

Philippines - Four Rebel Group Amnesties: Win Some, Lose Some [updated version]

Wednesday 11 September 2024, by [SANTOS Soliman, Jr](#) (Date first published: 12 July 2024).

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Four presidential amnesty Proclamations Nos. **403** (for the Rebolusyonaryong Partido ng Manggagawa ng Pilipinas-Revolutionary Proletarian Army-Alex Boncayao Brigade), **404** (for the Communist Party of the Philippines-New People’s Army-National Democratic Front), **405** (for the Moro Islamic Liberation Front) and **406** (for the Moro National Liberation Front), all dated 22 November 2023, have recently been concurred in separately by both Houses of Congress, thereby putting them into effect and paving the way for the National Amnesty Commission to receive and process amnesty applications. The Implementing Rules and Regulations for this are already underway (though not seen by the author at this writing). There are a number of things to note about this latest set of amnesty Proclamations for those four rebel groups.

(1) Sino/ alin ang naiiba? (Who/ what is different?)

First of all, the four Proclamation basically replicate four immediately preceding amnesty Proclamations Nos. 1090, 1091, 1092 and 1093 for the same four rebel groups - two Communist rebel groups and two Moro rebel groups — issued in 2021 by President Duterte. It would seem that there is this rebel amnesty policy continuity into the next Marcos Jr. administration. One notable difference is that Proclamation No. 1093 referred to the “Communist Terrorist Group (CTG)” while its new counterpart Proclamation No. 404 refers to the CPP-NPA-NDF. A more respectful improvement is this?

Secondly, three of the four rebel groups concerned - the RPMP-RPA-ABB, the MILF and the MNLF - have already entered into peace settlements with the Government of the Republic of the Philippines (GRP), while one rebel grouping — the CPP-NPA-NDF — has not (yet). Proclamation No. 404 covering the latter grouping however states in its prefatory fourth WHEREAS clause that this is “without prejudice to any legal arrangement that may result from a negotiated settlement which the government is pursuing with the various rebel and insurgent groups.” Presidential peace adviser Sec. Carlito Galvez Jr. has indicated that a new proclamation covering the CPP-NPA-NDF would be forthcoming “just in case we already have a final peace agreement.” He explained that amnesty was

usually granted after the conclusion of the peace negotiations. It is not clear though whether the amnesties for the aforesaid three rebel groups with peace settlements were also the result of negotiations. It does not look like it, given the basically uniform terms in the two sets of four Proclamations in 2021 and 2023.

Same terms and same date, 22 November 2023, for the new set of four Proclamations. It is thus likely only coincidental that Proclamation No. 404 for the CPP-NPA-NDF was issued just one day before the 23 November 2023 breakthrough Oslo Joint Statement between the GRP and NDF where they “agreed to come up with a framework that sets the priorities for the peace negotiations... that will set the parameters for the final peace agreement.” Sometimes, the left hand does not know what the right hand is doing.

Thirdly, and related to the above second point of note, the Proclamations for the three rebel groups (RPMP, MILF and MNLF) with peace settlements all apply to their “members,” while the Proclamation for the “unsettled” rebel grouping CPP-NPA-NDF (hereinafter “C-N-N”) applies to “former members.” Those who may file for amnesty must have “surrendered to the government and renounced [their] rebellious activities.” And so, on one hand, there is the understandable C-N-N complaint against this as a classic “divide and rule” tactic with disrespect to its organizational integrity, unlike that afforded to the three other rebel groups. On the other hand, there is the reality of some number of former members of the C-N-N who have actually surrendered and otherwise left the C-N-N, as well as members and former members who are detained or imprisoned due to criminal case convictions or still pending criminal cases without bail. They have real concerns of legal status and security, or of release from detention or imprisonment, or of some life normalcy.

According to Galvez, Proclamation No. 404 only covers around 40,000 C-N-N ex-rebels who already surrendered, not what he estimated to be the remaining 1,576 rebels (those numbers are of course belied by the C-N-N), that would have to be covered in another separate new Proclamation of expanded coverage “just in case we already have a final peace agreement.” This, however, remains much to be seen, nearly six months after the last hopeful Oslo Joint Statement just in 23 November 2023, though that seems like a distant past now when instead both the AFP and the NPA have since ramped up their offensive military operations against each other. Both their body language and even rhetoric have since been much more for war rather than for peace. One side thinks it is winning. The other side thinks it cannot lose. One side vows to end the local communist armed conflict by the end of the year. The other side vows to finally advance from its longstanding “middle phase” of the strategic defensive first stage of its three-stage Maoist protracted people’s war strategy, reaffirmed no less than twice already since the early 1990s split in the CPP.

Fourthly, the Proclamations for the three rebel groups RPMP-RPA-ABB MILF and MNLF apply to those groups only, while the Proclamation for the rebel grouping C-N-N applies to also to its “front organizations” though these are not named. This certainly casts a wider net, so to speak. This is the second count (the first being the “former members” qualification) that shows the government’s different, more aggressive if you will, treatment of the C-N-N. But more on this “front organizations” matter further below.

Fifthly, it is a tale of two contrasting responses to the Proclamations exemplified by the MILF and the C-N-N. Soon after President Marcos Jr. announced his coming rebel amnesty Proclamations during his State of the Nation Address (SONA) on 24 July 2023, MILF Chairman and Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) Interim Chief Minister Ahod “Al Haj Murad” Ebrahim, credited Mr. Marcos for his continued commitment to “bring genuine autonomy and progress” to the region with a vow to pursue amnesty for former rebels... it “is a testament to his strong and resolute desire of finding lasting peace and justice.” Earlier, several Bangsamoro Parliament members appealed to the President and Congress to grant blanket amnesty to MILF and

MNLF members. It is safe to say that the MNLF as well as the RPMP-RPA-ABB also welcome the Proclamation.

On the other hand, the C-N-N “firmly reject[ed] Marcos’s treacherous offer of amnesty and surrender.” CPP Chief Information Officer Marco L. Valbuena said, among others, that “The revolutionary cause for genuine national freedom and social justice is far greater than any Marcos offer of amnesty. Revolutionaries are motivated not by the selfish desire for some personal gain, rather by the selfless devotion to serve and struggle with the people.... Marcos is being grossly insolent with his offer of amnesty. He is seriously mistaken to think that Red fighters of the New People’s Army will line up to gain a few individual concessions in exchange for giving up the much bigger people’s cause which they have committed themselves to.” This rejection of amnesty has been reaffirmed by several NPA regional commands. This could be a real test of mettle, one way or the other.

Before proceeding to a discussion of the terms of the Proclamations, it should be noted that the Proclamations do not cover at least one more Communist rebel group that broke away first from the CPP as part of the RPMP and then from the latter to form the Rebolusyonaryong Partido ng Manggagawa ng Mindanao-Revolutionary People’s Army (RPMM-RPA) even though this group has been in a peace process with the GRP that has been suspended for some time now though still with an existing ceasefire agreement. This admittedly “small peace process” has apparently been long forgotten, at least by the GRP. There is also the C-N-N breakaway group Cordillera People’s Liberation Army (CPLA), no longer the subject of amnesty likely because of the completion of post-settlement Disarmament, Demobilization and Reintegration (DDR)

(2) Crimes Covered and Not Covered

All four rebel amnesty Proclamations, under the uniform terms of their respective **Section 1 on Grant of Amnesty**, cover “crimes in pursuit of their political beliefs, whether punishable under the Revised Penal Code or special penal laws, including but not limited to the following:

- a. Rebellion or insurrection;
- b. Conspiracy and proposal to commit rebellion or insurrection;
- c. Disloyalty of public officers or employees;
- d. Inciting to rebellion or insurrection;
- e. Sedition;
- f. Conspiracy to commit sedition;
- g. Inciting to sedition;
- h. Illegal assembly;
- i. Illegal association;
- j. Direct assault;

- k. Indirect assault;
- l. Resistance and disobedience to a person in authority or the agents of such person;
- m. Tumults and other disturbances of public order;
- n. Unlawful use of means of publication and unlawful utterances;
- o. Alarms and scandals;
- p. Illegal possession of firearms, ammunition or explosives, provided that these crimes or offense were committed in furtherance of, incident to, or in connection with the crimes of rebellion or insurrection; and,
- q. Those charged, detained or convicted of common crimes but who can establish by substantial evidence that they have actually committed said crimes in pursuit of political beliefs.”
(underscorings supplied)

This appears to be a relatively expansive long list of “political offenses,” i.e. “crimes in pursuit of their political beliefs” or “in furtherance of, incident to, or in connection with the crime of rebellion.” There of course follow further below certain significant exceptions.

It is interesting and laudable that “illegal possession of firearms” that is “in furtherance of, incident to, or in connection with the crime of rebellion” is covered by amnesty, while often enough captured armed rebels are charged just with “illegal possession of firearms” but not with the proper charge of “rebellion” that would or should absorb the “illegal possession of firearms,” such as provided under Section 29 of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Act of 2013.

It is also interesting and laudable that “Those charged, detained or convicted of common crimes” can be covered by amnesty if the common crimes were committed “in pursuit of political beliefs.” But of course this is later qualified to exclude certain common crimes, as will be seen shortly below.

But Section 1 provides that “the amnesty shall not be granted to those who have already been proscribed or those charged under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007, or RA No. 11479 or the Anti-Terrorism Act of 2020.” Note however that RA 9372 has been repealed and replaced under RA 11479. But conspicuously not mentioned, despite being terrorism-related, is RA 10168 or the Terrorist Financing Prevention and Suppression Act of 2012. The wide application of these anti-terrorism laws may effectively limit, or constitute exceptions to, the granting of rebel amnesties.

Section 1 also provides that “The amnesty granted under this Proclamation shall not cover kidnap for ransom, massacre, rape, terrorism, crimes committed against chastity as defined in the Revised Penal Code, crimes committed for personal ends, violation of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, grave violations of the Geneva Conventions of 1949, and those identified by the United Nations as crimes that can never be the subject of amnesty such as genocide, crimes against humanity, war crimes, torture, enforced disappearance, and other gross violations of human rights.” (underscorings supplied)

“Kidnap for ransom,” “rape,” “crimes committed against chastity,” and “crimes committed for personal ends” are examples of “common crimes” which are considered exceptions to rebel amnesty coverage. “Terrorism” is repeated here as such exception, but broadly rather than in terms of specific anti-terrorism legislation already cited above. The mention of drug offenses as also exceptions is interesting because of its implication of some possible linkage between drug offenses

and rebel groups. Since the new Proclamations under President Marcos just basically replicate the preceding Proclamations under President Duterte, the Duterte-type attention given to drug offenses even in a rebel amnesty matter is not surprising.

Most significant and laudable in terms of exceptions to rebel amnesty coverage are the specified crimes of “grave violations of the Geneva Conventions of 1949” (which are considered war crimes) and “genocide, crimes against humanity, war crimes, torture, enforced disappearance” as well as the unspecified crimes of “those identified by the United Nations as crimes that can never be the subject of amnesty” and “other gross violations of human rights.” All together, these have been referred to as “atrocities crimes” in some related literature. The most established atrocity crimes are genocide, crimes against humanity, and war crimes that are precisely the subject of the unmentioned 1998 Rome Statute of the International Criminal Court which describes them as “the most serious crimes of concern to the international community as a whole.” They are also the subject of the unmentioned RA 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity. Their not being considered as properly “political offenses” is consistent with the excellent Concurring Opinion of Justice Marvic Mario Victor F. Leonen in the *Ocampo vs. Judge Abando, et al.* (726 Phil. 471).

The 2004 Report of the UN Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies states that “UN-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights.” The latter would normally include “torture” and “enforced disappearance.” Torture and enforced disappearance are the subjects of the unmentioned RA 9745 or the Anti-Torture Act of 2009, and the unmentioned RA 10353 or the Anti-Enforced or Involuntary Disappearance Act of 2012, respectively. These domestic laws however cover only state actor (like soldier and police) perpetrators, not also non-state actor (like rebel) perpetrators, unlike RA 9851 which covers both kind of actors. Conspicuously not mentioned as among the exceptions to rebel amnesty coverage is extra-judicial killing (EJK) but this is certain covered in the phrase “other gross violations of human rights.”

Finally, Section 1 provides that “For purposes of this proclamation, the clause ‘crimes committed in pursuit of a political belief’ shall include, but shall not be limited to, acts and omissions performed or undertaken as part of a plan, program of action or strategy decided by the rebel leadership to overthrow and replace the National Government, any of its political subdivisions, or duly constituted authority, with or without the use of arms.” (underscorings supplied)

There are two aspects to note here, both which would tend to widen the coverage of rebel amnesty. First is “acts and omissions performed... as part of a plan, program of action or strategy decided by the rebel leadership” - which is not qualified as to whether the perpetrator was aware or not of the plan, program of action or strategy decided by the rebel leadership, but it could be that the perpetrator was simply following a field commander’s order to perform an act though he/she was not aware that it was part of the leadership’s decided plan, program of action or strategy. Second is “to overthrow and replace the National Government, any of its political subdivisions, or duly constituted authority, with or without the use of arms.” There are two levels here. One is the level of a rebel or political movement with the objective to overthrow the government, with or without the use of arms (like through “people power”). The other is the level of the perpetrator of an act performed as part of a plan, program of action or strategy decided by the rebel leadership, which act is with or without the use of arms (like propaganda except in the case of “armed propaganda units”).

(3) Time Frames, Surrenders, Admission of Guilt, and Processing

Under **Section 2 on Who May File For Amnesty** of the new rebel amnesty Proclamations, “the crime for which amnesty may be granted must have been committed prior to the issuance of this Proclamation” which is reckoned at its date 22 November 2023.

In **Proclamation No. 404**, a “former member” of the “CPP-NPA-NDF or their front organizations” is “understood to refer to one who... has surrendered to the government, and renounced his rebellious activities.” This obviously encourages surrenders from the C-N-N, while not similarly requiring surrenders for purposes of amnesty in the case of “members” of the three other rebel groups subject of the three other Proclamations. So, here is another instance of *naiiba* (different in amnesty treatment) as far as the C-N-N is concerned. But the government’s amnesty offer is only an external factor for rebel surrenders, which ultimately depend more on internal factors, whether at the individual rebel level or the rebel organization level. To be clear, amnesty is for individuals (members or former members), not for organizations. But surrender can be both for individuals and for organizations. Surrender can actually be the subject of, but is not inherent in, a peace settlement which could otherwise instead deal with major reforms and/or some power-sharing. The C-N-N has somewhat arrogantly (“holier than thou”) characterized the peace settlements of the RPMP, MILF and MNLF as “surrenders” to the government.

Under Section 2, “A person who has already been granted amnesty under previous amnesty proclamations shall no longer qualify to apply for amnesty under this Proclamation. For avoidance of doubt, persons who applied for amnesty under previous proclamations whose applications were not considered for having been made outside the reglementary period for filing may apply under this Proclamation.”

Furthermore under Section 2, “An applicant under this Proclamation must, in writing and under oath, admit his or her guilt of the offense for which he or she is criminally liable and shall turn over whatever firearms, weapons, and/or explosives he or she may have in his or her possession upon application for amnesty without incurring liability for illegal possession thereof, notwithstanding the grant or denial of the amnesty application.” Admission of guilt is considered standard enough in amnesty applications, akin to an apology as a premise for seeking forgiveness. In any case, a rebel leader availing of amnesty can rationalize that his or her admission of guilt was not really for a crime like rebellion but rather for a cause like revolution.

Cristina Palabay, secretary general of human rights group Karapatan, has said that this amnesty would only “oblige” or “force” grantees to admit membership in the C-N-N. That membership itself is not a crime unless the C-N-N is proscribed as a terrorist organization under the last paragraph of Section 10 in relation to Section 26 of the new Anti-Terrorism Act or is designated by the UN Security Council as a terrorist organization. Palabay also pointed out that grantees may even be “forced” to commit a “number of anti-government actions” that may even include activities that do not even involve the use of arms. A perusal of the last paragraph of Section 1 indicates that the “crimes committed in pursuit of a political belief” and thus possibly subject to amnesty need not be “with... the use of arms,” it may even be “without the use of arms” as long as the act was “part of a plan, program of action or strategy decided by the rebel leadership to overthrow and replace the National Government, any of its political subdivisions, or duly constituted authority.”

A potential problem with the above-quoted phrase “the offense for which he or she is criminally

liable” is in those instances where no criminal charges have yet been filed. What offense then should an amnesty applicant admit guilt of? Would “rebellion” be the default offense for this purpose? Or just go for a much less serious offense (say “alarms and scandals”) from the long list of “crimes in pursuit of political beliefs” covered by rebel amnesty.

Finally under Section 2, “The filing of an application herein shall not ipso facto result in a grant of amnesty. Applicants who are found qualified, upon due deliberation of the commission created for this purpose and approved by the President, shall be issued the corresponding Certificate of Amnesty.” This **Amnesty Commission** is the subject of **Section 3** and is currently the subject of Executive Order (EO) No. 47 dated 22 November 2023 by President Marcos, amending EO 125, series of 2021, by then President Duterte, on the Creation of the National Amnesty Commission (NAC) to receive and process applications for amnesty.

Under **Section 4** on **Effects** of the new rebel amnesty Proclamations, “Amnesty under this Proclamation shall extinguish any criminal liability for acts committed in pursuit of political beliefs, without prejudice to the grantee’s civil liability for injuries or damages caused to private persons whose right to be indemnified is fully recognized herein. The grant of amnesty shall also restore civil or political rights suspended or lost by virtue of criminal conviction.” Interestingly, “the grantee’s civil liability for injuries or damages caused” does not extend to public persons, such as soldiers and police officers.

Under **Section 5** on **Confidentiality Clause**, “All sworn applications filed before the Amnesty Commission, as well as any testimony and/or any evidence given or presented in support of the application which are not otherwise available to the prosecution, shall not be used as evidence against the applicant in any other proceeding where the amnesty is not in issue, except for the offense of perjury committed in the course of the testimony relevant to the amnesty application.” It seems that “any testimony and/or any evidence given or presented in support of the application” — if “otherwise available to the prosecution” — can still be used as evidence against the applicant in any other proceeding where the amnesty is not in issue.” What other proceedings could this be? One kind could be for “the grantee’s civil liability for injuries or damages caused to private persons.”

Finally under **Section 6** on **Application Period**, “Applications for the grant of amnesty shall be filed under oath with the Amnesty Commission within two (2) years from the effectivity of this Proclamation.” This would normally be counted from the corresponding Concurrent Resolutions of both Houses of Congress which were achieved when the Senate adopted the earlier House Concurrent Resolutions for Proclamations Nos. 403, 405 and 406 on March 4, 2024 and for Proclamation No. 404 on March 13, 2024. The two-year deadline is thus up to March 2026, still under the Marcos Jr. administration, barring unforeseen circumstances. By then, the NPA would normally be celebrating its 57th anniversary.

(4) CPP-NPA-NDF “Front Organizations”

Proclamation No. 404 granting amnesty to “former members” of the CPP-NPA-NDF or “their front organizations” does not define or name the latter. “**Front organizations**” may be defined as those created or infiltrated, but in any case controlled, by a mother organization to serve its purposes and interests. All four rebel groups subject of the four new amnesty Proclamations have their respective front organizations, but only Proclamation No. 404 makes reference to those of the C-N-N. Aside

from the obvious widening of the net, as it were, whether positively or negatively, on the national democratic front (used here generically, as distinguished from the National Democratic Front), this may in a way be a left-handed (pun intended) compliment or acknowledgment of the important role of the front organizations of the C-N-N in its “struggle for national democracy,” as shown early on since the 1960s by the “historical role and contributions of Kabataang Makabayan,” according to no less than its Founding Chairman Jose Maria Sison on its 50th anniversary (1964) on November 30, 2014.

The National Democratic Front of the Philippines (NDFP, not just NDF) itself has named its member organizations, as follows, **and so there is no doubt as to their being front organizations under the leading CPP-NPA tandem:**

- [Communist Party of the Philippines \(CPP\)](#)
- [New People’s Army \(NPA\)](#)
- [Moro Resistance and Liberation Organization \(MRLO\)](#)
- [Kabataang Makabayan \(KM\)](#)
- Revolutionary Council of Trade Unions (RCTU)
- Pambansang Katipunan ng Mambubukid (PKM)
- [Malayang Kilusan ng Bagong Kababaihan \(MAKIBAKA\)](#)
- Christians for National Liberation (CNL)
- Katipunan ng Gurong Makabayan (KAGUMA)
- Makabayang Samahan Pangkalusugan (MASAPA)
- Liga ng Agham para sa Bayan (LAB)
- Lupon ng Manananggol para sa Bayan (LUMABAN)
- Artista at Manunulat para sa Sambayanan (ARMAS)
- Makabayang Kawaning Pilipino (MKP)
- Revolutionary Organization of Overseas Filipinos and their Families (COMPATRIOTS)
- Cordillera People’s Democratic Front (CPDF)
- Revolutionary Organization of Lumads (ROL)
- Katipunan ng mga Samahang Manggagawa (KASAMA)

In the related literature, after the CPP and NPA as the leading and most important organizations of the NDFP, the rest of the above-enumerated largely sectoral organizations are referred to as “underground mass organizations” (UGMOs). But these also have their corresponding aboveground, open and legal mass organizations referred to as “national democratic mass organizations” (NDMOs), in effect second-level front organizations of first-level front organizations. And here lies the rub, where it becomes tricky or sometimes bloody, both figuratively and literally, like when they

are “Red-tagged.”

In this connection, there is the remarkable unappealed and therefore final **Resolution dated 21 September 2022 by RTC Manila Branch 19 Judge Marlo A. Magdoza-Malagar in Civil Case No. R-MNL-18-00925-CV (Department of Justice vs. CPP and NPA)** which dismissed the Petition to declare the CPP-NPA as terrorist groups under Section 17 of the RA 9372 or the Human Security Act of 2007, even as this was already repealed by RA 11479 or the Anti-Terrorism Act of 2020. In pp. 38-39 of this Resolution, there is a matrix based on the testimonies of prosecution witnesses Noel Minioto Legaspi and Joy James Alcoser Sanguino, both former cadres, not just ordinary members, of the C-N-N, “identifying the NDMOs targeting specific groups or sectors and their corresponding UGMOs as follows:”

Sector	UGMO	NDMO
Youth and Student	Kabataang Makabayan (KM)	- Anakbayan - League of Filipino Students (LFS) - National Union of Students of the Philippines (NUSP) - College Editors Guild of the Philippines (CEGP) - Student Christian Movement of the Philippines (SCMP)
Women	Malayang Kilusan ng Bagong Kababaihan (MAKIBAKA)	- Gabriela Youth - Gabriela Women’s Party
Farmers, Fisher folks and Peasants	Pambansang Katipunan ng Magbubukid (PKM)	- Kilusang Magbubukid ng Pilipinas (KMP) - Unyon ng Magsasaka sa Agrikultura (UMA) - Pambansang Lakas ng mga Mamamalakaya (PAMALAKAYA)
Workers	Revolutionary Council of Trade Unions (RCTU)	- Kilusang Mayo Uno (KMU)
Urban Poor	Katipunan ng mga Samahang Manggagawa (KASAMA)	- Katipunan na Damayang Mahihirap (KADAMAY)
Transport	Pambansang Samahan ng mga Makabayang Tsuper (PSMT)	- Pinagkaisang Samahan ng mga Tsuper at Opereytor Nationwide (PISTON)
Teachers	Katipunan ng mga Gurong Makabayan (KAGUMA)	- Alliance of Concerned Teachers (ACT) - Congress of Teachers and Educators for Nationalism and Democracy (CONTEND)
Government	Makabayang Kawaning Pilipino (MKP)	Confederation for Unity and Advancement of Government Employees (COURAGE)
Health	Makabayang Samahang Pangkalusugan (MASAPA)	- Alliance of Health Workers (AHW) - Health Alliance for Democracy (HEAD)
Lawyers	Lupon ng Manananggol para sa Bayan (LUMABAN)	- National Union of People’s Lawyers (NUPL)
Scientists	Liga ng Agham para sa Bayan (LAB)	AGHAM
Church	Christians for National Liberation (CNL)	- Promotion of Church Peoples’ Response (PCPR)
Artists	Artista at Manunulat ng Sambayanan (ARMAS)	- National Union of Journalists in the Philippines (NUJP) - Concerned Artists of the Philippines Musika Alay sa Bayan

The above listing of NDMOs does not appear to be exhaustive or complete, in terms of sectors and organizations, and any such listing is bound to be contested. But **note that this above NDMOs list**

is taken from no less than a court Resolution that is deemed by the Civil Code as “form[ing] a part of the legal system of the Philippines.” Would its above-quoted matrix be considered as “Red-tagging”? Or if a similar matrix would be presented in an academic journal article based on post-graduate academic research in political science, would it be considered as “Red-tagging”? Or if a similar matrix would be presented in a newspaper or magazine article based on investigative journalism, would it be considered as “Red-tagging”? OR what if the NAC through its expected IRR or some other guidelines were to list NDMOs (there should be no question with UGMOs) as “front organizations” of the C-N-N, for purposes of implementing Proclamation No. 404, **would it be considered as “Red-tagging”? Just asking, while realizing that the whole issue of “Red-tagging” is best treated separately from the herein amnesty topic.**

(5) The Case of “Political Detainees and Prisoners”

We round out this discussion of the four new rebel amnesty Proclamations by looking at the case of “political detainees and prisoners.” Some members and former members of the four subject rebel groups may be in detention or prison due to criminal charges or convictions, not necessarily for or limited to the crimes covered by amnesty. Presumably, most if not all of them, just like non-political detainees and prisoners, seek the soonest possible release from detention or imprisonment. There are various options for such release depending on each detainee’s or prisoner’s legal or criminal case situation, basically pre-conviction and post-conviction: [1] bail, recognizance and/or humanitarian release during the pendency of the case; [2] case dismissal or acquittal; [3] post-conviction probation often after plea bargaining; [4] post-conviction service of sentence, including with Credit for Preventive Imprisonment (CPI) and Good Conduct Time Allowance (GCTA); [4] post-conviction parole; and [5] various forms of executive clemency — reprieves, commutations, pardons, remission of fines and forfeitures (all post-conviction), and amnesty (may be pre- or post-conviction). The new rebel amnesty Proclamations, under Section 2, cover those “who ha[ve] committed any act or omission in pursuit of political belief, referred to in Section hereof, including those detained, charged, or convicted for such acts or omissions.” In other words, amnesty may be an option for political detainees or prisoners, among other options for release.

For example, a number of them may have been detained, charged or convicted for murder rather than for rebellion which absorbs murder committed in furtherance thereof. We already know the longtime prosecution practice of simply charging rebels with murder instead of the proper charge of rebellion which absorbs murder committed in furtherance thereof. Under the new rebel amnesty Proclamations, as already quoted and pointed out above, amnesty can apply to “Those charged, detained or convicted of common crimes but who can establish by substantial evidence that they have actually committed said crimes in pursuit of political beliefs.” But those who deny that they were NPA in murder cases may have a problem taking this amnesty option for release, aside from some doubts about their status as “political detainees or prisoners.” The mention of “in pursuit of political beliefs” in the Proclamations are not divorced from the particular rebel groups covered by the Proclamations.

Interestingly and relevantly, it was only recently reported that the Supreme Court in *Guinto et al. v. Department of Justice* and *Inmates of New Bilibid Prison, et al. v. Department of Justice* found that the Department of Justice (DOJ), in enacting its *2019 Implementing Rules and Regulations*, exceeded its power of subordinate legislation when it excluded persons convicted of heinous crimes from the benefits of RA 10592 or the New Good Conduct Time Allowance (**GCTA**) law. The Court ruled that

Article 97 of the Revised Penal Code, as amended by RA 10592, is clear that any convicted prisoner is entitled to GCTA as long as the prisoner is in any penal institution, rehabilitation or detention center, or any other local jail. "Heinous crimes," according to the RA 7659 or the 1993 death penalty law, include treason, piracy and mutiny, qualified piracy, qualified bribery, parricide, murder, infanticide, kidnapping, robbery, destructive arson, rape and drug trafficking. Aside from murder, rebels are also often charged with such common crimes as kidnapping and destructive arson, even if clearly committed in furtherance of rebellion.

Of course, taking the amnesty or whatever other option for release is ultimately an individual decision although high-level rebel leaders would tend to submit themselves to the central collective leadership's decision for them whether or not to opt for amnesty because of political and propaganda implications especially where it comes with difficult conditions for the grant of amnesty and release from prison. The history of Philippine revolutionary movements is replete with stories of amnesty availment dilemmas, whether of higher or lower level cadres. For example from the time of the old Partido Komunista ng Pilipinas-Hukbong Mapagpalaya ng Bayan (PKP-HMB) in the 1950s, the amnesty availment dilemmas of PKP leaders Celia Mariano and William J. Pomeroy imprisoned mainly in Muntinglupa and Fort McKinley are among their stories in his book *Bilanggo: Life as a Political Prisoner in the Philippines, 1952-1962* (UP Press, 2009). And from the early years of the new CPP in the early 1970s of martial law, the amnesty availment dilemmas of Dolores Stephens Feria and her propaganda collective comrades, as well as of "The Crimson Establishment" (i.e. "five members of the prestigious secretariat of the CPP before 1974"), detained in the Fifth Constabulary Security Unit are among the stories in her book *Project Seahawk: The Barbed Wire Journal* (Circle Publications, 2nd Ed. 1998).

Presidential peace adviser Sec. Galvez has said that the new rebel amnesty proclamations "would allow former rebels not only to fully reintegrate themselves into mainstream society as peaceful, productive and law abiding citizens, but more importantly enable them to rebuild their lives and ensure a better future for themselves and their families," According to him, he and presidential assistant Wilben Mayor, a retired police general, may be considered "living proof" of how amnesties can turn lives around. Mayor in turn said that he and Galvez were both involved in the 1989 coup attempt against then President Corazon Aquino but were later granted amnesty by her successor, President Ramos. Mayor recalled, "We were young lieutenants then."

Some military rebel coup leaders like Philippine Army Colonel Gregorio B. Honasan II of the Reform the Armed Forces Movement (RAM) in 1987 and 1989 and then Philippine Navy Lieutenant Senior Grade Antonio F. Trillanes IV of the Magdalo group in the Oakwood Mutiny of 2003, who were detained and subsequently amnestied, would later both even become no less than Senators of the Republic.

Again, interestingly and relevantly, it was only recently reported that the Supreme Court in *Sen. Antonio "Sonny" F. Trillanes IV v. Hon. Salvador C. Medialdea, et al. and People of the Philippines v. Antonio F. Trillanes IV* ruled that the amnesty granted by President Benigno Aquino III to Trillanes was valid and that its revocation through Proclamation No. 572 by President Duterte was unconstitutional. The Court ruled that a President cannot revoke a grant of amnesty without concurrence from Congress; that the revocation of Trillanes' amnesty long after it became final and without prior notice violated his constitutional right to due process; and that Proclamation No. 572, in seeking the revival of the criminal cases against Trillanes after they had been dismissed with finality, violated his constitutional rights against *ex post facto* laws and double jeopardy. Finally, the Court found that there is convincing evidence that Trillanes did file his amnesty application. The Executive's decision to revoke only Trillanes' amnesty, notwithstanding the fact that the application forms of all the other amnesty grantees could similarly no longer be located, constituted a breach of his right to the equal protection of the laws. Long standing jurisprudence on amnesty has thus

continued to be enriched.

CPP Chief Information Officer Valbuena, in a reaction titled “A redux on Marcos’ sham amnesty” to National Security Adviser Eduardo Año’s recent pronouncement that the Marcos administration plans to expand its amnesty program, said that the “Marcos’ amnesty proclamation will fail in its declared objective of weakening the NPA and the revolutionary movement.... Since Magsaysay, all these schemes merely seek to obscure the reasons why people rise up in arm[s]. [The] Marcos amnesty program will merely end up in the dustbin of history.”

Let still unfolding history then be the judge whether the four new rebel amnesty Proclamations, not only that for “former members” the CPP-NPA-NDF “or their front organizations,” but also those for members of the RPMP-RPA-ABB, the MILF and the MNLF, meet the Proclamations’ common declared objectives to “create a climate conducive for peace and reconciliation;” to serve “as an instrument of reconciliation and as a path for their return to a peaceful, democratic, and pluralistic society;” and to “promote an atmosphere conducive to the attainment of a just, comprehensive, and enduring equanimity and is in line with the government’s call for peace, unity, and reconciliation to bring closure to past enmity, rancor, and bitterness that has stymied lasting amity among the Filipino people.” The burden of proof is with the government. But the several concerned rebel groups have also their respective parts of the problem and of the solution.

Naga City, 16 April 2024

Soliman M. Santos, Jr.

Addendum on IRR

Update 7/12/24

The Implementing Rules and Regulations (IRR) for all four rebel group Amnesty Proclamations Nos. 403, 404, 405 and 406 were finally released by the National Amnesty Commission (NAC) around mid-May 2024, three months after the IRR’s indicated date of 14 March 2024. It also indicated the signatory seven members of the NAC: as Chairperson, Atty. Leah Tanodra-Armamento; as two regular member Commissioners Atty. Nasser A. Marohomsalic and Atty. Jamar M. Kulayan; and as Ex-Officio Members DILG Sec. Benjamin C. Abalos, DOJ Sec. Jesus Crispin C. Remulla, DND Sec. Gilberto C. Teodoro, and presidential peace adviser Sec. Carlito G. Galvez, Jr. Attys. Armamento and Marohomsalic are both former CHR commissioners, while Attys. Marohomsalic and Kulayan are both Muslims from Mindanao, more familiar with the two Moro liberation fronts.

IRR actually presents more clearly or systematically than the four Amnesty Proclamations who are the “Persons Covered” and the “Persons Not Covered” and what are the “Crimes or Offenses Covered” and the “Crimes or Offenses Not Covered.” **Persons covered** under Rule III, Section 1 are: “Any member of the RPMP-RPA-ABB, former member of the CPP-NPA-NDF or their front organizations, member of the MILF, and member of the MNLF who has committed any act or omission in pursuit of political beliefs, including those detained, charged, or convicted for such acts or omissions, may file an application for an amnesty. Provided that, the crime for which amnesty may be granted must have been committed before 22 November 2023.” (underscorings supplied) The latter was the common date of all four Amnesty Proclamations.

Persons not covered under Rule III, Section 2 are: “A person who is not a member of RPMP-RPA-ABB, MILF, and MNLF, or is an active member of the CPP-NPA-NDF or their front organizations, or who had already been granted amnesty under previous amnesty proclamations, shall no longer qualify to apply for an amnesty...” (underscorings supplied) Two things are to be noted:

1. The qualification as “active” member of the CPP-NPA-NDF or their front organizations would appear to allow “inactive” members to apply for amnesty under Proclamation No. 404 — but there may be questions about the IRR unduly expanding coverage contrary to the intent of that Proclamation.
2. The above-quoted Section 2 did not include the relevant common proviso in Section 1 of all four Proclamations that “the amnesty shall not be granted to those who have already been proscribed or those charged under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007, or RA No. 11479 or the Anti-Terrorism Act of 2020.” The possibly inadvertent omission of this proviso in the IRR cannot however defeat the clear intent of its mother Proclamations.

Crimes or offenses covered under Rule III, Section 3 include but are not limited to the following:

- a. Rebellion or insurrection (Art. 134, RPC);
- b. Conspiracy and proposal to commit rebellion or insurrection (Art. 136, RPC);
- c. Disloyalty of public officers or employees (Art. 137, RPC);
- d. Inciting to rebellion or insurrection (Art. 138, RPC);
- e. Sedition (Art. 139, RPC);
- f. Conspiracy to commit sedition (Art. 141, RPC);
- g. Inciting to sedition (Art. 142, RPC);
- h. Illegal assembly (Art. 146, RPC);
- i. Illegal association (Art. 147, RPC);
- j. Direct assault (Art. 148, RPC);
- k. Indirect assault (Art. 149, RPC);
- l. Resistance and disobedience to a person in authority or the agents of such person (Art. 151, RPC);
- m. Tumults and other disturbances of public order (Art. 153, RPC);
- n. Unlawful use of means of publication and unlawful utterances (Art. 154, RPC);
- o. Alarms and scandals (Art. 155, RPC);
- p. Illegal possession of firearms, ammunition or explosives, provided that these crimes or offense were committed in furtherance of, incident to, or in connection with the crimes of rebellion or insurrection (Republic Act (R.A.) No. 10591); and,

q. Those charged, detained or convicted of common crimes but who can establish by substantial evidence that they have actually committed said crimes in pursuit of political beliefs.

This is the same list in Section 1 of all four Amnesty Proclamations. The difference is the indication of the corresponding specific Articles of the Revised Penal Code (RPC) and one Republic Act (R.A. No. 10591) for each of the 17 listed crimes or offenses, except the last one. One special penal law “cognate” to R.A. No. 10591 on illegal possession, etc. of firearms and ammunition but not mentioned in both the IRR and its mother Proclamations is R.A. No. 9516 on illegal possession, etc. of explosives. Though not mentioned, violation of it would be considered as included among the crimes or offenses covered by amnesty.

Crimes or offenses not covered under Rule III, Section 4 are the following (note the more restrictive phrase “shall not cover the following” used here rather than the more expansive phrase “shall not include but shall not be limited to the following”):

- a. Kidnap for ransom (Art. 267, RPC);
- b. Rape (Art. 335, RPC);
- c. Crimes against chastity (Title XI, RPC);
- d. Massacre (R.A. No. 9851);
- e. Violation of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165);
- f. Violation of the Anti-Torture Act of 2009 (R.A. No. 9745);
- g. Violation of the Anti-Terrorism Act of 2020 (R.A. No. 11479);
- h. Violation of the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (R.A. No. 9851);
- i. Violation of generally accepted principles of international law, including the Hague Conventions of 1907;
- j. Grave violation of international humanitarian law, including the 1949 Geneva Conventions and their Additional Protocols;
- k. Grave violation of customary international law;
- l. Such other analogous violations in domestic and in international law, including those identified by the United Nations as crimes that cannot be amnestied, such as but not limited to genocide, crimes against humanity, war crimes, torture, enforced disappearances, and gross violations of human rights;
- m. Violation of election laws, rules and regulations without the favorable recommendation of the Commission on Elections; and
- n. Crimes committed for personal ends.

Several comments are due about this list of crimes or offenses not covered by amnesty:

1. Several above listed crimes or offenses – namely items i, k and m – in the IRR do not appear to be reflected in its mother Proclamations, and thus may be subject to question such as for being *ultra*

vires or beyond the NAC's legal power.

2. Massacre is designated as "(R.A. No. 9851)" but this may be inaccurate because massacres are not necessarily war crimes, crimes against humanity or genocide as defined therein. For example, the MILF and BIFF perpetrators of the Mamasapano Massacre of the SAF 44 in 2015 were instead eventually (to be) charged by the DOJ for multiple murder. There is in the current Proclamations amnesty for members of the MILF but not of the BIFF.

3. The IRR does not list, as its mother Proclamations do not mention, Violation of the Terrorist Financing Prevention and Suppression Act of 2012 (R.A. No. 10168). But the amnesty proclaimed expressly "shall not cover... terrorism..." So, does that include terrorist financing under R.A. No. 10168? Or is its exclusion from the above-quoted exclusion list to be strictly construed in favor of amnesty coverage?

Incidentally, the IRR has a **Rule I, Section 3 on Construction** that "...the provisions of amnesty proclamations and this Rules... shall be liberally construed in order to promote a just, speedy, and inexpensive disposition of application and grant of amnesty."

4. The mother Proclamations had mentioned "genocide, crimes against humanity, war crimes, torture, enforced disappearances" as among "crimes that can never be the subject of amnesty." In the IRR, the corresponding specific domestic laws are now mentioned: R.A. No. 9851 for the first three Rome Statute crimes, and R.A. No. 9745 for torture, but not yet R.A. No. 10353 for enforced disappearances.

5. The mother Proclamations mentioned only "grave violations of the Geneva Conventions of 1949," while the IRR now mentions "Grave violation of international humanitarian law, including the 1949 Geneva Conventions and their Additional Protocols." This latter formulation in the IRR may be considered an acceptable (not undue) elaboration of the earlier formulation in the Proclamations.

The **period for filing amnesty applications** under the IRR's **Rule III, Section 5** is now given starting dates (not found in its mother Proclamations, which merely stated "within two years from the effectivity of this Proclamation"): 04 March 2024 (thus up to 03 March 2026) for members of the RPMP-RPA-ABB, MILF and MNLF, and 13 March 2024 (thus up to 12 March 2026) for former members of the CPP-NPA-NDFP and their front organizations. The nine-day delay in the effectivity of Proclamation No. 404 covering the latter shows that it was a bit more contentious, perhaps expectedly, in terms of Congressional concurrence. *Naiiba talaga pagdating sa CPP-NPA-NDF.*

The IRR makes a **definition of terms under Rule II**, including on:

a. **Amnesty** - is an act of the sovereign power that abolishes criminal liability for past political offenses, overlooks and obliterates the offense/s for which persons are charged and/or convicted, and allows these persons to stand before the law as though no offense has been committed;

e. **Crimes committed in pursuit of a political belief** - shall include, but shall not be limited

to acts and omissions performed or undertaken as part of a plan, program of action or

strategy decided by the rebel leadership to overthrow and replace the National

Government, any of its political subdivisions, or duly constituted authority, with or

Without arms;

“Political belief” necessarily relates to the political program and ideology of the rebel organization concerned, not just individual beliefs of its members.

What is again **missing in the IRR**, as was in the relevant mother Proclamation No. 404, is a **definition of “front organizations”** as relates to the CPP-NPA-NDF. Definition not necessarily listing (some say it could number “hundreds”), so that whatever later necessary naming of the “front organization,” in the course of the processing of relevant applications for amnesty, is not arbitrary for all concerned. Determination of whether this or that organization is a front organization might best be done on a case to case basis, and need not be repeated every time, especially if there has already been a previous conclusive and credible determination, one way or the other, for purposes of amnesty.

The IRR also fleshes out the **NAC organizational structure, powers and functions under Rule IV-A**, and provides for **Local Amnesty Boards (LABs) in the provinces, cities, and municipalities under Rule IV-B**. There is **compliance with the Data Privacy Act under Rule VI**. The latter should however be balanced by the constitutional right of the people to information on matters of public concern – for example the victims of whatever rebel atrocity crimes perpetrated by particular rebel or ex-rebel applicants for amnesty. The concerned public must have fair notice and an opportunity to be heard on all applications without unduly infringing on personal data privacy. There are also provisions on the disclosure and **turnover of unlicensed firearms, ammunition, weapons, and explosives under Rule VII**.

The **effects of amnesty under Rule VIII** clearly indicate two major effects: (1) Extinction of criminal liability, and (2) Restoration of civil and political rights. But amnesty “shall not absolve the grantee from civil liabilities for injuries or damages caused to private persons or entities.” Interestingly or intriguingly, this does not appear to apply to injuries or damages caused to public persons or entities – such as soldiers or police officers killed or wounded in action by rebels, or military vehicles destroyed by landmines, or government infrastructure construction equipment burned by rebels.

Finally, the IRR indicates that “Upon the completion of the mandate and assigned tasks of the Commission [NAC]... [it] shall provide the **OPAPRU** [Office of the Presidential Adviser on Peace, Reconciliation, and Unity] with a general inventory of records for validation and reference and shall accordingly turn over the same to the OPAPRU.” This somehow shows that the amnesty program is situated “as an integral component of the government’s comprehensive peace efforts” (per the first WHEREAS clause of the IRR) rather or more than as an integral component of national defense for internal security to suppress rebellion on both the Communist and Moro fronts.

Comes now the recent news of presidential peace adviser Sec. Galvez’s plan to propose to Congress the creation of a **Department of Peace** in place of the OPAPRU. He was reported to have pointed out that this move would address the security of tenure and career advancement of its staff complement of peace builders “who have dedicated their lives to peace work...” But beyond that, an honest-to-goodness Department of Peace should reflect a paradigm shift along the constitutional principle of renouncing war as an instrument of national policy or as the preferential option (rather than comprehensive peace efforts) in resolving our internal armed conflicts, and the preambular aspiration for “a regime of truth, justice, freedom, love, equality, and peace. Perhaps a Department of Peace can be justified after both parties to the local communist armed conflict prove that they can actually “come up with a framework that sets the priorities for the peace negotiation... that will set the parameters for the final peace agreement,” as they agreed to do in Oslo way back 23 November 2023, just one day after the issuance of the four rebel group amnesty Proclamations. — #

Naga City, 12 July 2024

Soliman M. Santos, Jr.

P.S.

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