II. Impact of Modernization on Democratization, Decentralization and Empowerment

II. IMPACT OF MODERNIZATION ON DEMOCRATIZATION, DECENTRALIZATION AND EMPOWERMENT

A. Introduction

National development requires that the people acting directly or through their representatives, determine and shape national goals and aspirations, seek solutions to national problems, and adopt public policies for the common good. In the Philippines, this process may be said to have taken place in some crucial areas, authoritatively through the medium of law and legal institutions, which have been imposed, adopted and created in the course of her historical development.

This chapter will discuss the development of rules on governance which had been previously characterized by absolute rule and personalistic ascendancy on the part of the rulers on the one hand, and dependency on the part of the governed on the other, since pre-colonial times, into a participatory democracy. This transformation may be discerned to have taken place in three levels of the national polity:

(1) on the national level, by the adoption of constitutional policies and statutory enactments on people empowerment;

(2) on the level of local government, by the constitutional policy of local autonomy of local government units, the devolution of national functions to local government units and the enactment of constitutionally mandated local government code;

(3) on the level of indigenous peoples, by the constitutional recognition of their right to development, expressly embodied in civil, political, social and economic rights particularly those pertaining to their ancestral lands and domain. The enactment of the Indigenous Peoples Law has led to the recognition of customary law and their right to self-governance and self-determination.

B. Cultural Composition of the Inhabitants of the Philippines

The total population of the Philippines as of May 1, 2000 was 77.3 million. The average annual population growth rate in the Philippines between 1995 and 2000 was 2.0%. Although present day Filipinos are essentially of the same stock as the indigenous peoples of the Philippines, centuries of colonial rule and neo-colonial domination have created a distinction between the cultural majority and groups of cultural minorities or indigenous

peoples. Cultural minorities in turn may be divided into the Muslims, mainly found in the islands of Mindanao and Sulu and the pagans *(lumads*). To a large extent, Philippine national culture is the culture of the cultural majority; its indigenous roots had been substituted by foreign cultural elements (R. Constantino, *The Philippines: A Past Revisited* (1975), pp. 26-41; T. Agoncillo, *A History of the Filipino People* (8th ed.), pp. 5, 74-75). The culture of the majority reoriented itself to Western influence while the culture of the minorities retained its native character: about 12 million Filipinos are members of some 110 indigenous communities comprising 17% of the total population of the Philippines. (Philippine Yearbook (1998), p. 366). The groups comprising the indigenous peoples in the different regions of the Philippines have been reported to the House of Representatives of Congress. Presently, Philippine indigenous peoples inhabit the interiors and mountains of Luzon, Mindanao, Mindoro, Negros, Samar, Leyte, and the Palawan and Sulu group of islands. They are composed of 110 tribes and are as follows:

1. In the Cordillera Autonomous Region – Kankaney, Ibaloi, Bontoc, Tinggian or Itneg, Ifugao, Kalinga, Yapayao, Aeta or Agta or Pugot, and Bago of Ilocos Norte and Pangasinan; Ibanag of Isabela, Cagayan; Ilongot of Quirino and Nueva Vizcaya; Gaddang of Quirino, Nueva Vizcaya, Itawis of Cagayan; Ivatan of Batanes, Aeta of Cagayan, Quirino and Isabela.
2. In Regio III – Aetas.
3. Rizal in IV – Dumagats of Aurora, Rizal; Remontado of Aurora, Rizal, Quezon; Alangan or Mangyan, Batangan, Buid or Buhid, Hanunuo and Iraya of Oriental and Occidental Mindoro; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.
4. In Region V – Aeta of Camarines Norte and Camarines Sur; Aeta-Abiyan, Isarog, and Kabihug of Camarines Norte; Agta, and Mayon of Camarines Sur; Itom of Albay, Cimaron of Sorsogon; and the Pullon of Masbate and Camarines Sur.
5. In Region VI – Ati of Negros Occidental, Iloilo and Antique, Capiz; the Magahat of Negros Occidental; the Corolano and Sulod.
6. In Region VII – Magahat of Negros Oriental and Eskaya of Bohol.
7. In Region IX – the Badjao numbering about 192,000 in Tawi-Tawi, Zamboanga del Sur; the Kalibugan of Basilan, the Smal, Subanon and Yakat.
8. Region X – Numbering 1.6 million in Region X alone, the IPs are: the Banwaon, Bukidnon, Matigsalog, Talanding of Bukidnon; the Camiguin of

Camiguin Island; the Higa-unon of Agusan del Norte, Agusan del Sur, Bukidnon and Misamis Occidental; the Tigwahanon of Agusan del Sur, Misamis Oriental and the Misamis Occidental, the Manobo of the Agusan provinces, and the Umayamnon of Agusan and Bukidnon.

9. In Region XI – There are about 1,774,065 IPs in Region XI. They are tribes of the Dibabaon, Mansaka of Davao del Norte; B'laan Kalagan, Langilad, T'boli and Talangod of Davao del Sur; Mamamanua of Surigao del Sur; Mandaya of the Surigao provinces and Davao Oriental; Manobo Blit of South Cotobato; the Mangguangon of Tagakaolo, Tasaday and Ubo of South Cotobato; and Bagobo of Davao del Sur and South Cotobato.
10. Region XII – Ilianen, Tirural, Maguindanao, Maranao, Tausug, Yakan/Samal, and Iranon.

(Taken from the list of IPs submitted by Rep. Andolana to the House of Representatives during the deliberations of H. B. No. 9125 – Interpellations of Aug. 20, 1997, pp. 00086-00095. "Lost tribes" such as the Lutangan and Tatang have not been included).

Upon the advent of Spanish colonization, the historic communities which have developed in the Philippines and continue to evolve into the present, are the following: (a) The Christian community or *"indios"*, (b) the Muslim community or *"Moros"*, and (c) the indigenous communities, otherwise known as *"infieles"* (pagans) (S. K. Tan, *A History of the Philippines* (1987), p. 23).

Christians

The establishment of the Christian community began by the Spanish military expedition, which displaced the Muslim presence in Manila, and paved the way for the Christianization and pacification of the islands of Luzon and Visayas. The founding of Bishoprics in urban centers brought lowland villages under the bells, and by the 16th century, a Christian community had been established. It was not until 1632 that the Spanish administration succeeded in setting up the Spanish fort in Zamboanga which coordinated strategically the Spanish thrust into Muslim Mindanao. The Spanish religious accelerated church and town building, following the pattern in Luzon and Visayas called "plaza complex," where the fort and the church were integrated centrally and concentrically with the social classes. The Christian community was marked by a cultural synthesis of Christian and native elements (*Ibid*., pp. 25-27).

Indigenous Communities (Infieles)

Upland communities were successful in preserving their own customs and traditions. These were called pagans (*infieles*) by the Spanish government. Their successful preservation of their culture was ascribed to the Spanish colonial strategy of subjugating first the lowland communities and coastal villages which were vital to trade; and their resistance to the invaders and withdrawal into the hinterlands which were inaccessible and difficult to penetrate. The withdrawal and isolation preserved the indigenous and ancient way of life and thwarted the Christianization process (*Id*., p. 27).

Current practice refers to indigenous peoples of the Philippines as groups of Filipinos who have retained a high degree of continuity from their culture before the Spanish conquest and the American occupation (1521-1899). They inhabit the interiors and mountains of the islands of Luzon, Mindanao, Mindoro, Negros, Samar, Leyte, Palawan and Sulu. The early Filipinos settled in coastal areas and along rivers and lakes. Food gathering, hunting and fishing were the principal means of subsistence. They evolved a way of life where nature was a primary factor. The unit of government was a *barangay*, a family- based community, consisted of 30 to 100 families, ruled by a chieftain called *datu* who was executive, legislature, judge and supreme commander in time of war. Customary laws were handed down orally from generation to generation and dealt with inheritance, divorce, usury, crimes and property rights. Disputes were decided with the *datu* as judge and the elders of the community (Agoncillo, pp. 40-41).

Muslims

Islam took root in the archipelago sometime in the 13th century because of missionary activities of Muslim mystics and teachers. A community of believers (*ummah*) in Islam bound solely by spiritual ties developed together with the structure and functions of the sultanate. The *ummah* did not result in the transformation of Muslim communities into orthodox Islamic societies but rather, into folkislamic tradition which was a blend of Islam and indigenous local-ethnic traditions.

The Sultanate put the indigenous leadership under the Sultan who exercised paramount control over the people which consolidated an otherwise independent datuship. The first to emerge was the sultanate of Sulu which claimed jurisdiction over the territorial areas of Taw-tawi, Sulu, Palawan, Basilan and Zamboanga. Next was the Sultanate of

Maguindanao and lastly, the Lanao Sultanates, among the Maranaos in the Iligan-Cagayan de Oro and lake regions (Tan, pp. 24-25).

Values of the Cultural Majority

Many observers point out that the cultural majority hold values of *pakikisama* (smooth interpersonal relationship), *utang na loob* (debt of gratitude), and personalism. In traditional Philippine society, patrons provide a wide range of services to their clients, broadly protection and material benefits; clients in turn give them patron political support and personal service. When these core values are operationalized in the bureaucracy, they result in dysfunctional organizational behavior, namely inefficiency and ineffectiveness, and breed patron-client relations which determine voting behavior. A high personalism and particularism has resulted in cynicism towards government. There is also a primacy of kinship ties in Philippine society which create a lack of faith in government, no civic pride and a distrust of universalistic norms. For the cultural majority, stability, security and protection are sought in the family unit, in the kinship group or patron head of society in general. Both the patron-client relation and kinship ties have engendered little interest in class or interest group-focused legislation (L. Y. Jose, *Politics and Governance*, p. 32). All of the above values are factors which would continue the maintenance and perpetuation of the old power structure.

C. Development of the Philippine Legal System

Philippine national law began with a nucleus of Spanish law imposed and administered over the native population by the Spanish colonial administration. Not all the laws of Spain were made applicable to the Philippines but only those that were extended to her by royal decree. Among Spanish laws of general application which were so extended are the Penal Code of 1887, the Code of Commerce (1988), Code of Criminal Procedure, and the Code of Civil Procedure (1988), the Civil Code of 1889, the Mortgage Law (1889), Railway Laws (19875 & 1887) and the Law of Waters (1866). Special laws of limited application which were made applicable to the Philippines include Law Siete Partides, Las Leyes de Toro, Leyes de las Indias, La Novisima Recopilacion, the Mining Law and the Notorial Law. After the change of sovereignty to the United States, significant substantive laws of Spain were continued such as the Spanish Civil Code of 1889 which remained in force for sixty years. A great portion of that Code was retained in the original or slightly modified form in the Civil Code of 1950. The Code of Commerce of Spain of 1829 was extended to the

Philippines in 1832 and which, after this law is reformed into the Spanish Code of 1885, was made applicable to the Philippines in 1888. Some of the provisions of this Code continues to be in force. The Spanish Penal Code of 1870 became effective in the Philippines in 1887 and remained in force for about 40 years. The bulk of the provisions of the Penal Code was retained with the adoption of the Revised Penal Code of 1932 (M. Gamboa, Introduction to Philippine Law, p. 71 (1969)). Philippine law expanded with the accretion of common law rules first imposed by the Americans and later adopted voluntarily by the cultural majority after attaining independence from the United States. This blend of Spanish civil law and Anglo-American common law had developed into the Philippine legal system. The Spanish element had remained static, but the Anglo-American contribution had grown enormously. Philippine legal rules have been derived largely from American jurisdictions, both state and federal or enacted under American authority. Borrowings have been made in branches of public law on the system of government, public administration, international relations, trade and commerce, social welfare, and in civil and procedure and evidence (P. V. Fernandez, "Sixty Years of Philippine Law," 34 *Philippine Law Journal* 1390 (1960)).

Even as an independent republic, the reception of American law into Philippine law persists. Much of the law on labor relations, welfare legislation, taxation, banking and currency are local enactments of American statutes, with adaptations to fit local conditions. The Civil Code of 1950, revised by the Code Commission, from the Spanish Civil Code and extended by Royal Decree to the Philippines, embodies the common law principles of trusts and estoppel, as well as the Anglo-American law on sales and partnership, and torts and damages.

In procedure, large borrowings were made by the Rules of Court from the Federal Rules of Civil Procedure of the United States and in cognate rules in pleadings and evidence. The Philippine legal system has likewise adopted the rule of *stare decisis* (Art. 8, Civil Code). Local courts including the Supreme Court, and lower courts in their adjudication of disputes, cite the rulings of American appellate courts, as justifications of their decisions although American courts decisions are considered foreign law and technically not binding on Philippine courts. Since many statutes are of American derivation, American decisions which applied and interpreted these are given persuasive value resulting in the wholesale incorporation of many doctrines of American law into the Philippine legal system. Thus, there is a pervasive influence of Western law in the Philippine legal system.

The statutes of the Philippines are found in the various enactments of the Philippine legislature since its creation in 1900. From the establishment of the American civil

government in 1900 to 1935, there were 4,275 laws passed by the Philippine Commission and its bicameral successor, the Philippine Legislature which were denominated Acts. The Commonwealth period had 733 statutes called Commonwealth Acts; while 6,635 laws legislated from 4 July 1946 to 21 September 1972 are referred to as Republic Acts. During the martial law period, a total of 2,035 Presidential Decrees were promulgated until 20 February 1986, while 891 *Batas Pambansa* were passed by the *Batasang Pambansa* up to 1 February 1986. A total of 302 Executive Orders were issued by President Corazon C. Aquino as head of the Revolutionary Government (C. V. Sison, *International Encyclopedia of Laws* (1999), p. 44). Congress convened on 27 July 1987 and enacted some 2,367 Republic Acts since then. To date, approximately 17,238 statutes have been passed since 1900.

D. People's Participation in Decision- Making

As a result of the February 1986 revolution, democratic processes and institutions have been instituted to enable the people, through the electorate, to participate in decision-making processes such as the initiative in amendment of the Constitution, and legislative initiative in the proposal, approval and rejection of laws, both national and local, and the recall of local officials.

1. Constitutional Basis

The 1987 Constitution, no less, directly grants the people national legislative power. Section 1 of Article VI, states that legislative power is vested in Congress "except to the extent reserved to the people by the provision on initiative and referendum." According to Bernas, "[t]his new provision derives from the lesson drawn from past experience whereby the people have realized that legislative assemblies cannot always be trusted to do what is best for the people. Hence, the people have reserved to themselves the authority to correct legislative mistakes or to supplement legislative inadequacies whether on the national level or on the level of local legislation" (J. G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary (1996), p. 605). Article VI, Section 32 elaborates on this:

> "The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the

total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof."

2. Statutory Basis

These constitutional provisions are implemented by Republic Act No. 6735 or the "The Initiative and Referendum Act" (R.A. No. 6735 is entitled "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor"). Through this, the people are given the power to directly propose, enact, approve or reject, in whole or in part, the Constitution, laws, ordinances, or resolutions passed by any legislative body upon compliance with the requirements of the Act (*Ibid*., Sec. 2). The Act differentiates between "Initiative" and "Referendum" in the following manner:

1. "Initiative" is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose. There are three (3) systems of initiative, namely:
    a. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
    b. Initiative on Statutes which refers to a petition proposing to enact a national legislation;
    c. Initiative on Local Legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.

    "Indirect Initiative" is the exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action.
2. "Referendum" is the power of the electorate to approve or reject a legislation through an election called for the purpose. It may be of two classes, namely:
    a. Referendum on Statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and
    b. Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies (*Id*., Sec. 3).

Section 5 thereof enumerates the requirements, namely:

1. To exercise the power of initiative or referendum, at least ten *per centum* (10%) of the total number of the registered voters, of which every legislative

district is represented by at least three *per centum* (3%) of the registered voters thereof, shall sign a petition for the purpose and register the same with the Commission.

2. A petition for an initiative on the 1987 Constitution may be exercised only after five (5) years from the ratification of the 1987 Constitution and only once every five (5) years thereafter.
3. The petition shall state the following:
    a. Contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed, as the case may be;
    b. The proposition;
    c. The reason or reasons therefor;
    d. That it is not one of the exceptions provided herein;
    e. Signatures of the petitioners or registered voters; and
    f. An abstract or summary in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the petition.
4. A referendum or initiative affecting a law, resolution or ordinance passed by the legislative assembly of an autonomous region, province or city is deemed validly initiated if the petition thereof is signed by at least ten (10%) *per centum* of the registered voters in the province or city, of which every legislative district must bee represented by at least three (3%) *per centum* of the registered voters therein; provided, however, that if the province or city is composed only of one (1) legislative district, then at least each municipality in a province or each *barangay* in a city should be represented by at least three (3%) *per centum* of the registered voters therein.
5. A referendum or initiative on an ordinance passed in a municipality shall be deemed validly initiated if the petition therefor is signed by at least ten (10%) *per centum* of the registered voters in the municipality, of which every *barangay* is represented by at least three (3%) *per centum* of the registered voters therein.
6. A referendum or initiative on a *barangay* resolution or ordinance is deemed validly initiated if signed by at least teen (10%) *per centum* of the registered voters in the *barangay*.

Section 11 of the Act provides that indirect initiative may be availed of by any duly accredited people's organization by filing a petition with the House of Representatives, and other legislative bodies. The petition should contain a summary of the chief purposes and contents of the bill that the organization proposes to be enacted into law by the legislature.

Finally, Section 4 thereof states that the power of initiative and referendum may be exercised by all registered voters of the country, autonomous regions, provinces, cities, municipalities and *barangays*.

3. Party-List System

Another mechanism provided for in the 1987 Constitution is the party-list system. This was introduced in order to encourage the growth of a multi-party system, because a two-party system has been found to create a monopoly of political power by the two parties which prevented popular participation in governance. Those qualified to participate in the party-list system are "registered national, regional, and sectoral parties or organizations" (1987 Constitution, Sec. 5(1), Art. VI). Explaining this phrase, Commissioner Monsod said: "[A]ny sector or any party may register provided it meets the criteria of the Commission on Elections and the Constitution on prohibited organizations and the requirements for registration" (II Record 253). To be able to participate in the system, the organization need not be a party (Bernas, p. 628).

The party-list representatives will constitute "twenty *per centum* of the total number of representatives including those under the party list" (1987 Constitution, Sec. 5(2), Art. VI). Thus, under a total membership of 250, a fully operative party-list system would mean 200 district representatives and 50 party-list representatives (V RECORD 646-666).

A member of the Constitutional Commission comments that "[a]lthough the Constitution does not set down the mechanics for the operation of the system but leaves these to ordinary legislation, the 1986 Constitutional Commission had a clear understanding of the rough outlines of how the system should operate" (Bernas, p. 628). The Constitutional Commission outlines the process in this manner: "Parties or organizations desiring to participate in the party-list system register themselves together with the party's or organization's list of nominees for party-list representatives. The maximum number will be prescribed by law and the nominees will be arranged by the party or organization according to an order of priorities. In every election for the House of Representatives, each voter casts two votes: one for the district representative of his or her choice and another for the party or organization of his or her choice. The votes cast for the parties and organizations are totaled

nationwide. The number of party-list seats a party or organization will get will depend on the number of votes it receives in proportion to the total number of votes cast nationwide" (II Record, 253-254).

Republic Act No. 7941, the current party-list law, was enacted in 1995. It provided for representation of party-list representatives in the House of Representatives, thereby enabling election of marginalized sectors and parties, such as labor, peasant, urban poor indigenous cultural communities, women, and youth, in the legislature. (The case of *Veterans Federation Party, etc. v. COMELEC,* G.R. No. 136781, an En Banc Supreme Court decision, discussed the twenty per cent allocation for party-list representatives as a mere ceiling. The Court held 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 in the House of Representatives reserved for party-list representatives.")

4. Clean Air Act

Meanwhile, Republic Act No. 8749 or the "Clean Air Act" specifically ensured public participation in the provisions requiring the formulation of an Integrated Air Quality Improvement Framework and an Air Quality Control Plan. These shall involve the Government and the private sector, including non-governmental and people's organizations, in prescribing emission reduction goals and in monitoring emissions from both mobile and stationary sources of pollution. Citizen's suits may now be brought against any person, including the concerned government agencies for any violation or failure to comply with the provisions of the Clean Air Act, and for any regulations issued inconsistent with this Act. Very significant is a novel provision allowing the filing of suits and Strategic Legal Action Against Public Participation (SLAPP suits) where a case is brought as citizen's suit or against the person or government agency implementing the Act, an immediate investigation shall now be made to determine whether such legal action has been filed to harass, vex, exert undue pressure or stifle such legal resources of the person complaining of or enforcing the provisions of this Act.

5. Civil Society Participation

In a country that is plagued by massive poverty and by both natural and man-made disasters, various movements have sought to confront the power structure and raise alternative courses of action to the level of public debate. Poverty and disasters have a way of

exposing the inadequacies of the state while at the same time encouraging a level of voluntarism from the citizenry. Within a society that is in constant debate among those who traditionally wield state power as well as between them and those who are marginalized, these realities are occasions for further clarification of contending perspectives and contradictory interests (K. Constantino-David, "From the Present Looking A History of Philippine NGOs," *Organizing for Democracy NGOs, Civil Society, and the Philippine State* (1998), p. 26).

There are formal institutional mechanisms for direct influence at the policy level. The most common of these is participation in national councils or inter-agency, cross-sectoral committees, Cabinet clusters, etc., responsible for the formulation of policies addressing broad national concerns. For instance, the involvement of civil society groups was a key feature in the formulation of the Social Reform Agenda, the Peace Agenda, and Philippine Agenda 21 which sets the national agenda for "sustainable development." The Legislative-Executive Development Advisory Council (LEDAC) also gets inputs from civil society. All of these have given citizens' groups direct access to members of Cabinet and other senior officials of the executive branch and allowed them to have some influence on the making of policies and programs (A. B. Brillantes, "State-Civil Society Relations in Policy-Making Civil Society and the Executive," *State-Civil Society Relations in Policy-Making* (1998), p. 23).

To provide additional venues through which civil society could have direct access to government, some national departments have set up offices to liaison with citizen's groups. Some have set up "NGO desks" in an effort to institutionalize the involvement of these groups at the policy, program or even project level. Among the national departments that have set up such desks are the departments of agrarian reform, environment and natural resources, agriculture, health, interior and local governments, social welfare, and justice (*Id*., p. 24).

In the legislature, civil society participation is institutionalized in the appointment of sectoral representatives in Congress and in law-making bodies. Sectors which are represented consists mainly of the marginalized—the urban poor, women, peasants, indigenous cultural communities, etc. The goal is to empower these sectors by giving them access to law-making bodies so they can influence the formulation of laws and policies (*Id.*).

The generic term NGO is used as a catchall phrase to designate entities that do not fall into traditionally accepted categories such as the academe, church, business, and media. The following are the range of groups lumped together under the heading NGO:

1. *Individuals or NGIs (Non-governmental individuals).* They include the academics, religious leaders, and various professionals working outside an organizational structure.
2. *Membership-based Organizations*. They are voluntary membership organizations that can be further subdivided into PACOs (Professional, academic, and civic organizations) and POs (Grassroots people's organizations). POs can be further subdivided into GRIPOs (Government-run and initiated POs) and GUAPOs (Genuine, autonomous people's organizations). The GUAPOs have organized themselves beyond the community and/or workplace through sectoral and geographic alliances.
3. *Ideological Forces*. They are organizations challenging state power by articulating alternative ideological paradigms — communism, national democracy, popular democracy, socialism, democratic socialism, social democracy, and liberal democracy.
4. *Institutions/Agencies*. These are formally constituted grassroots support organizations that operate with full-time staff and provide a range of services, from direct services in communities to support services such as legal, medical, and research work.
5. *5DJANGOs (Development, justice, and advocacy NGOs).* They perform a mixture of direct and support service functions with and for GUAPOs.
6. *TANGOs (Traditional NGOs).* They are charitable, welfare, and relief organizations, performing valuable services for the poor.
7. *FUNDANGOs (Funding agency NGOs).* These foundations and grant-giving organizations are linked to grassroots organizations primarily by providing financial and other forms of support.
8. *MUNGOs (Mutant NGOs).* They are essentially extensions of the state or personal interests, as they are usually set up by politicians and government functionaries (Constantino-David, pp. 27-30).

Role in Society

The term NGO was first used by the United Nations (UN) in 1953, to refer to those "non-state organizations that interface with the UN agencies and serve as their sounding boards. In the development world, an NGO is defined as "a non-membership organization formed for providing welfare and development services to the poor ." They are private and

non-profit, and operate within a legal framework. They are most often established as relatively small organizations, possessing some kind of specialist knowledge, which services and acts on behalf of interest-based organizations or part of the population. Their emphasis is largely on people's participation (Melegrito, pp. 233-234).

Although the Constitution does not define NGOs, it clarifies the meaning of people's organizations (POs) as "*bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure" (Art. XIII, Sec. 15 (2). Likewise, POs are "membership-based associations that organize and mobilize members in support of collective welfare goals." Some examples would be farmer organizations, community organizations, and cooperatives, which are set up primarily to promote the interests of their members. They are committed to securing benefits for their particular membership though they still articulate their aims and objectives within the more general development discourse (*Id*., at 235).

NGOs proliferate when the social, political and economic conditions are conducive to their formation (J. V. Tigno, "People Empowerment: Looking into NGOs, POs and Selected Sectoral Organizations," *Democratization: Philippine Perspectives* (1997), p. 119). They emerge in areas where there is government intervention but unable to deliver the basic services due to resource limitations exacerbated by bureaucratic problems of red tape, graft and corruption, etc. Thus, they constitute a "private sector alternative" to government service delivery and an alternative to supply of services through the for-profit sector. In the same manner, they supplement government's social good delivery mechanisms (Melegrito, p. 237).

NGOs also play a role in the privatization of policy implementation that benefits them and local governments. In the interest of cost-saving and effective policy implementation, the government may contract NGOs to carry out services or offer subsidies and grants to them to do so. On their part, they seek out government funding to fulfill their stated objectives (*Id*.).

A more significant role NGOs and POs play is in the political arena. Their participation in Philippine politics dates back to the 1880s and Spanish colonial rule (G. Clarke, The Politics of NGOs in South-East Asia Participation and Protest in the Philippines (1998), p. 66). They provide mechanisms for participation and representation by (1) articulating issue-based platforms; and (2) mobilizing groups and individuals that the political party system has proved unable or unwilling to reach. They serve as "mediating structures", standing between citizenry and government bureaucracy, by affording institutional means for mediating between conflicting interests and social values of society's

various sectors. Furthermore, they view policy advocacy as one of their primary responsibilities. Often, they act as "pressure groups" through which the people express opinions and make policy demands, and through which they work within the government in its formulation and implementation of public policy. More specifically, they actively participate in the electoral arena by organizing political blocs, such as the Movement for Popular Democracy (MPD), *Bukluran Para Sa Ikauunlad Ng Sosyalistang Isip At Gawa* (BISIG), and *Demokratiko Sosyalistang Koalisyon* (DSK). Finally, they help to bring critical development issues and concerns into open public debate and to the attention of policy makers. Examples of these groups include environmental NGOs which lobby government to protect habitats and species, and social welfare organizations which press government officials to adopt new programs and allocate more funding for existing projects (Melegrito, pp. 245-249).

E. Decentralization, Devolution, and People's Participation in Local Governance

1. Centralization in Governance

Pre-Spanish Philippines was characterized with geographical particularism and political decentralization with the population living in scattered and isolated communities throughout the islands formed by independent, fragmented and ethnically diverse *barangays*.

The headsman of each *barangay* known as *datu* assumed his position either through inheritance, wealth or physical powers. The *datu* held absolute power over the people of the *barangay* who were considered to be his subjects; he could treat or dispose of them as he wished although his decisions were somehow limited by customary practices. The elders gave counsel to the *datu* but these may be disregarded. Some *barangays* formed into confederations for mutual aid or protection with a dominant *datu* ruling the confederation. The native government did not have any experience in decentralization of power and in popular participation in governance.

Spain established both a centralized authority and specific territorial boundaries. *Barangays* were assimilated into the colonial governance by the appointment of the local chiefs as *cabezas de barangay* and *gobernadorcillos*, who functioned as allies and represented the colonizers by enforcing the latter's authority over the inhabitants. Local administration was thus oligarchial rather than democratic. Governance was monopolized by a small group of "bosses" in the community. This system was known as *caciquism* (Phelan, Hispanization in the Philippines (1959), p. 127). The native ruling class called *principales*,

who collaborated with Spanish authorities, gained prestige and influence, extended some protection against excessive colonial exploitation, but oppressed their subordinate for personal gain (*Id*. at 133). During three centuries of colonial rule, the islands and *barangays* became a national entity under centralized Spanish colonization. Spain brought the Philippines within the influence of western civilization (*Id*. at 127). The exploitative, oppressive colonial rule, however, gave rise to an emergent nationalism expressed in grievances and numerous revolts against Spanish abuses. These culminated in a national revolution against Spain under the leadership of the *ilustrados* (Filipino middle class).

Dues and tributes imposed on the people were used for the benefit of the Spanish communities and very little went to the improvement of native conditions. Colonial law required the natives to provide free labor and labor with nominal compensation for Spanish needs (*polo y servicios*), whether for local needs (road building, ship building, and galleon trade requirements) or for military service in Spanish expeditions. These resulted in inhuman treatment, deaths and break up of families.

The Philippine revolution of 1896 established the first Philippine Republic in Asia, adopted a Constitution embodying western-style liberal democracy; independence, popular sovereignty, popular participation and representation, and civil and political rights. It was aborted by the Americans who replaced the Spaniards as colonial masters. Many high officials of the First Philippine Republic who had also served the Spanish colonial government capitulated and collaborated with the Americans. They were rewarded with appointments to important positions under the new American regime. By a series of organic acts, a pattern of increased political participation of Filipinos in all branches of government ordained a rule of law. A process of de-colonization culminated in Philippine political independence in 1946 after 50 years.

American colonial policy established a system of public school education and as a result, the 'electoral process system of party government, jurisprudence doctrines of constitutionalism and theories of administrative management' developed (O. D. Corpuz , The Roots of the Filipino People (1989) p. 69).

Initially, Spain continued the *barangay* system instead of abolishing it. The *datu* was left in authority but he became the agent of Spanish authority. Later, the power of the *datu* was weakened considerably. A *cabeza de barangay* became head of the *barangay* whose duty was to collect taxes in the *barangay*, later named *barrio*, for the *pueblo* or group of *barangays* and the central administration. He was also expected to inform the authorities

of what happens in the *barangay*. The *barrio* inhabitants resented him as a tax collector and agent of the Spanish authorities.

The Spanish colonial administration changed the *barangay* into the barrio, and its head, the *datu* into a *cabeza de barangay*. The municipality or group of barrios, became the *pueblo* headed by a *gobernadorcillo* and a group of pueblos called *alcadia* were headed by the *alcades mayores*; the cities which were urbanized areas were called *cabildos*. The Americans renamed these units into the barrio, city, municipality and province and maintained a highly centralized system of local government under the control of the colonial administration.

2. Decentralization

a. Definition

Decentralization refers to the degree to which the powers of the national government are shared with or transferred to intermediate or local governments. The process entails a downward delegation, i.e., from the central government to the intermediary governments. Municipal governments may also be recipients of decentralized powers. Its purpose is to establish administrative efficiency and/or to promote local autonomy. Either way, it impacts on the planning, decision-making, and administrative and fiscal components of governance. In unitary systems of government, the process is much more limited, involving a delegation of powers that are inherently national in source (A. Ocampo-Salazar, "Philippine Local Governments: Toward Local Autonomy and Decentralization," *Politics & Governance Theory & Practice in the Philippine Context* (1999), p.125).

Local autonomy is one of the main objectives of decentralization. It refers to the "capability of local governments to elect their officials, to exercise well-delineated and definite powers and functions, and to tax." It is a "state of self-determination and a measure of self-governance achieved by sub-national units when the powers to control local affairs and make decisions are exercised with a considerable degree of independence from the national government" (*Id*. at 126).

b. 1973 Constitution

Decentralization efforts begun from 1946-1952 but reverted to centralization when martial law was proclaimed in 21 September 1972. While control of local government units was lodged in the national government represented by the President as martial law

administrator, several changes were introduced during the martial law period. The *barangays* and their *barangays* assemblies converted by Presidential Decree into citizens' assemblies. These became formally the units of consultation by the national government on national concerns. Presidential decrees established the *Katipunan ng mga Barangay* (League of Barangay Councils), the *Kabataang Barangay Pampurok* (League of Barangay Youth Organization). *The Katipunan ng mga Sanggunian* (League of Provincial and City Councils) and the *Kabataang Pambarangay* (Barangay Youth Organization).

Decentralization of powers of the national government was largely achieved by the adoption of constitutional provisions on local autonomy and the devolution of national functions to local government units, and the enactment of a constitutionally mandated local government code.

Under the martial law, the 1973 Constitution was adopted. Formally, it guaranteed local autonomy, and local governments were given the power to create their own sources of revenues and to levy taxes. It encouraged local units to pool their resources in development efforts by providing that "local government units may group themselves or consolidate or coordinate their efforts, services and resources for purposes commonly beneficial to them." The Constitution induced greater participation of citizens in matters that directly affected them by requiring the approval of the inhabitants in the creation, abolition and alteration of boundaries of local government units. It also authorized the *Batasang Pambansa* to enact a Local Government Code (Batas Pambansa Blg. 337) which provided a system of recall of local officials and granted supervising powers to higher local government units. Though it retained the structure of local governments, central control of these units was still maintained.

c. 1987 Constitution

After the February 1986 Revolution, the 1987 Constitution continued and promoted the policy on local autonomy. It laid down the constitutional basis for the preservation and continuation of the existing structures of local governments. It provided that the territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities and *barangays*, and the autonomous regions in Muslim Mindanao and the Cordilleras (1987 Constitution, Section 1, Art. X). Further, the Constitution granted these territorial and political subdivisions local autonomy (*Id.*, Sec. 2). Pursuant to this, Congress shall enact (and has in fact enacted) a local government code which would afford a more responsive and accountable local government structure instituted through a system of

decentralization with effective systems of recall, initiative, and referendum (*Id.*, Sec. 3). Likewise, Congress has increased the financial resources available to local government units by (1) broadening their taxing powers (*Id*., Sec. 5); (2) allotting them a just share in the national taxes, i.e., internal revenue allotment (IRA) (*Id*., Sec. 6); and (3) providing an equitable share from the national wealth exploited in their area (*Id*., Sec. 7), e.g., mining, fishery, and forestry charges. They were also granted sectoral representation for their legislative bodies (*Id*., Sec. 9). Finally, these local governments shall be under the general supervision of the President (*Id*., Sec. 4).

3. Devolution

a. Definition

The decentralization strategy in the Philippines is devolution. A transfer of responsibility for service delivery and regulatory functions was effected. This takes up different forms in the 1991 Code (Ocampo-Salazar, p. 148). In fact, a devolution master plan (It is a critical document in the implementation of the Code, entitled, *Master Plan (1993-1998) for the Sustained Implementation of the Local Government Code of 1991*) has been formulated after intensive consultations with various concerned stakeholders.

b. 1991 Local Government Code: Basic Features

It was Republic Act No. 7160, otherwise known as the Local Government Code of 1991, enacted pursuant to the 1987 Constitution, which operationalized the decentralization of government functions to local governments which before were lodged in the national government, and prescribed their functions and relations with each other and with the national government. It authorized a decentralization of government powers and effected a systematic transfer of regulatory powers, services and resources from the national government to the local government.

The Code drastically changed the centralist system of governance in the Philippines. It (1) devolved basic services from the central government to the local government at all levels; (2) increased financial support to local government units (LGUs) by broadening their taxing powers and raising their share of internal revenue collections from 20% to 40%; and (3) institutionalized people's participation in local governance. The Constitutionally-prescribed system of decentralization of local government structure was accomplished by devolving powers to LGUs to provide basic services in health (field health, hospital and other

tertiary services); welfare; environment (community-based forestry projects); agriculture (agricultural extension and on-site research); public works (funded by local funds); education (school building program); telecommunications; housing; and investment support. Likewise, the Code devolved to LGUs the responsibility to enforce certain regulatory powers such as the reclassification of agricultural lands; enforcement of environment laws; inspection of food products and quarantine; enforcement of the National Building Code; operation of tricycles; processing and approval of subdivision plans; and establishment of cockpits and holding of cockpit fights. Specifically, even *barangays* were imposed responsibilities such as the distribution of seedlings to farmers, the maintenance of day care centers, and if feasible, *barangay* health centers. Finally, the Code effected the development of more entrepreneurial-oriented LGUs by furnishing the mechanisms by which they can enter into build-operate-transfer arrangements (BOT) with the private sector, float bonds, obtain loans from local private institutions, etc. (A. B. Brillantes Jr., "Local Governments in a Democratizing Polity: Trends and Prospects," *Democratization: Philippine Perspectives* (1997), pp. 84-85).

The devolution of services necessitated the transfer of personnel, appropriations and equipment of the national offices previously undertaking them, the power to appoint personnel and their heads providing the services, and the responsibility of service delivery and financing. Devolved financing services necessitated increased share in internal revenue allotments. Shares were computed on the basis of population, area, equal sharing and level of local autonomy (P. D. Tapales, "Decentralized Governance in the Philippines: Lessons from Three Local Areas," *The Local Government Code: An Assessment* (1999), p. 226). Below is a table of devolved services performed by the different levels of local government as prescribed by the 1991 Local Government Code.

Table 1. Devolved Basic Services

BARANGAY	MUNICIPALITY	PROVINCE	CITY
Agricultural support services	Agriculture & fishery extension and on-site research services & facilities	Agricultural extension and on-site research services & facilities; organization of farmers & fishermen's cooperatives	See municipality & province (~)
Health services	Same; Health centers & clinics	Health services, including hospitals & tertiary health services	~
Social welfare services	Same	Same, including rebel returnees & evacuees, relief operations, population development services	~
General hygiene & sanitation	Same		~
Solid waste collection	Solid waste disposal system or environmental management system		~
Katarungang			~

pambarangay			
Maintenance of roads, bridges & water supply systems	Roads, bridges, communal irrigation, artesian wells, drainage, flood control	See municipality	~
Infrastructure facilities (e.g. plaza, multi-purpose hall)	Municipal buildings, cultural centers, public parks		~
			~
Information & reading center	Information services, tax & marketing information systems, and public library	Upgrading & modernization of tax information & collection services	
Satellite or public market	Public markets, slaughterhouses		~
	Implementation of community-based forestry projects	Enforcement of forestry laws, limited to community-based forestry projects, pollution control law, small-scale mining law, mini-hydroelectric projects for local purposes	~
	School buildings		~
	Public cemetery		~

	Tourism facilities	Tourism development & promotion programs	~
	Police, fire stations, jail	Same	~
		Industrial research & development services	~
		Low-cost housing & other mass dwellings	~
		Investment support services	~
		Inter-municipal telecommunication services	Adequate communication & transportation facilities

Source: 1991 Local Government Code

4. People's Participation in Local Governance

Participation in governance refers to the "broadening of representative democracy through the utilization of venues within the state to actualize genuine people's participation in the formal structures of government primarily through actual presence in the legislative and executive department" (M. L. F. Melegrito and D. J. Mendoza, "NGOs, Politics, and Governance," *Politics & Governance Theory & Practice in the Philippine Context* (1999), pp. 253-254).

a. Local Initiative, Referendum, and Recall

The 1991 Local Government Code defines local initiative to be the "legal process whereby the registered voters of a local government unit may directly propose, enact, or

amend any ordinance" (1991 Local Government Code, Sec. 120). Section 122 thereof outlines the procedure to be followed:

a. Not less than one thousand (1,000) registered voters in case of provinces and cities, one hundred (100) in case of municipalities, and fifty (50) in case of *barangays* may file a petition with the *sanggunian* concerned proposing the adoption, enactment, repeal, or amendment of an ordinance.
b. If no favorable action thereon is taken by the *sanggunian* concerned within thirty (30) days from its presentation, the proponents, through their duly authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the *sanggunian* concerned.
c. The proposition shall be numbered serially starting from Roman numeral I. The Commission on Elections (Comelec) or its designated representative shall extend assistance in the formulation of the proposition.
d. Two (2) or more propositions may be submitted in an initiative.
e. Proponents shall have ninety (90) days in case of provinces and cities, sixty (60) days in case of municipalities, and thirty (30) days in case of *barangays*, from notice mentioned in subsection (b) hereof to collect the required number of signatures.
f. The petition shall be signed before the election registrar, or his designated representatives, in the presence of a representative of the proponent, and a representative of the *sanggunian* concerned in a public place in the local government unit, as the case may be. Stations for collecting signatures may be established in as many places as may be warranted.
g. Upon the lapse of the period herein provided, the Comelec, through its office in the local government unit concerned, shall certify as to whether or not the required number of signatures has been obtained. Failure to obtain the required number defeats the proposition.
h. If the required number of signatures is obtained, the Comelec shall then set a date for the initiative during which the proposition shall be submitted to the registered voters in the local government unit concerned for their approval within sixty (60) days from the date of certification by the Comelec, as provided in subsection (g) hereof, in case of provinces and cities, forty-five (45) days in case of municipalities, and thirty (30) days in case of *barangays*.

The initiative shall then be held on the date set, after which the results thereof shall bee certified and proclaimed by the Comelec.

However, the power of local initiative may not be exercised more than once a year. It shall extend only to subjects or matters within the *sanggunian's* legal powers to enact (*Id*., Sec. 124).

Local referendum is defined as the "legal process whereby the registered voters of the local government units may approve, amend or reject an ordinance enacted by the *sanggunian*." It shall be "under the control and direction of the Comelec within sixty (60) days in case of provinces and cities, forty-five days in case of municipalities and thirty (30) days in case of *barangays*." Finally, the Comelec shall "certify and proclaim the results of the referendum" (*Id*., Sec. 126).

Recall is a power vested in the registered voters of a local government unit to officially remove a local elective official, even before he finishes his term, due to loss of public confidence in him (*Id*., Sec. 69). It may be initiated either by a preparatory legislative assembly or by the registered voters of the local government unit to which the elective official subject to recall belongs (*Id*., Sec. 70). An election shall be conducted within thirty (30) days in the case of *barangay*, city or municipal officials, and forty-five (45) days in the case of provincial officials, after the filing of a valid resolution or petition for recall with the appropriate local office of the Comelec. In this election, the official(s) sought to be recalled would automatically be considered a duly registered candidate(s) to the same position, and may be voted upon (*Id*., Sec. 71).

b. Local Development Councils

Sectoral representation of women and workers in local councils was also provided by the Code. Active participation in governance is promoted by creation of local special bodies (Health Board, School Board, Peace and Order Council and Local Development Council) through representatives or non-governmental organizations (NGOs) and people's organizations (POs). Local Development Councils at all levels have provided for at least ¼ of their membership drawn from NGOs and POs (Tapales, pp. 226-227).

c. Civil Society (NGOs and POs)

(i) Constitutional Basis

Interaction between civil society and government in developmental planning and strengthening local autonomy has its formal basis in Article X, Section 14 of the Constitution which states:

> The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for the purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

The participation of the people in democratic governance greatly expanded through the mediation of civil society structures which had been given institutional recognition by the 1987 Constitution. This was made possible by increasing and expanding space for democratic and consultative interaction between organs of the state and civil society. The democratic framework operationalized their venues and mechanisms provided for in the Constitution and the laws which require consultative processes and mandate active participation of civil society in governance and policy making. The participation of NGOs and POs in the decision-making process has become constitutional directives in the following provisions:

The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation (Art. II, Sec. 23, 1987 Constitution).

The State shall respect the role of independent peoples' organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means (*Id*., Art. XIII, Sec. 15(1).

The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be

abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms (*Id*., Art. XIII, Sec. 16).

(ii) Statutory basis

The policy of the people's participation in democratic governance is specifically implemented in the 1991 Local Government Code which not only provides for sectoral representation in the local legislative council (*sanggunian*) but also authorizes LGUs to undertake project jointly with NGOs and POs for development and for the promotion of the welfare of communities:

> Section 34. *Role of People's and Non-Government Organizations.* – Local government units shall promote the establishment and operation of people's and non-governmental organizations to become active partners in the pursuit of local autonomy.
>
> Section 35. *Linkages With People's and Non-Governmental Organizations*. – Local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.
>
> Section 36. *Assistance to People's and Non-Governmental Organizations*. – A local government unit may, through its local chief executive and with the concurrence of the *sanggunian* concerned, provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.

d. Effect

Government policies on decentralized governance have activated local leaders and members of the local communities to undertake development programs for sustainable development at the grassroots level. Empowered communities with the support of decentralized governments have led to the effective delivery of services to the people and

have given rise to the feeling of the people that the quality of their lives improved, and their joint efforts have contributed to their individual well-being.

F. Indigenous Peoples Rights to Participation in Governance

1. Pre-Spanish Colonization

Indigenous peoples constitute one of the poorest sectors of Philippine society, have virtually no voice in the adoption and implementation of national laws and policies and receive the least protection against economic exploitation. In *baranganic* society, there was private property in land. The chiefs merely administered the lands in the name of the *barangay* and each individual participated in the community ownership of the soil and worked the land as a member of the *barangay* (Constantino, p. 38). Usufruct regulated the development of lands. The leaders, such as the chieftains and elders enjoyed the greater economic benefits subject however to their responsibility to protect the community from danger (S. K. Tan, *A History of the Philippines* (1997), pp. 43-44).

2. Spanish Colonization

During the Spanish colonization, the main effort was to collect the native population Filipinos living in barangays scattered along water routes and river banks into settlements called *reducciones* to make them compliant subjects of the Spanish crown and ultimately, to adopt Spanish culture and civilization (Agoncillo, p.80). All lands of the barangay were declared to be crown lands or *realengas*, belonging to the Spanish King. In Spanish colonial policy and law, the king was the owner of everything of value in the colonies, and the natives were deprived of their ancestral rights to land (O. D. Corpuz, *The Roots of the Filipino Nation* (1989), pp. 277-278).

3. American Regime

Upon the advent of American rule, the President of the United States enjoined the civil government then established that in dealing with the uncivilized tribes of the islands, it should maintain their tribal organization and government, and pursue a policy of assimilation (*People v. Cayat*, 68 Phil. 12, 17 (1939). A law was passed creating the Bureau of Non-Christian Tribes to do research to determine the most practicable means for bringing about their advancement in civilization and prosperity. The 1935 Constitution was adopted, pursuant to the Philippine Independence Act of the United States Congress, but did not

provide a policy towards the indigenous people. Its main concern was the preservation of natural resources for all Filipinos. In 1957, the Congress passed RA 1888 creating the Commission on National Integration (CNI), charged with the function of rendering the integration of the national cultural minorities into the body politic similar to the colonial policy of assimilation of the Americans. This policy was met with resistance because several ancestral lands were titled by Christian settlers, and indigenous peoples were displaced by projects undertaken by the national government (The construction of the Ambuklao and Binga dams in the 1950's resulted in the eviction of hundreds of Ibaloi families — Cerilo Rico S. Abelardo, Ancestral Domain Rights: Issues, Responses, and Recommendations (1993), p. 92).

4. Martial Law

The 1973 Constitution provided that "the State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of the state policies" (1973 Constitution, Sec. 11, Art. XV). An agency was tasked to integrate the ethnic group that sought integration into the larger community and at the same time, protect the rights of those who wish to preserve the original life ways beside the larger community (Presidential Decree Nos. 1017 and 1414). The Ancestral Lands Decree (Presidential Decree No. 410) provided for the issuance of land occupancy certificates to members of the National Cultural Communities who were given up to 1984 to register their claims. In 1979, the Commission on the Settlement of Land Problems (Executive Order No. 561) provided a mechanism for the expeditious resolution of land problems involving several settlers, landowners and tribal Filipinos. From 1974 to early 1980, water projects, timber concessions, plantations, cattle ranching and other projects of the national government led to the eviction, dispossession, displacement of indigenous peoples from their land but also to the reduction and destruction of their natural environment (C. MacDonald, Indigenous Peoples of the Philippines: Between Segregation and Integration, p. 351).

5. Post February 1986 Revolution

After the February 1986 Revolution, the 1987 Constitution had six provisions which insured the right of tribal Filipinos to preserve their way of life and expressly guaranteed the rights of tribal Filipinos to their ancestral domains and ancestral lands. Section 22, Article 11 of the Constitution states that the state "recognizes and promotes the rights of indigenous peoples within the framework of national unity and development," while Section 5, Article

XII explicitly narrates that the State "shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being." These directions were implemented by the Indigenous Peoples Rights Act (IPRA) of 1997 by providing and recognizing (a) civil and political rights of all members of indigenous cultural communities; (b) their social and cultural rights; (c) recognizing and providing a general concept of indigenous property right and granting title thereto; and (d) creating a National Commission on Indigenous People to coordinate implementation of the law and to issue Certificates of Ancestral Domain/Land Titles (M. M. V. Leonen, "Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy," 1998 Philippine Peace and Human Rights Review (1998), p. 161).

The civil and political rights recognized by law consist mainly of the right to non-discrimination of indigenous peoples which is to accord to them the rights and protection and privileges enjoyed by the rest of the citizenry, including the employment rights, opportunities, basic services, educational and other rights and privileges available to every member of society (Republic Act No. 8371, Sec. 21 (1997).

The law also recognizes the right of indigenous peoples to self-governance and determination, and respects the integrity of their values, practices and institutions (*Id*., Sec. 13). When disputes involve indigenous peoples, customary law will be used to resolve the dispute (*Id*., Sec. 65). Customary law will be the set of norms that would be used in case of disputes about boundaries and the tenurial rights with respect to ancestral domains, and gives the choice of dispute settlement process to the community (*Id*., Sec. 63).

In relation to indigenous culture, the State is required to respect, recognize and protect the right of indigenous peoples to preserve and protect their culture, traditions and institutions; and to consider these rights in the formulation and application of national plans and policies (*Id*., Sec. 29).

Republic Act No. 8371, otherwise known as "The Indigenous Peoples Rights Act of 1997" supplements the private vested rights of indigenous peoples and recognizes the rights acquired under Section 48 of Public Land Act. It also creates others sources for acquiring lands as well as adopts a different concept of ownership (Leonen, p. 176). It acknowledges the private but community property nature of ancestral domains. Aside from not being a proper subject of sale or any other mode of disposition, ancestral domain holders may claim ownership over the resources within the territory, develop the land and natural resources, stay in the territory, have the rights against involuntary displacement, regulate the entry of

migrants, have rights to safe and clean water, claim parts of reservations and use customary law to resolve their conflicts (Republic Act No. 8371, Sec. 7, pars. (a) to (h).

Ancestral land owners do not have all the rights and obligations of ancestral domain holders (*Id*., Sec. 9). They have the right to transfer land and property among their members, subject to customary laws and traditions, and to redeem land transferred to any non-members for cause (*Id*., Sec. 8).

Republic Act No. 8371 introduces a new set of rules for indigenous peoples. By legislating these new concepts and rules, the determination of legal rights and duties have become more definite: Rights to ancestral domains of indigenous peoples are more authoritatively determined. The government agencies which would process their claims and decide disputes are now clearly and specifically identified. Policies towards indigenous peoples are clearer, and strategies for their realization can be formulated and implemented (Leonen, p. 201).

Republic Act No. 7586 or the "National Integrated Protected Areas System Act of 1992" established a National Integrated Protected Areas System (NIPAS) for the classification and administration of all designated protected areas. These protected areas refer to the identified portions of land and water set aside for their unique physical and biological significance, and protected against destructive human exploitation (Republic Act No. 7586, Sec. 4). A significant part of this law pertains to the recognition accorded to ancestral lands and customary rights and interests arising from them. The Department of Environment and Natural Resources (DENR), under whom the control and administration of NIPAS is placed, does not have the power to evict indigenous communities from their land nor resettle them to another area without their consent. More importantly, all rules and regulations to be adopted to govern ancestral lands would be subjected to notice and hearing, whereby members of the indigenous community concerned can participate (Republic Act No. 7586, Sec. 13).

The use of modern law in regulating behavior of indigenous peoples and shaping their destiny under a regime of justice and non-exploitation has now become open and accessible to indigenous communities for their development and progress.

G. Conclusion

National development in the Philippines has undergone, in certain critical areas, an extensive process of evolution, from a governance characterized by absolute rule, personalistic ascendancy, and dependency to a participatory democracy. Centuries of colonialism formed a dichotomy of Philippine culture: cultural majority and cultural minority.

On the one hand, the cultural majority adopted and observed the rules of the Philippine legal system, and on the other, the cultural minority upheld its customary law. Thus, divisiveness and distrust developed between these two groups.

However, the gap between the center (government/cultural majority) and the periphery (citizens/cultural minority) was filled by the advent of an intermediary. Never before has the clamor for a more active participation in governance been felt than in the recent years, when the inadequacies and failures of the center-periphery system were experienced by the basic sectors of society. The need for decentralization and infusion of "fresh blood" other than the bureaucracy paved the way for the growth of local autonomy and a more active and vigilant civil society. The once government-dependent society is being transformed to a more dynamic force towards a truly democratic nation. People empowerment has started at the grassroots level, and growing towards unity and cooperation among the Filipinos.