REPORT



Amnesties for Political Crimes: From Terrorism to Dissent

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Executive Summary

Political crimes and the political offence exception in extradition law and refugee law have been subject to extensive academic analysis. However, there has been much less scrutiny of amnesties for political crimes. This omission is surprising given that even though amnesties for international crimes and serious human rights violations are increasingly restricted under international law and policy, intergovernmental organizations and international humanitarian law continue to encourage amnesties for conflict-related political crimes within their transitional justice and mediation policies, even for offences such as rebellion and treason.

This report explores the complex role of amnesties in addressing political crimes. It analyses how this category of offences is applied to a diverse activities ranging from participating in armed insurgencies to engaging in non-violent dissent in non-conflict settings. Drawing on a sample of 374 amnesties for political crimes that were enacted from 1990 to 2023, the report finds that contrary to observations drawing from extradition law that the political offence exception is disappearing, amnesties continue to be used within states to create exceptions in the application of criminal justice. The report argues that the expansion of the counter-terrorism framework, which has eroded protections for combatants contained in international humanitarian law, and the growing criminalization of dissent have both served to expand the repressive use of criminal law, which amnesties for political offences often seek to remedy.

The report further analyses how the legality of amnesties for political crimes may depend the context in which the crimes were committed, the types of political offences covered by the amnesty, and how they intersect with the duty to prosecute international criminal and serious human rights violations and with human rights law protections for individual's rights to freedom of expression, assembly, and political participation.

Key findings from the report include:

1. Amnesties continue to be used for a range of political crimes, from violent acts in armed conflicts to non-violent political dissent. Their application varies across contexts, with some countries using amnesties to address political unrest, while others apply them during peace negotiations or post-conflict settings.
2. Amnesties for political crimes are more commonly granted in less democratic regimes, particularly in Africa and Asia. Such regimes are more likely to restrict political debate and criminalize political activity, increasing the likelihood of non-violent, and in some instances, violent political offences being committed, which may in due course necessitate amnesties to resolve political disputes and reintegrate political offenders into society.
3. Most amnesties for political crimes benefit opponents of states, including non-state armed groups, coup participants, persons accused of 'terrorism' offences in peace, political prisoners, leaders and members of opposition groups, and protestors. However, about one-third of amnesties for political offenders also benefit stage agents, often where they committed crimes against the state's political opponents.
4. Forty-three per cent of amnesties for political crimes are unconditional, but where conditions are applied, they often involve requirements such as renouncing violence or contributing to truth and reconciliation processes. These conditions are especially relevant for violent political offenders but less appropriate for non-violent political dissidents.

List of Acronyms

ICRC	International Committee of the Red Cross
IHL	International humanitarian law
UN	United Nations

Introduction

Amnesties are legal or policy measures that remove criminal liability for categories of crimes. They stop ongoing criminal investigations and prosecutions or prevent new criminal investigations being opened. Often, amnesties also allow convicted persons to be released or have their sentences reduced. Amnesties are thus, intimately connected to the application of the criminal law. They can be used to address breaches of the criminal law and sometimes they provide a remedy to persons against whom the criminal law has been used unfairly or unduly harshly. The contrasting ways in which amnesties intersect with criminal justice are particularly pronounced for political crimes. This is because, as this report explores, the term 'political crimes' can cover a spectrum of activities ranging from armed insurgencies, to rioting and civil disobedience, to non-violent expressions of political opinions, with the boundaries between these different forms of political crimes often being porous and politicized. This report therefore argues that amnesties that are applied to these different forms of political crimes intersect with international law in different ways and that analyses of their legality should consider which bodies of law are applicable to the context and the crimes covered.

The expansion of the penal accountability paradigm (Wacquant, 1999; Rossi, 2021) and particularly counter-terrorism law has raised concerns that the idea of 'political offences' as a distinct category of crimes deserving of exceptional treatment within domestic and international law is disappearing. This shift has primarily been observed in extradition law and refugee law, but it does not seem to be replicated for amnesty laws. Domestic legal rules in some countries continue to recognize that amnesties can be granted for political offences¹ and recent examples such as Spain's Ley Orgánica 1/2024 de amnistía para la normalización institucional, política y social en Cataluña, as well as amnesties in 2022 and 2023 in Ecuador, Honduras, Kazakhstan, Chad, the Philippines, and Somalia show states continue to grant amnesties for political offences.

However, despite the prevalence and endurance of amnesties for political crimes, academics have rarely explored how political offences are defined and applied within amnesties. Existing studies generally focus on individual amnesty processes, such as the amnesty decisions of the South Africa's Truth and Reconciliation Commission (Bhargava, 2002; Sarkin, 2004; du Bois-Pedain, 2007). Furthermore, while there is a substantial body of academic research on the relationship of amnesties to international crimes, less studied is whether below this threshold, whether international law constrains when amnesties can be used for political crimes or encourages their use.

The objective of this report is to address these gaps in existing knowledge. Section 1 begins by examining how the concept of political crimes is defined by scholars working in law, criminology, and political science. Section 2 explores the distinctions between violent and non-violent political offences, considers how these different forms of political crimes are incorporated into amnesty laws, and their legality under international law. Section 3 draws on the Amnesty Law Database created by the author to present trends in how amnesties for political crimes have been used since 1990. This section demonstrates how contrary to some assumptions, amnesties continue to be used for political offences. It also indicates that amnesties for political crimes tend to be used by less democratic regimes and their conditions and effects have variable relationships on how amnestied persons can be reintegrated within society. Section 4 offers recommendations on the future use of amnesties for political crimes.

1. Defining Political Crimes

Distinguishing political actions from other types of social actions can be a subjective and context-specific endeavour (Kirchheimer, 1961, p. 25). Political concerns often shape which actions are viewed as criminal and how the law is enforced in response to criminalized acts. As a result, scholars and states have developed diverse ways of defining political crimes and thereby distinguishing political crimes from common crimes (Wijngaert, 1981, p. 95). This commonly entails viewing political crimes on a spectrum from 'purely' political crimes to common crimes that are connected in some way to the political context. Some scholars characterize 'purely' political offences, such as treason, conspiracy, and sedition, as 'acts which challenge the State but affect no private rights of innocent parties' (Kittrie, 1981, p. 300). Under this definition, purely political offences can be non-violent offences relating to political dissent or they could include violent acts that are directed exclusively against the state and did not injure private parties (Jansson, 2019, p. 31). However, other scholars criticize these oppositional definitions by arguing that state actors also commit crimes for political reasons. This could include acts relating to suppressing dissent, which are rarely criminalized under domestic law, but which may breach a state's international human rights law obligations (Hagan, 1996; Ross, 2012, p. 1).

Beyond purely political offences, academic literature and legal practice generally recognize that under some circumstances, common crimes may have political or ideological elements, which mean that the persons responsible should be treated differently to common criminals. This can include recognizing violence and criminality that is directed against individuals, for example, in kidnappings, assassinations, damage to private property, thefts, or extortion, as political offences. The rationale for treating political offenders more favourably than common criminals in the criminal justice system, even where they commit violent crimes, rests on a tradition developed over the last two centuries which views political offenders as having the right to rebel against unjust governments (Schmid and de Graaf, 2016). Political offenders' actions are often viewed as being motivated by their understanding of the common good, rather than personal gain. This position was expressed by Magistrate Hernández Galindo of the Colombian Constitutional Court, who observed that: 'Political crimes are susceptible to amnesty or pardon precisely because the commission of the crime is wrapped in an allegedly altruistic motivation, in which the perpetrator seeks to change society for the better. There is a basic difference with respect to the motive for ordinary crime, in which the perpetrator is always guided by selfish, and often perverse, ends.'²

He further argued that 'political crime is an expression of the legitimate and democratic right to resist oppression, enshrined even in the preamble' of the United Nations Universal Declaration of Human Rights of 1948. Other scholars have suggested that where crimes have a political nature, political responses, such as negotiation and inclusion, may be more effective than penal sanctions for restoring the rule of law and trust in public institutions and preventing a repetition of the crimes (Dziedzic and Yam, 2020; Fish, 2024). Amnesties can support these endeavours where they remove obstacles to inclusion and enable states to recognize the political nature of the offenders' causes (Mallinder, 2018).

To distinguish political crimes from common crimes, several amnesty laws set out criteria for amnesty-granting bodies to use when determining if an individual is responsible for political crimes, which can be amnestied, or non-political offences, which cannot. The Norgaard Principles are among the most influential expressions of these criteria. They were developed from extradition law by the United Nations to guide the release of political prisoners during Namibia's transition to independence in 1990. These principles establish the following criteria for determining if an offence is political:

- a. The motive of the offender
- b. The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance
- c. The nature of the political objective
- d. The legal and factual nature of the offence, including its gravity
- e. The object of the offence (committed against the state or private property)
- f. The relationship between the offence and the political objective being pursued (i.e. the proportionality test) (Keightley, 1993).

These principles underpinned the definitions of political crimes used in the series of indemnity and amnesty laws that were part of South Africa's peaceful transition from apartheid. Notably, neither the Norgaard Principles, nor South Africa's amnesty law stated that political crimes could not include international crimes or other violent offences. South Africa's amnesty process has of course been one of the most influential processes in the world, and we can see similar approaches to establishing criteria to make determinations in, for example, Zimbabwe's 2018 amnesty.³

Other amnesties in lieu of developing detailed criteria simply emphasize political motives either in general terms or with respect to specific political goals. For example, Nicaragua's 1993 amnesty applied to 'Nicaraguans who took up arms with political objectives or socio-economic demands'.⁴ Fiji's 2000 amnesty law applied to persons who allegedly committed offences that were 'directly or indirectly prompted and motivated by political developments'.⁵ Lebanon's 1991 amnesty applied *inter alia* to '[p]olitical crimes or those crimes that have a general or local political nature including the crimes of homicide committed for political motives provided that they were not committed for personal motives or interests'.⁶ Zimbabwe's 2020 amnesty referred to 'any offence motivated by the object of supporting or opposing any political purpose...'.⁷ In addition, Romania's 1990 amnesty defined political crimes as 'deeds which have as their object: protest against the dictatorship, ... the respect of fundamental human rights and freedoms, ... the satisfaction of democratic claims'.⁸ Other amnesties emphasize the political nature of the events in which the offences took place. For example, France's 1990 amnesty for New Caledonia stated that the amnesty was granted 'in connection with political, social or economic events in connection with the determination of the status of New Caledonia or land tenure'.⁹

The political nature of crimes can also be reflected in amnesty laws, which in place of setting out criteria, specify that the amnesty applies to crimes committed in connection with specific political events, such as protests, coups, or conflicts; or by specific groups, such as specified non-state armed groups or political movements, or provide an exhaustive list of domestic offences, which have political character, such as treason, which can benefit from amnesty. Section 2 explores the application of amnesties to political crimes committed during armed conflict, violent political crimes in non-conflict settings, and non-violent political offences, and the legality of amnesty for each type of political offence.

2. Forms and Legalities of Political Crimes in Amnesty Laws

2.1 Amnesties for Political Offences Related to Armed Conflicts

Most amnesties for political crimes result from armed conflict. Often these laws use general phrases to describe the amnestied offences, such as 'criminal acts committed during the aggression, armed rebellion, or armed conflicts',¹⁰ 'criminal acts related to the conflict',¹¹ or 'war or armed rebellion against the government'.¹² These phrases may be the sole guidance about the material scope of the amnesty or they may be followed by a list of offences in the penal code that are included or excluded from the amnesty. The conflict-related nature of the political offences covered by an amnesty can also be expressed in amnesty laws by specifying that an amnesty applies to members of one or more non-state armed groups or through listing specific conflict-related, political offences, for which the amnesty is granted. This often includes rebellion, insurrection, sedition, conspiracy, destroying public buildings or public property, treason, or espionage.¹³ These political offences are directed against the state or public institutions (Saul, 2019), and although national definitions of political crimes vary, several of these 'purely' political crimes inherently entail perpetrating or supporting acts of violence.

The granting of amnesties for violent offences committed during armed conflict has a long history, with such amnesties frequently being a core component of peace agreements across the centuries (Fish, 2024; Lesaffer, no date). Today, international law has evolved to require states to criminalize, prosecute, and punish the most egregious conduct in armed conflict, such as genocide and grave breaches of the Geneva Conventions. However, this does not mean that combatants can be prosecuted for participating in hostilities, even when they are responsible for killings and destruction of property. Instead, customary international humanitarian law grants immunity to combatants who participate in inter-state armed conflicts (ICRC, 2005, Rule 106). In addition, Article 6(5) of Additional Protocol II encourages states to grant the broadest possible amnesty at the end of non-international armed conflicts. This treaty provision does not bar amnesties being granted to war criminals. However, over the last two decades, the International Committee of the Red Cross (ICRC) has argued that a rule of customary international law has emerged to preclude this encouragement to grant amnesties extending to 'persons suspected of, accused of or sentenced for war crimes' (ICRC, 2005, Rule 159).

While this interpretation of Article 6(5) has been welcomed by some policymakers, jurists and activists, some international courts and scholars remain sceptical over whether international law has evolved to restrict states' ability to grant amnesty. For example, in 2020, the Appeals Chamber of the International Criminal Court observed in the *Gaddafi* case that 'international law is still in the developmental stage on the question of acceptability of amnesties'.

Notwithstanding these debates about the outer limits of permissible amnesties for violent conflict-related offences, it nonetheless remains the case that at a formal legal level, amnesties for political crimes committed in conflict remain permissible under international law. This is reflected in the UN's Guidance for Effective Mediation which states that 'amnesties ... for political offences, such as treason or rebellion, may be considered – and are often encouraged – in situations of non-international armed conflict' (2012, p. 17). Colombia's Amnesty Law 1820 of 2016, which resulted from the successful peace negotiations between the Colombian government and FARC guerrillas, provides a recent example of a conflict-related amnesty for political offences,¹⁴ which was widely viewed as an essential component of the peace settlement.

International experts are increasingly warning that combatants' right not be held criminally liable for participating in an armed conflict is at risk of being eroded by the expansion of the international frameworks on counterterrorism and its conflation of international humanitarian law as acts of violence that are lawful under international humanitarian law risk being deemed unlawful if the combatants are labelled as terrorists and a counter-terrorism framework is applied. This is because although international human rights law and international humanitarian law recognize that some forms of violent resistance to political oppression are legitimate, categorizing political offences as terrorism means that they are viewed as unacceptable. Of course, acts of terrorism, if targeted at civilians during an armed conflict, could constitute war crimes or other serious human rights violations and as discussed, amnesties for international crimes and serious violations are increasingly being viewed as illegitimate (Schmid and de Graaf, 2016). However, as Saul (2019) has observed, 'new terrorism laws often criminalize all violence (and even non-violent resistance) against all governments, regardless of the methods used, even if IHL applies, and irrespective of the legitimacy of a rebellion or illegitimacy of a repressive government'.¹⁵ Saul continued that this conflation of legal regimes has meant that '[t]he political offence exception to extradition is being eroded to vanishing point'.

Concerns have been voiced that these developments may operate to depoliticize political offences, reduce the use of amnesties for these actions, and provide a justification for political actors to refuse to enter into political negotiations or work towards reconciliation (Haspeslagh, 2021). For example, the United Nations (UN) Special Rapporteur on Counter-Terrorism and Human Rights observed that 'labelling [non-state armed groups as terrorists] can serve as a barrier to various forms of reconciliation, entrenching prejudice and exclusion, and eliminates the possibility of holding onto some shared meaning which allows deeply divided and conflicted societies to slowly transition from violence to co-existence. Proscription generally excludes the possibility of applying amnesty to certain crimes, and thus directly limits the ways in which combatants can be incentivized and encouraged to end their participation in hostilities...' (Ní Aoláin, 2022, para. 37). In addition, the ICRC (2011) has argued that the conflation of international humanitarian law (IHL) and the legal framework for terrorism reduces the incentive for non-state armed groups to abide by IHL and may constitute 'an obstacle to future peace negotiations or national reconciliation'. In addition, Rossi has cautioned that in postconflict and postauthoritarian societies, where the state has used counterterrorism frameworks to withhold amnesty for political offences, this can act 'as a veil of impunity for the powerful, for it pin[s] criminal responsibility for violence on a handful of individuals, shield[s] the state from accountability, and thus foreclose[s] the possibility of examining the deeper roots of a decade of social and political unrest' (2021, p. 383).

In sum, in the extremely challenging environments of ongoing conflicts and peace processes, amnesties are regularly used for political offences. At times, their use even extends to members of armed groups who used violence to challenge the state. Although international law may be moving to constrain the use of amnesties for some forms of serious violence against civilians, this does not amount to a bar on the use of amnesties for all conflict-related violence. Indeed, international law and policy continues to encourage the use of amnesties for some political offences, including participation in armed conflict. From this, it can be inferred that actions that pose a less serious threat to the state than armed insurrection can similarly be amnestied.

2.2 Amnesties for 'Violent' Crimes in Non-Conflict Settings

Amnesties in non-conflict settings are less common than conflict-related amnesties. The Amnesty Law Database has nonetheless identified 100 amnesties since 1990 which extend to political offences committed in the absence of armed conflict. Many of these amnesties are used in response to mutinies and attempted coups, election-related violence, riots, and other civil disturbances. For these types of amnesties, the question of whether the amnesty applied to violent crimes is often highly politicized and it can be difficult for researchers working only with secondary sources, like my work on the Amnesty Law Database, to determine definitely how to categorize the amnesty. In part, these difficulties come from the well-established debates in academic literature and practice over what counts as violence (Flyghed, 2002; Goede, 2014; Boches and Cooney, 2023). For example, should damage to private property always count as violence (Sunderman, 2022)? However, the expansion of counterterrorism and security laws and rhetoric in many states can also serve to blur distinctions between violent and non-violent offences. This can occur, for example, where non-violent protestors are arrested under national security legislation or where criminal provisions relating to violent crimes are interpreted in an overly expansive manner to prosecute non-violent offences.

Criminal justice responses in Spain to the Catalan independence movement provide recent and much criticized examples of this type of blurring. For example, the crime of rebellion was applied to the organizers of peaceful demonstrations based on novel interpretations developed by Spanish prosecutors and accepted by the Supreme Court. The Parliamentary Assembly of the Council of Europe described how this interpretation was based on the notion of 'violence without violence' according to which the sheer number of demonstrators exercised psychological coercion on the police officers facing them (2021, para. 9.5). In addition, terrorism charges were brought in 2019 against Tsunami Democràtic and the *Comitès de Defensa de la República*, which are pro-independence groups, which called for non-violent civil disobedience¹⁶ and which organized a series of demonstrations (Venice Commission, 2024).¹⁷

Notwithstanding these types of coding challenges, it is possible to identify examples of amnesties for violent political offences granted in peace time. These include amnesties for violent protestors in Albania in 1997,¹⁸ Russia in 1994,¹⁹ and Kazakhstan in 2022.²⁰ Some violent protests also triggered amnesties for soldiers or police officers who opened fire on protestors.²¹ In addition, amnesties for coup plotters have been used in several states including in Thailand in 1991,²² and Mauritania in 2006.²³

As there was no armed conflict in these types of settings, international humanitarian law's encouragement of amnesty is not applicable. If the violence reaches the level of international crimes and serious human rights violations, states may have obligations to investigate, prosecute and punish those responsible, which can impinge on their ability to grant amnesties. However, in all other instances, criminal liability for violent offences is primarily regulated by domestic law. This means that it is for the national authorities to determine in accordance with domestic legal rules governing the use of amnesties whether to prosecute or amnesty political offences relating to violence committed during protests, riots, and coups. In 1985, a UN report observed that crimes against property 'are normally amnestied where the offences were committed without serious violence' (Joinet, 1985, p. 16). Naturally, amnesties for political violence against persons, particularly against police officers, can be more controversial. Decisions over whether to grant amnesty for these types of offences are generally heavily influenced by domestic political calculations relating to the strength of the threat posed to the state and the need to find a political resolution to the crisis.

2.3 Amnesties for Non-Violent Dissent

During the Cold War-era, the human rights movement emerged through calling for amnesties for dissidents and political prisoners (Joinet, 1997, p. 3), as reflected in the name of Amnesty International. A 1985 comparative study of amnesties for the UN observed that 'persons guilty of offences of opinion' should be 'priority candidates for amnesty' and should be 'distinguished from persons guilty of offences against property or the person' (Joinet, 1985, p. 15). However, this report reflected on the complexity of this position by observing that since international human rights law forbids the persecution of individuals on the grounds of their political opinions, using criminal law to repress their ability to exercise their rights can violate international law.

It cautioned that granting amnesty to a 'prisoner of opinion is tantamount to an implicit acknowledgement that his conduct was criminal, whereas it is the really the authority responsible for the penalty, being guilty of unlawful detention, might be granted amnesty' (Joinet, 1997, p. 16).

Today, international human rights law accepts some limited restrictions on the individual's rights to political participation and freedom of expression, for example, with respect to 'hate speech' (Council of Europe Parliamentary Assembly, 2021). However, it requires that restrictions to these rights be objective, reasonable, established in law, incorporate fair procedures, and do not result in disproportionate penalties (Office of the High Commission on Human Rights, 1996). The challenge of balancing the states' ability to restrict these rights in limited circumstances with ensuring that individuals can enjoy their rights unmolested by the state continue to raise questions about the appropriateness of granting amnesty to so-called opinion crimes. International law standards on combating impunity for serious human rights violation address these tensions in the following provision:

Insofar as it may be interpreted as an admission of guilt, amnesty cannot be imposed on individuals prosecuted or sentenced for acts connected with the peaceful exercise of their right to freedom of opinion and expression. When they have merely exercised this legitimate right, as guaranteed by articles 18 to 20 of the Universal Declaration of Human Rights and 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights, the law shall consider any judicial or other decision concerning them to be null and void; their detention shall be ended unconditionally and without delay;

This provision suggests that rather than granting amnesties, appropriate remedies for the violation of the rights of political protestors and dissidents should entail steps to end criminal investigations and annul any penalties. In addition, these amnesties should acknowledge that the beneficiaries are not criminals but were instead exercising their rights. The position is reflected in the condemnation of Spain's use of the criminal law against Catalan independence campaigners from Amnesty International (2019), the International Commission of Jurists (Khattab, 2019), the Parliamentary Assembly of the Council of Europe (2021), the UN Human Rights Committee (2023), and the UN Working Group on Arbitrary Detention (2019).

The closing of civil space and criminalization of dissent in recent decades (Watts, 2019; Selmini and Di Ronco, 2023) has resulted in states across the world granting amnesties for criminalized political activities. The political activities covered in these amnesties can include membership of banned political organizations; participating in illegal assemblies or demonstrations; defamation of public authorities or offending a public official; disobedience or incitement against the authorities; strikes and trade union activism; and offences relating to journalism and other forms of publications. Depending on the context, these forms of amnesty can also relate to evading military conscription, military desertion, and leaving the country without permission. In some instances, these amnesties have recognized that the actions they cover were a legitimate expression of the rights of the amnestied persons. For example, Bolivia's 2021 amnesty states that the amnesty applies to "Persons who were criminally prosecuted during the de facto government in clear violation of human rights, constitutional guarantees and freedoms, for the alleged commission of crimes that are directly related to social conflicts within the institutional political crimes of the State that occurred in the country between October 21, 2019 and October 17, 2020".²⁴ Similarly, Article 3 of Ecuador's 2022 amnesty states "The constitution recognizes all people's right to resistance in the following terms: individuals and groups may exercise their right to resistance against the actions or omissions of public power or of non-state national or legal persons that violate or may violate their constitutional rights ..."²⁵

In sum, Section 2 has demonstrated that political crimes can cover actions ranging from armed insurrection to the peaceful expression of political rights. Amnesties have been and continue to be used for all forms of political crimes. However, their relationship with international law can depend on whether the political offences were conducted within the context of an armed conflict, whether the crimes involved illegal forms of violence, and for opinion offences, whether the so-called 'offences' should be subject to criminal law. These variations are highly significant for considering the legality and legitimacy of amnesty laws. However, the variations can be difficult to capture in large-scale comparative data projects given the limited availability of data in some instances and the politicization of debates about the nature of the offences. For this reason, the analysis of original empirical data on political offences in the following section codes all forms of political crimes together as one category.

3. Comparative Data on the Use of Amnesties for Political Crimes

The Amnesty Law Database has identified and coded 374 amnesties for political crimes that were enacted from 1 January 1990 to 31 December 2023. 274 of these amnesties relate to conflict and peace processes and 100 were granted in non-conflict settings.²⁶ As Figure 1 shows the number of amnesties for political crimes peaked at the end of the Cold War. Amnesties in the early 1990s often related to undoing the repression of political dissidents in former communist countries or were produced by the onset or resolution of the civil wars across the world which resulted from geopolitical shifts.

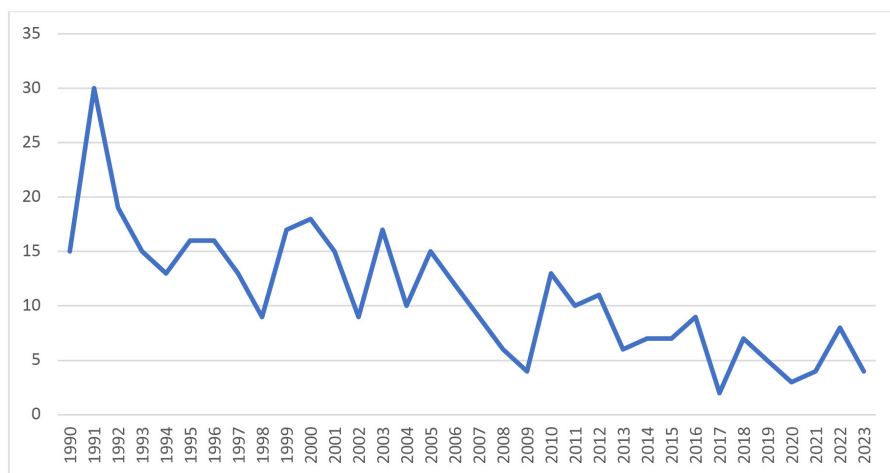


Figure 1: The use of amnesties for political crimes by year 1990–2023

The mean number of amnesties for political crimes across this 33-year period is 11.3 amnesties per year. However, over the last decade, there have generally been fewer than 10 amnesties each year. This suggests there is a decline in the use of amnesties for political crimes, although contrary to some assumptions in academic and policy literature discussed above, this manifestation of the political offence exception has not disappeared. The reasons for the decline may be the expansion of the counterterrorism framework. However, it may also be related to the substantial decline in comprehensive peace negotiations in recent years (Badanjak, 2022).

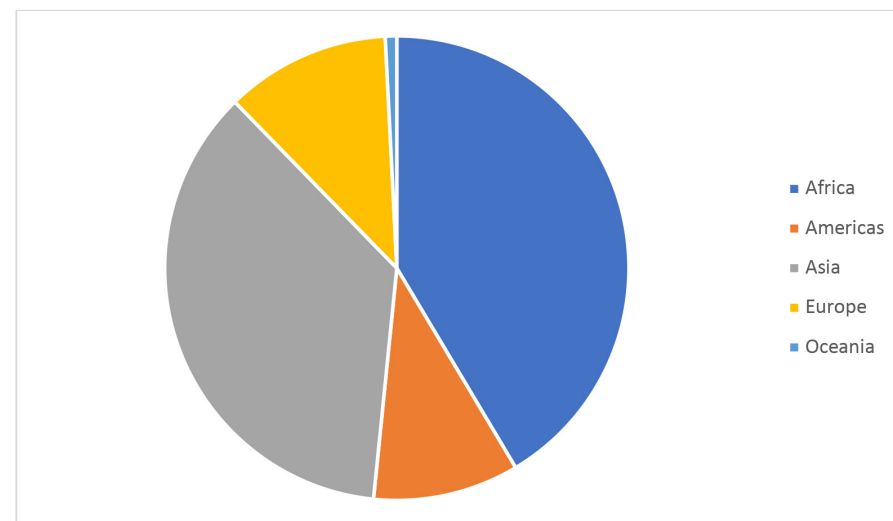


Figure 2: The use of amnesties for political crimes by world region

The regional distribution of countries that have enacted amnesties for political crimes to some degree reflects the number of countries in each region, with amnesties being used most often in Africa and Asia. These patterns may also be influenced by the types of regimes that are granting amnesties for political crimes.

Figure 3 shows the regional distribution of amnesties by regime type, using Freedom House regime categories²⁷ to code the political regime in the year that the amnesty was enacted.

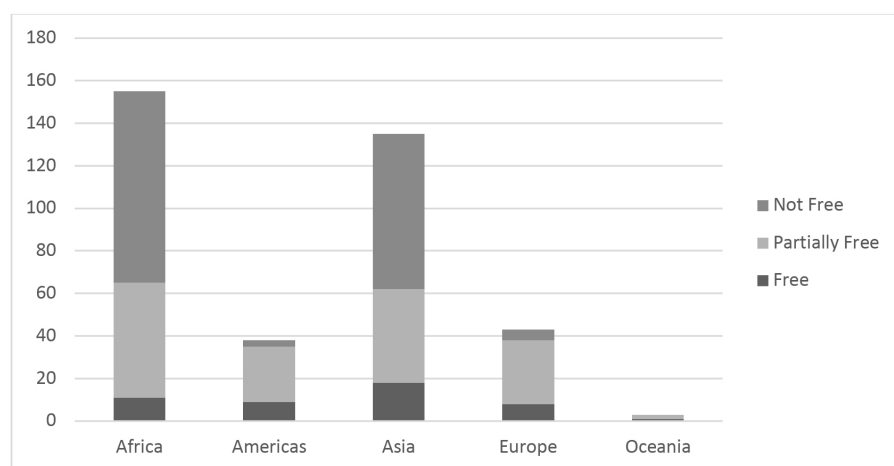


Figure 3: The use of amnesties for political crimes by regional and regime type

This figure illustrates that in the two regions with the highest numbers of amnesties for political crimes, Africa and Asia, a significant proportion of these amnesties were introduced in regimes that are classified as 'not free'. In addition, across all world regions more amnesties are introduced by partially free regimes than by free governments. These trends are unsurprising. Functioning democratic states should be able to resolve political disputes through established political institutions and processes that are intended to accommodate pluralistic visions of society and provide structures for negotiated and inclusive compromises.

In such contexts, the criminal law should be less likely to be applied to political activities, particularly since the ability to resolve political disputes through peaceful processes should reduce the likelihood that violent political crimes will be committed. In contrast, where partially free or not free political regimes restrict political debate and criminalize political activity, this increases the likelihood of non-violent, and in some instances, violent political offences being committed, which may in due course lead to amnesties.

Figure 4 shows the categories of recipients who have benefitted from amnesties for political offences. It illustrates that overall, most amnesties for political crimes have benefitted opponents of the state, including non-state armed groups, coup participants, persons accused of 'terrorism' offences in peacetime, political prisoners, leaders and members of opposition groups, and protestors.

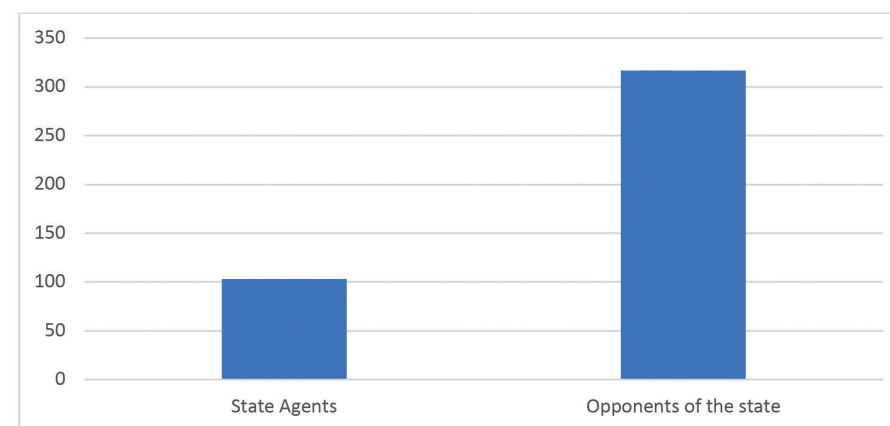


Figure 4: Recipients of amnesties for political crimes

The trends in this data are a product of the majority of amnesties for political crimes being used in relation to armed conflict and peace processes. If we consider only the 100 amnesties for political crimes that were granted in non-conflict settings, we find that 28 were granted to state agents and 92 were granted to opponents.

Amnesties for political crimes sometimes also include or exclude other categories of offences. Figure 5 illustrates trends in how amnesties do this.

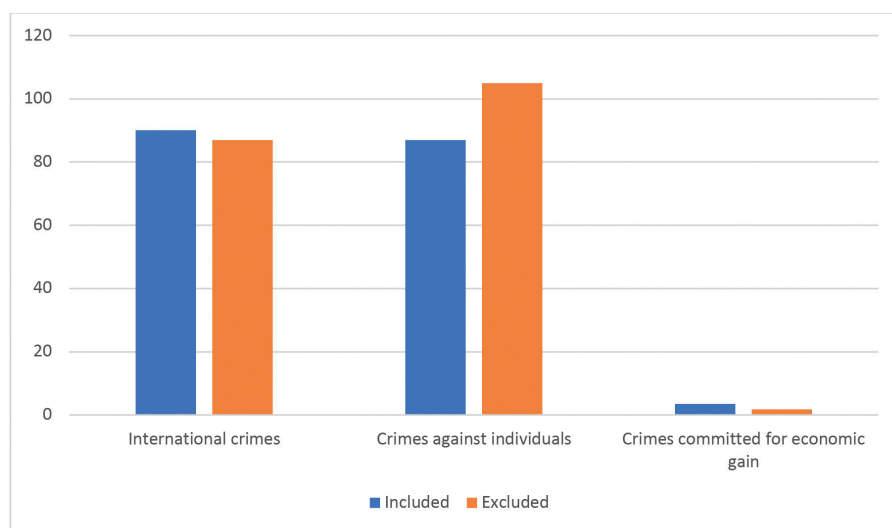


Figure 5: Treatment of Other Categories of Crimes in Amnesties for Political Offences

Given that amnesties for political crimes offer beneficiaries leniency in criminal justice process on the understanding that their crimes were not committed for personal gain, it is unsurprising to see that crimes for economic gain rarely feature. As discussed in Section 1, the relationship between political crimes and crimes against individuals, which can include violent offences and offences against property is more complex. A single amnesty process may cover political offences committed against the state and a range of connected offences committed against private individuals, while also excluding some forms of crimes against private individuals. For example, a set of amnesty proclamations issued in the Philippines in 2022 for four different rebel groups extended amnesty to a list of specified offences committed by these groups including rebellion, sedition, illegal assembly, and assaults. However, these proclamations excluded genocide, grave breaches of the Geneva Conventions, and serious violent offences under domestic law such as rape, terrorism and kidnapping from the amnesties.²⁸

Figure 6 examines how conditionalities are used in amnesties for political crimes. It shows that 43% of amnesties for political crimes are unconditional. Where conditions are used, these relate to security conditions (disarmament, demobilization and reintegration of combatants; renouncing violence; informing on comrades; and non-recidivism) or victim-centred conditions relating to participating in truth recovery, justice and/or reparations processes.

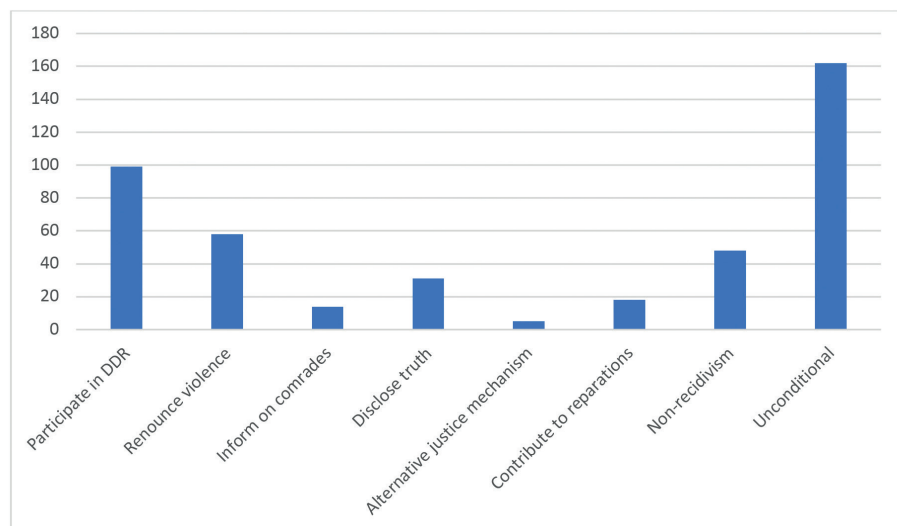


Figure 6: Conditions attached to political amnesties

While conditionalities should be used for violent political offenders, they are often not appropriate where an amnesty is to remedy violations of an individual's rights to freedom of expression, assembly, and political participation. This is because conditions are intended to ensure either that the amnestied person no longer poses a threat to the state or that they contribute to addressing the harms that they caused to victims. However, persons who engaged in non-violent political offences may have been motivated by a sense of the public good, rather than being a threat to others. In addition, they are less likely to have violated the rights of others and the amnesty should instead be intended to enable them to enjoy their own rights.

Finally, Figure 7 examines the legal effects of amnesties for political crimes. As the introduction stated, the primary function of amnesties is to remove criminal liability. As such, Figure 7 shows the most frequently occurring legal effects of amnesties do this. However, amnesties can also have a range of additional legal effects. Some of these are about removing other forms of criminal sanctions, such as reducing criminal sentences, releasing convicted persons, and erasing criminal records. Some amnesties may also remove or bar other forms of civil or administrative liability. The removal of administrative sanctions can include removing restrictions on voting or standing for election; facilitating amnestied persons to be reintegrated into government jobs or have their government pensions restored; facilitating exiles and refugees to return and be reintegrated into society, for example, through (re)gaining access to land and property; and refunding fines that have been imposed.

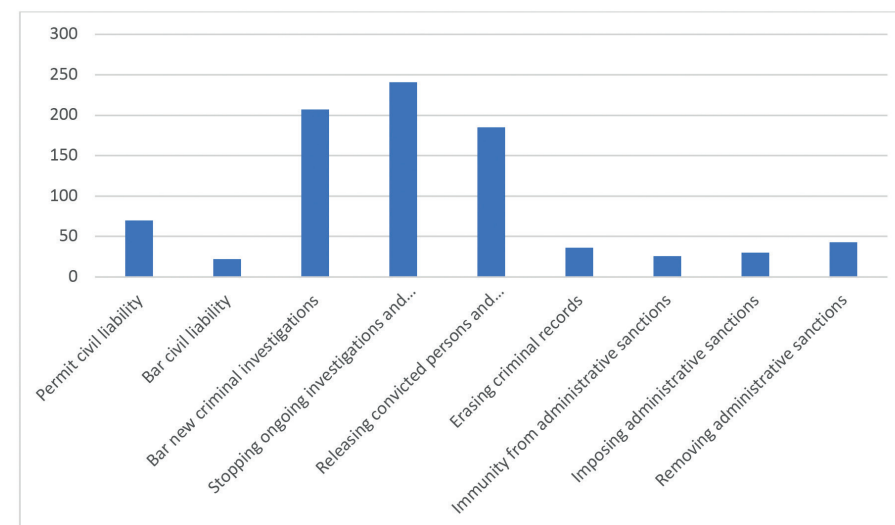


Figure 7: The Legal Effects of Amnesties for Political Crimes

Many of the amnesties for political crimes remove different forms of legal liability. However, a small number assert that civil liability remains unaffected by the amnesty. In addition, some amnesties for political crimes, which are generally enacted in non-democratic settings, impose administrative sanctions, including restrictions on the amnestied persons' political rights. Alternative administrative sanctions may be appropriate for some categories of political offences that are connected to violence; however, they are not appropriate where an amnesty is applied to crimes of opinion.

4. Recommendations

1. The granting of amnesty to political crimes recognizes that crimes committed for political objectives can and should be distinguished from crimes committed for personal gain. This is due not only to a recognition that the motivations of political offenders, and consequently, the risks that they potentially pose to society, can often differ substantially from common criminals. It also acknowledges that the criminal law may not always be the most appropriate avenue to resolve political crises triggered by political offences and that instead amnesties may be needed to create space for political negotiations and solutions.
2. Where amnesties are granted for political crimes, they can cover a spectrum of activities ranging from conflict-related violence to the peaceful expression of political crimes during peacetime. As a result, amnesties can intersect with and be regulated by international law in diverse ways depending on the context and the activities covered by the amnesty.
3. International criminal law, international humanitarian law, and international human rights law increasingly contend that amnesties cannot be granted for genocide, war crimes, crimes against humanity, and serious violations of human rights. However, international humanitarian law and international mediation policies continue to encourage the use of amnesties in non-international armed conflicts. In non-conflict settings, where no international crimes or serious human rights violations have been committed, international law does not restrict the use of amnesties and states should avoid applying counterterrorism law or domestic violent offences to blur the distinction between violent and nonviolent offences.
4. International human rights law creates obligations for states to respect, protect and promote individual rights to freedom of expression, assembly, and political participation, even where this includes questioning the constitutional order of a state. States are only allowed to restrict these rights in limited circumstances and the use of the criminal law to repress these rights may violate a states' international obligations. Amnesties are often applied to so-called 'opinion crimes' to remove criminal liability and ensure that the amnestied persons are once again able to exercise their rights. Whereas amnesties generally convey that amnestied persons have engaged in wrongdoing, even if they are not being punished, amnesties for 'opinion crimes' should acknowledge that the amnestied persons were exercising their rights rather than engaging in criminality, and the amnesty is about undoing a wrong, rather than creating an exception to the rule of law.

5. Where amnesties are applied to violent political offences, these amnesties should as far as possible be conditional on individual amnesty beneficiaries refraining from further violence, reintegrating into society, and taking steps to contribute to victims' rights to truth, justice, and reparations. The legal effects of amnesties for violent offenders should offer as narrow a leniency as possible and may, where appropriate, impose some forms of administrative sanctions, provided that these processes adhere to human rights standards.
6. Where amnesties are applied to non-violent protestors, political dissidents, or other persons accused of 'opinion crimes', the amnesties should be granted unconditionally and the legal effects of the amnesty should be broadly framed to ensure that their full enjoyment of their political and civil rights can be restored.

Endnotes

- ¹ See e.g. the Constitutions of Colombia, Costa Rica, the Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, and Panama.
- ² Constitutional Court of Colombia, Decision C-052 of 1993, Dissenting opinion of José Gregorio Hernández Galindo <https://www.corteconstitucional.gov.co/relatoria/1993/C-052-93.htm>
- ³ National Peace and Reconciliation Commission Regulations Statutory Instrument 90 of 2018, Arts 71-73.
- ⁴ Ley de Amnistía, Ley No 163 (20 September 1993), Article 1. Article 2 excluded war crimes and crimes against humanity.
- ⁵ Immunity Decree, Decree No. 18 (13 July 2000), Article 2.
- ⁶ Law No 84 The Granting of a General Amnesty for the Crimes Committed before 28 March 1991 According to Specific Conditions (26 August 1991), Article 2(3)(c).
- ⁷ Clemency Order No. 1, General Amnesty for Politically-Motivated Crimes (6 October 2000), Article 4.
- ⁸ Decret- Lege No 3 privind amnistierea unor infracțiuni și grațierea unor pedepse (5 January 1990), Article 1.
- ⁹ Loi No 90-33 portant amnistie d'infractions commises à l'occasion des événements survenus en Nouvelle-Calédonie (12 January 1990), Article 1.
- ¹⁰ See e.g. General Amnesty Act (Zakon o općem oprost, Official Gazette, no. 80/1996), Croatia, Article 1.
- ¹¹ Law on Amnesty, No. 07-1117/1, Official Gazette of the Republic of Macedonia No. 18 (8 March 2002), Article 1.
- ¹² Amnesty Act (passed 7 Dec 1999) Act No. 2 of 2000, Chapter 294, Section 3(1).
- ¹³ See e.g. Ley No.1820 de Dic 2016 Por Medio De La Cual Se Dictan Disposiciones Sobre Amnistía, Indulto Y Tratamientos Penales Especiales Y Otras Disposiciones, Diario Oficial 50102 de diciembre 30 de 2016, Colombia, Article 15.
- ¹⁴ Ley No.1820 de Dic 2016 Por Medio De La Cual Se Dictan Disposiciones Sobre Amnistía, Indulto Y Tratamientos Penales Especiales Y Otras Disposiciones, Diario Oficial 50102 de diciembre 30 de 2016.
- ¹⁵ Examples of the terrorism label being applied to non-violent political actors, included language used by the US government to describe Julian Assange and by Israel to describe Palestinian human rights organizations. See eg. Ewen MacAskill, 'Julian Assange like a hi-tech terrorist, says Joe Biden', *The Guardian* (19 December 2010) and Issac Scher, 'CIA unable to corroborate Israel's "terror" label for Palestinian rights groups', *The Guardian* (22 August 2022).
- ¹⁶ 'Los CDR aseguran que solo apuestan por la "desobediencia no violenta"', *El Periódico* (11 October 2019).
- ¹⁷ These charges against the Tsunami Democràtic were dropped on procedural grounds in July 2024. Seb Staršević, 'Spanish court shelves Puigdemont terrorism probe' (9 July 2024) <https://www.politico.eu/article/spanish-court-shelves-carles-puigdemont-terrorism-probe-spain-catalonia/> (accessed 11 September 2024).

¹⁸ Amnesty Decree No 1.732 (6 Mar 1997); Law on Amnesty for civilians and military personnel who were involved in the riots after the collapse of fraudulent pyramid schemes, Law No. 8198, (11 Mar 1997).

¹⁹ The State Duma of the Federal Assembly, Russian Federation, Decision from February 23, 1994 N 65-1 GD On Announcing Political and Economic Amnesty.

²⁰ RFE/RL 'Kazakh Parliament Approves Mass Amnesty For Participants In January Protests' (27 October 2022).

²¹ See e.g. Human Rights Watch, 'Chad: Amnesty Law Cheats Victims' (14 December 2023).

²² 'Thai military leaders get amnesty for coup', *UPI* (4 April 1991).

²³ Amnesty International, 'Report 2006 – Mauritania' (23 May 2006).

²⁴ Decreto Supremo Nº 4461, 18 de febrero de 2021. Gaceta Oficial de Bolivia 1361NEC

²⁵ Resolución No. RL-2021-2023-053 concede amnistía a varios ciudadanos con base en el informe elaborado por la Comisión Especializada Permanente de Garantías Constitucionales, Derechos Humanos, Derechos Colectivos y la Interculturalidad, Tercer Suplemento No.21 Registro Oficial, 15/03/2022

²⁶ The data on the conflict and peace related amnesties has been published as the Amnesties, Conflict and Peace Agreement (ACPA) Database, which is available at <https://www.peaceagreements.org/amnesties/> The data on peace time amnesties has not been published.

²⁷ Freedom in the World Research Methodology, <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology> (accessed 13 September 2024).

²⁸ Proclamation No. 1090, February 05, 2021 - Granting Amnesty to Members of The Moro Islamic Liberation Front (MILF) Who Have Committed Crimes Punishable Under the Revised Penal Code And Special Penal Laws In Furtherance Of Their Political Beliefs - 05/02/2021.

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