

ENABLING PARTICIPATION: TOWARDS DISTINCT LEGAL RECOGNITION OF PEOPLE'S ORGANIZATIONS

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I. INTRODUCTION

A common anecdote about Filipino communities in other countries is that there are as many Filipino associations and organizations as there are actual residents. Indeed, the Filipinos' penchant for organizing themselves cannot be denied.¹

Non-governmental organizations (NGOs) and people's organizations (POs) are but two of the numerous types of organizations. NGOs and POs have attained relative prominence in recent history, presumably due to their perceived role in the ousting of a dictator.

The sprouting of NGOs and POs has, in fact, been partly attributed to the 1986 "EDSA" revolt that led to the ouster of erstwhile dictator Ferdinand Marcos. An NGO worker outlines the reasons thus,

Foremost was the democratic space gained after the ouster of the Marcos dictatorship. The event provided an opportunity for many in the anti-dictatorship struggle to re-think their options and re-focus

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¹ The United Nations Development Programme (UNDP) reported that there are 18,000 organizations in the country, of which around one third were "people's organizations". UNDP, Human Development Report (1993). Another study, made in June 1993 by Gerard Clarke, estimated that there were 58,000 NGOs in the Philippines, using records from the Securities and Exchange Commission (SEC). G. S. Silliman & L. Gardner Noble, *in* NGOs, CIVIL SOCIETY AND THE PHILIPPINE STATE: ORGANIZING FOR DEMOCRACY, 10 (1998).

their energies in pursuing alternative development work within a changed political landscape.

Secondly, the events of February 1986 generated a tremendous amount of goodwill among developed countries more than willing to help the country recover from the nightmare legacy Marcos left behind. Such goodwill translated into millions in grants and development aid being channeled through government and NGOs to help the country rebuild its social and physical infrastructure.

Thirdly, the lessons gained by the citizenry during the dark years of oppression resulted in a realization that the ultimate weapon against an oppressive state is an active, organized and vigilant citizenry, constantly fiscalizing the state apparatus against any form of repression or curtailment of individual rights and freedoms.

Lastly, our 1987 Constitution is replete with guarantees recognizing that ultimate power lies with the governed. The very notion of direct and frequent popular participation in national and local decision-making has been fleshed out through several constitutional provisions upholding the spirit and objective of people empowerment. POs and NGOs have been provided a proper niche in running the affairs of government.²

It is as to this last point that the paper is concerned with. Indeed, the Constitution is replete with provisions which encourage public participation. This, by itself, would already provide recognition for the role of the organized sectors of society to participate in policy and decision making. Still, the Constitution goes one step further and explicitly provides for roles for non-governmental and peoples' organizations.

II. NGOs AND POS, DEFINED AND DISTINGUISHED

A. Non Governmental Organizations

It has been suggested that the first appearance of the term "non-governmental organization (NGO)" was in a 1950 Resolution of the Economic

² T.S. VILLARIN, PEOPLE EMPOWERMENT: A GUIDE TO NGO-PO PARTNERSHIP WITH LOCAL GOVERNMENT 29-30 (1996).

and Social Council (ECOSOC) of the United Nations, defining an international NGO as “any international organization which is not established by inter-governmental agreement.”³ In a sense, “non-governmental” was used not to distinguish these organizations from governmental organizations or governments but from “intergovernmental organizations.”

States (acting through the governments⁴) are the primary subjects of International Law.⁵ The States, through the governments, may, by agreement, establish international organizations. The international legal personality of these organizations may be gleaned from the intention of the parties creating it⁶ and whether such creation was of such nature as to create a personality even against those not parties to its creation.⁷ Curiously, then, the actions of non-subjects of international law, namely individuals, are taken to have some legal effect insofar as they “create” or “establish” non-governmental organizations.

Notwithstanding its curious original (and official) appearance, the term “non-governmental organization” has since been accepted in Philippine law, as can be seen in its inclusion in the highest law of the land: “The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.”⁸

While the term has acquired general use, there is no homogeneity in its definition. Taken literally, an NGO may refer to any aggrupation aside from the government. Such an interpretation would include stock corporations and, admittedly to the point of ludicrousness, families. The qualifier in the Constitution that these organizations “promote the welfare of the nation,” unfortunately is too broad to be of help.

³ Antonio B. Quizon, *A Survey of Government Policies and Programmes on Non-Governmental Organizations in the Philippines*, in *A STRATEGIC ASSESSMENT OF NGOS IN THE PHILIPPINES* (1989) citing U.N. ECOSOC Resolution No. 288 (1950).

⁴ “(W)hen we say that International Law regulates the conduct of States we must not forget that the conduct actually regulated is the conduct of human beings acting as the organ of the State.” FOUNDATION OF THE LAW OF NATIONS 20.

⁵ LACHS, *THE DEVELOPMENT AND GENERAL TRENDS OF INTERNATIONAL LAW IN OUR TIME*.

⁶ Advisory Opinion, *Reparations for Injuries Suffered in the Service of the United Nations*.

⁷ *Id.*

⁸ CONST., art. II, sec. 23.

Attention can be drawn to the discussions of the 1986 Constitutional Commission where several statements intended to qualify which "Non-governmental organizations" are referred to in the Constitutional provision were made.⁹

First, mention was made regarding the acceptance of the concept of NGOs at the international level.¹⁰ In particular, cited was a Club of Rome study regarding the need to support "volunteerism, community based and non-government agencies (and) independent organizations" in light of the failure of "government-led development" to "reduce disparities ... (and) trickle down resources to the majority."¹¹ The NGOs referred to would therefore have to have as an objective the pursuit of equity.

Second, the provision's proponent enumerated examples of NGOs, in response to a query requesting the same:

MR.OPLE Just one question if Commissioner Rosario Braid will not mind. Can we have some examples of nongovernmental organizations? Let us say, in the countryside setting (sic), we know that this is derived from the United Nations so that NGOs are generally invited to take part in international conferences, either as observers or as full participants. What are some examples of NGOs which we would like to mandate in this section of the draft Constitution?

MS. ROSARIO BRAID. I think they will be classified into different groups. They could be civic organizations, such as the Rotary Clubs and the Jaycees; development organizations, such as the Assisi foundation; independent organizations, like the NAMFREL; women's organizations, such as the YWCA; and they could also be organizations of businessmen, like the Bishops Businessmen Conference or the Philippine Business for Social Progress.

MR. OPLE. Will this also include, let us say, labor and peasant organizations?

⁹ Such an intent can be inferred from the statement of Commissioner Rosario Braid, speaking in behalf of the Committee on the State Principles and the Bill of Rights, in the midst of clarificatory questions as to the scope of NGOs: "I think we can add to the records the criteria for organizations that would fall under this," 4 RECORDS OF THE 1986 CONSTITUTIONAL COMMISSION 903 (22 September 1986). [hereinafter RECORD 4]

¹⁰ *Id.* at 902.

¹¹ *Id.*

MS. ROSARIO BRAID. Yes, they will be included if they are nongovernmental organizations.¹²

Notwithstanding the circular logic in the last answer, it should be noted that all the examples mentioned were those not organized for profit. Curiously, among the examples are “organizations of businessmen”, but the groups named were those organized for purposes not directly related to business or profit.

Finally, the types of NGOs referred to in the Constitutional provision have been further delineated as a result of the following exchange in the deliberations:

MR. SARMIENTO. My understanding is that Jaycees and similar organizations are exclusive clubs. Before one becomes a member, he has to pay fees. I do not think these are community-based organizations. This will encourage membership from the masses, from our people. So, is that within the intendment of Section 16?

MS. ROSARIO BRAID. They would fall under nongovernmental organizations as long as they are engaged in activities that promote the welfare of the nation. We will not exclude them really from being participants of beneficial support as long as the activities are directed to social-economic upliftment of the majority of the disadvantaged population.

MR. SARMIENTO. One last question. To the best of my personal knowledge, these organizations are concerned with projects like giving medical aid, giving extra clothing to indigents during Christmas time, and similar other projects. These are the thrusts of the Jaycees and other similar organizations. Are we made to understand that we are going to encourage this kind of organizations within the intendment of Section 16?

MS. ROSARIO BRAID. I think we can add to the records the criteria for organizations that would fall under this. And among these criteria is what the Commissioner has just mentioned – that these organizations contribute to the welfare through a different kind of social service that moves away from dole outs but which, in fact, encourage participation and human development. So if we can add these criteria in the records because we could not add the phrase “PROMOTING

¹² *Id.*

HUMAN DEVELOPMENT AND PARTICIPATION," that is really the intent of this provision.

MR. SARMIENTO. If the intent is to do away with doleouts and other similar activities, than I accept the explanation of the committee.¹³

The above attempt to qualify and limit the term "NGOs" should not be read as an attempt to cast aspersions on the social value of those outside the ambit of such qualifications. Neither should it be interpreted to suggest that all other types of organizations are not protected by the Constitution, particularly the right to association.¹⁴

The intention of the above exercise is simply to delimit, with some degree of certainty, which aggrupations, among the multitude of possibilities, the Constitution intends to encourage in Art. II, Section 23. The use of the term "NGOs" will be, for the purposes of this paper, those groups that fall within the criteria enumerated above.

The problem with the breadth of the term NGOs is not exclusive to the Philippines. Even international financial institutions have had to grapple with such definitional problem. The Asian Development Bank (ADB), in its Policy on Cooperation with NGOs, addresses such ambiguity similarly by functional delimitation:

In its broadest sense, the term "nongovernment organization" refers to organizations (i) not based in government; and (ii) not created to earn profit. While this broad definition of an NGO is correct semantically, it presents a problem in that it embraces a large number and wide range of organizations that structurally and functionally are unrelated. This broad definition of NGO refers more to what an organization is not, rather than to what it is, and can be applied to many organizations.

The Bank is concerned primarily with developmental NGOs. Developmental NGOs can be regarded as private organizations entirely or largely independent of government, not created for financial or

¹³ *Id.*, at 903.

¹⁴ CONST., art. III, sec. 8, "The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

material gain, and addressing concerns such as social and humanitarian issues of development, individual and community welfare and well-being, disadvantage, and poverty, as well as environmental and natural resources protection, management, and improvement.¹⁵

There is some consistency between the concept of “developmental NGOs” as defined by the ADB and the type of NGOs suggested above as falling within Art. II, Sec. 23 of the Constitution. For purposes of this paper, the ADB definition of developmental NGOs would be used to supplement the inferences from the Constitutional Commission’s deliberations, as an articulation of what the Constitution intends when it speaks of NGOs.

B. People’s Organizations

The Constitution devotes an entire part in the Article on “Social Justice and Human Rights”¹⁶ to the “Role and Rights of People’s Organizations.”¹⁷

Unlike in the case of NGOs, the Constitution itself defines what it means by people’s organizations: “People’s organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.”¹⁸

The ambiguity in the use of the term PO usually arises in relation to the term NGO. In fact, part of the confusion is apparent during the deliberations on the provisions for NGOs and for POs. During the discussions on the provisions on POs in Art. XIII, the following exchange was recorded:

MR. OPLE. ... I suppose that people’s organizations do embrace all groups of citizens that band together voluntarily for the pursuit of public interest. Would that be correct?

¹⁵ ASIAN DEVELOPMENT BANK, POLICY ON COOPERATION WITH NGOS, at http://www.adb.org/Documents/Policies/Cooperation_with_NGOs/ngo_sector.asp?p=coopngos.

¹⁶ CONST., art. XIII.

¹⁷ CONST., art. XIII, secs. 15 to 16.

¹⁸ CONST., art. XIII, sec. 15.

MR. GARCIA. That is correct, Madam President.

MR. OPLE. Therefore, this would include both labor and peasant organizations?

MR. GARCIA. Yes, including professional, neighborhood and civic associations, ethnic and cultural groups, and so on.

MR. OPLE. And presumably, because of the tripartite character of negotiations for industrial peace, these should also include associations of landowners and associations of business and industry.

MR. GARCIA. Yes, because they also pursue the public interest.¹⁹

But in the discussions relating to the provision for encouraging NGOs as a State policy, the following exchange, among different Commissioners, transpired:

MR. DAVIDE. For clarification purposes, the non-governmental and community-based organizations alluded to here are distinct and separate from independent people's organizations or farmers' organizations under the Article on Social Justice.

Is this broader in sense?

MS. ROSARIO BRAID. This is broader and the concept of the independent organizations as found in the Article on Social Justice would refer to the community-based organizations here which will be different from non-government organizations which perhaps are really more organized.

MR. DAVIDE. But community-based organizations are necessarily nongovernmental?

MS. ROSARIO BRAID. That is right.

MR. DAVIDE. And that is the meaning here?

¹⁹ 3 RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 146 – 147 (9 August 1986). [hereinafter RECORD 3]

MS. ROSARIO BRAID. Some of the community-based organizations may be government-initiated.

MR. DAVIDE. So it is now very clear that under the proposed Section 16, which will eventually be Section 15, community-based organizations may be organized by the government itself?

MS. ROSARIO BRAID. Maybe and also by private enterprises.

MR. DAVIDE. In short, my last question is: The contemplation of Section 16 is broader than the organizations in the Article on Social Justice?

MS. ROSARIO BRAID. The Commissioner is right.²⁰

The above exchanges are inconsistent in that, in the former, one would get an impression that POs are so broad as to be identical with NGOs, while in the latter, POs are expressly deemed a subset of the much broader NGOs.

Revealing is the answer of Commissioner Rosario-Braid that the independent POs contemplated in the Article on Social Justice are equivalent to “community-based” organizations in Article II, Sec. 23. Recalling said section, one would discover three seemingly distinct types of organizations: non-governmental, community-based, and sectoral. Add to this the POs and one would have four seemingly distinct kinds of organizations. That is, until one tries to distinguish and contrast one with another.

C. The NGO-PO Divide

It is important to state from the onset, that it was not the Constitution that introduced the aforementioned terms. As was noted in the earlier discussion on NGOs, the terms were coined way before the 1987 Constitution. Needless to say, NGOs, POs, community based organizations and sectoral organizations existed before the 1987 Constitution.

²⁰ RECORD 4 at 902.

The growth of people's organizations in the rural areas may be traced to a shifting of paradigms in the 1970s as a result of Martial Law. A marked change in the approach of community workers has been noted, from "community development"²¹ to "community organizing."²² The objective of "community organizing" was the formation of people's organizations.²³

Much earlier, however, workers were already cognizant of the need to organize themselves in order to counter the iniquitous relations between labor and employers.

It is in this historical context that the terms NGOs and POs were used in the 1987 Constitution. It would not be irrelevant, therefore, to turn to developmental theories to disentangle the seemingly overlapping concepts translated into legal terms.

A pioneering classification of parties to the development process is included in Korten's *Getting into the 21st Century: Voluntary Action and the Global Agenda*, one of the most read books among development workers:

- Public service contractors (PSCs) which function as market-oriented on profit businesses serving public purposes and contracted to implement programs of donors;
- Volunteer organizations (VOs) which pursue a social mission driven by a commitment to shared values;

²¹ The community development approach is acknowledged as having been partially introduced by Dr. James Yen, founder of the International Institute for Rural Reconstruction (IIRR), in the 1950s. The community development approach has as its fourfold program health, education, self-government and livelihood. Cristina M. Liamzon and Alexis M. Salinas, *Strategic Assessment of NGOs in Agrarian Reform and Rural Development* in STRATEGIC ASSESSMENT OF NGOS IN THE PHILIPPINES, *supra* note 3 at 50.

²² Community organizing "involved people's identification of issues and felt needs, and organizing vigilant action to assert their needs and demands to the relevant authorities." It is corollary to "conscientization" or "the process of developing people's awareness of social issues and their role in social change", made popular by the experiences of Paulo Freire and the Theology of Liberation in Latin America. *Id.*

²³ *Id.* Other terms used in lieu of people's organizations were mass organizations and local organizations. These terms, however, have been identifies with particular ideologies and are now seldom used, in favor of the more politically neutral "POs." M.C. FERRER ED., PEACE MATTERS: A PHILIPPINE PEACE COMPENDIUM, 20 (1997).

- People's organizations (POs) which represent their members' interest, have member-accountable leaderships and are substantially self-reliant; and
- Government non-governmental organizations (GONGOs) which are private entities created by government / government officials and serve as instruments of government policy.²⁴

The last classification can be automatically disregarded as irrelevant as it contradicts the requisite of independence expressly provided in Art. XIII, Sec. 15 and implicitly in Art. II, Sec. 23,²⁵ of the Constitution.

It has been pointed out that Korten's categorization is itself affected by the NGO-PO ambiguity as, in another part of his book, he outlines the parties of the development process as: government, private business, NGOs and POs.²⁶ This latter categorization makes POs distinct from NGOs; in the first categorization, POs belong to a subset of NGOs.

A complementary categorization, and perhaps one more relevant to the point in issue, is between first party and third party organizations. First party organizations are those one whose purpose is to advance the interest of their members, while third party organizations are those "basing their social legitimacy on the basis that they exist to serve the needs of third parties – persons who are not themselves members of the organization."²⁷ POs are, undoubtedly, first party organizations.²⁸

This latter point is important in that it renders moot the "POs as a subset- POs distinct from NGOs" dilemma.

It is herein asserted that Article XIII, Secs. 15 to 16 of the Constitution is applicable only to first party organizations. Such is made clearer by a reading of

²⁴ D. C. Korten, *Getting into the 21st Century: Voluntary Action and the Global Agenda* (1990) in *Peace Matters*, *supra* note 23 at 19.

²⁵ "MS. ROSARIO BRAID. Madam President, the concept of NGOs or nongovernmental organizations is an acceptable concept in the international world. And so, the importance given to NGOs here acknowledges that we are rising on the wave of volunteerism and private initiative." RECORD 4 at 902.

²⁶ Korten, *supra* note 24 at 96.

²⁷ *Id.*

²⁸ *Peace matters*, *supra* note 23.

the relevant Constitutional provision providing, "The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, **their legitimate and collective interests and aspirations** through peaceful and lawful means."²⁹ [Emphasis supplied.]

Art II, Sec. 23, on the other hand, directs the state to encourage NGOs, community based organizations and sectoral organizations. These would include both third party organizations and first party organizations, i.e. POs. Such a conclusion is made regardless of whether a PO is a subset of an NGO or not. In the latter case, a PO would still be within the Constitutional directive of encouragement as it is a community-based organization (as suggested by Commissioner Rosario-Braid). Note that contemporary sociological definitions of community admit of considerations other than geographical proximity.³⁰

The above discussion may seem esoteric but the importance of the distinction will become apparent in the succeeding part where the Constitutional directives relating to organizations in Art. II and Art XIII will be contrasted.

III. NGOS AND POS IN THE CONSTITUTION

A. Constitutional Provisions On NGOs And POs

The Constitution provides "The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation."³¹

²⁹ CONST. art. XIII, sec. 15.

³⁰ "The point made by those who sponsor this argument is that communities have been freed from territorial confinement by advances in transportation (e.g. superhighways, jet travel) communications (e.g. low priced long distance telephone, electronic connectivity to countrywide and global networks through computers and cable / video interactive systems), and other technological advances. These developments have enabled people to maintain ties with others regardless of distance.

The community liberated position emphasizes that people maintain membership in various social networks, such as kin networks, work-related networks, professional networks, computer networks (e.g. discussion groups within the Internet), racial and ethnic networks, avocational networks, church related networks and so on." M. QUERALT, *THE SOCIAL ENVIRONMENT AND HUMAN BEHAVIOR: A DIVERSITY PERSPECTIVE* 227 (1996)

³¹ CONST., art. II, sec. 23.

That such a provision is included in the Declaration of State Policies immediately solicits an inquiry as regards the enforceability of such a provision absent express legislative action. The Supreme Court's treatment of such State Policies and Principles has been, at best, ambivalent.

In the case of *Oposa v. Factoran*,³² the right to a balanced and healthful ecology and the right to health, were deemed enforceable rights even if they were found in the Declaration of State Policies and Principles. Said the court,

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter."³³

However, in the cases of *Basco v. PAGCOR*³⁴ and *Kilosbayan v. Guingona*,³⁵ the Court unceremoniously dismissed the cases partly on the grounds of lack of cause of action since the rights alleged to be infringed were merely directory.

The views on this particular provision of the Constitution have not been, quip unintended, encouraging.

Constitutionalist Joaquin Bernas, S.J. opines that said provision "recognizes the principle that volunteerism and participation of non-governmental organizations in national development should be encouraged."³⁶ However, Bernas notes that the "1987 provisions were written in the same spirit as their

³² G.R. No. 101083, July 30, 1993, 224 SCRA 792.

³³ *Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 804-805.

³⁴ G.R. 91649, May 14, 1991, 197 SCRA 52, 68: "On petitioners' allegation that Pres. Decree No. 1869 violates sections 11 (Personality Dignity), 12 (Family) and 13 (Role of Youth) of article II; Section 13 (Social Justice) of article XIII and Section 2 (Educational Values) of article XIV of the 1987 Constitution, suffice it to state also that these are merely statements of principles and policies. As such, they are basically not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles."

³⁵ G.R. 118910, July 17, 1995, 246 SCRA 540, 564: "Petitioners invoke the following Principles and State Policies set forth in art. II of the Constitution: ... These are not, however, self executing provisions, the disregard which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

³⁶ J. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 89 (1996).

counterparts in the 1935 and 1973 Constitutions,”³⁷ meaning that, as a general rule, they were “directives addressed to the executive and to the legislature,”³⁸ and the available remedy in case of perceived impairment was “political not judicial.”³⁹

This is considerably kinder than the view of former Justice Isagani Cruz, who noted:

In addition to the above discussed provisions, Article II contains the following rules on miscellaneous subjects, presumably incorporated in the fundamental law **only to accommodate their particular authors and gratify their desire for expression and perpetuation of their ideas**, even if anonymously, at the expense of the quality and nature of the Constitution.⁴⁰ [Emphasis supplied.]

Assuming *arguendo*, that said provision is self-executory or by itself enforceable, it still has to be determined what exactly the said provision grants to the citizenry in general, and to non-governmental organizations in particular.

To claim that said provision merely constitutes a bar to governmental action tending to restrict the organization of would be to render ineffective said provision, as such guarantee is already included in the freedom of association provision. In order to construe said provision as having a distinct effect, the term “encourage” must be understood in ordinary sense, i.e. to spur on, stimulate, incite, give help or patronage to, or foster.⁴¹

If indeed such interpretation would govern, the test of whether governmental action contravenes said provision must demand stricter requisites than the test used in freedom of association cases.

³⁷ *Id.*, at 33.

³⁸ *Id.*, at 32.

³⁹ *Id.*

⁴⁰ I. CRUZ, PHILIPPINE POLITICAL LAW 71 (1998). The assailed provisions were art. II, Sec 15 (right to health), sec. 16 (right to a balanced and healthful ecology), sec. 17 (promotion of human liberation and development), sec. 22 (rights of indigenous cultural communities), sec. 23 (NGOs), and sec. 28 (policy of full public disclosure).

⁴¹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 747 (1993).

The problem with such an interpretation, however, is in the practicability of its enforcement. It would be difficult, and even ridiculous, to demand that all laws include provisions specifically “encouraging” NGOs.

Concededly, then, the provision on NGOs is weak in that it is of doubtful enforceability, and equally questionable application.

The provisions on people’s organizations, however, do not suffer the same infirmities.

Article XIII of the Constitution, provides,

Sec. 15. The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

People’s organizations are bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

Sec. 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

Unlike the provision on NGOs, the provisions on POs are not in the Declaration of State policies and principles and thus do not suffer the same presumption against enforceability. To test its enforceability, what the Supreme Court stated in a leading case might prove relevant:

Admittedly, some constitutions are merely declarations of policies and principles. Their provisions command the legislature to enact laws and carry out the purpose of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and securing certain fundamental and inalienable rights of citizens. A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient

rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus, a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the construction itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.⁴² [Emphasis supplied.]

Section 15 provides for a specific right of POs to respect from the State. The purpose of POs is also stated as enabling the people to “pursue and protect their legitimate and collective interests.” It further qualifies this right by providing, as a requisite to its exercise, that such is “within the democratic framework” and through “lawful and peaceful means.” The former is instructive in that it provides, as well, for the rationale for the distinct provisions on POs.

Recall that the Philippines is a “democratic and republican State.”⁴³ Justice Cruz discusses the above concepts, thus,

A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.⁴⁴

Yet the people have reserved for themselves, direct participation, not limited to the choosing of representatives, in the pursuit of “social changes.”⁴⁵ Its very object is to retain for the people, the right to participate, with POs as the means:

⁴² Manila Prince Hotel v. GSIS, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 431 - 432

⁴³ CONST., art. II, sec. 1.

⁴⁴ CRUZ, *supra* note 40 at 52.

⁴⁵ RECORD 3, at 144. Commissioner Garcia: “... In a sense, we are trying to say that only a citizenry that is organized and mobilized can really pursue this very difficult endeavor of the State. In fact, if the Gentleman will remember, in many of the previous interventions, when we spoke of the unfinished popular revolution of February, we said it was a political act and that social changes which are unfinished still have to be pursued. It is not only the task of the State but also the people. We will still have to pursue this through their organizations.” [Emphasis supplied.]

MR. GARCIA. Therefore, what does it do? It refines and it amplifies what we already have in the Bill of Rights, specifically, because of the whole vision we have of social justice. If the Gentleman will remember, when we began the definition, we said "to redistribute wealth and power." In other words, it is not simply the State later on which will ensure that all of these protections and recognition of rights are given but **the people must also have a legitimate share of political power for them to participate. And so, this is the vehicle for them.**⁴⁶ [Emphasis supplied.]

This, in a sense, is a precept of democracy that balances the republican nature of the Philippines.⁴⁷

Such a fundamental right, then, could not be left for the legislature to "ignore and practically nullify."⁴⁸ In the words of the Supreme Court, such a situation would be "cataclysmic."⁴⁹

Moreover, the legislature cannot be left to determine the enforceability of a right expressly reserved by the people. Such a right to participate in political, economic and social construction should be deemed to have never been delegated by the sovereign.⁵⁰

Section 16, as a complement to Section 15, provides for participation of POs in decision-making and directs the State to facilitate consultation mechanisms. While the said section admits of legislative action to facilitate consultation mechanisms, it was made clear during the Constitutional

⁴⁶ *Id.*

⁴⁷ 4 RECORD of the 1986 Constitutional Commission 735 (September 17, 1986). Commissioner Nolleto: "I would like the Commissioner to know that as author of this term "democratic state," I am not ruling out certain concepts in socialism. I am putting the word "democratic" because of the provisions on recall, initiative, the right of the people even to participate in lawmaking and **other instances that recognize the validity of interference by the people through people's organizations, et cetera.**" [Emphasis supplied.]

⁴⁸ Manila Prince Hotel v. GSIS, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 432.

⁴⁹ Manila Prince Hotel v. GSIS, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 432.

⁵⁰ RECORD 3, at 164. Commissioner Rodrigo: "In our Declaration of Principles, we state that our government is a republican government, which means a representative government wherein sovereignty resides in the people; but then the people elect their representatives to the legislature, to the executive department, and these representatives are the ones who perform the function of government. We would like the people to have some reserve powers as was stated by Commissioner Monsod. We are providing for initiative, for referendum, even for recall. And now we are providing in this section another direct participation of the people..."

Commission deliberations that a law need not be passed for participation and consultation be effected.

The original form of the said section, as proposed by the Committee on Social Justice, was

The State shall respect the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making, and shall MAKE POSSIBLE adequate consultation mechanisms. [Emphasis in original]

There was a suggestion by Commissioner Maambong to include the phrase, "as may be determined by law,"⁵¹ in the said section, which elicited opposition from the other Commissioners.⁵² The motion was withdrawn by its proponent:

MR. BENNAGEN. I agree with the comments of Commissioners Monsod and Garcia as to the spontaneous but rather effective and dynamic people's organizations and consultations with the government. I think the problem with including that phrase "AS DETERMINED BY LAW" is for the law to delimit the possibilities of people's organizations consulting with the government. We are saying that the full potential of people's organizations consulting with the government cannot be accommodated by law. Therefore, to put that is already to provide some limitations to the fuller expression of people's organizations.

...

MR. MAAMBONG. Madam President, this is not really the intention of the proponent but if the Committee feels that way, we do not have to put it to a vote.

⁵¹ RECORD 3, at 148.

⁵² RECORD 3, at 148 – 149. Commissioner Garcia: "The understanding is that whether there is a law or not, this basic right must be respected and they should be consulted. The consultation mechanism itself could be treshed out and discussed, and later on, we need not have a law for that right."

Commissioner Monsod: "The Committee believes that the phrase 'within the democratic framework' might already be sufficient that we do not need to put the phrase 'AS MAY BE DETERMINED BY LAW.'

The amendment was pursued by Commissioner Regalado, who rephrased the suggested insertion to “as may be provided by law.”⁵³ This amendment was accepted with the *caveat* that this “does not mean a law is a precondition for consultation to take place.”⁵⁴

Days later, the section achieved its final form through an amendment of Commissioner Bernas who asserted:

We would like to avoid the use of the words “make possible” because it **gives the impression that these consultation mechanisms are not possible unless the State takes action by law.** As a matter of fact, these consultation mechanisms are already in existence, and the role we are giving the State is mere facilitation, not necessarily creation of these consultation mechanisms.⁵⁵ [Emphasis supplied.]

The fact that the section admits of further legislative action does not mean that it is not self-executing.⁵⁶ It is, both in letter and intent, immediately enforceable.

If both provisions are self-executing and contemplate participation by POs, where then is the delineation between the two?

Section 16 obviously deals with participation and consultation in its generic sense, meaning that the powers granted to the different departments by

⁵³ RECORD 3, at 149.

⁵⁴ RECORD 3, at 150.

⁵⁵ RECORD 3 at 162 (August 11, 1986).

⁵⁶ *Manila Prince Hotel v. GSIS*, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 433:

In self-executing constitutional provisions, the legislature may still enact legislation to facilitate the exercise of powers directly granted by the constitution, further the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right. The mere fact that legislation may supplement and add to or prescribe a penalty for the violation of a self-executing constitutional provision does not render such a provision ineffective in the absence of such legislation. The omission from a constitution of any express provision for a remedy for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution, further the exercise of constitutional right and make it more available. Subsequent legislation however does not necessarily mean that the subject constitutional provision is not, by itself, fully enforceable.

the ratification does not preclude the right of the people to intervene and air their views. In a sense, it qualifies the grant of representative powers through the electoral process such that the representatives exercising derivative powers are held more accountable to the sovereign.

Section 15, on the other hand, emphasizes the vehicle that is the PO. Through the POs, the people can directly participate to assert "their legitimate and collective interests and aspirations." That POs are, in the same section, defined, is instructive as the recognition that should be accorded POs.

It is herein posited, to be further qualified in Part 4, that Section 15, by itself, directs the State to recognize people's organizations, as defined in the same section, without need for any overt governmental act confirming the same.

IV. THE DIRECTIVE AND CHALLENGES OF PARTICIPATION

Article XIII, Sec. 16 of the Constitution recognizes and protects the "right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision making." The directive is intrinsically qualified:

- Participation must be both effective and reasonable;
- Participation must be allowed at all levels of social, political, and economic decision-making.

The second part of the article speaks of a way by which participation may be facilitated: adequate consultation mechanisms. This, however, should not be read to mean that consultations are the only ways by which participation is to be effected. Instructive are the comments of Prof. Alberto Muyot:

The framers of the Constitution have bet their money on State intervention as the means of implementing structural reforms, but the recent histories of the Philippines and of other countries have shown that reforms cannot be imposed from above and State intervention is anathema to productive economic activity. The more successful social and economic reforms have been instituted by the people themselves,

through their own initiatives, with assistance from the State through infrastructure support.⁵⁷

Prof. Muyot observed that the "Social Reform Agenda" a document which articulated reforms to operationalize "the government's human development goals,"⁵⁸ was formulated by "the people by-passing their congressional representatives in the articulation of their problems and in finding solutions thereto, in a rare example of direct democracy."⁵⁹ Prof. Muyot notes however, that,

... the alternative process is not completely alien to the governmental process outlined in the 1987 Constitution, as the fundamental law itself compels the State to "encourage non-governmental, community based, or sectoral organizations that promote the welfare of the nation," and recognizes the role of independent people's organizations "to enable the people to pursue and protect, within a democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means" and the right or (sic) the people and their organizations to "effective and reasonable participation at all levels of social, political, and economic decision-making." As if to emphasize the truism that **reforms have to be initiated by the people themselves**, the provisions on people's organizations are found within the article on Social Justice and Human Rights.⁶⁰

While the Social Reform Agenda was formulated through a consultation process, albeit "long and tedious," a warning is issued as regards the "bureaucratization" of participation of people's organization by the Constitutional provision for a "law on adequate consultation mechanisms" as such will "not facilitate but rather complicate matters."⁶¹

The challenge therefore, as regards the realization of "effective and reasonable" participation at "all levels of social, political, and economic decision-making" may be met by greater leeway in allowing "direct democracy." The convenience of adequate consultation mechanisms must be deemed secondary to the primary objective of greater participation.

⁵⁷ Alberto T. Muyot, *Social Justice and the 1987 Constitution: Aiming for Utopia?*, 70 PHIL. L. J. 310, 352 (1996).

⁵⁸ *Id.*, at 340.

⁵⁹ *Id.*, at 352.

⁶⁰ *Id.*, at 352 – 353.

⁶¹ *Id.*

This, obviously, is easier said than done.

The limitations of working within the bureaucracy affect the flexibility necessary to fully imbibe participation. The observation made vis-à-vis donor agencies and communities in forest management are relevant as regards government-peoples' organizations. It was observed that donor agencies, as do governments and perhaps most "formal institutions," have a "technocratic mindset" that values "haste and scale" more than actual on-the-ground impacts and expects "program and project design and implementation to take place within relatively short time frames"⁶² It thus seems paradoxical how an impact-fixated and myopic structure such as the government bureaucracy could ever support a broader public participation.

Still, there are theories which would support public participation as a desired norm.

A view holds that the concept of democracy itself goes beyond representative government and electoral participation. According to such view, people empowerment

specifically entails the creation of a parallel system of people's organization's (sic) as government's partner in decision making. Three forms of people's organizations are called for: basic sectoral associations to espouse people's political will; cooperatives to advance the people's economic interest; and the community organizations to attend to the people's social and cultural needs.⁶³

Another view introduces a "deliberative ideal," where decisions are made through a "mode of discussion in which participants engage in reasoned discourse about what action serves the common good of the community involved."⁶⁴ This ideal values deliberation and discourse not to discover a "pre-existing

⁶² P. Utting, *An Overview of the Potential and Pitfalls of Participatory Conservation*, in *FOREST POLICY AND POLITICS IN THE PHILIPPINES: THE DYNAMICS OF PARTICIPATORY CONSERVATION* 171-225 (2000).

⁶³ G. S. Silliman & L. Gardner Noble, *Movements and Democracy*, in *NGOS, CIVIL SOCIETY AND THE PHILIPPINE STATE: ORGANIZING FOR DEMOCRACY* 293 (1998) citing H. MORALES, JR., *A CALL FOR PEOPLE'S DEVELOPMENT* 172 (1990).

⁶⁴ J. Poisner, *A Civic Republican Perspective on the National Environmental Policy Act's Process for Citizen's Participation*, 26 ENV'T'L L. 53, 56 (1996).

consensus,”⁶⁵ or to use “some form of abstract moral reasoning.”⁶⁶ The common good is articulated through a set of public values or “goals or intentions that people ascribe to the group or community of which they are members.”⁶⁷ The community comes up with the set of public values through

the act of public participation, created through common deliberation and common action and the effect that deliberation and action have on interests, which change shape and direction when subjected to these participatory processes.⁶⁸

Both views place importance on the form and structure as determinative of the quality and appropriateness of the results. The policies formed and decisions arrived at through a “parallel system of peoples’ organizations” or through the deliberative process are perhaps no more intrinsically correct as, say, the application of a formula of abstract moral reasoning. But the “ownership” of said policies and decisions by the participants guarantee, to some extent, the enforceability and sustainability of the same. Similarly, the parallel PO system involved in the policy and decision-making assures that sufficient support guides implementation or enforcement.

Fortunately, recent history is replete with experiences which point towards the feasibility of public participation through people’s organizations. This may be seen in the number of legislative reforms initiated and facilitated by people’s organizations.

It was, for example, a people’s organization, the *Kilusang Magbubukid ng Pilipinas* (KMP) that reportedly proposed the first extensive plan for agrarian reform, which was submitted to President Corazon Aquino just four months into her presidency in 1986.⁶⁹

⁶⁵ *Id.*, at 59, citing B. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 152 (1984) and M. Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511, 1528 (1992).

⁶⁶ *Id.*, citing B. Barber, *THE CONQUEST OF POLITICS: LIBERAL PHILOSOPHY IN DEMOCRATIC TIMES* 199 (1988).

⁶⁷ *Id.* at 58, citing MARK SAGOFF, *THE ECONOMY OF THE EARTH: PHILOSOPHY, LAW AND THE ENVIRONMENT* 100 (1988).

⁶⁸ *Id.* at 59 – 60, citing BARBER, *supra* note 65 at 152.

⁶⁹ J. PUTZEL, *NGOS AND RURAL POVERTY IN NGOS, CIVIL SOCIETY AND THE PHILIPPINE STATE: ORGANIZING FOR DEMOCRACY* 89 (1998).

Urban land reform legislation⁷⁰ has been a result of active lobbying by urban poor POs and coalition of POs.⁷¹ The proliferation of such urban poor POs is partly attributed to the organization of the Zone One Tondo Organization (ZOTO) in 1971, pioneering community organizing among urban poor communities and launching public campaigns for the legitimate demands of the urban poor sector.⁷²

Finally, even the ascent to power of President Corazon Aquino, paving the way for the formulation and eventual ratification of the current Constitution can be partially attributed to the organized sectors of society. Indeed the inclusion of provisions recognizing the role of POs in the Constitution is but a just recognition of those who contributed to its formulation.

V. CONCLUSION

NGOs and POs: Why Differentiate?

The Local Government Code does not seem to distinguish between NGOs and POs:

Sec. 34. Role of People's and Nongovernmental organizations. Local government units shall promote the establishment and operation of people's and nongovernmental organizations to become active partners in the pursuit of local autonomy.

Sec. 35. Linkages with People's and Nongovernmental organizations. Local government units may enter into joint ventures and such other cooperative arrangements with people's and

⁷⁰ Examples of urban land reform legislation are: the Urban Development and Housing Act, Rep. Act 7279 (1992); the Comprehensive and Integrated Shelter Financing Act, Rep. Act 7835 (1994); and the law repealing the Anti-Squatting Law, Rep. Act 8368 (1997).

⁷¹ See, for example, John J. Carroll, S.J., *Philippine NGOs Confront Urban Poverty* in NGOs, CIVIL SOCIETY AND THE PHILIPPINE STATE: ORGANIZING FOR DEMOCRACY 113 - 137 (1998); ANNIE DE LEON AND PERCIVAL CHAVEZ, URBAN POOR COALITIONS IN STUDIES ON COALITION EXPERIENCES IN THE PHILIPPINES 251 - 264 (1994); Hans Leo Caddac, *Housing and Eviction Rights Practice: Where UDHA Implementation Meets Effective Peoples' Participation*, unpublished paper presented during the First Alternative Law Conference, University of the Philippines - College of Law, November 8 to 12, 1999 (on file with author).

⁷² *Id.*

nongovernmental organizations to engage in the delivery of certain basic services, capacity-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

Sec. 36. Assistance to People's and Nongovernmental Organizations. A local government unit may, through its local chief executive and with the concurrence of the sanggunian concerned, provide assistance, financial or otherwise, to such people's and nongovernmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.⁷³

This confusion, however, is not carried over to an important provision which inexplicably seems to neglect POs:

Sec. 108. Representation of Nongovernmental Organizations. Within a period of sixty (60) days from the start of organization of local development councils, the nongovernmental organizations shall choose from among themselves their representatives to said councils. The local sanggunian concerned shall accredit nongovernmental organizations subject to such criteria as may be provided by law.⁷⁴

While, based on the earlier discussion on NGO-PO confusion, the above section on representation may not necessarily mean that POs are excluded, even assuming that POs are part of the group of organizations from which representatives are to be chosen does not give justice to the distinct role that should be accorded POs.

This confusion must be corrected in the Local Government Code and other laws. This is to reflect the reality that POs are distinct and different from NGOs.

To recall the discussion in part two of this paper, the Constitutional provision for NGOs, lumps the same with sectoral organizations and community organizations, but suffers from vagueness. Indeed, the provision instructing the State to "encourage" said organizations seems at best permissive and hortatory.

⁷³ Rep. Act No. 7160 (1991).

⁷⁴ Rep. Act No. 7160 (1991).

But the importance of POs as vehicles for the exercise of direct democracy, as seen in the discussion in part three, cannot be glossed over. The same reasons why direct democracy is to be preferred to a restrictive government regulated consultative process may be raised as warning signs against continued dependence on NGO partnerships in policy and decision-making.

There are, after all, real and not just legal, differences and dynamics between NGOs and POs.

As was noted by a long time NGO worker:

As POs gain more skills, knowledge and, and confidence, tensions emerge in defining the boundaries of PO and NGO interventions. POs run the gamut from almost total dependence on NGOs to a perspective that views NGOs as simply sources of financial and other forms of support. While the vast majority fall somewhere between these two extremes, there are significant tensions nonetheless.

NGOs have always recognized the autonomy of POs, and the ultimate goal of NGOs is to assist POs to stand fully on their own. But development workers have always had a romanticist streak that runs side by side with a messianic complex. The former leads to self-depreciation, even a false sense of humility and timidity. NGOs have projected a self-effacing image, publicly articulating their subservience to the decisions of the people. And yet at the same time, development workers tend to identify fully with the community / sector they service and many times have taken the lead even in PO processes, speaking and deciding on behalf of POs. This situation not only muddles roles but leads to confusion especially among PO leaders.⁷⁵

The law should be the last to add to the confusion of NGOs and POs, which may, as has been opined above, lead to PO-NGO tensions. At worst, such confusion may even lead to a denial of the role of POs, in favor of the more visible and usually more articulate NGOs. In such a situation, the Constitutional directive recognizing POs would be contradicted.

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⁷⁵Karina Constantino – David. *From the Present Looking Back in NGOs, Civil Society and the Philippine State: Organizing for Democracy* 40-41 (1998).