

**Granting Amnesty in Southern Thailand – Complicating Legal Issues & Analysis by
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8 May 2007

Synopsis: The Thai government is contemplating granting amnesty to militants in the far South. Prime Minister Surayud Chulanont got the idea from Fourth Army Region Commander Viroj Buacharoon. The same concept was used successfully to weaken the Communist movement in the 1980s by granting fighters amnesty and subsequently welcoming them back home.

Our Analysis: We assess that granting amnesty to Southern Thai militants is an effective first strategy in getting militants to surrender. However, there are significant issues that need to be addressed and fine-tuned before the amnesty can be deemed workable. It is also critical for the government to acknowledge that they are combating a new enemy.

Firstly, the government has not been able to define this new enemy. The authorities still have little knowledge about their opponents. From a legal point of view, those who surfaced to create violence in the restive region are people who clearly committed crimes. Killings, shooting, bombing and arson are all crimes under the penal code.¹ Due the widespread suspicion of the Thai authorities in the South, the militants and population at large remain to be convinced with respect to this program. There is a belief that anyone who accepts this amnesty offer will be forgiven for political actions, but then be tried under the existing penal code. Thus the militants are concerned that the offer of amnesty is a trap and not an effort to end the violence.

It is important to note however that the Thai authorities have blurred the boundary between terrorism and crime and this will make the application of amnesty in the deep south particularly problematic. An example is the case of Sapaeing Basoh, the former principal of Thammawithaya school in Yala, now on the run and wanted in connection with multiple crimes in the restive South. His arrest warrant however, does not state that he has killed anyone or planted explosives. If the authorities take a criminal view of him, the amnesty just will not work. There are hundreds of militants like Sapaeing who will not be able to take advantage of the amnesty and surrender so long as the Thai government appears to view terrorism as simply a criminal action. .

It is essential for the Thai government to either offer a general amnesty to all violent actors in the south, or ensure that the amnesty applies to strictly defined combatants. It may require a definition of terrorism or at least defining a framework for which activities will be covered by the amnesty. The authorities must accept that some portion of the violence is being driven by ideologically motivated individuals who do not view themselves as criminals. Treating all violent actors as ordinary criminals may serve only to increase the gulf between the militants and the government. Applying the penal

¹ “Surayud has seen an amnesty work”, *The Nation*, 4 May 2007.

http://www.nationmultimedia.com/2007/05/04/politics/politics_30033356.php

[Accessed on 5 May 2007]

code to deal with ideologically-driven militants will only fuel their resentment and aggravate the threat.

Thai authorities should be applauded for proposing this as part of a wider approach to bringing peace to the south. In order to make this program successful, they must address the critical perception and practical questions that remain open and realise that there are numerous legal issues that need to be worked out before an amnesty proposal can be deemed workable.