

Charter Change and Federalism

Why CHARTER CHANGE?

- “...Through time, the disadvantages of a unitary system (imposed by Spain and the United States) became apparent in the country.
- The system concentrated political and economic power in the “center” and thus, development was limited in areas close to Manila and stifled elsewhere.
- Not surprisingly, in a country of more than 100 million people, sixty two per cent (62%) of the country’s GDP comes from Metro Manila, Central Luzon, and CALABARZON while the rest of the country is suffering from underdevelopment and low investment.

Why CHARTER CHANGE?

- Our system of government has resulted in a grave imbalance in the distribution of resources among regions and local government units.
- Unfortunately, this inequality has led to social unrest, with various groups (especially in Mindanao) arming themselves to fight against the system. Clearly, there is a need for change.
- “The problem, we submit, is our highly-centralized form of government and the solution, we believe, is the adoption of the federal system. We believe that the only way to bring about equitable and widespread development in our country is for the central government to share power – political and economic – with the regions and LGUs.”

From PDP LABAN Model cited by CM in one of his talk on Federalism

Federalism

- Philippines: unitary form of government
- Power — decisions, policies, and programs emerging from the central government.
- Federalism: power is divided/shared between the central government and local state governments.

PDP Laban draft Federalism

- No “one size fits all model” of Federalism.
- Every federal country has a distinct model that works best for its own country.
- “Countries who wish to shift to a federal system – like the Philippines -- must discern its own version of federalism according to the peculiar conditions of their societies.”
- “It is important to learn from the experiences – whether good or bad – of existing federations.”

Paper by Jonathan E. Malaya, Executive Director, PDP Laban Federalism Institute

- No need to come up with an entirely new Constitution. “The 1987 Constitution has many good provisions that need not be changed.”
- “We have taken a “surgical” approach towards amending the fundamental law, concentrating only on the articles and provisions that would enshrine federalism into the Constitution and strengthen our public institutions, among others.”
- “Articles in the 1987 Constitution that are left practically untouched such as Articles on the Bill of Rights, Citizenship, and Suffrage, among others.”

Paper by Jonathan E. Malaya, Executive Director, PDP Laban Federalism Institute

Salient Features: Federalism proposal

- Federal Government with a Semi-Presidential System or a Hybrid Parliamentary System
- Transition mechanism for Regional Governments to prepare themselves for further decentralization,
- Provisions to strengthen political parties, mechanisms to regulate political dynasties, and other political and electoral reforms.

Paper by Jonathan E. Malaya, Executive Director, PDP Laban Federalism Institute

Federal System: Pilipinas

- Two Constitutionally-established orders or levels of government
 - a. Federal Government
 - b. Regional Government.
- Unlike the present system where there are **overlapping mandates** between the National Government and Local Government Units (LGUs), each level of government in the Federal structure will have its particular jurisdiction.

The Federal Government

- Exclusive legislative powers over National Defense, Police and National Security, Foreign Affairs, Currency, Immigration, and other matters that concern the entire nation.
 - all residual powers are retained by the Federal Government but these may be delegated to the Regional Governments.

Regional Governments

- “Guided by the principles of Autonomy, Subsidiarity, Solidarity, Decentralization and Devolution, Democracy and Accountability.”
- Since local governments are closest to the people, they are the ones who are best equipped to deliver basic services to the people.
- Those basic services, however, that are best delivered under a national standard shall be a shared power between the Federal and Regional Governments.
- Proposal: 11 regional governments the composition of which shall be attached as an ordinance to the Constitution.

Concurrent or Shared Powers

- Law and Order, and Police
- Administration and Justice
- Education (Basic, Higher and Technical)
- Energy
- Sustainable Use and Management of Natural Resources
- Labor Relations, Benefits and Standards
- Social Security
- Health Policy and Standards
- Price Control and Product Standards
- Social Welfare and Development
- Etc.

Regional Governments

- Primary legislative powers over basic services such as Social Welfare and Development; Tourism; Irrigation, Water and Sewerage; Waste Management; Fire Protection; Regional Development Planning; Franchises, Licenses and Permits; and the allocation and provision of funds and resources to local Governments within the Region, among others.

Semi-Presidential System

- Current Presidential System which concentrates executive power in a single office will be replaced with a **semi-presidential or hybrid parliamentary system**
- Executive power is dispersed among the **President, the Prime Minister, the Cabinet, the Parliament and the Regional Governments.**

Reason

- “In the transition to a more decentralized system of governance, we need a popularly elected presidency to hold and unite the country together and ensure that the transition to federalism and transfer of powers to the regions will be successful.”
- The President can help as an arbiter of disputes between the federal and regional governments and among regional governments.

Reason

- We need an effective president to deal with powerful countries like China and the United States, as well as to effectively compete in a globalized world economy;
- We need a president who can decisively address the numerous national security problems and natural disasters;
- A pure parliamentary system without strong political parties can be unstable. It will take time to build strong political parties. We need a president to ensure that there is no gridlock in our political system and a president who can remain decisive in cases of national crises;

Reason

- Finally, having a president, a prime minister, a cabinet and regional chief ministers will help:
 - spread out the burdens of governance,
 - avoid a single issue agenda and,
 - help speed up regional development by giving more powers to the regions, which is the main objective of our reform.

President

- Nationally elected, shall be the Head of State.
- Symbol of the nation and the decisive leader in times of crisis.
- Primarily responsible for the country's National Defense and Foreign Affairs.
- The President can veto acts of Parliament
- Shall appoint SC justices, Consti Commissions, CA, Sandiganbayan, Ombudsman and other members of the Judiciary

President

- Nominate and with the consent of the Federal Assembly, appoint the Prime Minister and
- He/she can dissolve the Federal Assembly depending on certain conditions, and
- Call for new elections.
- Given these powers, the President will be insulated from day-to-day politics and act as an “elder statesman.”
- The President is given a maximum of two 5-year terms.

Prime Minister

- The Prime Minister shall be the Head of Government
- Will handle the day-to-day affairs of government.
- Will set domestic and economic policy and control public finances.
- He/she is responsible for the program of Government and determines the guidelines of national policy, appoints members of his/her Cabinet and other officials except those appointed by the President;
- Prepares the National Expenditure Program and submits it to the Federal Assembly for approval.
- He/she should be a member of the majority party or ruling coalition in the Federal Assembly in order to be appointed by the President as Prime Minister.

Parliament

- The Parliament. It is proposed that the present Bicameral legislature be retained but with different names, powers, and functions.
- Legislative power shall be vested in Parliament which shall have two houses or chambers:
 - a) **Federal Assembly and**
 - b) **Senate**

- Under the hybrid Parliamentary system, primary legislative power is vested on the Federal Assembly which will be composed of 400 members – 60% elected by plurality votes in Legislative Electoral Districts and 40% elected through the Proportional Representation system of accredited national political parties.
- The Federal Assembly shall have the power to initiate legislation which shall go through the mandatory 3-readings.
- The Prime Minister shall also come from the Federal Assembly together with the Cabinet, a majority of which shall come from the Assembly.

- The Senate shall now be elected by region just like in other Federal countries. **In the exercise of its legislative powers, the Senate shall concur on all bills and resolutions passed by Federal Assembly before it becomes law.**
- In order to avoid the duplication of functions between the two chambers and to streamline the legislative process, the 3-reading rule shall no longer apply to the Senate. One reading shall suffice.
- **It cannot initiate legislation. The power of the Senate shall be limited to the review of bills passed by the Federal Assembly.**

- Instead of a bicameral Commission on Appointments, it shall now be the Senate who shall confirm appointments made by the President and Prime Minister to the Cabinet (except when the nominee is a member of Parliament) and to other positions (e.g. Constitutional Commissions) that require confirmation.
- The Senate shall continue to act as the Impeachment Court; approves treaties and international agreements, and screen and nominates appointments to the Judiciary instead of the Judicial and Bar Council.

- There shall be 3 senators elected from each Region. Both the Senators and the Members of the Federal Assembly shall have a maximum of two 5-year terms.

Transition Mechanism to a Federal System

- For federalism to succeed there must be serious consideration to a smooth transition mechanism.
- Since the shift to a federal system will impact on practically all government agencies and levels of government, the transition must be slow, deliberate and purposeful.

- It is proposed that there be a three-step process in the transition process.
- This is important to ensure the capability and readiness of the Regional Governments and their constituent Local Government Units to take on the devolved powers and responsibilities from the Federal Government.
- The transition mechanism will also give Parliament the time needed to amend national laws as well as enact complementing legislation.

Step 1: Regional and Local Government Code (RLGC).

- Eighteen months from the ratification of the amendments to the 1987 Constitution, a **Regional and Local Government Code shall be enacted by Parliament to replace the 1991 Local Government Code.**
- The RLGC shall define the powers, functions, and responsibilities of Regional Governments and their constituent LGUs.
- The Code shall also provide the taxing powers and other sources of funds of the Regional and Local Governments.
- And it shall provide for the creation of an Equalization Fund which shall replace the Internal Revenue Allotment (IRA).

Step 2: Regional Commissions

- Once the Regional and Local Government Code is passed, the Regional Governments are deemed created.
- In order to save on government resources and **do away with the need for new elections for Regional positions**, the Regional Governments in the interim shall be governed through Regional Commissions.
- Each Regional Commission shall be composed of the incumbent Governors of Provinces and Mayors of Highly Urbanized Cities and Independent Component Cities within the Region.
- The **chairmanship** of each commission shall be by rotation among its members for a term of **one-year** term. The organizational structure and operations of the commissions shall be defined by the Regional and Local Government Code.

- The Regional Commissions shall serve as the interim Regional Government acting as a collegial body with both executive and legislative Powers.
- A Regional Chief Administrator who is a professional manager appointed by the Commission En Banc shall act as the Chief Executive Official tasked with running the day-to-day operations of the Regional Government.
- The Commission shall create and organize the government offices necessary for the effective and efficient functioning of the Regional Government.

Rationale behind the establishment of a Regional Commission as the Interim Regional Government

- Firstly, it will reduce the cost of establishing the regional government as the commissioners are already receiving their salaries from their respective LGUs;
- Secondly, the regional government can operate right away without the need for new elections which takes time and entails cost to government;
- Thirdly, it allows the constituent units to determine the agenda of the regional governments until such time that region can transition to a regular regional government through an Organic Act.

Step 3. Regional Organic Act

- Within 5-10 years from the establishment of the Regional Government, the Regional Commission shall submit to Parliament for approval a proposed Regional Organic Act more responsive to the needs, culture, and aspirations of the region.
- The Act shall define the basic structure of government for the region consisting of an Executive Department headed by a Chief Minister and a Regional Assembly composed of elected representatives from each province and city.
- The regional chief executive called Chief Minister shall be elected by the Regional Assembly from among its members. Once the Regional Organic Act is approved by Parliament, the Regional Commission shall transfer its powers and functions to the Regular Regional Government.

Fiscal Reforms

- The unequal distribution of public funds to the regions is one of the major causes of underdevelopment in the country.
- We will pursue the principle that the budget shall follow the division of powers; which means that the regions should be given the necessary funds to properly exercise the powers devolved to them.

- At present, 83% of national government revenue are controlled by the national government and only 17% are allocated to local governments. Under our formula, this will change in favor of regional governments: 60% to be controlled by the Regional Governments and only 40% by Federal Government.

Political, Electoral and Other Reforms

- For Federalism to succeed, it should come with a package of electoral and political reforms. We believe that federalism can fail if we do not institute changes in our political and electoral system.
- In order to democratize political power, we propose to make the anti-dynasty provision in the Constitution self-executing. It is proposed that relatives of incumbent politicians up to the 2nd degree of affinity or consanguinity shall be prohibited from running for public office in the territorial jurisdiction where the incumbent was elected.
- In order to establish strong and cohesive political parties, Parliament shall be mandated to promote the development of political parties as public institutions that shall serve as a mechanism for communication and cooperation between the people and the government, facilitating political organization and representation.

- To support this initiative, political turncoatism shall be prohibited. Party switching shall be banned within 1 year immediately preceding or following an election, otherwise he loses his position and shall be prohibited from running in the next election.
- It is also proposed that state subsidy shall be provided to political parties based on their electoral performance in the previous election. This is to reduce or all together eliminate the influence of big business and drug and gambling lords in our politicians.
- The current party list system is also proposed to be improved and transformed into a system of proportional representation. The 3-seat cap will be removed in order ensure that the ruling party is able to muster a majority and ensure a stable parliamentary system.

- Since corruption is still a curse devastating our country, we shall continue to strengthen the Ombudsman, Sandiganbayan, and the Commission on Audit and make them a strong presence in every Region.
- Under the proposal President has the power to appoint SC justices, Consti Commisisions, CA, Sandiganbayan, Ombudsman and other members of the Judiciary

- As to the restrictive economic provisions in our current Constitution, we propose that we delegate to Parliament the matter of fixing the percentage of allowable foreign ownership in nationalized economic activities. Land ownership in the country, however, shall be reserved only for Filipino citizens.

Deleted Provisions: Article XII National Economy and Patrimony (Footnote No. 123)

- SECTION 4. The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

Deleted Provisions: Article XII National Economy and Patrimony (Footnote No. 123)

- SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.
- SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Deleted Provisions: Article XII National Economy and Patrimony (Footnote No. 123)

- SECTION 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.
- SECTION 9. The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.

Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

Deleted Provisions: Article XII National Economy and Patrimony (Footnote No. 123)

- SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines **at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years.** Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Deleted Provisions: Article XII National Economy and Patrimony (Footnote No. 123)

- SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

PROPOSAL

- “As to the restrictive economic provisions in our current Constitution, we propose that we delegate to Parliament the matter of fixing the percentage of allowable foreign ownership in nationalized economic activities. Land ownership in the country, however, shall be reserved only for Filipino citizens.”

The PDP Laban Model of PH Federalism: An Executive Summary
Published on Thursday, 28 September 2017 05:22
Written by Jonathan E. Malaya

Deleted Provisions on Article XIII Social Justice and Human Rights – Agrarian and Natural Resources Reform (Footnote 126)

- SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Deleted Provisions on Article XIII Social Justice and Human Rights – Agrarian and Natural Resources Reform (Footnote 126)

- SECTION 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.
- SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.
- The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Deleted Provisions on Article XIII Social Justice and Human Rights – Agrarian and Natural Resources Reform (Footnote 126)

- SECTION 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.
- SECTION 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

Agrarian and Natural Resources (Proposed Consti Provision)

Section 4. The State shall promote economic expansion, higher productivity, and equitable distribution of the fruits of growth in the Agricultural sector, including the reform of land ownership arrangements to correct historical injustices and remove impediments to growth

Footnote: Sections on Agrarian Reform and Natural Resources are better left to the Parliament