

AMNESTY IN THE PHILIPPINES: THE LEGAL CONCEPT AS A POLITICAL TOOL*

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I. INTRODUCTION

Within this framework we should attempt to find solutions based on the...[premise] ...that despite our ideological and other differences, we recognize these needs for what they are, and that the answers to them are not intended to stop rebellion or subversion, but to enable every Filipino to live as a human being, proudly and with dignity.

Food and freedom, jobs and justice—these are the keys to peace.

- Jose W. Diokno

The road to peace is long and tedious. And it is trodded not without calling for the greatest sacrifices: wealth, pride, principles, lives. All of which, however, are expected to be regained at some point along the journey, if not at its end.

The history of the Philippines is a long and tedious journey toward an elusive genuine and lasting peace. Most chronicles about the life of the Filipino people begin with the presentation of the serene lives of the Malay forebears disrupted by the arrival of the Western colonizers. Throughout the rest of its history, the nation is plagued by such disruptions both from external and internal sources producing an almost uninterrupted rule of dissension and disrupted peace.

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From the dominion of this disruption, Philippine society seeks to be free. Implied in the Constitution, the fundamental law of the land, is the aspiration of the people for a just and lasting peace. The leadership of this mission for peace is assigned to the government, with the powers and functions necessary for the fulfillment of the task provided accordingly. Upon the Government is imposed the prime duty to serve and protect the people,¹ ascribing to the view that "(T)he maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment of all people of the blessings of democracy."² In pursuit of these ideals, the Government employs various means within the constitutional framework. One of those often used is the power to grant amnesty. At different points in history, offenses committed against the government in the breach of peace are cast into oblivion as a gesture of reconciliation. Yet, in spite of these attempts, unity still remains a goal and a lasting peace is yet to be a reality.

This paper seeks to provide a comprehensive discussion on the legal concept of amnesty and how it has been used in the Philippines. It seeks to answer the following questions: What is the nature of amnesty? Is amnesty an adequate tool to forge unity? What role does it play in the quest for peace? What is the future of amnesty in the country?

II. THE GENERAL CONCEPT OF AMNESTY IN LAW

Amnesty, derived from the Greek word *amnasthia*, has retained the original general concept of oblivion, although it has evolved into distinct technical concepts in criminal law, constitutional law and international law.

Generally, amnesty is understood in law as:

a sovereign act of forgiveness for past acts, granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offenses -- treason, sedition, rebellion, draft

¹CONST. (1987), Art. II, sec. 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.

²CONST. (1987), Art. II, sec. 5.

evasion -- and often conditioned upon their return to obedience and duty within a prescribed time."³

In criminal law, amnesty is simply appreciated as a mode of extinguishing criminal liability. However, in constitutional law, the consideration of amnesty exudes more vibrance and focuses on the question of power.

In many state constitutions, the power to grant amnesty is expressly provided for and granted to either the executive or the legislative branch of government, or shared by both departments, distinct from the power to grant pardon.⁴ However, in countries where the common law tradition is upheld,

³BLACK'S LAW DICTIONARY 82-83 (1991).

⁴The following are examples of provisions from the constitutions of some states on the power to grant amnesty:

HAITI, Art. 118. (The President)... can only grant amnesty in political matters and in accordance with the provisions of the law.

JAPAN, Art. 73. The Cabinet (shall)

x x x

(7) Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

ICELAND, Art. 29. The President may decide that the prosecution for an offense be withdrawn if there are cogent reasons. He grants pardon and amnesty

x x x

ALBANIA, Art. 67. The People's Assembly has the following competences:

x x x

(6) it grants amnesty.

ANGOLA, Art. 38. The People's Assembly has the following responsibilities:

x x x

(f) To grant amnesties.

COLOMBIA, Art. 76. Congress is vested with the power of making the laws. By means of the laws, it exercises the following functions:

x x x

(19) To grant, by a vote of two third of the members of each house, and for grave considerations of the public good, general amnesties or pardons for political offenses. xxx

CONGO, Art. 47. In the domain of law, there are regulations concerning:

x x x

- the determination of crimes and misdemeanors as well as the penalties which accompany them, amnesty, and the creation of the magistrate's status.

CUBA, Art 73. The National Assembly of the People's Power is invested with the following powers:

x x x

(f) granting amnesty.

DOMINICAN REPUBLIC, Art 37. The following are powers of Congress:

x x x

usually only the pardoning power, granted to the executive, is provided in the Constitution and the power to grant amnesty is inferred therefrom.⁵

The United States of America is a case in point where the power to grant amnesty is not express. Under American constitutional law, amnesty is defined as "an exercise of the sovereign power by which immunity to prosecution is granted by wiping out the offense supposed to have been committed by a group or class of persons prior to their being brought to trial."⁶ In the absence of an express provision in the United States Constitution on the power to grant amnesty, the same is deemed included in the pardoning power of the President⁷ and, thus, necessarily takes the form of a general pardon by virtue of presidential proclamations. The power of

(21) To grant amnesty on political grounds.

EL SALVADOR, Art. 131. The following are duties of the Legislative Assembly:

x x x

(26) To grant amnesty for political crimes or common crimes xxx; and to grant pardons

x x x

HONDURAS, Art 205. The National Congress shall have the following powers:

x x x

(16) To grant amnesty for political offenses or related common offenses, except in such cases the National Congress may not make decisions on pardons.

IVORY COAST, Art. 41. The law shall determine rules concerning:

x x x

- the determination of crimes and misdemeanor as well as the applicable penalties, penal procedure and amnesty.

PANAMA, Art. 141. The legislative functions of the National Assembly consist in enacting laws for the following purposes:

x x x

(4) To grant amnesty for political offenses.

PERU, Art. 186. The following are the powers of Congress:

x x x

(6) To exercise the right of amnesty.

FINLAND, Art 29. In particular cases, after hearing the opinion of the Supreme Court, the President may, by granting pardon, remit or reduce a sentence. xxx A general amnesty may be granted only by special law.

ITALY, Art 79. The right of amnesty and indult are granted by the President of the Republic, on the basis of laws enacted by the chambers delegating such power xxx.

See BLAUSTEIN, CONSTITUTIONS OF THE WORLD.

⁵The constitutions of the following states vest the pardoning power on the executive and do not have express provisions on amnesty: Antigua, Barbados, Belize, Dominica, Gambia, India, Jamaica, Jordan, Monaco, Morocco, Poland.

⁶67A CJS 7.

⁷*Id.*, at 36.

Congress, however, to enact amnesty laws in exercise of its general power to legislate has long been recognized.⁸

An amnesty in favor of a class or classes of persons accused of certain offenses against the State is deemed to constitute an act of oblivion, obliterating not just the penalty but the offense itself.⁹ This was the effect of the amnesty proclamation issued in 1863 by US Pres. Abraham Lincoln following the Civil War in the US,¹⁰ and during the Vietnam conflict in the 1970s to favor those guilty of violating the Military Selective Service Act amidst strong opposition from different sectors.¹¹

In the 1987 Philippine Constitution, the power to grant amnesty is expressly provided and granted to the President subject to the concurrence of a majority of the members of Congress.¹² Despite this difference in the source of the power, however, amnesty, as it has been utilized and understood in Philippine history, is taken as having the same nature and effect as its American counterpart. The Supreme Court, in *Villa v. Allen*,¹³ said amnesty "commonly denotes the 'general pardon to rebels for their treason and other high political offenses', or the forgiveness which one sovereign grants to the subject of another, who have offended by some breach of the law of nations." The primary effect, therefore, of this general pardon can be noted in the absolution of criminal responsibility of the persons whose offenses are covered by the terms of the amnesty proclamation. For those accused of common crimes included in the proclamation but subject to the condition that they be in furtherance of political goals, amnesty becomes a defense that must be pleaded and the inclusion of the crime charged within the purview of the grant must be proved for the charges to be dismissed.¹⁴

⁸*Id.*

⁹59 AM JUR 2d 11.

¹⁰21 COMPTON'S ENCYCLOPEDIA 114(1980).

¹¹19 COMPTON'S ENCYCLOPEDIA 144 (1980).

¹²CONST. (1987), Art. VII, sec. 19. Except in cases of impeachment, the President may grant reprieves, commutations, and pardons, and remit fines and forfeiture, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of the Members of Congress.

¹³2 Phil. at 440 (1902). The Philippines was still an American colony when the Supreme Court decided this case, hence, the general applicability of US constitutional law in the country.

¹⁴*Supra.*

In essence, amnesty is viewed in municipal law, whether in constitutional law or criminal law as an act of mercy by the sovereign partaking of the nature of an executive clemency. The understanding of the concept in public international law and international humanitarian law, however, is viewed from a slightly--but significantly--different angle. This view at the macro level provides for a better appreciation and maximization of the use of amnesty, frees the concept from being just a noble gesture on the part of the executive,¹⁵ and allows amnesty to play its part in the larger political schema that contributes either to the maintenance or recasting of the complexion of nation-states.

In public international law, amnesty clauses are found in peace treaties such as those in the Treaty of Nimeguen of 1678, Treaty of Utrecht of 1713, Treaty of Aix-la-Chapelle of 1748, and Treaty of Paris of 1763.¹⁶ Such clauses were deemed "indispensable to facilitating a new beginning" and were included to effect the principle of tabula rasa to past offenses.¹⁷ Although treaties concluded after World War II usually did not include amnesty clauses and instead provided for the punishment of war criminals, general amnesties were granted to anti-Nazi and anti-fascist war participants by numerous states under national legislation.¹⁸

Under international humanitarian law, Protocol II relating to the protection of victims of non-international armed conflicts provides in Article 6(5) that:

At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

The United Nations Commission on Human Rights, in a study of amnesty laws in 88 countries conducted in 1985, combining international law and municipal law through a human rights framework, viewed amnesty as

¹⁵However, in the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS [hereinafter cited as INTERNATIONAL COVENANT], amnesty is considered analogous to pardon with respect to cases involving the imposition of the death penalty. Part III, Art. 6 (4) thereof provides that "(A)nyone sentenced to death shall have the right to seek pardon or commutation of sentence. Amnesty pardon or commutation of sentence may be granted in all cases.

¹⁶1 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (EPIL) 148 (1992).

¹⁷*Ibid.*

¹⁸*Id.*, at 149-151.

a "juridical expression of a political act whose expected effects directly concern the promotion or protection of human rights and, in some instances, the return to, or consolidation of, democracy:

Because the amnesty encourages national consensus in the wake of political change brought about in a democratic framework (elections);

Because it is the first act in the initiation of a democratic process or marks a return to democracy; or

Because it is intended to block an internal crisis (non-international armed conflict) or to mark an end to an international-armed conflict.¹⁹

Although it recognizes amnesty as an outgrowth of the right to pardon, the study notes at the onset that amnesty as applied to ordinary and to political offenses differ in nature and purpose. On this point, the perspective of viewing amnesty as either an act of oblivion or an act of impunity becomes material. Amnesty for ordinary offenses is deemed an "expression of the relatively broad power of civil society to grant every citizen the right of oblivion, if only to facilitate his reintegration into society."²⁰ It has also been utilized by states for more practical reasons such as reduction of tension in overcrowded prisons.

On the other hand, amnesty, when granted to obliterate political offenses, is generally intended to play a larger part in the whole political scenario. The following goals were noted by the UN study as those which states most frequently pursue:²¹

(a) Traditional amnesties, as those which fall into this category are called, are granted regularly during holidays or elections to control tension or to alleviate the effects of emergency measures.

(b) Authoritarian regimes shifting to democracy also utilize amnesty not really as an attempt to forge reconciliation with opposing groups but mainly to grant themselves impunity for the offenses they incurred during the authoritarian rule. As an example, the study cited the amnesty law issued in 1983 in Argentina by the ruling military junta. The "pacification law," as the decree was known, only caused increase in tension and unrest as those members of the junta who were responsible for serious violations of human rights were exempted from criminal liability.

¹⁹Study on amnesty laws and their role in the safeguard and promotion of human rights, UN Doc. E/CN.4/Sub.2/1985/16 4 (1985). [hereinafter cited as UN STUDY]

²⁰*Id.*, at 8.

²¹*Id.*, at 8-14.

(c) Reconciliation may again take the backseat in terms of priority when amnesty is used to seek peace by reducing tension through neutralization of opposition groups. The goal is basically normalization of the situation by persuading members of the opposition to take advantage of the amnesty to absolve themselves of their liabilities for offenses they may have committed in their resistance efforts.

(d) Amnesty may also be granted to guerillas to encourage dissociation. Amnesties of this nature are usually conditioned upon voluntary surrender and laying down of arms within a specified period.

(e) A grant of amnesty may also be an element of a more comprehensive peace strategy by the state. In such cases, clemency is not conditioned upon the laying down of arms and is expected "to facilitate or confirm the cessation of the state of belligerence or rebellion, (and) to some extent play the role of an armistice."

(f) In some cases, amnesty laws are enacted to encourage the return of political exiles to their countries. The validity of this type of amnesty imposing an obligation to return within a specified period, however, has been questioned for infringing upon the right of freedom of movement of individuals.

The success of an amnesty grant with respect to its role in the wider and more complex political scenario depends largely on such purposes as enumerated above and the context within which it is utilized. In certain cases, the enactment of an amnesty law may even increase tension especially if it exacerbates domestic antagonisms,²² or denies even the possibility of material or moral reparation to victims of serious violations of human rights through a "conspiracy of silence".²³

Other studies in international human rights law have noted that amnesties granted to human rights violators, whether by law or by the state's inhibition from prosecuting such cases, constitute derogations of international law from which the existence of an international obligation to prosecute serious violations of human rights can be inferred.²⁴ The International Covenant on Civil and Political Rights provides that states

²²*Id.*, at 15.

²³*Id.*, at 19-20.

²⁴Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations in a Prior Regime*, 100 YALE L. J. 2537 (1991); George C. Rogers, *Argentina's Obligation to Prosecute Military Officials for Torture*, 20 COLUM. HUM. RTS. L. REV. 259 (1989); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449 (1990).

are required to provide effective remedy to victims of serious violations of human rights.²⁵ This remedy must not serve as mere compensation to the victims but should, at the same time, deter repetitions of the violations.²⁶ Furthermore, in case of grave human rights violations, domestic laws which seek to exculpate the culprits are not justifiable on either legal or policy grounds. If states are hesitant to initiate prosecutions under domestic laws for fear of "setting off an endless chain of divisive recriminations," the prosecutions may be undertaken pursuant to international laws where serious violations of human rights are considered "crimes against humanity."²⁷ Amnesty, as the UN study concedes, addresses only the effects of national dissension and not its causes; and it can only be effective if undertaken with the corresponding social, economic, or political measures permitting action to deal with the causes.²⁸ [The adoption by the National Unification Commission of this view will be discussed later in this paper.²⁹]

Nonetheless, amnesties granted by states to effect reconciliation have been shown to have the following desirable immediate effects:

- (1) immediate release of all political prisoners;
- (2) right of political exiles to return;
- (3) relinquishment of all proceedings, penal or disciplinary;
- (4) restoration of civil and political rights;
- (5) reinstatement in their jobs of persons dismissed for political reasons;

²⁵INTERNATIONAL COVENANT, Part II, Art. 2 (3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized shall have effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by a competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

²⁶Rogers, *supra* at 279.

²⁷Orentlicher, *supra*, at 2548-2550.

²⁸UN STUDY, at 22.

²⁹See pp. 72-74 of this study.

(6) compensation to victims of inhuman treatment or their families.³⁰

III. KINDS OF AMNESTY

Under current usage, an amnesty may be express or implied, general or limited, conditional or unconditional.

An express amnesty is one granted in direct terms³¹ such as a presidential proclamation or a law enacted by the legislature granting amnesty. An implied amnesty, on the other hand, takes place in international law when a treaty of peace is made between contending parties;³² in domestic or municipal law, it results from the inhibition of the State from prosecuting or punishing persons who committed political offenses,³³ or when the law punishing a certain crime is repealed with retroactive effect resulting in the decriminalization of the act and the release of those charged or convicted for the same. Congress' recent repeal of Republic Act 1700, known as the Anti-Subversion Law, is an implied amnesty.³⁴

A general amnesty is granted to a whole class of persons within the territorial domain or under the effective jurisdiction of the sovereign issuing the decree, while a selected or limited amnesty covers a segment of a particular class only or the portion of the sovereign's territorial jurisdiction,³⁵ or specific acts committed within a limited or specified time frame. A grant of general amnesty, therefore, usually takes effect in the whole country with respect to all political dissenters who had performed acts for which the amnesty is granted, subject to the conditions imposed by the grant, if any. The sole criterion is the commission of the act alone as specified in the decree. A limited amnesty, on the other hand, qualifies the grant with respect to persons/groups to be favored, places where the amnesty is to be effective and/or the time frame to which the decree was limited. There is a slight variance in international law, where a general

³⁰UN STUDY, at 20-22.

³¹BLACK'S, *supra*.

³²*Ibid.*

³³Senator Wigberto E. Tanada, AMNESTY IN THE PHILIPPINES (October 1992), at 3. [hereinafter cited as TANADA STUDY].

³⁴REP. ACT. No. 7636 (1992), 88 OG 6841 (1992).

³⁵*Ibid.*

amnesty is general in the sense that it provides immunity for all wrongful acts done by the belligerents themselves, the members of their forces and their subjects during the war, and a limited amnesty provides immunity only for such offenses and/or persons provided within the terms of the decree.³⁶

When the grant of amnesty is subject to the fulfillment of certain requisites, such as the filing of an application, the laying down of arms, and the taking of an oath of allegiance, that amnesty is deemed conditional, i.e., that the amnesty will only be granted if the applicants comply with certain requirements and procedures, as compared to a grant which is expressed in broad terms and does not lay down specific requirements and procedures. Amnesties belonging to the latter category are deemed unconditional.³⁷

IV. AMNESTY UNDER PHILIPPINE LAW

Throughout Philippine constitutional history, except the period of American military occupation of the islands, the power to grant amnesty has always been expressly provided for as a power shared by both the executive and the legislative branches of government.

The Malolos Constitution, which derived inspiration from the constitutions of Belgium, Mexico, Guatemala, Costa Rica, Brazil and France,³⁸ provided in Title 8 that:

³⁶EPIL, *supra*.

³⁷TANADA STUDY, *supra*.

³⁸Teodoro Agoncillo, THE CRISIS OF THE REPUBLIC IN THE DEVELOPMENT OF THE PHILIPPINE CONSTITUTION 42 (1974).

The constitutions of some of these countries today have the following provisions on amnesty:

COSTA RICA, Art. 121. The Legislative Assembly has exclusive power to:

x x x

(21) grant general amnesties and pardons...

FRANCE, Art. 40. Besides cases expressly provided for in the other articles, the law shall establish rules concerning:

x x x

(8) the determination of crimes and misdemeanor as well as the applicable penalties; penal procedure; regulation of penitentiaries; amnesty and the right of pardon.

GUATEMALA, Art. 26. Executive functions:

x x x

(13) To grant amnesty for political offenses and related common crimes... and to grant pardons for political offenses and related common crimes.

Art. 68. The President of the Republic needs the authority of a special law:

x x x

5. In order to grant amnesties and general pardons.

This power is distinguished from the general power of the President to grant pardon provided in Article 67 of the same title.³⁹

During the American regime, an amnesty proclamation was issued in 1902 by US President Roosevelt in favor of the Filipinos involved in the revolution by virtue of the pardoning power granted him by the US Constitution. This power to grant pardon and reprieve was later extended to the Governor General of the Philippine Islands under the Jones Law in 1916.⁴⁰

The 1935 Constitution, after the draft by a Constitutional Convention received the approval of the President of the United States and the ratification of the Filipino electorate, established the Philippines as a republican state and provided that:

Art. VII, sec. 11 (6). xxx (The President) shall have the power to grant amnesty with the concurrence of the National Assembly.

There were debates among the framers of the Constitution with respect to the office upon which the power to grant amnesty was to be vested. Some believed it should be exercised by the President alone; while others held the view that such power can only be exercised with the concurrence of the legislature. In the end, the latter view prevailed. Apparently, the participation of the legislature was "intended as a check against the possible abuse of the power by the President in favor of certain groups, to the prejudice of national interest."⁴¹

³⁹MALOLOS CONST., Art. 67. The President of the Republic, in addition to his duty to execute the laws, shall:

x x x

5. Grant pardons to convicted criminals in accordance with the law, except any special provision relating to the Secretaries of the Government.

⁴⁰Jose M. Aruego, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 435 (1949).

⁴¹*Id.*, at 438.

The same terms were basically retained when the Constitution was amended except that now the power to concur was lodged in Congress.

A new Constitution was promulgated in 1973 ostensibly to provide for a parliamentary form of government. The pertinent provision on amnesty read:

Art. VIII, sec. 14. The Prime Minister may, exception cases of impeachment, grant reprieves, commutations and pardon, remit fines and forfeitures, and with the concurrence of the National Assembly, grant amnesty.

Such power was returned to the President when the 1973 Constitution was amended:

Art. VII, sec. 13. The President may, except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures, and with the concurrence of the Batasang Pambansa, grant amnesty.

Today, the 1987 Constitution specifically states that an amnesty proclamation by the President requires the concurrence of a majority of the members of the legislature:

Art. VII, sec. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

While in the absence of an express provision on the power to grant amnesty in the US Constitution, the distinction between the pardoning power of the President and the power to grant amnesty is considered a matter of "philological interest rather than of legal importance,"⁴² nevertheless, the express provisions in the different Philippine Constitutions have led to two divergent interpretations on the relation of amnesty to the pardoning power.

⁴²Knote v. US cited in J. BERNAS, II THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 241 (1988).

It is generally held in Philippine jurisprudence that pardon is "an act of grace which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. It is a private, though official, act of the executive magistrate."⁴³

Some commentators subscribe to the interpretation that the pardoning power includes the power to grant amnesty similar to that which is held under American jurisprudence. Bernas defines amnesty basically as a general pardon and submits that what distinguish the two forms of executive clemency (pardon and amnesty) are simply the "number of recipients of the acts of clemency and the nature of the offense which is their subject."⁴⁴ In fact, he opines that what the President may not grant by amnesty because of the non-concurrence of Congress, he may grant by individual pardon.⁴⁵ The interpretation of *Sinco* of the 1935 constitutional text likewise holds that "the pardoning power of the President would have been sufficient to authorize him to grant amnesty after conviction, were it not expressly provided by the Constitution that amnesty may be granted by him only with the concurrence of Congress."⁴⁶

A different path, however, is treaded by others. Their interpretations give greater importance to the nature of pardon as essentially an executive prerogative, while amnesty should be recognized as a sovereign act exercised through the people's chosen representatives.⁴⁷ Under this perspective, amnesty is considered not as a power inherent in any officer or department of the state⁴⁸ but one that flows from the sovereign will of the people expressed in the Constitution. In fact, history has shown that a grant of amnesty is not necessarily dependent upon the initiative of the executive alone. Congress may likewise effect implied amnesties in the exercise of its general legislative powers by decriminalizing certain offenses, as discussed in the previous section. Likewise, it has also happened that from Congress came a recommendation of an extension of the period of effectivity of an amnesty proclamation originally concurred in without amendments or reservations. In such a case, the proclamation

⁴³P. FERNANDEZ, *et al.*, eds. PHILIPPINE POLITICAL LAW: CASES AND MATERIALS 1124 (1975).

⁴⁴BERNAS, *supra*, at 243.

⁴⁵*Ibid.*

⁴⁶V. SINCO, PHILIPPINE POLITICAL LAW 285 (1962).

⁴⁷TANADA STUDY, at 5.

⁴⁸67A CJS 8.

subsequently issued by the President (Proclamation No. 81) no longer required Congressional concurrence.⁴⁹ Recently, in its desire to broaden the scope and application of Proclamation Nos. 10 and 10-A issued by Pres. Fidel V. Ramos, Congress added its own recommendations, in its resolution concurring with the proclamations, to further improve the government's amnesty program, with the caveat that the same "shall not be construed as preconditions for concurrence, or constitute amendments" to the proclamations.⁵⁰ Therefore, to the extent that such addition does not constitute an amendment to the proclamation, Congress may attach its own recommendations to the same, as the body deems proper and necessary, in partaking of the shared character of the power to grant amnesty provided in Art. VII, sec. 19 of the Constitution where it has the power to concur in or reject the amnesty proclamation. Ultimately, the essence of amnesty goes beyond the magnanimity of the executive, which is the basis of a grant of pardon, and operates as the people's sovereign deed effected through two branches of government.

In trying to draw the distinction between amnesty and pardon, the Supreme Court held in the earlier case of *Villa v. Allen*⁵¹ that "(I)n so far as the proclamation extends to offenses of treason and sedition, it may be regarded as an amnesty. But to those offenses which have risen out of internal political feuds and dissension among Filipinos themselves, such as the ordinary crimes of murder, robbery, arson, etc., the proclamation must be regarded in the nature of a pardon."

In *Barrioquinto v. Fernandez*,⁵² the Court distinguished pardon from amnesty in the following manner:

(1) Pardon is granted by the Chief Executive and is a private act which must be pleaded and proved by the person pardoned; while amnesty, issued by the President and concurred in by Congress, is a public act of which the courts take judicial notice.

(2) Pardon is granted to one after conviction; while amnesty is granted to a class of persons who may be guilty of such offenses covered by the proclamation, generally before or after institution of criminal proceedings and sometimes after conviction.

⁴⁹TANADA STUDY, *supra*.

⁵⁰S. Ct. Res. 16.

⁵¹2 Phil., at 440 (1903).

⁵²82 Phil., at 646-647 (1949).

(3) Pardon looks forward and abolishes the punishment and consequences of the offense; while amnesty looks backward and obliterates the offense itself as if it had not been committed.

Under the Revised Penal Code,⁵³ amnesty and pardon are modes of completely extinguishing criminal liability. However, neither of these two exempt the grantee from any civil liability incurred by him. On the other hand, while amnesty restores the offender to his civil and political rights, such effect does not result from the grant of pardon unless it has been expressly stated therein. Therefore, to the extent that it absolves the offender of criminal but not civil liability, amnesty has the same effect as pardon.

However, for pardon to take effect, it has to be accepted by the convict, whereas, there is no need for such acceptance for an amnesty to be effective, provided there is concurrence by Congress. The tenor of the preceding discussion seeks to emphasize the point that the proper understanding and appreciation of the distinction between amnesty and pardon cannot be understated. While pardon is essentially an act of mercy, amnesty can be regarded as an act of justice, broader in scope and more crucial in the larger political schema.

Amnesty should also be distinguished from the other forms of executive clemency since neither a conditional pardon, parole, probation, remission of fine or forfeiture, reprieve nor commutation of sentence obliterates the offense or the penalty for the offense. The distinction between amnesty and the other forms of clemency included in the pardoning power becomes more apparent when one examines the distinct characteristics of the latter.

A conditional pardon may be granted by the President and must be accepted by the grantee to take effect. It partially extinguishes the criminal liability of the offender⁵⁴ and imposes upon him the obligation to

⁵³REVISED PENAL CODE, Art. 89. How criminal liability is totally extinguished. -- Criminal liability is totally extinguished :

x x x

3. By amnesty, which completely extinguishes the penalty and its effects;
4. By absolute pardon;

x x x

⁵⁴RPC, Art. 94. Partial extinction of criminal liability. -- Criminal liability is extinguished partially:

1. By conditional pardon;

strictly comply with the conditions imposed; otherwise, the pardon shall be revoked and he shall be prosecuted under Art. 159 of the same code, or he shall be ordered rearrested and reincarcerated by the President.

Parole is granted by the Board of Pardons and Parole only when the offender has already served his minimum sentence under the Indeterminate Sentence Law. It does not pardon the offender since he technically remains in legal custody and the clemency only serves to suspend the execution of the penalty and temporarily release the convict from imprisonment on conditions which he is at liberty to reject.⁵⁵ Once the conditions have been accepted, any violation thereof will result in the subsequent arrest and reincarceration of the offender to serve the unserved portion of his original penalty.⁵⁶

The President can remit a fine or forfeiture only with respect to those within the interest of the state and not those of private parties whose rights have been vested and fixed by the judgment. Fines and forfeitures already paid to the treasury cannot be remitted either since any disbursement of funds therefrom require legislation.⁵⁷

Probation, on the other hand, is a disposition that effects the release of a person found to have committed a crime subject to conditions imposed by the court and to the supervision of a probation officer. It is granted by the trial court to one after conviction, but before sentence is served. A grant of probation, however, cannot be extended to those whose penalties exceed six years and one day; those convicted of any offense against the security of the State; those who were previously convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not more than P200; and those who have been once on probation under the same law. The period of probation is dependent upon the penalty imposed. Non-compliance with the conditions of probation will result in the convict's service of his sentence.⁵⁸

1. By conditional pardon;

x x x

⁵⁵Fernandez, *supra*, at 1126-1127.

⁵⁶REYES, THE REVISED PENAL CODE 885 (1981).

⁵⁷FERNANDEZ, *supra*.

⁵⁸PRES. DECREE NO. 968, as amended by PD 1257, and as further amended by Batas Pambansa Blg. 78.

A reprieve is a withdrawal or withholding of punishment for a time after conviction and sentence, and is in the nature of a stay of execution. It postpones the execution of a sentence to a day certain.⁵⁹ Usually, it is granted to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed.⁶⁰

A commutation of sentence, on the other hand, amounts to a reduction of the penalty originally imposed. Commutation of sentence may take place even without the grantee's consent. Under the Revised Penal Code, as amended by Republic Act 7659 providing for the re-imposition of the death penalty, commutation of the penalty of death to *reclusion perpetua* is provided in cases when a convict is below eighteen (18) years of age at the time of the commission of the crime or over seventy (70) years of age, or when the required majority vote is not obtained for the imposition of or affirmance of an imposed death penalty.⁶¹

V. AMNESTY PROCLAMATIONS IN THE PHILIPPINES

From the Spanish regime up to the present Government, about 30 amnesty laws have taken effect, including those proclamations issued extending the periods of effectivity and/or amending the terms of previously issued ones. Although there is a dearth of legal materials covering the Spanish regime, some studies have mentioned amnesties in the nature of general pardons granted by Governor-Generals Legazpi (to Rajah Soliman and other chiefs in the 1570s),⁶² Polavieja (January 11, 1897),⁶³ Fajardo, Corcuera and Manrique de Lara, particularly those granted to Filipino and Chinese insurgents.⁶⁴ Amnesty proclamations made during the American regime and henceforth, on the other hand, are duly recorded.

⁵⁹FERNANDEZ, *supra*.

⁶⁰BLACK'S, *supra*.

⁶¹RPC, Art. 47. In what cases the death penalty shall not be imposed; Automatic review of Death Penalty Cases. -- The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon the appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be *reclusion perpetua*. xxx

⁶²BLAIR AND ROBERTSON, III THE PHILIPPINE ISLANDS 1493-1898 234-235 (1973).

⁶³*Supra*, vol. XVII 311.

⁶⁴*Supra*, vol. LIV 671.

Amnesty Proclamation of 1902

The first amnesty proclamation which took effect in the country in the twentieth century was issued by US President Roosevelt on July 4, 1902. It granted full and complete pardon and amnesty in favor of persons who committed treason, sedition and all other crimes of political character in the course of the "insurrection" of the Filipinos against the Spaniards, as well as those who gave aid or comfort to said persons. The proclamation also covered offenses which grew out of internal political feuds and dissensions between Filipinos and Spaniards or with the Spanish authorities or among the Filipinos themselves.

The only condition set forth in the terms of the proclamation was the taking of an oath of allegiance to the United States of America.

The proclamation, deemed as a "wise and humane" act "conducive to peace, order and loyalty," excluded the following from its coverage:

- (a) provinces inhabited by the Moro tribes;
- (b) persons committing crimes since May 1, 1902 in any province where the civil government is already established; and
- (c) those convicted of murder, rape, arson, or robbery by any military or civil tribunal organized by the Spanish or American authorities, unless they have applied for and were granted pardon. In spite of these exclusions, however, it is still, in essence, the only general amnesty which took effect in the Philippines so far because the grant covered not only those offenses which arose from the revolution against Spain but also those which grew out of internal dissensions. Furthermore, the amnesty applied to all areas which came under the jurisdiction of the American government.

In the cases decided by the Supreme Court, the following persons and crimes were among those held to be covered by the amnesty:

- (a) killings committed by insurgents upon orders of superiors, where the victims admitted or were suspected of acting as spies of the enemies;⁶⁵

⁶⁵US v. Abelinde, 1 Phil 568 (1902); US v. Ortiz, 1 Phil 466 (1902); US v. Santillan, 1 Phil 473 (1902); US v. Vergara, 1 Phil 638 (1903); US v. Alhambra, 2 Phil 80 (1903); US v. Carmona, 1 Phil 326 (1902); US v. De Guzman, 1 Phil 475 (1902).

(b) killing of a prisoner of war who was in a weak condition for fear that he might hamper the retreat of the insurgents;⁶⁶

(c) killing of Filipinos on account of their political sympathies with the United States, which was viewed by the court as an incident growing out of internal political feuds and dissensions covered by the grant;⁶⁷

(d) instances of robbery of personal property for the use and support of revolutionary forces.⁶⁸

Amnesty for Guerillas

On September 7, 1946, President Manuel Roxas granted an amnesty to guerilla and resistance fighters by issuing Proclamation No. 8, which sought to recognize such persons not as criminals but as patriots and heroes who have rendered invaluable service to the nation.⁶⁹ The amnesty benefitted those who have committed acts penalized under the Revised Penal Code in furtherance of resistance efforts against the enemy, or against persons aiding the enemy from December 8, 1942 up to the date when the particular area was actually liberated from enemy control and occupation.

Excluded from the scope of the proclamation, however, were those who committed crimes against chastity or for purely personal motives.

A Guerilla Amnesty Commission was formed by virtue of Administrative Order No. 11 (October 21, 1946) to which those who sought to avail of the amnesty must apply. Six additional commissions known as the Philippine Army Amnesty Commissions, which were to take cognizance of the cases of persons subject to military law and falling within the terms of the proclamation, were created later through Administrative Order No. 17 (November 15, 1946). The fact that the Commission failed to recommend the grant of amnesty for an applicant did not prejudice the latter's right to plead amnesty as a defense in case he was tried for the offense which he submitted was covered by the proclamation. If this fact was proved, the judge so declared it and the accused was released or discharged.

⁶⁶US v. Lardizabal, 1 Phil 729 (1902).

⁶⁷US v. Vergara, *supra*; US v. Alhambra, *supra*; US v. Catalan, 34 Phil 593 (1916).

⁶⁸US v. Giron, 5 Phil 257 (1905); US v. Orduna, 21 Phil 452 (1912).

⁶⁹42 OG 2072 (1946).

According to the cases tried and decided by the Court under this amnesty law:

(a) the fact of collaboration of the offended party with the Japanese forces and that the crime was topromote the resistance movement must be established for the act to come within the terms of the amnesty;⁷⁰

(b) belief or suspicion of the offender that the victim was aiding the enemy and, as such, the former was purely motivated by this belief, brings the crime within the scope of the proclamation;⁷¹

(c) the accused need not belong to a recognized guerilla unit to avail of the amnesty; it is enough that the crime for which he is charged comes within the terms of the proclamation;⁷²

(d) when the crime was committed when the Japanese were not yet within the area or when the area has already been liberated, amnesty cannot be granted.⁷³

Amnesty for Political and Economic Collaborators

Whereas Proclamation No. 8 sought to grant amnesty to guerillas, Proclamation No. 51 issued by President Roxas on January 28, 1948 sought to benefit collaborators in the war.⁷⁴ These persons were alleged to have engaged in treasonable collaboration with Japanese forces and charged before the People's Court. The proclamation took note of the fact that in spite of the number of cases involving such offenses filed in court, there has been no final judgments convicting anyone. This failure was attributed partly to the strict application of the two-witness rule requirement in treason and to the ruling of the Supreme Court that mere occupation of a position in the government established by the enemy did not constitute treason per se but could be deemed involuntary acts motivated by the desire to protect the people.⁷⁵

⁷⁰People v. Pena, 90 Phil 649 (1951); People v. Clamania, 85 Phil 350 (1950).

⁷¹People v. Dosal, 82 Phil 502 (1949); People v. Tuazon, 85 Phil 85 (1949).

⁷²People v. Ruiz, 86 Phil 293 (1950).

⁷³People v. Cruz, 85 Phil 577 (1950); People v. Tuazon, *supra*.

⁷⁴44 O.G. 408.

⁷⁵People v. Godinez, 79 Phil 775 (1947); People v. Butawan, 83 Phil. 440 (1949); People v. Labata, 89 Phil. 661 (1951); People v. Jose de Castro, 84 Phil. 118 (1949); People v. Tumandao, 82 Phil 723 (1949).

Full and complete amnesty, although limited in scope and conditional, was granted to all persons accused of any offense against the national security for acts intended to give aid and comfort to the enemy. However, the grant was not extended to "persons accused of treason for having taken up arms against the allied nations or the members of the resistance forces, for having voluntarily acted as spies or informers of the enemy, or for having committed murder, arson, coercion, robbery, physical injuries or any other crime against person or property, for the purpose of aiding and abetting the enemy..."

Amnesty for HUKBALAHAP and PKM leaders and members

Proclamation No. 76, issued by President Elpidio Quirino on June 21, 1948 granted conditional amnesty limited to leaders and members of the groups Hukbo ng Bayan Laban sa Hapon (HUKBALAHAP) and Pambansang Kaisahan ng mga Magbubukid (PKM).⁷⁶ The Government sought to forgive and forego the prosecution of those who committed the crimes of rebellion, sedition, illegal association, assault upon, resistance and disobedience to persons in authority, and/or illegal possession of firearms and who have voluntarily presented themselves to government authorities.

The grant of amnesty was conditioned upon the voluntary surrender of arms and ammunition to authorities within twenty days from the date of Congressional concurrence. Proclamation Nos. 81 and 86 were thereafter issued (15 and 31 July 1948, respectively) extending the original period up to August 15, 1948.⁷⁷

The Court strictly construed the application of this limited and conditional amnesty in several cases. Where the accused was not a member of the HUKs at the time of commission of the crime, it was held that he cannot avail of the amnesty.⁷⁸ Also, failure to surrender arms pursuant to Department of Justice Circular No. 27 implementing the proclamation was considered by the Court as reason enough to deny applicants the benefits of the proclamation.⁷⁹ In *People v. Malig*, the Court pointed out that the intent of the Government in issuing the proclamation was not only to get the

⁷⁶44 O.G. 1794 (1948).

⁷⁷44 O.G. 2160 (1948); 44 O.G. 2604 (1948).

⁷⁸*Tolentino v. Catoy*, 82 Phil 300 (1948).

⁷⁹*People v. Bondoc*, 85 Phil 545 (1950); *People v. Malig*, 83 Phil 804 (1949); *People v. Pineda*, 86 Phil 266 (1950).

dissidents back to the fold of law but also to gather loose firearms under their control.⁸⁰

However, in certain cases, the Court was liberal in its interpretation. The fact, for example, that the HUK member was already in prison and therefore could not follow the procedure laid down by the proclamation was considered by the Court as not prejudicial to his right to avail of the amnesty.⁸¹ Also, the killing, by order of the HUK command, of a fellow HUK member who was suspected of being a spy was deemed within the scope of the amnesty.⁸²

Amnesty for the Batangas Uprising

As a reaction to the questionable loss suffered by Jose P. Laurel in his bid for the presidency against President Quirino in the 1949 elections, Francisco Medrano, along with some other supporters of Laurel, staged an uprising in the province of Batangas.

On January 4, 1950, President Quirino issued Proclamation No. 164 granting conditional and limited amnesty to Medrano and the other participants of the uprising, whom the President regarded as motivated by a "mistaken belief that they had just grievances against the duly constituted authorities which could be redressed by armed resistance."⁸³ The proclamation covered the crimes of rebellion, sedition and disloyalty committed by the said persons subject to their surrender to the provincial authorities and the laying down of arms and ammunitions. Those persons who were already charged in court for the crimes mentioned were allowed to set up the defense of amnesty.

Martial Law Amnesty Proclamations

The declaration of martial law on September 21, 1972 by President Ferdinand Marcos was ostensibly intended to curb the violence and unrest then plaguing Philippine society. Martial law, however, exacerbated the problem since dissent could not be expressed within the bounds of the law. This resulted in the growth of the secessionist movement in Mindanao and

⁸⁰*Supra.*

⁸¹*People v. Camo*, 91 Phil 240 (1952).

⁸²*People v. Obenia*, 91 Phil 292 (1952).

⁸³46 O.G. 6 (1950).

the escalation of anti-government activities of the communist movement in the different parts of the country.

Presidential Decree No. 95

On January 11, 1973, as the country witnessed full scale fighting between the military and the Muslim separatist groups,⁸⁴ President Marcos issued a limited and conditional amnesty in favor of the members or followers of subversive organizations or lawless elements who "have unwittingly allowed themselves to be identified with such elements."⁸⁵ The amnesty covered those who committed any act in furtherance of political or religious beliefs penalized by existing laws in the provinces of Cotabato, South Cotabato, Lanao del Norte, Lanao del Sur, Zamboanga del Norte, Zamboanga del Sur, Sulu and Palawan; and nine cities including Marawi, Zamboanga and Basilan.

Such crimes included: illegal possession of firearms; illegal possession of bladed weapon; interruption of religious worship; offending religious feelings; illegal associations; direct assault; indirect assault; resistance and disobedience to a person in authority or agents of such person; tumults and other disturbances; and alarms and scandals.

Persons excluded from the grant were those who committed murder and crimes against chastity and the leaders of the groups engaged in rebellion, subversion and sedition.

The grant of amnesty was conditioned upon the surrender of arms and ammunitions to the Armed Forces and the recommendation of the Amnesty Commissions created by Administrative Order No. 349 which were to process all applications for amnesty. However, those whose cases were referred to military tribunals fell under the jurisdiction of a Special Amnesty Commission created especially for that purpose.

Presidential Decree No. 124

On February 2, 1973, President Marcos granted limited and conditional amnesty to members of the Communist Party of the Philippines/New People's Army (CPP/NPA), groups classified as

⁸⁴TANADA STUDY, at 20.

⁸⁵69 O.G. 412-20 (1973).

subversive under RA 1700,⁸⁶ on the premise that said followers were "not die-hard members or ideological believers in Communism but (they) had been drawn into these organizations...(due to) subtle indoctrination by hard-core activist leaders and false propagandists." PD 124 absolved said members and affiliates of their criminal liability for crimes committed by them in furtherance of political beliefs but it excluded those who had committed murder, crimes against chastity and those who had taken up arms against the government. Leaders of the rebellion and sedition, officers of the CPP/NPA, as well as those who conspired to overthrow the government by force, violence, deceit or subversion to place the same under alien power were also excluded from the scope of the amnesty.

In order for a person to qualify, he had to:

- (a) apply for amnesty not later than March 15, 1973;
- (b) renounce in writing his membership/affiliation with the subversive group, surrender arms and ammunition in his possession, and pledge allegiance to the Republic; and
- (c) have his parents/guardians, or prominent members of his community pledge in writing that he shall remain peace-loving and law-abiding. To implement this decree, Administrative Order No. 350 was issued creating three Amnesty Commissions with their corresponding territorial jurisdictions. This was later amended by Administrative Order Nos. 407 and 433.

In *People v. Paculba* (124 SCRA 383), the Court held that the filing of an application for amnesty under this decree constitutes an implied admission of guilt as it was ruled in *People v. Llanita* (86 Phil. 219) that "... (t)he invocation of amnesty is in the nature of a plea of confession and avoidance, which means that the pleader admits the allegations against him but disclaims liability therefor on account of intervening facts which, if proved, would bring the crime charged within the scope of the amnesty..."

Presidential Decree No. 158

This decree issued on March 17, 1973 extended the deadline for filing of applications for amnesty under PDs 95 and 124 until April 15, 1973.⁸⁷

⁸⁶69 O.G. 1154-13 (1973).

⁸⁷69 O.G. 2928-20 (1973).

Presidential Decree Nos. 206 and 872

On June 6, 1973, the President directed that "all proceedings before military tribunals and civil courts in connection with all criminal cases pending before them against all persons who have applied for amnesty (under) PDs 95 and 124, ... including those excepted thereunder but who, nevertheless, applied for amnesty... be held in abeyance" pending the final action on their application by the President.⁸⁸

The Secretary of National Defense was also empowered to temporarily release those accused, if they were under detention. This was later amended by PD 872 (9 January 1976)⁸⁹ which authorized the Defense Secretary to determine and order the commencement or resumption of proceedings against the amnesty applicant.

Presidential Decree No. 497

A limited and conditional amnesty was granted by the President on June 28, 1974 in favor of Filipino Muslims who had committed crimes in furtherance of their resistance to the authorities.⁹⁰

The proclamation took note of such efforts as "misguided idealism" and covered the crimes of rebellion, secession, subversion or treason in the following areas: North Cotabato, South Cotabato, Sultan Kudarat, Maguindanao, Lanao del Norte, Lanao del Sur, Zamboanga del Norte, Zamboanga del Sur, Basilan, Sulu, Tawi-tawi, Palawan; and the cities of Cotabato, General Santos, Iligan, Marawi, Zamboanga, Pagadian, Basilan, Dipolog, and Dapitan.

The grant of amnesty was subject to the condition of laying down of arms and surrender to the Special Amnesty Commission.

⁸⁸69 O.G. 5378-14 (1973).

⁸⁹72 O.G. 1603 (1976).

⁹⁰70 O.G. 6399 (1974).

Presidential Decree No. 571

Whereas amnesty had already been granted to members of subversive organizations by virtue of PDs 95 and 124, no amnesty had yet been granted to their officers and leaders. Thus, the President issued PD 571 on November 1, 1974 granting amnesty in favor of officers and ranking leaders of the CPP, PKP, HUKs (which became the Hukbong Mapagpalaya ng Bayan), Malayang Samahan ng Magsasaka (MASAKA), Malayang Pagkakaisa ng Kabataang Pilipino (MPKP) and Samahang Pambansa ng Kababaihan sa Pilipinas (SPKP) who indicated their desire to return to the folds of the law and cooperate with the program of the New Society.⁹¹

The same conditions imposed on the grant of amnesty to the members were imposed on the leaders who wanted to avail of the benefits of the proclamation. Those who had committed murder and crimes against chastity were excluded from the scope of the law.

Presidential Decree 571-A

The day after PD 571 was issued, the President issued another proclamation (PD 571-A) granting amnesty to political exiles in order to encourage them to return home.⁹² Subject to the proclamation's coverage were persons who had gone or remained abroad upon the declaration of martial law for political reasons and had made utterances or otherwise comported themselves in a manner derogatory to the duly constituted authorities. The amnesty, however, did not include those who committed murder or crimes against chastity. Those who availed of the amnesty were required to pledge allegiance to the Republic.

Presidential Decree No. 886

With the periods of application for amnesty under PDs 95, 124, 497, 571 and 571-A already expired, the President issued on February 3, 1976 an extension of such periods until December 31, 1976 to accommodate those who may still have wanted to avail of the amnesty.⁹³

⁹¹70 O.G. 9843 (1974).

⁹²70 O.G. 10765 (1974).

⁹³72 O.G. 2674 (1976).

Presidential Decree No. 1082

Pursuant to the Tripoli Agreement signed in Tripoli, Libya on December 23, 1976,⁹⁴ a limited and conditional amnesty was granted in favor of the leaders, members and/or sympathizers of the MNLF and the Bangsa Moro Army on February 2, 1977 with a view of attaining the objectives of the peace-making efforts of the government and encouraging dissidents to return to the folds of the law.⁹⁵ The amnesty covered the provinces of Tawi-tawi, Sulu, Basilan, Zamboanga del Sur, Zamboanga del Norte, Davao del Sur, South Cotabato, North Cotabato, Sultan Kudarat, Maguindanao, Lanao del Sur, Lanao del Norte and Palawan; and 11 cities including Dipolog, General Santos and Davao.

The following offenses were among those included within its scope: illegal possession of firearms, illegal possession of bladed weapons or explosives, interruption of religious worship, offending religious feelings, rebellion or insurrection, conspiracy and proposal to commit rebellion, sedition, conspiracy and proposal to commit sedition, illegal assemblies, illegal associations, direct assaults, indirect assaults, resistance and disobedience to a person/agent of a person in authority, tumults and other disturbances, and alarms and scandals.

Conditions set for the granting of amnesty were the surrender of firearms and the taking of an oath of allegiance to the Republic.

Presidential Decree No. 1182

This decree issued on August 21, 1977 further amended PD 124 by granting amnesty to all those who violated RA 1700 and who surrendered to

⁹⁴TRIPOLI AGREEMENT: xxx The Joint Committee is charged with supervising the following:

(a) A complete amnesty in the areas of the autonomy and the renunciation of all legal claims and codes resulting from events which took place in the South of the Philippines.

(b) The release of all political prisoners who had relations with the events in the South of the Philippines.

(c) The return of all refugees who have abandoned their areas in the South of the Philippines. xxx

⁹⁵73 O.G. 4035 (1977).

the government with their arms and ammunitions and pledged allegiance to the Republic.⁹⁶ However, the following persons were disqualified:

(a) those who have promoted, maintained or headed a rebellion or insurrection or who, while holding public office or employment, took part therein, engaged in war against the forces of Government, destroyed property or committed serious violence, exacted contributions or diverted public funds from the lawful purpose for which they have been appropriated; provided, that person who merely participated or executed the commands of others in a rebellion may be granted amnesty; and

(b) those who have committed murder, homicide, serious physical injuries, crimes against chastity, robbery, piracy, arson, hijacking, violations of the Firearms and Explosives Laws, and assaults upon and resistance and disobedience to persons in authority and their agents, except if such crime or offense was committed in furtherance of subversion or crimes against public order as a mere participant/affiliate/member.

Presidential Decree No. 1429

With the view that one of the perceived obstacles to national unity was the detention of persons charged with political crimes, or common crimes committed in furtherance of political ends, the President issued PD 1429 on June 10, 1978 which granted conditional amnesty to persons arrested and/or charged, or although not arrested and/or charged who may have committed acts which made them liable for, rebellion, sedition, subversion, illegal possession of firearms and other crimes committed in furtherance thereof.⁹⁷

The following conditions were set forth:

(a) if under arrest or charged as of June 10, 1978, he must submit his application not later than September 30, 1978 in the prescribed form; if not under arrest, he must submit such application within six months after his arrest or surrender;

(b) he must renew his oath of allegiance to the Republic; and

⁹⁶73 O.G. 9955 (1977).

⁹⁷74 O.G. 5933-666 (1977).

(c) he must surrender whatever unlicensed firearms and ammunitions he had in his possession.

Presidential Decree No. 1745

In view of the many cases of simple illegal possession of firearms and ammunitions filed in court, the President issued PD 1745 on November 20, 1980 granting amnesty to persons who were under arrest and/or investigated for, charged with, or convicted of, the said crime and who applied therefor in writing to the proper authorities within three months from the date of the decree.⁹⁸

The following persons were not included in the grant of amnesty:

(a) promoters, maintainers, heads or members of rebellious, seditious or subversive organizations or associations; and

(b) those arrested, charged with and/or convicted of illegal possession of firearms, ammunitions or explosives in furtherance of another offense or offenses.

Presidential Decree No. 1754

With the intent of providing a "clean, fresh and unscarred start (brought about by the grant of amnesty) . . . (and ensuring that) all thoughts of recrimination be laid to rest," PD 1754, issued on December 24, 1980, imposed the condition that all amnesties applied for and/or granted under previous decrees shall constitute a waiver of any and all rights of action that the applicant/grantee may have had against any public officer arising out of any act in connection with the arrest, detention or trial of the former.⁹⁹

Aquino Proclamations

Soon after the ouster of President Marcos from the country in 1986, the newly established Government of President Corazon Aquino launched its own efforts at reconciliation in order to unite the different political forces towards rebuilding the nation. Such efforts were later proven to be very

⁹⁸77 O.G. 449-2 (1981).

⁹⁹77 O.G. 2451 (1981).

much needed, though clearly inadequate, in the wake of the re-establishment of democratic institutions marred by several coup attempts and the collapse of the peace negotiations.

Executive Order No. 103

The National Reconciliation and Development Council (NRDC), created by virtue of EO 103 issued by President Corazon Aquino (24 December 1986), was tasked with coordinating the National Reconciliation and Development Program (NRDP) which was a priority program of the government.¹⁰⁰ One of the main functions of the NRDC was to formulate a comprehensive program for national reconciliation taking into consideration other program of the government.

Proclamation No. 80

President Aquino issued Proclamation No. 80 (28 February 1987) after the collapse of the peace talks between the government and the National Democratic Front on January 1987.¹⁰¹ The proclamation granted amnesty to persons who may have committed crimes in furtherance of political beliefs but it covered only those "not being in the custody of, or charged by, or undergoing investigation by the constituted authorities."

The following crimes were included: treason, conspiracy or proposal to commit treason, misprision of treason, espionage, rebellion or insurrection, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to commit sedition, illegal assemblies, illegal associations, direct assault, indirect assault, resistance and disobedience to a person in authority or his agent, subversion, and illegal possession of firearms. The amnesty offer was to be effective for six months from the date of issuance. Proclamation No. 80 also provided for the creation of Bayanihan Centers, which were provincial or local amnesty agencies to which applications for amnesty may be filed before the same were forwarded to the Amnesty Committee.

The deadline for filing applications for amnesty was extended by Proclamation No. 138 (11 August 1987) until February 29, 1988.¹⁰²

¹⁰⁰83 O.G. 189 (1987).

¹⁰¹83 O.G. 909 (1987).

¹⁰²83 O.G. 3744 (1987).

Executive Order No. 350

Executive Order No. 350, issued on March 13, 1989, provided guidelines in the processing of amnesty manifestation forms filed by rebel returnees.

Any person who returned of his own free will to the fold of the law was allowed to file for amnesty for any of the crimes and offenses covered by Proclamation No. 80; thus, common crimes were excluded from its coverage. Moreover, because the decree virtually requires a surrender on the part of the applicant, political prisoners/detainees were disqualified from availing of the amnesty. Neither could amnesty be invoked as a defense in cases of persons arrested and charged for the crimes covered by Proclamation No. 80 because the requirement of voluntary surrender was absent.¹⁰³

As part of the application procedure, Executive Order No. 350 provided for the filing of manifestation forms with any of the Bayanihan Centers or with the office of local officials. After initial processing by the local authorities, the accomplished manifestation and pledge of allegiance forms were dispatched to the Provincial Commander concerned for verification; after which, the documents were forwarded to the Reconciliation Processing Committee organized by virtue of Executive Order No. 350.¹⁰⁴

Ramos Proclamations

After winning the 1992 presidential elections by plurality, President Fidel Ramos immediately tackled the task of broadening his constituency. One of such efforts aimed at forging political unity was the issuance of amnesty proclamations which he announced during his first State of the Nation address.

Proclamation Nos. 10 and 10-A

On July 27 1992, President Ramos issued Proclamation No. 10 granting amnesty to persons who have filed or will still file applications for

¹⁰³"Cory grants amnesty to rebels," *Philippine Daily Inquirer*, 1 March 1987 at 1 and 10.

¹⁰⁴85 O.G. 2290-1.jf (1989).

amnesty under Executive Order No. 350. Seeking to completely obliterate the criminal offense and extinguish the criminal liability therefor and restore the grantee to all civil and political rights, amnesty was granted to the 4,453 persons who applied under Executive Order No. 350 as well as those who wished to still apply under the said law. Later on, this figure was amended by Proclamation 10-A to cover a total of 4,485 returnees whose applications were not acted upon under the Aquino Administration. Proclamation No. 10 was not considered by many as a new amnesty proclamation but a merely a revival or extension of Executive Order No. 350 of the Aquino Administration, with all its flaws and limitations.

Proclamation 10-A also provided for the establishment of the National Unification Commission (NUC), which was an advisory body tasked to hold consultations with the people, including all rebel groups, as well as the Armed Forces of the Philippines (AFP), and the Philippine National Police (PNP), and to recommend to the President a viable general amnesty program and process which will lead to a just, comprehensive and lasting peace. This proclamation was implemented by virtue of Executive Order No. 19 which prescribed the authority and functions of the NUC.¹⁰⁵ Several executive orders were subsequently issued extending the term of the NUC which ended on July 31, 1993.¹⁰⁶ Executive Order No. 125 adopted the recommendations of the NUC and provided for the appointment of the Presidential Adviser on the Peace Process and the establishment of the Government Peace Negotiating Panels.¹⁰⁷

In its concurrent resolution to Proclamation Nos. 10 and 10-A, Congress added its own recommendations which consist of the establishment of a proper body to undertake a physical inventory of the applicants, to determine the crime or crimes for which the applicant voluntarily sought amnesty, and to recommend to the President the applicants qualified to be granted amnesty. Executive Order No. 81 initially gave these responsibilities to the NUC¹⁰⁸ but this was later amended to transfer such functions to the National Reconciliation and Development Council.¹⁰⁹

¹⁰⁵88 O.G. 6357 No. 40 (1992).

¹⁰⁶EXEC. ORDER. Nos. 42 [89 OG-161 No. 2 (1993)]; 66 [89 O.G. 1880 No. 15 (1993)];

104 [89 O.G. 4423 No. 32 (1993)].

¹⁰⁷89 O.G. 6198 No. 43 (1993)

¹⁰⁸89 O.G. 2628 No. 20 (1993).

¹⁰⁹89 O.G. 3237 No. 24 (1993).

Proclamation Nos. 347 and 348

Recently concurred in by Congress were Proclamations 347 and 348, as amended, issued on March 25, 1994 by President Ramos, which grants limited and conditional amnesty to rebels and to certain personnel of the AFP and the PNP and created the National Amnesty Commission (NAC), a body tasked with determining who among the applicants are qualified for amnesty.

Proclamation No. 347, by its express terms, seeks to hasten the peace process and to reintegrate, as soon as possible, all rebels and insurgents into the mainstream of society, including those who had been charged or convicted.

The following crimes and offenses are covered by this amnesty grant: rebellion or insurrection, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to commit sedition, coup d'etat or insurrection, disloyalty of public officers or employees, illegal assembly, illegal association, direct assault, indirect assault, resistance and disobedience to a person in authority or his agent, tumults and other disturbances of public order, unlawful use of means of publication and unlawful utterances, alarms and scandals, illegal possession of firearms, ammunitions or explosives committed in furtherance of, or incident to, or in connection with the crimes of rebellion or insurrection, and violations of Articles 59 (desertion), 62 (absence without leave), 67 (mutiny or sedition), 68 (failure to suppress mutiny or sedition), 94 (various crimes), 96 (general articles) of the Articles of War. By the broad coverage of this proclamation, acts committed by communist insurgents, Muslim secessionists and renegade soldiers who had participated in attempts to overthrow the government are now all included within the scope of the amnesty.

Acts excluded from the scope of the amnesty are crimes against chastity and those committed for purely personal ends.

The grant of amnesty shall extinguish the criminal liability of the recipient and restore him to his civil and political rights but shall not prejudice the civil liability owing to private persons who suffered injuries or damages. The amnesty shall not ipso facto result in the reintegration or reinstatement into the service of former AFP or PNP personnel. Surrender of firearms shall not be a condition for the granting of amnesty, although rebels shall nevertheless be encouraged to surrender those in their possession.

Proclamation No. 348, before it was amended, covered all AFP and PNP personnel who may have committed acts or omissions punishable under the Revised Penal Code, the Articles of War or other special laws on the occasion of counter-insurgency operations. Excluded are the following acts: torture, arson, massacre, rape, other crimes against chastity, or robbery of any form, and acts committed for purely personal ends.

The issuance of both proclamations received scathing attacks from different sectors. Views were expressed that any amnesty which does not result from peace negotiations is bound to fail.¹¹⁰ Some have expressed the opinion that the grant of amnesty at this point is merely a ploy by the government to divide the ranks of the dissident groups. The group of renegade soldiers constituting the Rebolusyonaryong Alyansang Makabayan-Soldiers of the Filipino People-Young Officers' Union (RAM-SFP-YOU) stated that amnesty should not be placed ahead of social reforms which should be the primary concern of the government.¹¹¹

Moreover, Proclamation No. 348 stirred up a debate of its own. According to the NDF, "President Ramos is practically providing the gross violators of human rights from among the AFP, PNP and CAFGU with license to kill. It can no way be an action that promotes just and enjoining peace. Rather, it is an act that basically contradicts a genuine and serious process to achieve a just and liberating peace."¹¹² The group of renegade soldiers attacked the decree on the grounds that it would "allow human rights violators among (the military and the police) to be freed from liability as long as the offenses were committed in the course of the counter-insurgency campaign."¹¹³ In Congress, it was expressed that any amnesty in favor of agents of the state guilty of serious human rights violations is simply unacceptable because "(t)he only ones with the legal and moral right to forgive (these violators) are the victims..." who are usually civilians caught in the crossfire.¹¹⁴ Furthermore, under international law, a grant of amnesty in favor of agents of the state is questionable as it is considered "a

¹¹⁰Senator Wigberto E. Tanada, Let Amnesty be with Honor and Justice, privilege speech (18 April 1994); "NDF deploras amnesty for human rights violators," *Philippine Daily Inquirer*, 28 March 1994 at 1; Jerry Esplanada, "Reconsider amnesty offer, rebels urged," *Philippine Daily Inquirer*, 28 March 1994, at 1 and 10.

¹¹¹Esplanada, *ibid.*

¹¹²"NDF deploras," *ibid.*

¹¹³Esplanada, *supra.*

¹¹⁴Tanada, privilege speech, *supra.*

moral and legal perversion of the... concept of amnesty..." It has been advanced that:

The State's right to abolish or forget the crimes of those who have infringed its sovereignty, by rebellion or otherwise, flows from the role of the State as the victim. Thus, the State may find that its interests such as national reconciliation are best served by an amnesty. However, the State should not have the prerogative to abolish or forget its own crimes or those of its agents committed against its citizens. If the right to abolish or forget such crimes exists, then it belongs only to the victims themselves.¹¹⁵

In response to such objections, President Ramos issued Proclamation No. 377 on May 10, 1994 by amending Proclamation No. 348 and excluding from the amnesty military and police personnel who committed serious human rights violations, including extra-legal executions, during counter-insurgency operations.¹¹⁶

The amendment may have appeased some legislators originally opposed to Proclamation No. 348,¹¹⁷ however, any amnesty proclamation in favor of agents of the state will always raise questions of justice and propriety.

Despite all the objections raised against amnesties in favor of agents of the state, this kind of amnesty seems to be a component of current "reconciliation" formulas. One of the first acts of newly-elected South African President Nelson Mandela was to announce an amnesty for agents of the previous pro-apartheid government. Naturally, several black leaders were disappointed with the announcement. See "Mandela eyes amnesty," 12 May 1994 at 1 and 10.

VI. ANALYSIS

The number of times amnesty proclamations were issued by the government since the American period would seem to indicate that amnesty is considered an important and useful tool in the political system. Right

¹¹⁵R.K. Goldman, *Amnesty Laws, International Law and the American Convention on Human Rights*, THE LAW GROUP DOCKET 1989, at 1,3 cited in Roht-Arriaza, *supra* note 24, at 484.

¹¹⁶Gerry Lirio, "Ramos nixes bid to free Tiamzon," *Philippine Daily Inquirer*, 12 May 1994, at 1 and 10.

¹¹⁷"New amnesty rules hailed," *Philippine Daily Inquirer*, 13 May 1994 at 16.

after the 1896 Philippine revolution—upon the setting up of the American colonial government—and after the second World War, several amnesty proclamations were made in favor of those who fought against the then established governments purportedly to forge unity among the people; the principle of *tabula rasa* was supposedly upheld to pave the way for the rebuilding expected to take place after the wars. The same noble intent was likewise bannered by the express terms of the amnesty proclamations during the Marcos, Aquino and, now, Ramos administrations.

Yet, it may be asked, if amnesty indeed had such noble and definite purpose, and had been used generously at different points in Philippine history, why is it that unity and peace—amnesty's intended results—are still wanting?

To find the answer to this question, there is a need to probe deeper into, and even go beyond, the express terms of the proclamations, study the amnesty grants within the context of the prevailing political situations during those respective periods, and see how amnesty has been used by the different administrations.

The broad scope of the amnesty proclamation of 1902 appeared to be a gesture of benevolence on the part of the American colonial government extended to the *insurrectos* declaring, by its terms, the end of the "insurrection" and the establishment of the colonial rule. Yet, for many of these *insurrectos*, the fighting was far from over and a government by colonial masters was simply unacceptable. In many areas all over the country, the hostilities continued.¹¹⁸ However, the fact that many of those who were earlier regarded as leaders of the revolution began collaborating with the Americans¹¹⁹ "allowed the American government to belittle the resistance that still raged."¹²⁰ The amnesty proclamation itself was a confirmation of this view as it stole the legitimacy from the motivations which fueled the ongoing hostilities and reduced the acts of the revolutionaries to mere banditry, with the passage of the Brigandage Act on November 12, 1902, and the acts of the government to ordinary suppression of the "disturbances."¹²¹ (Some of those captured at the start of the Filipino-American war who were granted amnesty resumed their revolutionary

¹¹⁸RENATO CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* (1975), at 249, 252, 269.

¹¹⁹*Id.*, at 238.

¹²⁰*Id.*, at 244.

¹²¹*Id.*, at 251.

activities upon their release and were later on re-incarcerated under the Brigandage Act.)¹²²

During the early years of the Republic, after the second World War, several amnesty proclamations were issued in favor of guerillas and collaborators. Noteworthy is the fact that Proclamation No. 8, issued by then-President Roxas is the only amnesty proclamation to date which exalted the acts of the political dissidents in express terms and gave the grantees due recognition as "heroes and patriots." But, if placed within the larger context prevailing then, these words did not actually carry much weight. The proclamation came within days after the Roxas administration said it opposed any amnesty for rebels, even categorically stating that it would not seriously consider any offer to negotiate, and with President Roxas himself calling the PKM members and the HUKs as "lawless, criminals and subversives." In spite of the express terms of the amnesty law, therefore, the decree was viewed as "added insult to injury for many in the [HUK] who had resisted the Japanese occupation and had been denied any official recognition for HUK accomplishments."¹²³

Soon after Proclamation No. 8, Proclamation No. 51 was issued to bring back economic collaborators into the mainstream of economic activity. But, who were these "economic collaborators," and what act was actually covered by the grant in their regard? These "economic collaborators" were those who engaged in profiteering during the war, those who were able to amass great wealth at the height of the hostilities. This move by the Roxas administration, in effect, preserved the oligarchy and quelled the agitation among the economic elite who feared retribution. Although this may be regarded as a self-serving act by the government, the move found justification in constitutional law where restoration of rights by virtue of the amnesty grant includes restoration of property rights to the grantee (or respect of existing ones, as the case may be) as long as such rights had not been vested in others but had remained in the jurisdiction of the executive or proper officials, except when the proclamation expressly excludes restoration of property rights.¹²⁴

Whatever doubts nagged the public mind as to the sincerity of the government in healing the wounds caused by the past war was inevitably

¹²²*Id.*, at 267.

¹²³KERKVLJET, *THE HUK REBELLION: A STUDY OF PEASANT REVOLT IN THE PHILIPPINES* (1977) at 199-202.

¹²⁴59 *Am Jur* 2d 39-40.

confirmed by the issuance of another amnesty proclamation (Proclamation No. 76) and the subsequently related developments. Capitalizing on the vagueness of the terms of the proclamation issued as part of a negotiated agreement between the opposing forces, the amnesty proved to be a measure employed by the government to effect a crackdown on the guerilla movement. The condition set by the amnesty offer, *i.e.* "to present arms," was understood by the rebels – supported by newspaper accounts on the agreement -- to mean registration, and not surrender, of arms. However, when the HUK leaders came down to Manila to settle the details of the registration procedure, they were required by the Philippine Constabulary and other authorities to surrender their firearms. In other areas, the registration of weapons provided the authorities with means to trace the identities and whereabouts of the rebels and led to raids and arrests of as much as 150 members in an area in a single day.¹²⁵ As a result, only a few rebels availed of the amnesty offer¹²⁶ and on the day before the amnesty period would have officially ended, negotiations in Manila had already fallen apart and the HUK leaders went back to their areas to resume the fighting.¹²⁷

The amnesty proclamation in favor of those who participated in the Batangas uprising, however isolated and specific it may seem, belong to the same species as all the other amnesty laws issued in the country. Granted during those turbulent years of the Republic marred by allegations of graft and corruption in the highest echelons of government, the decree intended to diffuse a politically dangerous situation, ignited by questions of fraud in the previous elections, by pardoning the participants of the uprising for being "misled by unjust grievances."

Up until that point, the amnesty proclamations issued in the Philippines did not include any recognition of the legitimacy of the grievances motivating the rebels. Unfortunately, this situation did not change much during the subsequent periods in Philippine politics.

The periodic amnesties issued during the years of the Marcos administration following the declaration of martial law in 1972 were employed as a counter-insurgency measure, intended to divide the ranks of the rebel groups, albeit unsuccessfully, without really addressing or even

¹²⁵KERKVLJET, *supra*.

¹²⁶TANADA STUDY, *supra*, at 18.

¹²⁷KERKVLJET, *supra*.

understanding the roots of the rebellion.¹²⁸ Failure of the initial amnesty proclamations to effectively address the problem did not really impel the government to ponder on the idea of the inadequacy of its efforts. Its response to the failure of the initial amnesty laws were more limited and conditional amnesty laws--and continued raids and arrests of suspected rebels even during supposed amnesty periods.¹²⁹

A total of 14 amnesty proclamations, including those providing for extensions and amendments, were issued by President Marcos within a period of seven years, but the communist insurgency thrived and the problem of internal armed conflicts remained in the forefront together with allegations of serious human rights violations committed by the military against civilians and suspected rebels.

On February 25, 1986, the government of President Aquino was brought to the seat of power by a dramatic and unprecedented act of the people. Many observers noted that the government could have seized this moment and banked on the popularity and power it was enjoying during its first few months to initiate radical moves to address the problem of peace in the country;¹³⁰ but, as it were, the steps taken by the government were indecisive, uncertain and ambivalent.¹³¹ The clamor of different sectors for government to prosecute military personnel who committed serious human rights violations during the Marcos regime led to the creation of the Presidential Committee on Human Rights, but the office was eventually disbanded by President Aquino¹³² and was directed to turn over its records to the Commission on Human Rights still to be constituted at that time. Thereafter, the government had lost the initiative to investigate and prosecute charges of serious violations of human rights as it considered such move a "political suicide."¹³³ Six months after the Aquino administration assumed power, a faction of the military launched the first of a series of seven coup d'etats to beset the new government. In retrospect, some officials

¹²⁸In other countries, utilization of amnesty laws in a similar manner had been noted. In Poland, an amnesty law issued in 1984 was enacted to alleviate the effects of martial law which took effect in the country.

See UN STUDY, at 10.

¹²⁹"Amnesty offer expires on Feb. 28," Manila Bulletin, 17 January 1973 at 1 and 9; Jose de Vera, "2 outlaws killed; 7 others fall," Manila Bulletin, 18 January 1973 at 1 and 9; "2 rebels slain; 4 others fall," Manila Bulletin, February 1973 at 1 and 9.

¹³⁰ED GARCIA, THE FILIPINO QUEST (1988) 25; Roht-Arriaza, *supra* note 24, at 511.

¹³¹GARCIA, *ibid.*

¹³²Roht-Arriaza, *ibid.*

¹³³Orentlicher, *supra* note 24, at 2548.

of the administration could only opine that government's inhibition from prosecuting those serious human rights violations must have emboldened some factions of the military to launch those coup attempts.¹³⁴

The problem of the communist insurgency, however, continued to be handled in the traditional manner.

Initially, peace negotiations with the communist groups went underway, but later on, these proved to be futile efforts as mutual distrust prevailed and the talks eventually collapsed in January 1987. A month later, amnesty was granted by virtue of Proclamation No. 80, amidst the escalation of violence all over the country with the government intensifying its counter-insurgency campaign and the New People's Army launching a series of killings and violent operations in the urban areas.¹³⁵

The issuance of Executive Order No. 350 in 1989, on the other hand, merely allowed the government to continue with the process started by Proclamation No. 80, but with the institutionalization of corresponding economic incentives to rebel returnees on the theory that the rebels would accept the amnesty offer if they are presented with a viable livelihood alternative to the armed struggle. In addition to the fact that rebel groups rejected the amnesty offer as it "entice(d) surrender among the rebel ranks by promising doleouts and amnesty,"¹³⁶ the creation of the rebel returnees fund also ushered in corruption in the amnesty system. A number of legislators questioned the large amount supposed to have been distributed to rebel returnees by the now-defunct National Reconciliation and Development Program (NRDP). Conflicting reports as to the number of persons who actually availed of the funds and the number of rebel returnees who have been granted amnesty, as well as accusations that the funds did not reach some of the qualified beneficiaries, sustain allegations of misuse of the rebel returnees fund.¹³⁷

Today, developments in the international scene with respect to the decline of communism and the reported factionalism within the ranks of the

¹³⁴Orentlicher, A Reply to Professor Nino, 100 YALE L. J. (1991), at 2641.

¹³⁵GARCIA, *supra* at 32-33.

¹³⁶Samuel Matunog, "What's wrong with the government's amnesty program?," Philippine Collegian, 21 January 1993 at 3.

¹³⁷"Rebel returnees program defended", Philippine Daily Inquirer, 4 May 1994 at 1 and 10; Stella Gonzales, "P48M missing from government rebel fund, says Tanada," Philippine Daily Inquirer, 6 May 1994 at 16.

local communist movement had begotten a political situation in the country where insurgency is on the wane. The amnesty proclamations issued by President Ramos since he assumed office in 1992 sought to take advantage of this decline and contribute to the hastening of the death of the oldest insurgency in Asia. Proclamations 10 and 10-A, issued in 1992, merely completes the process begun by Proclamation No. 80, as continued by Executive Order No. 350, and cannot be considered as new amnesty grants.¹³⁸ The significant difference in these proclamations is the creation of the National Unification Commission tasked to "formulate and recommend, after consulting with the concerned sectors of society, to the President... a viable general amnesty program and peace process that will lead to a just, comprehensive and lasting peace in the country."¹³⁹

After almost a year of comprehensive and thorough consultations with rebel groups and the different sectors and interest groups, the NUC concluded that sincere efforts for a just and lasting peace must embody the following principles:

1. A peace process must be community-based, reflecting the sentiments, values and principles important to all Filipinos. Thus, it shall be defined not by the government alone, nor by the different contending armed groups only, but by all Filipinos as one community.

2. A peace process seeks to forge a new social compact for a just, equitable, humane and pluralistic society. This may require administrative action, new legislation, or even constitutional amendments.

It seeks to establish a genuinely pluralistic political society, where all individuals and groups are free to engage in peaceful competition for predominance of their political programs without fear, through the exercise of rights and liberties granted by the Bill of Rights, and where they may compete for political power through an electoral system that is free, fair and honest.

3. A peace process seeks a principled and peaceful resolution of the armed conflicts, with neither blame nor surrender, but with dignity for all concerned.¹⁴⁰

¹³⁸Manmog, *supra*.

¹³⁹Proclamation No. 10-A, sec. 5.

¹⁴⁰National Unification Commission (NUC), Recommendations for a Comprehensive Peace Process, 1 July 1993 at 1-2.

Part of the NUC's recommendations for a comprehensive peace process,¹⁴¹ which lay emphasis on reforms, is the establishment of programs for honorable reconciliation which includes a twin amnesty program: one for rebels from all armed groups, and one for agents of the state charged with specific crimes in the course of counter-insurgency operations.

Following the NUC framework, amnesty is not intended to be an independent and adequate solution by itself, but it is to be undertaken as a component of the whole peace process and its six "paths to peace." Herein lies the basis for the objections to the conditional amnesties provided in Proclamation Nos. 347 and 348 which were issued not as products of the peace negotiations and which departed from the NUC proposal for a general and unconditional amnesty for all rebels.¹⁴²

Executive officials, on the other hand, defend the proclamations by stating that the same shall not prejudice the possible issuance of general and unconditional amnesties in the future as part of the negotiated settlement.¹⁴³ However, such objections may find strength in international law where there is a prevailing view that amnesties intended to be part of peace strategies are "designed to facilitate or confirm the cessation of the state of belligerence or rebellion..." and may take effect without the laying down of arms as a prerequisite.¹⁴⁴ Amnesty of this nature, therefore, must be general and unconditional, as the NUC originally proposed.

The broadness of an amnesty proclamation, however, may likewise pose a problem when it, in effect, grants impunity to human rights violators and denies victims of any remedy, as shown by the vehement objections to Proclamation No. 348 before its amendment. As mentioned early on in this

¹⁴¹The following are the NUC's proposed six "paths to peace":

- (1) The pursuit of social, economic and political reforms that address the root causes of the armed conflicts;
- (2) Building consensus and empowerment for peace;
- (3) Pursuit of a peaceful, negotiated settlement with different armed rebel groups;
- (4) Establishment of programs for honorable reconciliation and reintegration into mainstream society;
- (5) Addressing concerns that arise out of the continuing armed hostilities; and
- (6) Nurturing a positive climate for peace.

See Recommendations, *supra* at 3 and 4.

¹⁴²Tanada, privilege speech, *supra*.

¹⁴³Esplanada, *supra*.

¹⁴⁴UN STUDY, at 11.

study, although the fears regarding the condonation of human rights violations may have been allayed by the amendment of Proclamation No. 348 by Proclamation No. 377, questions as to the legitimacy and propriety of the granting of amnesty to agents of the state remain. Studies have noted some alternatives to amnesty which may be considered by the state. The grant of individual pardon instead of a general amnesty may be a more acceptable measure as the conviction needed to recognize the criminality of the act is served.¹⁴⁵ However, this alternative may subvert the doctrine of separation of powers enshrined in the Constitution as it submits the judicial system to utter futility. Other studies suggest that instead of granting amnesty or pardon, the state must pursue with the prosecution of these agents even if no conviction will result because the mere publicity generated by the investigation is already deemed compensatory in certain cases.¹⁴⁶ This is exemplified by the creation of "Truth Commissions" in countries that have undergone a drastic change from a dictatorial to a democratic regime.¹⁴⁷

VII. CONCLUSION

From all indications, as long as there are groups opposing the government through arms, amnesty shall always be used by the government as a palliative, a way of addressing the problem at its surface and in the short and limited term.

The insufficiency of amnesty as a solution to the problem of armed conflicts cannot be missed. This, history has so blatantly shown and this, the policy-makers in government very well know. Clearly, the problems which have given rise to armed uprisings against the government will not be solved by the grant of amnesty alone. Rebellion in itself is not the problem. Its root causes have to be addressed. In a society where economic deprivation and social injustice thrives, there will always be people who shall be willing to put their lives on the line by taking up arms. However, it would seem that the government cannot ignore the convenience and attractiveness that amnesty offers, if only as a means of diverting the attention of the people from the government's inability to effectively

¹⁴⁵Orentlicher, *SETTLING ACCOUNTS*, *supra* at 2604-2606; Rogers, *supra* note 24, at 304-307.

¹⁴⁶Roht-Arriaza, *supra* at 529; UN STUDY, at 19.

¹⁴⁷Mexico Agreements between the Government of El Salvador and the FMLN, 27 April 1991, in UNITED NATIONS, *EL SALVADOR AGREEMENTS: THE PATHS TO PEACE* (1992). See also Roht-Arriaza, *supra* 509; "Mandela eyes amnesty," *ibid.*

address the impelling dissatisfaction that have given rise to the armed uprisings. As long as the final solutions to the economic problems of the country are not immediately forthcoming, there will always be overt and violent displays of dissatisfaction and, thus, succeeding governments in the Philippines will always find a place for amnesty in their programs and policies.

In the short term, an amnesty can be viewed as an attempt to provide the necessary space for the sowing -- and, eventually, the nurturing -- of the seeds of economic development. This is based on the premise that the cessation of hostilities would pave the way for the flourishing of economic ventures. However, this argument rests on shaky grounds and collapses against the glaring fact that the numerous amnesties which were proclaimed in the country in the last half century have failed to secure a level of economic growth sufficient to quell the rage of dissatisfaction.

In the ultimate analysis, the prejudicial consequences of such random use of amnesty does not only take its toll on the political situation it seeks to address but on the very concept of amnesty itself. Eventually, the intrinsic value of amnesty as a tool of national reconciliation based on justice is diminished with each periodic amnesty proclamation.