

Party-List System: The Philippine Experience

by Fritzie Palma Tangkia* and Ma. Araceli Basco Habaradas**
Published by Ateneo School of Government and
Friedrich Ebert Stiftung (FES), Philippine Office
April 2001

"I think that it is now the time to return the power to the people; let us have faith in them. And by faith, I mean real and abiding faith, not just looking at the people as some kind of a mystical entity in whose name the eternal political in some of us have done themselves proud. In other words, let the Filipinos chart their own histories."

- Commissioner Felicitas S. Aquino
1986 Constitutional Commission

About Us
Core Themes
Activities
Publications
Online Materials

FES Dialogue on
Globalization

FES International Policy
Analysis Unit

FES Journal -
International Politics and
Society

I. Introduction

The intent is clear. The party-list system, an innovative mechanism enshrined in the 1987 Constitution, aims to assure the various sectors of the Philippine society, particularly the disadvantaged groups, of representation in the highest lawmaking body of the Republic.¹

This is the essence of a representative government.

It cannot be gainsaid that the party-list system embodies the promise of further democratization by giving an opportunity to various sectors, especially the marginalized ones, to have their voices heard.² However, despite the fact that a new avenue for political change is at hand, this innovation in our democratic process was met by grassroots organizations with a mixture of skepticism and excitement.³

While the party-list system is constitutionally-enshrined, Congress was vested with the broad power to define and prescribe the mechanics of this system of representation.⁴ In compliance with this constitutional duty, Congress enacted Republic Act No. 7941, otherwise known as the "*The Party-List System Act*".⁵

Unfortunately, what should have been a better-defined embodiment of the party-list system appeared to be the further source of controversies and ambiguities which necessitated judicial adjudication and interpretation.

This paper, by way of review of related literature, presents the intentions, as well as the apprehensions of those who drafted the legal framework of the party-list system, the difficulties met by the party-list contenders, and the legal issues that arose from the 1998 experience. With these, it is hoped that changes in the law and in the attitude of the electorate that will transform a well-intended mechanism into something that will truly work for the Filipino people, shall be realized sooner than expected.

II. Concept, Intent And Expectations

A. The Party-List System

The party-list system is a mechanism of proportional representation in the election of representatives in the House of Representatives from national, regional and sectoral parties or organizations or coalitions registered with the Commission on Elections ("COMELEC").⁶

The concept of party-list elections was drawn from the proportional representation ("PR") electoral system "developed in order to remedy a basic flaw or disadvantage of the majoritarian or plurality system."⁷ This system is "based on the proportion of votes obtained by a candidate with respect to the totality of votes cast."⁸

More specifically, the scheme is closely patterned after a List PR system where "proportionality is determined on the number of votes cast in favor of parties (or organizations) where lists of representatives or candidates on a national or regional basis are presented to the electorate."⁹ It is a means of granting representation to major political interest groups "in as direct a proportion as possible to the votes they obtained" such that "the composition of the legislature closely reflects or mirrors the actual composition of the larger society."¹⁰

B. Broadest Possible and Meaningful Representation

The party-list scheme is intended to "*broaden representation* in the House of Representatives to include sectors and those organizations that do not have well-defined political constituencies" and "facilitate *access to representation* of minority or small parties."¹¹ Sufficient representation in the government of the disadvantaged groups — this is the primary reason for the adoption of the party-list system in the 1987 Constitution.

"The basic aim of representative government is to attain the broadest possible representation of all interests in its lawmaking and policy-making body. It becomes necessary to give an opportunity to the various social, economic, cultural, geographical and other sectors of our society, particularly the disadvantaged groups, to have their voices heard. And because they are usually without sufficient funding or political machinery, it becomes incumbent upon the government to extend such opportunity without the need to go through an expensive electoral contest. For this reason, the party-list system has been adopted in the new Constitution to assure them of representation in the highest lawmaking body of the Republic."¹²

The "heart of proportional representation is *inclusion*: it seeks to facilitate and ensure the entry and participation of all major interest groups, or at least of as many such groups as possible, in the crucial endeavor of national legislation."¹³ Thus, being a system of proportional representation, the party-list system is "intended to give to marginalized parties or groups access to the House of Representatives"¹⁴ and "to prevent [these] small groups from actually being left out in the democratic process."¹⁵

The party-list system's potential to bring some changes in the political system was recognized during the deliberations on what is now Article VI, Section 5(2) of the Constitution. More specifically expressed was the expectation that the system shall give political power to the marginalized sectors:¹⁶

"MR. TADEO: Our experience, however, has shown that legislation has tended to benefit more the propertied class who constitutes a small minority in our society than the impoverished majority, 70 percent of whom live below the poverty line. This has come about because the rich have managed to dominate and control the legislature, while the basic sectors have been left out of it. So, the critical question is, how do we ensure ample representation of basic sectors in the legislature so that laws reflect their needs and aspirations?"¹⁷

Thus, when the enabling law for this system was drafted, the premise was that the said system of voting "should be reserved for marginalized political groups who are too weak to get their own congressmen elected on the basis of districts as constituencies."¹⁸

Being conceived in the hope "that the system will democratize political power by encouraging the growth of a multi-party system"¹⁹, the prospects of increased political participation for parties and organizations became a necessary consequence:

"By its very nature, the [party-list system] opens the doors of government to many political parties. It is an arrangement that tends to favor small and new parties, to the extent that it accords them far greater chances of gaining seats than majority or even plurality systems allow them."²⁰

As a result, the promise of democratization may be realized as the party-list system "encourages the formation of genuine political parties representing organizations and groups long-excluded from political process, armed with definitive sets of principles and accountable to their members."²¹

This intent was translated into a Policy Statement as provided in the Party-List System Act, to wit:

"Declaration of Policy. -- The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties of organizations or coalitions thereof, which will *enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.* Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the *broadest possible representation* of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible." (Emphasis supplied)

*This policy of enabling the marginalized and underrepresented sectors to have not only the "broadest possible representation" but also a "meaningful representation" in the House of Representatives has been reiterated in the case of **Osmeña vs. Commission on Elections**²² where the Supreme Court enunciated:*

"The party-list system, an innovation introduced by the 1987 Constitution in order to encourage the growth of a multi-party system is designed to give a chance to marginalized sectors of society to elect their representatives to the Congress. A scheme aimed at giving *meaningful representation* to the interests of sectors which are not adequately attended to in normal deliberations, it is envisioned that system *will encourage interest in political affairs* on the part of a large number of citizens who feel that they are deprived of the opportunity to elect spokesmen of their own choosing under the present system. It is expected to *forestall resort to extra-parliamentary means* by minority groups which would wish to express their interests and influence governmental policies, since every citizen is given a substantial representation."²³

And considering the expense a nationwide political campaign entails, the party-list system is a welcome development. As aptly couched:

"I think the party-list system was installed in our Constitution in order to expand the democratic basis of our Government. In other words, politics is expensive. In this country, one has to belong to the landed economic or

political elite to be elected into Congress."²⁴

C. Non-Personality Oriented Politics

In addition to its promise of broader representation and "inclusion", the party-list system²⁵ also serves as "a break from personality-oriented politics towards a more program-based political system." Termed as a "long-awaited breakthrough"²⁶, the party-list system is meant to introduce a new concept to the Filipinos since they have "to vote for parties instead of for persons or distinct personalities."²⁷

"The party-list system institutionalizes for the first time, sectoral representation by providing for the election of candidates over and above those who win in their respective districts. . . . [I]t is intended to fortify the party system and democratize representation in the House of Representatives." ²⁸

This "novel experiment"²⁹ gives a new face to the kind of politics with which the country is familiar considering that this List PR system hopes to:

(i) Contribute to the institutionalization of *political justice and electoral reform* by providing opportunities to sectoral parties and organizations to gain representation in Congress;

(ii) Give legal *premium to membership* in political parties and sectoral organizations where changes in political affiliation shall cause the forfeiture of position as party-list representative;³⁰ and

(iii) Advance *program-based and issue-based politics* through a system of electing parties and organizations rather than individuals and personalities.³¹

III. Apprehensions And Contentions

After a thorough deliberation on the provision regarding the party-list system of representation, the 1986 Constitutional Commission adopted the following:

"(1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise provided by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, *and those who, as provided by law, shall be elected through a party-list system of registered national, regional and sectoral parties or organizations.*

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector..." ³²

Varied apprehensions, as well as suggestions, on the constitutional and legal framework of the party-list system were expressed during the deliberations of both the 1986 Constitutional Commission, and Congress. While outvoted, the value of these suggestions in gauging the effectiveness of the system cannot be overemphasized.

A. Participation of Political Parties

The apprehension in allowing the participation of traditional political parties in the party-list system, one of the most fervently discussed concerns, was captured best in Dr. Wilfredo Villacorta's statements during the 1986 Constitutional Commission deliberations:

"MR. VILLACORTA: We already have an Upper House which will likely be dominated by charismatic nationally known political figures. We have allocated 80 percent of the Lower House for district representatives who will most likely win on the bases of economic and political power. We are purportedly allowing 20 percent of the Lower House seats to be allocated to representatives of parties and organizations who are not traditional politicians. And yet, because we subject the sectoral candidates to the rough-and-tumble of party politics and pit them against veteran politicians, the framers of the Constitution are actually predetermining their political massacre.

Madam President, the party list system in the form that it is being proposed [allowing participation of political parties] will only exacerbate the frustrations of the marginalized sectors. . . ." ³³

Though met with opposition, the attempt to totally exclude the major political parties was pursued in order to close the door to traditional politicians who may desire party-list seats:

"MR. VILLACORTA: First of all, *I question the assumption that sectoral candidates will have an equal chance of winning a party list election when they compete with the politicians who belong to the traditional political parties. I question this assumption because even if the sectoral groups were forced to organize, their machineries would not be as well-oiled or as well-funded as those of the traditional political parties.* Chances are, in such a party list election, that does not give priority to these sectors; the traditional politicians will prevail over the sectoral candidates.

...

For one, I can think of the party list as an instrument for electing sectoral representatives. I would be in favor of the party list system on condition that this system be only for the sectoral candidates. If we allow the politicians to run under this system, then we are giving much more to those who already have power and resources..." ³⁴

The attempt to exclude the major political parties from vying party-list seats was also noted during the congressional deliberations on what is now the Party-List System Act:

". . . But the justification given for excluding them in the party-list system is that the idea of party-list system would be defeated, or the very purpose of giving access to small groups that cannot elect candidates on the district basis will be defeated, if the parties that are already big and can elect congressmen by district would still be given a chance for additional representatives through the party-list system."³⁵

As further relevantly stated:

"If the large parties would still be allowed to participate in the scheme, they invariably would have the advantage and this might just perpetuate the dominance of these large parties."³⁶

As a result of the inclusion of the political parties, coupled with the fact that only twenty percent (20%) of the seats in the House of Representatives are granted to the party-list representatives, the sentiment that the party-list system is a mere "token concession"

arose:

"Throughout the history of Philippine politics, the economic and political elite has always held on tightly to the helms of power. Thus many could not help but remain sceptical about the 20% seat allocation granted to party-list groups under the new law. Can this unbalanced system of representation, tainted by traditional politics, be remedied by merely reserving one fifth of the seats in the Lower House for the representatives of the marginalized? *Given the deeply rooted power of traditional politicians, the party-list system seems to be more like a token concession to those advocating broad based political participation.*"³⁷

Despite this valid concern, the political parties were not disqualified from joining the party-list scene for as long as the "political party is really organized along a specific sectoral line. If such is verified or confirmed, the political party may submit a list of individuals who are actually members of such sectors."³⁸ It was even observed that the inclusion of political parties in the party-list system had an advantage:

"[T]his party-list system is exciting to us in the sense that we have always complained that -- and I am experiencing it now; that is why pardon me if I have to refer to my position as party President -- a lot of good people whom we are trying to convince or draft to be candidates under a political party usually beg off. The principal reason really is that politics is dirty or they cannot afford it. In some cases, they cannot see themselves conducting a national campaign or a barangay-to-barangay campaign.

The idea that is crossing my mind is that the party-list system is an ideal vehicle for the political parties to be able to improve the quality of the House of Representatives by including in their party list very distinguished and qualified people who otherwise would not run for election."³⁹

B. Perpetual Reservation of Seats for Basic Sectors

As the political parties are not prevented from invading the party-list system arena, the age-old problem on the concentration of socioeconomic and political power to an elite few remains a concern. Thus, as an alternative, attempts were made to give preferential treatment to certain identified sectors by proposing a feature on permanently reserved seats:

"MS. AQUINO: ... My personal position is: (1) we should provide for *perpetual reservation of institutional seats for the basic sectors* – and by that, we refer to the peasants, the labor, the youth and the urban poor...

The problem with Philippine politics now is that the concentration of socioeconomic and political power is in the hands of the few, while the majority of the people are destitute and powerless. Now is the time and *the unedited opportunity for us to transfer the center of gravity of socioeconomic power from the people on top to the people below*. The proposal for sectoral representation is hardly iconoclastic; it is not a leftist aberration as some of us are inclined to think. Why do we have to look askance at it as a dynamic and powerful sectoral representation? Now, more than ever, is the time for us to realize the lessons of history. History is liberating, otherwise, we might as well consign it to the dung heap of oblivion. History has told us to be either nationalistic or wary of the forces that invade self-determination or it could also be just a kinetic over-reaction. But history is the best teacher in the sense that a people's history is liberating history. We know that traditional politics has denied the people the right to make their own mistakes. Elite politics has been sure-fire formula for depriving us of the luxury of making our own mistakes. I think that it is now the time to return the power to the people; let us have faith in

them. And by faith, I mean real and abiding faith, not just looking at the people as some kind of a mystical entity in whose name the eternal politician in some of us have done themselves proud. In other words, let the Filipinos chart their own histories."⁴⁰

This desire to give reserved seats to identified disadvantaged sectors is also a recognition of the inability of these sectors to compete in the political process.⁴¹ Fr. Joaquin Bernas, 1986 Constitutional Commissioner, gave a persuasive attempt to pursue the "permanentizing" of reserved seats in Congress:

"FR. BERNAS: Madam President, I would like to say a few words in support of the amendment proposed by Commissioner Tadeo for the 'permanentizing' of reserved seats for the sectors. The basic premise for this is that by these sectors, we mean the underprivileged masses. That is clearly what is in our mind. The sectors mentioned are understood as the underprivileged masses. In the 1935 and 1973 Constitutions and again in our new Constitution, we have enshrined the concept of social justice not so much as a philosophical concept but as a practical concept, meaning, that those who have less in life should have more in law. Now we are placing sectoral representation side by side with the party list system, and I think it is important to look at it in that context. *The effort to introduce the party list system has for its objective the equalization of political power.* In other words, in order that political power will not be concentrated in two parties, we are attempting to introduce a party list system in order to distribute political power among various parties. *But the distribution of political power is very much dependent, we might even say essentially dependent, on the distribution of economic power and the effective distribution of economic power would take quite a while.*

...

Therefore, *by 'permanentizing' these twenty-five seats reserved for the underprivileged, I think that we will be permanently injecting into the legislative process direct contact, as it were, with the large masses of people whose economic position in life need to be elevated...*"⁴²

However, this attempt to permanently reserve seats was vigorously opposed:

"MR. OPLE: ... There is an outright constitutional gift for the first two terms of the sectoral representatives but, after that, they will have to earn the seats through participation in a party list system or, even beyond that, to be direct competitors with established and more orthodox parties in the general political arena. *I see no reason why after having occupied seats in the House of Representatives for two terms, the representatives of sectors may not be able to combine their forces in order to form their own political parties or become powerful adjuncts to existing political parties so that they will enjoy not only the benefits of a party list system but also the benefits of being able to compete directly in the wider political arena.*"⁴³

In the end, however, the proposal to give permanent reservation of seats to certain sectors was outvoted. Instead, the reservation of seats to sectoral representatives was only permitted for three terms.⁴⁴

"This compromise recognizes the handicap under which disadvantaged sectors operate but at the same time it is meant to motivate them to strengthen their organizations so that they will eventually be able to compete in the regular party-list system three consecutive terms after the operation of the party-list system commences."⁴⁵

IV. The 1998 Experience

A. Low Voter Turnout

In the 1998 party-list elections, the first in Philippine history, only 33.1% or only 9,046,931 voted⁴⁶ for a party-list candidate out of the estimated 27,330,772 total voter turnout.⁴⁷ This was not a surprise. There are several reasons for this, some of which are the following:

1. Novelty of the Party-List Concept

The most obvious reason behind the low voter turnout lies in the "novelty of the party-list concept."⁴⁸ Confusion arose because the electorate which traditionally votes for individual candidates as their district representatives in the House of Representatives also had to vote for a party, organization or coalition as their party-list representative in the same House.

"The general public has been used to voting for single member district representative for too long that the call to cast an additional vote for a party-list representative did not register with many voters. Others were simply too confused and did not understand the procedure involved in this innovative feature. Still others were simply indifferent."⁴⁹

This confusion was, in fact, foreseen during the interpellations on the Party-List System Act:

"Senator Tolentino: I think this should be something very new to our people, to our electorate and there may be some confusion. It is possible that the number of votes that will be cast under this system will not be as big as we might expect because the only experiment we had in voting by parties was under the block-voting system. But that was different. That was the only time we had a party vote.

I do not know how the people will actually vote here. They may even be confused, and some ballots may be invalidated if we put the party vote and the individual vote by district in the same ballot. That is why I suggested to the Comelec that, perhaps, there should be two ballots, one ballot for the regular elections, and another ballot just for the party-list system. Many ballots may be invalidated because of some errors in the party-list system.

I would think that our people are so new to this system that they may not really like it because the culture among our people is that they want to put the individual candidates who will be the ones they are going to vote for. But in the case of the party vote, they just vote for the party and the party itself picks the individual who will represent it in Congress."⁵⁰

2. COMELEC Inefficiency

With the potential public confusion in mind, the Senate noted the very important role that the COMELEC shall play both in voters' education and in the careful implementation of the party-list system.⁵¹ Unfortunately, the COMELEC fell short on this expectation.

As early as 1996, COMELEC has already been tasked to start preparing for the party-list elections. On the same year, education and information dissemination on the new system should have begun.⁵²

However, as the events during the 1998 elections have shown, COMELEC failed in its task to educate and inform the public:

"COMELEC's inefficiency and lack of interest in the party list elections were even more obvious during the campaign period. I only saw one primer and

maybe two television advertisements, which aired about two weeks before election day. . . . [M]edia was not active enough in disseminating information about the party list either." ⁵³

The consequence was disastrous. It meant that party-list groups were saddled with a "double burden: they had to explain the party list system to the people first, before they could explain why their party was the right party-list choice."⁵⁴ In other words, "parties and organizations running for seats found themselves doing campaign work and voters' education at the same time. Before the campaigners could extol the virtues of their group, they had to explain the concept and the mechanics of the party-list system to the people."⁵⁵

3. Lack of Awareness Among Boards of Election Canvassers

Another factor which resulted in the low voter turnout in the 1998 party-list elections was the "indifference and lack of awareness among Board[s] of Election Canvassers"⁵⁶. The explanation behind this is worth quoting, to wit:

"Indifference and lack of awareness among Board[s] of Election Canvassers also resulted in the non-counting of votes in some areas. Some canvassers simply decided to ignore the party-list voters, since this would have made the proceedings more complicated. Votes for 123 parties needed to be canvassed, which required teachers to shift through numerous pages to record the votes. The party-list count was, thus, completely abandoned in some areas.

Mistakes were also committed when a sector was written on the ballot and listed for a party-list group with a name sounding closest to that sector. Canvassers were not very careful about the counting of the votes because only a few were aware of the importance and necessity of the party-list system."⁵⁷

4. Confusing Instructions

Ironically, what should have helped the general public in understanding the party-list system was also one of the reasons behind the disappointing voter turnout in the 1998 elections.

"The instructions for the casting of votes for the party-list representative has confused many voters, because its wording gives the impression that one votes for a sector and not a group or party from the sector. Clearer instructions could have prevented lost votes due to mistakes made in filling out the ballots.

Confusion also resulted from the layout of the ballot itself. The slot for party-list representatives should have been placed immediately before or after the district representatives."⁵⁸

B. Dismal Results

Of the 123 COMELEC-accredited groups, only thirteen were able to garner at least 2% of the total votes cast for party-list candidates. This lackluster performance, which was also a result of the low voter turnout for the party-list representatives, was aggravated by the following factors:

1. The Two Percent Threshold

Under the Party-List System Act, only those parties, organizations and coalitions garnering a minimum of 2% of the total valid votes cast for the party-list system are

qualified to have a seat in the House of Representatives.⁵⁹

The 2% threshold has been incorporated in the Party-List System Act for the following reasons:

- i. To avoid a situation where the candidate will just use the party-list system as fallback position;
- ii. To discourage nuisance candidates or parties, who are not ready and whose chances are very low, from participating in the elections;
- iii. To avoid the reserve seat system by opening up the system;
- iv. To encourage the marginalized sectors to organize, work hard, and earn their seats within the system;
- v. To enable sectoral representatives to rise to the same majesty as that of the elected representatives in the legislative body, rather than owing to some degree their seats in the legislative body either to an outright constitutional gift or to an appointment by the President of the Philippines;
- vi. If no threshold is imposed, this will actually proliferate political party groups and those who have not really been given by the people sufficient basis for them to represent their constituents; and
- vii. To ensure that only those with a more or less substantial following can be represented.⁶⁰

While the foregoing reasons are all laudable, the 2% threshold was one of the most notable reasons behind the failure to achieve "broadened representation":

*"[S]everal sectors will apparently remain 'unrepresented' in the Eleventh Congress. Among these are OCWs, labor, fishers, elderly, youth, disabled, indigenous peoples, and professionals. This is so because the parties that sought to represent them failed to meet the 2% threshold. This sad failure is but one more indication of the inadequacy of RA 7941 as a tool for proportional representation."*⁶¹

Only fourteen out of the fifty-two allocated party-seats were filled. The only sectoral groups which earned party-list seats were those from the labor, peasant and women sectors. The rest of the sectors remained unrepresented.⁶² The following observations⁶³ on this outcome are worthy of attention:

- i. One striking reality is that had more groups united, more seats would have been filled. What happened was that a lot of votes were wasted due to the fragmentation of groups.
- ii. The progressive movement did not prove much to the traditional politicians. On the contrary, the division which became obvious could even be used against them.
- iii. But there is also hope. Since only thirteen parties made it, the possibility of consolidating in Congress is greater, especially among the six parties with progressive elements.

2. The Three-Seat Limitation

Section 11(b) of the Party-List System Act provides:

*"The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party list system shall be entitled to one seat each: *Provided*, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: *Provided, finally*, That each party, organization, or coalition shall be entitled to not more than three (3) seats." (Emphasis supplied)*

This three-seat limitation has its downside. It encouraged "separate petitions for

COMELEC accreditation by groups that could otherwise have banded together and, by so doing, could have become a greater electoral force."⁶⁴ One striking reality is that had more groups united, more seats would have been filled. What happened was that a lot of votes were wasted due to the fragmentation of groups. The fragmentation among sectors was attributed to the three-seat ceiling:

"There was no imperative to unite, but more of an imperative to 'separate'. The meager number of seats to be won was hardly an incentive for groups to form coalitions. The temptation for larger organizations (which claimed huge memberships) to go [through] it alone -- and possibly win all three seats for themselves -- was too much. The goal was to capture as many seats as possible, at the expense of unity."⁶⁵

C. The Legal Controversy

1. *The Conflict*

In the case of *Veterans Federation Party, et. al. vs. Commission on Elections, et. al.*,⁶⁶ a consolidation of several cases, the Supreme Court ruled upon legal issues arising from the interpretation and implementation of the Constitutional provision on, and the enabling law of, the party-list system.

The legal controversy arose when only thirteen parties⁶⁷ were able to hurdle the 2% threshold during the first party-list elections in 1998. This resulted in the proclamation of only 14 party-list representatives,⁶⁸ far below the 52 party-seats, the equivalent of the 20% allocation provided in the Constitution.

In these consolidated cases, three issues were raised:

- i. Is the twenty percent (20%) allocation for party-list representatives mentioned in Section 5(2), Article VI of the Constitution, mandatory or is it merely a ceiling? In other words, should the twenty percent allocation for party-list solons be filled up completely and all the time?
- ii. Are the two percent (2%) threshold requirement and the three (3)-seat limit provided in Section 11(b) of the Party List System Act unconstitutional?
- iii. How should the additional seats of a qualified party be determined?

2. *The Resolution*

In resolving the issues raised in the said case, the Supreme Court was guided by four inviolable parameters:

- i. *The Twenty Percent Allocation.* The combined number of *all* party-list congressmen shall not exceed twenty percent (20%) of the total membership of the House of Representatives, including those under the party-list.
- ii. *The Two Percent Threshold.* Only those parties garnering a minimum of 2% of the total valid votes cast for the party-list system are qualified to have a seat in the House of Representatives.
- iii. *The Three-Seat Limit.* Each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.
- iv. *Proportional Representation.* The additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes".

Guided by these inviolable parameters, the Supreme Court ruled on the above-mentioned legal issues as follows:

- i. *The 20% allocation is a mere ceiling.*

The 20% allocation provided in the Constitution is not mandatory, *i.e.*, all seats allocated for party-list representatives need not be filled completely and at all times, but a mere ceiling. To quote the Supreme Court:

"Clearly, the Constitution makes the number of district representatives the determinant in arriving at the number of seats allocated for party-list lawmakers, who shall comprise "twenty per centum of the total number of representatives including those under the party-list." We thus translate this legal provision into a mathematical formula, as follows:

$$\frac{\text{(Number of district representatives)}}{20} = \text{(Number of party-list)}$$

...

We rule that a simple reading of Section 5, Article VI of the Constitution, easily conveys the equally simple message that Congress was vested with the broad power to define and prescribe the mechanics of the party-list system of representation. The Constitution explicitly sets down only the percentage of the total membership of the House of Representatives reserved for party-list representatives.

In the exercise of its constitutional prerogative, Congress enacted the [Party-List System Act]. As said earlier, *Congress declared therein a policy to promote 'proportional representation' in order to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. It, however, deemed it necessary to require parties, organizations and coalitions participating in the system to obtain at least 2% of the total votes cast for the party-list system in order to be entitled to a party-list seat. Those garnering more than this percentage could have 'additional seats in proportion to their total number of votes.'* Furthermore, *no winning party, organization or coalition can have more than 3 seats in the House of Representatives.*

...

*Considering the foregoing statutory requirements, the 20% allocation is not mandatory. It merely provides a ceiling for the party-list seats."*⁶⁹

ii. *The 2% threshold and the three-seat limit are not unconstitutional.*

The 2% threshold imposed by the Party-List System Act is in accordance with the "very essence of representation", while the three-seat limit "ensures the entry of various interest-representations in the legislature". In the words of the Supreme Court:

"In imposing a 2% threshold, Congress wanted to ensure that only those parties, organizations and coalitions having sufficient number of constituents deserving of representation are actually represented in Congress.

The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of 'representation'. Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people.

...

[Anent the three-seat limit], an important consideration in adopting the party-list system is to promote and encourage a multiparty system of representation... *Such three-seat limit ensures the entry of various interest-representations into the legislature; thus, no single group, no matter how large its membership, would dominate the party-list seats, if not the entire House.*"⁷⁰

iii. *The Formula for Determining Additional Seats*

a. The initial step, according to the Supreme Court, is to rank all the participating parties, organizations and coalitions from highest to the lowest based on the number of votes they each received. Then the ratio for each is computed by dividing each party's votes by the total votes for all the parties participating in the system. All parties with at least 2% of the total votes are guaranteed one seat each. Only these parties shall be considered in the computation of *additional* seats. The party receiving the highest number of votes shall be referred to as the "first party".

b. The next step is to determine the number of seats the first party is entitled to, in order to be able to compute that for the other parties. Note, however, that:

"[s]ince the distribution is based on proportional representation, the other qualified parties will always be allotted less additional seats than the first party for two reasons: (1) the ratio between said parties and the first party will always be less than 1:1, and (2) the formula does not admit of mathematical rounding off."⁷¹

The formula for computing the number of seats to which the first party is entitled, as laid down by the Supreme Court, is as follows,:

(Number of votes of first party) / (Total votes for party-list system) =
(Proportion of votes of first party relative to total votes for party-list system)

Moreover, "[i]f the proportion of votes received by the first party without rounding it off is equal to at least 6% of the total valid votes cast for all the party-list groups, then the first party shall be entitled to two additional seats. But the 6% benchmark is applicable only in determining the number of additional seats the first party is entitled to. It cannot be used to determine the number of additional seats of the other qualified parties because this would violate the principle of proportional representation."⁷²

c. The third step is to solve the number of additional seats to which the other qualified parties is entitled based on proportional representation. According to the Supreme Court, the simplified formula for this is as follows:

(Additional seats for concerned party) = [(Number. of votes of concerned party) / (Number of votes of first party)] x (Number of additional seats allocated to the first party)

Conclusion

The party-list system of representation, while laudable in its intent, faces tough challenges ahead to make it truly effective and to achieve the "broadest possible representation" of the marginalized sectors.

The novelty of the concept, coupled with a less than efficient COMELEC, resulted in a low voter turnout and lackluster party performance in the first ever party-list elections.

The strict interpretation and application of its enabling law imposed additional burdens with which party-list representatives have to contend in order to make their voices

heard in the halls of Congress. As aptly pointed out by Justice Vicente Mendoza in his Dissenting Opinion in the **Veterans** case:

"Already, the proportion of party-list representatives to district representatives is small compared to the mixed system in Germany where half of the seats (328) of the Bundestag are district representatives and the other half (328) are reserved for party-list representatives. *The ruling announced today would ensure that the proportion of party-list representatives to the district representatives who constitute 80 percent of the total membership in the House of Representatives is even less than 20 percent. The constitutional intent to afford marginalized groups in our society to be represented in the House is thus frustrated if not subverted.*"⁷³

With these things to consider, a challenge is posed:

"[T]he dismal result of the first election for party-list representatives should serve as a challenge to our sectoral parties and organizations. It should stir them to be more active and vigilant in their campaign for representation in the State's lawmaking body. It should also serve as a clarion call for innovation and creativity in adopting this novel system of popular democracy."⁷⁴

May history prove that the Filipino people have valiantly met this challenge.

Endnotes

* LL.B. 1999, University of the Philippines, Dean's Medalist; Member, Philippine Bar - Ninth Place, 1999 Bar Exams; A.B. 1995, Colegio de San Juan de Letran, Summa Cum Laude; Associate, Camacho and Associates.

** J.D. 1999, Ateneo de Manila University, School of Law, With Honors; Member, Philippine Bar; A.B.-B.S.C. 1994, De La Salle University, Manila; Associate Editor (1998-99), *Ateneo Law Journal*; Junior Associate, Carpio Villaraza & Cruz Law Offices.

¹Edward G. Libunao and Tet N. Abelardo, *Only in the Philippines: The Quirks of Our Party-List System*, Political Brief - Special Issue, Vol. 5, No. 9, September 1998, Institute of Political Democracy, page 16.

²Hector S. De Leon, *Philippine Constitutional Law Principles and Cases*, Volume 2 (1999) , page 55.

³Agustin Martin G. Rodriguez and Djourina Velasco, "*Democracy Rising? The Trials and Triumph of the 1998 Party-List Elections*", 1998, Institute of Political Governance, page 7.

⁴ 1987 Philippine Constitution, Article VI, Section 5(2), as interpreted in the case of **Veterans Federation Party vs. COMELEC**, G.R. Nos. 136781, 136786 and 136795 (October 6, 2000).

⁵"An Act Providing for the Election of Party-List Representatives through the Party-List System and Appropriating Funds Therefor"; Enacted by the Ninth Congress and signed into law on 03 March 1995.

⁶Section 3, The Party-List System Act.

⁷Libunao and Abelardo, *supra* note 1.

⁸Atty. Alberto C. Agra, *The Philippine Party-List System: A Legal Critique*, October 1,

1997, page 2. In this critique prepared through the *Dr. Manuel Lim Endowment Fund*, Atty. Agra also discussed among others, the different kinds of PR schemes and the purpose and features of the party-list system.

⁹*Id.* (Citing Handbook of Electoral System Design, International Institute for Democracy and Electoral Assistance, August 1997, page 19).

¹⁰Libunao and Abelardo, *supra* note 1.

¹¹Libunao and Aberlardo, *supra* note 8, at pages 4-5.

¹²De Leon, *supra* note 2, at page 55 *citing* the 1986 U.P. Law Center Constitution Project, Legislative Department

¹³Libunao and Abelardo, *supra* note 1, at pages 17.

¹⁴Senator Arturo Tolentino during his sponsorship speech for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 32, page 119. "Marginalized parties" as defined by Senator Tolentino, are "those which, on their own strength as political parties, would not be able to elect Congressmen in the different districts because they would not have the number of votes needed in particular districts [and] if these [votes] are combined together on a national basis, they may be able to elect even one or two Congressmen on the basis of proportional representation"; See Record of the Senate on the Party- List System, Volume II, No. 32, page 1356.

¹⁵As stated by Senator Arturo Tolentino during the interpellations for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 32, page 135.

¹⁶The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, page 561.

¹⁷*Id.* at page 562.

¹⁸Senator Arturo Tolentino during his sponsorship speech for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 32, page 119.

¹⁹Joaquin Bernas, S.J. Constitutional Structure and Powers of Government - Part 1, 2nd Edition (1997)

²⁰Libunao and Abelardo, *supra* note 1, at page 13.

²¹Melay Abao, *Notes on the May 11, 1998 Party-List Elections*, Political Brief- Special Issue, Vol. 5, No. 9 (1998), Institute of Popular Democracy

²²288 SCRA 447, 507 (1998)

²³Citing Joaquin Bernas, S.J., *The Intent of the 1986 Constitution Writers* (1995), page 344 . [Emphasis supplied].

²⁴As stated by Senator Leticia Ramos-Shahani during the interpellations for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 34, page 156.

²⁵Abao, *supra* note 21, at page 1

²⁶See comment of Constitutional Commissioner Nieva in *The Constitutional Commission of 1986 - Record of the Constitutional Commission*, Volume 3, page 574.

²⁷Record of the Senate, *supra* note 24, at page 157.

²⁸De Leon, *supra* note 2, at page 56.

²⁹Record of the Senate, *supra* note 24, at page 157.

³⁰A provision against turncoatism is provided in Section 15 of the Party-List System Act: "Section 15. Change of Affiliation; Effect. - Any elected party-list representative who changes his political party or sectoral affiliation during his term of office shall forfeit his seat: Provided, That if he changes his political party or sectoral affiliation within six (6) months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization."

³¹*Supra* note 8, at pages 4-5. In this critique, Atty. Agra makes a thorough enumeration of the specific purposes and advantages of a List PR system.

³²This is now Article VI, Section 5 of the 1987 Philippine Constitution. (Emphasis supplied)

³³The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, 25 July 1986 deliberations, pages 554-555. (Emphasis supplied)

³⁴*Id.* (Emphasis supplied)

³⁵Senator Arturo Tolentino during his sponsorship speech for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 32, page 120.

³⁶As stated by Senator Orlando Mercado during the interpellations for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 33, page 140.

³⁷Rodriguez and Velasco, *supra* note 3. (Emphasis supplied)

³⁸ The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, 25 July 1986 deliberations, pages 257. (Emphasis supplied)

³⁹ As stated by Senator Ernesto Maceda during the interpellations for Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 32, page 127-128. (Emphasis supplied)

⁴⁰ The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, 25 July 1986 deliberations, pages 566. (Emphasis supplied)

⁴¹ Joaquin Bernas, S.J., The Constitution of the Republic of the Philippines, Volume II (1988), page 90 *citing* II Record of the Constitutional Commission, pages 253-254.

⁴² The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, 25 July 1986 deliberations, pages 567. (Emphasis supplied)

⁴³ The Constitutional Commission of 1986 - Record of the Constitutional Commission, Volume 3, 25 July 1986 deliberations, pages 568. (Emphasis supplied)

⁴⁴ Article VI, Section 5(2) of the 1987 Constitution.

⁴⁵Bernas, *supra* note 40 *citing* II Record of the Constitutional Commission, pages 567-570, 577-582.

- ⁴⁶ Interpellations on Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 34, page 157.
- ⁴⁷ Note the comments made by Senators Tolentino and Shahani during the interpellations on Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 34, page 157.
- ⁴⁸ Rodriguez and Velasco, *supra* note 3, at page 8.
- ⁴⁹ *Ibid.* (Emphasis supplied)
- ⁵⁰ Interpellations on Senate Bill No. 1913, Record of the Senate on the Party-List System, Volume II, No. 34, page 157. (Emphasis supplied)
- ⁵¹ Libunao and Abelardo, *supra* note 1, at page 18.
- ⁵² G. Luis Igaya, "*The Failure of the Party-List Elections*", *Conjuncture*, Vol. 10, No. 2, June 1998, cited in Rodriguez and Velasco, *supra*. Note 3.
- ⁵³ Abao, *supra* note 21, at page 4.
- ⁵⁴ *Ibid.*
- ⁵⁵ Rodriguez and Velasco, *supra* note 3, at page 9.
- ⁵⁶ *Ibid.*
- ⁵⁷ *Id.* (Emphasis supplied)
- ⁵⁸ *Id.* (Emphasis supplied)
- ⁵⁹ Section 11, Party-List System Act.
- ⁶⁰ Separate Concurring Opinion of Justice Reynato Puno in the case of *Veterans Federation Party vs. COMELEC*, G.R. Nos. 136781, 136786 and 136795 (October 6, 2000)
- ⁶¹ Libunao and Abelardo, *supra* note 1, at page 16. (Emphasis supplied)
- ⁶² Abao, *supra* note 21, at page 7
- ⁶³ *Ibid.*
- ⁶⁴ Libunao and Abelardo, *supra* note 1, at page 18.
- ⁶⁵ Abao, *supra* note 21, at page 3
- ⁶⁶ G.R. Nos. 136781, 136786 and 136795 (October 6, 2000).
- ⁶⁷ Parties or organizations or coalitions.
- ⁶⁸ APEC, which garnered the most number of votes, was given two seats.
- ⁶⁹ *Veterans Federation Party, et. al. vs. Commission on Elections, et. al.*, G.R. Nos. 136781, 136786 and 136795 (October 6, 2000); (Emphasis supplied)

⁷⁰ *Ibid.* (Emphasis supplied)

⁷¹ *Id.*

⁷² *Ibid*

⁷³ *Id.*

⁷⁴ *Id.* (Emphasis supplied)

---END---

Copyright Friedrich-Ebert-Stiftung 2001

[▲ BACK TO TOP](#)

Copyright 2004 FES Philippine Office
Site design by Kinetic HTML Co.