

## **Small Means Marginalized? A critique of the Supreme Court ruling on the Party-list system**

*Smallness and the rationale behind it, which is, being small is synonymous with marginalization and under-representation. That is what the Party-list system in the Philippines is all about.*

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April 28, 2009

It is every judge's dream of a decision to make. Truly it is a decision that touched more on imprinting a policy than the settlement of a justiciable controversy, one that could have been resolved either way without fear of infringing constitutional tenets. *Barangay Association for National Advancement and Transparency (BANAT) vs Commission on Elections et al.*, G.R. No. 179271, April 20, 2009, and its companion cases is like filling in of details where Congress failed to legislate, an affirmative action to give meaning to the relevant texts of the Constitution and beyond – to bring order to the political mess of a party-list system.

Briefly Banat introduced key concepts in party-list representation. First, it revised the mathematics of bringing in party-list representatives. Second, it allowed more seats to be occupied in the House of Representatives so the 20 percent constituency could be achieved. Third, it reinterpreted the 2 percent threshold vote in the Party-List Law, RA 7941. And fourth, it did not sanction the domination by a single group or select groups of the party-list bloc in Congress, hence, the stress on the 3-seat cap. These parameters ushered in corrections that gave new life to party-list representation - if not by doctrinal revisions then at least by injecting new interesting faces as Congresspersons.

But the basics remained the same. Banat is simply the reincarnation of the three basic tenets of party-list representation – marginalized, underrepresented, and small. Those who have no constituency can be represented in Congress. Those who are ignored by political parties can have a voice in Congress. Those who otherwise would be

called nuisance can have a part in the political spoils. At its best new ideas are infused in lawmaking but at its worst in a manner of speaking it has democratized the access to political largesse. And all these because marginalization and under-representation have been equated with smallness – the smaller one has its voice suppressed even more. The idea appears logical. In Philippine society one who could throw its weight around is not and cannot be ignored; it could find an ally somewhere, somehow.

Here lies the conundrum. Some say that the party-list representation should help fringed political parties to be a strong voice in Congress by allowing them to sit more than three representatives in proportion to their tallied votes. But others say when this happens the fringe ceases to be crumbs and themselves turn into one of the largest political players in this jurisdiction. This was the divide in the Banat case between the have-nots and the haves: the definition of proportional representation revolved on the 2 percent threshold vote and the 3-seat cap. Thus these questions: Must the Supreme Court lift the 2 percent threshold? Must it do away with the 3-seat cap? Must it maintain both or must it choose only one of them in defining proportional representation? Must it respect the status quo?

Banat chose to stick to smallness, who because small could never gain access to Congress. The consequences may - now terrible - even become horrible, with the ascension to power of personalities whom one would never think of becoming members of the House of Representatives. Say, General Palparan or the President's relatives. Then again that is what the party-list system in the

country is all about – smallness and the rationale behind it, which is, being small is synonymous with marginalization and under-representation.

In the end forget about the ideal – it was never meant to be. One person, one vote. Not by majority. Not even by plurality. But by accident of the 20 percent party-list constituency. By the demand of a mathematical formula so this could be filled in. One becomes the people's representative no matter how small a number the principals

may be. No matter that looneys could band together and demand representation in law-making. But that is making a judgment on who should sit and who should not. Surely no one should dare propose imposing such judgment call. It was how we conceive our party-list system to be. Beggars cannot be choosers, and there certainly could not be one set of rule for one and a different set for another. Literally, one person, one vote, one representative. Ah, well, at least, it is the ultimate of ultimate democracy.

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