

Legal and Policy Frameworks for 'Participation' in Southeast Asia

LogoLink research – Legal Frameworks for Citizen Participation
Southeast Asia Regional Report

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LogoLink is a global learning initiative aimed at strengthening citizen participation in local governance. Through a network of partners, LogoLink provides spaces for exchange, reflection and research on diverse experiences around the world, and encourages learning and action for participatory local governance. LogoLink is hosted by the Participation Group at the Institute of Development Studies, University of Sussex, UK.

Table of contents

1. Introduction	3
2. Democratic transitions	4
3. Constitutional and legal framework	6
4. Civil Society	9
5. Decentralisation	13
6. Citizen Participation	18
7. Beyond Participation	23
8. Bibliography	25

Introduction

There has been more 'participation' in South East Asia (SEA) than any other region in recent years. In January 2001, massive demonstrations forced out an elected president in the Philippines. In 1998, demonstrations and riots in Indonesia led to the resignation of a dictator of 32 years. In 1992, demonstrations in Bangkok ended 60 years of military rule. These were epochal events in the political history of the three countries which are the case studies for this project.

This kind of "participation" is not the subject of this study. But legal frameworks facilitating popular participation in local governance cannot be understood without understanding the political circumstances behind these more dramatic forms of 'participation'. More definitive conclusions await further research. Here we will merely 'locate' legal frameworks in the local and national politics of these three countries to facilitate comparative analysis. More detailed descriptions of the legal frameworks for citizen participation are in the country papers.

For this study, 'citizen participation in local governance' will include institutions of direct democracy, legally mandated (reserved) seats for 'marginalized groups' in local legislative councils and special bodies, mechanisms for popular accountability of local governments including recall elections and referenda, and legal provisions which facilitate or hinder the self-organization of popular groups. A distinction is made here between mass actions similar to those described above, representative institutions, and what might be called the 'intersection' of the two.

New initiatives in citizen participation at the local level are the most highly developed in the Philippines. But future opportunities are greatest in Indonesia and Thailand. This can only partly be explained by differences in the constitutional and legislative frameworks for citizen participation. In the three countries, the legal framework is only one of several factors determining citizen participation. At best they provide opportunities. The extent to which 'opportunities' are availed of depends on (1) the structure and power of local government and their relations with the central government, (2) the level of organization of civil society.

Decentralization is a relatively new phenomenon in the region. The earliest decentralization law was passed in 1991 in the Philippines. In Thailand, the process started with the 1997 constitution which mandated decentralization, followed by the passage of the Decentralization Act of 1999. In Indonesia, two decentralization laws were passed in 1999, but implementation began only in 2001 when implementing regulations were promulgated. In Thailand and Indonesia, implementation has been slow and highly contested. Even in the Philippines where implementation is most advanced, the review process

mandated by the Local Government Code (LGC) which began in 1997 had not been finished in 2003.

These elements of local politics, in turn, are shaped by a bundle of conditions at the national level which together establish the stage of democratic transition of each country. These include the structures of representative democracy, the electoral and political party system, and civil and political rights. Of particular importance for the varieties of citizen participation which are the subject of this study is freedom of information and transparency in the government decision-making process.

If authoritarian regimes constitute one pole in democratic transition, the other, target pole is 'participatory democracy' which combines representative democracy with legally mandated forms of direct democracy, and citizen participation in mechanisms for accountability of both elected and appointed officials. An intermediate stage towards 'participatory democracy' is what has been called 'elite democracy' where the formal institutions of representative democracy, and civil and political rights have been established but limits to effective citizen participation remain in place.

2. Democratic Transitions

None of the three countries in this study, **Thailand**, **Indonesia**, and the **Philippines** can be said to be 'participatory democracies'. The establishment of institutions of democracy, and democratic practice vary greatly from one country to another. All three have come out of authoritarian periods, but the impact of the authoritarian experience on citizen participation varies depending on the nature of authoritarian regimes, the length of the authoritarian period, and the beginning of the democratic transition.

The **Philippines** has the longest history of elite democratic rule among the three countries, one that goes back to the establishment of the commonwealth in 1935, and arguably even earlier. The authoritarian period (1972-86) was the shortest. While Marcos succeeded in ending elite democratic contestation and monopolizing government power, the repressive instruments developed by Marcos never managed to be as effective as those set up in Indonesia and Thailand. While the military acquired considerable political power under Marcos, civilian control over the military has been maintained. The authoritarian period also ended earliest (1986).

The democratic transition in **Thailand** began in 1992, ending 60 years of military rule. The military dominated government at that time was forced out of office after revelations of the killing of hundreds of demonstrators in May 1992 was exposed by the media. The military dominated Thai politics after the king was forced to cede power in 1932 except for a short democratic period between 1973

and 1976. Military control of political institutions was buttressed by its willingness to use violence against political opponents and its extensive economic power. The democratic transition after 1992 was slowed down by difficulties in dismantling structures established during 60 years of military rule. But an exceptionally liberal constitution passed in 1997, if fully implemented, sets the best legal conditions for grassroots participatory initiatives.

The harsh authoritarian regime in **Indonesia** was built on the foundations of the mass killings of communists and other leftists in 1965-66. But it traced its roots to the declaration of martial law in 1957 and the period of “Guided Democracy” (1963-65) under Sukarno. While maintaining a civilian façade, military power under Sukarno was consolidated under Suharto, an army general. The military built a powerful economic base, a territorial organization that paralleled civilian government down to the village, and dominated the ruling golongan karya (GOLKAR) party. While Suharto’s resignation in 1998 began the democratic transition, the failure to consolidate the constitutional and legislative basis for democratic institution building until now has created unstable conditions for participatory initiatives.

Underlying these political changes is the balance of class forces and the political institutions which mediate political struggle. In the **Philippines**, a landed elite, later elaborated into commerce, manufacturing, and finance but centred on family conglomerates has controlled politics since the American period. Democracy has mainly meant electoral mediation of factional conflict within this elite, with the attendant political rights needed for electoral competition. While competing in elections, elite solidarity has been maintained against organized lower class challenges. The breakdown of this elite solidarity during the Marcos dictatorship created wide democratic spaces for grassroots initiatives.

Through most of the 14 years of the Marcos dictatorship, opposition was led by the Maoist armed underground. It was only in the latter years of the dictatorship, especially after the murder of Marcos’ chief elite opponent Benigno Aquino, Jr. in 1983, that elite groups began to mobilize. They seized the upper hand when the underground made major tactical errors in 1985-86. Because the anti-dictatorship movement had strong social justice and democratization thrusts, the elite faction that took over from Marcos gave expression to these thrusts in the constitution and in legislation. The non-Maoist Left was encouraged by the new government and set the base for the massive expansion of civil society after 1986.

In **Indonesia**, ruling military groups who got their first taste of political power with the declaration of martial law in 1957 also began to build their military base through Dutch enterprises confiscated by the government in the same year. With much more power after Suharto took power in 1966, the military allied with Chinese business groups to control modern sectors of the economy. This political economy arrangement collapsed in the aftermath of the 1997 financial crisis, and led in turn to the collapse of the political regime. The reconfiguration of the

political economy (some 80% of the modern sectors of the economy are being redistributed) and the state is still going on.

The collapse of state authority opened up democratic spaces which the Megawati regime, the third since Suharto's fall in 1998, is trying to close down or at least significantly limit. At the core of the institutions resisting change is the military. Considerably weakened because of challenges to its officially sanctioned political role in the national legislature, its human rights record, and the bankruptcy of its major economic enterprises, the military nonetheless retains considerable political power. The second key conservative institution is the bureaucracy, and the political party GOLKAR which is based in the bureaucracy and so-called functional groups of government controlled labour unions, farmer associations and other social organizations.

In **Thailand**, the political dynamic has been determined by a more complex interplay between Bangkok business groups, military economic interests, and provincial business groups. The 1992 mass actions which led to the collapse of military rule were spearheaded by civil society and Bangkok business groups who led the governments formed soon after. But electoral competition under new, more democratic rules, allowed provincial elites to capture the central government.

Competition between these three, combined with active civil society intervention, and the role of the king produced an unexpected constitutional reform in the aftermath of the 1997 financial crisis. Powerful election and anti-corruption commissions provide legal basis for undercutting the system of patrimonial politics. Following after his acquittal on corruption charges, Prime Minister Thaksin Shinawatra has used his considerable personal fortune (based on a communications empire) to build a strong base in the national parliament and to attempt to regain some of the authoritarian powers of the old military regime. The struggle between reform and tradition continues with unexpected alliances and still indeterminate consequences.

3. Constitutional and Legal Framework

Thailand and Indonesia are in the midst of a major restructuring of state institutions. The 1997 constitution in Thailand set into motion fundamental changes in the Thai political system affecting almost all aspects of the state. The new constitution has a distinct anti patrimonial politics thrust, most importantly in changes in the electoral system, a powerful anti-corruption body, and major changes in local politics and administration. A similar process is at work in Indonesia, one that is prolonged by resistance by conservative forces and the piecemeal character of the constitutional reform process. In the Philippines, pressure for reforming the 1987 constitution is mounting.

Ratified in 1987, the **Philippines** has the most elaborate constitution among the three countries. It has a strong Bill of Rights and explicit support for civil society participation in governance. But because the form of government restores elite democracy, the progressive provisions have proven difficult to implement. These provisions were concessions to the strong social movement base of the anti-dictatorship movement that brought down the Marcos dictatorship. Implementation has been possible only with strong advocacy more often than not led by civil society groups.

The constitutional provisions for popular participation are quite clear cut.

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

Art. XIII Sec. 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 interest and aspirations through peaceful and lawful means.

Art XIII Sec. 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.

It has been very difficult, however, to pass implementing legislation for many of the more progressive constitutional provisions. Among these:

- One of three modes of constitutional amendment is by popular initiative, but it is not operative because no implementing legislation has been passed.
- A 'Party List Law' reserves 20% of the seats in the Lower House for "marginalized groups" but lack of clarity in the implementing law have limited the seating of representatives of winning parties even after they won in two successive elections. Out of 52 possible seats only 14 were allocated in 1998 and only 7 after the 2001 election.
- The constitutional mandate for representation of marginalized groups in local legislative councils has not been implemented 15 years after the constitution was ratified because of the failure of the legislature to pass implementing legislation.

The 1987 constitution also has an explicit provision for direct democracy. Art XI. Sec. 32 calls on the government to “...provide for a system of initiative and referendum...whereby the people can directly propose and enact laws or approve or reject any law or part thereof passed by the Congress or local legislative body...” Although initiative and referendum is made possible by the Constitution at all levels of government, there has been only one attempt at the national level and it was an abject failure. There have been more attempts at the local level with varying degrees of success.

In **Thailand**, a broad civil society movement, working with reform politicians, succeeded in getting a progressive constitution approved in 1997. The most important achievement of the constitution arguably, is the creation of a strong election commission and an anti-corruption body which have already had an impact on patronage politics in Thailand. It has a strong Bill of Rights which incorporates many of the issues of civil society including the rights of indigenous people, children, elderly, consumers, and environmental protection.

Section 76, Chap.5 unequivocally says that “The State shall promote and encourage public participation in laying down policies, making decisions on political issues, preparing economic, social and political development plans, and inspecting the exercise of State power at all levels.” Sec. 61, chap. III says citizens have the “right to present a petition and to be informed of the result...within the appropriate time” Sec 65, Chap III even affirms the “right to resist peacefully any act committed for the acquisition of power to rule the country by means which is not in accordance with the modes provided in this constitution”, a pointed warning against coup d’etat.

In **Indonesia**, the 1945 constitution has undergone slow, piecemeal revision. The upper house of parliament, the People's Consultative Assembly (MPR) which is supposed to be convened every five years but has been sitting more often since 1998, has revised the constitution three times since 1998. There are ongoing deliberations for other amendments. In July 2002, the MPR changed the constitution to allow direct election of the president, and to remove seats allotted to the military. Provisions which are in the constitution in most countries such as elections, political parties, representation are in what are called 'political laws'.

The 1945 constitution is very short. It contains only 37 articles none of which says anything about popular participation or even acknowledges the existence of civil society organizations. This is only to be expected because these concepts are relatively new in political discourse. Even the Bill of Rights which was only put into the constitution in a recent amendment does not say anything about popular participation. While not enshrined in the constitution, concepts of consultation (*musjawarah* and *mufakat*) have strong influence. The MPR includes “functional group” (*GOLKAR*: cooperatives, labour unions and other collective organizations) representation. In the past, these representatives were, more often than not, ruling party (*GOLKAR*) representatives.

All three countries have constitutional/legislative basis for civic and political rights, including freedom of the press, freedom of assembly, right to public information. These are requisites for electoral competition even in limited elite dominated democracies. But practice varies depending on authoritarian remnants, and bureaucratic tradition. Indonesia and Thailand, for example, have decades of military rule and internal security laws which limit political rights. Under pressure from the Bush administration, the Philippine legislature is now considering a similar internal security law.

One of the most important legal requirements for citizen participation in governance, transparency in government decision-making is possible only with open access to public documents. Thailand (Sections 58 and 59 of the 1997 constitution) and the Philippines have constitutional provisions guaranteeing freedom of information, but implementing legislation has not yet been passed. In Indonesia, Article 28F of the revised constitution contains a guarantee for freedom of information. Specifically, the newly passed anti-corruption law provides for access to information. In practice, in all three countries, bureaucratic tradition limits the right in all three countries.

4. Civil Society

The organizational capacity and elaboration of popular forces: social movements, non governmental organisations (NGOs), and Left parties is another determinant of grassroots participatory initiatives. Citizens seldom 'participate' as individuals. In the three countries covered in this study, participatory initiatives, whether on national or local issues, have tended to be organized initiatives. Other 'civil society' groups, - business, media, religious groups, have played important roles in key outbursts of participatory energy, *repormasi* in Indonesia, Epifanio de los Santos Avenue (EDSA) 1 and 2 in the Philippines, the mass demonstrations in Bangkok in 1992. But in these and many other instances, popular groups, progressive social movements and NGOs have been the catalysts.

The **Philippines** has the strongest, most dynamic, and most organizationally elaborate civil society in the region. It has strong social movements, and NGOs to service social movement needs. NGOs are invariably connected to social movement groups (peoples' organizations, (POs)) such that NGOs are almost always referred to as NGO-PO. Elaborate sectoral and issue-based networks are in place. There are strong national advocacy coalitions on constitutional reform, electoral and other political reform, economic policy issues. At key political junctures, NGOs and social movements have coalesced with business and church groups. There are armed Left parties with underground and above ground organizations, several parties connected to unarmed underground organizations, several 'sectoral' parties, and one open 'social movement' political party.

Even before ‘governance’ entered Philippine NGO-PO discourse, development and other NGO work was referred to as ‘people empowerment’ work. Because Philippine civil society was largely built during the Marcos period, it had a strong anti-government bent. At best, NGO-PO groups undertook ‘claim-making’ – getting government agencies to implement legally mandated programs such as agrarian reform. It was not until the 1990s that ‘governance’ (often ‘governance and democratization’) entered NGO-PO parlance.

“Under the Marcos dictatorship, the predominant Left view of the state saw it as the instrument of the ruling class, then conceived to mean the Marcoses, their cronies, and key sections of the landed and industrial elite. From this perspective, it made little sense to participate in elections and other political exercises periodically called by the regime, for doing so would, accordingly, only legitimize the dictatorship. Instead, what was needed was to overthrow the entire state machinery – for many in the Left, primarily through armed struggle – and build a revolutionary government that would spearhead the transition to an envisioned alternative social order. Since the overthrow of the Marcos dictatorship in 1986, however, and with the restoration of formal democratic institutions, much of the Philippine Left’s thinking on the state has undergone significant changes. These shifts in thinking, in turn, have prompted important changes in the strategies that Left groups have adopted on issues concerning the state, state policies and state power.” (Melgar 2002)

Civil society governance work started as adjuncts to Official Development Assistance (ODA) funded programs of, most importantly US Agency for International Development (USAID) and Canadian International Development Agency (CIDA). The impetus for many of these programs was the passage of the LGC in 1991. This had strong influence on civil society local governance work because ODA funded programs only contracted NGO services and hardly ever funded projects devised by NGOs. Only a few private funding agencies, most importantly the Ford Foundation fund governance and democratization programs. Unfortunately, there are diminishing resources for governance and democratization work, as ODA and private donors have moved resources to Indonesia, Eastern Europe, and other countries.

In **Indonesia**, decades of repression and government organized 'syndicalist' *GOLKAR* (functional groups) weakened social movements. An elaborate apparatus of military repression down to the village level, the prohibition of political activity at the village level which relegated villagers to a “floating mass” kept political activity low. An Internal Security Law continues to limit the right to self-organization. Beginning in the Sukarno period and accelerating in the Suharto dictatorship, progressive organizations were suppressed, more malleable ones co-opted, or as in the case of the large Islamic organization Nahdatul Ulama, depoliticized. This repressive apparatus came close to destroying the vibrant Indonesian associational life going back to the beginning of the 20th century during the Dutch colonial period.

“Since the early 1970s, but proliferating especially during the 1980s and 1990s, thousands non-governmental organizations were established. Unable to enter the political arena, concerned citizens remained outside of state structures. Many of these groups proved to be innovative and effective at the project level in providing health and education services, credit and micro-enterprise schemes, environmental protection, legal aid and human rights, and natural resource management, among other things. But they could not fulfil one of the important “functions” of civil society, as defined above, limiting state power. Thus, although there were many NGOs in Indonesia during the New Order, it is difficult to talk about a strong civil society. It was at best nascent.” (Antlov, 2002, p.5)

It was only in the last few years of the Suharto regime, especially in the mid-1990s that civil society groups began to take on political roles. NGOs, especially those with active international links began to criticize human rights, environment, and economic policies of the government. Only underground groups such the Peoples’ Democratic Party (PRD) criticized the regime directly. As the anti-Suharto movement intensified, especially after the July 1997 financial crisis, student groups and organizations of activist journalists played bigger and bigger anti-Suharto roles.

The civil society situation after the fall of Suharto in 1998 has become very complex. The massive influx of private and ODA funds for civil society work including for local governance has spawned thousands of NGOs big and small. The mass actions which brought Suharto down has become difficult to sustain, especially as the new generation of students have moved to other interests. The weakness of social movements, in particular, farmers, labour, and urban poor have limited the political clout of civil society in the post Suharto period. Responding to this situation, NGOs have invested a major part of their resources and energies to organizing in these sectors.

Already active in advocacy in the 1990s, civil society organizations have moved even more strongly into advocacy on policy issues. Under pressure from ODA donors to organize political and economic reform, government agencies welcome the intervention of civil society organizations on a range of policy issues. Groups such as the Indonesian Environmental Network (WALHI), the Indonesian Centre for Environmental Law (ICEL), the Indonesian Legal Aid Institute (YLBHI), the Institute for the Free Flow of Information (ISAI) and the Indonesian Consumer’s Association (YLKI) are frequently invited to public hearings and sought out by media.

Because the opportunities for civil society governance work in a situation where political institutions are being redefined are many, more and more civil society organizations have moved into local governance work. These range from advocacy for amendments to the local autonomy law undertaken by the Forum for Popular Participation (FPPM) to the Indonesian Partnership in Local

Governance Initiatives (IPGI), a network of local NGOs working with ‘citizens forums’. During the 1999 elections more than a hundred NGOs did election monitoring. Because a lot of foreign donors are interested in civil society governance work, NGOs have proliferated, many of them ‘fly-by-night’ operations set up by local elites.

In **Thailand**, NGOs and social movements are more developed than in Indonesia, but less than the Philippines. There are strong national advocacy coalitions on political reform and economic policy issues and a number of coalitions of local NGOs and social movement groups. As in the Philippines, at key political junctures (1992, 1997 constitution) effectiveness has been greatly increased by alliances with business and middle class professionals. Governance and democratization work began during the campaign for the 1997 constitution and the passage of the decentralization law. Subsequently, the slow pace of implementation of decentralization has acted as a brake on civil society work in local governance.

“The term ‘civil society’, translated as *prachasangkhom* or *prachakhom*, has known an incredible popularity in Thai political discourse in the last 10 years. The presence of a strong (*khemkheng*) civil society is considered a *sine qua non* for the success of any political reform, the solution of social crisis, and the achievement of ‘good governance’. Confusion on what constitutes civil society is nevertheless rampant in Thailand and, as many other political concepts, it has been imported and mainstreamed in local political discourses, creating new meanings and legitimizing given interpretations.” (Orlandini, 2003, p.11)

This is a relatively recent development. During the 1950s and 1960s, popular organizations were automatically suspect and persuasively discouraged by the military. In the short flowering of democracy between 1973 and 1976, social movement groups and NGOs were quickly formed but just as quickly suppressed. Some 3,000 activists from these movements went to the jungle to join the communist-led insurgency. After the collapse of the insurgency in 1980, these activists returned and spread out into universities, the media and civil society organizations. Together with younger activists, they form the backbone of civil society organizing to this day.

“NGOs have developed in recent years an important catalyzing role. They are said to ‘have filled a vacuum created by the inability of political parties, trade unions and peasant associations to expand popular participation’ (Naruemon 2002: 183), both supporting the formation of people’s movements and coordinating their activities. Although this alleged inability and its causes should be explored further, it is true that at least some NGOs managed, over the years, to promote some forms of ‘people’s empowerment’, channelling grievances, information, and skills. An important development of the NGO sector has been the setting up in 1985 of a coordinating body at the national level, at first

comprising the organizations working on rural development (NGO-CORD Coordinating Committee on Rural Development).

“Later Naruemon identifies three broad types of NGO political activities: co operational (influencing government policy), grassroots (critical of government development policy), and promoting empowerment from below (2002: 188). The last two categories are the ones working closer to local politics (or ‘grassroots democracy’). In the ones promoting a politics of grassroots movements, Naruemon includes the Campaign for Popular Democracy (CPD), the Union for Civil Liberty and the Forum of the Poor. As belonging to the last group we find the Village Foundation, the Traditional Medicine in Self-Curing Project and the Community Forest Project. Some of these organizations were involved in different stages of the decentralization process and some (like CPD) had a significant influence in the process of the 1997 Constitution drafting. (Orlandini, 2003, p. 16-17)

As in the Philippines and Indonesia, ODA donors played important roles in generating civil society work in local governance. One of the most important was the Local Development Assistance Project (LADP) created by CIDA. This later developed into a Thai NGO, Local Development Institute (LDI), and Local Development Foundation (LDF). The Thai government has been another major player. Most of the studies on the emergence of ‘civil society’ at the local level identify its birth with the eighth national socio-economic development plan (1997-2001). The plan envisaged the participation of the ‘people’ in its drafting, through the creation of provincial *prachakhom* or civic assemblies. This has led some analysts to express concern about the “...risk that the paternalistic style of leadership that characterized the years of ‘national development’ will survive, shifting the emphasis from the ‘we take care of you’ to the ‘we listen to you’ attitude, without calling into question power relation structures.” (Orlandini, 2003, p.14)

5. Decentralization

The extent of decentralization is a major determinant of grassroots participatory initiatives. This in turn is determined by the legal basis of decentralization and the tradition of central-local government relations. The lower the level of local government where resources are, the greater the participatory opportunities. Quite simply, if local governments have no money or power, citizens would not have much incentive to participate. Election of local executives and councils is another measure of the openness of local government to participation. In all three countries, decentralization provided a distinct spur for civil society local governance work.

Philippines. The 1991 LGC is the most elaborate of all similar legislation among the three countries. It provides for the deepest, most extensive decentralization in

the region. Executives and local legislatures at all levels are elected. Whereas local governments used to negotiate funds with the central government, the LGC automatically allocates 40% of internal revenue collections to local government units (LGUs), a massive increase from the average of 11% in the 5 year period before the law was enacted. LGUs have also been given expanded taxing and borrowing powers.

Decentralization has been facilitated by a history of weak central bureaucracies for controlling local governments, and generalized central-local government contestation going back over 70 years. The result is a situation where central government bureaucracies are struggling to strengthen themselves at the same time as local governments. The central government, for example, has consistently violated the provision in the LGC for automatic allocation of internal revenue collections to local governments. Government departments whose functions have been devolved to local governments continue to demand increased budgets even as their local staff have been transferred to local governments.

Despite the uncertainties generated by this process, decentralization has brought important changes in local politics. In the past, local politics was dominated by two contests, over control of central government resources and over illegal economic activities. In the last couple of decades, local economic growth has expanded the tax base of many local governments. Greater local taxing power and increased central government internal revenue allotments have given significantly greater resources to local governments. This has increased incentives for citizen participation and more emphasis on management capability in the local leadership selection process.

Sectoral representation in elected local councils is in the constitution, but no implementing legislation has been passed in the last 15 years. Implementation of civil society representation in local special bodies such as local development planning bodies, school and police boards, and even bids and contracts committees is uneven and dependent on the strength of civil society in the locality and whether the local executive is cooperative. Recall provisions and a mandated system of popular initiative and referendum have not been used enough to ensure accountability. Indigenous peoples' traditional councils are recognized for ancestral domain claims. There are autonomous local governments for Muslims in the south and for Igorots in the Cordillera in the north.

Indonesia has had a highly centralized government for half a century. The territorial organization of the military which placed military officers parallel to civilian administration down to the village level, exacerbated the rigidity and centralization of administration. Although there were attempts at decentralization before, the process only seriously began after 1998 as a result of outside pressure and the need to counteract internal centrifugal tendencies. International

donors, led by the United States pushed the Habibie regime which took over from Suharto to undertake decentralization. Already chaffing under decades of centralized rule, the collapse of central authority after May 1998 emboldened the regions to demand more power and greater share of proceeds from the extraction of natural resources. Pressure was heightened by armed separatist movements in Aceh and West Papua.

Post Suharto amendments to the constitution provide firm basis for local autonomy and decentralization. Art.VI, Sec.18 says: “The regional authorities shall exercise wide-ranging autonomy, except in matters provided by law to be the affairs of the central government... [They] shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.” These amendments called for democratically elected local legislatures at the provincial, town/city (*kabupaten/kota*) levels. The amendments also mandated that “The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

Two laws were passed in 1999 laying out the organizational and fiscal components of decentralization. The former Law 5 of 1974 provided for a uniform and centralized system of governance. Law 22 is an almost one hundred per cent about face from what went before, radically transforming the nature of local governance in Indonesia. “Law no. 22 ... gives full autonomy to the (rural) districts and (urban) municipalities to manage a number of services and duties (there are in Indonesia some 400 districts and cities in 31 provinces). Similar to a federal system, finances, the legal system, foreign affairs, defence and religion are retained at the national level, while the authority over roads, harbours, and other “areas of strategic national interest” is transferred to the provincial level, an administrative arm of the central government. Districts and municipalities are given authority over remaining functions, including health care, education, public works, arts and natural resources management.

“Law no. 25/99 outlines the new fiscal relations between centre and regions and provides new formulas for dividing revenues. Districts retain 90 per cent of house tax, 80 per cent of land tax, 80 per cent of forest and fishery revenues, 15 per cent of oil and 20 per cent of gas revenues... There is no fiscal autonomy at the sub-district or village level; they are fully dependent on the goodwill of the district government. .. In the past, local revenues [were] based on lobbying with senior officials in Jakarta, with built-in kickbacks and mark-ups for all parties. The law attempts to stave this rent-seeking behaviour through defined resource-sharing formulas. These two decentralization policies were enacted on 1 January 2001...” (Antlov 2002, p.5, 11)¹

¹ There are 27 provinces, 280 (rural) districts, 80 (urban) municipalities, 3,300 sub-districts, 61,000 (rural) villages and 8,000 (urban) neighbourhoods (figures from 1997). In addition, villages

While the centre of gravity of the new, decentralized system of local government is the *kabupaten*, the potential for change, in particular, for participatory governance is greatest from changes at the village level. The central government penetrated and controlled villages in Indonesia, in even the most isolated parts of the country. There was hardly a single village out of the 61,000 or so scattered across the country that was not touched by government ideological and developmental control. Community leaders were enlisted as members of the state-party GOLKAR and incorporated into the national bureaucracy, required to maintain tight control over village activities, monitoring people's activities while promoting the New Order's economic priorities. (Antlov 2002/2, p.1) The new system changes all this.

The mere fact of elections for village councils in 2001 and 2002 in more than 60,000 villages and urban wards is already a major development in a country where there were no such elections. "Law 22 also replaced the much-criticized Law 5 of 1979 on village governance. There are 19 paragraphs at the end of Law 22 (a little understood section) that provide for a very different political and administrative framework, opening up for village-based democracy and autonomy to an extent never experienced in Indonesian villages... There are two major democratic features in the law, the introduction of Village Councils, (*Badan Perwakilan Desa*, BPD, literally "Village Representative Board") and the accountability of the village government...[The village head] is not directly accountable to the district government. The headman is thus not oriented upwards, he is rather accountable to the village population, and must answer questions at BPD meetings. ...The authority and autonomy of the BDP is far greater than of the former Village Assembly (the LMD). It has the right to draft village legislation, it approves the village budget, and it monitors the village government. It even has the right to propose to the district chairman that the headman is removed from his post (but the decision is taken by the district government). (Antlov 2002/2, p.2,7,8)

The whole process of decentralization, however, continues to be marked by great uncertainty. Although the decentralization laws were passed in 1999, the implementing rules were not finished until two years later under conditions of conflict that led to the resignation of the minister tasked to implement it. The Megawati regime is trying to roll back decentralization with the help of the military but elected local executives and councils are resisting. This has made attempts at pushing popular participation difficult. Unlike in the Philippines and Thailand where civil society pressure made democratization a key consideration in the decentralization process, the process in Indonesia has been centred on fiscal and administrative issues.

and neighbourhoods were further divided into wards (*rukun warga*) and quarters (*rukun tetangga*), with unpaid administrative staff.

Thailand has an even stronger central government tradition going back to the days of the monarchy. In this ‘prefectoral’ system, all local government executives were appointed by the interior ministry and had all-encompassing power in local government. This was strengthened after 1932 when military rule started. Local government is made up of 75 provinces, 1131 municipalities, 7409 *tambon*, 67,581 villages (*muban*). Local councils have been elected for some time (municipal councils in 1937; provincial councils in 1955; sub-district (*tambon*) in 1972), but these bodies coexisted with local units of the central government. Since the latter deliver most of the available services, they are the officials rural people come in contact with. There was little interest in these local elections as a result.

“The two most important loci of local political power are the sub districts and provinces. The hybrid position of local governments vis-à-vis the state administration structure and the ‘decentralization of the money politics’ since the 1980s, did not allow the formation of genuine representative bodies at the local level. Provincial governments have a negative reputation. They have been defined as ‘insignificant playgrounds for local politicians who are often construction contractors’ (Nelson 2002). This harsh depiction is due to the *de facto* weak role of this local government body vis-à-vis its administrative counterpart, in terms of power, sources and duties. The principal role of provincial councillors seems that of approving and allocating the budget for infrastructures’ development.” (Orlandini 2003, p.8)

This unwieldy system is in the throes of massive reconstitution. The 1997 constitution unequivocally says “The State shall decentralize power to localities for the purpose of independence and self-determination of local affairs...” (Sec 78, Chapter V) While the 1997 constitution lays a strong basis for decentralization, the process of implementation has been slow. The Decentralization Act was passed in 1999, but the implementation plan was not approved until November 2001. There are two phases of decentralization: the first four years, 2001-2004, will deal primarily with the re-classification and devolution of service responsibilities to appropriate levels of local authorities. The second phase, 2005-2010, is aimed at continuing the re-classification and devolution of public service responsibilities, finance, and personnel to full-scale operation.

Fiscal decentralization is quite ambitious. In 2000, the local share of revenues was only 12%. By 2007 this is supposed to go up to 35%. Before that time many thorny issues related to who delivers and who pays for services among the various levels of local government will have to be sorted out. Another issue is the direct election of local executives, up to now elected by local councils. Apart from bureaucratic inertia, patronage politics and the weakness of civil society at the local level stand in the way of realizing the opportunities for participatory

democracy. The transfer of power and financial resources to local governments, however, is already bringing about changes in local politics. It remains to be seen how much, and how quickly this change will bring about greater participatory democracy.

6. Citizen Participation

Actual participation in local government processes is dependent on openings available in the legal framework. It is useful to differentiate between different aspects of the legal system. What we might call an “enabling framework” – a set of rights that facilitate citizen action is necessary. These include freedom of assembly, speech, media which make it possible for citizens to organize, get information and project their views in the media. The right to information about government processes is of particular importance in assuring transparency, and therefore accountability.

Legal provisions constituting the system of government, at the national, but most importantly at the local levels are the second set of laws relevant to citizen participation. The system of representation and the electoral system provide the main avenues for citizen participation. The Philippine experience of reserved seats and popular initiative at the national level shows how difficult it is to implement these provisions. But they provide a political mandate for participatory arrangements at the local level.

Because government units are smaller (in territory and number of citizens) and government decisions more ‘proximate’ – closer to citizens, and because direct democracy is only possible at local levels, legal provisions on local government are the third and most important set of laws for this study. Legal provisions for direct democracy and civil society representation in local special bodies create spaces for citizen participation. Provisions for recall of elected officials and referenda facilitate accountability and bridge direct and representational democracy.

Participation is greatest in the **Philippines** because the LGC creates many openings for citizen participation. At the base of the political system, the *barangay*, councils where every voting age citizen can participate, where popular participation in the preparation of *barangay* development plans is legally required, set a base for direct democracy. At the municipal level, provisions for reserved seats in the town council can bridge direct and representational democracy at least in theory because implementing legislation has not yet been passed. Legally mandated citizen participation in local special bodies (development planning, education, health, bids and contracts, police) create opportunities for participation at the administrative level of government.

Table 1: Legislated Venues for Direct & Representative Participation in the Philippines

	Constitution		
	National Legislation		Local Legislation
	Venues for Participation in National Governance	Venues for Participation in Local Governance	
Direct Participation	<ul style="list-style-type: none"> • Initiative & Referendum 	<ul style="list-style-type: none"> • Recall • Local Initiative & Referendum 	
Representative Participation	<ul style="list-style-type: none"> • Party-List • Mandatory Consultations • NAPC (SRA) 	<ul style="list-style-type: none"> • Local Sectoral Representation • Public Hearing • Local Special Bodies • Local Development Councils • Active Partnerships • Participatory Local Development Planning • Participation in Planning & Implementation of Socialized Housing • Barangay Agrarian Reform Council (BARC) • Fisheries & Aquatic Resources Management Council (FARMC) • Localizing Agenda 21 	<ul style="list-style-type: none"> • People's Council • GAD Council Empowerment • Local Housing Boards

The enabling legislation for local initiative and referendum are found in Republic Act 6735 and Sections 120 to 127 of the LGC. Here initiative and referendum are modes of *direct legislation*. This does not replace the regular legislative-making powers of local sanggunians it only supplements or acts as a remedial measure against irresponsible and irresponsible local legislatures. (Sec. 34. 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). (Izatt 2002, p.14)

Another government initiative at the national level started with civil society representation in the Social Reform Agenda (SRA), an anti-poverty program of the Ramos administration (1992-1998). This was extended into the next administration with the passage of the Social Reform and Poverty Alleviation

Action Act, which provided for the adoption and integration of the SRA in the National Anti-Poverty Commission (NAPC). Although the NAPC Sectoral Council during the Estrada administration did not do much of anything, it has played an important role in advocating issues of civil society in the Macapagal-Arroyo administration.

ODA funded local governance projects, most importantly the two successive projects of USAID in the 1990s generated many participatory initiatives. Unfortunately, these initiatives have not been sustained. Individual NGOs and development networks have governance programs. The only network specifically formed for civil society local governance work is the Barangay-Bayan Consortium, more popularly known as BATMAN. A small group of NGOs which left BATMAN in 2001 has formed another network called Local Government Code Network (LGC Net).

Founded in 1998, BATMAN anchored its work on training elected *barangay* government officials and bringing them together with POs to prepare *barangay* development plans. These planning sessions included poverty mapping, analysis of the *barangay* economy, the planning proper, and technical preparation of project proposals. In about a quarter of the 1200 *barangays* covered, especially where a substantial number of *barangays* in one municipality had finished development plans, BATMAN assisted in organizing ‘pledging sessions’ where potential sources of funds – the mayor, district congressman, governor, line agency officials, private funding agencies, and in a few cases foreign embassies, participated.

After three years of operation, BATMAN is now in the process of conceptualizing a second phase of its work. BATMAN is preparing the requisites ‘scaling up’ - for participatory initiatives at the municipality level. The municipality has more resources, more taxing and other powers. Since there are only 1500 municipalities, work at this level would introduce a multiplier effect that will enable BATMAN to reach more of the 44,000 *barangay* at a faster rate. The 42 NGOs in the BATMAN network are in the midst of capability building for revenue generation and participatory budgeting, and participatory service delivery focusing on small water systems.

The maximization of opportunities for participation in local government processes are directly proportional to claims made by citizens groups. The greater the level of organization by citizens, the more effective the claims. Because of extensive community organizing and the opportunities opened by the decentralization law and the more advanced stage of implementation compared to Thailand and Indonesia, the level of citizen participation is greatest in the Philippines. There are large numbers of citizens’ organizations, from farmers, urban poor, women’s organizations, to cooperatives, church groups, civic organizations with long traditions of advocacy in public policy formulation.

There are NGOs specializing in 'governance and democratization' work. There are pioneering experiences in places such as Naga City which have institutionalized peoples' councils. There is an established tradition of 'claim making' by social movement groups, sometimes in alliance with state reformers at the local level. These efforts have been strengthened by para legal training to assist POs and in their claim making. Despite over a decade of organized local governance work by civil society, many of the opportunities for organized citizen participation have not yet been availed of.

In **Thailand**, a number of factors have limited the development of citizen participation in local governance, most importantly the fact that the process of implementing the mandate for decentralization in the 1997 constitution is ongoing. Given the long history of prefectorial administration, resistance is understandably strong. Campaigns for direct election of local executives have failed. Although the progressive 1987 constitution was achieved by reformers at the centre, the current central government of PM Thaksin Shinawatra is working to retain as much central government control as possible. The Thaksin government, for example, was instrumental in the rejection of an amendment of the Tambon Council and Tambon Administration Organization (TAO) Act, that provided for the direct elections of the chairmen of the TAOs (September 2002).

As in the Philippines, the constitution itself has set obstacles to the implementation of its mandate for decentralization and local democratization. Elements of recall and direct democracy are introduced in sections 286 and 287. Section 286 stipulates that any councillor or administrator must leave his or her position if votes cast against him or her reach at least three quarters of a turnout of at least one half of all eligible voters. And according to section 287, not less than one half (i.e. at least 50%) of those eligible to vote can request the chairman to have the local council consider promulgating a local law, the draft of which must be submitted together with the petition.

These requirements are so steep that it is going to be difficult to implement them. As one observer put it: "It seems that while some constitutional drafters meant to establish mechanisms for participatory democracy, the conservative part of the drafting committee managed to disabled them." (Orlandini 2003, p.10)

Another obstacle to the maximization of the opportunities for participatory democracy in the current situation is the inadequate articulation of civil society. Working with Bangkok business and other urban civic groups, civil society organizations played major roles in pushing the military out of politics in 1992, then in securing progressive provisions in the 1997 constitution. They have also facilitated bringing the issues of the provincial poor to Bangkok. But "It is hard to find communes' organizations that work on policy-advocacy, and the monitoring of local politicians and bureaucrats. NGOs and networks of POs involved in anti-corruption campaigns and democratic reforms promotion are based in the main cities with (usually) weak provincial branches." (Orlandini 2003, p.17)

Sympathetic observers have expressed concern over what Connors calls 'democrasubjection, or the subjection of people to imaginary forms of self-rule'. (Connors 2001) Orlandini calls this "part and parcel of a process of cooption of local resistances in which moderate sections are tamed and mainstreamed." (Orlandini 2003, p.15) Apart from officially organized civic assemblies, the *prachakhom* referred to before, concern has been expressed about the role of ODA funders such the CIDA-CAGIN (Canada-ASEAN Governance Innovations Network). This has generated NGOs labelled '*ha kin*' (finding something to eat), what in Indonesia are called 'consumers of democracy'.

"Engagement in local governance has been until now significantly curbed by existing power relations and public administration structures. Patron-client relations and the culture of 'reciprocity' is still indicated by some observers as an obstacle for lower classes' participation in the local political sphere (e.g. Fishel 2001, Arghiros 2001). However, as formal power structures are reformed, we can expect also cultural impediments to slowly evolve and adapt themselves to the new historical context. The nature of the Thai 'villager' is of course also subjected to change. The increased relations with urban Thailand and the increasing diversification of household income towards off-farm activities, have undoubtedly changed the rural dwellers' prospective vis-à-vis the rest of the society; many of the farmers movements have been re-shaped in the mid-1990s by the 'returnees' sons, who went to get an education in the 'city' and 'supplanted city-based NGO workers'" (Orlandini 2003, p.20-21)

In **Indonesia**, the weakness of POs in local areas and the still contested nature of decentralization has limited citizen participation in advocacy, claim making, least of all actual participation in local government processes. There have been a few initiatives in participatory planning, some government initiated, some by civil society. One organizational form, the *Forum Warga* (Citizens Fora) has been successful in a number of places for claim making. Four of these initiatives have been put together in IPGI, an initiative inspired by an observation tour of Philippine civil society local governance initiatives.

What complicates the evolving enlargement of civil society participation in local governance apart from the still contested nature of decentralization is a recent background of what might be called 'unruly citizen participation'. The collapse of state authority after the downfall of Suharto in 1998 resulted in mass actions such as the burning of police stations and forcing local officials to leave by force in several parts of the country. The slow reconstruction of state authority has curtailed these activities. The problem lies in where the line between 'illegal' mass actions such as those described above and radical social activism such as the occupation of illegally confiscated land by farmers' organizations is drawn.

At the national and local levels, government desperately needs people with new skills, the kind of skills demanded by new programs and offices. Because these

demands are linked to the process or at least the discourse of 'democratization', there are many opportunities for civil society organizations. "Government agencies are increasingly collaborating with civil society organizations, not as subcontractors but as partners (for instance, the Ministry of Settlement and Regional Development [formerly Public Works] launched a project at together with a number of prominent anti-corruption NGOs to deal with the widespread corruption within what is perceived as one of the most corrupt ministries)." (Antlov 2002/2, p.16) There are even greater opportunities in newly empowered local governments.

These demands have severely strained civil society capability. " One of the most serious weaknesses of NGOs today is the lack of a critical consciousness to act politically: to build constituencies, engage the public in debates, formulate and disseminate alternative public policies, discuss ideologies, search for broader consensus, find middle grounds, compromise, innovate, all those impossible things that are expected of a person, party or organization with an interest in politics, governance and change. This weakness is easily explained by the structural conditions under which NGOs had to operate under the New Order. These included a lack of skills in practical policy research and interaction with government bodies." (Antlov 2002/2, p.16) Another, more practical problem is that too many senior NGO leaders have been employed by government and the large numbers of foreign official and private funding agencies.²

7. Beyond Participation

One ongoing debate in civil society in all three countries is participation in the formation of political parties. Discussions for the formation of a 'social movement' party are just starting in **Thailand**. The process may take some time because there is strong anti-party sentiment. Campaign for Popular Democracy, one of the most active networks doing governance work, for example, prohibits participation in political parties. In **Indonesia**, a civil society initiative to transform an existing political party, National Mandate Party (PAN), ran aground when the leaders of this initiative bolted the party after a couple of years.

In the **Philippines**, a 'social movement party' has opened up possibilities for significantly extending citizen participation. While a few local executives have taken the initiative to institutionalize citizen participation in the communities, many more have obstructed the process. The elected municipal mayors of the party, **Akbayan**, have greatly expanded citizen participation. More importantly, **Akbayan** is committed to expanding participatory democracy horizontally, to

² A cursory list of these organizations would include the National Democratic Institute, PACT, Asia Foundation, the Civil Society Support and Strengthening Program (all of the above have most of their funding from various US sources), the Australian Government's overseas aid program, the Ford Foundation, CIDA, Deutsche Gesellschaft fur Technische Zusammenarbeit, the German private foundations, the Open Society Institute (under the local name of TIFA), not to mention a broad spectrum of international private voluntary associations providing technical assistance within particular fields, such as Birdlife and World Neighbours.

more and more municipalities, and vertically, all the way to the national political stage.

These discussions are pushed by dissatisfaction with traditional parties. In Thailand, the *Thai Rak Thai* party of Prime Minister Thaksin is an amalgam of smaller parties reportedly bought with the Prime Minister's ample personal funds. In the Philippines the attenuation of traditional parties has reached a point where the President belongs to three different parties, and members of the ruling party signed a letter asking the leader of another party to run for president in next year's elections. This has led to widespread support for a shift from a presidential to parliamentary form of government to strengthen parties.

In Indonesia, "The real crime of the New Order is that it left behind a depoliticized polity, in which political parties were seen as something foul and "liberal" a dirty word. People must "unlearn" three decades of (quite successful) brainwash... political parties and their representatives have not really been reformed: especially in the cities and districts, new collusive relations have been entertained between local governments and local councillors. New political parties, in Indonesia and elsewhere, tend to be ephemeral clubs of intellectuals, without effective grassroots. *Unsur politik* ("political backdrop") has become a derogative word. It is used when people talk for instance about an unwanted political decisions, and see it as based on party-politics. Political parties have become irrelevant for citizens only after one democratic election, while a "privatization of politics" leads to the growth of other forms of citizen initiatives, such as citizen forum, citizen charters, and so on. NGOs and other citizen-based groups thus need to re-politicize society." (Antlov 2002/2, p.16)

These discussions in the region form part of a wider discussion of new discourses, and new forms of organization in many other countries in both the North and South. It is no accident that these discussions are most advanced in countries such as Brazil, India and the Philippines where popular participation in local governance is most developed.

"Constructing a creative tension between autonomous popular councils and organisations, on the one hand, and multiparty competition, on the other, would provide a significant set of reciprocal checks and balances... Popular and representative structures would have to be given separate legal personalities. Parties would compete for national power... while autonomous non-partisan popular councils organised from the village to the regional level, each with specified sources of revenue and taxing power, would hold entrenched powers within each region." (Kasfir 1992, p.12)

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