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### LOCAL GOVERNMENT, EFFECTIVENESS AND HUMAN RIGHTS: THE PHILIPPINES

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#### THE GENERAL CONTEXT FOR LOCAL GOVERNMENT IN THE COUNTRY

##### Legal and Political Context of Policies towards Local Government

###### *Constituencies or Factors Behind Decentralization:*

1. There are five key players in the Philippine decentralization process:
  - Local Governments
  - National Government
  - Civil Society, including NGOs and people's organizations (POs)
  - Private Business Sector
  - Foreign Support & Funding Institutions

###### *Broad legislative framework*

2. *Local Government Code (LGC) of 1991*, with these major features (including powers after devolution):
  - a. *It devolves to local government units (LGUs) responsibility for the delivery of various aspects of basic services* that earlier were the responsibility of national government. These include: health (field health and hospital services and other tertiary services); social services (social welfare services); environment (community based forestry projects); agriculture (agricultural extension and on-site research); public works (funded by local funds); education (school building program); tourism (facilities, promotion and development); telecommunications services and housing projects (for provinces and cities); and other services such as investment support.

- b. *It devolves to LGUs the responsibility for the enforcement of certain regulatory powers*, such as the reclassification of agricultural lands; enforcement of environmental laws; inspection of food products and quarantine; enforcement of national building code; operation of tricycles; processing and approval of subdivision plans; and establishment of cockpits and holding of cockfights.
- c. *It provides the legal and institutional infrastructure for expanded participation of civil society* in local governance. It allocates to NGOs and POs specific seats in local special bodies like the Local Development Council, Local Health Board, and Local School Board. One door wide open for NGO and PO participation is in the area of promoting local accountability, specifically through the recall and people's initiative provisions.
- d. *It increases the financial resources available to LGUs* by broadening their taxing powers; providing them with a specific share from the national wealth exploited in their area (e.g. mining, fishery and forestry charges); and increasing their share from the national taxes, i.e. internal revenue allotments (IRA), from a previous low of 11% to as much as 40%. It also increases the elbow room of LGUs to generate revenue from local fees and charges.
- e. *It lays the foundation for the development and evolution of more entrepreneurial-oriented LGUs*. It provides the foundations for LGUs to enter into build-operate-transfer (BOT) arrangements with the private sector, float bonds, obtain loans from local private institutions, etc., all within the context of encouraging them to be "more business-like" and competitive in their operations in contradistinction to "traditional" government norms and operations.

#### *History of the process*

- 3. Since colonization by the Spain in the 16<sup>th</sup> Century, the politic-administrative system in the Philippines has been highly centralized. The LGC of 1991 was the breakthrough in this. Any continuing shortcomings in the Philippine decentralization process must be seen in that historical context. The breakthrough in local autonomy must also be seen as a function of the democratization process under the 1987 Philippine Constitution promulgated after the 1986 EDSA People Power Revolution which overthrew the most highly centralized Marcos dictatorship. The first decade (1992-2002) of the Philippine decentralization process has three distinct phases summarized in their significant features, as follows:

#### Phase of confusion, resistance and wait-and-see (1992-1994):

- i. Predominantly wait-and-see attitude of local officials.
- ii. Preoccupation with administrative transfer of personnel and property.
- iii. Problematic transfer of personnel and IRA distribution among LGU groups.
- iv. Strong reactions from devolved personnel, national agencies and the private sector, and tendency towards re-centralization, sometimes inadvertently.
- v. Strengthening of Leagues of LGUs.
- vi. Problems in NGO-PO-LGU relations are encountered.
- vii. *Phase of experimentation and initiative* (1994-1998):
- viii. Experimentation especially in the field of revenue mobilization and alternative financing increases.
- ix. Intensified capability building effort spearheaded by both government institutions using non-traditional, LGU-friendly techniques. Initial design and installation of regional support systems/centers.
- x. Increasing international support to the decentralization process.

- xi. Increasing NGO/PO effort to “engage LGUs” and form provincial networks.
- xii. Participatory processes are introduced into various aspects of local and even national agency operations.
- xiii. National agencies begin to orient efforts towards complementing LGU activities and programs.
- xiv. Opposition to decentralization, and re-centralization efforts, continue. National agencies try out different approaches to reverse the process.
- xv. Organization and management concerns saddle LGU initiative but attempts are made to creatively settle the problems.

Consolidation of gains from decentralization through replication (1998-2002):

- i. Significant strides in resource mobilization and revenue generation.
- ii. Greater national government and LGU cooperation through joint activities, networking and complementation.
- iii. Greater NGO/PO participation in non-local special body venues.
- iv. LGUs take significant steps to improve “front-line” service delivery through improved systems and procedures.
- v. Greater League initiative in networking for capability building programs for LGUs.
- vi. Appropriate systems and structures are fully in place.
- vii. More “LGU-own” programs and projects are crafted and implemented.
- viii. Assistance to barangays (village-level LGUs) is intensified.

#### **Present Powers of Local Governments** (see also Broad Legislative Framework above)

4. These **powers are political, administrative and fiscal** in nature:
  - a. *Political decentralization* (devolution): Transfer of powers, authority and resources from national to local government units.
  - b. *Administrative decentralization* (deconcentration): Transfer of administrative functions from the central to regional or local administrative units, such as in the issuance of permits and licenses.
  - c. *Fiscal or financial autonomy*: Expanded powers of LGUs to generate their own revenue, essentially broadening their resource base.

#### *Powers of local governments vis-à-vis central government*

5. Under the 1987 Philippine Constitution, LGUs enjoy local autonomy. But this is more precisely amplified by related constitutional provisions and Supreme Court interpretative rulings such as follows:
  - a. Local autonomy under the 1987 Constitution simply means decentralization. In a unitary system of government, such as the government under the Philippine Constitution, local governments can only be an *intra sovereign subdivision* of one *sovereign nation*, it cannot be an *imperium in imperio*.
  - b. Local political subdivisions are mere agents with the power of subordinate legislation by virtue of a delegation of power from the national legislature, their principal. Congress retains control of the LGUs although in significantly reduced degree now than under previous Constitutions.

- c. In spite of autonomy, the Constitution places the local governments under the general supervision of the President, seeing to it that LGUs perform their functions in accordance with law. But his direct supervisory contact is with autonomous regions (presently only Muslim Mindanao), provinces, highly urbanized cities, and independent component cities. Regrouping of administrative regions (each consisting of several proximate provinces) is for the purpose of facilitating the administrative supervision of LGUs by the President.

## Local Government Structure

### *Various Levels of Government (Territorial and Political Subdivisions):*

- a. *Provinces* (79): composed of a cluster of municipalities, or municipalities and component cities, is a political and corporate unit of government, and serves as a dynamic mechanism for developmental processes and effective governance of LGUs within its territorial jurisdiction.
- b. *Cities* (112): consisting of more urbanized and developed barangays, serves as a general-purpose government for the coordination and delivery of basic, regular, and direct services and effective governance of the inhabitants within its territorial jurisdiction.

Three categories of cities: (a) *highly urbanized*, based on income and population; (b) *independent component*, whose voters do not vote for provincial elective officials; and (c) *component*. The first two are independent of the province in which they are located.

- c. *Municipalities* (1,496): consisting of a group of barangays, serves primarily as a general purpose government for the coordination and delivery of basic, regular and direct services and effective governance of the inhabitants within its territorial jurisdiction.
- d. *Barangays* (41,944): the basic political unit, serves as the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community, and as a forum wherein the collective views of the people may be expressed, crystallized and considered, and where disputes may be amicably settled.

### *Specific Powers and Resources (focus on the legislative councils)*

- 6. The legislative councils at various levels exercise practically the same powers. The LGC categorizes their powers and functions into:
  - a. those needed for efficient and effective local governance such as the power to approve and pass ordinances and resolutions;
  - b. those needed to generate and maximize the use of resources and revenues for the development of the locality;
  - c. those needed to tax or regulate business activities inc. the grant of franchises in the locality;
  - d. those needed to regulate the use of land, buildings and structures within the municipality;
  - e. those needed to ensure efficient and effective delivery of basic services and facilities within the locality; and
  - f. those imposed on it by law or ordinance.
- 7. Specifically, in the case of the *barangay council*, among the more noteworthy of its powers are:

- a. to enact tax and other revenue measures authorized by the LGC;
  - b. to regulate and charge fees for the use of barangay facilities, including parking areas, markets, coconut dryers, multipurpose halls and the like;
  - c. to assist in the establishment of cooperatives to improve the economic well-being of the residents;
  - d. to provide compensation, allowances, per diems, and travel expenses for barangay officials subject to the limitations provided in the LGC;
  - e. to authorize direct purchases by the barangay treasurer of not more than PhP 1,000 [less than USD 20] worth of items at any one time that are ordinarily and essentially needed by the barangay;
  - f. to prescribe fines of not more than PhP 1,000 for violations of barangay ordinances;
  - g. to adopt measures to combat drug abuse, child abuse, and juvenile delinquency;
  - h. to provide for the establishment of non-formal education centers; and
  - i. to provide for the delivery of basic services.
8. In actual local governance practice in the Philippines, the *center of gravity* is not so much with the legislative councils but with the *local chief executive* – the provincial governor, the city or municipal mayor, and the barangay chairman (popularly captain).
  9. The *major financial resource* at present is the *internal revenue allotment* (IRA) or share of the LGU from national internal revenue which is 40%. That allotment would then be distributed as follows: Provinces 23%, Cities 23%, Municipalities 34% and Barangays 20%. This is actually skewed in favour of cities. Majority of LGUs, particularly municipalities and barangays, still rely on the IRA to fund operations. Only about half of the country’s cities and a fourth of the provinces rely on their own income sources to finance projects and programs.

*Relationship between the Various Levels (Hierarchy of Supervision)*

1. President

SUPERVISES

2. Provinces, Highly Urbanized Cities, and Independent Component Cities

PROVINCES SUPERVISE

3. Component Cities, and Municipalities

ALL CITIES AND MUNICIPALITIES SUPERVISE

4. Barangays

**IDENTIFYING LOCAL GOVERNMENT AREAS FOR RESEARCH FOCUS**

**Naga City (in Camarines Sur province, Bicol region, Southern Luzon)**

10. Naga City is a medium-sized (population of 140,000) independent component city about 400 kilometres south of Manila in a rural-agricultural region on Luzon island. It has over the past decade been **one of the best performing local governments** in the Philippines. It is one of only four cities in the Hall of Fame of the prestigious “Galing Pook” (Good Place) Award for excellence and innovation in local governance, winning also last year an Award for Continuing Excellence with a special citation for Good Urban Local Governance. It has also won a number

of international awards. It is a recognized center of local innovations, a liveable city, has a strong civil society and NGO sector and has taken advantage of local autonomy under the Local Government Code (LGC) of 1991. Devolving power to this local government unit (LGU) has significantly impacted the delivery of essential services for better.

11. If we go by the project design's human rights (HR) framework, Naga City has it all: accountability of official institutions, participation of people, responsibilities of officials in relation to specific groups and performance standards, equity and non-discrimination, transparency, reporting, monitoring, rule of law, and providing for basic needs. Yet Naga City is **an example of the implicit or non-explicit adoption of this HR framework**.
12. Instead, Naga City has developed **its own local governance framework** around three elements: a progressive development perspective of "growth with equity," functional partnerships that enable the city to tap community resources, and people participation in government decision-making which generates broad-based stakeholdership. There is an excellent relationship here between the local government and its electorate. The relationship between the local government and national government is of course always important in the still highly centralized Philippines but in Naga City's case it is not decisive because of Naga City's self-reliant strength.
13. In terms of **identifying essential services to focus on** for this research, local key informants basically prioritize the following: (in order of priority)
  - A. *housing for the urban poor*, definitely a socially excluded group, which involves not only the LGC but also the Urban Development and Housing Act of 1992
  - B. *public education*, including the role of the empowered local school board in pushing education reform
  - C. *health and nutrition*, particularly for malnourished children and pregnant mothers
14. The first item (housing for the urban poor) also best illustrates Naga City's **tripartism** dynamic involving the *local government* (e.g. the Urban Poor Affairs Office), an *NGO* (e.g. the Community Organization of the Philippines Enterprise), and a *people's organization* (e.g. the Naga City Urban Poor Federation). These offices/organizations would also be the main **sources of the data**, both quantitative and qualitative, which is readily available for the research. The same may be said about availability of data for the second (public education) and third (health and nutrition) items.
15. As for **preliminary identification of factors or approaches that have impacted the performance** of the local government, we can mention the following: young and progressive city leaders led by City Mayor Jesse M. Robredo, his institutionalization of organizations of residents by sectors and incorporating them into the public services and city governance, his good performance and personal approachability, Naga City's three-element governance model, and the presence of an active and vibrant civil society community.

#### **Barangay Lasang (in Bunawan District, Davao City, Mindanao Island)**

16. Barangay Lasang is a big (population 14,000, area 600 hectares) basically rural barangay in the northern end of the highly-urbanised city of Davao on Mindanao island about 1,500 kilometres south of Manila. It has been identified because of its **outstanding Barangay Human Rights Action Center (BHRAC) under its young and dynamic Barangay Human Rights Action Officer (BHRAO)** Manuel B. Javines, Jr. The BHRAC used to be a flagship program of the Commission on Human Rights (CHR), the national HR institution, but is still ongoing though no longer flagship. It recognizes the necessity of bringing the HR program to local government.

Focus is on the barangay (village) level because this is the most vulnerable level, usually being far-flung in the countryside where the most vulnerable and marginalized victims are found.

17. There is also a strategy here for CHR extension or multiplier effect, nationwide and at the basic grassroots level, given CHR's own personnel resources. Grassroots people's bottom-up participation is envisioned to achieve widespread HR awareness, as the best preventive deterrent to HR violations (HRVs), and to generate a HR culture. The BHRAC is a microcosm of sorts of the CHR in terms of functions (complaints processing, information/education, coordination and referral, mobilization) and in terms of independence. The BHRAO who is trained to run the center is elected by the barangay assembly from among at least high school graduate-residents of probity who are not government officials. BHRACs established number around 14,000, about one-third of the total 42,000 barangays.
18. The Barangay Lasang BHRAC, by definition, **adopts an explicit HR framework**. As might be expected, most of the complaints processed by the Barangay Lasang BHRAC involve civil and political rights (CPRs) and also cases of a criminal nature. In terms of **identifying essential services to focus on** for this research, we recommend the following:
  - A. *socio-economic livelihood and employment*, particularly for out-of-school youth and students of the barangay
  - B. *child and women protection*, particularly against child abuse and wife battering, which involves a barangay ordinance implementing the Women Development Code of Davao City
19. More recent times have seen some increase in the latter cases in Barangay Lasang. This is attributable to the prevailing economic situation, wherein the marginalized sectors could hardly meet the necessities of life, thus resulting in domestic tensions leading to various forms of domestic violence. Thus the importance of addressing this both immediately and at its economic roots. This is a good illustration of the indivisibility of HR, in its CP and economic, social and cultural (ESC) aspects.
20. Another strategic reason for the identifying Barangay Lasang is its young and dynamic BHRAO Manuel B. Javines, Jr., who is definitely the **key factor which has impacted on the performance** of the BHRAC. He has kept good records and also happens to be the barangay secretary, and so **availability of data**, including case data, should not be a problem. Javines is also now National President of the National Association of Barangay Human Rights Action Officers (NABHRAO), and so could provide the BHRAO perspective not only from his barangay but also nationwide.

### **Other possibilities looked into**

#### *UNDP Human Rights Cities Programme in "Abra Indigenous Municipality"*

21. This is the same programme which includes Rosario, Argentina and Thies, Senegal but neither UNDP-Manila nor the leading NGO Concerned Citizens of Abra for Good Governance (CCAGG) in Abra province (not municipality) in Northern Luzon could locate any UNDP-connected human rights city project there. Incidentally, there is no city in Abra and this might just be a paper project.

*UNDP-Manila rights-based approach (RBA) to governance programme*

22. This programme is still mainly in the advocacy and training stage at the national level such as with national government agencies. UNDP-Manila persons in charge had put recommending specific local government units (LGUs) or projects. One project mentioned, the Samar Island Biodiversity Project, was more ecosystem-based rather than LGU-based and involving forest conservation with conservation-compatible village livelihoods in a protected natural park.

*CHR rights-based approach (RBA) to development program*

23. This program, like that of UNDP-Manila with which Commission on Human Rights (CHR) coordinates with, is still mainly in the advocacy and training stage at the national level. But there is already some initial work and progress in mainstreaming HR in LGU planning and budgeting, especially in administrative Region I (the Ilocos region in north-western Luzon). Some initial good practices identified are:
  - A. *Candon City, Ilocos Sur*: where the city council passed a rights-based ordinance on continuing HR education and a local code for children
  - B. *Aringay, La Union*: with its process-oriented establishment of Barangay Human Rights Action Centers (BHRACs) in the municipality
  - C. *Bani, Pangasinan*: with its HR-oriented, child-friendly and environment-conscious municipal mayor
24. While these are promising cases on the interface of local governance and HR, they do not appear to be suitable to the focus of this research on socio-economic rights and service delivery.

*TFDP right to food program in Bukidnon province*

25. This is a pioneering initiative by the premier HR NGO in the Philippines, the Task Force Detainees of the Philippines (TFDP), to pilot a right to food program in Bukidnon province in northern Mindanao island. This definitely involves a socio-economic right but it is only just about to be started in March and its scope is the province, not the lower tiers of local government.