

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Survey of the Issues

Local Government: Links with Human Rights

March 2001

DECENTRALISATION AND HUMAN RIGHTS: A PHILIPPINE PERSPECTIVE ON THE FEASIBILITY OF THEIR INTERFACE IN POLICY AND PRACTICE

Soliman M. Santos¹

© 2001, International Council on Human Rights Policy
ICHRP commissioned this document as a Working Paper.
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

1. The feasibility of a policy project that examines both the role of local government in the implementation of human rights, and whether devolution of power to local governments creates opportunities or threats for the respect, protection and fulfilment of human rights, can draw something from the rich Philippine experience. There has indeed been discussion and implementation of both issues in the Philippines. This was especially true during the transition from dictatorship to democracy during the 1980s and 1990s. However, there has not been much interface, especially conscious and deliberate interface, between the two. In the course of our inquiry into these discussions (“policy”) and how they are implemented (“practice”), we hope to uncover some useful and practical pointers that will help us to gauge the feasibility of a project dealing with local government and human rights.

THE PHILIPPINE HUMAN RIGHTS FRAMEWORK

2. The Philippine perspective on human rights and, for that matter, on other major concerns about national governance and development, including local government, is framed by the Philippine Constitution. The idea of constitutionalism has been a major part of the Philippine tradition in a century of constitutional systems that began in 1899. Indeed, in the legal hierarchy of the Philippines, the Constitution is considered superior even to international law, including international human rights law.
3. Internationally, the Philippines has been a pioneer or leader of the international human rights regime, beginning with the 1948 Universal Declaration of Human Rights. Although this record was tarnished by the Marcos dictatorship that began in 1972, it was the ensuing struggle for

¹ JR., Esq., A.B. *cum laude* (UP), LL.B. (UNC), LL.M. (Melb); Lawyer, Legislative Consultant, Peace Advocate; assisted with some interviews and materials gathering by research assistant Adeline De Castro, A.B. *cum laude* (UP), M.P.A. cand. (UP), Instructor, Political Science Department, De La Salle University., Quezon City, Philippines,

human rights (thanks to the efforts of local human rights groups) which placed them on the national agenda and which made Filipinos cherish them more.

4. The current Constitution, circa 1987, was proclaimed after the first “People Power” revolution that overthrew the Marcos dictatorship in 1986. As a reaction to the regime’s wide-scale violations of human rights, the 1987 Constitution took on the characteristics of a “Human Rights Constitution.”
5. The 1987 Constitution covers a wide array of rights. There are the traditional “first generation” civil and political (CP) rights, as well as the “second generation” economic, social and cultural (ESC) rights. In addition, there are the “third generation” collective (e.g. group and people) rights, and refinements like various sectoral rights, the rights of enterprises, co-operatives, organisations, communities, spouses, families and parents. The Constitution also contains a policy which “guarantees full respect for human rights” and provides for an independent Commission on Human Rights (CHR) as the national human rights institution.
6. The rights provided for by the Constitution may all be considered constitutional rights. Some of these also correspond to international human rights. Although the Constitution uses the term “human rights” several times, it does not define it. Nor does it describe many of the rights it lists as human rights.² It is the CHR which has provided a definition and characterisation of human rights:

Human rights is defined as the supreme, inherent, and inalienable rights to life, to dignity, and to self-development. It is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations to which the Philippine Government is a state party... All human rights are universal, indivisible, interdependent and inter-related.³

7. The latest development in the Philippine framework on human rights is the recently-released “*The Human and People’s Rights Declaration of the Philippines*”. This is the Philippine contribution to the long-envisioned ASEAN Human Rights Declaration, as part of the Working Group for an ASEAN Human Rights Mechanism. The main sections of the said Philippine declaration concern: Individuals, Society and the State; Civil Rights; Political Rights; Social and Cultural Rights; Economic Rights; and Collective Rights.⁴
8. What all these indicate is that any further promotion of human rights in the Philippines — such as engagement with local governments — must be informed by the broad strategic framework or concept of human rights. There is, of course, some “dissenting opinion” to this. There is also some actual practice of human rights-based approaches to local government but with a narrower human rights focus. We shall take up some of these views and experiences in the course of our discussion below. But first, a brief look at the Philippine human rights experience and trends post-Marcos.

² On these last two points and more, see Alberto T. Muyot, “The Unfulfilled Promise: Gaps in the Human Rights Provisions of the 1987 Constitution” in the *1999 Philippine Peace and Human Rights Review* 1-41, published by the Institute of Human Rights, University of the Philippines Law Center in Quezon City.

³ Commission on Human Rights, *Barangay Human Rights Action Center Handbook*, 4th ed. (Quezon City: Commission on Human Rights, 1999) 1.

⁴ Philippine Working Group for an ASEAN Human Rights Mechanism, *The Human and People’s Rights Declaration of the Philippines* (Makati City: Philippine Working Group for an ASEAN Human Rights Mechanism, n.d.).

THE STATE OF RIGHTS IN THE PHILIPPINES

9. The 1987 Philippine Constitution and its collection of rights have lived through three presidential administrations, Aquino, Ramos, and Estrada. It is now into its fourth, the Macapagal-Arroyo administration, installed by “People Power II.” While we can refer to a recent study on the independence and impartiality of the judiciary and human rights in the Philippines from 1986 till 1997,⁵ we can only highlight here the important trends in human rights and due process after “People Power I”:
10. As a result of the restoration of formal elite democracy, politically-inspired human rights violations by state agents like the military were increasingly restricted to acts committed against communist insurgents and those branded as their supporters after the collapse of peace talks in 1987. Generally speaking, the Aquino administration was not successful in stopping these violations on account of the kind of military it inherited from Marcos and because of its balancing act consisting of upholding human rights on the one hand and ensuring political survival on the other. The latter logic prevailed.
11. This balancing act was subsequently imitated by the Supreme Court in important decisions involving human rights, most controversially the 1990 case of *Umil v Ramos*⁶ concerning arrests without warrants. To be sure, as was the case during the Marcos years, there was always a valiant dissenting minority. The leading human rights lawyers’ group castigated the Philippine government in these terms: “While it claims adherence to democratic goals and ideals, boasts of the most progressive Bill of Rights in the world, in reality, democratic rights are ‘paper rights’, not readily enforceable by the people”.⁷
12. Under Ramos, whose term began in 1992, politically-inspired human rights violations progressively diminished as a result of the marginalisation of the communist insurgency and of increasing political stability. The Ramos project to attain newly-industrialised country status for the Philippines by 2000 gave way to new human rights concerns about violations committed in the context of economic policies and referred to as ‘development aggression’. The new violations included forced resettlement of rural and urban poor to make way for infrastructure projects, massive conversion of agricultural land into industrial sites, mining company incursion into the ancestral lands of indigenous tribes, environmental destruction, and repressive labour policies.
13. It is the resurgence of criminality, however, that has brought forth what was the most important source of human rights violations under Estrada: violations of due process in crime fighting. Frustration with criminality and crime fighting has led some to blame this resurgence on due process rules contained in the Bill of Rights. It has even been said that criminal suspects enjoy 35 specific rights in the Filipino justice system, while victims can only invoke one.⁸ While some unworkable rules might need amendment, the real problem lies with inadequate law enforcement, and police integrity and competence. The latter, however, are only one pillar of a whole criminal justice system which also depends on the quality of the judiciary and simple access to justice for all citizens.

⁵ Jan Willem Bakker, *The Philippine Justice System: The Independence and Impartiality of the Judiciary and Human Rights from 1986 till 1997* (Leiden and Geneva: Interdisciplinary Research Program into the Root Causes of Human Rights Violations [PIOOM] and Centre for the Independence of Judges and Lawyers [CIJL], 1997). See also Criselda S. Martin (ed.), *The Continuing Revolution: Human Rights and the Philippine Constitution (An Assessment of the Current State of Human Rights in the Light of the 1987 Constitution)* (Quezon City: Institute of Human Rights, University of the Philippines Law Center, 1997).

⁶ 187 SCRA 311 (1990) and 202 SCRA 251 (1991).

⁷ Ma. Socorro I. Diokno and Arno V. Sanidad, ‘Justice and the Rule of Law in the Philippines’ (Paper presented at the Solidarity Seminar on Justice, Manila, 1990) 7, as cited in Bakker, above, 55.

⁸ Roy C. Sinfuego, *Manila Bulletin* (Manila), 8 June 1995, cited in Bakker, above, 63.

14. A note might be made on the Commission on Human Rights created by the Constitution. This is one of the institutions, aside from the judiciary, that reflects the human rights emphasis of the 1987 Constitution. The Commission has retained a credibility problem with a reputation for docility towards the military, in spite of the fact that various commissioners and employees have taken a bold stand on a number of specific issues. In 1995, the Commission came up with the *Philippine Human Rights Plan: 1996-2000*. Although this plan adopted a sectoral approach and has drawn some NGO encouragement, it has also drawn skepticism as ‘another one of those master plans’.⁹
15. Given the aforementioned state of rights in the Philippines, one question that human rights policy research could look into in more detail, is: how much was engagement or non-engagement of local governments on human rights a factor in this? Let us look now at the frame of reference for local governments.

THE PHILIPPINE FRAMEWORK ON LOCAL GOVERNMENT

16. Like human rights, local government in the Philippines is framed by the Constitution. The 1987 Philippine Constitution contains a state policy that “shall ensure the autonomy of local governments”, as well as a whole Article on Local Government which includes a section on Autonomous Regions. There is, however, also a provision centralising the Philippine President’s power of general supervision over local governments. The highly centralised Philippine presidential system is complemented by the unitary relationship between the central and local governments. The local government units (LGUs) referred to here are the provinces (77), cities (68), municipalities (some 1,400), and *barangays* (some 42,000).
17. A constitutional provision mandated Congress to “enact a Local Government Code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanism of recall, initiative, and referendum”. This resulted in the Local Government Code (LGC) of 1991, which has become *the* framework document for local government. Fortunately again, there is good local wisdom to refer to regarding the highlights and impact of the LGC.¹⁰
18. Rood describes the passage of the LGC as “one of the most remarkable changes that has taken place in the Philippines since the restoration of democracy in 1986. It ushered in a revolution in governance, devolving substantial power, responsibility and resources from the national government to the local governments”. Brillantes calls it “by far the most radical and far-reaching policy that addressed the decades-old problem of an overcentralised politico-administrative system with most significant political and administrative decisions concentrated in

⁹ Monalisa C. Dimalanta (ed.), *The Philippine Human Rights Plan: A Public Forum* (Quezon City: Institute of Human Rights, University of the Philippines Law Center, 1996).

¹⁰ For this purpose, I draw mainly from the work of two local governance experts who were interviewed for this feasibility study. Steven Rood, Ph.D., is now a representative with The Asia Foundation (TAF) in the Philippines, and was previously a long-time Policy and Indicators Measurement Specialist with the Associates in Rural Development (ARD) on the Governance and Local Democracy (GOLD) Project of the United States Agency for International Development (USAID) and Professor of Political Science at the University of the Philippines (UP) College Baguio. His papers I freely referred to are: “Decentralization, Democracy, and Development;” “Democratic Decentralization in the Philippines;” and “An Assessment on the State of Knowledge Concerning Decentralized Governance under the Philippines’ 1991 Local Government Code.” Alex B. Brillantes, Jr., Ph.D., is a Professor at the National College of Public Administration and Governance (NCPAG), UP, and was once Executive Director of the Local Government Academy (LGA), Department of the Interior and Local Government (DILG). His papers I also referred to are: “Decentralized Democratic Governance under the Local Government Code: A Governmental Perspective” and “Redemocratization and Decentralization in the Philippines: The Increasing Leadership Role of NGOs.”

Manila”. As with human rights, greater local autonomy was a reaction to the Marcos dictatorship. Brillantes outlines the major features of the LGC as follows:

- It devolves to the LGUs the responsibility for the delivery of basic services that previously were the responsibility of national government.
 - It devolves to LGUs the responsibility for enforcement of certain regulatory powers.
 - It provides the legal and institutional infrastructure for the participation of civil society in local governance.
 - It increases the financial resources available to LGUs.
 - It lays the foundation for the development and evolution of more entrepreneurial-oriented LGUs.
19. By all descriptions, the LGC provides for what Manor defines as *democratic decentralisation*: “...the transfer of resources, tasks and decision-making power to lower-level authorities which are (a) largely or wholly independent of the central government, and (b) democratically elected. Devolution — that is, democratic decentralisation — will therefore be our main concern here”.¹¹ Of course, in the Philippine case, we can only speak of *relative* independence from central government. This is the concept or theory of democratic decentralisation in the Philippines. What about the practice?

THE PHILIPPINE EXPERIENCE WITH DEVOLUTION

20. Manor has already noted “the three countries where decentralization has worked quite well — the Philippines, various Indian states and possibly Uganda”.¹² It is clear that the implementation of the LGC in the Philippines has resulted in decentralisation of governance. From a series of empirical Rapid Field Appraisals (RFAs) since 1992, the finding in 1997 was over-all success in decentralisation under the 1991 LGC. In 1998, the verdict was that decentralisation was here to stay, with continued success in local governance and local ownership of appropriate national programmes. In 1999, there were progressive signs of deepening of decentralisation. And in 2000, decentralisation had spawned a number of tangible improvements in local governance, such as in the delivery of basic services to the *barangays*.¹³
21. Using the findings from such RFAs as well as other sources of empirical data like systematic reviews of case studies, public opinion survey data, electoral outcomes, and popular participation in between elections, Rood has sought to assess the impact of decentralisation on first, democracy, and, second, development at the local level.¹⁴
22. First, the impact of decentralisation on democracy. Nationwide survey data shows that citizens are more satisfied with their local governments than with the national government and feel they are more able to influence the former than the latter. There are also more candidates and new politicians than before — especially from a larger middle class — for positions in local government. These have become more meaningful in terms of responsibilities, powers and resources under the LGC.

¹¹ James Manor, “Democratic Decentralization in Africa and Asia” (1995) 26 (2) *IDS Bulletin* 81-82, published by the Institute of Development Studies at the University of Sussex, Brighton, UK. See also James Manor, *The Political Economy of Democratic Decentralization* (Washington, D.C.: The World Bank, 1999).

¹² *Ibid.*

¹³ Associates in Rural Development (ARD) Governance and Local Democracy (GOLD) Project and Ateneo School of Government (ASG), *10th Rapid Field Appraisal on Decentralization: Synopsis Report* (September 2000). This was provided by the 10th RFA’s Principal Technical Consultant, Henedina R. Abad, Director, Ateneo School of Government.

¹⁴ This section draws heavily from Steven Rood, *Decentralization, Democracy, Development* (Makati: ARD, Inc., 1998).

23. There is, however, a mixed picture when it comes to disadvantaged sectors like women and indigenous cultural communities (ICCs). In the LGUs, there are more women than before but still rarely more than 25% of elected officials. ICCs are well represented in areas where they constitute a majority of the residents, e.g. in the Cordillera region of Northern Luzon but their representation is low in areas swamped by immigrants, e.g. in the southern island region of Mindanao. Both the Constitution and the LGC provide for sectoral representation (of agricultural or industrial labour, women, and a third disadvantaged sector) in the local legislative councils but this has been stalled both by Congress and by the regularly elected local officials.
24. With regard to popular participation in governance, the NGO community participated actively in the implementation of the LGC. Several reviews of case studies on NGO participation in local governance concluded that the intensity of participation was at least “medium” and that the trend was towards greater participation. The involvement of the NGO community increased the participation of women in governance. Since 1992, LGUs complied with the letter of the LGC in convening local special bodies (LSBs) as venues for people’s participation. However, there have been doubts about whether this was leading to genuine democracy. The most important of the LSBs, the Local Development Councils (LDCs), tended to be too large and unwieldy to be effective.
25. But even when the specific mandates of the LGC are lacking, the LGC itself and its spirit of local autonomy have been instrumental in developing a mind-set that encourages participation. In sum, these various assessments indicate that decentralisation under the LGC has advanced democracy at the local level, even though traditional politicians continue to dominate parts of the country through patronage and coercion.
26. Second, on the impact of decentralisation on development. In response to the LGC, the promotion of economic activity is a growing concern of LGUs, some of which have set up investment-promotion centres. A small but growing number of LGUs are starting to avail themselves of non-traditional forms of financing like bonds, loans, and build-operate-transfer (BOT) arrangements. Because LGUs have more money to spend thanks to the LGC, they now spend more on social and economic services than did national government agencies (NGAs) before the passage of the LGC. The full effect of this increased expenditure has yet to be known. However, with regard to spending on health, macro-level indicators of health care have not deteriorated and survey respondents have consistently said that health services have improved since 1992.
27. LGUs and local communities are now taking action to preserve the environment, as demonstrated, among others, by the establishment of locally-based natural resource councils. Some local planning efforts are now technically sophisticated, featuring workshops, feasibility studies and bottom-up planning. Unfortunately, some NGAs do not fully embrace participatory, bottom-up development. While there is no systematic data yet, anecdotal evidence indicates that the socio-economic benefits from decentralisation appear quite strong. Decentralisation under the LGC has also advanced development at the local level.

PARALLEL TRACKS, LITTLE CONSCIOUS INTERFACE

28. What is immediately striking about the Philippine experience with both local government and human rights, is that these two tracks hardly inter-relate, at least not through concerted efforts. It is correct to say that not much thinking and analysis has been done on this interface. This is true not only among those who have gone deeply into local government or human rights, but also among those who have had substantial exposure to both fields. The connection is simply not readily made.

29. The growing literature on local governance here does not show the connection. The most comprehensive annotated bibliography on decentralisation in the Philippines¹⁵ has *no* category on “Decentralisation and Human Rights”. The closest, but not really what we are looking for, are categories of decentralisation in relation to certain services like health, housing and social services, and a category on “GO-NGO Partnerships/People’s Participation/Civil Society-State Relations”.
30. And in terms of best practices, the established *Galing-Pook* awards for innovation and excellence in local governance, has the following criteria: effectiveness of services delivery, positive socio-economic and/or environment impact, promotion of people empowerment, and transferability. The categories for best practice are the following: health services, environment management, public finance, peace initiatives, integrated approach to development, socio-cultural development, employment generation/livelihood, and productivity improvement.¹⁶
31. A search for related literature on human rights in the Philippines¹⁷ likewise bears largely negative results in terms of serious research and published material on the connection to local government. In the case of those coming from the human rights perspective, the obvious root of this non-connection is the notion that human rights are state obligations, i.e. obligations of the national or central government, a notion that is true not only in the Philippines.
32. In the case of those coming from the local government perspective in the Philippines, the overriding concerns “range from administrative concerns (such as fundamental issues pertaining to absorbing devolved personnel to being able to afford their salaries to career pathing) to equally important and substantial concerns such as ensuring and improving the quality of basic services delivered”.¹⁸ A long-time human rights lawyer who had a recent stint as Assistant Secretary of the Department of the Interior and Local Government (DILG), Atty. Alexander A. Padilla, offers some reasons why human rights has never been a major concern of local government. The LGC’s principal concern is the central government’s control as shown, for example, by its hold on the financial capacity of LGUs in terms of the Internal Revenue Allotment (IRA). Much action and discussion surrounding local government revolves around this matter. A second reason is the non-devolution of the police, the principal government agency involved in respect for or violations of human rights. Police accountability for human rights violations rests with certain national offices, not with LGUs.¹⁹
33. Padilla says that, during his many years as a human rights lawyer with the Free Legal Assistance Group (FLAG), he and his colleagues never thought of a link with local government. And then during his stint with the DILG Assistant Secretary, he never thought of a link with human rights, not even of setting up a human rights desk there.²⁰ It must be the paradigm, not the person. And yet, Padilla and basically all other key informants readily agree, once the idea or question is put to them, that there should be an interface between local government and human rights.

¹⁵ Ateneo Center for Social Policy and Public Affairs (ACSPPA) Databank/Library Unit, *Technical Assistance to Databanking for the Assessment on the State of Knowledge of Decentralization* (30 June 1999). This was prepared for the ARD, Inc.-GOLD Project.

¹⁶ Alex B. Brillantes, Jr., “Decentralized Democratic Governance Under the Local Government Code: A Governmental Perspective” (1998) XLII (1&2) *Philippine Journal of Public Administration* 38, 47-50.

¹⁷ For example, we checked with the Philippine Human Rights Information Center (PhilRights), the Ateneo Human Rights Center (AHRC), the Institute of Human Rights (IHR) of the UP Law Center, and the Commission on Human Rights (CHR).

¹⁸ Alex B. Brillantes, Jr. <alexb@pacific.net.ph>, email (1 March 2001).

¹⁹ Alexander A. Padilla <AlexanderPadilla@netscape.net>, email (21 February 2001).

²⁰ Interview with Alexander A. Padilla, former Assistant Secretary, Department of the Interior and Local Government (Pasig City, 23 February 2001).

AFFIRMING AND SHAPING THE INTERFACE

34. Would a policy project focusing on local government and human rights be useful? Here are some views that carry weight because of where they are coming from. Rood says “it would be very useful, inasmuch as it would deepen the analysis which has always before assumed that 'the government' is a national one. In particular, human rights violations are greater in localities far from the glare of publicity”.²¹
35. Former Secretary-General of the non-governmental Philippine Alliance of Human Rights Advocates (PAHRA) and incumbent CHR Commissioner Mercedes V. Contreras-Danenberg also says it would be worthwhile and useful, believing that the best way to promote a human rights *culture* is through local government. It is here, especially at the grassroots *barangay* level, where human rights awareness and praxis should and can be developed. On one hand, there will always be local cases of human rights violations that can be of national value and therefore can be given attention at the national level (reactive, curative). On the other hand, it is better to have a national programme that deliberately propagates human rights ideals down to the various local levels (proactive, preventive).²²
36. One NGO executive director, with many years of involvement in several human rights groups, including PAHRA, describes the local government–human rights interface as “a very new field” which his NGO “is only starting to tackle”,²³ thereby implying its value. In a paper on “Human Rights and Local Development”, he notes the crucial role of local government in local development and bats for a human rights-based development framework to “ensure that development does not run wild”.²⁴ This does not just affirm, but *shapes* the interface, i.e. how the human rights approach is to be made to local government. We discuss a few more conceptualisations of this as well as pioneering practice below. But first a “dissenting opinion”.
37. Padilla thinks it may be a bit too early, even in the Philippines, to go into the interface because “there is no basis yet to determine the effect or impact of human rights on LGUs since local mayors have no control over the police (who are the main human rights violators). It would be like comparing apples with oranges”. He is also of the view that the operative concept of human rights should be limited to civil and political rights of citizens as may be violated by the state or state agents, as was the view of FLAG.²⁵
38. This is similar in a sense to the constitutional mandate of the CHR to “investigate... all forms of human rights violations involving civil and political rights”.²⁶ The latter are still considered the cutting edge of human rights and are a logical subject for focus where this is needed, such as when a new national human rights institution is established in the aftermath of a dictatorship. But practice over ten years has brought in development aggression and other forms of human rights violations involving E-S-C rights. Confronted with this reality, the CHR had to creatively interpret its constitutional mandates in order to be able to address E-S-C rights.²⁷ It found an opening in its constitutional mandate to “monitor the Philippine government’s compliance with international treaty obligations on human rights”.²⁸ On this basis, it passed a resolution clarifying its jurisdiction to include “investigative monitoring of incidents and/or conditions obtaining in

²¹ Steven Rood <srood@asiafound.org.ph>, email (26 February 2001).

²² Interview with Mercedes V. Contreras-Danenberg, Commissioner, Commission on Human Rights (Quezon City, 26 February 2001).

²³ Ramon C. Casiple <moncx@hotmail.com>, email (24 January 2001).

²⁴ Ramon Casiple, “Human Rights and Local Development” (n.d. but early 2000).

²⁵ Interview with Padilla, above.

²⁶ 1987 Philippine Constitution, Art. XIII, Sec. 18(1).

²⁷ Interview with Contreras-Danenberg, above.

²⁸ 1987 Philippine Constitution, Art. XIII, Sec. 18(7).

the country which are violative of concerns in both areas of civil and political rights and economic, social and cultural rights”.²⁹

39. As we indicated in the first section above, the weight of opinion, not to mention the dictates of reality, tends towards a broad strategic framework or concept of human rights even for the purpose of engagement with local government. This allows for flexibility, depending on the different human rights priority needs in different localities, and flexibility to accommodate various human rights programmes with varying human rights focuses. By this token, the question is not really *whether* there should be a local government-human rights interface but *how* should this interface be worked out.

HOW SHOULD THE INTERFACE BE WORKED OUT?

40. There is a similar thrust coming from the perspective of local governance which illustrates one possible *how*. As Brillantes puts it, “the beauty of devolution is that it has widened the latitude of discretion and field of agenda-setting by the local governments that, if properly appreciated, human rights concerns can be identified by the local governments among their priorities. This could of course go beyond the traditional human rights concerns, but also could be contextualised in such a way that basic services (health, education, social services) are also within the ambit of human rights. Placed in this light, HR could be high in the agenda of LGUs”.³⁰
41. Elaborating on this point, Brillantes says “it is entirely possible to introduce (or emphasise) the human rights dimension of the provision of basic services to the people. For instance, the right to basic health services (a function that has been devolved to local governments) could be placed in this light. The same is true with social services. I guess the challenge is how to change the paradigms of local governments and to encourage them to go beyond the ‘conventional’ definitions of human rights and bring them to the level of the real world of service delivery as basic human rights... I think this could be operationalised at the level of delivery of basic services and participation of the people. One concrete key link between local governments and human rights is the use of the Minimum Basic Needs (MBN) approach to governance. There are 33 indicators. This has been in place among LGUs the last five years. This could be an ideal entry point for HR for LGUs: MBN as an HR concern”.³¹
42. With regard to health services, that view is shared by health officials like Juan A. Perez III, MD, MPH: “The health sector sees access to health services by all Filipinos as a human right that is guaranteed by the 1987 Constitution [Art. II, Sec.15 – The State shall protect and promote the right to health of the people and instil health consciousness among them.]. The protesting health workers often cited this provision as well as the Magna Charta of Public Health Workers as matters that were clearly being limited or even violated by the decentralization process”.³² As is evident from this, human rights can be a term of reference for both sides of the debate on devolution of basic services. It also shows possible situations of conflict of rights between sectors.
43. Rood, however, holds a nuanced “dissenting opinion” on the matter: “Here is where I would point to the discourse. These are not thought of as ‘rights’ at the local level, but rather services to be improved... I don’t think of ‘economic and cultural rights’ as Rights, but as social services the constituents can demand of their government. So, I would focus on the narrower set of

²⁹ CHR Resolution No. A95-069.

³⁰ Interview with Brillantes, above.

³¹ Ibid.

³² Juan A. Perez III, MD, MPH <jeepy.perez@friendlycare.com.ph>, email (21 February 2001).

rights, but make sure we consider whether this narrow focus allows citizens to gain better access to the ECOSOC ‘rights/services’.”³³

44. Casiple, as indicated earlier, would anchor a human rights approach to local governance to the 1986 United Nations (UN) Declaration on the Right to Development (DRD) as espousing a people-centred concept of development: “It is in this sense that the Local Government Code, which gave the local governments a big part of the responsibility for development in their respective areas, should be interpreted and implemented in accordance with this general development framework as defined in the Declaration... Human rights advocacy provides the way wherein non-empowered or less empowered sections of the people, particularly those at the grassroots, intervene in development projects which change their very lives. *If embraced by the State instrumentalities, it can provide the common language to decide on any development concept, plan, or project*”³⁴ (italics mine). It is interesting to note that if universal human rights can be a common language between two countries in conflict, then even more reason for it to be a common language between national and local authorities within one country.
45. One of several criteria Casiple posits for the “human rights way to development” is that “*The right to development is universal, indivisible, and interdependent in relation to all other rights*”. He explains: “This refers to the limits set by human rights on development, particularly in cases where development projects tend to trespass on other rights. *It also points out how seemingly conflicting rights should be handled and resolved*”³⁵ (italics mine). This is another argument for a broad strategic framework and clarifies that the human rights regime perforce includes conflict resolution guidelines and mechanisms.
46. It was only in August last year that a specific “human rights approach to governance for peace and development” was presented in the Philippines by the UN Development Programme (UNDP) on the occasion of the launch here of its *Human Development Report 2000*. The latter integrates human rights and human development to come up with “the seven freedoms”. On the whole, it is still the national government which is being addressed. But it also calls on local governments, among the major actors in society, to commit to five priorities for national action.³⁶
47. Thus far, we have presented conceptualisations of a human rights approach to local governance. But before we present some pioneering practice, it might be good to try to glean from the Philippine experience so far whether the devolution of power to local governments has advanced or retarded human rights at the local level.

FOR BETTER OR FOR WORSE?

48. In the section on the Philippine experience with devolution, above, we relied on Rood’s empirically supported conclusion that decentralisation under the LGC has advanced both democracy and development in the Philippines.³⁷ On this basis, one might say human rights have been advanced though democracy and development were not assessed in human rights terms. And though both democracy and development can be viewed with a human rights

³³ Rood, email, above.

³⁴ Casiple, “Human Rights and Local Development,” above.

³⁵ Ibid.

³⁶ United Nations Development Programme, *Summary: Human Development Report 2000* (New York: United Nations Development Programme, 2000). See also UNDP, *Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document* (New York: UNDP, January 1998). These materials were graciously provided by Jana Grace P. Ricasio, ARR (Programme), UNDP Philippine Country Office.

³⁷Rood, *Decentralization, Democracy, and Development*, above.

framework, those two categories nevertheless have parameters and dynamics that differ from those of human rights.

49. Speaking now in human rights terms, Rood says “Partly the answer [to the above question] depends on what you mean by ‘human rights’. If you mean economic and social rights, to the extent that better services are delivered in a more localized fashion, respecting the local cultures, then it is advancing human rights. Since I believe that decentralization has indeed improved these services, I would opt for ‘advancing’... For civil and political rights, the answer is more neutral. Given that the PNP [police] still remains centralized, then the source of human rights violations has not changed. As for civilian pressure on civil and political rights, there was concern in 1992 that local warlords would be strengthened by the new [Local Government] Code, while others felt that arenas for democratic action would serve to check these tendencies. I think that experience supports the second view — that democratic engagement at the local level has kept the warlords more in check than before”.³⁸
50. CHR statistics for 1988 to June 2000 indicate a general downward trend in incidents of human rights violations (HRVs), especially after 1992. (This was the period when the Ramos administration, with its comprehensive peace process, was in office. The peak was during the Aquino administration after the collapse of peace talks). Civil rights violations maintained their position as the dominant HRV throughout the entire period, with social rights violations in a far second place during the Aquino and Ramos administrations (1987-1998). The police still ranks as number one in the list of alleged perpetrators of HRVs. However, in more recent years, specifically from 1995 to June 2000, with the police still on top, local officials/employees and civilians variably occupied the second and third ranks, respectively.³⁹
51. The latter trend is disturbing as it coincides with the over-all success of decentralisation by 1997 and deepening decentralisation since then. The policy research question, therefore, should be whether there is a correlation, or whether other factors are involved. This is one area that needs further study. Padilla anecdotally notes that “mayors exercising their new-found powers have embarked on various activities which are oftentimes approved locally by ordinance but are of questionable validity. Recent examples are that of Manila where spray painting [of the houses of suspected drug-pushers] was officially approved by the local council and is still subject of a pending suit in the Court of Appeals and Supreme Court; another is Marikina which had approved an ordinance practically legitimizing hamletting and a sort of identification card for its constituents which affect one’s domicile, liberty of abode and travel, and others. Both ordinances were adopted on the pretext of combating a greater evil, that of the drug menace”.⁴⁰
52. For Padilla, the big issue is police control, whether by a national authority or by local government or a combination of both. This has been debated before and will be debated from time to time. The status quo of national control is usually explained in the light of the 1987 Constitution’s Art. XVI, Sec. 6: “The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a National Police Commission. The authority of local executives over the police units in their jurisdiction shall be provided by law”. It remains to be seen whether and how this constitutional provision might

³⁸ Rood, email, above.

³⁹ CHR Management Information Services Division, “Status of Operations: Summary of Statistical Information (1988 to June 2000).” See also CHR, *1998 Annual Report: 12 Years of Human Rights Advocacy*. Access to this and other CHR materials was facilitated by Edgardo C. Diansuy, Chief of Staff and Director, Public Information Office, CHR.

⁴⁰ Padilla, email, above.

be creatively interpreted and implemented to devolve more power over the police to local government which is presently limited to “operational supervision and direction”.⁴¹

53. Padilla believes devolving the police would advance human rights, especially civil and political rights, at the local level because they would then be more accountable to the local government and community. Local mayors would then naturally recruit police from the local community, which makes them less prone to abuse their own fellow towns-people, compared to national police deployed from one region to another, where they have no stake.⁴² This view is concurred with by CHR Commissioner Vicente P. Sibulo, a former local mayor himself.⁴³ Both acknowledge the danger of local private army-building but Padilla feels this can still be better controlled than and would be a lesser evil than the present militaristically-oriented national police.

PIONEERING PRACTICE OF INTERFACE

54. Let us now survey the field for some pioneering practice in the relation between local government and human rights in the Philippines. While these two tracks hardly interface at the conscious or conceptual level, it is gratifying to note that there *are* some pioneers in the field. This is inevitable, given the rich experience in both fields, there are bound to be points of convergence. In the course of briefly presenting these pioneering efforts, we hope to provide some insights for a policy project on local government and human rights. There may be other such efforts but the following are what has come to our attention so far:

CHR’S BARANGAY HUMAN RIGHTS ACTION CENTER (BHRAC) PROGRAM⁴⁴

55. This “flagship program”, started in 1995 by the CHR, in partnership with the DILG through successive memoranda of agreement, recognises the necessity of bringing the human rights programme to local government. Particularly, in view of the recent trend of local officials/employees as second-ranked alleged perpetrators of HRVs. The focus on the *barangay* (village) level is simply because it is the most vulnerable level, usually being out in the countryside where the most vulnerable and marginalised victims are found. But there is also a strategy here for CHR extension or multiplier effect, nationwide *and* at the basic grassroots level, given CHR’s own limited personnel resources. Grassroots people’s bottom-up participation is seen as the best preventive deterrent to HRVs, and the way to achieve widespread human rights awareness, so as to generate a human rights culture.
56. The BHRAC is a microcosm of sorts of the CHR in terms of functions (complaints processing, information/education, co-ordination and referral, mobilisation) and in terms of independence. The *Barangay* Human Rights Action Officer (BHRAO) who is trained to run the centre is elected by the *barangay* assembly from among high school graduate-residents of probity who are not government officials. By the end of 2000, the BHRACs established numbered 14, 137 (about

⁴¹ Alberto C. Agra, *1992-1996 Supreme Court, Constitutional Commissions and 30 National Government Agencies: Compendium of Decisions, Rulings, Resolutions, and Opinions on Local Autonomy and Local Government* (Manila: Rex Book Store, 1996) 122.

⁴² Interview with Padilla, above.

⁴³ Interview with Vicente P. Sibulo, Commissioner, Commission on Human Rights (Quezon City, 27 February 2001).

⁴⁴ This subsection is based on the Interviews with Sibulo and Contreras-Danenber, and also interviews with and materials gathered by Adeline De Castro from Ana Elzy E. Ofreño, Director, Education Research, and Training Office (ERTO), CHR, and Ma. Ellen Julian, Division Chief, ERTO, CHR, Quezon City, on 8 February 2001 and with Susan T. Nuguid, Division Chief, ERTO, CHR, Quezon City, on 1 February 2001. See also CHR, *Barangay Human Rights Action Center: Handbook*, above.

1/3 of the 42,000 or so *barangays*). As of 1998, the figures for BHRAC operations were: complaints processing (326), education/training (1,160), coordination & referral (93), and mobilisation (36).

57. Unfortunately, there has not been a more qualitative evaluation of BHRAC operations so far, whether and how they work, what their impact is, and so on. Such an evaluation would presumably cover the key training programme that integrates human rights in capability-building. One interesting angle here is how an increasingly complex international human rights regime is imparted to village-level rural folk. But *is* this the real-world ground-level challenge or test of the true universality of human rights?
58. The BHRAC programme's main sustainability problems are the lack of a regular budget (even only for honoraria of the BHRAOs) and the lack of legislative institutionalisation (it not being provided for by the LGC). The latter accounts for its non-prioritisation by some LGUs. Some DILG and local government officials would also want the BHRAO to come from among the *barangay* officials, which would defeat the independence of the BHRAO. Political will and the political leadership concerned are definite factors in the interface of local government and human rights.

AHRC'S ROLE IN PROMOTING LOCAL INITIATIVES FOR DEMOCRACY AND JUSTICE (PRODEM) PROJECT⁴⁵

59. One of the CHR's major co-operating partners for the BHRAC programme is the PRODEM project. This USAID-funded project was implemented with the implicit goal of empowering local government and non-governmental institutions for effective public-private sector partnership in local governance, and the management of the local development process. It gives particular focus on programme and policy initiatives that strengthen democratic processes, enhance access of the poor to productive assets and basic services, and broaden community access to justice.
60. The academe-based non-governmental institute Ateneo Human Rights Center (AHRC) was invited to join PRODEM to enhance the technical content of the access to justice programme. AHRC zeroed in on promoting and protecting human rights. Human rights principles form the foundation for improving the entire justice system. It addresses the conscientisation of people who operate the system. Human rights promotion and protection, being a fundamental concept and concern, fits with PRODEM's interventions in local governance.
61. AHRC's implementation of the project in Laguna province, for example, included paralegal training of volunteers who became staunch human rights advocates in their localities. Project allocations were made to support human rights education at the *barangay* level. Emphasising the non-political, non-partisan criteria for the selection of BHRAOs allayed fears of *barangay* officials about potential political rivals.

⁴⁵ This subsection is based on an interview with and materials gathered by Adeline de Castro from Carlos P. Medina, Jr., Executive Director, Ateneo Human Rights Center, Makati City, 21 February 2001.

UNICEF'S CHILD FRIENDLY MUNICIPALITIES & CITIES MOVEMENT⁴⁶

62. While UNDP has presented a “human rights approach to governance for peace and development” in the Philippines, the United Nations Children’s Fund (UNICEF) is implementing one of the six major UN human rights treaties, the 1989 Convention of the Rights of the Child (CRC), a child rights-based approach, if you will, to dealing with various local government levels and formations. It has drawn up indicators and an evaluation tool for the search of child-friendly municipalities and cities. It has identified some model areas such as the Davao, Bohol and Negros Oriental provinces that were able to draft and adopt a Provisional Code on Children.
63. One leading example of the child rights-based approach is the “Aurora [Province] Comprehensive Development Plan for Children (2001-2025)”. The ACDPC is a long-term plan that integrates all interventions to shape the future generations of the province. It is anchored on the principles of the CRC. It seeks to address four categories of child rights: survival, development, protection, and participation. It is based on the early stages of the human life cycle, starting with pre-natal, infancy, early childhood, school age through to adolescence. In addition, the rights of special children and of women are also addressed. The strategies to overcome the threat to children’s rights in Aurora are taken in the framework of the family. The welfare and development of women in general and mothers in particular are taken in the context of the important role they play in the realisation of the vision for children.
64. So, in this pioneering effort, we have an example of a human rights approach to local government that is focused on one sector (e.g. children) served by a particular international human rights instrument. The implementing international agency (e.g. UNICEF) is perforce limited by its narrower human rights mandate. But all such agencies have their respective roles and contributions in the over-all human rights effort, which is a global effort.

THINK GLOBALLY, ACT LOCALLY

65. This dictum may as well sum up the case for an interface of local government and human rights, the latter being a global concept embodied in international instruments of universal application. Yet, there is still another global phenomenon, globalization especially in its economic and cultural aspects, which makes the local engagement of human rights even more imperative. Rood notes that “decentralized governance is allied to economic liberalization [decentralization in the political sphere is the equivalent of deregulation and privatization in the economic sphere]. However, with economic liberalization comes the need for particular attention to the marginalized sectors, which attention must be directed by governments closer to the situation. Hence, it is crucial that democracy be available at the local level”.⁴⁷ And so with human rights. There *is* a “human rights challenge of globalization”.⁴⁸
66. Still on global mechanisms, to the question on whether the human rights performance of local governments should be scrutinised by international NGOs or inter-governmental organisations, Rood answers “This idea seems off the track. International entities basically don’t understand decentralization, so rather than having them do the scrutinizing about something they are

⁴⁶ This subsection is based on an interview with and materials gathered by Adeline De Castro from Jose Abraham Ongkiko, Local Policy and Institutional Development Programme Officer, UNICEF Philippine Country Office, Makati City, 15 February 2001.

⁴⁷ Steven Rood, “Democratic Decentralization in the Philippines.”

⁴⁸ Ramon Casiple, “The Human Rights Challenge in the 21st Century” (2000) X(1) *Human Rights Forum* 7-18, published by the Philippine Human Rights Information Center (PhilRights). This was provided by its Executive Director Antonio R. Villasor.

ignorant about, they need to be engaged in a learning process”.⁴⁹ Indeed, globalisation has a centralising aspect to it. Decentralisation of local government must be appreciated in some of its own terms for a human rights approach to be effective.

67. There is still so much more to learn and to say about the interface between local government and human rights. Even if we are speaking only about the Philippines, there is an imperative for deeper case study. This feasibility study for policy research on the interface is only the tip of the iceberg. It has only outlined or indicated some of the key themes, issues and options from the Philippine perspective.
68. The main audiences for such a policy project are the various institutions, from local to global, a number of which are represented by the key informants of this feasibility study: the target local governments through certain groups like the Leagues of Provinces, Cities and Municipalities or the Union of Local Authorities of the Philippines; the relevant national government agencies like the DILG and CHR for support programmes; the relevant Congressional committees for possible policy legislation; the international agencies like UNDP and UNICEF already pursuing a human rights approach to governance; the academe for research linkages; and NGOs in the two fields for advocacy.
69. While it is ultimately the local governments that would put in place their human rights agenda, history shows that it is the human rights NGOs that are the engine of human rights advocacy. They too must see the need to engage local governments on human rights. Without this, local governments will not move much or at all on human rights.

⁴⁹ Rood, email, above.