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## Workshop two: Towards greater effectiveness of parliaments

Loretta Ann P. Rosales

Member, Philippine Congress

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In citing the theme of today's Parliamentary Forum, "Dialogue, Tolerance and Freedom of Expression as Cornerstones of Democracy", Dr. Beetham points out that the theme suggests a set of values and practices that are essential in a given distinctive context: the context of *social diversity* obtaining in each of our societies. This context refers to diversity of social condition, identity, religious belief, a way of life as individuals, as families and as communities. Beyond diversity in ways of living, these diversities include different views on laws and policies to which all are subject, and which can only be decided *collectively*, through a democratic process.

If I may add, the social diversity of individuals, families and communities is not limited simply to a descriptive difference in living condition, religious belief or political persuasion. In most societies, the particular social condition of individuals and/or communities within this diverse social context determines their capacity to access resources that can help them develop their potential and make them more capable in contributing to the democratic enhancement of their community.

Where these societies, through their governments, fail to provide the minimum requirements to help the broad range of diverse groups and communities gain access to economic, social, political and cultural resources necessary for self- and collective development, diversity polarizes these differences that oftentimes result in violent and continuing conflict. This situation holds particularly true when the functions and resources of government are diverted to the promotion of specific interests that run counter to the public good; when the coffers of government are used for private rather than public gain; when government is run without transparency and accountability to the people, *precisely because the people are not democratically represented*.

A parliament composed of democratically elected representatives of the people is theoretically conceived to address the problem of non-representation in governance. But to be truly representative of the people so that government and its resources redound to the public good, parliament must not only be *democratically* elected, i.e., the elected body genuinely reflects the votes of the people through a clean electoral process, but that the body must equally be *effective*, once elected into office.

And here we get to the crux of the matter. Parliamentary effectiveness cannot be fully satisfied without addressing the issues of power – the power of parliament to represent the fundamental interests of the people *in their diversity* not only through the making of policy responsive to their basic needs, but to ensure that these policies, once enacted into law, are fully enforced to enhance sustainable human and social development.

Parliamentary power has two aspects that are relevant to its effectiveness: its procedural and substantive aspects. When we speak of procedural requirements, we refer to the *capacity* of

parliament to have the relevant legal rights and resources – financial, human and organizational – to carry out its multiple, but necessary tasks. Substantive power, on the other hand, refers to the autonomy of parliament to genuinely convey the interests of its constituency *in relation* to the powers of executive governance. Where the latter's execution of policy transgresses public interest, parliament's oversight functions are intended to keep abuse of authority in check. Oversight functions are also intended to rectify the limitations of policy and improve on them through regular consultations with the people.

There are four areas of legislative activity that we suggest for workshop discussion in scrutinizing our effectiveness, or lack of it, and possible remedial measures for building capacity in functional democratic legislation:

*1. Discussion on the capacity of parliaments to develop resources to be more effective in undertaking their legislative functions.*

There is obviously a wide gap in terms of resources and facilities available to parliaments in developed and developing countries. Much of this can be explained in the budgetary priority given to crucial matters such as the rights to food, to health and education denied to an impoverished population which is prevalent in cash-strapped developing economies. Paradoxically, this becomes a matter of serious concern to parliamentarians, whose *raison d'être* is precisely to be able to develop that capacity to effectively address the critical issues of poverty, health and education. Effective capacity means the ability to mobilize sufficient resources to enable legislators to effect long-term policies that address questions of social justice, human development and sustainable growth.

A well-resourced parliament, such as is typical in developed economies, will have, *inter alia*:<sup>1</sup>

- Adequate expert staff to provide impartial support to members across parliament's whole range of work;
- A comprehensive library and information service;
- Office facilities for individual members, with their own secretarial and research support; and
- Dedicated facilities for the main opposition party/parties.

In many developing countries where the problems of poverty and development are structural, parliaments cannot function as effectively when there is a dire lack of sufficient facilities, especially with respect to competent staff with the appropriate expertise to help draft legislation that addresses those issues that obstruct social, economic and political development.

Strategies for compensating for these resource constraints have been developed by some parliaments. These include:

- More effective training for members themselves, with encouragement to pursue greater specialization;
- More extensive and systematic use of experts in different fields from civil society and the academic community, to support the work of parliamentary committees and groups;
- The development of internship programmes to supplement scarce parliamentary resources;
- The development of on-line facilities to enhance the research and information capacity of parliaments, including on-line library services .

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<sup>1</sup> Parliament and Democracy in the Twenty-First Century, pp. 116-117

In some third world countries such as the Philippines, the role of non-governmental organizations (NGOs) and civil society groups has been tremendous in enabling party list representatives and some district representatives address the major issues of social reform. With a robust social movement of workers, students, peasants and church groups as partners, party list groups are able to draw from their wealth of experience in assisting legislation. As an NGO, the Philippine Legislators Committee for Population and Development (PLCPD) brings together senators and members of the House to work together on common issues related to a sound population policy and sustainable development.

## 2. Discussion on developing parliamentary autonomy

The handbook entitled *Parliament and Democracy in the 21<sup>st</sup> Century* quotes from a study of Michel Couderc on “The Principle of Parliamentary Autonomy, *Constitutional and Parliamentary Information*, No. 176, 1998, a Report by the Association of Secretary Generals of Parliament (ASGP) that defines autonomy of parliament as “on the one hand non-dependence and non-subordination of Assemblies in relation to the Executive, and, on the other, the possibility of the Assembly freeing itself at least partially from the rules of ordinary law so as to follow instead its own regulations.” It notes that “in almost all States, the principle of the autonomy of Parliament is formally recognized in the constitutional texts ... dealing with the separation of powers.” And it concludes that the general trend is to make this principle increasingly effective in practice.<sup>2</sup>

There are experiences in developing countries that strive to achieve, as exists in more developed ones, procedural independence by parliament from the executive branch, as suggested by the Slovenian Parliament’s present study on parliamentary autonomy; i.e.,

- Parliamentary responsibility for its own staffing;
- Control over its own budget; and
- Organization of its own business.

A professional and non-partisan parliamentary service with its own organization and career structure independent of the central bureaucracy is increasingly accepted as a desirable trend for achieving autonomy in legislation. Such expectations, on the other hand, rely heavily on the extent of autonomy parliaments would have over their budget. While budgetary autonomy has been made fully operational in the French Parliament, for instance, in newer parliaments of the developing world, this authority over one’s budget still remains “*aspirational*” as many would still remain under government supervision, specifically from the ministry of finance.

The third aspect of procedural independence – control over its own business – becomes a delicate issue where executive dominance frequently prevails in the relationship with the legislative body, whether under a presidential or parliamentary system. The problem of autonomy over its business is compounded in cases where the legislative body is divided in two Houses and one House tends to uncritically accept executive action and the other finds itself having to contend with this combination for checks and balances. What results is gridlock, not necessarily an executive-legislative impasse, but a failure of both Chambers to assume a consolidated role of checks and balances against possible executive abuse of authority.

In the Philippines, to avoid gridlock, the Legislative-Executive Development Council (LEDAC) was created to coordinate approaches to legislation and to fast-track priority measures. Where there is a modicum of trust and respect between both Houses and in relation to the executive branch, this consultative and advisory council can provide essential help in thrashing out crucial measures and arriving at a consensus in addressing priority bills. But the concept of

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<sup>2</sup> Ibid., p. 118

legislative autonomy is completely lost when one House refuses to assume its responsibility to remain independent of undue executive influence.

### *3. Discussion on legislative authority to appropriate funds for the budget*

Control over the purse strings is a mandate of every parliament in ensuring that government programmes are effectively implemented in accordance with enacted laws and responsive to the basic and diverse needs of society.

While this mandate, often reflected in the constitutional provisions, finds full expression in the more developed societies that are strong on human rights and the rule of law, this does not hold true for the less developed countries, scant in resources and systematically kept indebted to international institutions due to failure to comply with measures imposed by the latter. In some cases, the debt burden has been like a sword of Damocles that has obstructed the newly organized parliaments of the developing world from creatively crafting a budget policy that meaningfully caters to the more basic needs of the people.

In the case of the Philippines, the legacy of fourteen years of one-man-rule has made appropriations for debt service payment automatic, and this presidential decree has remained to the present, eroding House prerogative to have full control over budget appropriation. The consequence has been a historical abdication of responsibility to assert autonomy in programming the appropriation of budgetary funds for immediate and long-term priorities with a view to attaining the more strategic goals of social justice and sustainable human and social development.

By and large, the long-term lament of the developing world is to try and seek a new paradigm to address the debt burden imposed on their economies by financial institutions in order to help their parliaments become more effective in crafting appropriation measures from resources historically drained for debt servicing.

### *4. Discussion on the oversight functions of parliament*

Parliaments have a key function in exercising oversight of the government on behalf of the people. Through oversight, parliament exacts accountability of government to parliament and, through parliament, to the electorate as a whole.

This particular discussion merits more attention in scrutinizing the relations of power between the executive and parliament. Apart from evaluating the effectiveness of law enforcement based on the merits of the law itself and the purpose of remedial reform, oversight functions determine the capacity of parliament to pit a check on possible abuse of discretion by the executive in the implementation of programmes as provided for by law.

On the other hand, this is not just a matter of balance between the legislative and executive branches. It is also a matter of relations between parties and within parties in collective and individual positioning on urgent matters of national policy. It is often said that it is the configuration of party power that can determine the relationship between parliament and the executive. Where the party in power within the executive is not in control of the legislature, for instance, parliamentary oversight can be vibrant and rigorous. However, party competition can also result in sectarian positions that result in obstructionism and gridlock.

When the same party, however, controls both branches of government, oversight can easily be blunted through the way power is exercised by the ruling power and the way this authority is exercised in discouraging internal dissent from being publicly expressed.

Rigorous efforts by the minority party in committee oversight functions can be consistently obstructed by members of a ruling party through a mechanical majority vote on every resolution that questions executive abuse.

Crucial to the effectiveness of committee inquiry is the power to require ministers or cabinet secretaries and civil servants to appear and answer questions before the oversight committee. Access to information is key to effective accountability of government to the people, and this includes access even to classified information. In the experience of some countries like the Philippines, the majority is insufficient to thwart investigations on anomalous practices of the executive, for instance, the issuance of executive orders that cross constitutional lines to prevent cabinet secretaries and their subordinates from being investigated. In this regard, an appeal is filed with the High Court to get a correct interpretation of the constitutional provisions that may seem to have been violated by zealous executive protection of its cabinet.

The accountability of government can likewise be addressed through non-parliamentary independent bodies like the Commission on Human Rights, the Commission on Audit, the Commission on Elections, the Ombudsman and such similar institutions. It is crucial that these bodies be independent of executive influence with their composition assured through the confirmation of legislative bodies such as the Commission on Appointments. While all these look good on paper, when parties exercise control over both the executive and legislative branches, and are consequently influenced by party considerations in the confirmation of appointments to these constitutional bodies, the oversight functions of these democratic instruments can easily be compromised.

The role of parliaments in implementing *effective* checks on possible executive dominance and abuse of discretion can be approached from the perspective of building effective networks with local legislative bodies that are much closer to the people and their communities and can therefore articulate the latter's interests more directly. In this regard, oversight functions through standing committees affecting local governance in its broad range can and must be developed as an infrastructure of support in effecting legislation that is responsive to the needs of the communities on the ground. In the Philippines, apart from Committee work, NGOs like the PLCPD mentioned above has helped establish such linkages for effective translation of national legislation to local policies and ordinances.

##### 5. Discussion on parliament's involvement in international affairs

We live today in an increasingly interdependent world. The actions of a variety of external institutions, geared towards both governments and citizens, impinge on every country in ways that affect the life and well-being of populations in relation to the environment, their physical security, and their right to adequate food, shelter, health and education, to name but a few. The implications of these developments for democracy cannot be made clearer. There are two aspects of this area of parliamentary work we may venture to look into for purposes of studying how we can be more effective as promoters and protectors of democracy within the arena of international relations.

The first aspect deals with existing multilateral organizations to which our governments are party through solely executive negotiation and upon agreement, concurrence in ratification by the legislative body. For instance, as cited earlier, negotiations and agreements on debt service payments by the executive with international financial institutions without parliamentary scrutiny has been a continuing subject of controversy and debate in many developing countries. Multilateral institutions such as the World Trade Organization (WTO) for instance, was conceived and established to make life better for everyone by improving on bilateral trade and introducing immediate and long-term prescriptions for the eventual eradication of tariff walls and quota limits. At the end of the tunnel, it envisioned a free world with the *free flow* of trade beneficial to all nations. Unfortunately, the road has been less than beneficial for most countries of the developing world where such prescriptions are perceived as obstacles to the more desirable vision of *fair trade* among nations, big and small. It would be instructive to share among us experiences of how such multilateral institutions have impinged on our diverse

lives without benefit of consultation from the people through their duly elected representatives in Parliaments.

The second aspect addresses the wealth of international human rights instruments available to all members of the United Nations addressing fundamental human rights of individuals and communities with the objective of restoring the human dignity of each person and realizing the collective humanity of each nation. Again how much access to information regarding these human rights instruments has been made available to the people through their representatives in Parliament and in Congress? It is crucial that members of Parliament are made aware of this wealth of instruments to be able to translate these to domestic policy that covers the range of national legislation to town ordinances.

As a last point of concern, through these international human rights instruments, we may venture to look more closely into three fundamental institutions:

- How political parties in our own constituencies have been developed to reflect the policies, programs and platforms that defend, protect and promote these rights in parliament and governance;
- How the bureaucracy is performing with respect to the delivery of services - economic, political, social, cultural and technical – for the advancement of the public good;
- How much access to information and such services as mentioned above are the citizens given for their individual and collective empowerment in actively and democratically participating in the making of policy that fundamentally affects their lives.