



LEGAL MATRIX FOR CIVIL SOCIETY

IN THE

REPUBLIC OF THE PHILIPPINES

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**by
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This Legal Matrix focuses on specific technical legal issues (formation of organizations, reporting, etc.) as well as some meta-legal mechanisms providing civil society access to the governance processes in the Republic of the Philippines (RP). It was prepared for the Afghan and Pakistani delegates to the Study Tour to the RP sponsored by the Aga Khan Foundation in November 2009.

A. Constitutional Protections.

It is important to take into account that the existence of civil society and access to governance structures in RP is directly affected by the 1987 Constitution, available at <http://www.lawphil.net/consti/cons1987.html>, which provides in relevant part

“ARTICLE XIII

ROLE AND RIGHTS OF PEOPLE’S ORGANIZATIONS

“Section 15. The State shall respect the role of independent people’s 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.

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“People’s organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure.

“Section 16. 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.”

With respect to the freedoms of association and religion, the Constitution provides in Article III(the Bill of Rights) as follows:

“Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

“Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

“Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

In addition, Article II, Section 23 provides that “The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.”

B. Technical Issues

1. Formation

a. NGOs

NGOs are formed as non-stock corporations under the Corporations Code (Corp Code) sec. 17.

The registering agency is the Securities and Exchange Commission (SEC) www.sec.gov.ph. SEC is an independent agency organized within the Department of Trade and Industry. SEC has branch offices to assist it with its registration and oversight responsibilities, but no postal registrations allowed. Registration fees are minimal and do not make registration inaccessible to smaller organizations.

Non-stock corporations are defined in secs 87-88 of the Corp Code; the non-distribution of profits rule for these orgs is found in sec. 94.

The Corp Code contains conflict of interest rules in secs 32-34.

Non-stock corporations are not permitted to engage in political activities in favor of or against political candidates. Sec. 36 (9) of the Corp Code.

There are special rules for foundations (Mem. Circ. No. 8), issued in 2006. They are described as grant-making organizations and are required to include the word “foundation” in their name. They must have a capital fund (endowment) of 1 million pesos, and the new rules describe where they must deposit their endowments.

There are also special rules regarding micro-finance institutions.

b. People’s Organizations (PO’s)

This is not a legal category of organizations except as provided in the Constitution. PO’s are registered with the SEC as non-stock corporations, when they do register. Many are unregistered. Despite the provisions in the Constitution, PO’s may have mutual benefit or a combination of mutual and public benefit purposes and, as such, are not NGOs as defined by the tax law (which requires public benefit purposes).

c. Coops

Cooperatives are registered with the Cooperative Authority, under the Cooperatives Act 2008 (which replaces legislation from 1990). Under Art 85, the distribution of “surplus” in the form of patronage dividends is permitted by Art 85 (5).

2. Licensing and accreditation

a. Welfare Organizations

Department of Social Welfare and Development (DWSD) www.dswd.gov.ph

- i. Although the Corp Code does not require accreditation of social welfare agencies (SWAs) before they are registered. Now, however, it is the practice to ask the DWSD to review applications for registration from social welfare organizations before registration occurs.
- ii. DWSD has an elaborate system (prescribed by Rep Act 4373 of 1965 and Rep Act 5416 of 1968 as well as several decrees and executive orders) for registering, licensing, and accreditation of SWAs.

b. Educational Organizations

Sec. 107 of the Corp Code requires the Department of Education to accredit any non-stock corporation seeking to be a school.

c. Religious Organizations

Ch II of the Corp Code contains special provisions with regard to religious corporations, including religious societies.

3. Certification (for tax deductibility and donor's tax exemption)

- a. Bureau of Internal Revenue (BIR) issues the certificate pursuant to Rev. Reg. 13-98; Implementing R.A. No. 8424, "An Act Amending the National Internal Revenue Code, as amended, Specifically Section 34 (H) Relative to the Deductibility of Contributions or Gifts Actually Paid or Made to Accredited Donee Institutions in Computing Taxable Income"
- b. But the process of certification has been delegated to the Philippine Council for NGO Certification (PCNC) www.pcnc.com.ph, which carries out the entire process on behalf of the BIR. Executive Order 671 abolishing PCNC was replaced with Executive Order 720 confirming PCNC as a partner of government in accrediting organizations for donee status.
Those organizations that can be certified are only those as defined in the Rev. Reg., which are only public benefit organizations that meet all the requirements for registration, including a limitation on administrative expenses, etc.

4. Reporting and oversight

a. NGOs and PO's –SEC

- i. Annual reports are required, but they are said to be minimal. There is no separate chapter in the Corp Code on reporting, though there is one on document retention.
- ii. Monitoring is only when there is a complaint; strangely monitoring is first done "undercover" upon the receipt of any complaint (email, text, etc.)

b. Coops

Annual reporting is required by Articles 80-81 of the Coop Act.

c. Reporting for PCNC certified organizations

Annual reporting is required by secs 7 (reporting) and 9 (monitoring) of the Rev. Reg.

C. Meta-legal issues – civil society access to governance

In addition to the stipulations in the Constitution, the following structures assist with civil society participation in local and national governance.

1. Party List representatives in the House of Representatives (HOR)

This is one form in which civil society gains access to decision-making processes in RP. It is allowed under sec. 5 (1) of the 1987 Constitution.

2. Local Government Code (LG Code) (Rep Act 7160)

Only a few provisions of the LG Code apply to NGOs and PO's – secs 34-36 and sec. 108; all of them requires local government units (LGUs) to be involved with NGOs and PO's. LGUs are required to promote the establishment of PO's and NGOs and to provide for NGO and PO representation in local development councils. This is available at http://www.lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html.

3. NAPC accreditation

Although this is fraught with political issues, it must be noted that the National Antipoverty Commission (NAPC) www.napc.gov.ph is required to have representation from NGOs and PO's (with the latter presumably dealing with some aspects of the non-NGO basic sectors) (A.O. 187 amends the guidelines for accrediting sectoral representatives.)

NAPC implements R.A. 8425, available at <http://www.napc.gov.ph/RA8425.htm>