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The Local Government Code of 1991: Opportunity and Challenge

Joel Pagsanghan



Decentralization may be defined as a state or condition in a governmental system where there is dispersal of power or authority from the center (Brillantes 1987, 131). Political decentralization, also known as devolution, involves the transfer of power and authority from the national government to local government units (LGUs). Administrative decentralization, referred to as deconcentration, is the delegation of functions from national line departments to regional or field units. Brillantes (1987, 131) cites four reasons why decentralization should be pursued. First, it enables maximum participation of the people in decision making, resulting in decisions which are more responsive to the people's needs. Second, it promotes greater self-reliance among the lower levels of government. Third, it hastens decision making processes by doing away with red tape and delays associated with going back and forth from central to local government bureaucracies. Lastly, it decongests central government from various functions which can well be done at the lower levels.

The case for decentralization is nowhere clearer than in the Philippines, where centuries of centralized governance failed to bring development to rural areas. Both the Spanish and American colonizers used centralized government as a tool for maintaining control over the country. During the Commonwealth period, the 1935 Constitution placed local governments under the "general supervision" of the President. Progress towards decentralization was made after independence was granted in 1946. Laws such as Republic Act 2264, the Barrio Charter of 1959 and the Decentralization Act of 1967 broadened the decision making and fiscal powers of local govern-

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ments. Political centralization resurfaced with the Marcos regime. Authoritarian rule overshadowed whatever progressive provisions existed under the Local Government Code (Batas Pambansa 337) which was passed in February 1983. This period, however, did witness positive developments towards deconcentration. The Integrated Reorganization Plan of 1972 divided the country into eleven (later twelve) regions, and recommended that national line agencies have regional offices.

Centuries of centralization have resulted in the concentration of wealth and basic services in Metro Manila and a few other urban areas, to the detriment of the rural areas where 60 percent of Filipinos reside. A study by Calaguio and Oamar (1985, 16-25) for instance revealed that in 1982, average revenues of provinces was P20 million, cities P22 million, and municipalities P1 million. In contrast, each of the seventeen local units of Metro Manila earned an average of P86 million in the same year, with the four cities averaging P253 million, and the thirteen municipalities/towns with P34 million. The new Local Government Code (RA 7160) seeks to respond to this centuries-old problem. Enacted in the twilight of the Aquino administration (10 October 1991), its full implications will only be realized and understood in the years to come.

BP 337 and RA 7160: Two Philosophies of Development Administration

The 1991 Code is more comprehensive and more detailed than its 1983 predecessor, having 302 more provisions. RA 7160 is a compilation and/or revision of numerous Presidential Decrees and proposed House and Senate bills. The succeeding sections will compare RA 7160 and BP 337 on the basis of governmental powers and responsibilities granted to Local Government Units (LGUs), financial resources, and people's participation.

BP 337 and RA 7160 rest on the same foundation—that the President exercises “general supervision” over the local governments. What proceeds from there, however, is a difference in development administration philosophy. BP 337, which is more focused on deconcentration, views local government officials as administrators of national development programs. RA 7160, concerned principally with devolution, views local officials as area development managers. Section 7 of BP 337 is vague, providing that LGUs “shall exercise the

powers expressly granted, those necessarily implied therefore, as well as powers necessary and proper for governance . . ."

Studies have shown that most development projects are implemented by the national government with local officials having only ministerial or even ceremonial functions (see Buendia 1991 and Ocampo and Panganiban 1985). For the average region, more than 87 percent of all government goods and services are directly provided and thus controlled by the national government (Brillantes 1990, 1). The new Code, instead of merely enumerating vague functions or powers to be exercised by LGUs, specifies a minimum set of basic services to be delivered by local governments. Section 17, the heart of RA 7160, enumerates particular basic services formerly delivered by national line agencies which will now be the responsibility of LGUs: agricultural extension and on-site research, community-based forestry projects, field health and hospital services and other tertiary health services, public works and infrastructure projects funded out of local funds, school building programs, social welfare services, tourism facilities, promotion and development, telecommunication services for provinces and cities, housing projects for provinces and cities, and other miscellaneous services. This devolution includes the transfer to LGUs of all national government agency records, equipment assets and personnel corresponding to the devolved powers. Exempted however, are programs and projects funded by the national government under the General Appropriations Act (GAA), special laws and foreign-funded projects. Almost all infrastructure projects, for instance, are funded out of the GAA.

Despite the significant exceptions, the devolution is revolutionary nonetheless. In a speech before NGOs, Department of Interior and Local Government Assistant Secretary George Walter Misa revealed that in the Department of Agriculture (DA) alone, 15,000 employees will be transferred to LGUs. And the DA is not even the most heavily affected national agency. The Departments of Social Welfare and Health will have most of their functions and powers devolved, and what will probably remain of these departments at the field and regional levels are small monitoring units (as law provides that regional offices whose functions are devolved will be phased out within one year from the Code's effectivity).

But this is not all. The 1991 Code also vests in LGUs various regulatory powers which were formerly exercised by national government agencies: reclassification of agricultural lands, enforcement of environmental laws, inspection of food products, quarantine, enforcement

of the National Building Code, operation of tricycles, processing and approval of subdivision plans, and the establishment of cockpits and holding of cockfights.

Thus, the new law signals a shift from a sectoral approach to development administration, to a more areal approach. Under BP 337, the national line agencies were the main development actors, while LGUs were bit players. RA 7160 gives local executives a set of basic service functions and regulatory powers with which to take the lead in developing a particular geographic area. The new law views local executives as development managers, orchestrating a wider range of powers and functions to meet area-specific needs and concerns.

As with anything that involves great change, the new Code ushers in many risks. The country is still semifeudal, with some municipalities and provinces controlled by big land-owning or business elites, who are likewise entrenched in public office. Many of these elites even maintain private armies. RA 7160 could serve to reinforce the dominance of local kingpins and warlords.

Also, upon full implementation of the Code by the latter part of the year, administrative chaos is bound to occur as offices and personnel are transferred from national to local governments, and as local executives grapple with the enormous responsibilities they must now fulfill. Do local governments have the administrative capability to handle the specialized functions performed by national line agencies?

Under the old Code, lack of resources was the primary obstacle to a more activist LGU role in development. Although section 8 of BP 337 provided that each LGU "shall have the power to create its own sources of revenue and to levy taxes subject to such limitations as may be provided by law," all the lucrative tax bases, such as income tax, were already appropriated by the national government. Another major constraint was the fact that LGUs got nothing from the resource extraction and profit-making operations of the national government in their area. Lastly, despite all the resources and profits derived by the national government from the provinces, cities and municipalities, the LGUs share in internal revenue allotments (IRA) remained small. Studies reveal that the national government actually collects an average of 46.8 percent more than it gives back in allotments to LGUs (Brillantes 1990, 1).

Under RA 7160, the local tax base and taxing powers of LGUs remain practically the same. However, in the areas of resource-shar-

ing, the new Code is a significant improvement. Under Section 290, LGUs will get 40 percent of the mining taxes, royalties, forestry and fishery charges and other fees collected by the National Government within their territorial jurisdiction. LGUs will also get 40 percent of the National Government's share in any co-production, joint venture or production sharing agreement in their territorial jurisdiction. Furthermore, LGUs will now also share in the proceeds derived by any government agency or government owned or controlled corporation engaged in the utilization and development of the national wealth.

As for the IRA, the new Code provides for a graduated increase of the LGU share over three years. In 1991, before the new Code's effectivity, LGUs received only 20 percent of the IRA, or P12.15 billion. In actuality, LGUs received as little as 11 percent only, due to various bureaucratic constraints. This year, the LGU share rises to 30 percent or P24.4 billion—double the amount last year. In 1993, it will rise further to 35 percent (P36 billion) then 40 percent (P46 billion) in 1994. The Code provides a formula through which the LGUs share of the IRA will be divided among the provinces, cities and municipalities. The smallest barangay of 100 people will get P80,000.00. Because of the IRA, the income of the LGUs will increase dramatically. One more noteworthy provision is Section 23 which allows LGUs to secure foreign and local grants without approval from any national governmental agency. This provision will motivate local officials to take the initiative in expanding the resource base of their LGUs.

In sum, the new Code gives LGUs greater powers and responsibilities, and also gives them the necessary resources to fulfill this expanded role. Under RA 7160, a governor or mayor is considerably more powerful than a congressman.

To counterbalance the vast powers and resources local governments now possess, the new Code gives citizens a wider range of remedies and courses of action. It also gives nongovernmental organizations (NGOs)/ people's organizations (POs) a major role in local development—something which was largely unrecognized by BP 337. The comparative provisions of both Codes on citizen and NGO/PO participation are presented on p. 349.

The new laws' provision on recall and barangay assembly are based on the old law. Recall, which involves the holding of a new election for the position of an official sought to be replaced, can be initiated by 25 percent of the registered voters in a particular LGU. A barangay assembly, on the other hand, can be convened by

Local Government Code Provisions on People's Participation

	Citizens in General	NGOs/POs in Particular
RA 7160	1. recall (Sec. 69-75)	1. joint ventures (Sec. 35)
	2. barangay assembly (Sec. 397-398)	2. financial and other assistance (Sec. 36)
	3. initiative (Sec. 120-127)	3. representation in local special bodies
	4. mandatory consultation (Sec. 2c,26,27)	a. LDCs (Sec. 106-115)
		b. PBACs (Sec. 37)
		c. Health Boards (Sec. 102-105)
		d. School Boards (Sec. 98-101)
		e. Peace and Order Councils (Sec. 116)
		4. sectoral representation (Sec. 446, 457, 467)
		5. sanguniang kabataan (Sec. 423-438)
BP 337	1. recall (Sec. 54-59)	1. representation in School Boards (Sec. 68-71)
	2. barangay assembly (Sec. 98, 99)	2. sectoral representation (Sec. 146, 173)
		3. kabataang barangay (Sec. 115-132)

citizens in order to review the performance and finances of the sanggunian (local legislative body).

Initiative is a procedure whereby citizens can directly propose, enact or amend any ordinance by filing the desired petition with the local sanggunian. If the required number of people sign the petition, it will be presented to the LGU's registered voters for approval or rejection in a referendum. The provisions on initiative and recall are easy to start, but hard to finish, since they ultimately involve a majority vote. The provisions on mandatory consultations stipulate that national government agencies, before implementing projects in an area, must consult with the appropriate local government and people's organizations—especially when proposed projects have ecological consequences. Some POs consider these provisions the most important, given the long struggle against geothermal plants, dams,

and mining operations and other supposed development projects which have negative effects on local communities.

The new Code envisions NGOs/POs and LGUs as partners in development. BP 337, enacted under the framework of the Marcos 1973 Constitution, did not recognize NGOs. Section 35 of RA 7160 allows LGUs to form partnerships with NGOs for the delivery of basic services and the implementation of a wide range of development projects. Section 36 allows LGUs to give financial or other forms of assistance to NGOs. These provisions formalize a partnership which is already existing in many areas. RA 7160 also institutionalizes NGO participation in governance through representation in various local special bodies. At least one-fourth of the local development council (the socio-economic planning body in the LGUs) is to be composed of NGO representatives. Under the old law (Executive Order 308 and other executive issuances), NGO representation was limited to one-fourth of the council at most. Two NGO representatives will also sit in the Pre-qualification, Bids and Awards Committee, which is very strategic since LGUs now have a more active role in local infrastructure projects.

The new Code also provides for more democratic sectoral representation in the local sanggunian. POs will now have three representatives—one from the women, one from the agricultural or industrial workers, and one from another sector which will be specified by the local sanggunian. Under BP 337, there were only two sectoral representatives, one each for the agricultural and industrial labor sectors, both of whom were Presidential appointees.

LGUs and NGOs: Partners and Protagonists

The new Code will have far reaching implications on development dynamics in the Philippines, and its full effects will only be felt and understood in the years to come. The Code signals a shift in the focus of development administration from the national to the provincial and municipal levels. It reflects the growing consensus that specific areas of the country have their own particular needs and concerns, requiring an integrated, comprehensive area focus. Cries for federalism and an autonomous Mindanao are reflections of this trend.

In order to meet the challenges and opportunities presented by the Code, it is imperative that NGOs form networks, especially at the provincial level. The time has come for NGOs to make the transition from micro, community-based projects to more integrated, large-scale

programs designed to have impact on a considerable number of barangays or municipalities. Though each member NGO may be small and specialized, an NGO network may cover an entire province and offer an integrated, more comprehensive package of services.

The Code's provision allowing cooperative agreements between LGUs and NGOs for basic service delivery and development projects can make NGOs major development players in the province, provided they are organized and unified. Section 36 which allows LGUs to give financial and other assistance to NGOs is also an opportunity for NGOs to diversify their financial and resource base, which is essential to expanding service delivery. However, to become major development players, NGOs must build up staff and service delivery capability. However, the provision allowing LGUs to seek foreign grants on their own may result in competition between LGUs and NGOs for the same fund sources.

NGO networks also have the advantage of greater credibility and bargaining power vis-a-vis LGUs. Experience has shown that local executives prefer to deal with a single network of NGOs rather than with many different NGOs. Furthermore, an NGO network with a big constituency and the ability to deliver services province-wide is more likely to get serious consideration from local officials.

The opportunities presented by the Code also raise the need for regulatory and decision-making mechanisms for NGOs. NGOs need to decide on their representation in the various committees and special bodies created under the new law. NGO participation in these different bodies can only be effective if the representatives bring with them the agenda and interests of the entire NGO community in the area. Also, since the Code allows NGOs to receive LGU funding, NGOs of dubious origins and motivations are bound to mushroom. An NGO network can screen and accredit bona-fide NGOs of long-standing in the area.

Lastly, provincial networks can develop the machinery needed to exploit the Code provisions on initiative and recall, something an individual NGO will have difficulty doing. In many areas, NGOs will be the only organized counterpoint to the powerful local officials. A strong NGO network can garner the votes or signatures needed to win a referendum or an election or recall, and thereby exact accountability from LGUs. In areas controlled by warlords or corrupt officials, NGOs may have to take an adversarial stance. A machinery will also be needed to propel candidates for sectoral representative, and ultimately, NGO/PO candidates for mayor or governor.

Provincial networking initiatives have already been launched in some provinces. In Antique, for example, NGOs have already become major development actors in the province, with the formation of the Antique Federation of NGOs (AFON). The federation is composed of all nine development NGOs with province-wide operations. AFON has projects in 43 percent of Antique (225 out of the province's 590 barangays), therefore it is clearly a force to reckon with. It is now the lead implementor of the Antique Integrated Areal Development (ANIAD) program, a comprehensive, grassroot based development initiative. A joint undertaking between government and NGOs, ANIAD is principally funded by the Netherlands government to the tune of 30 million dutch guilders for 1992 alone. Similar initiatives in other provinces must also be promoted. In summary, the Local Government Code of 1991 envisions LGUs and NGOs/POs as partners (and protagonists if necessary) in the context of integrated area development. The Code, however, does not guarantee "equal" partnership. That will have to be won.

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