

The Party-list System: Sectoral or National? Success or Failure?

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Some view the party-list system as the best hope for a system that will finally address the needs and concerns of the country's neglected and marginalized sectors. It is even brandished by the government as the cure to the cancer of traditional politics and politicians. Others, however, are reluctant to pin their hopes on the party-list system for a good reason. Although a more than sufficient number of groups, organizations and parties have expressed interest in the system, the fact remains that very few would-be voters, including some in the Commission on Elections (COMELEC), actually know about it. Even fewer actually understand what it is or how it works. Blamed, as usual, are the lawmakers and the Commission. The Party-List Act begins by carefully distinguishing the concepts of "parties" and "sectors" and "regional" and "national" but recklessly obliterates the distinctions in the latter portions of the law. The law also disqualifies the five largest parties from individual participation, in order to level the field, only to allow the same to participate anyway through a coalition loophole. The solons accidentally or deliberately left the door open for manipulation and confusion while protecting their interests. The COMELEC has likewise failed to inform the voters about the party-list mechanics and to provide a reasonably tamper-proof counting system that can withstand the return of the dreaded *dagdag-bawas*. In theory, the party-list system offers a better alternative but it must first get past the *trapo*¹ system that is bent on self-preservation and survive a COMELEC that is consistently getting better at creating more problems than solutions.

The party-list system (PLS) is the major innovation in the 1998 elections. In the long run, it is the best hope for the transformation of the *trapo* system into one with more programmatic parties, more responsive than at present to the needs and concerns of the majority of the people - the workers, farmers, and fishermen. It holds out the prospect that marginalized groups will have a chance for substantial representation in the legislature that they seldom have today.

In implementing this provision in the 1987 Constitution, the Philippines is part of a trend among Asia-Pacific democracies. In 1993, both Japan and New Zealand introduced proportional representation, or the party-list system, to elect a substantial percentage of their legislative seats. Both have had one election so far under the new system.

Sadly, however, the implementation of this progressive step in the Philippines is faced with many difficulties, a result of both misunderstandings and devious intentions. In 1995, some key members of Congress appeared to be determined to prevent the party-list system from being used to substantially boost the representation of mass-based, cause-oriented groups. At the same time, few people in either Congress, or the present COMELEC, understand the party-list concept, or how it has functioned in other countries. (Although some of the COMELEC staff are very well informed, they have not been allowed to have much input into decision-making by uninformed Commissioners.)

In fact confusion began in the 1987 Constitutional Commission (ConCom), where a few Commissioners even thought that sectoral representation was some kind of “communist idea” - despite the fact that it is not used in the election of legislatures in either China or Vietnam. Two different systems - party-list and sectoral representation - were actually proposed and eventually merged into a single constitutional provision.

Proportional representation, implemented through a party-list ballot, is designed to make the number of seats in the legislature proportional to the votes cast whereas in a single member district system, the largest party is grossly over represented, and minor parties are shut out. It is used in some form in 57 of 150 reporting countries. In the process of introducing proportionality, the new legislature would also be more representative of the social make-up of the country. For instance, among 53 democracies around the world where there are single member districts, only 7.3 percent of legislators are women, but in legislatures elected entirely by a party-list, women make up 17.2 percent of members.² For the Philippines, there is particularly another advantage which is also relevant in Japan. The party-list system focuses attention on the party, not on personalities. Name value is meaningless, since most voters would not even know the names of the candidates chosen by the parties when they are asked to vote for a party. This should also reduce money politics and put emphasis on party platforms and programs.

Sectoral representation was first introduced to the Philippines by the Marcos dictatorship. Marcos, in turn, borrowed it from fascist Italy as part of his plan to institute a corporatist system in which every sector would have

a single organization approved and controlled by Marcos. (Several Latin American dictatorships had also had corporatist experiments.) Elections for sectoral representatives are feasible only through corporatism, with sectoral organizations that have separate, and officially sanctioned, voters' lists. But Philippine society was too fluid and democratic traditions too strong to permit Marcos to impose corporatism fully. Instead, he "appointed" legislators to "represent" sectors—a procedure found also in fascist countries. The most important qualification for these appointees was their expected "cooperation" with the Marcos leadership. (At the local level, they were expected to cooperate with the mayor; to be sure, expected cooperation did not always materialize.) In any case, there was no mechanism by which these appointees could be held accountable to their respective sectors. Sometimes, appointed legislators could hardly be considered typical of their sectors (e.g., large landlords) to represent "peasants."

In view of this history, it is amazing that in 1986, Constitutional Commissioners identified with the far left and others who had been anti-Marcos activists were among the most enthusiastic supporters of sectoral representation.³ The enthusiasm of the small group of Marcos sectoral appointees also chosen by then President Aquino for the ConCom was, on the other hand, much more understandable. Commissioner Lerum, who himself had been a beneficiary of sectoral appointment, admitted that it had been impossible to agree on a mechanism for electing sectoral representatives under Marcos,⁴ so the ConCom, after considerable debate, again agreed on the presidential appointment of 25 sectoral representatives for three terms, i.e., until 1998. (Debate on the number and names of the sectors was long and inconclusive.) Thus, the Marcos system survived under Aquino.

President Aquino sometimes tried conscientiously to get the advice of representative persons in a sector before making an appointment; other times she did not.⁵ In any case, little notice was given to her decisions in this regard; a very serious and comprehensive review of Mrs. Aquino's presidency made no mention of them.⁶ President Ramos seldom made the same effort to consult the sectors. Joel Rocamora judges the arrangement: "With few exceptions, sectoral representatives were either labor bureaucrats from the Trade Union Congress of the Philippines (TUCP), fake peasants...or even people who bore no recognizable relation to the sectors they were

supposed to represent.⁷ Thus, even after martial law, “sectoral representatives” in Congress usually failed to truly voice the concerns of those in their sectors. In any case, they were marginalized by the elected Congressmen in the House of Representatives.

In the ConCom debates, some Commissioners were under the misimpression that the party-list system was equivalent to functional representation.⁸ However, Commissioner Monsod tried from the beginning to make a distinction. Said he, “The proposal for the party-list system is not synonymous with that of sectoral representation. Precisely, the party-list system seeks to avoid the dilemma of choice of sectors.”⁹ He pointed out further that “if this body accepts the party-list system, we do not even have to mention sectors, because...there can be sectoral parties within the party-list system.” But he was not successful in persuading the Commission to accept his point. Only with the enactment of Republic Act No. 7941 in 1995 were sectors relegated to a type of party under the party-list system, making irrelevant the listing of sectors.

The language proposed by the COMELEC in 1993¹⁰ for revising the Election Code had been different. Part ‘F’ on Party-list System of Article III had not mentioned ‘sectors’ at all, but only parties, organizations and coalitions. Each was to be allowed to elect up to five members of Congress. No restrictions were put on the participation of the top five parties in the previous election, and no minimum percentage of the vote was required to gain a seat. The draft code was brief and straightforward.

Nevertheless, by the time Congress finished deliberating on a new Election Code in 1995, the text clearly revealed multiple authorship and the confusion that such often produces. The Party-List Act continues to read in some passages as if sectoral representation were a separate concept or process. “Sectoral party,” “sectoral organization” and “political party” are carefully defined in Section 3, even though the distinctions are meaningless in the subsequent sections of the law. In fact, 12 sectors are enumerated, but there are no provisions for refusing to register parties or groups formed around other, unnamed sectors. The only restriction on any sector is that a nominee of the youth sector may not be more than 30 years of age on election day (Section 9). But, of course, there is no age restriction on those who may vote for a youth nominee.

In fact, when it comes to procedures for registration, deregistration, or nomination, qualifications of nominees (with the one exception mentioned), term of office, method of counting votes, or rights and privileges of members elected, there is no distinction made between national parties, regional parties, sectoral parties or coalitions, or just plain “organizations.” Thus, one wonders why the definitions were provided in the first place.

An understanding of this inconsistency can be found in the history of the legislation. An amendment to the original House Bill, which was introduced by Rep. Michael Mastura, was filed by Rep. Leonardo Montemayor which specified that 50 percent of the party-list seats should come from six sectors. The amendment was adopted. An amendment to the senate bill by Sen. John Osmena made the distinctions even more rigid: in addition to 50 percent of the seats for sectoral representatives, he proposed that 30 percent of the seats should go to national parties and the remaining 20 percent to regional parties. Not until the Conference Committee were these restrictions removed, but the elaborate differences between these categories remained.

Some critical observers assume that a certain amount of this “confusion” in the law is deliberate - to confuse COMELEC and the voters, so that the new law will be difficult to implement. There is evidence of this in the much debated provision - unique in the world -that the “first five” major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress shall not be entitled to participate in the party-list system (Section 11). This was designed by sympathetic legislators to give a breathing space to new parties trying to represent marginalized sectors, so that in their first electoral attempt, they did not have to face unrestrained competition from the richest and best organized of the existing parties.

In fact, in the bill passed by the House, the prohibition would have lasted for three terms, until 2004. The Senate, on the other hand, regarded the prohibition unconstitutional. So in the Conference Committee, a compromise had to be struck: a one-time prohibition in 1998.¹¹ Hence, in the party-list system debut, the Lakas-NUCD, the Laban ng Demokratikong Pilipino (LDP), the Kilusang Bagong Lipunan (KBL), the Nationalist People’s Coalition (NPC), and the Liberal Party (LP) will be non-participants.

One would have assumed that this would prohibit the creation by the top five of 'dummies' among sectoral groups or political parties participating in the party-list. A senior staff member of COMELEC even suggested in 1997 that it might prevent a party in the party-list system from receiving direct or indirect assistance from one of the "first five," on penalty of deregistration.

But another, curiously worded passage in Section 3 seems to provide a way out for the *trapos*. It reads, "Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system." (The failure to attach this provision to Section 11 makes it easy to miss, perhaps deliberately.) Thus, a major party that classified itself as a coalition" - and most are, could support a satellite or dummy in the party-list under this provision. The prohibition against the participation of the "first five" is thus unenforceable.

Confusions that existed in Congress have even persisted in some segments of the press. In a February column that was replete with quotations from the law, former Supreme Court Justice Isagani Cruz opined that "it resurrects the odious practice of block-voting."¹² Justice Cruz apparently had forgotten that "block voting" as practiced in the 1940s was based on the plurality system, with the party having the largest number of votes getting all the seats, the very antithesis of proportional representation. The only thing that the two systems have in common is that voters write the name of a party, not a candidate, on the ballot; the results are radically different.

The confusions imbedded in the law have been effectively transmitted to the COMELEC - though cynical observers would suggest that the present COMELEC needs no outside intervention to foster legal-illiteracy and confusion! For instance, the ban on participation by the "first five" parties in Section 12 was again effectively nullified by a passage incongruously tucked into Section 1 of the Implementing Rules and Regulations (IRR). Furthermore, the careful distinctions between 'parties' and 'sectors,' 'regional' and 'national,' and the long list of approved sectors found in the Act are repeated in the IRR regardless of their lack of relevance. Nevertheless, it should be noted that a senior COMELEC official in 1997 was alert to the fact that the list of sectors was not exhaustive and therefore proposed the

inclusion in a 'primer' for voters of the phrase "and such other organizations as maybe registered with the Commission," despite its omission from the IRR.

What was also revealing was the explanation provided at the time of the refusal to register one of the most prominent of the 'national parties' under the party-list system, AKBAYAN! (Citizens' Action Party). In the first place, this denial violated the most fundamental principles of due process; the IRR itself (in Section 6) allowed for such denial of registration only after "due notice and hearing," and on one of eight specified grounds. Not only was no hearing held prior to the announcement that the registration had been denied, but no grounds for denial were listed. AKBAYAN! chose to emphasize political protest against this ruling - at both the central and several regional offices of COMELEC - at the same time it filed a formal request for reconsideration.¹³ Before that request was heard, one commissioner, perhaps the brightest and most active among his colleagues, suggested to AKBAYAN! that its real problem was that it did not represent a sector! If one of the brightest had this misconception, one can only imagine what the other commissioners were thinking. AKBAYAN! was, finally granted registration, but without COMELEC admitting its earlier error.

Confusion about the law within COMELEC was even admitted by Augusto Toledo, the head of the education and information department of the Commission. He said that he and other COMELEC officials "do not completely understand" the party-list system,¹⁴ which prompted some other COMELEC staff who had carefully studied the law to retort, "speak for yourself, Mr. Toledo." But such remarkable self-criticism was associated in the same statement with a complaint about insufficient funds-which many doubt -to print more than 200,000 primers on the new law. Mr. Toledo may have been preparing the public for a breakdown in COMELEC implementation, comparable to other breakdowns that have already occurred. COMELEC is showing more evidence every week that it is part of the problem of, not the solution to, electoral fraud.

Perhaps out of the experience of this election it will become clear to policy makers that the attempt to distinguish between sectors and parties in Republic Act No. 7941 was useless.

Even a "peasant sector coalition" like Alyansang Bayanihan ng mga Magsasaka, Manggagawang-Bukid at Mangingisda (ABA) has – quite

appropriately prepared campaign material appealing to other sectors, though, perhaps because of the earlier emphasis on sectoral distinctions, feel under some obligation to establish linkage between it seems to a them. For example, in its pathetic appeal to “All Justices, Judges, Lawyers and Administrators of Justice,” the emphasis is on “The Socio-Economic Obstacle to the Administration of Justice.” Or in the appeal to “All Military and Police Officers and Men,” the focus is on “Peace and Order and the Peasants.”

But there are other serious difficulties in the law and regulations which could have very unfortunate consequences for the NGOs and POs which were its strongest advocates. We have already mentioned the problem of a surreptitious role for the “first five” parties. Deprived of the option of trying to enforce the exclusion of the “first five” through the courts, the progressive parties in the party-list system have decided on a strategy of political attack on *trapo* dummies.

Another difficulty is, of course, the perennial *dagdag-bawas*. Unveiled in the 1995 elections, the process involves the systematic addition (*dagdag*) to the tally of a “preferred” candidate votes systematically subtracted (*bawas*) from the tally of other candidates. But there is a special twist for the party-list, where votes necessary for election are calculated as a percentage of “the total votes cast for the party-list system. This will constitute a new burden on the Board of Election Inspectors (BOI), many working through the night anyway. That total must be tabulated and recorded separate from the total number of voters. If at the precinct level this separate count is neglected there will probably be a tendency in the first and second canvass to neglect it as well. Many people expect that voting for party-lists will be far below – perhaps only 50 percent – than that for candidates. Thus, there will be a huge undefined gap to be filled by those engaged in illegally augmenting the count. The only hope this time for those who are looking for reform in the electoral and party systems is that the masterminds of *dagdag-bawas* may be too busy manipulating the vote for well-known candidates to even bother with the party-list system. (But in the long run, the system of counting must be fundamentally restructured.)

There is also the danger, though small, of a challenge to the law on constitutional grounds, since some legal experts have already claimed that the law has unconstitutional provisions. The most prominent of these is

the ban on the “first five,” though the ease with which they are getting around it, reduces the chances of legal action. Another weak spot in the law is the cap of three seats per party, regardless of the number of votes a party receives. This is contrary to another sentence in Section 11 which reads - reiterating the basic principle of proportional representation stated in the Constitution - “those garnering more than two percent of the votes shall be entitled to additional seats in proportion to their total number of votes.” Since the victims of the three seat cap will not be known until after the elections, we could only speculate as to who might make a protest beforehand, but *trapo* dummies could well take the lead.

Under the existing law, it may happen that the party-list election does not fill all the 51 seats it has been allotted. This could result if the bulk of the votes were concentrated on ten or less parties - some of which may turn out to be *trapo* satellites, with a lot of excess votes, unable to produce more seats because of the cap, and if at the same time almost all of the remaining parties failed to get the minimum two percent of the votes. But such an outcome could be a learning experience, and should lead to the law’s amendment.

This would be one more powerful argument for the elimination of the caps - not to be found in party-list systems anywhere else in the world. And, in fact, the long run goal of proportional representation to equate the percentage of seats with the percentage of votes, to force all parties large and small - to define themselves more clearly in terms of program, and to de-emphasize the lavish use of money for vote buying, *cannot* be achieved with a cap on the number of seats a party may win. Small progressive parties must be allowed to expand, and large parties must be exposed to the impact of the party-list system on their methods of operation.

In the short run, the effect - and for some Congressmen perhaps the purpose of the cap is to divide mass-based organizations and progressive groups. It has encouraged numerous separate filings, rather than the creation of coalitions: altogether 125 parties and groups as of March 11. In the “labor sector” alone, there are 13 registered, and in the “peasant sector,” nine; some of these are based on well-established labor and peasant organizations, e.g., ABA, led by the long-time officers of the Federation of Free Farmers, while some of the others are of more doubtful connections. And under the category “organizations” are another 37,

ranging from the Estrada-backed Citizens Movement for Justice, Economy, Environment and Peace (JEEP), or the elite Philippine Chamber of Commerce and Industry (PCCI), to several unknowns, e.g., Alliance for Natural Law, Ampo Party, or Philippine Jury Movement. That so many groups with no previous political activity have been registered by COMELEC, while AKBAYAN!, which included well-known intellectuals with a trenchant progressive critique and had been organizing nationally for over a year, was initially denied registration, is also an indication of the bias of the COMELEC and its easy disregard for the law.

A measure of the divisiveness of the three-member cap is found as well in the fact that 16 of the parties and groups registered are blatantly regional, seven of which propose to represent the Visayas. Regionally defined parties are more likely than most to be *trapo* creations. The first election under the party-list system will be a cold shower for most of the groups registered; but excessive splintering will continue in subsequent elections if the cap is not removed. (This is not to suggest that Filipino parties are not capable of splintering even without a special electoral incentive.)

In conclusion, it must be said that for all the problems that have been enumerated, and more that could be, the party-list system is still an essential asset for reforming the fundamental character at the Philippine political system. It cannot achieve its goals without being surrounded by educational programs and political mobilization to raise citizens' consciousness and motivate them to act in their own best interests. But the party-list is itself worth a vigorous struggle by proponents of reform, for if it fails in implementation – as many *trapos* must wish – the whole progressive reform movement will have suffered a severe setback. A quick surge of volunteers for poll watching is urgent.

We have commented on the confusion and misunderstanding among decision-makers that has complicated the implementation of the party-list concept. And yet on reflection, that confusion and misunderstanding may have been a blessing. Seldom do elites – and least of all Filipino *trapos* – give away wealth and power without reaping compensatory benefit. If establishment politicians had really understood the purpose of the party-list system, and believed that it was actually capable of achieving that purpose, they may have done an even more thorough job of frustrating its implementation. To be sure, with the end of the appointive sectoral

representation in 1998, they were under some pressure to do *something* to fill the void. And Congress did need to act within the framework of the Constitution. But the passage of the PartyList Act may have been premised on the assumption by a majority of the members of Congress that its stated goals were just airy ideals that did not require careful study and could, in any case, be successfully subverted by the old politics, as was sectoral representation in the past. It will require tremendous effort by mass-based reformers to prove them wrong.

The law needs revision, as we have noted, and the only way to ensure that it does not change for the worse in the next Congress is to elect a large number of reform-minded members from progressive parties and groups. The present law is certainly an innovation, whether viewed in the context of Philippine political history, or on the world scene. But it will best be strengthened by building more effectively on the experience of other countries that have themselves used proportional representation to stimulate political reform. ❁

Endnotes

- 1 "Traditional politicians" or *trapos* are perceived as a terribly corrupt, self-serving breed of elected officials. often eloquent and ultimately unreliable, these public servants are viewed as the embodiment of everything wrong with Philippine politics.
- 2 Pippa Norris, "Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems," *international Political Science Review* 18:3 (1997), 309. See also Arend Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990*, (Oxford Univ. Press, 1994).
- 3 Among those anti-Marcos supporters of sectoral representation were Jaime Tadeo, Constitutional Commission, Journal, August 1, 1986, p. 562-563; and Fr. Joaquin Bernas, SJ.
- 4 *Ibid.*, p. 564.
- 5 The progressive (elected) Congressmen who had supported a law that would truly benefit peasants boycotted the signing of the Comprehensive Agrarian Reform Law (CARQ) in June 1998 while the two (Aquino-appointed) "peasant representatives," neither of peasant stock, did not. They thus disassociated themselves from the Congress of People's Agrarian Reform, and became more identified with the pro-landlord bloc. (Cielito C. Gono, *Peasant Movement-State Relations in New Democracies: The Case of CPAR*, Pulso Monograph No. 19, Institute on Church and Social Issues, 1997), p.@ 41. To be sure a subsequent "peasant representative," again not of .peasant stock," Leonardo Montemayor, proved to be a very effective spokesman for peasant interests.

- 6 Jose Abueva and Emerlinda Roman, eds., *The Aquino Presidency and Administration (1986-1992)*, (UP Press, 1993).
- 7 Joel Rocamora, "The Party-List Elections: Making the Best of a Bad Deal," *Conjuncture*, 9:6
- 8 Among those who had this misimpression was Sen. Blas Ople.
- 9 *Ibid.*, July 22 1986, p. 85.
- 10 Proposed 1993 *Election Code of the Philippines* (Manila, 1993, mimeographed).
- 11 Tet Abelardo, "Streams Towards the Party-List Law" manuscript, March 1998, p. 8.
- 12 *Philippine Daily Inquirer*, Feb. 15, 1998.
- 13 *Manila Times*, Feb. 13, 1998.
- 14 *Philippine Daily Inquirer*, March 7, 1998.