

Rethinking Federalism

In the Light of Social Justice

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I. Introduction: Background

The irony in the struggle for charter change is this: civil society advocates pushed for constitutional change leading to a federal Philippines since the nineties, and when it finally came within striking distance, they had to back off. In the last two decades, academic and civil society, political and electoral reform advocates as well as just and sustainable development advocates began studying the possibilities of rethinking the shape of the republic's form of government. Their main interest was and still is to institute a form of government that would help ensure the establishment of political parties with well-defined platforms, programs of government, advocacies, and memberships; break up the elite's monopoly of the government; allow genuine representatives of the concerns of the people to have a voice in government; do away with patronage politics; break the centralization of power and resources in the National Capital Region and create regional centers of development; bring governance closer to the people; and empower people to govern themselves. After some study, discussion, and consultation, there emerged the idea of refashioning the Philippines as a federal republic with a parliamentary form of government. The advocacy for a parliamentary form of government brought with it the hope that it would force politicians to run based on party affiliations and it would make them take parties and platforms more seriously. Advocates also hoped that the system would also help influence voters to focus on platforms and programs of governance rather than individual candidates. Federalism, on the other hand, is supposed to strengthen people's participation and government accountability, as well as improve service delivery.

Federalism, even more than local autonomy as it is presently practiced and defined, should free up the concentration of power and resources in the capital and thus give the localities the chance to define and realize their own development. The general experience is that the farther away a locality is from Manila, the less developed it is and since all the resources and powers are accumulated in the capital, no locality is capable of acquiring the resources for its development without aligning itself to the wishes of national government politicians. Thus, instead of focusing their energies on administration and management of the development of their localities, local politicians spend much of their energies courting national level politicians who control resources and aligning their own development plans and projects to those of national line agencies. With federalism, genuine local autonomy will be established and the creative energies of local politicians might be unleashed. Since they control both the funds and the administrative power to determine their own priorities, local governments will be able to define the development priorities most appropriate to their localities. Federalism will also allow these localities to determine how best to preserve and develop their local cultures. Most importantly, since government is closer to the local populace, local politicians can be made more accountable to their people and finally the voices of the marginalized majority will be heard. That is the hope, and so we can see how charter change for a federal republic with a parliamentary government is very attractive to reformists.

The campaign initiated by civil society has been, from the very start, a campaign to bring about fundamental change in the way we govern our nation. This desire for radical change comes with the understanding that our nation suffers from grave injustices born

from, among other things, a failure of governance. Our nation is badly governed. Being a nation composed of various peoples with various lifeways, conceptions of development, and aspirations for a good life, we need a government that can bring this multiplicity together in a cooperative whole that can work for its development and mutual welfare. As it stands, we have separate communities competing for scarce resources controlled by the political and economic elite. This control is maintained by a political system that effectively takes away from the majority of its people the right and the capacity to determine the flow and control of resources, the shape of the economy, and the laws that determine their lives. The advocates of change say that the effective disempowerment of our people is rooted in the excessive centralization of government. It is also rooted in a political system that continuously pits the elite in a contest to control government for their self-serving interests. Thus it is necessary to bring governance back to the people, especially the marginalized, so that they can fairly take part in the governance of their nation and make the state serve them. A shift to the federalist and parliamentary form of government is supposed to serve the cause of empowerment because they will give the people mechanisms of meaningful participation in governance. Given this avowed agenda, we must reassess the moves for charter change being pursued by various sectors, including our own, since these moves are being championed as the necessary steps in establishing a form of government that will address centuries of injustice and ill-governance.

In this paper, we will focus our study on the promise of federalism, i.e. how it can respond to our problems with regard to good governance and sustainable and equitable development, and how—if it is indeed desirable and feasible to federalize—to establish a federal Philippine republic. We will weigh the value of federalism with the scales of equitable and sustainable development to see how it can serve the liberation of the marginalized Filipinos. However, before we begin, let us state what we mean by a good governance system as understood by the advocates of sustainable and just development.

A governance system is empowering. Unlike our system which encourages or even creates relationships of dependence between the mass of people and the minority elite, it must be a system that enables people to participate in governance. It must discourage elite control of government institutions and their squabbling to control its resources. A good system of governance should encourage transparency, responsiveness, and participation. It should be able to accommodate the aspirations of its citizens to realize their genuine and reasonable needs by creating an environment of fair competition and cooperation among its citizens. It should also be able to allow for fair representation so that all stakeholders are allowed to determine government programs and policies. In sum, a good government system is one that allows for the emergence of responsive and accountable leaders and allows an empowered citizenry to cooperatively govern itself for sustainable and equitable development. Our question then is: will a federal system support this kind of governance? Our assessment of federalism will always return to this question.

II. Review of literature on federalism and social reforms especially agrarian/asset reforms

When one is doing research on federalism as an effective form of government for the Philippines, there are very few materials that directly address the subject matter. Not too many researchers have focused rigorous studies to address the issues that surround the

assertion that Federalism will lead to fundamental governance reforms. However, because of the recent campaigns for the federalization of the Philippines, there were produced some important anthologies that explain the reasons behind the push and the necessity for the shift. Of course, the most authoritative studies are already collected in these books edited by Jose V. Abueva: *Towards a Federal Republic of the Philippines With A Parliamentary Government: A Reader* and *Constitution For A Federal Republic Of The Philippines With A Parliamentary Government*. These books contain all the major arguments for a federal Philippines with a parliamentary government. There are also these conference proceedings “Federalism: The Future of Decentralizing States? 2nd International Conference on Decentralization” which bring together the work of various scholars to speak on the federal experience across nations in order to shed light on the necessary steps toward federalism that we should take. One should also study these two monographs by Cristina Jayme Montiel and Judith M. de Guzman, *Political Psychology of Spain’s Transition to the Estado de las Autonomias: Lessons for the Philippine Transition to Federalism* and by Montiel, *The Power Terrain of Transitioning to Federalism: Can the Philippines Learn from Malaysia’s Experience? Political Psychology of Transitioning to Federalism in the Philippines*, which are excellent discussions of processes that facilitated the federal shift in Spain and Malaysia in order to draw possible lessons for the Philippines. Between these works, we have the more important academic reflections of the possibilities and value of federalism for the Philippines.

However, if we are to seriously consider the federal shift, these books do not offer a complete picture. These books offer arguments for the shift, and the last two even offer lessons of our own potential shift, but they do not give a satisfying argument that federalism will work for the Philippines, especially if one has an equitable development agenda. They are mainly the arguments of social scientists and advocates on why the shift should happen and what it could possibly address. None of them give compelling data that will show us how the shift could genuinely address some of our longstanding governance and social justice issues. In order to genuinely understand this, one has to turn to the studies on the implementation of local autonomy and devolution under the Local Government Code of 1991. A list of the more important and helpful studies is contained in the annotated bibliography at the appendices of this work. These works, although not speaking directly to the federal issue, make a more compelling and realistic argument of how federalism could or could not address our development and social justice agenda. However, most of these works are in the form of case studies. None of them are in-depth, national studies on the effects of devolution and local autonomy. Works like these are necessary and still need to be done. Otherwise we will never really understand how this laboratory, or even this preparatory phase for federalism, worked and what its lessons are for federalism. Nonetheless, we will comb through these studies in order to draw from them the possible lessons for the federal shift.

This study seeks to reflect on the potentials of federalism based on the accomplishments and failings of local autonomy and devolution. We do not believe that this will give us a complete understanding of the possibilities of federalism in the Philippines but they will give us a sense of how localities govern, what makes local governance work, and what improves with local governance. The studies listed in the appendix are some of the more significant in the field of local democracy.

Comprehensive studies on the implementation of social justice provisions of the Constitution are lacking. However, there are some published and unpublished assessments and even case studies that do help us understand the rate of implementation; many of the more important studies are done by the advocacy teams of NGOs. Again these are listed in the annotated bibliography. However, despite these significant studies, there is really a lack of comprehensive, interdisciplinary and multi-sectoral studies that explain the national situation regarding the implementation of the social justice agenda of the 1987 Constitution and other social justice reform issues. However, the partial studies and national situationers that exist do give us an idea of the general issues regarding implementation and how these tied in with local autonomy.

Given the state of the literature on the issue of federalization and its implications on just and sustainable development, we must really say that there are not enough studies to help us come to a clear and determinate conclusion regarding the necessity and potentials of federalization. However, there are enough studies from which we can draw insights regarding the genuine value of federalization for our social justice agenda.

III. Historical Survey of the Federalism and Social Reform Agenda

A. Background

In this section, we will reflect on the writing of our constitutions and the forms of government they established in order to understand how governance served the agenda of democratic governance and social justice. We begin with this reflection in order to understand how the history of governance and its existing forms can serve local democracy and people empowerment.

The story of the writing of our constitutions can be seen as the elite's struggle to create a system that establishes what they understand to be a viable state. It also reflects the elite's growing awareness of injustice and the need to balance and to make concessions to social justice while furthering their own interests. From The Malolos Constitution, which expressed no awareness of the plight of the dispossessed, to the 1987 Constitution, which tried to institutionalize a preferential option for the marginalized, these constitutions reflected the elite's changing understanding of what is best for the country according to what concerned them at the time of its drafting.

The Malolos Constitution reflected the concern of the elite to protect themselves from the abuses of power, especially the need of the provincial elite to protect themselves from the potential abuses of a strong national executive. Thus it promulgated a representative form of government with a predominant unicameral congress that had some executive and judiciary powers. This is because of their great fear of the military oligarchy that the revolutionary government represented. It therefore gave Congress the power to scrutinize and supervise the affairs of government through the Permanent Committee of Congress.¹ President Emilio Aguinaldo tried to become a stronger president by having Congress grant him decree-making powers and have it abolish their oversight functions but

¹ Nicolas Zafra, "The Malolos Congress," in Vicente Albano Pacis, et. al., *Founders of Freedom: The History of the Three Philippine Constitutions*, (Manila: Elena Hollmann Roces Foundation, Inc., 1971), 164.

the local elite controlled legislature stood firm because of their fear of an autocratic government. However, the predominance of the legislature also ensured the predominance of the provincial elite over the republic.² This Constitution also detailed the rights of citizens and established the separation of church and state in order to ensure that the elite's experience under Spanish rule would not be repeated.³ The constitution was never tested though. Shortly after its ratification, the Philippine-American war broke out.

The 1935 Constitution was drafted by a group composed mainly of members of the elite, "with no less than 20 having been educated in American universities; most were middle class, many of whom had served in government; some were landed and moneyed; and a "big majority [were] lawyers."⁴ Contrary to the naïve statement of Jose M. Aruego that the constitutional convention was "representative of Philippine society,"⁵ just as in Malolos, it was a body that represented the mind of the elite. But like Aruego, the delegates probably did believe that they represented the cross section of the Philippine population.

According to Aruego, the 1935 Constitution founded a constitution with these basic principles:

(1) the sovereignty of the people; (2) strong government (3) the separation of powers, with its concomitant check and balance; (4) the independence of the judiciary; (5) a strong executive power; (6) nationalization of natural resources and public utility; (7) a high sense of public service and morality; (8) national solidarity; (9) promotion of individual and social welfare; (10) social justice, (11) government of laws, and (12) majority rule.⁶

The 1935 Constitution follows the basic principles of the American Constitution and the requirements of the Tydings-McDuffie Act.⁷ It also retained the "institutions and philosophy [drawing] substantially from the organic acts which had governed the Filipinos for more than 30 years, more particularly the Jones Law of 1916."⁸ This was because the draft was subject to the approval of the United States Government. At heart, it was a constitution formulated according to "the wisdom of seven men, informed by historical precedent, traumatized by an

² Patricio N. Abinales and Donna J. Amoroso, *State and Society in the Philippines*, (Pasig City: Anvil Publishing, Inc., 2005), 116.

³ *Ibid.*, 115.

⁴ Jose M. Aruego, "The Framing of the 1935 Constitution of the Philippines," in Vicente Albano Pacis, et. al., *Founders of Freedom: The History of the Three Philippine Constitutions*, (Manila: Elena Hollmann Rocas Foundation, Inc., 1971), 199-200.

⁵ *Ibid.*, 199.

⁶ *Ibid.*, 208.

⁷ *Ibid.*, 7.

⁸ *Ibid.* 93-94.

obviously colonial background and inspired by a revolution they knew about almost at first-hand” who resolved “the basic issues among themselves.”⁹ It was not a constitution that one could hope to be keenly aware of profound social injustice because its main concern was to show the world that we could be a constitutional republic that was capable of rational, self-governance.¹⁰ It was also a document that was meant to ensure that American interests would be protected and furthered after independence:

Article XVII

Special Provisions Effective upon the Proclamation of the Independence of the Philippines

Section. 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines:

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of the Philippines.

This ordinance was also Appended to the 1935 Constitution:

...the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

The 1971 Constitution was drafted to update the 1935 Constitution. It was supposed to be formulated by a constitutional convention but this was suspended with the declaration of Martial Law. They did finish a draft though but this was to be revised by the same assembly minus the incarcerated oppositionists to President Ferdinand Marcos. The 1973 Constitution was amended to serve Marcos’ agenda for power. Many features of the constitution—including the Parliamentary structure and the absence of a limit to the number of terms a president could remain in office—were meant to allow Marcos to rule for a long time and ensure that he had a parliament loyal to him. Two other amendments in 1976 and 1981 were made. The 1976 amendment further consolidated Marcos's hold over the Philippines by allowing the Prime Minister to hold the position of President at the same time, thus giving one man unlimited access to both executive and legislative powers. The

⁹ Jose Luna Castro, “The Promise and the Challenge in the 1971-1972 Constitutional Convention,” in Vicente Albano Pacis, et. al., *Founders of Freedom: The History of the Three Philippine Constitutions*, (Manila: Elena Hollmann Rocas Foundation, Inc., 1971), 331.

¹⁰Isagani Cruz, "The Nature of the Constitution", *Constitutional Law*, (Philippines: Central Lawbook Publishing Co., Inc.,1995) 18.

1981 amendment was meant to return the Philippines to a more democratic system by establishing a Parliament with a President directly elected by the people.¹¹ However, this new structure still allowed Marcos to continue his authoritarian rule.

The 1987 Constitution was drafted on the winds of goodwill and a great desire for reform. Learning from the lessons of suffering from a one man rule, it sought to return the Republic to a form of government more recognizable to the elite. Firstly, the 1987 Constitution restored civil and political liberties as well as separation of executive, legislative, and judicial branches of government which were lost with the 1973 Constitution. Secondly it integrated economic policy (e.g. distribution of agricultural land) within the constitution, which was subject to much debate among the members of the Constitutional Commission. Dissenters felt that its form favored the interests of the elite landowners more. Still it sought to integrate economic policy that would allow for the development of the marginalized sectors of society. Thirdly, it mandated the establishment of autonomous Local Government Units, the mechanisms of which were only specified in the 1991 Local Government Code. Finally it stated as policy the need to empower the dispossessed and the promotion of people's participation in governance, the mechanisms of which were officially legislated into law several years after the actual ratification of the constitution. Sadly, many of these constitutionally-mandated structures are still not legislated such as sectoral representation in local governments and the system of a people's initiative to amend the constitution. However, as we shall explain, this Constitution did reflect a more progressive understanding of distributive, social justice and sought to institutionalize ways to ensure that the marginalized and dispossessed were guaranteed a means to liberate themselves from poverty. It is more articulate about its social justice policies and offers social reformers a basis from which to demand action or protection from the government. It also institutes people's empowerment in many of its social justice agenda. This could be a positive characteristic but Isagani Cruz makes this observation:

What makes the present Constitution excessively long is the inclusion therein of provisions that should have been embodied only in implementing statutes to be enacted by the legislature pursuant to the basic constitutional principles. The most notable flaw of the new charter is its verbosity and consequent prolixity that have dampened popular interest in what should be the common concern of the whole nation.¹²

However, this prolixity may have been the result of the constitutional commission's understanding that its high ideals may not be realized by a legislature that would be dominated by those whose interests run contrary to social justice.

Thus, we see how the history of our constitutions, at least from the interest of social justice and empowerment, is a history of a growing awareness of the need to establish a just society. We can see here an evolving sense of the need for policies of distributive justice and the preferential protection of the rights of the dispossessed. However, the constitutions also expressed the form of governance that served the needs of the elite at the time of their formulation. Malolos needed to protect the provincial elite from the excesses of the military

¹¹ *Ibid.*

¹²Isagani Cruz, *Philippine Political Law*, (Quezon City: Central Publishing Co., Inc., 2002), 11.

elite, 1935 had to win the approval of the Americans and preserve the position of the political elite in government, 1973 served to legitimize Marcos' authoritarian rule, and 1987 served to restore democracy the way the pre-Marcos elite understood it and to make concessions to people's and liberation movements that helped restore democracy. In the bid for a new constitution, we must ask ourselves whose interests are served by these amendments so that the reformist and social justice agendas are not perverted. We should also note the social reform and social justice gains made with the 1987 Constitution and understand that those provisions were made riding on the spirit of good will generated by the restoration of democracy. Therefore, the elite were given to making concessions to the point of giving up some of their privileges in the political and economic control of the nation. Given the current mood of the time, where the elite are brazen about their assertion of their desire to control political and economic power, we must wonder if there is a chance to expand, and even just retain, the gains made with the 1987 Constitution. Will the movement for charter change open the Constitution to expansions of social justice gains or will it open it to elite assertions to gain more power and more economic privileges to the detriment of the dispossessed? It would indeed be tragic if the elite were allowed to remove the progressive provisions considering how miraculous their insertion was to begin with and considering how 20 years after its ratification, not all the progressive provisions have been given flesh.

B. The Autonomy/Federal Agenda

Seeing how each government reflected the elite's needs at the time of their formulation, we must ask ourselves how the Federalist Agenda of autonomous, responsive, empowering local governments would have fared in these constitutions. Malolos was simply an elite constitution that aimed to ensure the dominance of the local elite. It was in some sense a potential federalist republic since the local elite controlled governance through the national assembly, thereby showing how the locals needed to control the assertion of the national over their territories. It also granted these powers and responsibilities to local governing bodies (Title XI, Art. 82):

1. The government and management of the particular interests of the province or town shall be discharged by their respective corporations, the principle of direct and popular elections being the basis underlying each of them.

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5. Power of taxation shall be exercised to the end that provincial and municipal taxation do not come into conflict with the power of taxation of the State.

Thus, there is already a clear granting of administrative autonomy and some taxing powers. However, there is this strongly worded provision:

4. Government interference and, in the absence thereof, by the National Assembly, to prevent provinces and municipalities exceeding their powers and attributes to the prejudice of the interest of individuals and of the nation at large.

Clearly, government and national assembly interference is an established power of the national government. Thus local governments should be always open to national government interference and to understand clearly the limits of their powers and attributes. Although it seems they are autonomous units of government, they are autonomous mainly in the management of local affairs. They are not policy-making bodies but agents realizing the policies of national government. The 1935 Constitution changes the government's power of interference to the president's power to general supervision. (Art. VII, Sec. 10) This power is carried in all the other constitutions. Again, with the wordings general supervision, we see how local governments are agents of the national government¹³ but there is a growing understanding of the need to strengthen this local autonomy.

In the 1971 Constitution there was added this provision:

ARTICLE II Declaration of Principles and State Policies

SECTION 10. The State shall guarantee and promote the autonomy of local government units, especially the barrio, to ensure their fullest development as self-reliant communities.

The intent seems to be to strengthen administrative autonomy for more efficient governance. This intent was spelled out even more with the local autonomy act of 1959, RA 2264, which gave the city and municipality "greater fiscal, planning and regulatory powers" and broadened their taxing powers. Later, barrios were made into quasi-municipal corporations with taxing powers with RA 2370 or the Barrio Charter Act. In 1967, the Decentralization Act, RA 5185, granted local governments even more administrative autonomy to perform functions more effectively administered at their level.¹⁴

This principle of local autonomy was carried in the 1973 Constitution with the addition of these provisions that spell out more clearly the commitment to local autonomy:

ARTICLE XI Local Government

SECTION 2. The Batasang Pambansa shall enact a local government...defining a more responsive and accountable local government structure with an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, election and removal, term, salaries, powers, functions, and duties of local officials, and all other matters relating to the organization and operation of the local units....

This provision mandates the writing of a code that clearly defines what autonomy means and how it is to be realized by the autonomous government units. The Code should be able to define in no uncertain terms how the localities will govern themselves and the possibilities of

¹³ A fuller discussion of this follows in Section V on the 1987 constitution and local governance.

¹⁴ Alex B. Brillantes, Jr. and Donna Moscare, "Decentralization and Federalism in the Philippines: Lessons from Global Community," <http://72.14.235.104/search?q=cache:cMLnS5TGF6kJ:www.geocities.com/clrgncpag/dec-fed.doc+2370+barrio&hl=en&ct=clnk&cd=9&gl=ph>.

this governance. It seems to genuinely aim for the establishment of a system that will allow local governments to effectively govern without too much dependence on the national government. This is important because it will clarify the meaning of the mandate of autonomy. However, Marcos' authoritarian rule did not allow any genuine local autonomy to flourish.

Later, in the 1987 Constitution, the call for autonomy was expanded to include decentralization. (Art. X, Sec 3) This means that they will be responsible for and manage the provision of government services, including many that traditionally belonged to the national government, in their localities. They were also accorded a share in the national internal revenue and a share of the revenue generated from the exploitation of the natural resources in their localities, aside from their powers to tax. (Art. X, Secs. 5, 6, and 7) The fuller implications of this will be discussed later. However, the point to note here is that governance is brought closer to the people because the administration of government services is brought to government units closer to them. The decentralization of governance and resources genuinely opens up real opportunities to realize an effective system of creative management and local policy making. This was actually an anti-authoritarian, empowerment provision.

Of course there is the grand innovation of creating autonomous regions in this constitution. The provision on the autonomous regions is meant to establish areas that will be able to define their own systems of government within the framework of a unitary government. These autonomous regions are supposed to be able to create government programs and systems of management, as well as laws and policies that are respectful of their cultural difference, and hopefully in this way promote governance systems that are more conducive to their development. (Art. X, Sec. 15 and Sec. 20) Of course, this is not full autonomy because the president still has the power of general supervision. They still have to enact laws that do not contradict national laws but they do have the power to redefine how they are to be governed and how they are to live together within their communities.

There is a clear progression of the awareness for the meaning and need of local autonomy in our constitutions. From the provisions that mean to define local agents of governance to the establishment of local autonomous government units, these constitutions reflect the growing awareness that national government had to give local governments enough freedom and capacity to govern themselves. The constitutions reflect a growing understanding that the less centralized governance is the more effective and responsive it is to the people, and the more capable it is of creating centers of growth and development. We will see in later sections how true this presupposition is. However, we must note that this autonomy is granted by the national government and is defined by the national government. And thus its practice is also regulated by national government.

C. The Social Justice Agenda

There are measures in the constitutions that indicate the rising awareness of the need to institute social justice in the Republic. These can be gleaned in the provisions that state a commitment to social justice, labor rights, agrarian and aquatic reform, housing reform, women's rights, and indigenous people's rights. Examining the provisions on the promotion of social justice in general, we see a progressive awareness of the need to institute measures

to protect and promote the welfare of the marginalized. Certainly, the need to protect individual rights was already a concern of the Malolos Constitution with the “guarantee of rule of law, from the largest landholder to the smallest peasant. Yet the constitution’s articles on property rights, consistent with nineteenth century liberalism, were designed to protect what was owned after a century of land accumulation.”¹⁵ The succeeding constitutions will be more aware of the need for distributive justice and make some provisions for it. In this section, we will look through the various provisions of the constitutions that shaped our Republic in order to understand the evolution of this awareness and to show how the 1987 Constitution was a social justice constitution.

Social justice as a concern of the state enters the 1935 Constitution but it shall be promoted mainly “to insure the well-being and economic security” of everyone. (Art. II, Sec. 5) This idea is expanded in 1971 and 1973 with the inclusion of the protection of dignity and this sense of distributive justice: “Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.”(Art. II, Sec. 6) This sense of regulation opens the path to agrarian reform. The 1987 Constitution expands this even more in Article XII, Section 1 by saying that this protection is to be given highest priority by Congress by enacting legislation that will “protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.” Section 2 adds this: “The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.” In no uncertain terms, the 1987 Constitution recognizes the existence of inequities and the need to address them through an active diffusing of wealth and political power. This constitution makes a clear commitment to addressing injustice as the highest priority of the state. We will see the 1987 Constitution’s commitment to this justice throughout the provisions that address poverty and inequity. Notice too that they recognize that the inequities are caused not only by economic injustice but also in the inequitable distribution of power.

The first mention of labor rights is found in the 1935 Constitution. Here is the first mention of the protection of labor, the regulation of relations between labor and employer and the power of the state for compulsory arbitration. (Art. XIV, Sec. 6) The 1971 draft and the 1973 Constitution expand this to the promotion of full employment and guarantee of equality in employment, equal opportunities, right to organize, collective bargaining, security of tenure and just and humane working conditions.(Art. II, Sec. 9) The 1987 Constitution makes it a state policy to recognize labor as a primary social economic force.(Art. II, Sec. 18) It then mandates the promotion of the preferential use of Filipino labor (Art. XII, Sec. 12) and includes the overseas labor force and unorganized labor among those to be protected. (Art. XIII, Sec. 3) It guarantees the right to strike, to security of tenure, to a living wage and to “participate in decision-making processes affecting their rights and benefits.”(Art. XIII, Sec. 3) It also “promotes the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes.”(Art. XIII, Sec. 3) Labor’s right to their just share in the fruits of production is also recognized. (Art. XIII, Sec. 3) In this constitution, we see the expanding recognition of the value of labor and the

¹⁵ Abinales and Amoroso, 115

protection of the rights that empower them. Not only are they guaranteed the protection of their rights but the constitution mandates that systems of worker participation in policy making processes be legislated. The 1987 Constitution does not only protect rights, it empowers labor and recognizes that labor has a just share in the fruits of their productivity.

To further illustrate the commitment of the 1987 Constitution to the cause of the protection of the marginalized, it carries provisions on marginalized sectors that the other constitutions do not have. First it recognizes the role of women in national building and ensures the fundamental equality with men in the Declaration of Principles. (Art. II, Sec. 14) In Article XIII, Sec. 14, it makes an explicit commitment to the duty of the state to protect working women. This same constitution makes a commitment to the rights of the indigenous peoples. The 1971 and 1973 Constitutions recognize the need to consider the culture and interests of the indigenous people in making and implementing state policies. (Art. XV, Sec 11) The 1987 Constitution makes a greater commitment to promote their rights (Art. II, Sec. 22) as a matter of state principle and policy, and makes a clear commitment to protect their rights to the ancestral lands. In Art. XII, Sec. 5 it asks Congress to “provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.” This goes beyond consideration and moves toward a recognition of their customs with a very real commitment to making provisions for the practice of their lifeways. Of course it goes a great step further by providing for the possibility of autonomous regions where they can create a locality suited to their own cultural heritage and systems of governance.

A further deepening of the 1987 Constitution’s commitment to the promotion of the welfare of the marginalized and dispossessed is this commitment in Article II, Section 23: “The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.” It further elaborates on the need to promote these organizations:

ARTICLE XIII Social Justice and Human Rights

Role and Rights of People's Organizations

SECTION 15. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.

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

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

The protection and promotion of civil society groups is an empowerment mechanism guaranteed by the state because they realize that the best protection of people’s rights and

the promotion of social justice is an empowered citizenry. Thus, these provisions are aimed at strengthening a mechanism that will ensure and promote just and equitable development. It is in fact the basis of all the grassroots and civil society consultation mechanisms found in many implementing laws such as the Fisheries Code, the Urban Development and Housing Act, and the Local Government Code.

Regarding the commitment to distributive justice, the 1971 and 73 Constitutions show a concern for the state of the agrarian worker and small farmer in Article XIV, Section 12: “The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution.” The Constitutions recognize the state of bondage of peasants and make a commitment at emancipation. The 1987 Constitution again expands this commitment greatly and spells out some radical reforms. First it commits to “comprehensive rural development and agrarian reform.” (Art II, Sec. 21) This is reinforced by the commitment to a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.” Further the state will “promote industrialization and full employment based on sound agricultural development and *agrarian reform*, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.” (Art. XIII, Sec. 1) And then in the article on Social Justice and Human rights it spells this commitment out with some detail. In Section 4 it recognizes again the right to own land or to the just share of labor and spells out the principle of the just distribution of lands. Section 5 recognizes “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” which could be an empowerment principle. In Section 6 forms of land stewardship are recognized:

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.

Here we see the state’s deep commitment to land reform comes with a recognition that the existing state of affairs is not just to the farmer and that it is the state’s duty to rectify this inequality. They go so far as to empower farmers to engage in the policy-making bodies that will determine their emancipation. The 1987 Constitution makes a similar if not detailed commitment to the subsistence fishermen in Article XIII, Section 7:

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.

Again we see this commitment to empowerment. It is a commitment to be found all over the constitution, which is of course the direct result of the people power experience and the liberation, grassroots organizing movement that preceded the people power event.

Article XIII, Section 4 of the 1935 Constitution makes this policy statement: The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals. This is echoed in 1971 and 1973 constitutions. (Art. XIV, Sec. 13) In this wording, the awarding of land is like a gift of benevolence of the state to poor but deserving citizens. This is how the 1987 Constitution articulates this principle:

ARTICLE XIII Social Justice and Human Rights

Urban Land Reform and Housing

SECTION 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

SECTION 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

In the 1987 Constitution, the policy is already clearly directed toward addressing the plight of the urban poor. And it also gives them the right to humane treatment, resettlement, and empowers them with the right to be consulted.

The wording again is interesting in the policies on the provision of basic services. In the 1971 and 73 Constitutions, this was declared:

ARTICLE II Declaration of Principles and State Policies

SECTION 7. The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.

In 1987 it was restated thus:

ARTICLE II Declaration of Principles and State Policies Principles

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

The provision of social services comes with a liberation agenda, i.e. it aims to liberate the poor from poverty and lead them to an improved quality of life. Social services here comes with a developmental agenda because it does not only aim for the state to provide these services but commits to the promotion of a just and dynamic social order. Social services provision is tied to the promotion of a just society. This again betrays the commitment of the Constitution to the redressing of injustice.

On the whole, we can say that the 1987 Constitution stands for a high awareness of the injustice that exists in Philippine society and in its way aims to address this ill with the building of a just society. It recognizes the rights of the dispossessed, it recognized that they have to be given an opportunity to liberate themselves from oppression, and it commits the state to creating these opportunities. Limited as these opportunities might be, they are still there. And thus, we must pose this question again from a social reformers perspective: with these features of the constitution, are the advantages of federalization enough to risk losing the social justice provisions of this constitution? Because if we open up the process of constitutional change, there is a real risk of losing whatever was gained. And no matter how little this seems, the fact is that these constitutional provisions have helped reformers campaign for the institutional mechanisms for a just society. Simply because these principles are enshrined in the constitution, they can demand their protection or implementation from the government. We can see in the following discussion that the orientation of the dominant elite, the very people who will most probably control the charter change process, is to focus on the acquisition of and strengthening of their hold on power. Social justice is the least on their minds and there is a tendency to write these principles off.

IV. The Current Debate on Charter Change

A. The Maneuverings for Constitutional Reform

The campaigns for a federal Philippines and a parliamentary government have not always moved together although their campaigns have had some points of intersection. However, their main proponents share this characteristic: they are composed of civil society groups that are reform oriented and have worked in various areas of development work. Many are members of nationwide non-governmental organization networks. The original movements for federalism and parliamentary government were clearly proposing these reforms in our form of government with the desire to realize sweeping reforms for sustainable and equitable development and political reform. Their ideas have always been floated now and again, with various degrees of intensity, in the social development and reform community. However, beginning in 2000, the parliamentary debate was peaking because the civil society movement, which included progressive members of the Liberal Party, was able to bring the discourse to the Lower House at about the time the Speaker of the House was becoming interested in this form of government. At about the same time, the

Citizen's Movement for a Federal Philippines (CMFP), which sprung from the Lihuk Pideral Mindanao and other local movements, embarked on an intensified campaign for the federalization of the country. The movement worked closely with the Federalism Research Project of Kalayaan College and campaign partners, mostly from academia and civil society, to set up many consultation meetings and workshops held in various parts of the country since 2002. With the Kalayaan College research project, the proposals for a federal government were academically united with the call for a parliamentary government.

This concerted campaign of the CMFP brought to public discourse the federalism issue, even going so far as to sponsor studies on the possibility of federalism in the Philippines and proposing a possible constitution and process for implementation. The campaign included the enlistment of allies among policy makers. It seems that the campaign worked well enough to make the discourse of federalism and parliamentary government a buzzword for politicians seeking electoral reform, so much so that they were the main agenda in the most recent moves to amend the constitution in 2005 to 2006. And this is where irony comes in. The fact that powerful politicians were talking about constitutional change leading to a federal Philippines with a parliamentary government should have been a moment of triumph for the proponents of these shifts in government. However, instead of reveling in the moment and fueling the drive of the bandwagon, the proponents for reform took a big step back and condemned the moves of the President and Congress, and even of former political allies, for pursuing constitutional change. Their opposition to charter change, although surprising, had a simple reason: the President, the Speaker of the House and their allies took up the discourse of constitutional change and perverted it. If the call for charter change was first issued as a call for empowerment and good governance, it was being used as an instrument of consolidating traditional, political power and for sustaining an administration fast losing credibility.

When the "Hello Garci" tapes were exposed to the public in 2005, the Arroyo administration was already suffering from declining approval ratings. The tapes that made it seem that the president was instructing Commission on Elections (COMELEC) Commissioner Virgilio Garcilliano to cheat in the presidential elections on her behalf only served to further eroded her already waning credibility. Of course, the opposition, the progressive political groups and civil society, and business groups unhappy with the Arroyo administration were drawn together by the scandal and hoped that it would cause this administration's downfall.¹⁶ For a while it seemed to be the end of the Arroyo regime. During weeks of uncertainty, it seemed that there was a real possibility that opposition groups and civil society forces could force the president to step down especially when, in July 8, ten of the administration's civil society- based, reform-oriented cabinet members resigned and broke away from the president. However, the president survived the crisis but with her mandate in question.

Taking advantage of her predicament when it was reaching a crescendo, Speaker of the House Jose de Venecia and former president Fidel Ramos offered the President a way

¹⁶ Christian Monsod, "Perspective on the Current Situation, November 27, 2005, http://news.inq7.net/index.php?index=1&story_id=57884

out. They proposed a plan where she would support a process of constitutional change that would lead to the establishment of a parliamentary form of government by 2007. The idea was to allow for the President Arroyo to serve out her term but as a nominal head of state in a parliamentary government.¹⁷ This might have been attractive if there was a serious threat to her presidency. But the threat to the president was not that serious: she was not impeached and public and military disaffection did not reach a point that forced her to consider this option.

Despite her surviving the crisis, policy makers allied with the President and the Speaker of the House still pushed for charter change seemingly with the intention of pushing for the parliamentary shift. The president supported this move and gave them the go signal to work for charter change. She even formed a 55 member Consultative Commission to Propose the Revision of the 1987 Constitution in late 2005. The commission was supposed to study the possibility to shifting to a parliamentary form of government and federalization. But this did not seem to be the case. By January 2006, after nationwide consultations, the Commission's draft was submitted to the President and then submitted for consideration to Congress. However, the proposal was merely accepted by the Lower House as a reference document and not a draft from which they would base their own proposals. The draft was not completely adopted by the People's Initiative movement either. Thus, it seems that the President convened the group less to propose a constitution but more to draw allies to her campaign for constitutional reform. This was noted by the Philippine Center for Investigative Journalism (PCIJ):

Recently, a print advertisement boasted that "influential business organizations, major labor and civil-society groups, and all the leagues of local officials nationwide have joined in this chorus for change!" It then listed as "joiners" the Philippine Chamber of Commerce and Industry headed by Donald Dee; the Filipino-Chinese Chambers of Commerce and Industry led by Francis Chua; Trade Union Congress of the Philippines led by Democrito Mendoza; the Philippine Council of Evangelical Churches headed by Bishops Efraim Tendaro and Federico Magbanua

The ad also made it appear that the various leagues of governors, city and town mayors, and councilors joined the charter-change movement only recently. These organizations, however, were represented in the ConCom by Dagupan City Vice Mayor Alipio Fernandez, Calbayog City Mayor Mel Senen Sarmiento and Biliran Mayor Gerardo Espina Sr.¹⁸

The Commission seemed set up to legitimize Malacañang proposals which intended to expand the President's powers. It was meant to present its proposals as the fruit of consultations and dispel the demand for a constitutional convention. Thus when the Commission proposed the suspension of elections until 2010 and the transformation of the two houses of Congress into an interim parliament with the sitting president as the head of state and government, it all seemed to legitimize the President's desire to keep and expand her powers. And when it proposed these key provisions—"the shift to a 'classical' form of

¹⁷ *Ibid.*

¹⁸ <http://pcij.org/stories/2006/charter3.html>

parliamentary government, a gradual, ‘constituent-initiated’ transition to federalism, and the lifting of the ban on foreign ownership of natural-resource companies, public utilities, educational institutions and other industries”—they seemed to legitimize Speaker de Venecia’s proposals.¹⁹ However, it is important to note though that the Commission only aimed at a semblance of legitimacy since “Official transcripts of ConCom sessions... reveal that some commissioners were not really that interested in getting input from the public.”²⁰ This is because when some commissioners opposed the No Elections till 2010 scenario as a violation of the will of the people they consulted, their opposition was defeated by the argument that it was more important to draw the support of the elected officials through this proposal than to honor the objections of the people since it would be these politicians who would have the machinery to campaign for the proposed constitution.²¹ The legitimization of the No-Elections scenario and the consolidation of power for the President may have been the other function of the Commission. Whatever their intended function was, the end result was still the shelving of their proposal. Not even the Sigaw ng Bayan initiative championed its proposed reforms.

As the Consultative Commission wrapped up its work, the Sigaw ng Bayan signature campaign for constitutional change came to public attention in March 2006. The intent of this campaign was also confusing.²² Convening Congress into a Constituent Assembly for charter change seemed to be the main game plan for Charter Change because the people’s initiative had only a slim chance of succeeding—unless of course Malacañang was confident that it controlled the Supreme Court. Rene Azurin of One Voice had this to say:

My personal reading is that the pro-chacha strategy is to let the Supreme Court reject the People’s initiative petition – thus pacifying oppositors – but then calling on the Supreme Court to uphold the ConAss interpretation that will allow Congress to vote jointly on chacha. If the Supreme Court grants them the second option, then chacha will move at breakneck speed because the House already has a resolution prepared on this matter and before we know it the system of check and balance shall have been weakened or removed.²³

This reading makes sense because unless the Supreme Court would reverse its ruling on the people’s initiative based on a campaign without clear legal basis and an even more questionable signature gathering system, it seems that the Sigaw ng Bayan campaign had only a slim chance of succeeding. It seems even they did not take their own campaign seriously since their own proposal was too confused to be taken seriously.²⁴ Of course, there was the

¹⁹ <http://www.pcij.org/blog/?p=542>

²⁰ <http://pcij.org/stories/2006/charter3.html>

²¹ *Ibid.*

²² <http://www.pcij.org/blog/?p=753>

²³ <http://www.onevoice.org.ph/index.php/?m=200609>

²⁴ Some of examples of their proposals as cited by <http://www.onevoice.org.ph/index.php/?p=57> are the following: Art. VI, Sec. 3: “in case of vacancy in the Parliament or in the Parliament, a special election may be called ..., but the Member of Parliament or Member of the Parliament thus elected shall serve only for

gambit that they could convince the court to uphold their petition since the signatures would indicate that the voice of the people was clearly expressed by the lending of their signatures to the petition. But that gambit did not play out well for them.

Despite the seeming futility of the their initiative, the group Sigaw ng Bayan still went out on an all out campaign to gather the signatures of 12 percent of all registered voters and at least three percent of voters in each congressional district which would amount to five million signatures. Their campaign also seemed well supported by the administration. Memorandum Circular 2006-25 was issued on March 10 by the Department of Interior and Local Government (DILG) Secretary Ronaldo Puno to convene barangay assemblies “to tackle issues on health, agriculture, education, and ‘current issues affecting the country.’”²⁵ These assemblies were purportedly used to gather signatures, with DILG personnel distributing signature forms as well as copies of voter’s lists and a primer on the value of a parliamentary system.²⁶ They also had the support of “the majority of the members of the 1.7 million-strong Union of Local Authorities of the Philippines led by Bohol Gov. Erico Aumentado.”²⁷ The main actors of the Sigaw ng Bayan are documented to be “...the same organizations that were part of the political machinery in GMA’s presidential campaign and who issued paid advertisements supporting her at the height of the impeachment proceedings. After the 2004 elections, these groups were mobilized again last year to defend GMA against impeachment, enjoining us ‘to stop all the destabilization/trouble ’ (Tama na ang Gulo, Tama na ang Pulitika).”²⁸ General Resolution No. 17413 issued on 25 October 2006 put an end to the Sigaw ng Bayan campaign once and for all when the Supreme Court decided that COMELEC was not obliged to give due course to the initiative because it “miserably failed to comply with the basic requirement of the Constitution for conducting a people’s initiative.” Mainly this was because the full text of the proposed amendments was not shown to the signatories and because the mechanism for a people’s initiative does not apply to any attempt to revise the Constitution.

But as expected, this failure did not dampen Congress’ campaign for charter change. While the Sigaw ng Bayan was at work, the President’s allies in the House of Representatives made moves to convene Congress as a Constitutional Assembly to propose charter change, with the proviso that both houses would vote as one body ensuring that the ruling coalition’s majority in Congress would silence the uncooperative Senate. However, by March 2006,

the unexpired term.” Art. VI, Sec. 4: “The salaries of Members of Parliament and Members of the Parliament shall be determined by law.” Art. VI, Sec. 15: “The heads of departments may upon their own initiative, with the consent of the Prime Minister, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House...”

²⁵ <http://www.pcij.org/blog/?p=753>

²⁶ “Palace Initiative.” Gladstone A. Cuarteros (Political Reforms Team, Institute for Popular Democracy) April 19, 2006. <http://www.ipd.ph/features/2006/palace.html>

²⁷ “ChaCha Now” Alvin Capino. April 4, 2006.
http://www.manilastandardtoday.com/?page=alvinCapino_april04_2006.

²⁸ Gladstone A. Cuarteros, “Palace Initiative,” April 19, 2006.
<http://www.ipd.ph/features/2006/palace.html>.

senators passed Senate Resolution 473 which placed in clear terms that only both houses of Congress voting separately can pass any amendment to the Constitution. At around this time, Speaker de Venecia was already poised to convene Congress into a Constituent Assembly because he claimed to have almost three-fourths of the combined membership of 260 of the House and Senate to support his amendments. The House attempts to insist that a Constituent Assembly should vote as one body was a rather divisive battle. It centered around the Lower Chamber's debates on November 29, 2006 to amend Section 105, Rule 15 of its rules so that the congressmen could pass their proposals for amending the constitution without requiring senate concurrence. These debates were televised and the House majority's blatant bullying to silence the minority caused public outrage such that in December the House dropped its bid to revise the constitution through a Constituent Assembly dominated by Congressmen.

At present, the debates of the constitution have quieted down, because of the administration's failure to suspend the 2007 elections. However, this latest battle over constitutional change shows us how our politicians have a tradition of turning to constitutional change to serve their particular ends. Although their motives are articulated in more fundamental and reformist language, nonetheless they all attempted to change the Constitution for their contingent, political needs: Marcos wanted to expand his powers, Ramos wanted a chance for a second term, Estrada wanted to accommodate foreign investors, Arroyo wanted to survive and expand her powers, and the congressmen wanted to consolidate their hold over national politics. PCIJ notes this:

The real impetus for the drive to change to a parliamentary system is that the "trapos" are threatened by the rise of media and movie celebrities and their possible dominance of the commanding heights of political power in the Philippines — the Senate and the presidency. The quick fix they propose to this is quite simple: establish a unicameral legislature (thereby doing away with the Senate) and changing to a parliamentary system (thereby eliminating a president elected by popular vote).²⁹

These attempts to reformulate the very basic structures of the state and of governance to serve the elite's interests are symptomatic of how constitutional change has become a tool for restructuring the political system to serve a group in power. It also shows how the constitution change has become some kind of panacea to whatever current economic political ills the public has been made to focus on.

B. The Proposed Revisions

Given how much effort and resources the administration has put into this latest campaign, we must ask this: aside from the rhetoric of greater prosperity, just development for the regions, reform of the political system, and smoother, more effective governance, how would these moves benefit the President and her allies? We can glean the answer to this question from their proposals which were well analyzed by the lawyers and political scientists of the group One Voice. They show that the Sigaw ng Bayan proposal (DP), House Resolution 1230 (HR), and the report of the Consultative Commission on Charter Change

²⁹ <http://www.pcij.org/blog/?p=467>

(CC) tend to give more power to the political elite than they have with the 1987 Constitution. It is worth quoting their analysis.

1. It will take away our right to vote directly for the President/Head of State. Only members of Parliament will choose the Prime Minister.

“The Prime Minister shall be elected by a majority vote of all the Members of Parliament from among themselves.” (DP-Art. 7, Sec 1; HR-Art. 7-A, Sec. 3; CC-Art. 8, Sec. 2):

“The President shall be elected from among the Members of the Parliament by a majority vote of all its Members for a term of five years...” (HR-Art. 7, Sec. 2; CC-Art. 9, Sec. 2)

2. It will create a powerful Interim Parliament composed of incumbent politicians that would decide whether 2007 elections would be held or not.

- Interim Parliament will be composed of incumbent senators, congressmen, and Cabinet Secretaries: “There shall exist, upon the ratification of these amendments, an interim Parliament which shall continue until the Members of the regular Parliament shall have been elected and shall have qualified. It shall be composed of the incumbent Members of the Senate and House of Representatives and the incumbent Members of the Cabinet who are heads of executive departments.” (DP-Art. 18, Sec. 4(1); HR-Art 18, Sec. 1; CC-Art. 20, Sec. 8 & 9)

- Interim Parliament will be left alone to decide when the next elections are to be held including those for local positions: “The interim Parliament shall provide for the election of the members of the Parliament, which shall be synchronized and held simultaneously with the election of all local government officials.” (DP-Art. 18, Sec. 5(2))

3. It will create a super-President with additional Prime Minister powers. This is because the President will keep the powers specified by the 1987 Constitution, while enjoying the powers of Prime Minister – an arrangement vulnerable to abuse.

- Impeachment becomes more difficult, if not nearly impossible: “The incumbent President and Vice-President shall serve until the expiration of their term at noon on the thirtieth day of June 2010 and shall continue to exercise their powers under the 1987 Constitution unless impeached by a vote of two thirds of all the members of the interim parliament.” (DP-Art 18, Sec. 1(1))

- Interim Prime Minister will only perform functions delegated by the President. He or she will be chosen by the President: “The incumbent President, who is the Chief Executive, shall nominate, from among the

members of the interim Parliament, an interim Prime Minister, who shall be elected by a majority vote of the members thereof. The interim Prime Minister shall oversee the various ministries and shall perform such powers and responsibilities as may be delegated to him by the incumbent President.” (DP-Art 18, Sec. 5(1); HR-Art. 18, Sec. 6; CC-Art. 20, Sec. 12 & 13)

4. Open the door for those in power to stay on indefinitely.

There is no prohibition in any of the proposals against incumbents, including the President, from running in any parliamentary elections to be held in 2010. Moreover, there is no limit in the number of terms: “Each Member of Parliament ... shall be elected by the qualified voters of his district for a term of five years without limitation as to the number thereof...” (DP-Art. 6, Sec. 1(2); HR-Art. 6, Sec. 1(2); CC-Art. 7, Sec. 4(1))

5. Open the door to other amendments (DP-Art. 18, Sec. 4(4)), some of which may not even be known to the people today, such as amendments to weaken the Supreme Court as a check against martial law and, conversely, give more powers to the President to declare it. Once the Interim Parliament assumes plenary powers, it will be hard to stop.
 - o CC deletes the following from Article VII, Sec. 18 of the 1987 Constitution: “The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.” (CC-Art. 9, Sec. 8)
 - o And restores to the President the power to declare martial law in “imminent danger...” of rebellion, which was used by President Marcos to declare martial law but which was removed in the 1987 Constitution. (CC-Art. 7-A, Sec. 12)³⁰

Last minute insertions to the Consultative Commission gave the President the power to include a third of the appointed cabinet in parliament as well as 30 more members she chooses. The Commission also adds that only the members of her Cabinet can propose bills on national import. Further the people’s initiative gives the president the power to nominate the prime minister who will then be elected by members of parliament.³¹

A closer reading of House Resolution No. 1230 filed by Misamis Oriental Rep. Constantino Jaraula and House Resolution No. 1285 filed by Surigao del Sur Rep. Prospero Pichay, Jr. are even more telling of the administration’s agenda. Again we quote from One Voice:

³⁰ http://www.onevoice.org.ph/index.php/?page_id=20

³¹ <http://pcij.org/stories/2006/charter2.html>

Both versions propose to weaken the Supreme Court. Both also give more powers to the Prime Minister than the President has in the 1987 Constitution, as can be gleaned from the following features:

- Abolition of the Commission on Appointments, thus removing any check on the appointing power of the Prime Minister;
- Handing the Prime Minister the power to contract and guarantee foreign and domestic loans without the concurrence of the Monetary Board; and
- In addition to the powers that arise from the fusion of the Executive and Legislative Departments and of the Senate and the House of Representatives, the Prime Minister, under HR 1285, will continue to exercise general supervision over all local government units.

Under both versions, there is no question as to who will hold power during the transition: themselves, meaning the incumbent senators and congressmen who shall comprise the Interim Parliament.³²

The analysis of One Voice makes it clear why administration politicians were so persistent in pushing for constitutional change and why the civil society proponents of constitutional reform had to put the brakes on their own campaign.

Regarding the parliamentary system, the House proposal establishes a parliament fully elected as by district. Consultative Commission proposes a unicameral parliament composed of district representatives and representatives elected in a proportional, party-list system. The party-list representatives “(2)... shall constitute thirty *per centum* of the total number of members including those elected by Parliament. In the choice of such members, the political parties shall ensure that the labor, peasant, urban poor, veterans, indigenous peoples, women, youth, differently-abled, and such other sectors as may be provided by law, except the religious sector, are properly represented.”(Article VII) Perhaps this is the aspect where the promised democratization of our system of governance through the parliamentary system becomes visible. This proposal mainstreams the party-list system and opens it to all parties, but tries to guarantee that sectors listed in the 1987 Constitution will still somehow be represented.

Regarding the provisions on National Patrimony, there are a few more things to note from Resolution 1230. Article XII still states the basic principles to “...promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.” Then it adds this “But Parliament may provide by law ownership of residential and industrial lands

³² <http://www.onevoice.org.ph/index.php/?m=200609>

by foreigners in connection with their investment in the country under such conditions it may deem necessary for the protection of the Filipino citizens.” Thus allowing foreign ownership of land. (Sec 1) Sec 2 allows for the State to “enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or with any corporation or association, domestic or foreign.” (Sec. 2) The Consultative Commission agrees with this. Section 11 deletes the parts of the 1987 Constitution which state that public utilities can only be run by companies or groups with “at least sixty per centum of whose capital is owned by such [Filipino] citizens” and that “all the executive and managing officers of such corporation or association must be citizens of the Philippines.” (Sec11) The same is true for the advertising industry. And then Section 12 states this:

Notwithstanding the provisions of sections 2 and 11 hereof, citizenship restrictions are hereby lifted relative to the ownership and lease of alienable lands of the public domain which include agricultural, residential, commercial and reclaimed lands, development of natural resources, ownership of franchises and of public utilities, mass media, education, insurance and advertising, unless otherwise provided by law. Parliament shall provide for limited foreign ownership in regard to franchises granted to corporations involving public utilities of large scale

The proposals also open up exploitation of our fishery resources to foreign groups by limiting the protection of the state of subsistence fishermen to the preferential use of local marine and fishing resources opening other areas to further exploitation without protection. (Sec 7)

The Consultative Commission also opens the economy but retains certain restrictions. Alienable lands of the public domain can only be owned by Filipino citizens. Foreign corporations and associations can only lease these lands. And they affirm the State’s duty to “protect the rights of indigenous peoples to their ancestral lands to ensure their economic, social, and cultural well-being.” Industrial, commercial or residential land can be owned by foreign individuals or corporations with the legislature defining its limitations. The legislature may also “declare certain areas of enterprise as restricted to their foreign participation.” As long as it is soundly justified by the economic and planning agency. They also add that “The State shall regulate and exercise authority over foreign investments, monitoring and regulating the conduct of foreign investors more rigorously than that exercised over corporations with majority Filipino ownership.” Advertising and mass media is also opened to foreign ownership. They also remove restriction on franchises and ownership of public utilities is removed, but educational institutions can only be run by corporations or associations with 60% Filipino ownership.³³

These provisions on the national patrimony and the economy come as no surprise since it is a commonly held belief among politicians that opening up the economy to foreign ownership will bring in more investments. But surveys of foreign investors repeatedly show that the critical factors to attracting foreign investment are “infrastructure, human capital, quality of policies and stability of the regulatory framework, peace and order, among

³³ <http://www.concom.ph/proposals/patrimony.php>

others.”³⁴ Constitutional amendments are rarely mentioned in such surveys and the inconsistent policy regime seems to discourage investments more than the lack of ownership. Once Voice notes this further:

To date, our Constitution has proven to be just that as demonstrated by constructive government responses to the investment requirements of foreign investors, such as:

- In laws enacted by Congress (i.e. the Investment Lease Act that allows foreigners to lease land for up to 75 years, or the EPIRA enacted in 2001 under the Arroyo administration which defined “public utilities” as the natural monopolies in the “wires” businesses);
- In rulings by government agencies like the Securities and Exchange Commission (i.e. investment and voting procedures, determination of 60% Filipino ownership);
- In decisions by the Supreme Court (i.e. the Mining Law);
- In allowing financial instruments designed by the investment banking community, specifically, the global depositary receipt, which is consistent with public policy that distinguishes corporate control from economic benefits.

In none of these examples, however, has the objective and intent of the Constitution - that the companies and resources involved must be under the effective control of Filipinos or the Philippine Government - been violated, ‘bent’ or “circumvented”. In some cases, the rate of return allowed to a foreign investor may be too much or uncalled for, but that is an economic management problem and not a constitutional issue.

The main argument of those opposed to the administration’s push for charter change is that these economic concerns are not urgent and do not justify the maneuverings of this government.

The charters proposed by the Commission and the House both retain the structure of local autonomy within the unitary system defined by the 1987 Constitution, including the provision for autonomous local governments in the Cordilleras and in Muslim Mindanao. However they also make provisions for the establishment of a federal system of government. The House resolution makes this pronouncement in Section 25: “The State shall ensure the autonomy of local governments, or clusters thereof, towards the ultimate establishment of a federal system of government.” It keeps the basic guarantee for local autonomy but enjoins that this autonomy should lead to the establishment of a federal system. Art. VI Sec 24 states this:

A federal system of government consistent with the unicameral parliamentary system provided for herein shall be installed within ten (10) years from the approval of these amendments. The Parliament shall provide by law the division of the country into as many ‘independent states’, allocating uniform powers thereto, and reserving to the

³⁴ http://www.onevoice.org.ph/index.php/?page_id=7

federal government powers on national defense, foreign relations, monetary policies, and such other powers it may deem imperative.

It will be up to the Parliament to define the specific character of our federal government. The proposal of the Consultative Commission is similar but provides a mechanism for achieving a state or readiness for federalism.

The Commission amendments instruct the parliament thus:

...strengthen the existing Local Government Code to provide for a more responsive and accountable local government structure instituted through a system of decentralization and devolution with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources. The Code shall provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.”(Art, XII, Sec. 3)

This basically reiterates what the Local Government Code of 1991 has institutionalized. The rest of the provisions on local government again affirm the Code and the 1987 Constitution’s conception of local governance especially in the areas of fiscal and administrative autonomy and reiterates the supervision of the Prime Minister over local government units. However it provides the mechanism of creating autonomous territories leading to the establishment of a federalist system. This mechanism is spelled out in the Transitory Provisions which state:

Within one year and after at least sixty percent of the provinces, highly urbanized cities and component cities of the country shall have joined in the creation of different autonomous territories, upon petition of majority of such autonomous territories through their respective regional assemblies, the Parliament shall enact the basic law for the establishment of a Federal Republic of the Philippines, whereby the autonomous territories shall become federal states. (Sec. 15)

In brief, 60% of local governments have petitioned for autonomous status, they can petition for the realization of a federal state. The structure of this state will be defined by congress in a basic law.

Local governments achieve autonomous status “...upon a petition addressed to Parliament by a majority of contiguous, compact and adjacent provinces, highly urbanized and component cities, and cities and municipalities in metropolitan areas through a resolution of their respective legislative bodies. In exceptional cases, a province may be established as an autonomous territory based on area, population, necessity, geographical distance, environmental, economic and fiscal viability and other special attributes”(Sec 12) and “Within one year from the filing of the bill based upon the petitions and initiatives, Parliament shall pass an organic act which shall define the basic structure of government for the autonomous territory, consisting of a unicameral territorial assembly whose members shall be elective and representative of the constituent political units. The creation of the autonomous territories shall be effective when ratified by a majority of the votes cast by their

proposed constituent units in a plebiscite called for the purpose.” (Sec. 13) Their autonomy allows these bodies to legislate their own laws except when they come into conflict with national laws, they are superceded. And they have these powers:

SEC. 16. Within its territorial jurisdiction and subject to the provisions of this Constitution and the national laws, the organic act of the autonomous territories shall provide for primary legislative powers of their assemblies over the following:

1. Administrative organization, planning, budget, and management;
2. Creation of sources of revenues and finance;
3. Agriculture and fisheries;
4. Natural resources, energy, environment, indigenous appropriate technologies and inventions;
5. Trade, industry, and tourism;
6. Labor and employment;
7. Public works, transportation, except railways, shipping and aviation;
8. Health and social welfare;
9. Education and the development of language, culture and the arts as part of the cultural heritage;
10. Ancestral domain and natural resources;
11. Housing, land use and development;
12. Urban and rural planning and development; and
13. Such other matters as may be authorized by law for the promotion of the general welfare of the people of the autonomous territory.

The autonomous local governments will have these powers and take on this form of autonomy until they petition for the enactment of a federal republic. When they do, Parliament shall change our form of government from unitary to a federal through a statute or an enabling law that should define the basic relationship of the states to the federal government, their rights and responsibilities toward each other, and the principles that unite the nation.

This is a very strange move on the part of the Commission. They are in effect allowing Parliament through a statute to change our form of government. In short, an enabling law will define the very basic form of relationship between states and the federal republic. This fundamental relationship between levels of government should clearly be enshrined in the constitution as the basic law of the land not in one of the laws of the land that can easily be superceded or repealed by another law. If a constitution is the document that enshrines a people’s most fundamental understanding of who they are, what principles and structures bind them, and their agreement on the best form of government that will bind a nation, then something as fundamental as the basic form and principles of our federal government should be spelled out in the constitution and not just in a law. This reveals that the Commission was convened with a clear agenda for parliamentary government but without a clear idea on federalism. If we are to adopt this proposal, it will mean that we will have been rushed into a form of government that is supposed to be the best form of government for us without anyone knowing exactly what form that government should take. If they did not know what kind of federal government will be best for us, how do they know that a federal republic is what we ought to aspire for? Even in the realm of “trapo” manipulation and maneuvering, this is sloppy and illogical proposal. It is clear that the

proposals for constitutional change were rushed only to realize its proponents need to have a parliamentary form of government and open up the economy to foreign investments. Federalism, if it was a serious concern at all, was not well thought out or understood—at least not by the administration’s operators. Leaving the form of government to be determined by a statute will lead us into greater chaos since it will leave the basic relationships of our localities and the federal state to the whims of politicians who have no qualms about tampering with the basic laws of our land for their own purposes, and will certainly have less qualms about tampering with laws when they have another agenda.

Therefore, it behooves us to reflect on civil society’s own push for constitutional reform in order to understand if these radical changes proposed are necessary to bring about the reforms we understand are needed. This is so because the current crop of politicians and their allies are not presenting us with a viable federalist option.

C. Revisiting the Civil Society Reform Agenda: On a Parliamentary Government

As we discussed above, a federal, parliamentary Philippines is being proposed by some of the progressive and reform minded civil society advocates. What are the reasons for the focus on these two forms of governance? Let us outline them here. We begin with the question of the shift to parliamentary government.

The heart of the problem of our unitary, presidential system can be summed thus:

In the Philippines, the history of local-central government and executive-legislative relations have created a politics of corrupt deal-making. Instead of national interest, individual and family interests determine policy; instead of rational decision-making, laws and implementation of laws are unpredictable and subject to the uncertainties of *areglo*. The president has a lot of powers, but without strong political parties has to negotiate with individuals or factions in the legislature. Because in the absence of political parties, local political leaders control votes, the president often cannot get laws and policies implemented locally.³⁵

Florencio Abad has a more precise analysis of the problem. He believes that the presidential system has an inherent weakness and tends toward chronic gridlocks. The root cause of the problem is that both the president and the legislators have fixed and independent tenures rooted in “separate but co-existing democratic legitimacy..., being both directly and popularly elected.”³⁶ And yet, everyone has a sense that the president has a stronger claim to legitimacy as the head of state and government, thus giving the president a “feeling of superior democratic legitimacy”³⁷ and consequently giving the president the feeling that s/he ought to control policy and define programs of government thus making her/him unwilling

³⁵ http://www.ipd.ph/chacha/primer/chacha_primer.html

³⁶ Florencio Abad, “The Case for Parliamentary Government,” in Jose V. Abueva, et al, eds., *Towards a Federal Republic of the Philippines With A Parliamentary Government: A Reader* (Marikina City: Center for Social Policy and Governance, Kalayaan College and Local Government Development Center, 2002), 297.

³⁷ *Ibid.*

to compromise with the legislative branch. But then, the president does not always have control of the legislature leading to differences in policy positions, leading to the oft witnessed gridlocks. How does the president settle these gridlocks so that s/he is able to effectively proceed with the business of governance?

Repeatedly faced with these stalemates and the expectation of their inevitability, presidents have learned to cope with them and have accepted that it is to their interest—and perhaps survival—to adopt “anti-party” practices to secure approval of their policies. In the Philippines, this practice has institutionalized the much detested, yet enduring practice of “pork barrel” politics and the ritual of party-raiding and party-switching that predictably follows every presidential elections.³⁸

Thus it becomes essential to establish a system that does away with these gridlocks and helps establish a more cooperative and unified system of governance.

The proponents of a parliamentary form of government primarily hope that it will realize the following things:

- The Parliamentary System will help ensure the coordinated and effective exercise of legislative and executive powers that are fused or united in the Parliament. The formulation and implementation of the Government’s policies and programs will be undertaken by the ruling political party or coalition of political parties in the Parliament. There is collective responsibility and accountability for governance.
- The Parliamentary System is more likely than our Presidential System to ensure the election of a Head of Government—the Prime Minister—who is known to fellow party leaders for his/her leadership and experience in governance. This includes the ability to unite and strengthen a political party, to build consensus in shaping its program of government and policies and in implementing them, and to mobilize popular support for the political party and its leaders.
- The Parliamentary System will help prevent the election of the Head of Government on the basis largely of personal wealth, personal popularity, or name recall as a celebrity projected in the media or cinema, as we have experienced in our Presidential System.
- The Parliamentary System fosters the development of political parties that are democratic, disciplined, united and effective in formulating a program of government that can secure the support of the people. The majority party or the coalition of political parties in the Parliament will form the Government that will lead the nation.
- The Parliamentary System will facilitate the timely change of the Head of Government whenever it becomes necessary, by a vote of no confidence in the

³⁸ *Ibid*, 298.

Prime Minister and the majority political party or coalition in the Parliament. The Parliament may be dissolved and new elections held.

- In the Parliamentary System the program of the Government is shaped by the majority political party led by the Prime Minister. The Government, led by the Prime Minister and the Cabinet, is responsible and accountable to the Parliament and the people for the realization of its program and the quality of governance.
- The Parliamentary System will empower the people to choose not only the candidates but also the political party that they want to govern the country.
- The Parliamentary System will reduce the very high cost of electing the Head of Government, by choosing the leader of the majority party or the majority coalition in the Parliament as Prime Minister.³⁹

If we analyze Abueva's concerns, which are supposed to sum up the concerns of the CMFP, parliamentary governance is supposed to address the political impasse that keeps us from genuine development. The hope is that a parliamentary system will be able to develop parties that will be accountable, will be able to bring to government leaders who are consensus builders, and will be able to draw parties into the task of articulating genuine and viable programs of development to sell to the people. It will also lessen political bickering. This is still just a wish that does not have a clear ground of viability because in One Voice's critique of the Sigaw ng Bayan and Consultative Commission's proposal, they raise this reasonable objection:

We are told by its proponents that the shift to a parliamentary system will open the doors to political stability and economic prosperity. This despite the lack of conclusive empirical evidence to show that such a form of government is the answer to our specific problems. On the contrary, studies that attempt to explain the complex issue of growth differentials among countries cite government policies as the most relevant factors for the differentials. The form of government, whether parliamentary or presidential, is not indicated as a material factor. There are countries that are doing better or worse than ours which happen to have a parliamentary system.⁴⁰

We can say the same for how effective the parliamentary system will be in correcting our elite's chaotic competition to gain political and economic power, and if it will effectively draw this elite to a common agenda that centers on actual governance that will lead to sustainable and equitable development. However, it will most probably be the case that the members of parliament will be drawn from the same pool of leaders who are not of, and do not share the concerns of, the marginalized majority. Their form of responsiveness to the needs of the people will lie in their ability to formulate programs of government that are

³⁹ Jose V. Abueva, "Some Advantages of Federalism and Parliamentary Government for the Philippines" (<http://www.pcij.org/blog/wp-docs/Abueva-Federalism.pdf>)

⁴⁰ http://www.onevoice.org.ph/index.php/?page_id=7

marketable to the people. But these will still be formulated by the elite contesting for power. Perhaps they will be able to build leaders from the grassroots who could articulate the needs of the marginalized from their perspective but that is neither a concern nor an inherent characteristic of the parliamentary system.

There is also this chilling observation from Bolongaita. He believes that the problem with our political system lies in our having a very strong president:

The Philippines stands out among other presidential democracies, chiefly because of the extraordinary legislative and nonlegislative powers constitutionally granted and legislatively delegated to the president. Among presidential democracies, the Philippine president virtually has no equal in terms of aggregate executive power. The president's main legislative powers are the package and the line-item veto. The president may certify bills for immediate legislation, which would dispense with the constitutional requirement that a bill must go through three readings on separate days, be printed and distributed to members of Congress three days before final reading. The president also has the authority to transfer funds from any item in the budget to another if certified as urgent in "the national interest." Presidential certification is required in the disbursement of all budgetary items legislated "subject to the availability of funds." Under the 1935 constitution, the president as commander-in-chief was authorized to suspend the writ of habeas corpus and declare martial law without need of congressional consultation, much less concurrence. Regarding nonlegislative powers, the president has extensive powers of appointment and removal, which, in the 1935 constitution, included not just national but even local officials. The president also has vast powers of government reorganization. The president's authority over government financial institutions, notably the Central bank, gives him decisive control not only over macroeconomic policies but also over microeconomic details such as providing preferred access to government credit facilities.⁴¹

Because of these extraordinary powers, there exists no real accountability between the legislature and the executive. We find the legislature often jockeying to access the president's funds or playing the role of the fiscalizing opposition in order to render the president hostage to their demands. Proponents of a parliamentary government hope to be able to strengthen accountability and cooperation between the two branches of government and do away with the political wrangling in order to realize efficient and effective governance. However, the marriage of both executive and legislative powers in one branch of government in our political tradition may just result in something worse than we have now:

This danger of unbridled presidential power is virtually guaranteed if the Philippines changes to a parliamentary system because the prime minister is necessarily the leader of the majority in Parliament. In this case, there is no institutionalized checking mechanism, except the force of rhetoric by the minority opposition. There would hardly be any incentive for the parliamentary majority to severely criticize the prime minister, who, after all, is their leader and fellow member of the Parliament.

⁴¹ Emil P. Bolongaita Jr. "Presidential versus Parliamentary Democracy." *Philippine Studies*, Vol. 43, 1st Quarter: 1995, 110-111.

To do so would only be self-destructive. Perhaps the only circumstances that would prompt a vote of no confidence or a call for new elections are when the prime minister and the cabinet or members of the parliamentary majority have been exposed for blatant corruption or other heinous crimes. But such circumstances would be exceptions, given the rather discreet tradition of official corruption in the Philippines and the decay of the judicial system. Thus, virtually the only time a parliamentary government would be checked and held accountable would be during the next regular election.⁴²

Of course we are hoping that with a change of governance structures, hearts will follow. But the reality may still be that our political culture could pervert the system we hope to reform.

Let us pause here in our discussion and examine what is at the heart of the parliamentary system advocacy. At heart it aims at political reform and rationalization of governance. It aims to end the wrangling of the elite in the promotion of their interests because it forces them to learn to work cooperatively because this is the only way that they can control the government. To put it simply, parliamentary government hopes to give the elite a less adversarial structure of state capture, with a smoother form of regime change, so that they will be forced to work together, hopefully for the good of the country. In a sense it also hopes to realize electoral reform by setting up a system that will guide the electorate to think of parties and platforms as much as the individual candidates. This will be instituted presumably by the fact that 20 to 30% of the legislature will be elected through a proportional, party-list system. Also, the fact that the head of government will be elected by the ruling party or coalition should hopefully help the electorate to think in terms of parties when choosing their legislators because the head of government will come from this party. Thus we see how the shift to a parliamentary government is rooted in the desire to reform party politics. However, it is not primarily concerned with opening the doors to the voices of the marginalized or even their meaningful participation in governance. On the whole, based on the arguments in its favor, it is an attempt to rationalize (in the sense of giving order and reason) governance and the contest of the elite for domination. Hopefully, it will also lead to more equitable distribution of power and greater representation for the marginalized, but it is not particularly clear how the parliamentary form of government will encourage this. Of course, it could be argued that once a genuine party system is established and once parties become more program and platform based, then perhaps they will have been able to institute systems of consultation. They might even be able to develop leaders from the different dispossessed sectors and regions once parties become breeding grounds of leaders. But again, it does not seem to be inherent in the system. Just and equitable representation does not seem to be a specific area that the parliamentary shift will directly address. Rational representation and platform making is. I am discussing this because it is the aim of this paper to understand the necessity of charter change from the optics of equitable and just development, and from the surface the parliamentary system may but will not necessarily serve equitable and just development. We will look into this question more closely when we examine the possibilities of establishing a federal Philippines.

D. Revisiting the Civil Society Reform Agenda: On Federalism

⁴² *Ibid.*, 116.

We go now to our main interest: the necessity of establishing a federal Philippines, its possibility and necessity. And here we again will use our good governance for development with justice and equity framework. What is the root of the problem of poverty in our country? To put it succinctly, poverty is caused by the elite's monopoly of resources and opportunities, and what allows them this monopoly is their effective control of the systems that define our shared existence as a people. People are poor because they do not have the ability or resourcefulness to build a human life for themselves. This is not because of an inherent weakness or lack of resourcefulness. It is because of their marginalization from the systems that effectively define their rights, their access to resources, their ability to acquire skills and knowledge, and the rules that define justice and fairness. Their marginalization is the direct fruit of one simple fact, the world as they know it is defined by a particular strata of their society, who have their own interests and understanding of how things ought to work, what development is, what is fair and just, and what are efficient and rational systems. This elite class is a complex web of families, national and local leaderships, and political and economic interests and it has created a system and language that it understands and which serves its purposes.

One of the important factors that protects the poor from complete exploitation is the existence of a democratic government that must make a show of protecting their rights and serving their needs. If the elite exploit the poor too much or national leaders are too callous to their plight, they will lose the support of the people. Because the Republic has adopted the democratic system of gaining and controlling power, the elite need to enlist the support of the poor in the struggle of vested interests to control power and resources. The national leaders have to continue to protect the rights of the poor and work for their development in some form or other. If the poor are to have a fair chance at building better lives, it is necessary that these democratic structures are strengthened so that at least leaders are forced to become accountable to their constituency and at best the marginalized are given a chance to gain power and address their own state of marginalization. Thus, we need to reform government and state structures to bring governance closer to the people. They must be empowered by these systems so that they can redefine the rules that govern them to make these rules fair and serve their need for a just and human life. Governance structures must also give them a chance to affect policy discourse so that they can meaningfully engage in the processes that define their chances for development. Only then can their interests be meaningfully and equitably served by the economic and political systems. If we are to reform our system of government meaningfully, we need to reform them in such a way that the marginalized are drawn into the mainstream of policy making, and that they have a fair hand in governance. The question then is this, are the new systems of governance that we are proposing leading to that? It is not so clear in the parliamentary proposals, again except in the hope that parliamentary governance will allow for the creation of more accountable parties. And perhaps, with proportional representation, it will allow for the creation of smaller parties of the marginalized. It seems the promise of democratization and more participatory governance can be realized through federalism.

The CMFP position on our unitary form of government is articulated by Abueva thus:

In the first place in our traditional Unitary System the powers, authority, and resources of the Republic are concentrated in the National Government: the

President, Congress, the Judiciary, the national executive departments and agencies, and the government corporations. The President exercises general supervision as well as actual control over all local governments. Congress legislates on all subjects including local issues. Most decisions are therefore made at the national capital region of Metro Manila.⁴³

Thus the first problem is the concentration of power in the national capital with the central government. Because of the executives control over policy and resources, the local governments have always needed to act as mere implementers of policies dictated by the national government and Congress. These policies are not always reflective of the needs of the localities and are not always, if not usually, able to effectively serve the basic and development needs of those who are far from the capital. Thus the first act of reform should be to bring governance closer to the people.

The 1987 Constitution recognized this and laid local autonomy as a principle of governance. It devolved power, authority, and resources to the local government units and in effect helped them govern their localities better. With a guaranteed share of the national internal revenue, the power to tax, the right to have a share of the profit from the use of their resources, and the right to act as corporate entities, local governments were supposed to have been transformed into effective managers of development. There have been stories of local governments using their power to raise revenues, enter into successful development ventures with the private sector, and to formulate of viable development plans, but overall it seems that devolution and autonomy are not enough. And so the CMFP is campaigning for greater autonomy since the present unitary set up does not free local governments to fully govern their localities according the their needs. Abueva makes this observation:

The local autonomy principle in the 1987 Constitution and the Local Government Code of 1991 are supposed to promote decentralization and actual devolution or transfer of powers and functions from the National Government to the local governments. In practice, the National Government is still highly centralized. It continues to make most decisions and forces local government leaders to come to the national capital to follow up on their resolutions and requests by practically begging national offices to make those decisions, wasting much time and money in doing so. Even the share of the local governments of the Internal Revenue Allotments may be reduced or delayed contrary to law.⁴⁴

This is an accurate description of the present state of governance. On the whole, even if the internal revenue allotment is released, this and the income from local taxes cover mainly the salaries of personnel and the basic functions of government. Local governments still have to run to the national government and Congress for funds for projects and programs. And in effect, they still have to conform to national government priorities to bring any resources to

⁴³Citizens Movement For A Federal Philippines (CMFP), "Constitution For A Federal Republic Of The Philippines With A Parliamentary Government" [Revised February 14, 2005], Edited By Jose V. Abueva, https://www.kas.de/db_files/dokumente/7_dokument_dok_pdf_6315_2.pdf

⁴⁴ *Ibid.*

their localities. But this may just be a question of a better allocation of funds. Federalism means more than just the decentralization of responsibilities and devolution of powers and resources.

The autonomy of federal states goes beyond local autonomy and decentralization as we know it. Our understanding of local autonomy “implies the existence of a central authority, a central government that can decentralize or recentralize as it desires.”⁴⁵ Thus, each autonomous government unit is given powers to govern their localities according to the determination of the national government. Federal states are different. Each federal state is a unit that derives its legitimacy directly from the people just as the federal government does. Thus it can function autonomously without federal government interference. The federal government “functions powerfully in many areas for many purposes” but it is not a controlling center of power. States are not the subordinate units of the federal government. They are not “lower power centers” but “smaller arenas of political decision making and action.”⁴⁶ This is why the states are “able to participate as partners in national governmental activities and to act unilaterally with a high degree of autonomy in areas constitutionally open to them—even on crucial questions and even, to varying degrees, in opposition to national policies, because they possess effectively irrevocable powers.”⁴⁷ So we can say that federalism allows local governments to be genuinely autonomous because they are recognized as smaller government units that are directly responsible to their constituents and not the national government. Because of this, local governments are not controlled by the national government and they can operate according to policies and laws determined by their constituents. Local governments in a unitary state can “operate only within the legislative powers that are assigned to them by the center. Therefore the workability of decentralization depends on the good will of the unitary central government instead of relying on existing constitutional divisions of power.”⁴⁸ In short, the capacity of local government to effectively govern their people will no longer depend on the moods and agenda of the current administration and national politicians because their powers are already defined and guaranteed constitutionally. Thus it seems that federalism guarantees more decentralized governance. However, Robertson Work has this observation to make:

There is no broad-based generalization that can be made about the correlation of federal/unitary states and decentralization. Some federal states are highly centralized such as Malaysia, while some unitary states have a high degree of decentralization such as China..⁴⁹

⁴⁵ Daniel J. Eleazar. *Exploring Federalism*. (Tuscaloosa: University of Alabama Press. 1987), 34.

⁴⁶ *Ibid.*, 37-38.

⁴⁷ *Ibid.*, 166.

⁴⁸ Robertson Work, “Overview of Decentralization Worldwide: A Stepping Stone to Improved Governance and Human Development,” *Federalism: The Future of Decentralizing States?* 2nd International Conference on Decentralization. (July 25-27, 2002, EDSA Shangri-La Hotel, Manila, Philippines), 6.

⁴⁹ *Ibid.*, 10.

And as Soliman Santos observes “A high degree of autonomy within a unitary system is better than a low degree of autonomy within a federal system, which generally connotes uniformity among the federal states across the country.”⁵⁰

The division of the Philippines into federal states will mean simply that the people have agreed that certain matters are best dealt with as national concerns and others have a local character. The daily running of the locality, its development priorities, the statutes that govern it, what programs they ought to have and how to go about implementing these programs, and the manner by which they raise and spend funds are the jurisdiction of the states. Unless the acts of states intrude on other states, violates laws that concern the whole Republic or the constitution, or overstep their realm of authority, they are genuinely autonomous and are not supervised or interfered with by the national government. The national government acts in its own sphere which is the layer of governance that affects the whole. And local governments are responsible for their own sphere of responsibility. And because the local governments are closer to the people and are clearly accountable to the people, they will hopefully be more responsive to their people. Since policies and the delivery of services will no longer rely on the whims of national government and will be the sole responsibility to local officials, they will tend to respond more to the will of their constituency. Federal state leaders will actually have more time and energy to listen to their people since they will not have to play the patronage politics game with national government. Unlike with local autonomy under a unitary state, where they are supervised by the national government and they only have a token share of the national revenue, they will in principle have all the power and resources they need to decide what to do and actually implement it.

Federalism could also enhance people’s participation in governance since actual administrative and policy making units of government are more accessible (both because it is near them and because it speaks their language and is rooted in their reality) and visible to them. With federalism, government will not seem too far from the people and they may be drawn to become more active citizens since their government is something they can identify with. Just as important, federalism may encourage the development of local cultures since the style of governance and its structures will presumably reflect their culture, and the government units and government officials who are responsible to them are of their lifeworld and their localities. Because of this they will be able to govern according to their own peculiarities and particularities. In this way, since they will not be dictated to by Manila-defined policies and programs, they will be able to create policies and programs suited to their own ways. More importantly, the discourse of governance could become more suited to them and thus more inclusive since they will be defining, through their state constitutions, what they stand for, what they are about, and what form public discourse, policymaking, and governance will take. Local governance will thus reflect more accurately and effectively the concerns and aspirations of the citizens of the locality on their own terms.

⁵⁰Soliman M. Santos, Jr., “A Framework for Constitutional Accommodation: One Country, Two Systems,” in Jose V. Abueva, et al, eds., *Towards a Federal Republic of the Philippines With A Parliamentary Government: A Reader* (Marikina: Center for Social Policy and Governance, Kalayaan College and Local Government Development Center, 2002),

Of course, federalism itself may bring some dangers. Alex Magno's analysis of these dangers are worth listening to. He has three points of concern regarding the federalist shift: "fiscal sustainability and the cost of government, the implications of this proposal on the process of empowering local governments and the diminution of the capacity of the national government to ensure even development across the regions."⁵¹ On fiscal sustainability there is this problem to face: local governments will need greater funds to create a new layer of bureaucracy to support their parliament and ministries. They will need to raise funds for maintenance and operating expenses. Thus, federal states will face the dilemma of having to raise greater funds on their own by designing tax systems that will raise revenue but will not lose the support of their constituency. They will also have to compete for investments with other states most probably by designing attractive tax schemes as well. Magno believes tax incomes will decline and the national government will "receive a *smaller share of a smaller pie*." This will especially be true because the states will want to keep as much of their revenue as they can while the national government will be left with large expenditures like the armed forces and major infrastructure.⁵²

Regarding the disempowerment of local governments, Magno believes that creating a new authoritative state power will tend to lessen the authority of the component local governments. He says, "In a shift to federalism, a new layer of authoritativeness, the 'states' will evolve out of nothing. As a dry cotton ball absorbs the moisture around it, this new layer will suck in functions and prerogatives from the existing [local government units]."⁵³ Regarding the federal government's redistributive role, there is the tendency for the federal government to be incapacitated from its role as the body that evens out development among states many of which will suffer from gross inequalities. With a reduced budget and powers, federal governments may not be able to effectively draw resources from richer states to support the development of poorer states.⁵⁴ This last point was explained this way by economist Gerardo Sicat:

The economically weak regions that are currently highly dependent on the support of the central government may find elevation into self-governing states unprepared [sic] for the responsibility. Based on the present economic structure, there are likely to be more weak regions than viable ones. This will aggravate the condition of the weak regions further. The weak regions will be condemned to a state of deficiency in resources to finance their programs and projects.⁵⁵

These are some of the more pertinent objections to the federal shift and they seem to remain largely unanswered. Certainly there will be the mechanism of a national equalization fund but

⁵¹ Alex Magno, "Federalism" in *First Person*, October 15, 2005, *Philippine Star*, 14.

⁵²*Ibid.*

⁵³*Ibid.*

⁵⁴*Ibid.*

⁵⁵ Gerardo P. Sicat, *A Federal Structure Is Costly and Does Not Guarantee Progress*. December 2005, <http://www.econ.upd.edu.ph/respub/dp/pdf/DP2005-11.pdf>.

how incomes will be distributed between state and federal government and how effectively local governments will be able to raise revenues remains a question open to much speculation.

Another question that must be faced is the question of the rise of the local elite and their monopoly of power. This will include warlordism and their monopoly of economic resources and opportunities. As it stands, there are already political dynasties that control congress and local governments. Landlords control some local governments and have effectively blocked agrarian reform. Will complete local autonomy remove the only check on their dominance over their constituents and territories? Given our political culture, will the local elite not merely use their autonomy to exploit their people further? The local elite is already using its influence over local politicians to subvert land reform and to shamelessly exploit local natural resources. Will federalization not strengthen their hold over local officials since there will be no national government to check their excesses? Is it not possible that their policies, their very constitutions will be determined in the end by their own elite in order to serve their narrow interests to the detriment of the constituency? This is a gnawing question that must be answered properly.

Despite these objections, it seems that federalism does bear some clear advantages if properly realized. If we can establish the profound degree of autonomy that federalism promises coupled with safeguards against the abuses of power that will be opened to local politicians, then we could witness the blossoming of good governance which allows an empowered citizenry to emerge from the margins so that they can direct their own development and realize the potentials for growth suited to them.

V. The Limits and Possibilities of the Federalist Reform within the Framework of the 1987 Constitution

Let us begin this section by asking the question, is it not possible to realize a federal Philippines under the current constitution? If we consider the idea of federalism we proposed in the previous section, and this is the form we will consider since in principle it seems to be the consensus of the CMFP, the answer is no. Certainly a great deal of autonomy has been granted to local governments under this constitution. Let us examine the aspects of this grant of autonomy in Article X on Local Government. The Constitution grants that the territorial and political subdivisions shall enjoy local autonomy (Sec 2) with autonomous regions in Muslim Mindanao and the Cordilleras.(Sec 1) Congress is supposed so enact a local government code that “shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.” (Sec 3) However, the president still exercises general supervision over these units and the higher local government units over their component units to “ensure that the acts of their component units are within the scope of their prescribed powers and functions” (Sec 4) as specified by the Constitution and the Local Government Code. And then these

units were guaranteed fiscal autonomy when they were given the power to create their own sources of revenue and to impose taxes but within the guidelines provided by Congress.(Sec 5) They also have a just share of the national taxes to be released to them with the amount determined and guaranteed by law. (Sec 6) They also will have a share of the income from the utilization of the national wealth in their areas again with a sharing scheme to be determined by Congress. (Sec 7) Here we see that the constitution establishes autonomous units that function under the general supervision of national government and whatever powers it enjoys are conferred to it by Congress.

The autonomous regions are another case. The Constitution makes for these special autonomous units because of the different cultures and systems that rule their communal existence, which are not served by the application of general national policies and system to them.

SECTION 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

Despite their special autonomous status, the president still exercises general supervision “to ensure that the laws are faithfully executed.”(Sec 16) It is still Congress that formulates their autonomy although with consultation with a regional consultative commission appointed by the president. (Sec 18)

SECTION 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

Their special autonomy allows these autonomous regions to set up their special courts with regard to the laws that they will be able to enact.

SECTION 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;

- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and
- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

These regions have a broad policy defining powers which should be able to help them shape their locality as demanded by their customary laws and should help them prosper while preserving their cultures. From a purely constitutional perspective, these special units should have enough autonomy to begin to determine an acceptable life for their particular peoples.

Given these features, we can ask if autonomy as framed by the constitution is the kind of autonomy aspired for by federalists. In *Disomangcop v. Datumanong* (G.R. No. 149848) the Supreme Court categorically states that decentralization in unitary systems “differs intrinsically from federalism in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government.” The local government’s authority to act is always by delegation. This authority is conferred and can be taken away. In another decision, the Court further elaborates this principle:

Decentralization of power (or devolution) involves abdication of political power in favor of local government units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. (*Limbona v. Mangelin*, 170 SCRA 786, 795 [1989])

Is this the kind of decentralization we have with local autonomy? The court determined that the constitutional guarantee of local autonomy “refers to administrative autonomy...or the decentralization of government authority.”(*Cordillera Broad Coalition v. Commission on Audit*, 29 Januray 1990, 181 SCRA 495, 506) This means that authority for administration and not power was devolved to local government units.

Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies ion the President and Congress. Municipal governments are still agents of the national government. (*Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000)

Clearly, our Supreme Court in no uncertain terms has spelled out the limitations of the 1987 Constitution regarding Federalism. Local governments are still accountable to the national government and are its agents in implementing policy set at the national level. At the end of the day they are still answerable to the President and Congress. The limits and possibilities of their acts of governance will still have to fall in line with the national agenda

set by national level politicians. Given the reality of our political system, this really means that they are free to innovate on administration practices and perhaps on policies regarding revenue-raising and even in development planning. However, these have to be eventually aligned to national government priorities.

This is not to say that the granting of local autonomy the way it is spelled out in the 1987 Constitution is not significant. It is extremely significant and innovative. In fact, because of its guarantees, it became possible to formulate the Local Government Code (LGC) of 1991 which establishes some of the most important innovations in Philippine governance. Sosmena summarizes its features most succinctly:

1) It devolves to local government units the responsibility for the delivery of various aspects of basic services that earlier were the responsibility of the national government. These basic services include the following: health (field health and hospital services and other tertiary services); social services (social welfare services); environments (community based forestry projects); agriculture (agricultural extension and on-site research); public works (funded by local funds); education (school building program); tourism (facilities, promotion and development); telecommunications services and housing projects (for provinces and cities); and other services such as investment support. 2) It devolves to local governments the responsibility for the enforcement of certain regulatory powers, such as reclassification of agricultural lands; enforcement of environmental laws; inspection of food products and quarantine; enforcement of national building code; operation of tricycles; processing and approval of subdivision plans; and establishments of cockpits and holding of cockfights. 3) The Code also provides the legal and institutional infrastructure for expanded participation of civil society in local governance. More specifically, it allocates to non-governmental organizations (NGOs) and people's organizations (POs) specific seats in local special bodies. These special bodies include the local development council, the local health board, and the local school board. Because of their ability to organize and mobilize the people, one door wide open for NGO and PO participation in governance is in the area of promoting local accountability and answerability, specifically through the recall and people's initiative provisions. 4) The Code increases the financial resources available to local government units by a) broadening their taxing powers; b) providing them with a specific share from the national wealth exploited in their area, e.g., mining, fishery and forestry charges; and c) increasing their share from the national taxes, i.e. internal revenue allotments (IRA), from a previously low of 11% to as much as 40%. The Code also increases the elbowroom of local governments to generate revenues from local fees and charges. 5) The Code lays the foundation for the development and evolution of more entrepreneurial-oriented local governments. For instance, it provides the foundations for local governments to enter into build-operate-transfer (BOT) arrangements with the private sector, float bonds and obtain loans from local private institutions, etc., all within the context of encouraging them

to be “more businesslike” and competitive in their operations un contradistinction to “traditional” government norms and operations.⁵⁶

Let us elaborate on this.

Since the passage of the Code, local government units have become the frontlines in the provision of basic services and the catalysts for local development. The Code makes them both the front line for the provision of basic services and calls on them to become the catalysts of development for their localities. This is because the Code gives local government units powers that allow them to fashion themselves as administratively autonomous government units. Mainly, they were given fiscal independence with their guaranteed share of 40 percent of the “national internal revenue based on the collection of the third fiscal year preceding the current fiscal year.” (LGC, Sec 284) Despite the national government’s attempts at illegal cutbacks, the IRA is a steady source of income for local government units. Thus, local government units (LGUs) are supposed to be able to function without any dependence on the national government. The Code also allows LGUs to raise their own revenue through taxation. For instance, they can raise tax rate ceilings; tax the income of banks, forest concessions, mines and mineral products; and withdraw tax exemption privileges of Government Owned and Controlled Corporations (GOCCs). As corporate bodies, they can enter into debt, enter into cooperative agreements with the private sector, and receive funding. In fact, there are many ways for LGUs to raise funds in relation to the private sector⁵⁷ and they need not be IRA dependent.

Given their fiscal autonomy, LGUs clearly have a leading role in the design and implementation of local development programs. They are no longer just the local arm of the national government nor are they merely administrative units, but they are centers of governance that could plan and direct the development of their communities. Thus, we see why the institution of people’s participation is integral to local autonomy. Given their devolved powers and responsibilities as well as their relative fiscal independence, LGUs can play a genuine role in shaping a locality into a progressive polity.

Local autonomy as envisioned by the Code also means to establish LGUs as venues for democratic governance. Since much power was vested on the LGUs, the people were also given mechanisms of participation. The local citizenry are given a chance to effectively participate in the delivery of basic needs, in the planning for the development of the community, and in the administration of the locality. There are several provisions in the Code for people’s participation. One area is in mandatory consultations. Sec. 2 (c) states:

It is likewise the policy of the state to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the

⁵⁶Gaudioso C. Sosmena, Jr., “Ten Years of the 1991 Local Government Code” in Jose V. Abueva, et al, eds., *Towards a Federal Republic of the Philippines With A Parliamentary Government: A Reader* (Manila: Center for Social Policy and Governance, Kalayaan College and Local Government Development Center, 2002), 49-50.

⁵⁷Alex B. Brillantes, Jr., “Essay on the Local Government Code of 1991 and NGOs,” *CSC Paper No. 1* (Baguio City: Cordillera Studies Center, 1992), 5.

community before any project or program is implemented in their respective jurisdictions.

It states also in Sec. 26 the following:

It shall be the duty of the national agencies or GOCCs authorizing or involved in the planning and implementation of any project and program that may cause pollution, climatic change, depletion of non-renewable, loss of cropland, rangeland or forest cover and extinction of animal or plant species, to consult with local government units, non-governmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27 reiterates this need for consultation:

No project or program shall be implemented by government authorities unless the consultations mentioned in Section 2(c) and 26 hereof are complied with, and proper approval of the Sanggunian concerned is obtained; Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution

These provisions give a voice to the local populace, especially organized groups.

The Code also calls on local governments to involve NGOs and POs in the delivery of basic services and in project implementation. It also mandates the promotion or support of NGOs and private sector as partners in local autonomy. This partnership often comes into the delivery of basic services, in joint ventures and cooperative programs and in financing, construction and maintenance of infrastructure projects. The mandate also challenges local civil society groups to engage their local governments to ensure that governance is responsive to the basic and development needs. We can see this policy in the following provisions:

Section 34. Role of People's and Non-governmental Organizations

Local government units shall promote the establishment and operation of people's and non-government organization to become active partners in the pursuit of local autonomy.

Section 35. Linkages with People's and Non-government organizations

Local government units may enter into joint ventures and such other cooperatives arrangements with people's and non-government organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

Section 36. Assistance to People's and Non-governmental Organizations

A local organization unit may, through its local government units and with the concurrence of the Sanggunian concerned, provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.

Sec. 3 (1): The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development

From the Implementing Rules and Regulations of the LGC:

Art. 62. Role of People's Organizations, Non-governmental organizations and the Private Sector. – Local government units shall promote the establishment and operation of people's and non-governmental organizations and the private sector to become active partners in the pursuit of local autonomy. For this purpose, people's organizations, nongovernmental organizations and the private sector shall be directly involved in the following plans, programs, projects or activities of the LGUs:

- (a) Local Special Bodies
- (b) Delivery of basic services and facilities
- (c) Joint ventures and cooperative programs and undertakings
- (d) Preferential treatment for organizations or cooperatives of marginal fishermen
- (e) Preferential treatment for cooperatives development
- (f) Financial and other forms of assistance
- (g) Financing, construction, maintenance, operation, and management of infrastructure projects

The Code further strengthens and legitimizes local governance by providing avenues for people's participation in policymaking. For instance, it mandates people's participation in local special bodies (LSBs). They are reserved one fourth of the seats in one of the most important of these bodies: the Local Development Council (LDC) as defined in Sec.106. The LDC is the main planning and advisory body of LGUs which sets the direction of economic and social development. They are also reserved seats in the Local Pre-qualification, Bids and Awards Committee. (Sec 37) This body is responsible for the pre-qualification of contracts, evaluation of bids, and the recommendation of awards regarding local infrastructure projects and requires two representatives from POs or NGOs that are represented in the LDC and a practicing certified public accountant from the private sector designated by the local chapter of the Philippine Institute of Certified Public Accountants to be members. This body is meant to be a preventive for corruption in local infrastructure projects. There is similar representation in the Local School Board which determines the annual supplementary budgetary fund for the operation and maintenance of public schools within the LGU, allocates the share of the LGU in the Special Education Fund and other sources, and serves as an advisory committee to the local Sanggunian. Here, one representative from the elected president of the local federation of parent-teachers association, one representative from the local teachers' organization and one representative from the non-academic personnel of public schools are reserved seats. (Sec 98-99) Similarly, one representative from an NGO or the health professionals involved in health services sits

on the Local Health Board (LHB) which serves as an advisory committee to the Sanggunian on health matters and proposes to the Sanggunian the annual budgetary allocations from the operation and the maintenance of health services and facilities. (Secs 102-105) Three representatives from the private sector and a representative from the veterans sit in the Local Peace and Order Council (LPOC) that monitors peace and order programs and projects, formulates plans and recommends measures for peace and order. (Sec 116)

Aside from being assured of representation in these special bodies, representatives from marginalized sectors are reserved three seats in the local legislative bodies or the Sanggunian. (Sec 41 [c]) These representatives will come from the women, labor and any other sector determined by the local Sanggunian and will be elected by the electorate to the Provincial, City and Municipal Sanggunian. Unfortunately, this provision is not in effect because Congress has failed to pass an enabling law that will set the date and manner of the election. The citizenry is also empowered to participate in local legislation is enacted through the systems of initiative, referendum (Sec 120 – 126) and recall (Sec. 69 to 75). Initiative allows voters to directly propose, enact or amend any ordinance through election. Referendum allows voters to approve, amend, or reject ordinance enacted by local legislation. Recall allows the electorate to remove from office any elected official by a vote of no confidence.

We emphasize people's participation in our discussion with the understanding that local autonomy will not work without people's participation. These areas of people's participation in local governance frame the possibilities of active local citizenship and the very possibility of founding viable local governments that will actually respond to the people's needs and work for their development. We will discuss this in the next section, but before that, we should discuss the special autonomous regions.

The 1987 Constitution mandates the creation of autonomous regions in Muslim Mindanao (ARMM) and in the Cordilleras. However, only the ARMM was established since only one province, namely Ifugao, voted to be part of the Cordillera Autonomous Region.

Republic Act No. 9054 is the Organic Act of ARMM. It replaced Republic Act No. 6734 which originally created the ARMM in 1989. It took effect on August 14, 2001, the date of its ratification through a plebiscite held in ARMM's constituent units.⁵⁸ According to

⁵⁸ The Organic Act of 1989 called for the holding of a plebiscite in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur, and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga. [Article II, Section 1 (2)] In the ensuing plebiscite held on 19 November 1989, only four provinces voted for the creation of an autonomous region, namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. [*Chionghian v. Orbos*, 315 Phil. 251, 257 (1995)]. The Organic Act of 2001 called for the conduct of a plebiscite in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, Sarangani, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, Zamboanga del Sur and the newly created Province of Zamboanga Sibugay and in the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Kidapawan, Marawi, Pagadian, Puerto Princesa, Digos, Koronadal, Tacurong and Zamboanga. [Article II, Section 1 (2)] It was ratified in a plebiscite held on 14 August 2001. The province of Basilan and the City of Marawi also voted to join the original four provinces of the ARMM on the same date. (*Disomangcop v. Datumanong*, G.R. No. 149848, 25 November 2004, 444 SCRA 203)

its authors in the House of Representatives,⁵⁹ it incorporates the salient features of the Peace Agreement entered into between the National Government and the Moro National Liberation Front on September 2, 1996. The law describes the ARMM as a corporate entity with jurisdiction in all matters devolved to it by the Philippine Constitution and its Organic Act. It shall have executive, legislative and judicial powers exercised through its Regional Governor, Regional Assembly and special courts, respectively.

The President of the Republic shall exercise general supervision over the Regional Governor but only “to ensure that [the latter’s] acts are within the scope of his or her powers and functions.”(Article V, Section 1 of the Organic Act of 2001) The President has no control over the Regional Governor’s acts in the sense that he or she can substitute the Governor’s judgments with his or her own.⁶⁰ However, the President may suspend, reduce, or cancel the funds and financial assistance released to the ARMM by the national government if the regional government fails to account for these or when the rights of the indigenous peoples, Christians and other minorities are violated or not implemented.(Art. V, Sec. 1) The President also has the power to suspend the Regional Governor for willful violation of the Constitution, the Organic Act or any existing law applicable to the autonomous region and even to remove him for treason, bribery, graft and corruption, and other high crimes.(Art., II, Sec. 13)

The Regional Government has police power,(Art. IV, Sec. 4) power of eminent domain(Art. IV, Sec. 6) and taxation. (Art. IX, Sec. 1) Regional powers were likewise devolved to local government units. The ARMM Local Government Code⁶¹ was enacted by the Regional Assembly on January 25, 1994 and approved by the Regional Governor on March 3, 1994.⁶²

The Regional Assembly may exercise legislative power except on the following matters:

- (a) Foreign affairs;
- (b) National defense and security;
- (c) Postal service;
- (d) Coinage and fiscal and monetary policies;
- (e) Administration of justice except on matters covered by the Shari’ah legal system;
- (f) Quarantine;
- (g) Customs and tariff;
- (h) Citizenship;
- (i) Naturalization, immigration and deportation;

⁵⁹Explanatory Note of House Bill No. 2577 sponsored by Representatives Alfredo E. Abueg, Jr. and Eduardo R. Ermita.

⁶⁰*Disomangcop v. Datumanong*, supra note 3.

⁶¹ Also known as the Mindanao Autonomy Act No. 25. This was pursuant to the Organic Act of 1989.

⁶²*Pandi v. Court of Appeals*. (G.R. No. 116850, 11 April 2002, 380 SCRA 436)

- (j) General auditing;
- (k) National elections;
- (l) Maritime, land and air transportation, and communications except the power to grant franchises, licenses and permits;
- (m) Patents, trademarks, trade names, and copyrights; and
- (n) Foreign trade.

Aside from regular members, the Regional Assembly also has sectoral representatives whose number shall not exceed fifteen percent of the total number of elected members representing the agricultural, labor, urban poor, disabled, indigenous cultural communities, youth, and women sectors. (Art. VI, Sec. 3) Legislation mandated or encouraged to be enacted are: civil service laws that will govern appointment of government officials and employees, (Art. VI, Sec. 13) law for the codification of indigenous laws and customary laws of Muslims, (Art. VIII, Sec. 21) regional tax code, (Art. IX, Sec. 3) regional agrarian reform law, (Art. X, Sec. 8) aquatic and fisheries code, (Art. XII, Sec. 4) and a law creating Regional Economic Zone Authority. (Art. XII, Sec. 4) The Assembly has powers, rules and procedures similar to that of Congress, e.g. questioning of cabinet members in aid of legislation, (Art. VI, Sec. 14) three readings of a bill before its passage (Art. VI, Sec. 16) and enactment of the budget. (Art. VI, Sec. 20)

The Regional Governor has powers parallel to that of the President, for example, veto power of laws (Art. VI, Sec. 17) and the power to appoint. (Art. VII, Sec. 19) A Vice Governor is also elected and he must belong to the same political party as the Governor. (Art. VII, Sec. 4) A vote for a candidate for Regional Governor shall be counted as a vote for his teammate for Regional Vice Governor and vice versa. (Art. VII, Sec. 4) Assisting the Governor are the Cabinet (Art. VII, Sec. 2) and Executive Council (composed of three deputies representing the Christians, indigenous cultural communities and Muslims, along with the Governor and Vice Governor). (Art. VII, Sec. 6) The Governor and Vice Governor may be removed in a process similar to impeachment. (Art. VII, Sec. 13) Like other local government officials, the Governor, Vice Governor and members of the Regional Assembly may be recalled. (Art. VII, Sec. 14)

The Supreme Court and other lower courts, including the existing Shari'ah Courts, shall continue to exercise judicial power over the region. (Art. VIII, Sec. 1) The Shari'ah Courts shall have jurisdiction over cases involving personal, family and property relations, and commercial transactions, in addition to their jurisdiction over criminal cases involving Muslims. (Art. III, Sec. 5) The Organic Act also created the Shari'ah Appellate Court, (Art. VIII, Sec. 7) the decision of which shall be final and executory, (Art. VIII, Sec. 10) and a system of tribal courts, which may include a Tribal Appellate Court, for controversies involving indigenous cultural communities. (Art. VIII, Sec. 19) However, in case of conflict between the Muslim Code or the tribal code on the one hand, and the national law on the other, the latter shall prevail. (Art. VIII, Sec. 22)

Seeing how the ARMM is structured by its Organic Act, we can see how much power is granted the autonomous region. It in fact has the power to restructure their systems of justice, ownership, and governance so that they are more responsive to their specific culture. They can create legislation that will allow them to govern themselves according to

their traditions and their beliefs. As long as they do not secede, violate the basic rights of their citizens or violate any national laws, they are free to govern themselves with minimal intervention. However, this autonomy comes from an act of national government. It is still defined by national government and it is still revocable by national government. In short, it is still not the full autonomy of a federal state. In the end, the autonomous region is still under the supervision of the national government. Nonetheless, they do have great leeway for self-governance. And so do the local government units. Given this maneuvering room for governing themselves and creating opportunities for development and growth, how did these local governments perform? This is the question we will be posing in the next section. We will be posing this question not so much from the perspective of the realization of good governance in general, or economic development and administration. Rather, we will assess the performance of local governments with the powers of local autonomy, from the perspective of social justice. We will focus on this question from the social justice perspective because it is our interest to understand how federalization could affect the social justice agenda. In short, if we radically strengthen local autonomy through federalization, will this serve the liberation of the marginalized from their marginalization?

VI. Assessing the Potentials of Local Governance in Establishing Social Justice

A. A Cursory Assessment of the Achievements of Governance under the Code

Now that we have assessed how local autonomy has been established and strengthened as an instrument of development and democratization, we should ask ourselves if autonomy served the interest of sustainable and equitable development. We ask this because it will give us a clue as to how federalism might serve this very agenda and if local autonomy is not enough for our development. If we are to be honest regarding our advocacy, we must admit that all the gains that we believe are promised by federalism are precisely just promises. We have no idea how it will work faced with the realities of Philippine political culture. The closest lived world indicators that we might have as to its potentials are to be found in the ongoing experiment with local autonomy and the autonomous region. Certainly, the results in these experiments are not the same as those we will see in a federal state. There are after all many limits to autonomy that local governments have to face. For instance their share of national wealth is still inadequate and thus makes them dependent on Congress and the Administration for projects and some devolved national government agencies are still unable to realize their role in the devolution regime. However, LGUs do have enough devolved powers and responsibilities and enough administrative autonomy to show us how local governments may function when they are made fully autonomous government units. With the autonomy of federalism, will the social justice agenda prosper and will the process of liberation that we have instituted be furthered by federalism? Has it already prospered in any way with local autonomy?

We can begin our reflection on the general trends of autonomy. How has it fared in the last 15 years? Trends have been established at least for the last 10 years by scholars, NGOs and multilateral agencies concerned with good local governance as a tool for development. One such study is the Rapid Field Appraisals (RFA) which were funded by the United States Agency for International Development. Contracted to different agencies

through the last years, these RFAs give a quick picture of how local autonomy is generally progressing. These reflections are culled from the first nine RFAs.

According to Steven Rood of the Asia Foundation, “The Rapid Field Appraisals have found that local governments now spend more on social and economic services than did national government agencies before the passage of the Local Government Code. However, we know little about the effect of this increased expenditure.”⁶³ It seems that some of the expenditures in agriculture and health are making an impact. At least they impact on people’s awareness of their existence although it is not clear if they have improved health and agriculture on a sustainable basis. But one thing is clear, many local governments are responding to the challenge of local governance. It seems to be true that local officials feel themselves to be more accountable to their constituency than national government officials and national line agency heads. The common sense view that the pressure from voters can pressure local officials into action seems to be the case with local governments and basic services. Steve Rood offers a plausible explanation for this:

In the last two local elections (1992 and 1995), winners typically won with less than half of the vote. This is because votes are split among so many candidates, which is part of the trend noted above toward more candidates for each office (a trend caused in turn by a larger pool of middle-class citizens). The result is that in 1995 less than one-third of the governors reached their constitutionally prescribed maximum of three terms, and fully two-fifths were elected to their first term. (Members of Congress, also elected by districts but less accountable locally, had exactly the opposite profile in 1995. Only one-fourth were elected for their first term, whereas two-fifths were on their third and last term. The latter figure is one of the main reasons for the discussion in Congress about changing the 1987 Constitution to remove term limits.)⁶⁴

Based on the findings of the RFAs, we can say that the first few years were a struggle to understand what they had to and what they could do under local autonomy. But by 1995, there was greater resource mobilization and an improvement in the delivery of basic services. (Fifth RFA, 1995) As the experience of devolution and administrative autonomy progressed, these observations were made by the Sixth RFA:

- "Basic service delivery is progressively becoming more integrated with local operations, more focused on local priorities, and more efficient in terms of both services and costs."
- "There is greater revenue support for devolved services."
- "LGUs appear much more willing to look at issues such as privatization, fee for service, co-delivery of services and other innovation as a means to cover costs."

⁶³ Steven Rood, “Decentralization, Democracy, and Development,”
<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN005102.pdf>, 17.

⁶⁴ *Ibid.* 14.

- "More creative support service modes are being discovered and developed as a result of decentralization."⁶⁵

With growing experience, LGUs began to flex their creativity and to show that they could deliver health and agricultural services in a manner more relevant and more responsive to local needs. However, there was a general resistance to devolution from the national government agencies (NGAs). They tended to act as if local government units were implementers of the plans of national agencies and to forget the level of control local government units have over their local offices. Thus there was the conflict of authority and lack of funds that marred the devolution process. However, local governments were learning to raise their own funds for their hospitals, water systems, and agricultural support services. Social welfare services and health were the early success stories because the national agencies were early on committed to cooperating with LGUs and because these services received increased financial support from the local governments. There was in fact a greater understanding of the needs of beneficiaries due to the closer supervision and planning support from local executives. There were also experiences where LGUs partnered with NGOs and the private sector in co-financing and implementing projects. This showed a growing creativity among local partners in responding to local needs. LGUs were also becoming aggressive in addressing their own environmental concerns especially because they felt that the Department of Environment and Natural Resources was incapable of effectively responding to their environmental problems.

In 1996, LGUs still faced the problem of a central government bureaucracy that could not let go of their power. LGUs that participated in the RFAs noted that: 1) NGAs continue to set increased budgets for field and extension work even though they have devolved the personnel to accomplish these projects. LGUs feel the "the NGAs have continued to hold onto the money, but we have the people and the responsibility;" and 2) NGAs continue to devise programs at the national level for implementation at the local level without consultation or needs of local needs and priorities. Many LGUs felt forced into complying with NGA projects because they did not have their own funds to pursue alternatives that were more suitable for their areas. This was a problem especially since they felt that the NGA planning and implementation processes were not transparent. This was still a problem in 1997 when NGA budgets rose despite devolution. This should give us a clue of how national government holds on to its powers and resources in order to control the disbursement of projects. It could also show how a national bureaucracy exists mainly to propagate itself even if this means propagating irrelevant and unresponsive programs. Even in 1997, devolution and local administration was still a problem because local governments continued to have limited control over planning, implementation, monitoring, and evaluation of projects funded from the national budget and overseas assistance. If local governments wanted to implement their own programs in agriculture, they had to source their own funds and find technical assistance outside the Department of Agriculture structure. Thus, localities continued to be constrained from developing and implementing their own

⁶⁵ ARD and Ateneo School of Government, *Sixth Rapid Field Appraisal of the Governance and Local Democracy (GOLD) Project*, unpublished paper commissioned by USAID, 1996.

programs. They found more support from the NGO and PO community. Even the Department of Social Welfare and Development which was supposed to be the agency more open to devolution tended to give a menu of projects and programs which the LGUs could choose from in order to respond to the basic minimum needs approach to poverty alleviation.⁶⁶ Otherwise, there was already some evidence then of creative partnerships between LGUs, national government and NGOs for program implementation and planning.

By the Eighth RFA, sectoral and regional consultants begin to confirm that there are widespread improvements in the delivery of public services under decentralization. Even the Social Weather Stations' survey on Data on Devolved Services conducted in first semester of 1998 show that people are more aware of LGU programs for agriculture, health, and social welfare services. Roughly 30% of respondents were aware that these services had been devolved, with 82% of those satisfied with the LGUs' provision of social services, 56% satisfied with LGUs' delivery of agricultural extension services, and 59% saying that health care had improved while only 9% said it had become worse.⁶⁷

Also by 1998 the Department of Agriculture (DA) is performing better with their on-going implementation of the Agriculture and Fisheries Act. It seems they are using participatory planning approaches which the localities appreciate and thus there is greater grassroots involvement in agricultural projects planning and implementation. However, despite the fact that the DA is more flexible with its programs, LGUs are still mostly implementing the national agencies programs because it is easier to just tap into their resources. Partnerships between LGUs, NGOs and NGAs in program implementation are seen to lead to dynamic responses to service delivery.⁶⁸ In the later part of this section, we will see though that there are very serious problems with agriculture support services which this early optimism does not reflect.

Participatory planning has also become more evident by the eighth and ninth RFAs. The Departments of Health and Agriculture are especially open to people's participation in planning processes and consultations. The 9th RFA notes that in almost all regions, the use of participatory planning in the formulation of Food Security Plans (FSP), and the identification of the Strategic Agriculture and Fisheries Development Zones (SAFDZ) was common practice. It also notes that the Agriculture and Fisheries Modernization Act's mandated bottom-up planning processes ensure the responsiveness of national government technical assistance to local governments. These participatory planning processes encourage people's participation in local governance. In fact, there is a growing engagement of NGOs and POs in non-mandated avenues of people's participation. This occurs more in the areas of service delivery projects and activities with clear benefits and clear issues for LGUs and civil society groups. This is to say that participation in LGC-mandated areas of participation tends to be low or not fully effective. This is true of local special bodies, especially the Local Development Councils. The councils are too unwieldy in size, nobody knows what their

⁶⁶ Associates in Rural Development Inc., "Synopsis of Findings: Seventh Rapid Field Appraisal of the Status of Decentralization: The Local Perspective," Governance and Local Democracy Project, Makati, 1997.

⁶⁷ Associates in Rural Development Inc., "Synopsis of Findings: Eighth Rapid Field Appraisal of the Status of Decentralization: The Local Perspective," Governance and Local Democracy Project, Makati, 1998.

⁶⁸ *Ibid.*

mandate is exactly and there is no secretarial support to ensure effective planning. The Ninth RFA notes that many local governments have explored the engagement of civil society beyond Code-mandated advisory LSBs.⁶⁹ The involvement of NGOs in local planning and the localization of national government programs have resulted in stronger partnerships between NGOs and LGUs. However, participation for some LGUs ends with accreditation for inclusion in LSBs and initial consultations on specific initiatives, after which the LSBs remain largely inactive. Rood notes this:

Reflecting this problem, a 1996 study of municipalities and cities within seven provinces addressed three indicators of citizen participation in local governance: active NGO representation in local special bodies; citizen participation in the preparation of investment plans; and citizen participation in the preparation of environmental plans. Based on these three indicators, the study found that 57 percent of the local government units covered had evidence of effective citizen participation.⁷⁰

He adds:

Even when the specific mandates of the Code fall short, the Code itself is influential in producing a mind-set that encourages participation. When individual citizens and NGOs think about interacting with government, they are more likely than before to think of local government because of the channels laid out in the Code.⁷¹

Here we see that because of the Code, local democratization is making headway: perhaps not through formal channels, but through informal systems of cooperation. Local government officials are beginning to appreciate the value of partnership with the private sector and NGOs in providing more responsive services.

The RFAs help us understand how local autonomy and devolution may have improved the delivery of basic services. But has governance improved? Brillantes and Moscare claim that after more than a decade of implementation “Energies long held hostage by a highly centralized politico-governmental set-up were finally unleashed leading to creativeness, innovation and boldness among many local communities.”⁷² Certainly there are problems including the lack of resources and capabilities and the lack of structural improvements in the relations between national and local agencies. But it seems that “devolution is working and that local autonomy has brought about creativity, imagination and innovation at the local level.” Brillantes and Moscare’s optimistic assessment is captured in this statement:

⁶⁹ Associates in Rural Development Inc., “Synopsis of Findings: Ninth Rapid Field Appraisal of the Status of Decentralization: The Local Perspective,” Governance and Local Democracy Project, 1999.

⁷⁰ Steven Rood, “Decentralization, Democracy, and Development,” 16.

⁷¹ *Ibid.*

⁷² Brillantes and Moscare, “Decentralization and Federalism in the Philippines....”

All these have shown that it is possible to have good local governance under a devolved set up, governance here meaning the delivery of basic services to the people, not only by the local government, but in partnership with the other sectors in the community. The countryside is dotted with illustrations of good and best practices of how local governments have creatively used their powers to bring about good governance at the local level.⁷³

This assessment reflects the assessment of the studies on local governance that we have cited. Scholars often feel that despite the setbacks, decentralization is here to stay and it has indeed unleashed the creativity on many local governments—especially in the area of governance that encourages local governments to be more entrepreneurial and creative in income generation and in building partnerships for the delivery of basic services. And certainly this development is laudable and justifies the hope that greater autonomy will lead to good governance. We must note that these achievements are at the level of the delivery of basic services such as water systems, agricultural support mechanisms, and basic health services which, if improved, would indeed improve the lives of the Filipinos at the margins significantly. After all, Amartya Sen himself explains how the provision of basic services like health and literacy and numeracy “makes a direct contribution to the expansion of human capabilities and the quality of life” as well as an “impact on people’s productive abilities and thus on economic growth on a widely shared basis.”⁷⁴ Human development helps the people participate in the “process of economic expansion.”⁷⁴ But still there are those areas of governance where there is need of a kind of militancy that promise to liberate the poor from poverty and lead to social justice. Has improved local governance made headway in the area of asset reforms and equitable development? It is certainly one significant achievement for LGUs to have improved service delivery; it will be another greatly significant achievement if they were able to address the constitutionally mandated social reform agenda.

Delivery of basic services is within the normal, day to day business of the LGU. But social reform leading to social justice may just take on a more militant stance that looks toward rethinking economic and social relations so that unjust systems are redressed. It is more likely that LGUs will be more open to delivery of basic services because it does not need to challenge existing economic and power structures. Thus it would be not surprise if they are not as open to realizing social justice mandates of the constitution. Let us examine their performance in the light of the constitutional mandates for agrarian and fisheries reform, urban land reform and housing, and the improvement of the lives of indigenous peoples. Based on the constitutional provisions regarding the establishment of social justice, there are four special laws that were meant to realize these mandates: the Comprehensive Agrarian Reform Law (CARL), the Fisheries Code, the Indigenous Peoples Rights Act (IPRA) and the Urban Development and Housing Act (UDHA). Let us discuss the basic provisions of these laws and a brief assessment of how they fared under local autonomy.

B. The Comprehensive Agrarian Reform Law

⁷³ *Ibid.*

⁷⁴ Amartya Sen, *Development as Freedom*, (New York: Anchor Books, 1999), 144.

The intention of the Comprehensive Agrarian Reform Law (CARL) is to free the farmer from his bondage by making the farm he tills his own. The agrarian reform program is 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 farm workers, to receive a just share of its fruits. The State shall be guided by the principles that land has a social function and land ownership has a social responsibility. Owners of agricultural lands have the obligation to cultivate directly or through labor administration the lands they own in order to make the land productive. (Sec. 2) Thus, the law states that no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm but in no case shall retention by the landowner exceed five hectares. It is the Department of Agrarian Reform's (DAR's) task to acquire the lands not retained and redistribute them to agricultural lessees, tenants and farmworkers qualified to be beneficiaries of the Comprehensive Agrarian Reform Program (CARP). (Sec. 15) The DAR has extraordinary power to acquire land and redistribute it according to a process of just acquisition. The acquisition of land under this scheme was characterized by the Supreme Court as a revolutionary kind of expropriation.⁷⁵ Thus, the balance of the payment to the landowner may be paid in government financial instruments that are negotiable at any time, shares of stock in government owned and controlled corporations, Land Bank of the Philippines (LBP) bonds or tax credits. (Sec. 18)

The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or if there are none, to landless residents of the same municipality. Actual tenant-tillers in the landholdings shall not be ejected or removed from it. (Sec. 22) No qualified beneficiary may own more than three hectares of agricultural land. (Sec. 23) Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award. (Sec. 25) Lands awarded shall be paid for by the beneficiaries to the LBP in 30 annual amortizations at 6% interest per annum. Pending final land transfer, individuals or entities owning, or operating under lease or management contract, agricultural lands are mandated to execute a production-sharing plan with their farmworkers or farmworkers' organization, if any, whereby three percent (3%) of the gross sales from the production of such lands are distributed as compensation to regular and other farmworkers in such lands over and above the compensation they currently receive. (Sec. 32)

The law mandates the establishment of Provincial Agrarian Reform Coordinating Committees (PARCCOM) which shall coordinate and monitor the implementation of the CARP in the province, (Sec. 44) Barangay Agrarian Reform Committees (BARC) which shall mediate and conciliate between parties involved in an agrarian dispute and assist in the identification of qualified beneficiaries and landowners within the barangay, among others. (Sec. 47) Thus, there is clearly a local government component to this process of just redistribution of land. However, the national government still controls much of the process. The DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). (Sec. 50)

⁷⁵*Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*, G.R. 78742, 14 July 1989.

The CARP is supposed to be an aggressive program to acquire private agricultural lands from among big landowners and to distribute it to small-scale farmers with the appropriate support services for their land ownership to be viable. However, the CARP is going to expire in 2008 and land reform advocates are not optimistic about its extension. By all indications President Arroyo is not supportive of the CARP and would rather focus on agribusiness endeavors. The President went so far as to reduce “the yearly target for land acquisition and distribution of (LAD) private agricultural land (PALs) to just 100,000 hectares, which led to some of the lowest accomplishments in LAD in a year since 1987.”⁷⁶ The CARP has had an almost 20 year run of implementation and as of December 2005 the DAR has only distributed 3,639,868 hectares or 85% of its target and has put 1,604,364 hectares under leasehold for 1,157,309 beneficiaries.⁷⁷ However, of those lands that the DAR has claimed to have distributed, many were distributed under questionable schemes like the Voluntary Land Transfer/Direct Payment Scheme where farmers are left with inequitable or undesirable deals and many fake transfers of land to non-eligible beneficiaries were realized.⁷⁸ This failure to deliver a genuine and comprehensive land distribution program is due to the government’s lack of funds, political will, or desire to acquire land directly and distribute this to farmers. Thus many of the land distribution figures reflect the distribution public lands, undesirable and questionable acquisition schemes, or even non-distribution schemes where land that is supposedly transferred to beneficiaries has fallen into the hands of heirs of big landowners. Here are some interesting data on land distribution:

- “...almost half (44%) of lands that the DAR has distributed (including Lanao del Sur and Basilan) are non-PALs (i.e. Settlements, Landed Estates and GOL/KKK Lands).... Government-Owned Lands/KKK Lands accounts for almost one-fourth (24%) of the total lands distributed.”
- DAR has a “practice of over-covering non-PALs to compensate for failure to move PALs”
- “...there have also been cases of the DAR aggressively covering under CARP non-PALs/public lands that are also already within the ancestral domains of indigenous peoples (IPs) while PALs in the lowlands have remained undistributed.”
- “...the total areas distributed under CARP only 7% were acquired and distributed through Compulsory Acquisition (CA).”
- “Of the PALs distributed, the main modes used for acquiring and distributing these lands were through Voluntary Land Transfer [VLT] (27%), Voluntary Offer to Sell (26%) and Operation Land Transfer (26%). While

⁷⁶ Ernie Lim, “CARP 2008 & Beyond: An Agrarian Reform Situationer” (Unpublished Paper)

⁷⁷ *Ibid.*

⁷⁸ Alber Lagliva, “Not the Biggest Distribution in History,” *Intersect*, Vol. 17. No.6, 25.

lands acquired under CA accounted for only 8% of the total PALs distributed.”

- “...lands covered through VLT/Direct Payment Scheme (553,253 has.) are highly questionable as there have been reports of VLT contracts/arrangements being executed for mere compliance with the requirements of CARP but in actual practice are not implemented. There are also reports of VLT contracts being executed with relatives of the landowners.”⁷⁹

Here we see that there is a numbers game involved in land acquisition and distribution and clearly there is not enough acquisition being accomplished. The government is committed to meeting certain success indicators but is not sincerely working to distribute land through its power of acquisition. Today, agrarian reform advocates are worried that with the president’s 100,000 has. per year target of private agricultural lands, CARP land acquisition and distribution will only be completed by 2020.⁸⁰

However this is not the only major problem of agrarian reform. The major issue is the support services given to beneficiaries to make their farms a viable proposition. Firstly, the DAR’s support programs have been limited to members of agrarian reform communities (ARCs) but these comprise only 41.5% of all beneficiaries. And even these ARCs have not receive substantial services with only 58% of ARCs which only cover 27% of all agrarian reform beneficiaries (ARBs) have received a bulk of support services.⁸¹ This is a clear lack in support for the agrarian reform beneficiaries given these data:

- “As of December 2005, only 1,704 ARCs, covering 884,432 ARBs or just 41.5% of total ARBs, have been organized. However, not all ARCs have received substantial support services. According to the DAR itself, only 990 ARCs (just 58% of ARCs) covering only 581,386 ARBs (just 27% of the total ARBs) have received overseas development assistance (ODA) and thus most of the support services.”
- “...only 142,218 ARBs or just 6.69% of the total ARBs have received credit assistance from CARP. Counting the leaseholders, credit assistance from CARP only reached 4.33% of total FBs.”⁸²

It is in this area that local governments could be of most help. Perhaps land acquisition is a power given exclusively to the national government but the support of local agrarian reform communities could be drawn from the local government units. In fact, under the devolution

⁷⁹ Lim, “CARP 2008 & Beyond.”

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

of the agricultural support services, the agrarian reform beneficiaries could be helped to realize viable farms that would lead them beyond poverty. However, it has been noted that “[the] immediate effect of devolution has been the ineffective coordination between agricultural development plans at national and local levels, and this has resulted in the absence of agricultural extension services for CARP beneficiaries and other farmers.”⁸³ The fact is agricultural services seems to be problematic in most localities. Most local agricultural officers lack skills, technical know how, or expertise in their field. And with devolution, they were cut off from valuable technical support, funds, and training. Juan Edmund Martinez notes: “Most have fallen behind in knowledge and capacity to teach. The extension service could hardly develop human resources in farming households if the quality of human resources within it is also rather poor.”⁸⁴ In fact, some of our interviewees cite the fact that many agricultural officers are burdened with other tasks like tax collection. This double burden coupled with the fact that they lack any capacity to creatively support their agricultural sector means that they are not able to fully support the poor farmers and they cannot effectively direct their services to the agrarian reform beneficiaries. Actually, the problem of support to agrarian reform beneficiaries ties in with the problem of agricultural support in the nation as a whole.

The national government does not fully support agricultural development and research.⁸⁵ Martinez claims that agricultural experts agree that low agricultural productivity can be attributed to these causes: “a policy framework that has stifled productivity and innovation; inadequate or inappropriate government investments in agriculture; lack of access among the poor to productive resources; and an institutional framework that creates inadequate responses to the problems of Philippine agriculture and breeds of corruption and inefficient use of resources.”⁸⁶ This could have to some degree been addressed with devolution. At the very least, local governments could have directed intervention to respond more specifically to their own farmers’ needs. With agricultural extension, irrigation, and natural resource management devolved to them, they could have engaged in activities that could have impacted on productivity and viability. However, much of the fund appropriations for agriculture have not been devolved with as much as 75% retained by the Department of Agriculture and 7% distributed to local governments in 1998.⁸⁷ Local governments have also been reluctant to engage more significantly in agricultural development. This is mainly because major agricultural areas simply do not have the funds to give agricultural extension services with the IRA distribution scheme heavily

⁸³ Raul Gonzalez, Draft Country Study: The Impact of Decentralization on Local-Level Development, Angoc, 1 December, 1977, 26.

⁸⁴ Juan Edmund Martinez, “Governance in Agriculture and Rural Development,” in *Philippine Governance Report—Studies on the Management of Power*, ed. Jose Ibarra Angeles, (Philippines: United Nations Development Program), 2002, 196.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, 184.

⁸⁷ *Ibid.*, 206-207.

favoring urban areas and they are not interested in agricultural development because of its low visibility and long gestation period.⁸⁸

Here we see how there is a lack of knowledge or interest on the part of LGUs to support the agricultural sector in general and all the more the agrarian reform communities and beneficiaries. However, it has been noted again that the presence of strong civil society groups can push local governments to give innovative support to their agricultural sector. For example some groups have lobbied for the passage of ordinances that include agrarian reform communities' representatives in the Barangay Development Councils.⁸⁹ In this way, their agenda can be included in government plans. There is also the example of Irosin, Sorsogon where the local chief executive aggressively and diplomatically pursued the distribution of agrarian reform lands and the support of local agrarian reform beneficiaries. Mayor Dorotan's creativity and commitment to the project allowed him to negotiate with absentee land owners for the voluntary sale of their land and their declaration of the municipality as an agrarian reform community allowed them access to resources for support services.⁹⁰ These are examples of how local government units are able to push for the effective implementation of agrarian reform. Because they are close to their communities, LGUs may even be made to pursue the program more realistically since they are accountable to their constituents, unlike a national agency that is mainly concerned with meeting targets. However, these local government units are only as interested in agrarian issues as their local constituencies and their local government leaders will make them. Ernesto Lim notes that if one's local government is ruled by landlords, there is no chance of implementing CARP.⁹¹ It takes professionals without landed interests or with a development perspective to undertake such an endeavor. And so, the success of LGU implementation of CARP, even at the beneficiaries support side is low.

C. The Fisheries Code

The Fisheries Code seeks to implement the policy of the State to achieve food security, to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens, and to protect the rights of fisherfolk, especially of the local communities with priority to municipal fisherfolk, in the preferential use of the municipal waters. (Sec. 2) The Department of Agriculture (through the Bureau of Fisheries and Aquatic Resources) (Sec. 64) shall issue such number of licenses and permits for the conduct of fishery activities subject to the limits of the Maximum Sustainable Yield of the resource as determined by scientific studies or best available evidence. (Sec. 7)

In municipal waters, catch ceilings (which are limitations or quota on the total quantity of fish captured, for a specified period of time and specified area) may be established upon the concurrence and approval or recommendation of the concerned LGU

⁸⁸ *Ibid.*, 207.

⁸⁹ Jane Lynn D. Capacio, Executive Director, KAISAHAN, Interview, March 22.

⁹⁰ Simon Gregorio, ed., *Kaban Galing: Fighting Poverty Together*, (Galing Pook Foundation, 2001), 70-71.

⁹¹ Ernesto Lim, Interview, April 30, 2007.

in consultation with the Fisheries and Aquatic Resources Management Councils (FARMCs are formed by fisherfolk organizations/cooperatives and NGOs in the locality and assisted by the LGUs and other government entities)(Sec. 69) for conservation or ecological purposes. (Sec. 8) Here we see that the law has a clear empowerment mechanism where local fisherfolk can take part in policy making. The municipal/city government shall have jurisdiction over municipal waters. It shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters. The LGUs shall also enforce all fishery laws. (Sec. 16) All fishery related activities in municipal waters shall be utilized by municipal fisherfolk and their cooperatives/organizations who are listed as such in the registry of municipal fisherfolk. (Sec. 18) The LGUs shall coordinate with the private sector and other concerned agencies and FARMCs in the establishment of post-harvest facilities for fishing communities such as, but not limited to, municipal fish landing sites, fish ports, ice plants and cold storage and other fish processing establishments to serve primarily the needs of municipal fisherfolk. (Sec. 59) There is clearly a component of enforcement which belongs to LGUs in the Code. LGUs are also tasked to preserve their fisheries and aquatic resources, as well as in the assistance of their fisherfolk in their livelihood. However, much of the policy making and enforcement is still in the hands of the national government. The DA shall establish and create fisherfolk settlement areas in coordination with concerned agencies of the government, where certain areas of the public domain, specifically near the fishing grounds, shall be reserved for the settlement of the municipal fisherfolk. (Sec. 108)

On the whole, the fisheries sector is still one of the most neglected areas of development. Liza Lim explains:

...municipal fish production in the country has steadily decreased over the years, vis-à-vis commercial fish production and aquaculture. While this brought higher income from the export fish and marine products, it also contributed to the rapid destruction of the country's coral reef cover, mangrove forests (Primavera: 26-30 March 2000). Moreover, it kept the contribution of the fishery sector to the country's productivity low. In 2003, the share of fisheries in the Gross Domestic Product was only 2.2% (current price). It also only accounted for 20.9% of the Gross Value Added in Agriculture, Fisheries and Forestry.⁹²

Fisherfolk are among the poorest sectors having the third highest poverty incidence of 50.8% as of 2000.⁹³ This is due to the low productivity of fishing in general. The Fisheries Code was supposed to address the problems of these fisherfolk at least by giving them preferential fishing rights over municipal waters. However, Sanny Batongbakal of the national fisherfolk organization Tambuyog claims that no substantial improvements have been realized in the fisheries sector in whatever area of concern: "illegal fishing, decreasing fish catch, the competition between commercial at the municipal sector..., lack of basic

⁹² Liza Lim, "Facilitating Civil Society-Government Partnership in Coastal Resources Management: The Case of the Integrated Fisheries and Aquatic Resources Management Council of Northern Lamon Bay, Province of Quezon, Philippines," Unpublished Paper, 3.

⁹³ *Ibid.*

social services.”⁹⁴ Even the provisions in the Fisheries Code regarding the allocation of municipal land for the housing of small fisherfolk has not been implemented. This is because the concerns of the fisheries sector are the least among the concerns of LGUs. Most LGUs focus on agricultural development where development means mechanization of agriculture. Most development plans even show that the main priority of LGUs is to industrialize, and so the fisheries sector is greatly marginalized.⁹⁵ However, the decentralized and participatory framework of local governance allowed NGOs to rationalize their engagement with LGUs in the fisheries sector.

Despite the fact that fisheries development is not a priority for the LGUs, NGOs can initiate “community-based projects through technology and information sharing and systematic documentation of findings.”⁹⁶ The Fisheries Code mandated the protection of the local coastal resources as a task for LGUs and thus NGOs strategically engaged them in coastal resource management, where they went to far as to take on the task of implementing government initiated resource management projects.⁹⁷ But on the whole, LGUs are only going to be interested in Coastal Resource Management if there are local POs and NGOs who will lobby for its implementation. It is sometimes difficult for LGU officials to appreciate coastal resource management and fisheries issues because they can be technical and difficult to appreciate. Implementation even demands the hiring of experts in the area. But if local groups are persistent, they can manage to have ordinances enacted to institutionalize coastal management and even include the resource management needs in the local development plan.⁹⁸ Thus, there are anecdotal examples of areas where the coastal resources were protected and developed because of the positive actions of LGUs—actions that resulted from partnerships with environmental groups.⁹⁹

The effectiveness of local groups in pushing for a fisheries reform and coastal management agenda is made possible by the Local Government Code and Fisheries Code’s provisions giving people’s organizations a role in local development planning and in the Fisheries and Aquatic Resource Management Council. There are areas in Mindanao, for instance, where the FARMC helped formulate the local codes for protecting and developing coastal resources.¹⁰⁰ Much still has to be done with regard to fisheries reform because there is no massive implementation of coastal resource development. There are only pockets of areas

⁹⁴ Sanny Batongbakal, Tambuyog Development Center, interview, 3 May 2007.

⁹⁵ Alma Ocampo Salvador, Assistant Professor, Ateneo de Manila University, interview, 3 May 2007.

⁹⁶ Alma Ocampo-Salvador, “Environmental Governance in the Philippines,” in *Philippine Governance Report—Studies on the Management of Power*, ed. Jose Ibarra Angeles, (Philippines: United Nations Development Program, 2002), 53.

⁹⁷ *Ibid.*, 54

⁹⁸ Alma Salvador, interview.

⁹⁹ Simon Gregorio, ed., *Kaban Galing: Managing the Environment*, (Galing Pook Foundation, 2001), 29-30.

¹⁰⁰ Alma Salvador, interview.

where LGUs, NGOs and POs have partnered either in the implementation of coastal resource management project and in the creation of laws that will ensure the preservation of resources and the improvement of the lives of local fisherfolk. Interestingly, the Fisheries Code provides an integrated framework for reform.

D. The Urban Development and Housing Act

In an effort to uplift the living conditions in the poorer sections of the communities in urban areas, the legislature enacted Republic Act No. 7279 otherwise known as the “Urban Development and Housing Act of 1992.” This was envisioned to be the antidote to the pernicious problem of squatting in the metropolis.¹⁰¹ The law seeks to implement the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program which shall uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost and to provide for the rational use and development of urban land. (Sec. 2 a and b). It covers all lands in urban and urbanizable areas with some exemptions like those included in the coverage of the Comprehensive Agrarian Reform Law. (Secs. 4 and 5)

Within one year from the effectivity of the law, all city and municipal governments were mandated to conduct an inventory of all lands and improvements thereon within their respective localities which should be submitted to the Housing and Urban Development Coordinating Council for planning purposes. (Sec. 7) After the inventory, the local government units, in coordination with the National Housing Authority and other government agencies shall identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, taking into consideration and degree of availability of basic services and facilities, their accessibility and proximity of jobs sites and other economic opportunities, and the actual number of registered beneficiaries. (Sec. 8) LGUs shall acquire lands for socialized housing (Sec. 9) which shall be the primary strategy in providing shelter for the underprivileged and homeless. (Sec. 15) The law discourages eviction or demolition as a practice (Sec 28) and instead encourages resettlement. (Sec. 29)

The Program shall include a system whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least 20% of the total subdivision area. (Sec. 18) As an incentive for the private property owners who voluntarily provide resettlement sites to illegal occupants of their lands, they shall be entitled to a tax credit equivalent to expenses incurred in the resettlement. (Sec. 20) The law encourages the wider implementation of the Community Mortgage Program which is a mortgage financing program of the National Home Mortgage Finance Corporation. It assists legally organized associations of underprivileged and homeless citizens to purchase and develop a tract of land under the concept of community ownership. The primary objective of the program is to assist residents of blighted or depressed areas to own the lots they occupy, or where they choose to relocate to, and eventually improve their neighborhood and homes to the extent of their affordability. (Sec. 31)

¹⁰¹ *Galay v. CA*, G.R. No. 120132. December 4, 1995.

Program beneficiaries shall be given an opportunity to be heard and to participate in the decision-making process over matters involving the protection and promotion of their legitimate collective interest which shall include appropriate documentation and feedback mechanisms. They shall also be encouraged to organize themselves and undertake self-help cooperative housing and other livelihood activities. (Sec. 23)

Of all the social justice laws we are looking at, the one which calls for the most LGU involvement is the UDHA. In fact, the local governments are expected to be its main implementers. However, because of the “lack of technical capacity, resources and even political will to address the problem of informal settlements, the national government still bears responsibility of providing resources for housing and of initiating solutions to the proliferation of informal settlements.”¹⁰² Unfortunately, it seems that that national government’s programs are aiming at the wrong target group with 95% of the beneficiaries coming from the urban areas mostly of the NCR and with only 21% of beneficiaries actually coming from the poor.¹⁰³

Since LGUs are supposed to understand the actual housing needs of the poor in their localities, they could have implemented more relevant housing programs. However many LGUs have failed to fulfill their UDHA mandated roles like the “inventory of land for socialized housing, identification of eligible socialized housing beneficiaries, elimination of professional squatting, or even just the preparation of a land use plan.”¹⁰⁴ According to a 2006 study by Lorenzana and Quijano, only these cities have in fact complied with UDHA requirements: Pasig City, Muntinlupa City, Antipolo City, Sorsogon City, Iloilo City, Island Garden City of Samal, and Tagum City.¹⁰⁵ The same study states that it was difficult to understand what LGUs were actually doing for socialized housing since there was no standard documentation for things like site identification and there was no clear indication which housing projects reported were actually projects for the informal communities. However it is clear that LGUs are only selectively complying with the UDHA provisions; cities are not making a register of socialized housing beneficiaries; they are not disposing of the lands identified as socialized housing sites efficiently enough; cities do not ensure that there are relocation sites for demolished communities; and they do not monitor if private developers allocate 20% if their housing projects for socialized housing.¹⁰⁶ LGUs are also not submitting land use plans indicating areas reserved for socialized housing to the National Housing Authorities nor have they entered into socialized housing projects with the private

¹⁰² Maricris R. Valte, “A House For Every Filipino: A Pipe Dream In The Land of Promises,” *Philippine Governance Report—Studies on the Management of Power*, ed. Jose Ibarra Angeles, (Philippines: United Nations Development Program, 2002), 226.

¹⁰³ *Ibid*

¹⁰⁴ *Ibid.*, 242-244.

¹⁰⁵ Agnes Marcella Lorenzana and Salome Quijano, “Capacity Building and Localization Of City Housing Program (UDHA) Monitoring Towards Good Urban Governance,” (2006 unpublished Study).

¹⁰⁶ *Ibid.*

sector as mandated by the UDHA. Most of these LGUs point to their lack of resources as the reason for their lack of compliance. However there is no evidence that they even try to access existing credit for local government housing.¹⁰⁷

Can we say that LGUs have failed miserably in realizing socialized housing programs? Or, has the socialized housing program failed miserably because it was given to LGUs? According to Anna Marie Karaos, Executive Director of the John J. Carroll Institute for Church and Social Issues (JJC ICSI), there are only very few LGUs that have taken the initiative to implement socialize housing programs or allocated land for the informal settlers. And compliance with the UDHA is uneven to the point that one cannot find an LGU that substantially complies with the UDHA.¹⁰⁸ And why are they not interested in the issue? Because local executives think that if they initiate programs for the urban poor, then they will attract more of them to their cities; such programs demand high capital investment, they lack funds to buy land or lack land to allocate for the program, and they see housing as a private good that will yield no returns on their investment.¹⁰⁹ And still she believes that there are some gains with localization of the implementation of the UDHA because it has made possible for the urban poor to push for meaningful programs at the local government level. Marlon Manuel explains that many local housing boards were established for instance in Quezon City, Muntinlupa Cebu, Cagayan de Oro and Davao based on local ordinances.¹¹⁰ There has been a national campaign to pass a law establishing such boards so that they can coordinate the housing needs of the localities, advise the local government on these issues, and be responsible for realizing some of the mandates of the UDHA, e.g. the inventory of lands and potential beneficiaries. These were desired by civil society groups because then there would be a local body that would focus on the housing problem that would include local POs and NGOs. The law could not be passed in Congress because of the opposition of the conflicting national interests. However, because the campaign was taken to the local level, they were established through the passing of ordinances. This is one instance to illustrate how the local governments could enact more progressive policies than the national government.

We can also note how some localities already worked to address the housing and urban poverty issues without the UDHA mandate. The city government of Naga already established model partnerships with the private sector and NGOs for the provision of housing and poverty alleviation. Cebu City as early as 1988 established the Cebu City Commission for the Urban Poor and more recently the Cebu City Housing Board that seats two PO and one NGO representative/s. Such accomplishments were the result of a good working relationship of the city leadership with the NGO community. To date, Cebu continues to implement an “integrated and continuing housing plan for Cebu City with emphasis on socialized housing as primary strategy in providing shelter for the

¹⁰⁷ Valte, 244.

¹⁰⁸ Anna Marie Karaos, Executive Director, John J. Carroll Institute for Church and Social Issues, interview, 8 May 2007.

¹⁰⁹ Karaos, interview.

¹¹⁰ Marlon Manuel, Executive Director, Saligan, interview, 28 March 2007.

underprivileged and homeless.”¹¹¹ Here we see how a persistent and empowered civil society partnered with progressive local government officials can bring about more meaningful housing and urban poverty reforms. When the campaign for reforms is taken to the local arena, it is more possible to achieve positive results. However, these achievements are really rare perhaps because most local government officials do not see the need to prioritize housing and because there are not enough active local groups that can effectively engage local governments.

E. The Indigenous Peoples Rights Act

The Indigenous Peoples Rights Act (IPRA) of 1997 or Republic Act No. 8371 recognizes that the indigenous peoples have their own distinct culture and lifeways and allows them to own and possess their ancestral domains and ancestral lands in a way that is unique to their culture. It allows them to own land according to “the indigenous concept of ownership under customary law which traces its origin to native title.”¹¹² They are also granted other rights with regard to the ancestral lands:

- the right to develop lands and natural resources;
- the right to stay in the territories;
- the right to safe and clean air and water;
- the right to claim parts of reservations;
- the right to resolve conflict; (Sec. 7)
- the right to ancestral lands (different from ancestral domains) which include
 - a. the right to transfer land/property to/among members of the same Indigenous Cultural Communities (ICCs)/Indigenous Peoples (IPs), subject to customary laws and traditions of the community concerned;
 - b. the right to redemption for a period not exceeding 15 years from date of transfer, if the transfer is to a non-member of the ICC/IP and is tainted by vitiated consent of the ICC/IP, or if the transfer is for an unconscionable consideration. (Sec. 8)¹¹³

These indigenous communities also have the right “to self-governance and empowerment, (Secs. 13-20) social justice and human rights, (Sec. 21-28) the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies. (Sec. 29-37)”¹¹⁴

¹¹¹ Valte, 244.

¹¹² Much of this discussion is based on the Separate Opinion of Justice Reynato S. Puno in *Cruz vs. Secretary of Environment and Natural Resources*, 347 SCRA 128, 173-175, 191.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

The law also recognizes the sense of ownership that the indigenous people have over their land:

Ownership of ancestral domains by native title does not entitle the ICC/IP to a torrens title but to a Certificate of Ancestral Domain Title (CADT). The right of ownership and possession of the ICCs/IPs to their ancestral domains is held under the indigenous concept of ownership. This concept maintains the view that ancestral domains are the ICCs/IPs private but community property. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the ICCs/IPs and not by one particular person. Communal rights to the land are held not only by the present possessors of the land but extends to all generations of the ICCs/IPs, past, present and future, to the domain. This is the reason why the ancestral domain must be kept within the ICCs/IPs themselves. The domain cannot be transferred, sold or conveyed to other persons.¹¹⁵

An agency under the office of the president was created to oversee the implementation of the law, i.e. the National Commission on Indigenous Peoples (NCIP). Composed of seven Commissioners belonging to indigenous peoples “from each of the ethnographic areas.” (Secs. 38-40) It also has quasi-judicial powers to resolve disputes between IPs when these disputes cannot be resolved under customary laws and practices. (Sec. 69)

The value of the IPRA is that it established a fourfold agenda composed of the following: the right to own ancestral lands/domain; the right to self-governance and empowerment; the right to cultural integrity; and the recognition and respect for indigenous peoples’ needs of social justice and human rights. The law is premised on the pressing need to address the poverty that indigenous peoples suffer—poverty that the government saw as the effects of “the historical errors that led to systematic dispossession of and discrimination against indigenous peoples.”¹¹⁶ One could say that the IPRA does not only aim to protect the rights of indigenous peoples especially to their ancestral lands, but to support their economic, social, and political development as well; and that the law’s four primary elements encompass these aims.

However, neither the IPRA nor its Implementing Rules and Regulations (IRR) contain any sections pertaining to the role that local governments must play in this agenda. The law merely creates a national commission (the National Commission on Indigenous Peoples or NCIP) to attend to the various aspects of the IPRA, particularly the claiming and granting of ancestral domains. Presumably, development projects for indigenous peoples should be initiated by the local governments governing the particular localities where

¹¹⁵*Ibid.*

¹¹⁶ Environmental and Social Safeguard Division, Regional and Sustainable Development Department, Asian Development Bank, *Indigenous Peoples/Ethnic Minorities and Poverty Reduction: Philippines*, (Manila: 2002), 13.

indigenous peoples reside, as they are closest in proximity to the indigenous communities in comparison to the nationally-based NCIP. We can thus wonder if despite the lack of direct mandate, devolution served the interests of the indigenous peoples.

Indigenous people compose over 20% of the entire Philippine population.¹¹⁷ That 20% is unequally distributed over the country, with the majority (61%) in Mindanao, one third (33%) in Luzon, and the remaining 6% scattered in small pockets in the Visayas.¹¹⁸ The majority of indigenous groups in Luzon are concentrated in the uplands of Region I and Cordilleras Administrative Region (CAR) and the lowlands of Region II. In Regions III, IV, and V, scattered numbers of indigenous groups also exist, with some larger populations in the islands of Mindoro and Palawan. The indigenous peoples of Visayas are concentrated in the islands of Panay and Negros (Regions VI and VII). Indigenous peoples are present in *all* regions of Mindanao, even in ARMM. This means that *15 out of 17* regional governments have a constituency that, to varying degrees, include indigenous peoples.

However, having a significant number of indigenous people in almost every region of the Philippines does not mean that the LGUs from all these regions are able to act upon their concerns. Let us take for instance the ancestral domain claim. This is a painstaking process that often takes years to finish. The NCIP oversees the whole process, which involves a detailed survey and mapping of the claimed area, examination of oral and written history and genealogical records to determine the validity of their claim, and so on. In the period between July 2002 and December 2004, 29 Certificates of Ancestral Domain Titles (CADTs) were approved nationwide.¹¹⁹ This is very few in comparison to the 71 ancestral domain claims prioritized for processing in 2005 alone.¹²⁰ In the whole ancestral domain claim and recognition procedure, LGUs, if ever, are only involved as a partner agency helping the particular indigenous peoples' group in drafting their petition and completing the NCIP-mandated requirements for application.¹²¹ Out of the 71 proritized ancestral domain claims mentioned above, only 12 LGUs (two in CAR, one in Region III, three in Region V, one in Region X, three in Region XI, two in ARMM) are active partner agencies.¹²² LGUs also help in informal ways when tribal groups request for financial support, but they have not been the proactive in assisting in the claiming process.¹²³

Regarding the practice right to self governance, some LGUs in Region X, particularly the Malaybalay City Government, has been actively encouraging the participation of tribal

¹¹⁷ Ibid., 7.

¹¹⁸ Ibid.

¹¹⁹ Approved CADTs From July 2002 to December 2004, <http://www.ncip.gov.ph/resources/PDF FILES/APPROVED CADTs CYs 2002-2004 Nationwide.pdf>, accessed 5 May 2007.

¹²⁰ <http://www.ncip.gov.ph/resources/PDF FILES/StatusREport-PDAP.pdf>, accessed 5 May 2007.

¹²¹ <http://www.ncip.gov.ph/resources/PDF FILES/Flowchart-ANCESTRALDOMAIN.pdf>, accessed 5 May 2007.

¹²² <http://www.ncip.gov.ph/resources/PDF FILES/StatusREport-PDAP.pdf>, accessed 5 May 2007.

¹²³ Eric Bruno, telephone interview, 17 May 2007.

chieftains in political life. In Malaybalay's case indigenous peoples are actively represented in the sanggunian, the groups which draft barangay-level and city-level development plans. It really depends, though, on how the LG officials understand the LGC's demand for sectoral representation. Eric Bruno, who has worked with IPs in Bukidnon for the last 15 years, cites Malaybalay as more the exception and not the rule, noting that its planning boards are generally very inclusive of a variety of interest and marginalized groups, not just IPs.¹²⁴ NCIP has also begun taking measures to ensure that the Ancestral Domains Development and Protection Plan (ADsDPP) of a particular IP group is integrated with the barangay development plan in the particular locality. Whether or not this move is effective remains to be seen. More informally, the large concentration of IPs in the highlands of Luzon and Mindanao contributes to an increased number of LG officials who are themselves members of indigenous or tribal groups. Jerry Jose, formerly of the Assissi Foundation, observes that this is one reason why more LGUs are more active in promoting IP rights than others—the simple reality that many LG officials may be IPs themselves.¹²⁵

Part of this agendum includes IPs rights to basic social services—health, sanitation, transportation, etc. The actual access that IPs have to these services really depends on the LGU; many LGUs hampered from delivering basic services to IP communities because of their inaccessibility from city and municipal centers. For many LGUs, establishing adequate roads remains to be their primary agenda, and health services are spotty at best. Many indigenous communities in Mindanao still rely on quarterly visits from various international medical missions (such as the German Doctors for the Third World) for their healthcare.

How effective and empowering of IPs an LGU is *depends largely on the LG officials* and how they implement the LGC. The LGC potentially allows greater participation of IPs in political planning and decision-making, but this remains to be fully operationalized by LGUs. LGUs could also take a more active role and partner with Indigenous Peoples Organizations (IPOs) to facilitate the processing of more ancestral domain claims as part of their local development plans. More generally, for IPs, the main benefit of having a strong LGU system is really a closer proximity to power. As Atty. La Viña put it, “Noon kapag may problema [ang mga IP], pupunta pa sila sa Malacañang. Their only hope was the national [government]. Ngayon they can go to the local as well. Just by localizing power naging mas proximate sa mga IPs.”¹²⁶ Devolution, in tandem with the implementation of IPRA, has made it easier for IPs to ask for aid from local governments, and has educated IPs as well of what exactly they can demand from their LGUs. On the flip side, La Viña points out, the major issues that affect IPs—such as land rights, environmental exploitation, even access to education and culturally-appropriate curricula—are things that LGUs have no direct control over.

F. Social Justice and Local Governance

¹²⁴ Ibid.

¹²⁵ Jerry Jose, telephone interview, 17 May 2007.

¹²⁶ Tony La Vina, Dean, Ateneo School of Governance, Ateneo de Manila University, interview, 10 April 2007.

In all of these laws, we see the attempt to rectify centuries of injustice through positive state action that offers the marginalized communities a chance to access resources and opportunities for their development. The laws are flawed but in essence they seek to redress the majority's lack of opportunities to realize a human way of life according to their understanding of a good life. Our question is: Have the implementations of these laws prospered under devolution? This question is not exactly fair since their implementation was not devolved to the LGUs. However, they do offer a framework of proactive state action for poverty alleviation. It was within the powers and authority of local governments to help implement these reforms meaningfully. How they responded to this challenge, especially in those areas where they were given a direct role can give us an idea of how social justice and just development can fare under autonomous local governments.

On the whole, it seems that local governments are still exploring the possibilities of their autonomous status. A clear indication of this is the fact that most localities are still mainly Internal Revenue Allotment dependent. The IRA dependence of provinces in 2004 is at 85.69 percent, almost half of them being 90 percent dependent.¹²⁷ Municipalities were dependent on their IRA for 77% of revenues and 85% of expenditures in 2003.¹²⁸ Local governments are only beginning to find ways out of this IRA dependence so it is not quite fair to expect them to be already fully effective in their delivery of basic services. It seems even more demanding to expect them to be able to proactively address social justice issues. The first order of business in the minds of local government officials is the running of the local bureaucracy, the delivery of basic services, and the accessing of resources to fund these functions. Only if local groups can lobby effectively will they draw the attention of local officials from these primary concerns.¹²⁹ And it seems that civil society advocacy work is effective in the local government level. Civil society groups have had more luck pushing progressive local legislation than national legislation. For instance they were able to push for local ordinances penalizing domestic violence even before the anti-domestic violence law RA 9262 was passed and the province of Aurora has already passed a reproductive health bill. It seems there is really a space opening in local legislation for progressive legislation and even for creative development projects.¹³⁰ This is a direct effect of the strengthening of local autonomy. La Vina observes that because the LGUs have greater power to make things happen in the localities, local actors like the basic sectors have begun to appreciate local lobbying because they no longer have to go to Manila to push their agenda. "By giving local governments power it localizes issues that are national in nature from the legal point of view. Local government officials become worth influencing and lobbying."¹³¹ They are also worth partnering with, especially since they are open to partnerships with groups that can help them deliver basic services. Thus, we can see that local autonomy can have a potential

¹²⁷ <http://www.lpp.gov.ph/TheGovernorMagazine/lppnews.html>

¹²⁸ http://www.pdf.ph/downloads/decentralization/Jan_18_Agenda_VII_2_LCP_Paper_on_Financing_and_FiscalManagement.pdf

¹²⁹ Ariel Hernandez, Executive Director, Balay Mindanao Foundation Inc., interview, 27 April 2007.

¹³⁰ Marlon Manuel, interview.

¹³¹ Tony LaVina, interview.

positive effect on the advancement of the social justice agenda. However, the issues of distributive justice are not the areas where advancements will be made immediately, if at all.

As we noted, local governments are really focused on the effective and efficient delivery of basic services. But as Salvador notes “If the LGUs deliver their services well, hopefully this will have some distributional effects.”¹³² Maria Belen Bonoan, Senior Program Officer of The Asia Foundation, observes that decentralization could be a genuine response to poverty and thus LGUs are in the front line of the battle against poverty.¹³³ Most LGUs at this point of devolution are more focused on the delivery of basic services than social justice and even sustainable development. They are still basically learning the potentials of their newfound situation. However, even at this point, we can see how local autonomy bears possibilities for just and equitable development. If the poor are able to direct basic services toward their needs and they are able to effectively realize the potentials of people’s participation, then can create the conditions for realizing their own development. La Vina notes this:

Oftentimes when you deliver social services you create the condition of social justice to happen. If you deliver health services you have workers who are healthy and can be in a better position to assert their rights. If support services to the farmers are given by the Municipal Agricultural Office then farmers are in the better position. If schools are in good condition then this is the most essential condition for social justice to be sustained over time. When the next generation is more educated than the previous generation, they are going to assert their rights more and will be better off economically and eventually politically.¹³⁴

However, local governments are still severely limited in their capacities to deliver these services effectively. The nation is still at the phase where capacity building for local governments is a top priority. Also, much depends on the strength of local organizations for local autonomy to work for the people. Thus, much work must also be done to strengthen the capacities of local groups to engage local governments in code-mandated and non-code mandated partnerships. Only then will we see the fruits of autonomy. Only when local governments are made more capable for good governance and local groups are empowered for local democracy can federal autonomy be effective for just and sustainable development. The ARMM experience is telling of how the lack of capability and readiness on the part of local officials and local groups can lead to the breakdown of governance.

¹³² Alma Salvador, interview.

¹³³ Maria Belen Bonoan, Senior Program Officer, The Asia Foundation, interview, 25 April 2007.

¹³⁴ La Vina, interview.

VII. ARMM and the Experiment at Regional Autonomy

A. Background

Although blessed with a bounty of natural resources, ARMM has been and remains one of the Philippines' poorest regions. In 2005, it had a per capita gross regional domestic product of only PhP3,433, 75.8% lower than the national average of PhP14,186. It is the lowest among the 17 regions, and the second lowest region has a per capita income almost double that of ARMM, pointing to a yawning income gap between ARMM and the rest of the country.¹³⁵ Poverty incidence in the region was a high 45.4% in 2003, almost twice the national average of 24.4%. That dismal figure was already an improvement, as significant gains had been made in reducing regional poverty by 10.5% in comparison to the 2000 figure. In 2000, all the four then-provinces of the ARMM were among the 10 poorest in the Philippines. By 2003, Lanao del Sur, Sulu and Tawi-Tawi were out of the bottom 10, leaving only Maguindanao, which has the second highest incidence of poverty among all Philippine provinces. Only the Caraga region had a higher poverty incidence in 2003, which still places ARMM at the bottom of the poverty incidence scale.

ARMM regional governance is dominated by members of the Lakas-Christian Muslim Democrats (CMD). All those who have served as governors from the region's inception have been members of Lakas-CMD, and the overwhelming majority of the Regional Legislative Assembly are Lakas members as well.¹³⁶ Political power seems to be concentrated in the hands of leaders who are approved of by the administration. Furthermore, these elected leaders are still part of long-established political and economic clans whose origins are really from the traditional elite. Patronage politics is still overwhelmingly dominant in ARMM, as Gerry Bulatao points out.¹³⁷ There seems to be little interest among leaders in actually empowering their constituents. Of course we could embrace this as a particularity of political culture in Mindanao. But with the LAKAS-CMD connection, we must wonder if this political culture is being exploited for personal gain of traditional politicians.

Below the regional level, ARMM LGU officials rank very low in terms of capacity in comparison to their peers from other parts of the country. Marlon Manuel explains that ARMM officials are not well trained in governance. Governance capacity is low and this is not helped by the fact that officials are not well educated in formal systems.¹³⁸ Here, per capita spending on such vital services as education and infrastructure are among the lowest in the Philippines. This reflects greatly in the delivery of basic services and on the quality of

¹³⁵ http://en.wikipedia.org/wiki/Autonomous_Region_in_Muslim_Mindanao, accessed 24 April 2007.

¹³⁶ Ibid.

¹³⁷ Gerry Bulatao, Board Member, CAPP-SIAD, interview, 4 April 2007.

¹³⁸ Marlon Manuel, interview.

life of ARMM residents, particularly in health, education and general human development. According to the United Nations Development Program, the life expectancy in ARMM is lower than the national average by at least 9 years. The region has about the same population as Region XII and Region XIII but has the least number of health workers and barangay health stations (BHS) in Mindanao. According to a Philippine Business for Social Progress (PBSP) study in 1996, its BHS-to-population ratio was 1:4.356—the worst among all regions of Mindanao.¹³⁹ ARMM also recorded the highest dropout rate of 22.5 percent and lowest cohort survival rate of 32.4 percent in public elementary schools during the school year 1999 to 2000. The region also has the least number of preschool and elementary schools as well as the fewest enrollees in secondary schools for the school year 2000 to 2001.¹⁴⁰

B. A Closer Look at ARMM Governance

One major factor that impedes the proper delivery of basic services, as well as limits the capacities of LGUs, is the lack of “decentralization” within ARMM itself. Ironically, as the LGC was signed into law, the ARMM Regional Assembly enacted the ARMM “Organic Act” (also known as the Muslim Mindanao Autonomy Act No. 25 or the Local Government Code of Muslim Mindanao) which officially centralized power in the regional government.¹⁴¹ Thus, although NGA staff were generally devolved to the municipal level, in the ARMM they were devolved only to the regional level, and remain under the control of the regional government. (In contrast, CAR’s Organic Act fully devolves services to municipalities.) Since the regional government assumed responsibility for devolved services, those services have not improved and may have deteriorated. Furthermore, the Regional Government does not have a clear procedure for accounting and fund allocations to devolved government agencies.¹⁴² Because of this, municipalities and barangays have much difficulty delivering basic social services and cannot do much to improve their constituency’s quality of life. In addition, the Organic Act vested the duty of fund management and allocation in the regional government, with little transparency about how the funds are allocated to municipalities. It often happens that mayors and administrators use public funds for personal use. According to Maria Belen Bonoan of The Asia Foundation, many officials in the ARMM do not see the difference between personal and official functions. Their use of their IRA for personal needs is not seen as corruption.¹⁴³ Again this is a particularity of ARMM political culture and is perhaps something that we just need to accept. However, it does have a severe effect on the delivery of basic services because the lack of funds prevents the regional government from providing effective and meaningful services to the poor.

¹³⁹ Felipe S. Ramiro, Jr., “Governance and Development in Mindanao,” in *Philippine Governance Report: Studies on the Management of Power*, Jose Ibarra A. Angeles, ed. (Ateneo School of Government, Makati: 2002), 325-326.

¹⁴⁰ Ibid., 326.

¹⁴¹ ARD and Ateneo School of Government, *Sixth Rapid Field Appraisal*.

¹⁴² Ibid.

¹⁴³ Maria Belen Bonoan, interview.

The other reason why services are hard to deliver in ARMM is the fact that very few people actually collect or pay taxes in ARMM. Thus exceptionally few LGUs, mainly capital towns, raise more than 5% of their income from non-IRA sources, making them even more IRA dependent than most LGUs.¹⁴⁴ This is even more detrimental to social services. Since the IRA allocation municipalities receive from the regional government is intended for the costs of LGU operations, the only way for LGUs to support social development projects is through other sources of funds.¹⁴⁵ Many parts of ARMM remain dependent on Official Development Assistance (ODA) from international funding agencies such as United States of America for International Development (USAID) and Asian Development Bank (ADB).¹⁴⁶

Another major area of weakness in ARMM governance and decentralization is its domination by political clans, most of whom are families who have traditionally been the elite of Muslim Mindanao. In the book *Muslim Rulers and Rebels*, anthropologist Thomas McKenna observes that both national and local government believes that the continued participation of traditional elites in politics is essential in maintaining the Muslim character of ARMM.¹⁴⁷ He further notes that “the extraordinary aspect. . . is the extent to which not only various Muslim separatist factions but also Christian politicians and state functionaries share the perception that the political fate of Cotabato Muslims is tied to their traditional nobility as a result of ancient and immutable bonds. . . In this view, any political arrangement to enhance Muslim self-determination must include prominent consideration of the role of the traditional nobility,”¹⁴⁸ despite the lack of real historical evidence of the validity of this claim. This notion has been further reinforced, ironically enough, by the grassroots Muslim separatist movement, which wanted to free the region from oppression by both the national Philippine government and local elites, by emphasizing a return to Muslim socio-political structures and values.¹⁴⁹

Keeping political power in the hands of these clans bodes ill for ARMM because of continued patronage politics and rivalries between clans that spill over into governance. What is needed, says Gerry Bulatao, is to “find Muslim leaders from the communities who are willing to move from the base up. Unless they can build cooperation among themselves walang mangyayari.”¹⁵⁰ Finding these leaders is not as easy as it sounds. As Bulatao points

¹⁴⁴ ARD and Ateneo School of Government, *Sixth Rapid Field Appraisal of the Governance and Local Democracy (GOLD) Project*, unpublished paper commissioned by USAID, 1996.

¹⁴⁵ Maria Belen Bonoan, interview.

¹⁴⁶ *Ibid.*

¹⁴⁷ Thomas M. McKenna, *Muslim Rulers and Rebels: Everyday Politics and Armed Separatism in the Southern Philippines* (Berkeley, Calif.: University of California Press, 1998; reprint Manila: Anvil Publishing, 2000), 46.

¹⁴⁸ *Ibid.*, 46-47.

¹⁴⁹ *Ibid.*, 6.

¹⁵⁰ Gerry Bulatao, interview.

out, “A lot of institutions are investing in education (such as the Notre Dame schools) pero generation after generation same pattern ang ginagawa ng Muslim leaders. How do you break through to find Muslim leaders who are good and capable? How to spread...development-oriented thinking?”¹⁵¹

ARMM is in a sense a laboratory for the potentials of federal statehood in the Philippines. They were given significant powers and they receive a significant amount of funding from Official Development Assistance funds. Although no one expected any miraculous turnaround from ARMM, they did hope that it would refashion their autonomous region into a model of development based on substantial autonomy. Despite their autonomy, development in ARMM has failed to materialize because of the combination of factors stated above. A lack of capacity among LGU officials, a regional government-dependent system, lack of proper financial management, and a politics dominated by ties of patronage and family have kept ARMM's resources from actually trickling down to the poor. Instead of being a potential model of the benefits of local autonomy, ARMM has become a cautionary tale that should warn us about hasty moves toward federalization.

However, we must also reflect on this question. There is no doubt that the major problems in ARMM are rooted in the failure of their leaders to govern well. Nonetheless, their autonomy also has serious constraints. Firstly, although it is autonomous, the administration tries to control the governor, at least by ensuring that he belongs to the ruling party and agrees with their general political agenda. Secondly, national government controls the funds of the ARMM because unlike other LGUs with a constitutionally guaranteed IRA, ARMM's share of the national funds are still hostage to the national appropriations act and thus national government officials and politicians can still raise or lower it according to their play of power. So we can ask ourselves, how autonomous is ARMM, and how autonomous are its component local governments? Because of its particular form of autonomy, which ended up giving more power to the regional government and disempowering component local governments, ARMM has failed to realize the potentials of an autonomous region. Therefore, when we do craft our states we must learn from ARMM. And the lessons are the same as they were from our study of local autonomy: build governance capacities, ensure local democracy by empowering the civil society and creating effective mechanisms for participation, and, most importantly, do not craft their constitution for autonomy based on the needs of the local elite but on the genuine needs of the people.

VIII. The Basic Constitutional Requirements for a Federalist Republic with a Strong Equity-led Sustainable Development Strategy

At this point, we must ask ourselves what basic principles of a federal republic should we stand by. Although we cannot and should not predefine what this republic should be like without broad consultation and consensus building, we can propose certain principles to guide our discourse and our own position. So we begin with a basic question to help us clarify our basic principles regarding our goal. What is the reason for the federal shift? And

¹⁵¹ Ibid.

our answer to this is simply to achieve just and sustainable development for our people by creating a system of governance that will facilitate this. And so we begin this section by inquiring into the kind of development the federal shift aims for and to explain how the federal shift can realize this. One straightforward way of explaining this is by saying that federalism strengthens participatory democracy thereby setting up the governance structures that will help achieve just and sustainable development. But what is the heart of just development? Perhaps we can quote Korten on his idea of a transformed society:

Justice does not require equality of income, nor does it require that the productive be required to support the slothful. It does require, however, that all people have all the means and opportunity to produce a minimum decent livelihood for themselves and their families. It rejects the right of one person to self-enrichment based on the appropriation of the resources on which another person's survival depends. The transformed society must give priority in the use of the earth's natural resources to assuring all people the opportunity for a decent human existence.¹⁵²

Here we see the need to ensure that every person has the opportunity to build a good human life without taking the same opportunities from others and without destroying the earth from which these opportunities are drawn. He continues with this understanding of inclusiveness:

Inclusiveness does not mean that everyone must enjoy equal status and power. It does mean that everyone who chooses to be a productive, contributing community member has a right to the opportunity to do so and to be recognized and be respected for these contributions. The transformed society must assure everyone an opportunity to be a recognized and respected contributor to family, community and society.¹⁵³

A just society is one that gives its members the opportunity to live a full and creative, more than just productive, human existence. It is one that opens opportunities for people to realize and sustain their well being both on the physical and spiritual aspects. Thus society must be structured in such a way that stakeholders are guaranteed access to whatever basic needs for their human flourishing. This does not guarantee the opportunity for unlimited acquisition or excessive consumption. We have already seen how unlimited acquisition and excessive consumption is destroying our world and perhaps our spirits as well. Rather, social structures should guarantee that all its citizens have the capacity and opportunity to fulfill their need to live and to realize their creativity and their productivity in such a way that does not impinge on the rights of others. Thus, societies must have structures that regulate excessive, destructive acquisition and open opportunities for continuous, mutual human development.

¹⁵² David C. Korten, *Getting to the 21st Century: Voluntary Action and the Global Agenda*, (Connecticut: Kumarian Press, Inc. 1990), 4.

¹⁵³ *Ibid.*

The existence of such structures is important especially since we are in a country of great inequity where social and political structures maintain and enrich the inequity. Thus, if we are to redress the inequity we must create governance structures that will help restructure unjust systems. If we are to restructure our governance system and the shape of our republic, we should do this in such a way as to ensure that the marginalized and dispossessed are given a chance to realize their potential as secure, productive, and creative citizens. We can borrow from the thoughts of Amartya Sen to better understand the possible directions we can take:

A good starting point for the analysis of development is the basic recognition that human freedom, in the broadest sense, is both (1) the primary objective, and (2) the principal means of development. The former is an evaluative claim and includes appreciation of the principle that the assessment of development cannot be divorced from the lives that people can lead and the real freedoms that they enjoy. Development can scarcely be seen merely in terms of enhancement of inanimate objects of convenience, such as a rise in the [gross national product] (or in personal incomes), or industrialization, or technological advance, or social modernization. These are, of course, valuable - often crucially important - accomplishments, but their value must depend on what they do to the lives and freedoms of the people involved. We have reason to focus instead on reducing the unfreedoms and insecurities of various kinds that plague human lives.¹⁵⁴

Thus genuine development demands that our governing systems are liberating, in that they allow everyone to develop their freedom or their capacities and capability to create a way of life that it is reasonable for them to expect.¹⁵⁵ How society is structured and governed can deprive people of capability or enrich their capabilities:

...What a person has the actual capability to achieve is influenced by economic opportunities, political liberties, social facilities, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives. These opportunities are, to a great extent, mutually complementary, and tend to reinforce the reach and use of one another.¹⁵⁶

Using Sen's language, we must see development as tied to the emancipation of people. It is the freeing of people from capability deprivations that keep them from achieving the kind of life that they have a right to aspire for.¹⁵⁷ Genuine development should be the development of human beings by enhancing their freedom to realize their potentials and the capabilities in general.¹⁵⁸ Thus, development should have a clear empowerment aspect. It is capability

¹⁵⁴ <http://www.principalvoices.com/voices/amartya-sen-white-paper.html>

¹⁵⁵ Sen, *Development as Freedom*, 72.

¹⁵⁶ <http://www.principalvoices.com/voices/amartya-sen-white-paper.html>

¹⁵⁷ Sen, *Development as Freedom*, 75.

¹⁵⁸ Amartya Sen, Basic Education And Human Security, Prepared as a background paper for the workshop on "Basic Education and Human Security," jointly organized by the Commission on Human

development which allows all stakeholders in the society to realize for themselves a secure and enriching human life. In the words of Korten:

Development is a process by which the members of a society increase their personal and institutional capacities to mobilize and manage resources to produce sustainable and justly distributed improvements in their quality of life consistent with their own aspirations.¹⁵⁹

To achieve this kind of society faced with the realities of inequity, there must exist systems of governance that promote and support capability enhancement, empowerment and human security. No matter how much states and governments have changed in the new century, governments are still the one of the most potentially effective promoters and protectors of human development. This is because they provide or supervise the provision of the most basic services that serve human existence. Our redesigned governance system should be able to provide education, health, livelihood, and other such services because, Sen will argue, these services enhance human security and promote human freedoms. If we will revise our forms of government, we will have to shape it based on its capacity to provide basic services more efficiently and effectively. Our decision to federalize should also assure that this autonomy will enhance human freedom and build capability. Strengthened local autonomy should reduce if not eliminate capability deprivations. This means that this form of governance should be empowering and be able to actually establish mechanisms that will promote social justice. In short, if we federalize, we must make sure that federalism will better promote mechanisms of distributive justice. It should serve asset reform more effectively because this furthers capacity building and freedom enhancement. It should serve to provide basic services that are relevant and necessary to the constituents. Lastly it should serve people's empowerment in governance because only in this way can we ensure that local governance will be genuinely responsive to the needs of the poor. Sen observes that only genuinely democratic states tend to provide for people better and prevent massive abuses against their freedoms, their capabilities and their dignity as persons.¹⁶⁰

Our shift to a federal state will only be genuinely justified if it can promote genuine human development. Let us examine here some concrete aspects of that development as elaborated by Korten:

Both the factual assumptions and value preferences of the people-centered development vision advocates play a major role in shaping their policy references. These preferences commonly differ markedly from those of the growth-centered development advocates. For example, advocates of the people-centered vision will commonly: 1) Seek economic diversification at all levels of the economy, beginning with the rural household, to reduce dependence and vulnerability to the market shocks that result from excessive specialization. 2) Give priority in allocating local

Security, UNICEF, the Pratichi (India) Trust, and Harvard University, in Kolkata, 2-4 January 2002. <http://www.humansecurity-chs.org/activities/outreach/Kolkata.pdf>, and *Development as Freedom*, 12.

¹⁵⁹ Korten, 67.

¹⁶⁰ Sen, *Development as Freedom*, Cf. Chapter 6.

resources to the production of goods and services to meet the basic needs of the local population. The goal is to create a national and ultimately an international economy comprised of interlinking self-reliant local economic units that have a degree of insulation from the shocks of national and international systems and a stake in conserving their local environmental resources. 3) Allocate a portion of surplus productive capacity (beyond what is required to meet basic local needs) to produce goods and services for export to national or international markets. Exports should feature products with a high value-added relative to their content of physical resources. The goal here is to achieve optimal gains for the local community from “external” trade while conserving physical resources to the future benefit of the community. 4) Strengthen broadly-based local ownership and control of resources by pursuing policies that: a) allow communities substantial jurisdiction over their own primary resources, and b) give individual producers control or ownership of their means of production. This would involve measures such as land reform, agrarian reform and policies favorable to locally owned small farms and enterprises, member-controlled cooperatives, and employee-owned corporations. 5) Encourage the development of a dense mosaic of independent, politically conscious voluntary and people’s organizations that strengthen the direct participation of citizens in both local and national decision-making processes, and provide essential training grounds in democratic citizenship. 6) Develop strong locally accountable, financed and democratically elected autonomous local governments that give residents a strong voice in local affairs. 7) Establish transparency in public decision making and strengthen communication links between people and government. 8) Provide economic incentives that favor recovery and recycling over extraction and exploitation. 9) Focus on the returns to the household and community in choosing among investment options. 10) Favor industrial investments that: a) strengthen diversified small and intermediate scale production; b) use environmentally sound, resource-conserving, labor-using technologies; c) add value to local resources and products; d) serve and enhance competitive efficiency within domestic markets; and e) strengthen backward and forward linkages within the community. 11) Favor intensive, smallholder agriculture based on the use of high productivity bio-intensive technologies. 12) Give preference to advanced information-intensive technology over those that are materials-intensive and resource-depleting. 13) Give preference to the mobilization of local resources, savings and local energy. Avoid dependency creating debt financing, particularly foreign debt, except for clearly productive purposes that will clearly generate the resources for repayment. 14) Give high priority to investments in education that build the capacity of people to take charge of their own lives, communities and resources and to participate in local, national and global decision processes. 15) Encourage an acceptance of shared responsibility for the well-being of all community members and a reverence for the connection between people and nature.¹⁶¹

I quote Korten extensively because in this description, he articulates clearly the kind of development that will both allow us to sustain our civilizations in the face of the end of the petroleum age and the necessary shift in systems of production and trade that this will bring. It also shows us how to get past the kind of mass societies that have caused massive injustice

¹⁶¹ Korten, 69-70.

and environmental destruction. But most of all, they speak of the kind of development that focuses on the strengthening and empowering of the local communities that offer the best way out of our poverty. If there is a way for us to find a way to build a just and sustainable human civilization, it will require the return to the local and the small that Schumacher advocated for since the sixties and Korten rearticulated in the nineties. More than ever, their insights into building a just human civilization are relevant to our survival, and they are relevant to our desire to shift forms of government.

If we examine Korten's listing development inventory, at the heart of his advocacy is the strengthening of the local economy and the local means of production by returning to a form of local self-reliance that will allow communities to find their strengths and trade from these strengths. This will empower grassroots communities to take control of their economies and environments and allow them to trade and produce according to their own aspirations and their own vision of development. But in order to realize these possibilities much change is required, and to effect this change much political will is required. In order to realize any of these changes like the strengthening "of broadly-based local ownership and control of resources by pursuing policies that: a) allow communities substantial jurisdiction over their own primary resources, and b) give individual producers control or ownership of their means of production" would "involve measures such as land reform, agrarian reform and policies favorable to locally owned small farms and enterprises, member-controlled cooperatives, and employee-owned corporations." This requires great political will to push and a greater creative imagination to even understand or appreciate if one is caught in an extractive, mass consumption based, traditional development framework. Are local governments equipped with the will and imagination to realize such change?

It is hard to tell if local governments will want to realize such reforms since vested local and national interests will be hurt by such reforms. But certainly, it is something they are more likely to be influenced by local groups into adopting as a policy and development vision than if the policy decision would have to come from the national government. This is because if local communities accept such a development framework, and it seems that this is certainly one development framework worth advocating, then they have a better chance to convince local officials who have a stake in the locality, especially in preserving their positions as well as the environment and the local economy. National governments do not have a good record of protecting the local welfare when economies of scale are at stake. And local governments are only going to be effective in realizing such reforms if they have the power to define policy, autonomously raise and allocate funds, and creatively legislate incentives and disincentives in realizing their policies. Only a fully autonomous federal state can do this, and so it makes sense to federalize. But again, it only makes sense to federalize if the local citizenry are prepared to advocate for their development and the local government is capable of administering their local governments and of governing their localities.

This is not to say that Korten's is the only development model that makes sense, and therefore we must federalize in order to realize it. Rather, it seems that genuine development can only be achieved if the localities are strengthened in their capacities to discover and realize their potentials and take control of their resources. Genuine development will also require bold steps from people whose welfare and development is at stake in these steps. The strengthening of local autonomy will allow localities to take bolder steps in developing their communities and the strengthening of local, participatory democracy will also

strengthen the capacity of all stakeholders, especially the dispossessed, to push their governments toward directions that will shift development policy to favor equitable and sustainable development. But of course, federal autonomy is risky. It is still a very real possibility that federalism will only condemn localities to incompetent leaderships that will lead to greater poverty and inequality or it will remove the checks on local autocracies and lead to the death of local democracy in some regions. This is definitely a risk that needs to be seriously considered. Federalization could lead to greater democracy leading to genuine development or it will lead to inequitable development where some states will grow and others will witness the end of development and democracy. Thus we must proceed carefully.

If 15 years of devolution has taught us anything it is this: localities are best governed by local governments. Autonomy is good because it allows for relevant and creative governance and it awakens local energies to realize local possibilities. There is no turning back on local autonomy and there is no question regarding the need to expand and strengthen it. But how do we proceed—through a reform of the local government code or through a re-envisioning of our unitary state into a federal state?

On one hand it does make sense to strengthen local autonomy and keep the unitary state. It seems the major problems in realizing the potentials of good local governance are the need for more funding, better capability building, the further devolution of national agencies, better institutionalization of people's participation and strengthening of partnerships with civil society and the private sector, and better development planning. All these problems can be addressed in our current unitary form of government. We need to revise the LGC, devise a better internal revenue allotment system, ensure that there is relevant and effective training for local government officials and the bureaucracy, and ensure the proper implementation of the people's participation initiatives. If this is the case, then is it not enough that we focus on making local autonomy work? Why should we revamp the whole governmental system if the system of local governance is already in place?

The answer may be found in this: the very foundation of local autonomy is the understanding that local governments are agents of the national government. They are all part of a unitary whole that determines from the center what ought to apply in a general way to all. Control of resources and of policies still emanates from the center and even if much of our resources and powers have been devolved, this devolution and even the grant of autonomy are done at the pleasure of the center. Thus, much of the energies of local governance are spent in coordination and lobbying with the central government. And local creativity can only go so far if they only have administrative autonomy bestowed at the pleasure of the center and not political autonomy rooted in the will of their local constituents. The real difference between local autonomy and federal autonomy is a mindset, a paradigm of interaction, and a sense of power over one's self.

No matter how autonomous a local government is under a unitary set up like ours, local governments will always be an agent of the national government. Let us return to the Supreme Court on this:

Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political

subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress. Municipal governments are still agents of the national government. (Pimentel v. Aguirre, G.R. No. 132988, July 19, 2000)

This sense of needing to coordinate with national policy seems to always hinder local government initiative under devolution. Perhaps this could be corrected with greater autonomy, however, the mindset will always remain that the central government determines overall policy to which all local policy must be aligned. This immediately puts a limit to the innovativeness of the locality especially with regard to policymaking and to the reform of systems of governance. With federalism, the whole governance mindset will shift. Localities will no longer be parts of the national whole that are determined by one center. Rather they will all be autonomous units with the power of self-determination that take part in the shaping of a national whole which they in their autonomy jointly determine with other states. In their sphere of responsibility, which will be most of governance, the federal state is self-determining. The national government has its own sphere of action that will serve the national whole but will not interfere in local self-determination. Thus, in a federal state, localities can exercise their creativity and self-determination to a significantly greater degree, i.e. to a degree where they can re-imagine their polity, their development agenda, their structure of governance, and the policies that will allow them to progress in accordance with their values and their cultural heritage.

There is another good reason for social reformers to want to federalize. From the lessons on the implementation of the social justice agenda, we realized that it is more fruitful and more feasible for civil society to push its agenda in the local level than in the national level. When one has to push for new policy or even the implementation of policy in a unitary system, NGOs have found the need to build national coalitions or networks in order to convince national politicians about the need to formulate or implement such policies. In the national scene, where power and resources are concentrated, they have found the clash of interests so intense that civil society only has a slim chance to present their reform agenda. Since devolution, civil society groups have found that localizing campaigns for reform has been more effective and easier. Implementing the reform agenda often means partnering with local LGUs and/or lobbying with local chief executives, bureaucrats or legislators who are within reach. Networking works on a smaller scale and becomes more effective. But the limit of such reform work is that LGUs can only do so much within a unitary government. Federalism will open spaces for local groups to effectively lobby for their reforms to an even more radical and creative degree. This is because they will be dealing with states which have the right and capacity for self-determination. When the equation changes and these states will be drawing their mandate directly from their stakeholders and not the national government, the stakeholders will have a more effective voice than politicians or bureaucrats who are not stakeholders of the locality. When local government officials will not have to focus their energies balancing the demands of the national leadership and the local citizenry, they will be able to focus on the needs and the demands of the local. This does not automatically mean that they will be more responsive

and accountable to their citizens. But it will restructure relationships in a way that will allow an empowered local populace to push for a more responsive development agenda. This fact is born out from the experience of local groups pushing for reform. They are finding more possibilities in pushing for more favorable urban land development and land use policies, sustainable environmental protection policies, and agricultural support policies when they have to deal with the local government. And they are finding that these local governments are unable to move more boldly even if they wanted to, not only because of local opposition. Rather they are constrained by national policies that stand in the way of local development or service delivery.

Thus if we are to push for a federal Philippines, this has to be done with a clear understanding that we have a human development agenda which demands the empowering of local communities for self-determination, the strengthening of local democracy, the strengthening of the local economy for equitable development as determined by the community, the preservation of local resources, and the strengthening of unity among the peoples of the Philippines for mutual development. If these are the objectives of constitutional change, what basic principles should guide our design?

1. Federalism must ensure that local autonomy guarantees local self-determination.

If structured properly, federalism by definition guarantees local self-determination. The principles that structure our federal republic must work with the premise that the federal states do not draw their mandate and power from the national government. Rather they draw their mandate from the constituency. As the Supreme Court says of federal states: “the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities.” This should be made clear by whatever structures we define. The mandate to govern comes from the people directly and not the federal government. Eleazar expresses the principle this way:

In each, the states, cantons, or provinces are not creatures of the federal government but, like the latter, derive their authority directly from the people. Structurally, they are substantially immune to federal interference. Functionally, they share many activities with the federal government but without forfeiting their policy-making roles and decision-making powers.¹⁶²

Therefore there must be a clear separation of responsibilities and jurisdictions between the federal government and the states. And in the sphere of the responsibilities, they must be free from national interference.

Each level of government must have its sphere and points of intersection between these spheres must be engaged in as cooperative endeavors. Overlaps are not fruitful if there are no clear principles of cooperation, when overlaps in responsibilities cause conflict of jurisdiction, and when they promote turfing. However if jurisdictions and responsibilities are to be divided, they must be divided clearly in the constitution. These are some ways of clarifying the division:

¹⁶² Daniel J. Eleazar, *Exploring Federalism*, (Tuscaloosa: University of Alabama Press. 1987), 35.

1) To confer a list of exclusive powers on the federal governments, leaving the residual powers to the constituent states (Pakistan); 2) Identifying a list of jurisdictions pertaining to the federal and constituent states respectively, with an added clause according residual powers accorded to the federal government; 3) To draw up two lists only; federal jurisdictions and concurrent jurisdictions. All residual powers are left to the states. (The United States, Switzerland, Australia, Germany, Austria)¹⁶³

And as we demarcate jurisdictions we must also keep this principle in mind:

Not all government functions should be entirely decentralized. Following the principles of subsidiarity, a function should not be decentralized to a lower level if it is critical in the achievement of central-level goals and its sustainability at the local level cannot be guaranteed, the capacity to perform the function does not exist or the function at this level is not cost-effective.¹⁶⁴

Further studies must be made regarding the division of jurisdictions. It is not useful for our cause if we predefine this, so recommendations must be clearly the result of consultations. We could begin with the Abueva recommendations but subject this to much deliberation from stakeholders:

The Federal Government (Gobierno Federal). The Federal Government shall be responsible only for national security and defense, foreign relations, currency and monetary policy, citizenship, civil, political and other human rights, immigration, customs, the Supreme Court, the Constitutional Tribunal, and the Court of Appeals, and such other functions of federal governments.

The States (Estados). Most other government functions and services that impact directly on the lives of the people shall be the main responsibility of eleven States or regional governments and their local governments. These include peace and justice; agriculture and fisheries; energy, environment & natural resources; trade, industry and tourism; labor and employment; public works, transportation and communication; health; basic education, science and technology; culture (language, culture and the arts); social welfare and development; and public safety and police.¹⁶⁵

¹⁶³ Celine Auclair, "Federalism: Its Principles, Flexibility and Limitations" in *Federalism: The Future of Decentralizing States?* 2nd International Conference on Decentralization, (July 25-27, 2002, EDSA Shangri-La Hotel, Manila, Philippines), 3.

¹⁶⁴ Robertson Work, "Overview of Decentralisation Worldwide: A Stepping Stone to Improved Governance and Human Development," in *Federalism: The Future of Decentralizing States?* 2nd International Conference on Decentralization, (July 25-27, 2002, EDSA Shangri-La Hotel, Manila, Philippines), 16.

¹⁶⁵ Jose V. Abueva, "Some Advantages Of Federalism and Parliamentary Government for the Philippines," <http://www.pcij.org/blog/wp-docs/Abueva-Federalism.pdf>, 4.

Special study must be made regarding the potential oversight function of the federal state regarding the bill of rights and social justice provisions of the constitution. Clearly, if these are enshrined in the constitution, then the federal Supreme Court would have the power to ascertain that state actions do not violate these rights. However, the feasibility and necessity of giving the executive regulatory or administrative jurisdiction over the proactive implementation of social justice provisions like asset reform should be studied further. Existing studies are not conclusive regarding the value of national supervision. With the existing studies, one could say that local governments may not take much interest in actively pursuing these reforms because they are focused on administration and the delivery of basic services. Also, the influence of vested economic interests may have a strong influence on their taking an active interest in social justice reforms. Thus, national government should monitor implementation in order to ensure implementation. On the other hand, it is also evident that if local groups take an active interest in pushing for these reforms, then local governments become more proactive in implementation. And the way it is, national government itself is not very effective in implementing or monitoring the implementation of reforms. The question then is if we leave issues like asset reform and wages to the states, will these be neglected or even suppressed? There is no clear evidence either way. The only trend we can see is that local governments are more interested in the delivery of basic services as the heart of their social reform agenda. Greater reforms only become their concern when there are strong local groups pushing for such reforms.

Local governments will also be concerned with social justice issues if there are constitutional provisions that demand the implementation of these reforms and if there is a powerful body that will be able to compel them to implement the constitution. Whatever the flaws of the 1987 Constitution, the fact that it spelled out a social justice agenda allowed civil society groups to demand for land reform, fisheries reform, and the respect of ancestral rights. Thus, these principles must still be enshrined in the federal constitution and if they are, then a transitory commission could oversee their realization in the states. However, the federal government could still have a hand in implementation if this will ensure more efficient implementation. Based on our study, it is not clear that this will be so. In some cases, such as fisheries reform and informal setting issues, groups are realizing that the battle at the local arena is more fruitful.

2. It must guarantee local democratization and people's empowerment.

From the trends of local governance, it seems that greater autonomy can lead to greater people's empowerment. From all indications from the existing case studies on people's participation, local governments are open to partnership with citizens' groups if this will lead to the acquisition of funds or cost sharing, the improvement of basic services, or to better project implementation.¹⁶⁶ It is clear though from all these studies that LGUs and

¹⁶⁶ There is no comprehensive study on this but these explorations will show the trend: Philippine Partnership for the Development of Human Resources in Rural Asia (PHILDHARRA), "Forming Networks for People's Participation in Local Governance: Three Case Studies" (Quezon City: PhilDHARRA-GOLD, 1999); Rommel B. Sacan, "A Case Study on the NGO/PO Participation in the Dumaguete City Development Council," PHILDHARRA Visayas; Phil DHARRA, "Negros Oriental NGOs and POs: Banding Together for Local Governance," *Forming Networks for People's Participation in Local Governance: 3 Case Studies*, (Quezon City: PhilDHARRA-GOLD, 1999); Fernando Zialcita, et. Al. *People's Participation in Local Governance: 4 Case Studies*, (Quezon City: Ateneo Center for Social Policy and Public Affairs, 1995); Fides Estela R. Ragragio, "Enhancing

even civil society groups do not value formal, Code-mandated people's participation mechanisms because these tend to be unwieldy and have no clear mandate or have no clear relevance to the advocacies of the NGO. Therefore, LGUs and NGOs/POs tend to partner up in mutually beneficial projects that have a clear impact more than in avenues for policy making. This indicates that with the devolution of responsibilities, local democracy in the form of people's participation in governance opens up. As we noted earlier, there are a growing number of cases where local organizations are able to engage the local government more effectively on policy issues. This is because of the structure of local governance under local autonomy, i.e. since the provision of services are devolved to them, then they can be more effectively engaged to provide these services. Thus we can see how federalism can enhance local democracy. When local governments are the genuine governing power in a locality, we will most probably see more initiatives from local groups to engage local governments. Nonetheless, there is a real need to get these groups interested in the local policy making bodies. After all, policies shape their shared world. However we structure our federal system, it must either follow or improve on the patterns of people participation already defined in the LGC, especially in the area of guaranteed representation in local legislature so that participation in policy making bodies is realized, or we must think of new ways to go about establishing people's participation in governance bodies. Clearly, the Code's mandated participation in local special bodies is a very good start. But, whatever forms these mechanisms take, the Constitution must guarantee, not just encourage, people's participation in policy-making. This guarantee could be enforced by a transitional, oversight Constitutional Commission in the federal government level that has the power to enforce these constitutional provisions.

Of course, even if mechanisms of participation are in place, there have to be NGOs and POs in the locality who themselves appreciate participation and understand the effective methods of participation. This is no longer a constitutional concern. Nonetheless, it should be noted and perhaps despite the trend for local network formation versus national network

Partnership Through Gender Mainstreaming: Quezon Women Test the Limits of Participation, in *Taking the "People's Road:" 9Bold Experiments in Making Participatory Governance Work*, (Quezon City: PhilDHRRRA, 2001); Ma.Diosa Labiste, "Participatory Project Monitoring and Evaluation: Getting Engaged, Getting Involved in Iloilo," in *Taking the "People's Road:" 9Bold Experiments in Making Participatory Governance Work*, (Quezon City: PhilDHRRRA, 2001); Edel Guiza and Daniel B. del Rosario, Jr. Community-Based Rehabilitation of the Disabled: The Alimodian Experience, (Manila: Local Government Academy); Edel Guiza and Daniel B. del Rosario, Jr., "Eco Walk," (Manila: Local Government Academy); Daniel B. del Rosario, "Nutrition, Food, Environment (NFA) and Medicare Program of Binamley, Pangasinan, (Local Government Academy); Cynthia A. Tan, "Community Mobilization for Zero Waste Management of Bustos, Bulacan, (Local Government Academy); ISDS, "Performance, Problems and Prospects: People Empowerment in Davao del Sur and Davao City," *Operationalizing People Empowerment and the Local Government Code of 1991*, (Quezon City: ISDS, 1993); ISDS, "Status of GO-NGO-PO collaboration in the Province of Pangasinan and the City of Dagupan," *Operationalizing People Empowerment and the Local Government Code of 1991*, (Quezon City: ISDS, 1993); Edel Guiza and Daniel B. del Rosario, Jr., "Inter-Barangay Environment Development Program, Irosin, Sorsogon" (Local Government Academy); Edel Guiza and Daniel B. del Rosario, Jr., "The Bigay Kalinga Program of Sampaloc Quezon (Local Government Academy); Cynthia Tan, "Economic Amelioration Sustainable Development Program of Polompon, Leyte," (Local Government Academy); ISDS, "Successful GO-NGO Collaboration: The Cooperative Movement in Bulacan and the UPPC University," *Operationalizing People Empowerment and the Local Government Code of 1991*, Quezon City: ISDS, 1993); Danilo Songco, "Strategic Partnerships through People's Participation in Local Governance," *GOLD Occasional Papers*, Makati: GOLD-ARDI); Edgar dL. Bernal, "Didipio Initiative: Amplifying the People's Voice," *Tanawan*, Tomo 2, Blg. 2.

building, the national networks may still play a role in participatory governance training and advocacy.

3. It must lead to the more effective and efficient delivery of basic services that serve human development and capability building.

The main guarantee for the effective and efficient delivery of services is to ensure complete autonomy to the localities. And this is where we have to rethink another issue: the state and component local governments' relations. If there is something to learn from the ARMM experience, it is this: an inefficient state can rob initiative and effectiveness from component LGUs. What the ARMM Act did was to rob localities of their autonomy by concentrating power and resources at the regional level and thereby causing component LGUs to be dependent on the regional authority thereby ending up even less autonomous than their counterparts in the non-autonomous regions. This is what Magno foresees to be the potential problem of federalism:

In a shift to federalism, a new layer of authoritativeness, the “states” will evolve out of nothing. As a dry cotton ball absorbs the moisture around it, this new layer will suck in functions and prerogatives from the existing LGUs.¹⁶⁷

This is exactly the problem with ARMM—a new layer of government was created that absorbed all the resources and created an inefficient bureaucracy in the region. Because of this, component LGUs suffered a lack of resources and their autonomy was impaired by governance practices in the regional level. We should be able to guard against this and ensure that the component LGUs do not lose their own autonomy under a federal structure otherwise, governance and the delivery of basic services will suffer. Even people's participation will suffer once the federal state acts like another center that will control resources and define policy without consultation.

The answer to this lies in the strengthening of autonomy in component LGUs and the strengthening of mechanisms of participation. It also demands the clear understanding of the role of the state vis-à-vis the component LGUs. It must be clear what powers and responsibilities belong to the state and what belong to the LGUs and what the relationship is between these units. It has also to be decided if these relationships will be defined in the federal constitution or in the state constitution. It could go either way: if it is specified in the constitution then the relationships will be enshrined and more difficult to change on whim. On the other hand, they could be specified in state constitutions where there will be more flexibility in defining the relationships depending on the existing political culture and governance realities.

One way to check this tendency is to adapt the parliamentary system in the local governments. For the same reason as we will argue later for the national, the parliamentary government structure for the state will ensure that the state is not a separate government entity running on its own trajectory, but rather it is a body that administers according to the will of the component government units. After all, the executive policies will be determined

¹⁶⁷Magno, *Federalism*, 14.

by the parliament composed of representatives of the component government units. In short, the state will not be a domain dominated by state politicians with their own agenda. Rather, its parliament, composed proportionally by the representatives of component LGUs, will determine policy making, and the executive, at least theoretically, and this will ensure that state policies are reflective of the needs of the LGUs.

4. It must guarantee equitable and sustainable development and it must ensure that disadvantaged states develop and are not mired in deeper poverty.

Work makes this observation about federalization: “A federal system is expensive and institutionally complex. It requires high levels of cooperation and capacity at the sub-national levels to ensure the enhancement of good governance.”¹⁶⁸ This must be considered along with Magno’s concern that many local governments are not ready to raise their own revenues:

Federalism will introduce an entirely new layer of bureaucracy. Each “state” will have its own mini parliaments and little prime ministers, their own set of state ministries and the consequent staff support required. They will need to build or rent new offices, purchase equipment and accumulate maintenance and operating expenses. At the same instance, the federalists propose to design their own tax systems and surrender 30 percent of all revenues they collect to the national (federal) government. With the “various” states competing with each other for investments and the new regional leadership attempting to win public approval by offering more benign tax policies, the greater tendency is for total revenues to decline.¹⁶⁹

We are faced with the dilemma that federalization will be expensive to set up and maintain and some states will not be able to raise the funds for the shift and the maintenance of their existence for the first few decades or so. So the shift alone may already be debilitating to the localities. Because of this, we have to think clearly about where the funds for the shift will come from, how it can be made without too much expense, and how disadvantaged states will be assisted. This applies of course not only to the period of the shift but to the question of sustainability.

This brings us to another issue. How will the states be divided? Abueva provides a scheme:

The Eleven Estados. Each Estado (State) is an autonomous regional government of the Federal Republic. The territory of the different Estados is determined by a combination of geographic contiguity of their component areas, their ethnic, linguistic and other cultural aspects, and their socio-economic potential and viability.

¹⁶⁸ Work, 6.

¹⁶⁹ Magno, 14.

From south to north, the Estados are the following: (1) Bangsamoro (ARMM); (2) Davao Region and Central Mindanao; (3) Zamboanga Peninsula & Northern Mindanao; (4) Central and Eastern Visayas; (5) Western Visayas-Palawan; (6) Bicol; (7) Southern Luzon; (8) Metro Manila (NCR); (9) Central Luzon; (10) Cordillera (11) Northern Luzon.¹⁷⁰

Certainly, the divisions seem rational and well-studied but we must wonder if those gathered together in the state according to Abueva's schema are agreeable to the component localities. Do the people identify with each other in any way and do the LGUs have any organic avenues of cooperation? These states formations are mainly a fruit of an academic exercise. They are unlike the the Uragon state envisioned by Bicolanos which is a fruit of a consensus and a shared imagination. How many of these states can say that of their artificial configurations? And we can wonder if there is really a basis for saying these states do have a basis for economic sustainability and the resources for development. Just because they are that way on paper, does not mean that they are economically feasible in reality. There are factors especially regarding economic interactions and dependencies that may have escaped the lens of academic musings. States must be organic to the component LGUs and the people. Without these organic foundations, the states will fail and may fall further into poverty.

Certainly, there must be a federal government equalization fund and state assistance process. The mechanism to set up and maintain this fund must be carefully crafted. There will be the tendency that states will want to give less of their revenues to the national government especially if these funds will go to the development of other localities. Also, the revenue pool may fall overall since local government may not have the will to tax their citizens appropriately. Thus we must ensure that our taxation system will give a just and equitable share to national government if we do decide, and this seems to be the trajectory: that revenues will be kept by the local governments who will give a fixed share to national government. We should also decide carefully which taxes are to be imposed and collected by the federal and state governments. We should be able to ensure that appropriate revenue is raised for national government functions especially for the equalization fund for all government units, and equalization funds must go into building the economic infrastructure that will strengthen the development potentials of the locality and not to personnel needs. Thus equalization need not come in the form of monetary assistance alone. It must also be made clear to all states that equalization is a necessary condition of federalization. This must be done discursively so that the assistance system will be acceptable to all states, especially those that will probably have to shoulder the burden of sharing. We must take heed of Work's observation:

While decentralization is primarily a political process, it will not be successful unless adequate provision is made to finance the devolved or deconcentrated responsibilities. As is evident from the few case studies presented above, a large impediment to local service provision is lack of resources. More capacity and technical expertise needs to be provided in the areas of local revenue generation and

¹⁷⁰ Jose V. Abueva, "Some Advantages Of Federalism and Parliamentary Government for the Philippines," 5.

financial assistance from the center. While the decentralization process in South Africa is far more complete, the comprehensive vision of South African policy makers is remarkable. The design of the political, fiscal and institutional changes is being managed simultaneously and in different ways for different jurisdictions.¹⁷¹

The transition must be managed well by the central government. Preparations appropriate to the locality must be made so that when they are made into autonomous federal states, they will not collapse. The transition must make sure that states and local governments have the government institutions they will need to survive and develop:

The maintenance of federalism requires that the common polity and its constituent polities each have a substantially complete set of governing institutions of their own with the right—within limits set by the compact—to modify those institutions unilaterally. Both separate legislative and administrative institutions are necessary. This does not mean that all governmental activities must be carried out by separate institutions on each plane. It is possible for the agencies of one government to serve as agents of the other by mutual agreement. What is essential is that each government have enough of its own institutions to function in the areas of its authority without depending upon the other and to have the structural wherewithal to cooperate freely with the other's counterpart agencies.¹⁷²

We must remember that we are moving away from a government set up of dependence to one of self-governance. Many underdeveloped localities will not be equipped with the capacity or even the government institutions to ensure autonomous self-government. The first decades of federalization must tend to this issue.

5. It must serve to strengthen, or at least keep intact, the unity of the nation.

As states federalize, they will tend to focus on their own issues and problems and there may be a tendency to question the need for a national government, especially for the more wealthy states. Other states may relate with the national government with some dependence and therefore will not question the need for the federal union. Both attitudes will not lead to a meaningful federalization. What will keep federal states together is a sense of genuine identity. We seem to have that already even if it not deemed strong. We have already been a nation long enough for most people to have accepted that there is a sense of being Filipino especially when faced with the global community. There is a real sense that we are a “we” that is other than “them.” But is this strong enough to bind us together, especially those populations that have a seething resentment against the political and economic elite that are often concentrated in specific regions? Perhaps mutual sentiment will not bind us but mutual need and the obvious usefulness of the federal government will.

¹⁷¹ Work, 16.

¹⁷² Eleazar, 182.

When we federalize, we must clarify the role of the federal state and make clear that federalization is a kind of sharing of responsibilities as much as it is a devolution of power. Eleazar notes this:

In this regard, the contractual sharing of public responsibilities by all governments in the system appears to be a central characteristic of federalism. Sharing, broadly conceived, includes common involvement in policy making, financing, and administration of government activities. In contemporary federal systems it is characterized by extensive intergovernmental collaboration. Sharing can be based on highly formal arrangements or informal agreements. In federal systems, it is usually contractual in nature. The contract—politically a limited expression of the compact principle—is used in formal arrangements as a legal device to enable governments responsible to separate polities to engage in joint action while remaining independent entities. Even where government agencies cooperate without formally contracting to do so, the spirit of federalism that pervades ongoing federal systems tends to infuse a sense of contractual obligation into the participating parties.¹⁷³

We should be able to show clearly first that the federal state is not a separate entity but one that is a shared responsibility of all citizens of every state and then we must also clarify what areas of governance are beneficially left to a shared federal state. We should be able to show, for instance, why it is beneficial to all states that they do not bother with national defense and diplomacy. It should also be clear to all why it will be beneficial to have one currency managed by one central bank. It would be necessary to have a federal system that encourages and institutionalizes mechanisms for inter-state and federal-state cooperation. We should study how such mechanisms will work and insist that they are made a principle of our federalization in order to enforce both the autonomy of states and the need to keep the union whole.

This is perhaps the best place to discuss the need for a parliamentary government. In the light of the federalist agenda, we must think clearly if a parliamentary system will work for us. From the insights we gained from the above discussions on the benefits of a parliamentary form of government we can say that it may serve to strengthen national unity. This is because a unicameral, parliament elected through a party-list system will ensure two things: that state representatives will feel that they are part of national policy making and administration and that there will emerge local leaders with a national perspective because they belong to parties with national agenda and they will have a stake in the administration of the federal government. Let us spell this out more clearly.

A unicameral parliament composed of district representatives will ensure that local voices will be strong in determining national policy. And since parliament will determine the composition of the administration cabinet, they will ensure that the decisions of this body will be carried out by the federal government. This will strengthen the sense that the federal government is a distinct entity without any accountability to the states and their citizens. But since these local representatives will be part of parties with clear national agenda, then they will decide policy with a national perspective as well. And the local perspectives will also be balanced by a national perspective because a percentage of the composition of the

¹⁷³ *Ibid.*, 185.

parliament will be composed of party-list representatives elected through a proportional system of representation. In this way, there will be members of parliament who are primarily party representatives and can bring the perspective of national party platforms and agenda to the legislative discourse. Through this form of parliamentary governance, it will be possible to give localities a sense of ownership of the national policy discourse and national governance. It will also balance the local and national perspectives on issues that will affect all stakeholders in the national whole. In order to strengthen unity though, it is desirable that we have a popularly elected president as head of state. A popularly elected head of state could give a sense of having a national leader chosen by the people. It may give citizens of different states a sense that they have a concrete embodiment of the unified will of the nation. The people may need a national leader they have chosen to pull them together. A popularly elected president as the head of state will give the people someone to rally around.

This parliamentary system will only make sense if we have a strong party system which of course means that we have parties with clear programs of government, with party discipline and with a system of leadership building. But more than that, most importantly, these parties must be consultative and participatory. They must be built from the grassroots or have grassroots components so that their programs reflect the genuine development concerns of the people and so that they can represent their perspective in the national discourse. They must be national and be rooted in the localities. This must be achieved in order to justify the parliamentary shift. And only then will we have a national government and a union embraced by the states. Perhaps proposals to make this commitment in the constitution might make sense. And if such a level of representation is achieved it would also make sense to echo this structure at the state level.

We cannot and should not impose the form our federal state should take here. From our interviews, it seems that many of the national and local groups who are interested in federalism are wary of the federal movement because they see its proposals as impositions from above. The impression on the ground is that the federal state is already clearly conceived and plotted out by the federalism advocates. And although there was a process of consultation, the proposed CMFP constitution and proposals for the federal shift are unpalatable to many because it does not seem rooted in their reality and seems too well thought out it does not leave room for the real concerns of the people on the ground. Thus, in a campaign like this, it is important to present principles of federalization which will ensure that the shift will open a path toward achieving a just and equitable society. These principles are offered as points of negotiation and areas of further exploration in dialogue with stakeholders. The shape of this new federal republic cannot be the work of political scientists designing a federation from best practices or political theory. It must be the fruit of dialogue, shared reflection, and negotiations between stakeholders who have the perspective of their lived experiences. The principles should guide the work of the federal movement as facilitators of this dialogue and consensus building process. Thus we summarize these principles:

- Local self-determination must be guaranteed by the structures of governance
- There must be a clear separation of responsibilities and jurisdictions between the federal government and the states. However jurisdictions and responsibilities are

to be divided, they must be divided clearly in the constitution with this principle: a function should not be decentralized to a lower level if it is critical in the achievement of central-level goals and its sustainability at the local level cannot be guaranteed, the capacity to perform the function does not exist or the function at this level is not cost-effective.

- We should be able to show clearly first that the federal state is not a separate entity but one that is a shared responsibility of all citizens of every state and then we must also clarify what areas of governance are beneficially left to a shared federal state. It must be clear to all how the national government serves the states and why it is useful to have a national government for the benefit of the states.
- We must clarify the tax system and ensure that there is a substantial source of funds for the federal government.
- Autonomy in component LGUs must be clarified. There must be a clear understanding of the role of the state vis-à-vis the component LGUs. It must be clear what powers and responsibilities belong to the state and what belong to the LGUs and what the relationship is between these units.
- Special studies must be made regarding the potential oversight function of the federal state regarding the bill of rights and social justice provisions of the constitution. Social justice principles must be enshrined in the constitution and a powerful oversight body should be able to ensure that these principles are realized by the states.
- The federal system must either follow and improve on the patterns of people participation already defined in the LGC, especially in the area of guaranteed representation in local policy making bodies, or it must have new ways to go about establishing participatory governance bodies. The Constitution must guarantee, not just encourage, people's participation in governance.
- A unicameral parliamentary government system both at the Federal and state level with an elected president as head of state will probably best serve good governance and national unity. However, we must find ways to strengthen political parties and local civil society movements.
- There must be an equalization fund that will assist disadvantaged states to set up and develop their governance systems. The equalization assistance must go into building the governance and economic infrastructure that will strengthen the development potentials of the locality and not to personnel needs.
- The division of the states must have an organic ground of unity and must serve economic viability.

- The transition must be managed well by the central government. Preparations appropriate to the locality must be made so that when they are made into autonomous federal states, they will not collapse. The transition must make sure that states and local governments have the complete and functioning government institutions they will need to survive and develop.

IX. Proposed Constitutional Reform Processes and Transition Requirements

Now that we have discussed what should guide the formation of our federal state, we must discuss how to proceed with the process of federalization. We must proceed cautiously with this. More than anything, the move toward federalization must be a movement toward deep seated consensus building. And we are not speaking of consensus between politicians, academics, and reform activists. It is such a profound revision of our political and governance system that it must genuinely be convincing to all concerned. We should take heed of Works' observation:

Plans for decentralization should be strategic rather than predefined. Decentralization needs to be a flexible process, allowing the central/local dynamics to evolve and taking into consideration potential instability of the political framework. Since decentralization is heavily dependent on political will of the central government and consensus of the population, constant changes in the political framework can hinder the building of support for decentralization.¹⁷⁴

So we need much time to let people get used to the idea of local autonomy, letting them see the advantages of greater autonomy, showing them that federalization could lead to greater and more fruitful autonomy, and then let the clamor build from there.

We cannot reiterate enough that many of the leading civil society groups that could be valuable and natural allies for the federalization campaign are taking a step back from it because they believe that there is no real consensus from the ground up regarding the value of federalism. There seems to be no real clamor for it except from academics who believe in the shift and government officials who think that it will mean bigger budgets and more power for their localities. Thus, the primary need for this campaign is to build the clamor for federalism from below. Certainly, there is a great possibility for the campaign to succeed if civil society groups ally with government officials and politicians to push for the constitutional reforms leading to a federal republic. However, this may lead to failure since a successful shift to federalism demands the cooperation of all the stakeholders from the local and the national level. Success here demands that everyone is prepared for the shift, not just local government officials and bureaucrats but even political parties and citizens groups that will ensure that federalization will lead to good governance. Thus, Abueva is right in saying this:

A transition period is needed to enable the Federal Government and the various States to prepare for, and adjust to, the redistribution of powers, functions and

¹⁷⁴ Work, 15.

tax bases between the Federal Government (National Government) and the several States (Regional Governments) and their local governments.¹⁷⁵

But more than this, a transition period is needed to ensure that local citizens, people's organizations, and civil society groups and networks are ready to engage the new form of government that will emerge from the shift. How is this to be effected?

From the outcome of our studies, it seems that the best move is to strengthen local governance as envisioned by the LGC. This will entail the following:

- Push for effective implementation of all provisions especially those related to fiscal autonomy, devolution of services and resources, and people empowerment.
- Push for the effective and creative exploration of the potentials of the above especially in the areas of revenue generation, transparency in governance, people's participation in governance, and partnerships with the private sector.
- Explore the means by which to realize the social justice provisions of the Constitution in the framework of local autonomy. Make the social justice provisions work but with a local autonomy framework so that we can see the possibilities of realizing just development with autonomous local governments.
- Strengthen local autonomy through the revision of the Code. There are many well-studied proposals for the revision of the Code. These must be rethought in relation to an eventual shift to federalization and then adapted into law.
- Ensure the establishment of a multi-sectoral, local autonomy oversight body that is capable of studying the implementation of local autonomy in the country and is able to propose appropriate legislation or executive action to continuously improve implementation. This should include the monitoring of people's participation mechanisms. The oversight body, wherever it is housed, must have the appropriate and genuine capacity to carry out accurate and insightful studies into the implementation of devolution.
- Strengthen avenues of cooperation and interdependence between localities that may possibly belong to the states which will be created. Perhaps the Codal amendments should consider Abueva's suggestion for regionalization that will amalgamate the existing 14 administrative regions plus the Autonomous Region of Muslim Mindanao (ARMM) into larger administrative regions and grant these more substantial regional and local autonomy. We should of course restudy the composition of these regions. This will certainly tell us how the configuration of states might work.

¹⁷⁵ Abueva, "Some Advantages Of Federalism and Parliamentary Government for the Philippines," 6.

During this period of unspecified years, the discourse on federalism must continue. But we must remember that the discourse should be grounded on the experience of local autonomy and devolution. We have accomplished enough theoretical studies; we must now be able to beef up the discussion on federalism with actual data on the implementation of autonomy with an eye toward federalization. We need this period of testing and strengthening to prepare us for the shift. And during this period, the implementation of the Code should be committed to the gradual shift. However it must really be a period of exploration of the possibilities of the shift without prefiguring and predefining the shift. Otherwise we will lose allies and we will have another form of government that will come from the impositions from above—and this is the surest way to ensure the failure of federalism.

This is a summary drawn from Eleazar's study to show why federalist shifts fail:

- 1) "The federal arrangement was imposed from outside without ever having any serious internal support."
- 2) "The ascendancy of a strong man has been a major factor in terminating federal structures."
- 3) "Ethnic conflict has been another cause of the breakup of federal systems."
- 4) "A fourth factor is lack of resources, especially in the Third World."
- 5) "A fifth factor is the absence of a federally inclined political culture."
- 6) "Unbalanced federal arrangements also rarely succeed...federal arrangements are likely to fail where one entity is clearly dominant."¹⁷⁶

We have discussed the safeguards against these potential pitfalls when we discussed the principles of federalization. However, the first and fifth are genuine causes of concern and should serve as a warning for a hasty move toward federalization imposed from above. Do we indeed have a federally inclined political culture? And do we indeed have a federally inclined populace? Because of decades if not centuries of governance without genuine local autonomy and a political culture of dependence on the center, we are not really sure how prepared our people and our leaders are to realize good governance in a federal system. Thus the transition period of autonomy should be a non-negotiable condition for federalization.

Eleazar notes that for federalism to succeed:

Successful federal arrangements have not been imposed from the outside but have developed indigenously in ways that suit the entities involved...The existence of common interests, especially economic and security interests, is a necessary if not sufficient factor reinforcing successful federal efforts, although taken alone they can serve to encourage consolidation as well.¹⁷⁷

Certainly "[t]he actual formation of the individual States shall depend upon their relative political, economic, fiscal, and administrative capabilities to govern themselves as

¹⁷⁶ Eleazar, 240-244.

¹⁷⁷ *Ibid.*, 247.

autonomous regional governments and territories.”¹⁷⁸ But we also insist that there should be actual and organic grounds of unity within states before they are formed. Thus we reiterate the need to establish the process of regionalization first before we can define the division of states. And only then can we proceed to federalize.

Given the need to build up local autonomy before full federalization, how do we go about the federalization process? After a period of the strengthening of local autonomy, a process of constitutional revision must follow. The Constitution must reflect the consensus arrived at from the lessons learned from devolution. And the Constitution must provide for a process of gradual, asymmetric federalization that could follow the pattern suggested by this suggestion of the Presidential Consultative Commission. It proposes that local government units can come together and petition for the grant of autonomy. And if within a year, at least, 60% of the localities of the country have “joined in the creation of different autonomous territories, upon petition of majority of such autonomous territories through their respective regional assemblies, the Parliament shall enact the basic law for the establishment of a Federal Republic of the Philippines, whereby the autonomous territories shall become federal states.”(Transitory Provisions, Sec. 15) This proposal seems to offer a valuable option for the federalization process. What it allows in essence is for various “contiguous, compact and adjacent provinces, highly urbanized and component cities, and cities and municipalities in metropolitan areas through a resolution of their respective legislative bodies” to come together and ask to be made an autonomous local government. They will be given powers of federal states short of being declared federal states. This is an interesting idea because then, the clamor for federalism will come from the localities themselves. Even the composition of the localities will not be predefined but will be defined by their components based on their organic relations. This is advantageous because states will not be artificially created and there will be a greater chance of these states coming to an identity that they will own. From this petition, the national parliament will create an organic act that will structure their governments in a way that should be responsive to their local realities. This proposal has two foreseeable, major concerns. Firstly, what is to prevent some provinces or cities from being left out of states when they are formed? It is conceivable that there are localities that will be a governance or development burden and so no one will want them. The second problem is that the constitution itself does not specify the structure of the federal states and does not specify the relationship of the states to the federal government. It seems that after 60% of localities have petitioned for autonomous status, then we federalize by statute. This seems too arbitrary and too flexible such that it leaves the very structure of government to the determination of parliament.

The proposal has the advantage of allowing for the organic growth of states and the emergence of a federal republic when a majority of people are ready. It also has the advantage of allowing for states to determine the shape of their autonomy as they so determine. This is perhaps the best proposal that we can adopt given these provisos:

¹⁷⁸ Abueva, “Some Advantages Of Federalism and Parliamentary Government for the Philippines,” 6.

- That the federal form of government that will emerge after the majority petition is made should already be provided in the constitution. The constitution must already determine the basic relations and the basic forms of government and systems of governance.
- That the autonomous areas determine their own interim constitution rather than this be determined by an organic act by the parliament or Congress. The legislative body will only have to affirm it. Their constitutions will only be finalized when a federal republic is declared.
- That the criteria for their being granted autonomy is that the component LGUs have reached a certain level of compliance with the LGC. This should include compliance with revenue generation and people's participation as well as proof that these local government units are capable of creative and dynamic use of the opportunities laid out in the Code. They must also show that they are capable of fulfilling the social justice mandates of the Constitution. It will be difficult to set criteria for this but they will have to be set perhaps as transitory provision or set by parliament.
- There should perhaps be at least a 5 year moratorium before such petitions are granted because localities will have to show their capacity to comply with the Code and show their capacity to act autonomously as a unit.
- It must be clear that while we are in this process of regionalization or gaining autonomy, we are still under a centralized government. Thus autonomous regions can negotiate with the central government how much autonomy they should be granted and the assistance they will need in setting up.

This should allow our nation to federalize without federalization being an imposition of politicians, national civil society organizations, or academics.

With this kind of a process, we may also see the emergence of a kind of asymmetric federalism where states will, according to their needs, define their governance and, within the framework of the constitution, their form of autonomy. Our process of federalization will be asymmetric because it will depend on the capacity and willingness of autonomous regions to become autonomous. Thus some regions will achieve autonomy earlier than others. It will also allow autonomous regions to explore the form and extent of autonomy they will need. If some areas will need more autonomy and some need more federal government assistance or supervision, they can negotiate this during the autonomous region creation process. This way, federal statehood will adjust to the needs of the localities and when full statehood comes, it will not come as a shock.

It seems this process is what can allow a unitary government that is used to its unitary form to federalize. I quote from Montiel's study of Spain's federalization process to explain the value of a gradual, asymmetric process of federalization:

- The crux of transition takes place as regional social movements claim and demand their autonomy. Politically, this can be done by each region's drafting its own constitutional provisions for high regional autonomy, and pressing for legislative confirmation by national parliament. For example, Spanish regional autonomy was operationalized by regional initiatives drafting their respective Statutes of Autonomy, to be sent to the Cortes Generales for the statute's enactment into law.
- We want to emphasize the importance of region-based people's initiatives for self-rule. In Spain, Catalonia and the Basque Country possessed homegrown strength based on viable social movements, cultural fervor, and local prosperity. Can Philippine sub-groups demonstrate similar regional initiatives that are politically viable and locally loyal, yet open enough to collaborate positively with other Philippine regions under a unified federal Philippines?
- We could accommodate varied devolutionary rules across regions; structural devolution cannot be purist. For example, inequalities in the Spanish political system can be categorized into three dimensions: fiscal (pertaining to financial control), power (pertaining to degrees of self-government granted) and electoral (pertaining to capacity and success of nationalist and regionalist parties). To illustrate, the regions of Catalonia, the Basque Country, Galicia and Andalucia appear to have higher levels of autonomy. In the same manner, the Basque Country and Navarre enjoy a special form of federalism that allows them to collect their own taxes and bequeath a fixed amount of contribution to the central government.
- Structural change to federalism cannot take place under authoritarian rule.¹⁷⁹

This process needs to be managed well with strong, committed, democratic leadership. The kind of administration that will guide this process is one that is capable of consensus building and supervision without imposition. This will be a time for statesmen and managers of change in every sector and level.

X.Recommendations for the Sector's Meaningful Constitutional Reform Engagement

The shift to a federal Philippine is a process that needs more preparation and planning. What it has achieved in the last six years is a building of awareness among policy makers and key civil society figures of the possibility of the shift and the reasons for and strategies of realizing the shift. However, it has not been as convincing as we thought it would be: there is no clear civil society consensus behind the move and, from the administration sanctioned proposals for constitutional change, there is no indication of a strong consensus of the how and when of federalization.

¹⁷⁹ Cristina Jayme Montiel and Judith M. de Guzman, *Political Psychology of Spain's Transition to the Estado de las Autonomias: Lessons for the Philippine Transition to Federalism*, (Quezon City: C4CC/CAPP-SIAD/ ECPG, 2006), 6-8.

Clearly the federalism campaign cannot effectively be accomplished in the next three years. It has been co-opted. Powerful politicians and policy makers have taken up the charter change cause and have used it to push for their own agenda: the extension of their terms in office, the removal of term limits, the exclusion of popular entertainment figures from the major electoral contests, and their control of the choice for head of state through the parliamentary system. The interest in the federal movement is only secondary to them and was taken up to win the support of local government officials who are interested in increasing their localities' revenues. Powerful interests have taken on the discourse of charter change and thus, to the public, charter change has become an issue that serves this administration and its allies. To a broad group of civil society organizations, the whole charter change movement is not only suspect but, with the recent proposals for charter change, we can say that it has taken on a sinister character. If the administration's proposals somehow push through to an actual shift to a change in form of government, executive and legislative power will be consolidated with the president until 2010. The administration party will also have control over the legislature and the Supreme Court will be weakened. Given the growing authoritarian tendencies of this government, such a shift cannot be allowed to happen.

With the recent moves toward constitutional reform, the civil society federal movement was forced to take a critical step back because of the obvious dangers of supporting the Arroyo administration's campaign. Because their reform discourse was co-opted by the dubious plans of the ruling politicians, a tactical retreat was necessary to save the federalism campaign from any more credibility damage. With the administration's determination then to push their agenda, and given the ruling coalition's propensity to insist on its agenda through sheer political manipulation, civil society groups would have been used to legitimize their machinations just like the Consultative Commission was used as a recruiting and legitimizing machinery. If the administration and its allies continue to push for constitutional reform, this position of tactical, critical retreat would be the only possible stance the movement can take. However, the politicians have called off their bid for constitutional change, at least for the moment. If they will continue their push after the elections is not clear. It will depend on how the political dynamics of the new Congress will play out. However, it seems that with the recent defeat of Team Unity in the midterm elections, they will have to bide their time before pushing through any unpopular moves. They will have to consider how public opinion was so clearly against their actions that it may have to back down even if it has the numbers in Congress.

Our question now is this: can we still meaningfully push for constitutional change and for federalism under the current administration? The answer is yes, but it must follow a plan of genuine or deep constituency building.

First of all, we have to remember that the movement failed to convince its allies to go all out in the campaign for federalism. Not too many groups are convinced that the studies conducted are convincing because they were too academic or lacking in concrete evidence. Secondly, we have to realize that not too many people in the general population, especially among the marginalized, accept the value of federalism. Thirdly, there is no clear indication that there is a political culture in place that will make federalism work. Thus, if the movement is convinced that federalism is still a viable and necessary alternative to our form

of government, then we will have to convince others by focusing on networking and research for the next few years.

Regarding networking, it seems that we must focus our efforts on the local level before we build a stronger national movement. The networking and campaign practice of NGOs is changing. Reform campaigns in some areas like housing are less focused on national advocacies directed by national networks. It is becoming more common to see government and non-government bodies engaged at the local level with local NGO and PO networks working or lobbying with LGUs in very specific program or issue based campaigns or partnerships. These groups are less interested in national policy engagements as they were a decade ago because they see that the local engagements are able to address their needs more effectively. In order to interest them in a major national campaign to change the very form of our republic, they will have to be convinced of the value of the shift to federalism. It is not clear that a majority of these local groups accept the value of federalism, although it is clear that they are beginning to appreciate the value of devolution and local autonomy. Deep constituency building would have to begin with a process of consultation that will draw from the local POs and NGOs experience of and appreciation of local autonomy. With them we will sincerely have to understand if federalism will deepen their gains or if these gains can be furthered just by the strengthening of the devolution and local autonomy process. Only when we appreciate what federalism will mean to people in local areas can we begin to understand what kind of federalism will be responsive to the experience of the local groups. Although we cannot accomplish this kind of reflection in all localities, we must be able to map out a situation where we can engage localities that will give us a sense of how autonomy works in representative areas of the local autonomy experience. We have to be able to dialogue with key actors in places where autonomy is serving development and where it is not serving development and be able to map out all the variables that define the varieties of the local governance experience. We also have to reflect on the local engagement experiences of different sectors to understand if the advocacy of the social justice agenda can be more effectively realized in a federal Philippines.

To accomplish this step of constituency building, we must not be on campaign or consultation mode where we use the engagement with the local groups to convince them of the value of federalism. We must rather be on discourse mode where the whole process of consultation is designed so that it becomes a shared process of reflection that asks the hard question: is federalism necessary and are we ready for it? It seems that no movement for charter change has effectively consulted with the communities from below because many potential allies for a federalist movement are not completely convinced of the value of federalization and are quite happy with local governance and autonomy reform. The tactic of constituency building of local leaders is not enough. For such a fundamental change that will require the mobilization of local energies, a deeper form of constituency building is imperative. Federalization will only work if it is born of a clamor from below. This clamor will only emerge if local groups active in building their localities will appreciate how federalism will strengthen their gains under the regime of local autonomy and devolution.

Another essential activity at this point is a national policy study, versus anecdotal and best practices studies, on how devolution is proceeding. Congress should be convinced to commission such a study. After all, they have an oversight function with regard to the LGC. They should be able to get essential and reliable data regarding the implementation of

autonomy and devolution, especially regarding people empowerment, good governance practices, partnerships with the private sector, revenue generation, service delivery and local government compliance with the UDHA, CARP, IPRA, and Fisheries Code mandates. This should also include a study on the impact of local governance on the creation of local economic opportunities and on poverty reduction, as well as on local resource management. This should give us an idea of how autonomy and devolution have actually impacted on major areas of governance and development that they should have improved. If we are able to identify areas of success and failure, then academic institutions, civil society groups, policy research organizations, and even government planning agencies can work together to understand the major areas of improvement for the LGC. It will also help us to understand the potential areas of success and the genuine necessity of federal governance. So far, all that we have to convince us that federalization will work are studies of the experiences of other countries and anecdotal evidence of the value of local autonomy and its shortfalls in areas that have dramatically improved local governance. But we do not have any hard evidence to tell us that we need to federalize. Even the failure of the ARMM autonomy experiment is not indicative of the need to federalize or not to federalize. ARMM only stands as a dramatic example of how grand plans fail when local communities are not empowered and leaders are too trapped in playing power games to focus on good governance. We need to understand what is going on and we need to have evidence of what is working and what is not and why. We have had the perfect case to study if federalization will work in our country, i.e. local autonomy and devolution, but none of our studies are broad enough. We actually have very good case studies of what works in local governance, but we do not have a national picture so we do not know if the successes of local governance are exceptions to celebrate or trends to build on.

Perhaps some members of the movement for a federal Philippines will object that so many studies have been done and so much networking has already been accomplished, these recommendations will just take us back to step one and will lead to wasting more time and resources. However, the fact is, the studies available are mainly academic and conjectural or tend to focus on sound byte rhetoric. Thus, no matter how much networking was accomplished, the movement has not convinced a critical mass. It was not even able to convince enough of a constituency to have reflected a clear federalism agenda in the consultations or deliberations of the 2005 Presidential Consultative Commission. Thus the new studies and the networking are important to begin with. These can be achieved even in a less than democratic Arroyo regime.

Another networking strategy that can be accomplished immediately is to insert the federalist agenda in many ongoing reform campaigns. There are already national networks with broad local partnerships that are campaigning for essential governance reforms and for the implementation of the social justice agenda. If we can understand how the reforms they are campaigning for will be served by the federalist agenda, then we can partner with their campaigns. However, this is difficult since some of these groups need much convincing about the need to federalize. They all see the value of local autonomy. But the push further is still in question to them.

Another essential move is to network with local leaders, especially local government officials, who are able to realize the potentials of local autonomy for development and good governance. Many local government unions are pro-federalization. But we are not sure if

these are for good governance and development reasons or for the consolidation of power and the increase in resources available to the local governments. Not many local governments have begun to realize the development and governance potentials of local autonomy. Some still think local autonomy is good mainly because of the IRA. Not too many have actually embraced the practice of development planning and participatory governance. And yet most were said to be supportive of federalization. We should be cautious of this support. But there are those who have in no uncertain manner shown us how local autonomy can serve the people and local development. These are the ones we should network with and whose support we should court. We need to network with these leaders because their success will help others local leaders to appreciate the value of good local governance. And, if they agree to the federalist cause, they too will be able to best convince other local leaders of the necessity and value of federalism for good local governance and development. More importantly, this is a time in the federalist cause to bring to awareness the value of genuine local autonomy. These local leaders and their successes are the best argument for the strengthening of local autonomy and consequently for federalization. If they are not convinced to espouse the cause of the federalists, then the federalists may have no basis for their cause.

Montiel in her study of the Malaysian shift to federalism has these very valuable insights that are worth quoting regarding the groundwork necessary to realize the federal shift:

Two forceful stages shape the human terrain of federation: transition to and maintenance of federalism. The Philippines may need to attend to transition requirements first. Transition politics includes: (a) key players who will prepare the human field for transition—paper work, private and public political diplomacies, concessions and negotiations among interest blocs (b) mobilizing international support and minimizing resistance—especially in the context of the new global configuration of Western vs. Muslim/Arab conflict (c) mobilizing Filipino support and minimizing resistance (d) dealing with local interests and fears among both the center and periphery groups (e) inserting the federation process within the political script that contemporary Philippine politics provides in the coming years—electoral exercises, regional issues, personal and group ambitions of local players (f) preparing development funds and the appropriate utilization and delivery of such funds for confidence building during the federation process.¹⁸⁰

This shows in no uncertain terms that the shift requires the cooperation of national and local political leaders and civil society leaders. Much diplomacy and negotiation must be done to ensure that stakeholders are not too threatened to block the process and that supporters understand the broader agenda of good governance and just development that transcends their own narrow interests for federalism. Thus, the building of networks of such key players must be continued. These key players will be the main negotiators and diplomats that will shepherd the regarding the process of implementation of the federal shift. The movement

¹⁸⁰ Cristina Jayme Montiel, *The Power Terrain of Transitioning to Federalism: Can the Philippines Learn from Malaysia's Experience? Political Psychology of Transitioning to Federalism in the Philippines*, (Quezon City: CMFP, CAPP-SIAD, ECPG. 2004), 3-4.

must be sure that they are allied with these potential change managers and peacemakers. They must be sure to be allied with key policy makers that will push for the necessary reforms when the nation is ripe. However, before the time for federalization is ripe, until the groundswell from below has risen, they must be enlisted as partners in the reform of local autonomy. We must be careful about choosing our allies especially in the present regime because the president and her allies will take every opportunity to use any constitutional reform movement to consolidate power and silence any opposition.

From the outcome of this research, it seems that it is not the time to push for a federal Philippines, nor will it be any time soon. Selling federalism should not even be the focus of the campaigns in the next three years at least. This is because of the present administration and its allies that dominate the political scene, but more importantly because if we push for a federal Philippines today, we are only facing greater chaos and hardship. After 15 years, local autonomy is clearly working but not yet according to the depth and breadth of its potential. Some will say that this is because local governments are not autonomous enough and federalism will fix that. But to all indications, federal autonomy will only benefit very few, well established regions. For most, it will only cause chaos because the division into states will be artificial, most local government units lack the capacity for revenue generation and development planning and management, and many areas are far from prepared to have an active citizenry to engage local government. Federal autonomy any time soon will only condemn most local governments to languish in underdevelopment and bad governance. It may even spell the end of local democracy. The first task is to make local governance work and stabilize beyond the experimental state before we push it to its next level. Perhaps some will argue that this is overly cautious, but such a change of form of government without any clear basis in experience and without any clear support from the political culture is bound to fail.