

The Carpio Formula, the Philippine-Style Party-List System and Social Justice

Any seat allocation formula that imposes a seat-capping mechanism on the Party-list proportional representation voting system contradicts the social justice provision of the 1987 Constitution.

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Finally, after ten years of mixed membership, the House of Representatives will have 20% of its members coming from the Party-list (proportional representation) voting system. This 20-percent constitutional mandate is fulfilled by the new Supreme Court (SC) ruling on April 21, 2009. For the first time in ten years, the number of party-list groups has grown to more than 30 parties, thereby broadening the participation of the marginalized and underrepresented sectors of our society. We note, however, that not all of these parties are genuine representatives of these sectors. We hope that in 2010, the Commission on Elections (Comelec) will do its job properly in the accreditation of Party-list groups and give the members of civil society enough time to scrutinize its list of accredited parties and their respective nominees for the Party-list election.

Proportional representation and social justice

One of the state policies put forward by the framers of the 1987 Constitution is found in Section 10, Article II which provides that “The state shall promote social justice in all phases of national development.” A social justice tool designed for our Legislative Department is the election of Party-list representatives which comprise 20 percent of the House of Representatives.

In the senatorial election, a voter chooses 12 candidates from a list of senatorial candidates and 12 winners will be proclaimed by the Comelec. However, in the Party-list election, a voter chooses only one party from a list of accredited Party-list groups – and there are more than one winning parties with one or more seats. The allocation of seats to the winning parties must be done fairly and in proportion to the votes that each winning party received. Thus, the Party-list system is inherently a proportional representation voting system. The principle of proportional representation is the fourth inviolable parameter of the Philippine-style Party-list system according to the SC.

The democratic principle of proportional representation simply means that the percent share of seats of a winning party must be equal, if not almost equal, to its percent share of the total votes of all parties qualified to receive a seat. Thus, if a party has 10 percent of the total votes then it must be awarded 10 percent of the total seats. If it is not possible to award 10 percent of the total seats, then the percent share of seats must be close enough to 10 percent and the difference should not be more than the equivalent of one seat. That is, if there are 55 available Party-list seats, then the difference between the percent share of votes and the percent share of seats should not be more than $1/55$ or 1.81818 percent.

The Carpio formula and the four inviolable parameters

In its recent ruling, the high court still maintains that the Philippine-style Party-list system must be governed by four INVIOABLE parameters as stated in the Veterans Case:

1. **“The twenty percent allocation** - The combined number of all Party-list congressmen shall not exceed 20 percent of the total membership of the House of Representatives, including those elected under the Party list.” This is the first inviolable parameter.

The high court rules that there are 55 available party-list seats. The 20 percent mandate means that for every four congressional district representatives there is one Party-list representative. Thus, the ratio between the number of Party-list representatives and the number of congressional

districts is 1:4. Since the high court maintains that there are 220 congressional districts, it follows that the number of Party-list representatives is $220/4 = 55$. Hence, in its recent ruling the 55 party-list seats are all filled up.

But, isn't it that there are only 219 congressional districts since Sharif Kabunsuan and Cotabato City are merged into one congressional district? This gives us $219/4 = 54.75$ and 55 is more than 20 percent.

2. **"The two percent threshold** — Only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives". This is the second inviolable parameter.

The two-percent threshold is the minimum share of votes required by the Party-list law to qualify for a seat. It does not guarantee that a party is entitled to a seat. Note that if the qualifying threshold is 1 percent and there are 50 available seats, then a party with 1 percent of the votes is not guaranteed to be given a seat but it may receive a seat if there is a second round of seat allocation. Only those with 2 percent or more are assured of a seat.

The Carpio formula allocates a guaranteed seat to those parties that qualify for a seat. The Carpio formula did not use the latest Comelec data in its computation. It based its computation on the Party-List Canvass Report No. 32, dated August 2007 and not on the Party-List Canvass Report No. 33. Thus, it allocated 17 guaranteed seats instead of 18 since YACAP had 1.97 percent of the total votes in the old canvass report but had 2.069 percent in the new canvass report.

Although the SC ruled that the 2 percent qualifying threshold is an inviolable parameter, it awarded one seat each to those that did not qualify to receive a seat in the second round of seat allocation.

Thus, the two percent threshold is not inviolable after all.

3. **"The three-seat limit** — Each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats." This is the third inviolable parameter.

Actually, this is the only parameter of the Philippine-style Party-list system that is not violated by the Carpio formula.

4. **"Proportional representation** — The additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes." This is the fourth inviolable parameter.

In the latest Party-list canvass report, BUHAY has 7.29705 percent of the total votes and it is awarded 3 seats or 5.45455 percent of the total number of seats by the Carpio formula. The difference is 1.84251 percent. This is equivalent to more than 1 seat. This means that the Carpio formula denies BUHAY with 1 seat.

Thus, proportional representation is not an inviolable parameter.

It is very clear that the four inviolable parameters of the Philippine-style Party-list system are inconsistent with each other and any seat allocation formula that will adopt these parameters is bound to such inconsistency by upholding one or two parameters and compromising the others.

The error in the first inviolable parameter can easily be corrected by using the correct number of congressional districts.

However, the 20 percent constitutional mandate cannot be filled up if the 3-seat cap is imposed. Thus, the 2 percent qualifying threshold is compromised in the second round of the Carpio formula.

Parties with more than 6 percent of the total votes are penalized if they get more than 3 seats by the Carpio Formula. The effect is denying these parties of the seats that are rightfully theirs. Hence, the 3-seat cap violates the democratic of proportional representation which is one of the principles of social justice.

With the imposition of the 3-seat cap in our Party-list proportional representation voting system, the State does not promote social justice but instead negates its development.

Therefore, any seat allocation formula that imposes a seat-capping mechanism on the Party-list proportional representation voting system contradicts the social justice provision of the 1987 Constitution.

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