

KUSOG MINDANAW

2019 CONFERENCE REPORT

**Federalism,
Bangsamoro,
Security &
Martial Law**



INSTITUTE FOR
AUTONOMY AND
GOVERNANCE



KONRAD
ADENAUER
STIFTUNG





Established in 2001, the Institute for Autonomy and Governance seeks to provide research, training and technical assistance to promote meaningful autonomy and governance in the southern Philippines.

This publication is made possible through the grant of the Konrad-Adenauer-Stiftung. KAS is in 5th floor, Cambridge Center Building, 109 Tordesillas corner Gallardo Street, Salcedo Village, Makati City, Metro Manila, Philippines. Telephone: 894-3737.

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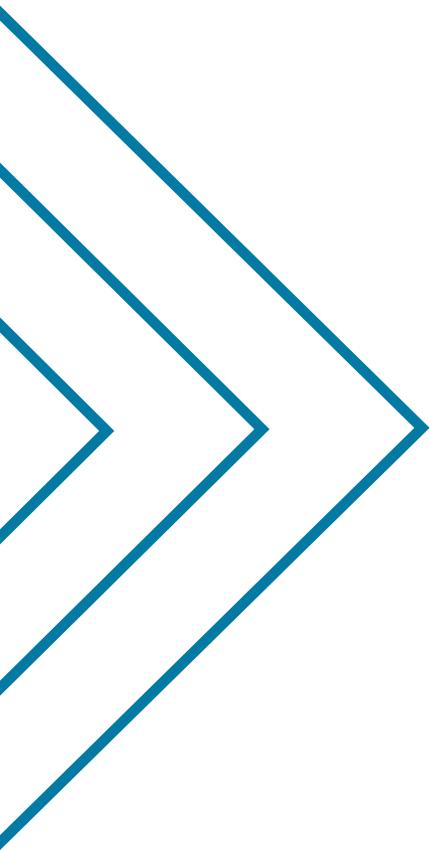
**Federalism,
Bangsamoro,
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Martial Law**





Kusog Mindanaw is a platform of dialogue among Mindanao leaders and thinkers since 1994. It has advocated issues to benefit the region, including an equitable share in the national budget and representation in the national government, good governance, inclusive growth, peace and development. IAG is the secretariat of Kusog Mindanaw.





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IAG continues to provide platforms in our common search for genuine autonomy and governance.

Editor: Dean Benny Bacani
Associate Editor: Ramie Toledo
Lay-out Artist: Jazz Cuaresma

Printed in Cotabato City

ISSN: 2243-8165-19-27

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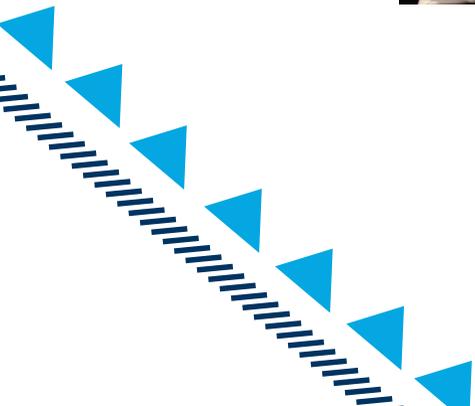
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Presented by the Institute for Autonomy and Governance (IAG) in partnership with the International Institute for Democracy and Electoral Assistance (IDEA) and with support from Konrad Adenauer Stiftung Philippines, Kusog Mindanaw 2019 Conference drew around 100 participants from government, business, academe, civil society, security and religious sectors at the Marco Polo Hotel in Davao City on July 10-11 to discuss this year's agenda: "Federalism, Bangsamoro, Security and Martial Law". This report outlines the proceedings of the conference.





“ I commend the annual Kusog Mindanaw for sustaining its role as a platform for civil society organizations, academics, indigenous peoples, religious leaders and stakeholders by enabling them to conduct dialogue on the issues pertaining to the development of Mindanao.

The Konrad Adenauer Stiftung (KAS) considers itself a friend of Mindanao as shown for the past 60 years of its work in the Philippines. I would like to emphasize that KAS does not dictate other countries on what to do but help them undertake efforts to reach a decision, a philosophy they apply to around a hundred countries where the foundation has presence.

Political and economic developments in Mindanao are beneficial not only to Mindanao but the whole country and the ASEAN region as well.

Dialogue will continue to play a significant role as Mindanao is currently in its transition period. I believe freedom, democracy, peace and inclusive development are the pillars of this future.”

Dr. Stefan Jost

Konrad Adenauer Stiftung (KAS)
Country Representative



Daring to Dream for Peace and Posterity in Southern Philippines

Opening message of Fr. Eliseo Mercado Jr., Chairman of Kusog Mindanaw

A year ago, at our Kusog Mindanaw Conference, we grappled with three concrete and pressing issues: First was amending the Constitution to pave the way for the shift from unitary system to federal form of government; second on the Bangsamoro Autonomous Region in Muslim Mindanao or RA 11054; and the third was the issue of security and martial law in Mindanao since May 2017.

The first issue remains the pending agenda of President Duterte's administration. The second is now in transition phase towards fully establishing the BARMM in May 2022. The third remains a major concern, especially after the human and car bomb in Lamitan City, the suicide bombing in Jolo Cathedral; and the latest, the suicide bombing also directed to the AFP Camp in Indanan, Sulu. While all the bombing and the destruction of Marawi occurred within the confines of former ARMM – now BARMM, martial law is in operation for the entirety of Mindanao.

PRRD has delivered on his commitment to sincerely deal with Mindanao issue, that is, to a just and peaceful political settlement that is inclusive of all – Lumads, Bangsamoro and Christians.

The second issue remains ambiguous and still needing further discussion and refinement to establish a national consensus to revise the 1987 Constitution and move to federalism. In the absence of clear direction and consensus on the type of Federalism, people are beginning to contemplate a sort of transition by way of amending rather than revising the Constitution and allow first genuine political reforms like full devolution of powers to LGUs and Regions, political party reforms that include purification of the party list system that represents truly marginal and vulnerable sectors and electoral reforms that apportion true representation and funding of political campaigns.

It is in this context that while looking for an inspiration to open this year conference of Kusog Mindanao, I came upon with Dr. Martin Luther King's famous "I Have a Dream". When I was younger, much younger and many years ago, that same masterpiece had inspired me to go his way and dare dream for Mindanao.

With some modifications in the original "I Have a Dream", I offer the short piece below for reflection...

I dream of a prosperous and peaceful Mindanao where all the inhabitants feel safe and secure and there is no more war and fear.

I dare to dream of Mindanao where the majority of people want to live together, to co-exist, perhaps initially uncomfortably but open to learn how to live together as common stakeholders of this land.

I remain convinced that God creates all in love, that love is natural in our nature, and it is in fact hate and mistrust and conflict that are unnatural.

And if we have been taught hatred, we can 'un-teach' hatred and replace it with an inclusive love. Our hearts are big enough for all - Lumads, Bangsamoro and Christians.

Martin Luther King taught us that we have a choice: nonviolent coexistence or violent co-annihilation. We have gone down the path of attempting to violently annihilate one another, and it has gotten us nothing but this vortex of pain and destruction. It is time to try the higher path of nonviolent coexistence, illuminated by love.

I dream of a day when our children, Indigenous children, Moro children and Christian children, go to school together, live in the same communities, and work the same fields together and are empowered to chart our destiny as a community within the community of nations.

That day is possible, and our coexistence is possible and our self-determination of our destiny is possible. We dare each one to rise above our own worst fears, and reach out to others who wish to coexist with us. Dr. King was right: we are all bound up in an inescapable network of mutuality.

Martin Buber was right: we achieve our full humanity when the “I” is projected into the “Thou”. Jesus and Muhammad (peace upon them) were right: that which we do to the least of humanity we do to one another.

Is convergence of the dreams of multiple communities in southern Philippines possible? Is it an illusion to work together as partners to realize all our dreams, not one at the expense of another? It is to that common humanity that we appeal. And may the path to Truth and Reconciliation begin with each of us, today as we face the new beginning in shaping a prosperous and peaceful Mindanao.

Padayon, Kusog Mindanaw.



Fr. Eliseo Mercado, Jr., OMI
Chairman
Kusog Mindanaw



FEDERALISM AS A MINDANAO AGENDA

First Session

Keynote Speaker

Undersecretary Jonathan Malaya

Department of Interior and Local Government

Panelists

Robert Maulana Alonto

*BTC Commissioner and Negotiator
for the Moro Islamic Liberation Front*

Atty. Randolph Parcasio

*Consultative Committee
to Review the 1987 Constitution*

Lito Monico Lorenzana

*Centrist Democratic Party
of the Philippines*

Atty. Antonio Arellano

*Consultative Committee
to Review the 1987 Constitution*

Moderator:

Charlito Manlupig, *Balay Mindanaw*

Federalism As A Mindanao Agenda

KEYNOTE SPEECH



Undersecretary Jonathan Malaya
Department of Interior and Local Government

Maayong buntag ninyong tanan!

I am very glad to be with you today here in the glorious and blessed land of Mindanao and here in Davao, the home city of our beloved President Rodrigo Roa Duterte.

I am pleased to speak on behalf of DILG Secretary Eduardo Año about federalism as a Mindanao agenda for today's first session of the Mindanaw Conference 2019.

Let me first thank the Konrad Adenauer Stiftung and Institute for Autonomy and Governance for organizing this two-day conference with the theme "Mindanao 2019: Federalism, Bangsamoro, Security and Martial Law."

Thank you for this chance for government, private sector, religious, and civil society leaders of Mindanao to come together to bridge understanding and explore collaboration on issues affecting you Mindanaoan people.

Sa mga pagkakataong ito natin natutupad ang ating karapatan gayundin ang ating responsibilidad bilang mamamayang Pilipino at mga lider sa ating sari-sariling kapasidad na maging maalam sa mga isyung nakakaapekto sa inyo at sa lipunan at maipahayag ang inyong

panig at opinyon ukol sa mga ito.

This two-day Mindanao Conference is a demonstration of the living and active democracy that we are blessed with.

This is a way for us to practice participatory governance as both a right and a responsibility.

Conferences like this is an opportunity for you leaders of various sectors in Mindanao to build a consensus and collaborate on doable courses of action for the common good.

You are all stakeholders in keeping Mindanao peaceful, progressive, and resilient. It is a shared responsibility across the public and private sectors.

Federalism as a Mindanao Agenda

As you know, Mindanao and the Bangsamoro development is one of the main reasons that President Duterte pushes for federalism.

The President as a Mindanaoan himself knows the benefits of shifting to a federal form of government. He knows and sees the need to change the system of government from being over- centralized to a system that shares more power and resources to the region.

Kay unsa man gyud ang benepisyo nga makuha ninyong mga taga Mindanao sa pederalismo? What's in it for you Mindanaoans to adopt federalism?

For one, Mindanao will surely have greater influence and control in running and benefitting from its development.

There will be a guaranteed representation of Mindanaoan or Bangsamoro senators through mechanism of regional representation in federalism.

That way, you can better mainstream Mindanaoan economic and policy interests.

Also, the peace being gained here will also be even more sustained by institutionalizing regional autonomy.

The country needs a major constitutional reform to address social ills like rampant corruption and widespread poverty among Filipinos.

Indeed, there is so much to gain in federalism. The Cabinet-level Inter-Agency Task Force or IATF on the Federalism and Constitutional Reform is being led by DILG Secretary Año and the IATF is working double time to inform the people of the merits of Federalism once the new Congress opens its session on July 22.

Our studies show that the more people know about the new system, the more they support it.

On this note, I call on you in the government, private sector, and civil society for us to be one in surpassing the greatest challenge and roadblock of explaining to the people the positive impact of Federalism on the nation.

The IATF is now completing the review of the 1987 Constitution and rolling out an intensified information campaign to generate more knowledge and understanding of Federalism among Filipinos.

Magtulongan po tayong sa ating sama-samang pagsusumikap na tunay at lubos na maunawaan kung ano ang pederalismo at ang pakinabang nito sa atin.

Upcoming activities in Mindanao

The DILG is leading various campaigns on Federalism to be conducted in all regions including here in Mindanao.

Starting August to November, there will be federalism campaign with partner institutions such as the Liga ng Mga Barangay, Philippine Councilor's League and other leagues of government, and the Sangguniang Kabataan or SK Presidents.

There will also be CSOs Coalition Building and Partnership Forum; a Federalism Youth Congress for the youth sectors; and 81 Provincial Road Shows to be conducted in all provinces.

Again, I urge you as leaders of various sectors here in Mindanao to be among the Filipinos who have an informed opinion about Federalism. Be the light to enlighten your families, workmates, organizations, colleagues, church, and friends about Federalism.

Mahalaga ang inyong boses sa ating sama-samang paghuhubog ng pederalismong yayakapin ng ating Sambayanan.

In federalism, Mindanao will surely be able to have greater autonomy in reaching its potential in transforming from being called as a Land of Promise for a long time now to a Land of Fulfilled Promise.

Muli, sa ngalan ni DILG Secretary Año, daghang salamat ninyong tanan!

Federalism: The Mindanao Agenda from a Moro Viewpoint



Robert Maulana Alonto
BTC Commissioner and Negotiator
for the Moro Islamic Liberation Front

After the 16th Congress failed to pass the Bangsamoro Basic Law (BBL) that was drafted by the first Bangsamoro Transition Commission (BTC) based on the MILF-GRP Comprehensive Agreement on the Bangsamoro (CAB) of March 2014, there was an air of uncertainty, or to put it more pointedly, pervasive consternation, that took hold not only of the MILF Peace Negotiating Panel but the entire rank and file of the MILF as well as the Bangsamoro masses.

In retrospect, all hopes were then pinned on the passage of the BBL, which was the product of the 17-year peace negotiations between the MILF and the GRP - 3 years of which were held inside the country and 14 years of which were conducted abroad, specifically in Malaysia. The failure of the 16th Congress, thus, to pass the Bangsamoro Basic Law, as I was saying, brought us on the brink of hopelessness.

However, it was timely Congress closed when Presidential elections were about to be held in May 2016. And one of the Presidential candidates, Davao City Mayor Rodrigo Roa Duterte, took up federalism as one of his flagship platforms. He contended that federalism shall be the means to resolve the historical and current injustices heaped on the Bangsamoro people. Indeed, the words of Mayor Duterte resonated with us. For these historical injustices were borne by the Moro people during and after their

incorporation into the Philippine state without so much as a democratic plebiscitary process to acquire Moro consent and therefore legitimize said incorporation.

To digress a little bit, we, in the MILF, at that time maintained and strictly enforced the policy that was issued by the late MILF Chairman and Amirul Mujahideen, Sheikh Salamat Hashim (r) and was hitherto continued by his successor, Al Haj Murad Ebrahim, now the Chief Minister of the BARMM, that prohibited the MILF as a revolutionary organization from participating in Philippine electoral politics. This prohibition, nevertheless, did not preclude individual members or the mass supporters of the Front from exercising their right to vote for their candidate relatives or just any candidate of their choice provided they did not carry the name of the MILF.

Suffice to say, Mayor Duterte's federalism platform appealed to many of us, especially to the young Moro intellectuals in Ranao and even to some Moro politicians who were frustrated by the turn of events in the 16th Congress. Out of utter frustration, they have arrived at the conclusion based on experience from the 1976 Tripoli Agreement to the present, that under the Philippine unitary state system, Congress, invariably invoking constitutional compliance will never allow full political expression of the right of the Moro for internal self-determination. That is, unless of course a new constitution that ushers in a new system, such as federalism, will accommodate said full expression of Moro right to internal self-determination not in terms of separatism or external self-determination - which had been shelved by the peace negotiations - but through a federal association with the rest of the country and the Manila government.

In other words, we found in the federalist proposition of Mayor Duterte the practical wisdom - call it *realpolitik* - that allowed us an alternative, the way out of the precarious impasse then created by the 16th Congress that was impeding the implementation of the peace agreement and, as

a result thereof, had upped the ante on the risk of unwanted war spawned by frustration and even desperation on the ground. Such desperation, needless to say, is the stuff that violent extremism is made of.

Hence, when Mayor Duterte finally threw his hat into the Presidential ring, we supported him because not only was he, or is he, the only Presidential candidate with a Moro blood from Mindanao but because we felt obligated and committed to rally behind his federalist platform and constitutional change for the purpose of the aforesaid.

On May 19, 2016, about a week after he was elected President, a select group from the MILF Central Committee headed by Al Haj Murad, held a close-door meeting with then President-elect Rodrigo Roa Duterte at Elena Hotel here in Davao City. I was with the group. This was the first time that the MILF leadership officially had a post-election meeting with the President and this was facilitated per instruction of Mayor Duterte by my late cousin, Datu Abul Khayr Alonto, former MNLF Vice-Chairman, himself a federalist, an advocate of the BBL, and a staunch supporter of Mayor Duterte. Briefly, President-elect Mayor Duterte laid bare to the group his proposal to change the 1987 constitution and reconfigure the country's state system from unitary to federalism. A new constitution, he told us, will accommodate the unadulterated BBL, which, he further suggested, can be the template for the basic law of the other component states of the envisaged Federal Republic of the Philippines. Moreover, he also proposed that he would like the MILF and MNLF to come together, and with his backing and full support campaign for federalism throughout the country. With no change in the unitary constitution, he emphatically pointed out that the BBL even if he were the sitting President will not escape alteration and revision by the new 17th Congress to make it conform to the 1987 unitary state constitution. Thus, he averred, there is imperativeness in changing the constitution that would replace the unitary state, which is the institutional legacy of foreign colonialism, to a federal state to correct historical and current injustices in Moroland through Moro home rule and put closure to the never-ending cycle of

violent conflict and war in Mindanao while, at the same time, granting the same right to home rule to the other peoples of this country. In a nutshell, on a larger picture, it was a 'happy for all' proposition.

The President-elect's proposal was not only sound - and visionary to be sure - but was the most practical political formula accompanied by a roadmap in light of the ill-fated BBL in the 16th Congress, not to mention the earlier MOA-AD debacle in 2008. It offered closure to the Bangsamoro Question that remains a 'question' under all Philippine Presidents from Marcos to the present because of the perennial challenge of 'constitutionality' in the context of the unitary state.

Unfortunately, though, what he proposed to us on that particular night of Ramadhan 2016 did not push through. Voices from within the Moro movement took a contrary viewpoint and that was to prioritize the passage of the BBL before federalism. Consequently, the BBL went through the same process as it did in the 16th Congress and as a result, what we have is the Bangsamoro Organic Law (BOL) wherein provisions of strategic import that have clearly deviated from the signed Comprehensive Agreement on the Bangsamoro (CAB) had been installed just to pass the litmus test of constitutionality. Before I conclude, let me just say a few words on the BBL that was conceived within the framework of the CAB. The architecture of the BBL was designed as a federacy. Why? Because it has to be noted that the Bangsamoro is sui generis on account of its history, identity, culture, religion and unrelenting struggle for self-determination that make it distinct from the rest of the country. Very briefly, federacy, according to its standard definition, is a political relationship between a larger state entity and a smaller political entity in which the latter exercises full self-rule within the larger state. Federalism refers to the whole state being divided into component sub-states, or as a result of the political union of erstwhile independent or semi-independent states. But in federacy this relationship is confined to the mother state and the smaller political entity in which the former concedes some of its sovereignty to the smaller entity to allow it to

exercise internal sovereignty, call it full political autonomy, in the form of home rule within its territory. Stefan Wolff, the renowned German political scientist, specialist in international security and prevention of ethnic conflicts, posits that federacy or autonomy 'normally enjoys similar powers and constitutional protection as federal entities, but is distinct in that it does not necessitate territorial subdivisions across the entire state territory. Autonomy/federacy is normally otherwise a feature of unitary states.' (cf. also Weller and Woff 2005, Wolff 2010) This political arrangement between the mother state and the smaller political entity is called asymmetrical relationship because such a relationship does not apply to the other regions of the larger state. Federacy, thus, conforms with the shared sovereignty paradigm, which is often featured in conflict resolutions worldwide, though not on a uniform basis, as a remedy to sovereignty-based conflicts.

The FAB followed this paradigm of shared sovereignty approach to a sovereignty-based conflict in a unitary state setting. A sovereignty-based conflict which is what the historical injustice is all about and therefore what the Bangsamoro Question is all about.

Yet, while other countries have applied the shared sovereignty formula to resolve their sovereignty-based conflicts, like Finland vis-à-vis Åland or Antigua vis-à-vis Barbuda, to name but a few, Philippine unitary state politicians, consistently invoking the unitary constitution as if it were the immutable Bible, cannot accept such a political solution even if it is in the form of a signed political peace agreement. This is what happened to the MOA-AD, the FAB-compliant BBL and to all the previous proposals-cum-agreements for Moro self-rule that were forged on the negotiating table. We are faced with the reality, thus, that the present Philippine unitary state cannot and will not grant genuine political autonomy or federacy and shared internal sovereignty to the Bangsamoro. The most that it can concede is an administrative region with pseudo-territorial autonomy under the control or supervision of the central government.

In conclusion, therefore, given the urgency to upgrade the quality as well as flexibility of the BOL to meet the emerging problems of Moro ethnicities, and to resolve this conflict in Mindanao and Sulu in earnest, pre-empt the proliferous growth of violent extremism, as well as breakup the monopoly and concentration of powers in the hands of the central government and share power to the people, the only option is to federalize the country by means of constitutional change. With the present implementation of the BOL, opening the constitution for amendments will be a strategic opportunity for the Bangsamoro to strengthen what they have gained in the peace negotiations and ensure that justice, genuine peace and development can be achieved in Mindanao. Though federalism has been removed recently from the President's agenda, or so it seems; and, to be frank, is not the utopian panacea to all the ills of the country, we believe it is the right start and the right track for moving this country forward to discernable and enduring peace, social, political and economic justice, development and human security through a democratic political union and parity of esteem among its diverse nations you call regions.

Federalism in its Death Throes?



Lito Monico Lorenzana
Centrist Democratic Party of the Philippines

The President's pronouncements that federalism is dead is both true and false. It could be dead in the sense that DU30 may no longer spend his political capital steering its complexities through his remaining three years. But if the 1987 Constitution could still be revised, as he has implied, then federalism could still be realized sometime in the future – but without DU30.

It is a pity that the President has abandoned this campaign promise. Such are the vagaries of politics and the impulses of traditional politicians. The proposition that federalism is not ripe because surveys show it remains unpopular and Filipinos don't understand the concept is simply inane. The President knew from the very start that this complex idea needed to be explained to the public well as this was his main advocacy – the need for systemic change in governance, decentralizing political power and resources to the regions and bring the decision-making process to the lower echelons of government. And he staked his reputation and presidency on this. Having built a large constituency on federalism and having won the presidency as a result, he now has seemingly given up. Very sad! He failed to translate the idea of federalism beyond the sloganeering and could not inspire his bureaucracy to reach out to the citizenry to paint an alternative to the presidential unitary system that has plagued Philippine society for generations. But perhaps, all is not lost.

It appears that remnants of his bureaucracy continue to push through with educating the constituency despite PRRD's declarations. The Department of the Interior and Local Government (DILG) tasked to shepherd federalism through the local governments and the masses has declared that it can still be done and has relaunched the campaign. This is a brave thing to do and the DILG could pull it off.

For what it's worth, the advocates of federalism, including the Centrist Democrats (CD), of whom the author is a prime mover, has made it a lifelong commitment to push for systemic change. Oddly, the CD has always maintained that federalism will come in due time only after certain preconditions are met. And these must include revisions to the 1987 Constitution. All these have been disseminated to Congress, to Malacañang and to the public through the Centrist Proposals. I am reprinting in an abridged format the document (please access www.cdpi.asia and download Centrist Proposals).

When this columnist was asked to present the Centrist Proposals to the Malacañang press corps in September 6 2017, I suspect a copy found its way into the hands of the Deegong, and now I'm sure he read it and even perhaps internalized some facets of the proposals. The Centrist Proposals are unequivocal that federalism will take a little more time than DU30's term allows and even beyond that of his immediate successor. But the ground work has to be laid down now – at the onset of the second half of his term through constitutional reform.

Grudgingly the President may have agreed with the Centrist position that federalism is a drastic idea whose time has come, yet it has to be translated in a manner that will not cause too violent a rupture in the fragile relationship between the political leadership and the governed. Such relationship has been a consequence of generations-long practice by traditional politicians to subvert the will of the citizenry every election using the proverbial “guns,

goons and gold.” And to sustain this hold on power, political dynasties proliferated and an unholy alliance with the oligarchy was inevitably forged. This is a culture that grew out of the petri dish of the presidential unitary system – our current governmental system protected by the 1987 Constitution.

Indeed, every election cycle the governed are free only to elect those selected by this unnatural partnership between the tradpols and the oligarchs. This practice of selecting a menu of candidates for the country’s leadership is the biggest anomaly and deficit of a democratic state that we claim the Philippines to be. Whichever side wins, traditional politicians and the oligarchy remain at the top and in control. Political power shifts only between the two faces of the same coin. DU30 perhaps may be the only leader who broke away from this prototype.

Generations and decades of this dysfunctional symbiosis between the traditional politicians and the oligarchy have entrenched systemic practices perverting good governance. And the President steeped in the lore of traditional politics himself understands that the legacy he is now crafting will result in the ultimate destruction of the very system that allowed him to survive and flourish in the first place. He said so himself. And this is a noble act. He understands too that to destroy the old and usher in a new system of governance, he needed to apply the very tools of that system. This is his paradox. Assault the ramparts of traditional politics with the apparatus and the demeanor of a traditional politician. To make a good omelet, he needed to break a few eggs. But this has to be calibrated. Don’t go yet for the big enchilada – federalism. Go for the doable, the currently possible which the CD have always maintained from the very start is the right path to eventual change. There are preconditions to federalism. This will be discussed in detail in a coming series of articles.

In essence, CD proposals seek first to erode the fabric underpinning the current presidential unitary system. Clarita Carlos, an eminent UP professor and author has detailed this in her book, *The Deficits of*

Democracy. Stark poverty, corruption, inefficiency and rent-seeking activities within government; the inaccessibility of the poor and the disadvantaged to a perverted justice system; and the general environment of malaise and a host of others are a systemic rot embedded in our type of government festering in the body politic.

These are the problems confronting our country today. The next articles in this column will lay down the doable parameters upon which the groundwork for federalism must be put in place. But first, the President needs the concurrence of the two houses of Congress.

Fortunately, the results of the midterm elections allowed him the opportunity to influence to some degree the two chambers of Congress from whence the legal framework for systemic changes must emanate. The Lower House may prove to be more malleable as the current fight for leadership are all headed by personalities who have displayed canine-like devotion to the Deegong. The Senate may be a little trickier as the term of many senators goes beyond his. And then there is the cliché that every senator once seated assumes an aura of self-importance and affectations of independence.

The agenda for systemic changes has a high probability of passage while we have a president endowed with tremendous political capital, however tainted and fractured it may be, and has the political will to act decisively. But this President's enormous political capital as in anything that is valuable is likewise fragile and could erode. Therefore, the need to act now and fast before his presidency descends into that "lame duck" period, a bane to the powerful who must adhere to legitimate constitutional constraints where political power becomes almost illusory.

Unitary presidential vs federal parliamentary

The Centrist Democrats (Centrists) are unequivocal that PRRD is the linchpin of a constitutional shift from unitary-presidential to parliamentary-federal, his original advocacy. But he may

have failed to comprehend that the federalization process may not be realized within his term of office. Also, he dropped the “parliamentary” adjunct after his much maligned “French model” didn’t wash. But he stuck to his overall nebulous idea of federalism; yet long on slogans but short on concepts.

This is understandable for an impatient and driven executive who has the misfortune of being surrounded by some senior political advisers whose appreciation of their jobs does not go beyond the level of sycophancy. This is partly the President’s fault as his stint as a superb local executive, an autodidact in the intricacies of national politics and international relations has confined his recruitment among a coterie of a prosaic circle of associates easily intimidated by a display of his alpha male attributes; thus, inhibiting good counsel.

Meanwhile, the Centrists which have been refining the idea of a shift to federal-parliamentary since the 2005 Consultative Commission (ConCom) of President GMA has produced the Centrist Proposals to revise the 1987 Constitution. This document has not been accorded due importance by the PRRD bureaucracy, preferring instead to divine the Deegong’s perorations and perceptions inaccurately, thus failing to inform, educate and precipitate debate among the masses. The presidential backtracking therefore is taken by the Centrists as a challenge to push through its original vision: a shift from unitary-presidential to parliamentary-federal systems.

For a short tutorial, what we have now is a unitary-presidential form of government where power and authority are concentrated in the national central government (the Center) making the same inordinately dominant. The regional and local government units (LGUs) are subordinate and exercise only such powers allowed to them by the Center, headed by the President. This subservience stifles local initiative and resourcefulness, perpetuates dependency and reinforces traditional political patronage relationships.

In theory, executive power is vested in the president who is the head of government and the state; legislative power is entrusted to a bicameral congress consisting of the senate and the house of representatives; and judicial power is conferred upon a supreme court and in the lower courts created by law. This is the classic separation of the three branches of government handed down to us by our American colonizers. But in practice, our present system is characterized by intermittent gridlock between the senate and the presidency, a clash of super-egos, a systemic anomaly.

One source of “ingrained corruption” is the very expensive nationwide elections where the president, vice president and senators are susceptible to the intrusion of the moneyed class and the oligarchy to finance elections. Such an environment enforces a malicious quid pro quo allowing office holders to recoup election expenses through rent-seeking activities or even outright regulatory capture.

Planning and programs for the communities are characterized by a top-to-bottom approach divorced from the realities on the ground; and impairing gravely the decision-making process. Critical revenues directed centrally and collected locally are invariably expensed from the top; detached from the actual needs below.

The Centrists want an alternative, a federal form of government, a system with clear separation of powers and authority between national government (federal) and the regional or local governments (states).

The federal government aims to establish a democratic system that recognizes the rights of each region to govern itself and pursue its own agenda of progress and development consistent with the national interest. It will run its own affairs and decide its own destiny without interference from the national government. Federalism emphasizes regional and local self-rule and self-reliance in governance, based on the principle of subsidiarity. This means decisions should be made at the lowest level where

problems are best solved.

While regional or state governments are designed to be autonomous in state and local affairs, the federal government helps the various regions and states, especially the less developed ones – as in all federal systems in the world.

Federalism emphasizes respect for the socio-cultural diversity of the people and seeks solidarity and cooperation in governance, nation-building, modernization and development. The Constitution will define the powers that may either be exclusive to the federal government, to the states or shared. Universally accepted are federal powers on defense, foreign affairs, currency and coinage and customs and trade.

The Centrists also want to replace our presidential form with a parliamentary government where the legislative and executive powers are fused and vested on a unicameral (or bicameral) parliament; and the “head of government” is the prime minister with his cabinet recruited from among the members of parliament. The president is the “head of state” and is elected from among the members of parliament; and upon taking his oath he ceases to be a member of parliament and any political party.

A unicameral parliament is composed of elected members from the parliamentary districts, plus those chosen on the basis of “proportional representation” by the political party according to the votes each party obtained in the preceding elections. The members chosen by the political parties (party list) shall constitute 30 percent of the total number of members of parliament. The political parties shall ensure that in the 30 percent “party list,” the labor, peasant, urban poor, veterans, indigenous people communities, women, youth, differently abled, except the religious sector, are properly represented. The current “party list” system is a perversion of the German model from whom it was copied. As practiced now, there is no clear representation of the less privileged. This should be

abolished.

A parliamentary government is also called “party government” because of the pivotal role of political parties in parliamentary elections, governance and public administration. Our political parties are personal factions and alliances of politicians, united mainly for elections and patronage; they have no mass memberships and no sustainable and exclusive serious platform of government that differentiate them from one another. They are not responsible and accountable for their performance in and out of office.

For these reasons, they don’t have loyalties to their parties and migrate to the political party of the winning president. This spectacle is known as “political butterfly.” As proposed, any elective official who leaves his political party before the end of the term shall forfeit his seat and will be replaced by his political party.

A mechanism to replace a prime minister is for parliament to withdraw its confidence and by electing a successor by a majority vote of all its members. This “vote of no confidence” is a much easier process of replacing a head of government in a parliamentary system than the current impeachment process of replacing a president.

All these need constitutional revisions and may not be accomplished within the remaining term of DU30. But there are critical reforms which need to be done prior to a shift away from unitary-presidential to federalism with a parliamentary form of government.

Preconditions to federalism

The shift towards federalism will be realized only when certain preconditions are met prior to the constitutional revisions. And the speed with which these preconditions are put in place will depend much on the application by DU30 of his vaunted political will and the

influence he wields with the two houses of Congress. The remaining three years of DU30's term provide ample time provided Congress acts now.

The four preconditions are: 1) reform the political party system; 2) initiate electoral reforms; 3) pass a universal freedom of information law; and 4) enact a law banning political dynasties.

The first precondition is the total overhaul of our political party system. Whether the Philippines will remain a presidential-unitary government or shifts to a parliamentary-federal republic, political parties are indispensable. They are primarily formed not only to contest elections and hold power in government, but they must possess an ideological core, aggregating the needs and aspirations of a diverse segment of our society. A party must write and adhere to a unique platform or vision of governance with a set of principles and strategies. This vision defines the ideological identity of that party, and members are expected to go by these principles and strategies. Voters must be given a choice as to who must govern them based on what candidates and their political parties stand for. Unlike today, personalities are selected by the tradpols and financiers with the connivance of the oligarchy and lodged in all political parties and presented to the voters to elect from. Popularity, name recall and "winnability" have primacy over principles, ideals and even decency and personal integrity. Whoever wins therefore primarily serves the interest of these few.

Also, we have a political phenomenon that occurs every presidential election cycle – the lemming-like migration of political parties to the winning President's brand. This "political butterfly" or the "balimbing" spectacle has been the norm in the modern Philippine political scene, stunting the growth of principled and ideologically anchored political parties. This prevents the development of clear party platforms that are the lifeblood of a vibrant democracy, giving the voters choices as to whom to gift the privilege of governance.

The badly needed political party reforms seek to institutionalize political parties based on the above criteria and norms and which will:

1. Penalize “turncoatism” (or the switching of political parties, “balimbing” or “political butterfly”);
2. Enforce transparent mechanisms providing and regulating campaign financing to eliminate graft, corruption and patronage (corporate and individual contributions); and through
3. State subsidy that will professionalize political parties by supporting their political education and campaign initiatives.

We have currently pending bills from the last few congresses. The Political Party Development and Financing Act (SB 3214, and HB 6551, HB 49, 403 and 159) have been languishing and were archived by the PNoy administration. The current congress can refile these bills.

The second precondition is to initiate electoral reforms that will put in place a system to prevent the perversion of the will of the populace (i.e. rampant vote-buying, intimidating voters, etc.). One of the greatest evils in our democracy is the dominance of the traditional politicians allied to the oligarchy. They rear their heads every election cycle taking advantage of a legal though weak electoral process. The Comelec must be reformed to take on earnestly its sacrosanct role as the “premier guardian of the Philippine ballot,” actively filtering the qualifications and credentials of candidates for public office and the nation’s political leadership, and remove all quasi-judicial work from the Comelec and transfer electoral contests to the judiciary. Electoral reforms in tandem with political party reforms will substantially diminish the oligarchy’s influence in the election process.

The third precondition is the passage of a freedom of information law (FOI) to enforce transparency in all transactions in government

(not only through an executive order). This law will allow public access to information (regardless of physical form or format) pertaining to official acts, transactions or decisions, government research data used as a basis for policy development; and compel transparency and accountability in public service by requiring financial information such as SALNs of public officials and civil servants to be posted in government offices or websites. And even the Bank Secrecy Law and the Anti-Money Laundering Act (AMLA) should be amended to allow legitimate agencies to compel public officials and civil servants to show their bank accounts in the Philippines and abroad.

The fourth precondition is to enact a law banning political dynasties as mandated by the 1987 Constitution. The immediate passage of an anti-dynasty law will level the playing field and provide equal opportunities to other emerging capable leaders to serve; practice transparent nomination among political parties with candidates willing to contest in the local elections; and most especially, ban the concentration of power to a few dynastic families in the barangay, local and national positions.

These four preconditions will not require the revision of the 1987 Constitution unless Congress, 80 percent of whose members are scions of political dynasties, will again shamelessly refuse to pass an enabling law. Then what should be written during the revision of the 1987 Constitution must be self-executory.

If these preconditions are not put in place and we proceed with a transition to a federal government, then we may have a government much worse than what we have now. Consider the scenarios:

- a. We will have allowed the same personalities and political parties controlled by dynasties into the federal states, each establishing their fiefdoms, possibly with their own private armies and untrammled looting of the States' resources.

b. Control by the local elite and oligarchy of the economy and the political structure will result in regulatory capture of government agencies. This will all be fortified by a patronage system flourishing within a much smaller State area and population.

Once these laws are enacted, we should then proceed to revise the 1987 Constitution toward federalism (with a presidential or parliamentary government). These issues have in fact been debated ad nauseam by Congress for more than a decade. The appearance of the Digong in the political scene could be the game changer. Never was there a Philippine President who so displayed political impudence as to ram through his agenda down the throats, first of the oligarchy (witness the Ongpin and Prieto business shenanigans), then the inept opposition (Otso Diretso debacle), yet managed to maintain an 80-percent approval rating.

This maverick leader recognizes his political clout. Witness the recent fight for the House speakership where the three leading contenders were all over each other to win his imprimatur. And the public display of canine devotion, kowtowing to the President, with the anointed one bowing publicly to kiss his hand, presages an easy passage of these preconditions into law.

These laws are sine qua non before the shift to federalism (presidential or parliamentary).

Framework for federalism

Once in place, a framework for federalism can be written in the revised Constitution as a constitutional pathway even beyond the term of President Duterte. Federalism as a solution for the systemic deficiencies in the country requires the collective energy of its adherents and the commitment of the bureaucracy to inform and educate the great masses of our people on its nuances and advantages. The messaging should give substance to what was

once a formidable slogan cloaking it with a pragmatic step-by-step process.

To reiterate, federalism is the type of government where power and authority are not centralized but shared between the national central government (federal) and the regional governments (states). This system allows states to develop themselves the way they see fit based on their culture and specific conditions. Some areas of public life are under the control of the federal government (security and defense, money and coinage, diplomacy and foreign affairs, etc.). Some are left to the states (education, revenue generation and taxation, franchises licenses, and permits, etc.), and some are shared (raising taxes, borrowing money, criminal justice, etc.). These are all to be guaranteed in the Constitution.

Federalism is a multi-step process that must be clearly written in the Constitution. We can't just legislate federalism or just write in the Constitution that we are a de facto Federal Republic tomorrow. What can be written is the framework, the road map as it were to attain the Philippine Federal Republic; beyond the term of DU30 and even in the next decade or so. So even with the Deegong gone from the political scene, we will have planted today the seeds of our Federal Republic.

Creation of autonomous territories

The Centrist proposal's version has its roots on the concept of autonomy, subsidiarity and self-determination. Initially, we allow the existing provinces and highly urbanized component cities to evolve first to an autonomous territory with the decision to group themselves coming from the grassroots level (pinatubo). "Self-determination" is central to this decision. In other words, the citizens within a contiguous territory, with common language and culture must decide in a referendum that they become completely autonomous. Petitions are then passed by their local legislative assemblies.

Once a referendum is passed, within a year, parliament (or Congress)

must enact an organic law defining the autonomous territory's land area, powers, obligations and sources of revenues (taxes), mindful of the components' economic viability. The autonomous territory then writes its own constitution to be approved in a plebiscite by its own people.

The Philippines may eventually end up with from eight to 12 federal states. Parliament can't impose on the current provinces and cities but can give general guidelines on how states are formed based on criteria to be embedded in the revised Constitution (i.e. common culture, language, custom, contiguous areas and economic viability). Therefore, it is necessary that these contiguous provinces and cities need to negotiate among each other.

If three-fifths (60 percent) of the provinces and component cities of the Philippines become autonomous territories, then the Federal Republic of the Philippines is created.

Congress recently enacted into law RA 11054, an Organic Act creating the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). The BARMM also adopted a parliamentary form where the executive and legislative bodies are fused. It could be the template by which autonomous territories can be created all over the country not by the sufferance of Congress but through the revisions of the 1987 Constitution.

Mode of changing Constitution

A critical consideration in the writing of the new constitution is the participation of Congress. Under the current 1987 Constitution only three modes are allowed: people's initiative (PI), constituent assembly (ConAss) and a constitutional convention (ConCon).

1. PI is eliminated as the constitutional changes being contemplated are not mere amendments but a revision of the 1987 Constitution.

2. ConAss will involve the members of Senate and Congress writing a constitution. With 80 percent of congressmen and senators members of political dynasties and allies of the oligarchy, the finished product will be highly flawed.

3. The third option therefore, ConCon, could be the better alternative, provided a combination of elected delegates is balanced with the appointed chosen delegates of the President.

Most of these elected delegates would be the moneyed few, members of political dynasties whose clans and family interest take precedence. The chosen appointed constitutional experts even from the marginalized sectors – who could never afford and win an electoral campaign, can counter and balance these dynasts – and give the presidential agenda a chance to be debated and pondered upon well.

Case for federal-parliamentary system

Empirical evidence shows how countries under the presidential system have serious problems of corruption, development and peace. Consider the following:

1. Nine out of 10 countries in the 2015 Transparency International Corruption index's most corrupt/least transparent countries are under a presidential system, with Iraq the lone exception that has a federal-parliamentary form.

2. And five of these are ranked the least peaceful nations in the world, according to the 2015 Global Peace Index (GPI).

3. Similarly, in nations with the highest Terrorism Index, more countries have a presidential form (Afghanistan, Nigeria, Syria, Yemen, Somalia, Libya, the Philippines) while the rest have parliamentary governments (Iraq, Pakistan and India).

With our unitary-presidential system, the Philippines ranks among these countries: Somalia, North Korea, Afghanistan, Sudan, South Sudan, Angola, Libya, Iraq, Venezuela and Guinea-Bissau; followed by Syria, Yemen, Central Africa Republic, Ukraine and Libya.

Least corrupt countries (the better ones)

In contrast, all of those in the top 16 “least corrupt” nations are under a parliamentary system, with the exception of the United States (presidential-federal); and these are also the 16 most prosperous nations in the world. They lead in curbing corruption and ranked high in human development in the 2015 UNDP human development index. These countries are Denmark, Finland, Sweden, New Zealand, Netherlands, Norway, Switzerland, Singapore, Canada, Germany, Ireland, the US, Iceland, Luxembourg, the UK and Australia.

Empirical evidence shows that a federal form is definitely better than a unitary system. But clearly it also suggests that a parliamentary system is superior to the presidential form in many criteria of government performance.

Technical Mechanism of Changing the 1987 Philippine Constitution and Mindanao Concerns of Consultative Committee Draft Federal Constitution



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Consultative Committee to Review
the 1987 Constitution

FIRST PART: TECHNICAL MECHANISM OF CHANGING THE 1987 PHILIPPINE CONSTITUTION

The Filipinos never had a constitution adopted under a democratic rule. The 1987 Constitution and all past Philippine Constitution were all written under abnormal times. The colonial Malolos Constitution and the 1935 Constitution were adopted when the Philippines were under the Spanish and American subjugation respectively, the 1973 Constitution when the country was under martial law, the 1986 Freedom Constitution and 1987 Constitution when the Philippines was under continuing revolutionary government and the constitution was written by a Constitutional Commission composed of individuals handpicked by the late Revolutionary President Corazon Aquino. The 1987 Constitution did not pass through the critical eye of the masses or any senate or congress because there was none. It was a logical consequence of the “EDSA REVOLUTION”, the cry then was “a vote for the 1987 Constitution was a vote for “Cory”.

It is only now that we have the chance to adopt a constitution under normal times when the only war we are facing is “war on drugs”. Ironically, now that democracy reigns and there is freedom, changing the constitution is rather more challenging given the pessimism

and opposition of those who have entrenched themselves in power and whose vested interest are threatened. But change is the law of nature. I like to believe that Filipinos want to move forward to remove obstacles to progress. Undoubtedly, in Mindanao, to rectify historical injustice, Federalism is a must.

Claro M. Recto said, *“I am not an idolater of Constitutions. I do not believe that once proclaimed, they should be forever carved on tablets of imperishable stone beyond the reach of impious hands. On the contrary, the people should be made to live with their Constitution, but the caprice of the powerful should not be confused with the anxieties, the longings, the wants and the will of the people.”*

The mechanism of changing the constitution as provided in the 1987 constitution consists of REVISION or AMENDMENT.

[a] *Revision* broadly implies a change that alters a basic principle in the Constitution, like altering the principle of separation of powers or the system of checks and balances. There is also revision when the change alters the substance entirety of the Constitution. Revision generally affects several provisions of the Constitution.

[b] *Amendment* broadly refers to a change that adds, reduces, deletes, without altering the basic principle involved. It generally affects only the specific provision being changed. [Lambino v. COMELEC, G.R. No. 1741453, October 25, 2006].

The Two-Tiered Process of Amending/Revising the Constitution:

1. Proposal. This refers to the adoption of the suggested change in the Constitution by the agency/authority having the power.
2. Ratification. The approval by the majority vote of the people of the proposed amendment/revision in a plebiscite called for the purpose.

The First Step: PROPOSAL

A change in the Constitution may be proposed by:

1. Congress;
2. A constitutional convention; or
3. The people, in the exercise of the power of initiative.

1. Proposal by Congress:

Art. XVII, Section 1. "Any amendment to, or revision of, this Constitution may be proposed by: "(1) The Congress, upon a vote of three-fourths of all its Members." *Occena v. COMELEC*, G.R. No. 56350, April 2, 1981, is authority for the principle that the choice of method of proposal, i.e., whether made directly by Congress or through a constitutional convention, is within the full discretion of Congress.

The Constitution does not specify whether the bicameral Congress will sit in joint session or in separate sessions; or whether the legislature will vote jointly or separately, as this issue remains unresolved, although there seems to be a consensus in the current congress that the provision should be understood as referring to $\frac{3}{4}$ of the Senate and $\frac{3}{4}$ of the House of Representatives.

Fr. Joaquin Bernas, S.J., in his book, *A Living Constitution. The Abbreviated Estrada Presidency*, writes: "No preparatory resolution is needed before Congress can propose amendments. A constituent assembly is a body authorized by the Constitution to propose amendments or revision. But Congress is already authorized by Article XVII to propose amendments. In other words, the Constitution has made Congress both an ordinary legislative body through Article VI, and a constituent assembly through Article XVII."

Congress does not transform itself into a different animal in

order to be able to propose amendments. Thus, there is no need for Congress to undertake a prior act of organizing itself into a constituent assembly before proposing amendments.

The Rules of the House in the current Congress allows for an amendatory proposal to be filed and treated just like a bill: it will undergo three readings, then if approved by $\frac{3}{4}$ of the House of Representatives it is sent to the Senate. The proposal is deemed approved by a vote of $\frac{3}{4}$ of both Houses of Congress.

2. Proposal through a Constitutional Convention

The Constitution in Art. XVII, Section 1, provides “Any amendment to, or revision of, this Constitution may be proposed by:

“(1) x x x

“(2) A constitutional convention.”

x x x

“Sec. 3. The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, **or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.**”

Aside from empowering congress to call a ConCon, this provision also empowers the electorate through a majority vote to decide to call a convention. It is through this provision that the power to decide to adopt a convention where some delegates will be appointed by the President and some will be elected by constituent legislative district, city or provincial units as the congressional proposal will provide.

A Concon is co-equal to and independent of other departments. Once a Constitutional Convention is validly called in accordance with this provision, it shall be independent of, and co-equal to, the other departments of government [*Mabanag v. Lopez Vito*, 78 Phil. 1], and it shall have the power to adopt its own rules of proceedings.

Admittedly, the most democratic mode of proposing amendments is through a ConCon. Its members are elected, and thus, have the people's mandate. In addition, the Convention has full plenary authority to adopt whatever change it may desire.

However, the main objection to a ConCon is the enormous expense entailed in the election of delegates, and the upkeep of the Convention, as each delegate will have to be provided with an office and staff, and its work may take years.

3. Proposal through a People's Initiative.

Art. XVII. Sec. 2. "Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter."

To be valid, the people's initiative on the Constitution must comply with the essential requirements set forth in *Lambino v. Comelec*, and the proposed changes must be restricted to an amendment, not a revision. (Already discussed.)

Given our experience with the *PIRMA* and the *Lambino* initiatives, the gathering of the required signatures (12%-3%) nationwide in order to effect a simple amendment may prove to be an exhausting and wasteful exercise.

The Second Step: RATIFICATION

- Article XVII, Sec. 4. "Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the vote cast in a plebiscite which shall be held not

earlier than 60 days nor later than 90 days after the approval of such amendment or revision.

- Any amendment under Sec. 2 hereof shall be valid when ratified by a majority of the votes cast in the plebiscite which shall be held not earlier than 60 days nor later than 90 days after the certification by the Commission on Elections of the sufficiency of the petition.

THE DUTERTE INITIATIVE

On December 7, 2016, President Rodrigo Roa Duterte issued Executive Order No. 10, creating a 25-man Consultative Committee (ConCom) to review the 1987 Constitution. The ConCom commenced worked before the end of February, 2018 and labored through the months of March, April, May and June, of the same year to fashion a new Constitution for the Federal Republic.

On July 3, 2018 by a unanimous vote of all its 22 members, the ConCom approved the draft of the proposed Constitution, and on July 9, the ConCom presented this draft to President Rodrigo Duterte accompanied by a letter referring to the ConCom approved provisions for the Bangsamoro in separate paper.

The Bangsamoro provisions provide 56 exclusive powers of the Bangsamoro Government, a Bangsamoro Core Territory comprising ARMM-BARMM, Shar'ia and other provisions that will rectify historical injustices to the Bangsamoro as stipulated in all peace agreement but were torpedoed by BOL.

SOME FEATURES OF THE CONCOM DRAFT:

I. BASIC PRINCIPLES OF GOVERNANCE AND EXPANDED HUMAN RIGHT:

Giving the poor demandable socioeconomic rights to: (Sec. 26-27, Art III)

- o Adequate Food
- o Complete Education
- o Decent Housing
- o Universal and comprehensive Healthcare
- o Livelihood and Employment opportunities

Giving demandable environmental rights to: (Sec 28, Art. III)

- o Healthful environment and balanced ecology
- o Clean air, water, soil, surroundings
- o Seek compensation for damage to the environment
- o Seek court relief to stop activities that damage the environment

II. DISTRIBUTION OF POWERS

A. FEDERAL GOVERNMENT EXCLUSIVE POWERS:

The Federal/National Government shall have exclusive power over: (Sec 1, Art. XII)

- Defense, security of land, sea, and air territory;
- Foreign affairs;
- International trade;
- Customs and tariffs;
- Citizenship, immigration and naturalization;
- National socio-economic planning;
- Monetary policy and federal fiscal policy, banking, currency;
- Competition and competition regulation bodies;
- Inter-regional infrastructure and public utilities, including telecommunications and broadband networks;
- Postal service;
- Time regulation, standards of weights and measures;
- Promotion and protection of human rights;
- Basic education;
- Science and technology;
- Regulation and licensing of professions;

B. FEDERATED REGIONS EXCLUSIVE POWERS:

Within their regional territory, the Federated Region shall have exclusive power (Sec. 2, Art. XII):

- Local government units;
- Socio-economic development planning;
- Creation of sources of revenue;
- Financial administration and management;
- Tourism, investment, and trade development;
- Infrastructure, public utilities and public works;
- Economic zones;
- Land use and housing;
- Justice system;
- Business permits and licenses;
- Municipal waters;
- Indigenous peoples' rights and welfare;
- Culture and language development;
- Sports development; and
- Parks and recreation.

C. SHARED POWERS (Sec. 4, Art. XII)

- Powers not exclusively given to either the Federal Government or the Federated Regions
- They fall within the relative competencies of the Federal Government and the Regional Government
- Can be exercised jointly or separately
- In case of dispute or conflict in their exercise, Federal power shall prevail.

1. Specific Shared Powers:

- Risk Reduction, response to calamities (Sec. 8 Art XIX);
- Natural Resources (Sec. 4, Art. XV);
- Land use (Sec. 8, Art. XV);
- Land Reform (Sec. 10, Art. XV);

2. Other Shared Powers:

- Agriculture;
- Health;
- Social Welfare;
- Fishery;
- Power Generation and Distribution;
- Higher Education/Voc. Tech.;
- Infectious Disease;
- Cooperatives;
- Poverty Alleviation;
- Women, Youth, Elderly, Differently Abled;
- Waste management;
- Others not falling within the exclusive powers of Federal and Regional Governments

GUIDING PRINCIPLE OF SHARED POWERS IS THAT DECISIONS SHOULD ALWAYS BE TAKEN AT THE LOWEST POSSIBLE LEVEL OR CLOSEST TO WHERE THEY WILL HAVE THEIR EFFECT

III. TAXATION POWER AND POLICY

1. Federal Government has power to levy and collect all taxes, duties, fees, charges and other impositions (Ex. Income Tax, Excise Tax, VAT, Custom Charges) **except those granted to the Federated Regions.** (Sec. 1, Art. XIII)

- The Federal Government and Federated Regions shall ensure that taxation shall be UNIFORM, EQUITABLE, and PROGRESSIVE. (Sec. 3, Art. XIII)
- NO DOUBLE TAXATION SHALL BE ALLOWED (Sec. 3, Art. XIII)

2. Sources of Revenue of the Federated Regions:

Given the power to collect the following: (Sec. 2, Art. XIII)

- Donor's, Documentary stamp, Estate taxes
- Real property tax
- Professional tax
- Franchise tax
- Games and amusement tax
- Environmental, pollution and similar taxes
- Road users tax
- Vehicle registration fee
- Transport franchise fees
- Local taxes
- Other taxes which may be granted by federal law

3. SHARING OF FEDERAL REVENUES IS 50-50 ON THE FOLLOWING:

- INCOME TAX
- EXCISE TAX
- VAT
- CUSTOM CHARGES

4. The sharing of Federal Revenues will ensure Federal Government budget on Defense, Security, Law and Order, Basic Education, Debt Service, Equalization Fund and other exclusive functions.

5. Based on 2017 Budget each of 18 Federated Region will have 57 Billion.

- Federal Government Budget will set aside an average of 15 Billion per Federated Region for Basic Education to cover Personnel Services and MOOE plus Textbooks Printing and School Buildings
- This translates to 72 Billion automatic appropriations of each Region. (57 Reg. Share+ 15 Basic Education = 72B in Public Investment)

PART II. MINDANAO CONCERN: CONSULTATIVE COMMITTEE DRAFT FEDERAL CONSTITUTION

Regarding the Mindanao Issue on federalism may I read to you a portion of the VOTE SPEECH I delivered before the ConCom on July 3, 2018:

I have attached my signature to the draft constitution with a condition.

My reservations on the draft are matters pertaining to the following:

- The proposed 18 regional government will imposed unnecessary burdens to tax payers;
- Weak Federated Regions which make them look like bloated local government units rather than regional governments in terms of delivery of basic services;
- Unclear shared powers between the Federated Government and Federated Regional Government that will cause a tug of war between them in the simultaneous exercise of shared powers;
- The primacy of so called national development policies and programs over customary laws of indigenous peoples to their ancestral domains and lands and all resources found therein to ensure their economic, social and cultural well-being; and
- The incomplete work on the Bangsamoro.

The attainment of peace in Mindanao must be primordial in the shift to federalism. The annexation of the Mindanao, Sulu Palawan archipelago to the Philippines by virtue of the colonial December 10, 1898 American-Spanish Treaty of Paris is the root cause of conflict for more than a century. Alas, with the prospect

of a new federal constitution this historical injustice may now be appropriately addressed by restoring self-rule in all of Mindanao as one Federated State/Region with an autonomous region composed of the existing ARMM or Bangsamoro Core Territory. I believe that, if this is not done, the drive for Mindanao independence may continue to recur as it did in the past.

Our Committee theorized that the forthcoming federalism is a “holding together” type rather than “coming together” type. This theory may be legally correct but politically inaccurate. Models of some foreign federal countries show that “Holding together” federalism is characterized by a state whose citizens by their political free will and without any taint of vitiated consent unitedly aspired and constituted for themselves a sovereign state but later on decided to decentralize governance by forming different states or autonomous governments as political subdivisions. History bears witness that the Bangsamoro people did not consent that their homeland be part of the Philippines state.

Their Bangsamoro homeland became part of the Philippines by force. Since they did not give their consent freely, the annexation of their homeland to the Philippines is void from the beginning according to those who have struggled for Mindanao Independence. It is this claim of forced annexation that is the root cause of conflict and precipitated one of the longest wars, if not the longest war for resistance in the world since colonial times. The annexation of the Bangsamoro homeland to the Philippines is the driving force of demand for the restoration of their universally accepted inherent right to self-determination thru independence or genuine self-rule in accordance with the peace agreements starting with the MNLF-PHILIPPINE GOVERNMENT (GRP) AND ORGANIZATION OF ISLAMIC CONFERENCE (OIC) 1976 TRIPOLI AGREEMENT, the MNLF-GRP-OIC JEDDAH ACCORD aimed at establishing an autonomous government in all of Mindanao, Sulu and Palawan (MINSUPALA), 1996 MNLF-GRP-OIC FINAL PEACE AGREEMENT as well as the MILF-GPH COMPREHENSIVE AGREEMENT

ON THE BANGSAMORO and FRAMEWORK AGREEMENT ON THE BANGSAMORO. Ignoring this political fact have caused the failure to resolve the “Mindanao Problem” despite the peace process. Overlapping peace agreements have complicated the problem considering that not one peace agreements had ever been implemented for more than four decades since the 1976 TRIPOLI AGREEMENT.

The creation of ARMM (and now the BARMM) was an artificial and short-sighted solution hence not sustainable. The Consultative Committee has now the window to “seize the moment” to prevent the Bangsamoro people from invoking the December 14, 1960 United Nation General Assembly Resolution No. 1514 On Decolonization that brought freedom and independence to all colonized nations.

There will be no more ground to aspire for independence if the Bangsamoro people would be allowed to freely and intelligently participate in the establishment of a Philippine Federal Republic that will recognize fully their right to self-rule in all of their homeland (not only within the so called “core territory”). In this way, the Bangsamoro people will have sense of co-ownership of the transformation process for the new federal republic which they would have helped established freely in the exercise of their plebiscitary right. In this sense the new federal republic will be a “coming together” type of federalism. It will put an end to the aspiration for an independent Mindanao.

Politically, to establish six federated regions in Mindanao namely Regions IX, X, XI, XII, Caraga, and the Bangsamoro on the Sub-Committee’s May 22, 2018 “18-1” vote and subsequently the June 20 En Banc “9-4” that voted down the One Mindanao Proposal will go down in history as another oppressive and arbitrary neo-colonial-Imperial Manila divide and rule tactic similar to the historic colonial divide and rule tactics used in the Middle East that brought conflict in the Arab world up to the present. Please take note that all four who voted for One Mindanao, Atty. Randolph

Parcasio, Atty. Antonio Arellano, former congressman Atty. Ali Pangalian Balindong, former MSU Chancellor Eddie Mapag Alih are all Mindanawan. Our esteemed colleague Atty. Rueben Canoy also a Mindanawan sent a letter dated April 26, 2018 to the Consultative Committee clearly expressing his support to One Mindanao. This makes 5 out of 7 Mindanawan.

Economically the 6- Mindanao federated region will be totally dependent on “Imperial Manila” Federal Government with each of them to vie for favors from the blessings of the so called “equalization fund”. Certainly such equalization amounting to more or less 50billion pesos by our committee’s calculation will not be sufficient for all the needy 18 federated regions except a few.

Now on the merits of a One Mindanao Federated Region.

Statistic clearly shows that constituting Mindanao as One Federated Region will indubitably spur the following:

1. Self-Sufficient Economy.
2. Faster Economic Growth.
3. Attract Foreign Investment.

Furthermore, a One Federated Mindanao Region will have:

4. Coherent Economic Planning.
5. Synergy.
6. Learn but mean bureaucracy

Based on all of the foregoing and considering that there is proviso in the draft that provides power to congress to increase or decrease the number of federated regions subject to plebiscite, thus the possibility of re-arranging MINDANAO, SULU AND PALAWAN in the future, I reiterate my motion for reconsideration of the May 22, 2018 “18-1” and June 20, 2018 “9-4” votes against One Mindanao by appealing to my esteemed colleagues to reconsider for the

second time and vote for a ONE MINDANAO FEDERATED REGION even at this late hour. You have until August to change your minds.

At this juncture I would like to inform my colleagues that on June 27, 2018 at Cagayan De Oro City, the Mindanao Indigenous People's Summit approved a Resolution calling for the establishment of an Indigenous People Federated Region in Mindanao. This gives more reason that a One Mindanao must be established first to allow all the Bangsamoro Peoples, Indigenous Peoples and Mindanawans/ Mindanawons to decide for themselves the manner of dividing Mindanao into federated regions based on their rights and economic viability and sustainability.

In my more than 20 years of experience I have learned not put all my eggs in one basket especially in determining options for the Bangsamoro. And so, on June 21, 2018 in en banc meeting I presented a "middle ground" formula to address the demand for the right to self-rule of the Bangsamoro people. The presentation itself is a result of a joint effort with my colleagues' former congressman Atty. Ale Pangalean Balindong and Prof. Eddie Mapag Ali.

The formula consists of 15 sections which will be the basis of an Organic Act or Basic law that will fully establish the Bangsamoro Government which, similar to the Cordillera Region, will have asymmetrical relationship with the Federal Government. The approved proposal defines the Identity of the Bangsamoro people, their homeland and initial territory where the Bangsamoro government will have territorial jurisdiction. It also provides for exclusive powers and mechanism for accession of other geographical areas, local government units to be part of the Bangsamoro.

However, the proposal which was approved unanimously in en banc session, is not in the draft. This is understandable because

of complex issues on the Bangsamoro. I do not also expect this Consultative Committee in so short a time to craft the most appropriate recommendation to the President that will help untie the “Gordian Knot” that binds the centuries old complexities created by colonialism in Mindanao, Sulu and Palawan. Hence, I consider our task a work in progress. In the meantime, pending completion of our work on the Bangsamoro, I am constrained to affix my signature with a condition as I have in fact affixed my signature with a condition in this first draft. I hope in the coming days, after our meeting with the President and with the incorporation of vital concerns that may be taken up during our consultations with stakeholders in the deferent areas in the country, I shall be able to unconditionally vote yes to the Consultative Committee FINAL DRAFT.

Is it Still Possible to Revise the Constitution for Federalism?



Atty. Antonio Arellano
Consultative Committee to Review
the 1987 Constitution

Whoever made this question is also hopeful that there is time to revise the Constitution. We in the ConCom share the hope that there is still time to revise the 1987 Constitution. Much more, we believe that indeed, federalism is the answer to the myriad of problems besetting our country and our people. If federalism, they say, is the answer, then what is the question?

Let me start by recalling what former associate justice of the Philippine Supreme Court Renato Puno, our chairman in the constitutional committee created by President Duterte to review the 1987 Constitution, said last June 21, 2018 in a speech he delivered before the first national forum and consultation [on] revising the 1987 Constitution. I would like to quote some portions [of what] he said.

“The federalism initiative of the Duterte administration brings forth and center the issues hounding the country in the context of governance and development. From a historical perspective, the unitary government that exists in the country for the last 500 years produced a myriad of complex problems from the monopolistic control over the political, economic and administrative systems of society to historical injustices committed against the marginalized sectors in various identity-based groups. Unitarianism resulted in the overconcentration of powers to the hands of the few in a small section of the country. It has produced secessionists, insurrectionism, dynastic rule, immature political

parties, unequal growth, adventurism in the military, slow justice, extreme poverty and hunger, unemployment and corruption among other.”

The myriad of complex problems enumerated by Chairman Puno is described by social science scholars as problems structural in essence. They identified root causes being the existing political, economic and administrative systems established historically under the fundamental legal parameters of all Philippine constitutions from the 1897 Biak-na-Bato Constitution of the Philippine revolution, the Malolos Constitution of the short-lived Malolos Republic, the 1935 colonial Constitution, the authoritarian 1973 Marcos Constitution, the freedom constitution of the revolutionary government of Corazon Aquino and the present 1987 Constitution drafted by the constitutional commission created by and ratified under the auspices of the Aquino revolutionary government.

All these constitutions were drafted and adopted under conditions of political disturbances [and] established a unitary system of governance with political power over-concentrated at the center of the system. Considering that these problems are systemic or structural-rooted, necessarily, the measures meant to address these problems must also be structural measures which in effect will call for no less than the revision of the constitution itself.

These myriad of social problems are the very same problems then presidential candidate Mayor Duterte promised to address during the campaign. Recognizing that the problems are basically structural, he made heart and center the program of government he adopted the call for structural changes, particularly the call for charter change in order to adopt the federal system of governance as the mechanism to effect the long overdue fundamental changes in the country's political, economic and administrative systems.

Since the call is for structural changes, particularly the shift from unitary system to a federal system, necessarily, the call will require substantial changes not only in the form and organization of government but more importantly in the constitution's fundamental governance political philosophy. Thus under the 1987 Constitution, this call for charter change will

require the revision and not just the amendment of the 1987 Constitution.

To the question whether there is still time to effect this process within the remaining period of the term of President Duterte, under the 1987 Constitution, the constituent power to propose the revision of the fundamental law is vested in the Congress of the Philippines. Under its rules, the process usually commences with the submission with the pertinent committee of draft bills calling for the convening of Congress' constituent assembly for the purpose of proposing the revision of the 1987 Constitution together with copies of the proposed revised charter for the body's eventual deliberation, consideration and approval. This of course is based on the presumption that Congress has given its approval to the proposal to revise the 1987 Constitution which process is governed by the following constitutional rules:

1. Under Section 1 of Article 17 of the 1987 Constitution, any revision of the constitution will be proposed by congress as a constituent assembly upon the vote of three-fourths of all its members or
2. Under Section 3 Congress may by a vote of two-thirds of all its members call a constitutional convention or
3. It may by a majority vote of all its members submit to the electorate the question of calling such a convention.

As worded, the provision is problematic. It can cause undue delay in the conduct of the proposal procedure because the provision is vague as to whether Congress is to vote jointly or separately in determining the number of votes required to make the proposal. The phrase "of all its members" is vague since Congress is a bicameral assembly consisting 24 senators and 304 members of the House of Representatives. The required three-fourth number could mean either 246 votes if voting jointly or 18 senators and 185 members of the House if voting separately. Any attempt by Congress to adopt either interpretation may be questioned before the Supreme Court in a case and thus cause the constitutional change efforts to be suspended pending final adjudication of the constitutional issue by the Supreme Court.

If a petition will be brought before the Supreme Court questioning the constitutionality of the process adopted in determining the required

number of votes, the question is, for how long will it take the court to finally issue its final and executory judgment? Section 1 Article 8 of the 1987 Constitution provides that the Supreme Court must decide or resolve cases within 24 months from date of submission. This is a maximum period of two years.

Finally, since the Constitution is the social contract of the Filipino people which enshrines the sovereign will, efforts must be maximized to ensure their optimum participation in the process of constitutional change. Massive public consultation, education and information drive must be conducted in all regions of the country. This will require substantial manpower and logistics, and the clock is ticking.

Considering the foregoing complex and problematic nature of this process of constitutional change under the given circumstances, indeed there are serious reasons to doubt that this call for constitutional revision can still materialize within the remaining term of President Duterte. But there are those who cannot afford to doubt, resolutely believing that the only chance to achieve the beginning of this long overdue structural change from the unitary system to federal system of governance is under the leadership of President Duterte. There are those who believe that there is still time to overcome the challenges. For them, there is no other time. For them, the call for action is now.

Open Forum



Will the new cry for amending (no longer revising) the constitution be the overall theme of the next three years of the Duterte administration?

Usec Jonathan Malaya: The call is still to revise. The President said “change the constitution”—it means revision, not just amendment.

Are the barangays being involved in the drive to amend or revise the Constitution?

Usec. Jonathan Malaya: We are working closely with the League of Barangays in the Philippines for us to explain the need for federalism as part of our consultations. We are going to do provincial activities in all 81 provinces in the country before the year ends. Unfortunately, we don't have funds to go to the barangays and to the municipalities so we are going to ask the mayors for help for them to convene barangay assemblies and municipal assemblies, discuss this matter in the municipal development council and utilize funds for this purpose. We have a website where they can download materials to get the discussion going down to the barangays. We are working closely with the League so that questions about federalism and constitutional reform can be discussed on that level.

Indigenous peoples may not be well versed about federalism but what they want is clear: self-governance over their traditional territory based on indigenous political structure. Diversity in governance and the emergence of the collective dignity of peoples remain an aspiration. For now, what is the place of indigenous peoples in this process of amending or revising the Constitution?

Usec. Jonathan Malaya: The activities the DILG will undertake at the provincial and municipal level include consultations and we are going to have mechanisms to bring the results of the consultation up to the national level. How to govern the barangays – that can

be addressed not necessarily through constitutional change. We can't put everything in the constitution lest we'll have a very long constitution. The issue of powers of the barangay can already be discussed in Congress and addressed through an amendment to the Local Government Code.

What will happen to sultanates and their historical territories? Will federalism be willing to correct historical injustice and accommodate Sabah claim?

Usec. Jonathan Malaya: In the discussions right now in the Inter-Agency Task Force on Federalism (IATF) and even ConCom, historical claims will be part of the national territory of the Philippines.

Atty. Randolph Parcasio: One colonial legacy in the 1987 Constitution which is also found in the 1973 and 1935 constitutions is the proviso that says no law shall be passed conferring royalty or nobility to any persons in the Philippines. This seems harmless, but this is a proviso that was lifted from a proviso in the American constitution—meaning it was the Americans through the 1935 Constitution that inserted that proviso because of their disgust against royalty. That proviso in the 1935 Constitution had, in effect, erased all agreements that were entered into by the sultanates of Sulu and the Americans. It has erased all that because the 1935 Constitution did not recognize royalty or nobility. It has also erased all kinds of influence, moral authority by the sultanates over their constituents.

What is the basis of the Philippine claim to Sabah? The basis of the Philippine claim to Sabah is the claim of the Sultanate of Sulu. If the constitution of the Philippines does not recognize the Sulu Sultanate, how can it validly claim Sabah?

The Sabah claim is a claim of the Sultanate of Sulu. It is only the Sultanate of Sulu, not the Philippine government, that has claim over

Sabah. The ConCom has decided to delete this proviso once and for all in the draft. If the constitution is silent about it, there is no more prohibition on the recognition of the sultanate. We can only do that if we change the 1987 Constitution.

One issue that needs to be reflected on in the quest for federalism is the proliferation of firearms, which is also related to the issue of land tenure. How can federalism address these issues in the communities?

Usec. Jonathan Malaya: The gun culture in the context of the BARMM is part of the prevailing attitudes of people. If we relate this to the role of government, peace and order is a joint responsibility of the national government through the Philippine National Police (PNP) and other uniformed personnel and the LGU.

The LGU is the head of the peace and order council of their area. If there are problems in your area regarding proliferation of firearms, drugs, terrorism – these concerns fall under the DILG. If you can provide us information about these private armed groups, we can relay this to the necessary units of PNP.

We do not need to go federal to address these concerns. Some would say federalism is simply a governance structure, simply providing more resources and funds to LGUs to address more issues. At the end of the day, whether we are unitary or federal, peace and security is a joint responsibility – shared responsibility of the national government and the local government. If we can already address problems under our current unitary system of government, let's not wait for federalism.

The commitment of government to reduce the proliferation of firearms and private armed groups, especially at this time when martial law is in effect in Mindanao—if we will not do this today, we will not be able to do it again. Martial law in Mindanao gives us an opportunity to be able to address these problems that are being faced in your area.

Robert Maulana Alonto: In Islam, a Muslim has the right to bear arms, but it doesn't mean that you abuse it. The purpose of bearing arms is to defend himself, his family, community or the state. It is not true that the gun culture is unique to the Moro because [look at] America, there are more than 100 incidents of mass shootings so far in 2019; we don't have that in the Bangsamoro. But the proliferation of firearms has to be controlled; it has to be a tandem between the state and the community.

We know we cannot eliminate political dynasty at once, but will federalism be able to reduce it?

Robert Maulana Alonto: I was the chairman of the political committee of the first BTC and in our draft we placed an anti-dynasty proviso that unfortunately got deleted when it reached Malacañang. That was a letdown to us who drafted the original BBL. Political dynasty flourished because of political patronage and where does political patronage come from? It comes from Manila, it comes from government. We have experienced that in our area. If there is an existing family in power who is against the administration, the administration will create its own local family to become another dynasty that is supportive of that administration.

In federalism, the powers of the central government are limited. This would limit political patronage. Federalism will not eliminate it, but it will lessen the umbilical cord of political patronage.

We have Executive Order No. 10 (Creating a Consultative Committee to Review the 1987 Constitution) and Memorandum Circular No. 52 (Creating the Inter-Agency Task Force on Federalism and Constitutional Reform) to fast-track federalism, but what is the possibility for charter change if federalism is no longer feasible? The only question is where are we now?

Usec. Jonathan Malaya: The ConCom draft Bayanihan Federal

Constitution was submitted to the President, but we faced difficulty in the campaign for federalism because there are reactions coming from the government itself, especially from the economic managers who are really against the federal system. The President directed the ConCom to make a draft yet other parts of the government are criticizing the draft. This caused confusion among the public so I talked to Executive Secretary Salvador Medialdea to ask them not to utter pronouncements in public, that we should keep to ourselves misgivings that we have on the draft. In Malacañang, we agreed to issue Memorandum Circular No. 52 to harmonize the draft Bayanihan Federal Constitution with the positions of the other agencies. At this point, we are harmonizing and once we're finished, hopefully all the government agencies can support this draft and we will relaunch it. We will only have one draft and this is the draft that we will advocate in Congress. Working from the product of the ConCom, the Bayanihan constitution, it will have political and electoral reform, economic provisions removing the restrictive provisions of the Constitution, and it will hopefully have provisions that will relate to sharing of powers, addressing the economic imbalances across the regions in some form, which hopefully will lead us to a federal system of government. But since we are not boxing ourselves into federalism, we are open to addressing these problems not necessarily through federalism.

Atty. Randolph Parcasio: One critical aspect is the harmonization of proposals. In all Kusog Mindanaw conferences, we have only discussed the fringes [of federalism proposals]. It's time to discuss the substance. I suggest to Kusog Mindanaw that there should be a forum just to discuss the substance in aid of what is being done by the government to help in harmonizing the proposals.

Is there a Plan B if Congress fails to amend or revise our “flawed and unresponsive” 1987 Constitution?

Gus Miclat, Initiatives for International Dialogue (IID): The bottom

line is there is a rotten system, but how do we expect this rotten system to legislate itself away. In Congress, what happens to good provisions, preconditions—they can't legislate this because this is against their interests. The system will remain; the discussions are cyclical and not going anywhere. What is Plan B? I think Plan B is with us the people, not with Congress, not with the President. We have to educate ourselves, organize a peaceful revolution to change the rotten system, because we can't expect these entities in power to change or legislate away their interests.

Fr. Eliseo Mercado, Jr. : This is to remind each one that three years ago, we in Mindanao believed that a North Star for federalism has risen from the horizon in the person of President Duterte. Whether we agree or disagree with him, at least the federalism discussion has been mainstreamed. What went wrong, however, is that it seems that he lost his bearing and allowed people to move on with his many initiatives with nobody in the compass. But we must also never forget that he's still extremely popular after three years and if there is a man that can bring federalism, he is the one. If there is a real constitutional change that is coming, it is through that North Star. We in Kusog Mindanaw can muster our forces and mainstream the political will of the President and move towards federalism.

What about the fiscal aspect of federalism in light of the proposal to amend the economic provisions of the constitution?

Atty. Jose Lorena, BTA: I am commenting on the fiscal side of federalism, especially in the context of Usec. Malaya's pronouncement that the fiscal leaders of the country are now open for discussion. To begin the discussion of resource distribution, I think we have to begin by looking at the national internal revenue code, especially on large taxpayers, even without going further to the changing the Constitution. We have had many laws already like Republic Act 9054, which allows the payment of taxes of large corporations in the area where they are operating. But the Internal

Revenue Code provides that the Commissioner can identify the situs of the large taxpayers. In our study, there are only two areas that are fiscally ready for federalism: Metro Manila and CALABARZON because of the situs of taxation. In the BARMM, that is a problem that we have especially now that the maritime boundary of the BARMM is not defined because there are big time corporations here who pay their taxes to Metro Manila. Since the alternative now is opening up for discussion the regulatory provisions and fiscal policy in the constitution, the issue of situs of taxation with respect to large taxpayers should be on the hindsight of many of our discussions so that it will not only strengthen the economic fiscal viability of the BARMM but improve initially the distribution process of the economic pie of the country.





TECHNICAL DISCUSSION ON FEDERALISM & CHARTER CHANGE PROPOSALS WITH INTERNATIONAL & NATIONAL EXPERTS

Second Session

Distinguished Panel

Prof. Cheryl Saunders, AO

*Laureat Professor Emeritus & Founding Director,
Centre for Comparative Constitutional
Studies, University of Melbourne Law School,
Australia*

Amanda Cats-Baril

*Constitution Adviser for Asia Pacific,
International Institute for Democracy and
Electoral Assistance (IDEA)*

Dr. Adrian Tamayo

Mindanao Development Authority

Prof. Dr. Stefan Jost

*Country Representative,
Konrad Adenauer Stiftung Philippines*

Moderator:

Atty. Ishak Mastura, COO, IAG Development Consulting, Inc.



Atty. Ishak Mastura

Chief Operations Officer of IAG Development Consulting, Inc. (IDCI) and former Regional Board of Investments-ARMM Chairman, moderated this discussion.

From the IAG and KAS workshop for members of the BTA in Davao City this week, we saw the constraints under a unitary structure wherein all of the powers of the BARMM are still subject to national laws. Our experts from Australia and Germany provided the perspective that constitutions, political order and political structures and systems are products of a sovereign people's history, culture, tradition and identity.

What we hope to foster in this technical discussion on federalism and charter change proposals is understanding how political change happens wherein the people and the citizenry are actively engaged. This is not only an ordinary political change wherein we change political leaders through an election but change in political structure and system.

Quoting House Speaker Alan Peter Cayetano, our short election cycle of three years and six years prevents meaningful political discourse to change the system or change the constitution, because, often, time runs out and the political elites and the citizenry become busy or engaged in the political contest of who will end up on top or become the next leader.

Quoting Daenerys Targaryen of the popular Game of Thrones television series: "Lannister, Targaryen, Baratheon, Stark, Tyrell –

they're all just spokes on a wheel. This one's on top, then that one's on top, and on and on it spins, crushing those on the ground. I'm not going to stop the wheel. I'm going to break the wheel."

Will Filipinos break the wheel for meaningful charter change, or again be subject to the tyranny of another election cycle that will keep on grinding and grinding, ad nauseam, until there is no real change except through the personalities?

Aspects of Federalization in the Philippines



Laureate Professor Emeritus Cheryl Saunders of the Melbourne Law School talked about aspects of federalization and some of the challenges it faces in the context of debates in the Philippines. The following are highlights of her presentation.

What is a federation? It involves organizing a state in a way that there are at least two levels of government and, of course, very often, more. Each level of government deals directly with the people on methods assigned to it by a constitution. Each level has autonomy in the exercise of its powers and responsibilities. Each level is accountable to the people for the exercise of its constitutional powers and responsibilities. That's federalism in essence and it's often said to involve self-rule, but also shared rule.

How a unitary state compares?

Federation involves organizing a state so that:

- There are at least two levels of government.
- Each level deals directly with the people, or a section of the people, on matters assigned to it by a Constitution.
- Each level has autonomy in the exercise of the powers and responsibilities assigned to it by the Constitution.
- Each of the levels of government is accountable to the people for the exercise of its constitutional powers and responsibilities.

What are the key features of a federation?

- A Constitution that typically cannot be changed by one level of government alone.
- Two or more levels of government protected by the Constitution, each with their own governing institutions (at least legislature and executive).
- A constitutional division of legislative, fiscal, executive and (sometimes) judicial power between the levels of government
- Participation by the sub-state governments and/or their people in central decision-making (including, typically, through a second chamber of the central legislature)
- Provision for resolving disputes between two levels of government through an independent, generally judicial, body.

Why federate?

Sometimes federations are formed by bringing together polities that were previously independent. The US is a classic example of what is sometimes called “bringing together” federation. The other kind of federal system has traditionally been called the “holding together” federation. The idea there is you have a unitary state, you decide to federate and give parts of the state a degree of autonomy.

Traditional account of why federate is no longer adequate. Most federations now are formed from unitary states. Almost all of federations formed in recent times have been formed by devolving within the state. That occurs for a whole variety of reasons. Federalization might occur because you are trying to democratize more deeply, because you’re trying to disaggregate power and resources (for instance from Imperial Manila), because you’re trying to respond to different conditions, circumstances and preferences around a very complex geographical area with a complex population that you are trying to provide greater certainty for multi-level government. Sometimes also you federate to hold

the state together. You can have all of those reasons involved in the process of federalization and indeed I think many of them are on the table in the discussions in the Philippines.

What are the challenges of federalization?

Challenges would depend on how you're forming your federation. If you're forming your federation by bringing together previously independent polities, then the principal challenge is to build the central state and build a commitment to the central state by the various component bits of the population.

In (now more usual) devolutionary federations the initial challenges are building regions that work effectively for the people they represent; developing a federal culture, particularly in central institutions; and developing ways of working together while still maintaining the benefits of federalization.

A federal culture involves acceptance of limits on power, mutual respect between the levels of government and acceptance of difference.

The need for a federal culture extends to the elected branches of government, the bureaucracies, independent commissions, courts and the people themselves, at both levels of government. These challenges also exist in a unitary state with multi-level government.

Division of powers

Federations divide legislative power between the levels of government. There are several techniques for dividing powers (the one in the Concom draft used the technique of exclusive powers, shared powers, and when you have that techniques you have to have principles to resolve inconsistencies of laws), including:

- Exclusive power
- Concurrent power
- Shared power
- Principle to resolve inconsistency of laws
- Residual power/reserved power

You also need to consider the different practices in the ways in which the division of power is reflected in a Constitution, as well as the impact of judicial interpretation on the division of powers.

Federations also divide executive power between the levels of government. This may, but does not always, follow the same lines as the division of legislative power.

Federations may divide judicial power between the levels of government.

Different practices in countries using this technique of shared and exclusive powers and the way you reflect them in a constitution.

Division of resources

If you're going to divide power, you're going to divide resources as well. Fiscal questions like: deciding which level of government can tax—and because the center almost always ends up with more revenue than it actually needs for its own purposes, you need to decide how the revenue is going to be distributed to the substate regions. One of the issues is the extent to which the center can control the expenditure of the money that it grants to the substate regions. To some extent there will be controls, but there are also principles that the substate regions should be able to decide those expenditures themselves.

Shared rule

Shared rule symbolizes the federal character of the state, acknowledges the significance of its constituent parts, and may make a statement about equality or asymmetry.

It enables regions to contribute to central decision-making and accept the legitimacy of shared institutions, and experience and knowledge from different parts of the state to inform central decision-making.

It affects, for example, the second chambers in a bicameral central legislature, shared independent commissions and courts that interpret and apply the Constitution and/or regional legislation.

Intergovernmental relations (IGR)

IGR exists informally (and, increasingly, formally) in every federation (and in systems of multi-level government). It may be useful for sharing information and ideas, coordinating policy (including in areas of concurrent or shared power), providing a framework for revenue redistribution and building consensus and avoiding disputes that could lead to litigation.

IGR can take many forms and may comprise: intergovernmental meetings or forums; intergovernmental agreements; intergovernmental instruments of other kinds (depending on context).

Its benefits potentially include the smooth operation of the federal system while risks include overcentralization, shortfalls in transparency and accountability. The risks can be anticipated and minimized through, for example, working rules, adequate support for intergovernmental forums, protocols for public engagement.

Designing a federal constitution

Designing a federal constitution requires consideration of the core features of federation

- Self-rule and shared rule
- Division of legislative and executive power
- Two levels of government, each with institutions of their own
- Courts to interpret the Constitution; constitutional amendment processes
- Perhaps, framework for intergovernmental relations
- Maybe other (e.g. guarantees of free movement around the state)

Federal features of the constitution need to work seamlessly with the rest of the system of government: representative and direct democracy (NB: the concept of federal democracy); rights protection (including social and economic rights).

Federalism is likely to affect much of the content of a constitution. Ideally the Constitution should be clearly set out and clearly written, as a guide to those who need to work within; courts that will interpret it; the people in whose name it is made.

Implementing a federal constitution

A change from a unitary to a federal constitution (or any other form of multi-level government) requires careful attention to the challenges of implementation.

Implementation may take place over a significant period of time, even if no provision is made for deferral or phasing in of aspects of federalization. It involves:

- Putting in place technical requirements (for example, enacting the necessary legislation; making appointments to constitutional bodies, etc.)
- Creating and building the capacity of a new level of government.

- Developing an approach to constitutional interpretation that adequately reflects the new logic of the Constitution and is capable of dealing with the (often unexpected) issues that arise.
- Encouraging the development of a federal culture to guide the actions and attitudes of politicians, bureaucrats, other agencies and the people at large
- Ongoing programs for public information and education.

Fiscal and economic implications

Federalism has positive economic implications:

- Potential to harness local strengths and energies
- Development of local economies
- Management of problems caused by overcentralization and overconcentration of populations

And negative economic implications:

- Unproductive competition between regions
- Greater complexity of national economic management
- Inefficiencies of scale

Outcomes depend on the way in which the federation is structured and managed. Fiscal implications also depend on design and management. Consider in particular ways in which duplication and overlap can be avoided (e.g., by not having large central department monitoring regional departments).

Transition

Challenges for the transition phase include:

- Transferring power to a new level of government and building its capacity
(where federation occurs in a formerly unitary state), persuading central institutions and agencies to part with power, resources, personnel, property, etc.
- Developing skills, knowledge, understanding of the

new arrangements

- Determining the status of existing law
- Especially any central law made in the exercise of a power now transferred to regions
- Ensuring accountability for the decisions to be made
- Particularly in the absence of institutions through which democratic accountability generally occurs.
- Bringing transition to an end.

There is a whole lot of questions about how you implement a federal constitution. Those issues engage the need to build a federal culture as well as to literally create the various levels of government. Those issues loom particularly large in the context of transition, which is the phase that you are presently going through in the Bangsamoro, and, equally, if there were to be a federal constitution for the Philippines, there will be a very important transition phase. One of the trickiest phases of all is to try and create new institutions, to empower new institutions, to build their capacity, to create IGR that will work properly, all within a fairly short timeframe and in a way that still maintains an appropriate level of democratic accountability.

MinDA and Federalism



Dr. Adrian Tamayo, Public Relations of Mindanao Development Authority (MinDA), shared his take on the fiscal aspects of federalism and the current initiatives of MinDA to popularize federalism. The following are highlights of his presentation.

My order at MinDA is to make federalism, one of the thrusts of the Duterte administration, a topic of conversation and research among Filipinos, especially Mindanawons.

We are the second layer of federalists; we are the successor generation. We continue the effort. There is no Plan B. We are the Plan B.

What is the economic basis, configuration for carving out federated regions?

First is economic viability where we look at the integration of resources, of endowments, and the relationship and interconnectivity of these regions from the production side up to the market. We also look at development sustainability, consistency with culture, geographic contiguity, economies of scale – that is land size, production sites, cluster effect. If we're only looking at administrative regions, we may end up missing economies of scale and the need for having a highly urbanized city, because this will be a propeller for each region to grow across time using its own resources, and with the support of the national government, the block grant. So there is now the ability for the federated region to govern its own operation

plus the ability to create revenue for its own development. That is why when we look at the integration proposal we look at Northern Mindanao and Southern Mindanao as possible geographic federated territories. Note that we are not talking about regional government but a territory.

In the course of time, we at MinDA were able to determine the clusters, the potentials, the growth engines of these areas, that is there is economic hub, logistics cluster, agro-tourism cluster, marine culture cluster and these should be configured also in the process of federalization, calling it as territories.

At MinDA, we were able to facilitate sounding boards in our federalism-related activities. One of them is the All Moro Convention that produced the Bangsamoro State Constitution, which we used as a reference along with the Bayanihan Federal Constitution. What I appreciate about the Bangsamoro State Constitution is the riparian doctrine that recognizes the source of revenues. They should also get a good share of the resources that are coming from them.

We are also getting information and ideas from other sounding boards such as the Kilusan ng Kabataan Para sa Pederalismo, Kilos Pederal sa Pagbabago, Davao Region Federalists, National Anti-Poverty Council, DILG-XI, the IATFF, LPD, PDP-CMFP.

These are the signals that are being heard over the last quarters:

- Federalism is a long shot.
- Federalism must be within the constitution.
- Federalism can be a fiscal nightmare.
- Why not push for charter change instead of federalism?

Two scenarios

There are two scenarios. The first scenario is the President always has this character of holding his ace very close to his chest and he is the only person who knows that card. The President is shaking the tree, so to speak, identifying all those that are really meant for federalism, who are really federalists, because in the last three years, there are many people saying they are for federalism without really understanding what it is. He is shaking the tree, which is actually a repeat of the 2016 presidential election when he said he will not run but did the opposite later on. What followed was a trailblazing campaign.

What's the implication? That means a call for true federalists to do more, to educate more. What is missing even with EO 10 MC 52 is how to make these efforts known to the ordinary public. When we talk about federalism it does not immediately translate to food or security. There's the need to articulate and contextualize all this, to be more visible, to increase efforts to gain more public support.

The second scenario is the President over the course of his 22 years in service was always saying it's about revenue sharing, the economic side. So what if this is true?

Four proposals

First is amending the Constitution so that Article X will have three autonomous regions: Cordillera, Muslim Mindanao and the rest of Mindanao, being the birthplace of federalism. This proposal is consistent with the Jeddah Accord and the One People Mindanao.

The second proposal aligns with the Centrist view of

strengthening political parties to tone down the issue of political dynasty. Rather than talk about political dynasty, strengthen political parties, in addition to liberalizing economic provisions that limit direct investments, and social market economy and social security which are demandable rights (health, education, employment, dwelling) already enumerated in the Bayanihan Federal Constitution.

The third proposal, also a Centrist proposal, is giving the people in autonomous territories the right to call for creating their own autonomous regions. The state shall ensure that the political and territorial subdivisions of every federal region shall enjoy local autonomy. The state parliament is mandated to provide local government units just share in the national taxes which shall be automatically released to them.

The fourth proposal is the Renato Bermejo model, also an amendment to Article X, that says a state government consisting of executive, legislative, and judicial branch may be created in every state territory. Congress may pass a law calling for an election of delegates to the constitutional convention to draft the constitution of a particular state territory to create their state government.

Reality check

Public support for federalism is not wide. It is not understood. We have to simplify our call for the shift to federalism.

We unnecessarily provoke politicians who have their own followers due to political dynasty. Mindanao culture is dynastic, Southeast Asia is dynastic, but this can be reduced if we have strong political parties. If the political party can discipline their own members then we would not have a problem of political

dynasty to begin with.

The imposition of number of states or federated regions will create a fiscal problem and therefore the regions should be allowed to determine whether they are ready to form their own federated region.

Federalism is both a process and an outcome, not an outcome alone. There is no deadline to beat in the process of developing the culture for federalism, but there is always that opportunity in this term.

Comprehensive Reform through Charter Change?



Amanda Cats-Baril is International IDEA Constitution Building Advisor for Asia and the Pacific. The following are highlights of her presentation

Overall, it is a choice of whether or not constitutional change is required or necessary within a given context and what it can bring both in terms of benefits as well as risks. Federalism in itself is such a huge issue and it's easy to get sucked into that. It is important to also think about what are the other aims and objectives the Philippines is looking at in this transitional period because federalism is one of the many issues being considered at this time. I highlight this broader and holistic perspective on comprehensive reform and why constitutional change can be helpful in situations where comprehensive reform is needed.

The question of constitutional change

Constitutional change is a momentous occasion for most countries. Some countries have relatively simpler amendment procedures. They might experience small-scale constitutional change quite regularly, but, in general, constitutional change is something quite unique. It usually happens once in a sort of lifetime of different political actors especially in a scale that's being considered right now in the Philippines.

You always have the choice of scope and process when you're

considering constitutional change—scope being what do you want to change substantively, how much do you want to change your constitution, and process being how do you want to go about that change.

There are so many examples of processes around the world. It's never a fixed question and it's tied to context and depending on the objectives that you seek to pursue through change. Change is usually motivated by some sense of a need for things to be different. Then you would choose different scopes and processes for constitutional change.

The following is not an exhaustive list but these are the common objectives that tend to accompany constitutional change processes:

- State building and enhanced governance
- Economic growth
- In countries that have experienced either very extreme authoritarian regime or when you have a need for greater autonomy in certain regions that might be enhanced through constitutional change such as the case potentially in Mindanao.

Constitutions can change formally or informally. Informal change – when there is no need to necessarily change the text of the constitution in order to change how the constitutional order functions. There can be sub-constitutional changes, policies, political behaviors in leadership, constitutional interpretation by the courts that could lead to constitutional change without having any formal amendment of the constitutional text.

If you do go for formal change, that would either be amendment, which is when you change a certain provision or certain provisions within the constitution but you maintain the rest of the

constitution, or replacement or repeal which is when you get rid of one constitution and bring in a whole new document. Formal change has benefits: potential for symbolic and systematic change to pursue larger objectives (context specific).

There are also risks because once you open the constitution for change, it's very hard to direct how the process will go. It's always a political negotiation that involves both the outgoing political elite as well as whoever is agitating for change and there's a need to balance those two group interests as well as the interests of marginalized groups and other stakeholders in the process. Once you opened the constitution, it's very hard to know how far that change is going to go and to keep it in line with what you're originally expecting. One issue: will human rights be watered down? There's the risk of losing oversight institutions like the ombudsman, or opening the constitution for federalism and ending up with a constitution that has less protection for human rights.

Oftentimes, people think of new constitution as implying more change than amendment and that's not always true. This is a false choice. You could have a whole new constitution that actually looks a lot like the constitution that came before it and doesn't bring in any change or you can have a significant amendment, for example, to change the form of government from presidential to parliamentary. This could overhaul the entire system even though the rest of the constitution remains in place. It's not just because you have a new constitution doesn't mean you are going to have more change than if you simply amended your old constitution. That being said, the choice between amendment and new constitution does have significant implication for the process that you will pursue when you're seeking constitutional change. Almost all constitutions include amendment procedure, so if you choose to go through an amendment process you have to comply

with the constitution that exists now and go through that process. Whereas if you go for repeal and replacement, some constitutions do include provisions for how they can be repealed or replaced, but some do not and sometimes especially after conflict or large change, you might have to think through your process from scratch and develop how you want to do it.

On the process side, I want to comment on the process that's been going on here in the Philippines. There's one thing I noticed in terms of lack of clarity on how the process is going to move forward. You saw this a lot last year with the release of the Concom draft and the Arroyo draft and the people not sure which is the official draft, which one to work on, which one will be voted on in Congress. Having clarity of process when you make these choices from the outset, from the drafting all the way to promulgation, can be really helpful to carry momentum and reduce confusion and the chance for political capture in this kind of processes. Process can be done in a number of ways.

Constitutional processes happen in different ways—your choice either to have a legislature serving as the body, whether you want to create a whole new body and whether that body is going to be large or small and who is going to be included, as well as civic engagement, cost related to the process, actors to involve. Process is very important and will have an impact on the legitimacy of the final document that results from it.

General Impressions on the Shift to Federalism



Prof. Dr. Stefan Jost is the Country Representative of Konrad Adenauer Stiftung in the Philippines. The following are highlights of his talk.

I will focus my short intervention on two aspects: first are general impressions on the shift to federalism, second would be to highlight some aspects which are considered transversal for this debate, and a few recommendations.

It seems like there is a decreasing importance and public interest in the issue of federalism. In the President's SONA, it seemed like the political push did not exist anymore. Even among the proponents of the shift to federalism there is no consensus about the design or specific model.

There are a number of renowned experts on this issue in the Philippines, but at the same time, lack of nationwide knowledge and understanding or even interest.

I think the shift to federalism is not one of the priorities of the Philippine population. The discussion is limited to more or less inner circle or closed circle, and there's not even a consensus even within this circle.

The information and insights given by DILG Usec. Jonathan Malaya

in his keynote message are opening a new narrative on this issue. The new push based on a common draft in order to open a broad consultation, including a nationwide discussion, would be the best. Let's see what new political surprises this new chapter will bring.

There is still a time window but not about three years, mostly about two years before the next presidential election will cast a shadow and complicate political discussions and decisions in the Philippines. Therefore the key question is who will take the initiative which kind of federalism this time, and I am a bit of skeptical in my perception, think about the reasons and how to improve the strategy.

Now the transversal aspect. One speaker asked if federalism is the answer, what is the question? There are two main reasons for the shift to federalism in my understanding.

First is to break the centralist power of Imperial Manila.

Second is to overcome poverty and establish better conditions of life in all parts of the Philippines.

These are excellent reasons, but you should be aware that even if charter change is necessary, this political promise can't be achieved only by the name charter change. It's a very long process, at least a generation or more, and depends on many conditions and variables. It's a process with high financial and political cost.

There's another political problem and discussion that should not be overlooked. This process carries immense expectations from the people. Therefore, this is a process that should be accompanied by other political and structural reforms, for example, the

role, structure and legal basis for political parties, economic regulations and guarantees of transparency and accountability. In comparison to another discussion that for me is disconnected in the Concom, is charter change to adopt a parliamentary system. This shift would be easier than shift to a federal system.

Broad consensus is needed for structural, institutional and functional design of the Philippine federal system. Considering the political system of the Philippines, I doubt if only the president is enough to guarantee the shift to federal system.

Third, the basic condition—without this condition, forget federalism—you need political will based on the principle of subsidiarity, shared power, shared competencies and shared money.

The question of the role of political dynasties, structural part of the political system and political culture of the Philippines are key aspects for resolving this problem. I have not heard yet a promising solution or approach to this problem.

Fourth, federal design should provide strong institutions in all levels, especially in the local state or regional one, depending on how you call them. Build regions or states who are able to develop a common identity as a region or federal state.

All this should be provided a design for effective and resilient inter-institutional intergovernmental relations. The current discussion on the Bangsamoro could be pioneered for the rest of the country. BARMM is better off as part of a federal system of the Philippines for better development.

There's also a decision to be made between a competitive or a more cooperative federal system. In my opinion, due to specific situation in the Philippines, the latter would be preferred.

These are only impressions, you should take the chance despite the questions. There are always alternatives. If they are not visible, work for it, look for it.

Open Forum



A question for MinDA: How can federalism support the “Build, Build, Build” program, imagining an industrial Philippines?

Dr. Adrian Tamayo, MinDA: Mindanao lags behind in terms of infrastructure, therefore we need to identify the fundamentals such as interconnectivity, roads, bridges, coastal road. Federalism is very unique to Mindanao because it is not only about addressing the distribution of resources but having our own autonomy towards the kind of development that we all deserve. The Triple B program is a necessary macro fundamental. The other side would be for us to continue understanding why we need this federalism, the process and its outcome.

Prof. Dr. Stefan Jost, KAS: There’s also the necessity to build up economic strategy and not only focus on building up political institutions. It’s very important at the moment to have economic perspective and strategy, social market economy in your process.

How can the consultation process be made credible, for instance, in the selection of representatives of the youth in the process?

Amanda Cats-Baril, International IDEA: For consultation, decide who is going to be responsible, what agency will be responsible, will they be done in town halls, one-on-one consultations with sectors. Youth representatives should be chosen by the youth groups themselves who want to represent them. Political parties pick usually who they want to talk to, the rest are left behind. People should choose who will represent them. There is responsibility also for these groups to be organized. There is a need to formulate groups and choose leaders so people know whom to talk to.

A lot of time the issue is not who who’s consulted but what happens with the document. People put forward all sort of ideas but not taken seriously. Two aspects: who’s participating in the consultations and what’s the plan to reflect the input on the final document?

Technology is changing consultations significantly. Now you can have online consultations. Iceland actually crowdsourced a full draft constitution online so they had a platform wherein they accepted inputs

online. In the end they had a full draft constitution that is fully based on technical crowdsourcing. In those circumstances the youth benefit, because they tend to understand technology better—a lot of openings in that way for youth participation.

Prof. Dr. Stefan Jost, KAS: Don't be passive. You have to fight for your space. You have to look for your space. You have to demand your space. And you have to demand the politicians to discuss with you and that's the obligation of all the civil society, because politics is too important to be left only at the hands of politicians. And it's not a question of federalism, it's a question of democracy. Democracy without participation will not work.

What about education on federalism or integration in the curriculum?

Amanda Cats-Baril, International IDEA: The need is not necessarily to include federalism in the curriculum, but to think broadly what areas of the curriculum need to be reformed to promote federalism, the skills and mentalities that come with civic education, how to teach critical thinking, collaborative leadership, history.

How do we distinguish between self-serving interests and legitimate issues that merit constitutional change?

Dr. Adrian Tamayo, MinDA: It's important in the information and education campaign for federalism to focus on the powers to be exclusively exercised by the federated regions and the central government, respectively. The riders of federalism, e.g., political dynasty, political party reform may end up in a gridlock with what is more important which is federalism because these are items constantly assailed by those who do not want federalism.

Amanda Cats-Baril, International IDEA: It's a relevant question anywhere. We always think of constitutions as above politics because of their nature and foundational element, but the reality is that constitutions are political documents. Constitutional change processes are extremely politicized. In fact may be more so than other processes because of the importance of what's at stake. Therefore, and I don't mean this in

a pessimistic way, but I don't think any way to guard against vested interests entering the process. They will be part of every process and when we talk about constitutional change processes and how do you design them we often talk about the need to balance the elite interests and that's about getting everyone on board. If you just ignore the elite in the interest of change, that's very unlikely that your transition will succeed. There is a need to not guard against vested interests but be very aware of them and have your power maps in place – who wants what out of this process and what are they pursuing and then have spaces for negotiation and dialogue that could allow you to tease out the legitimate interests as opposed to the vested interests.

What is the question if federalism is the answer?

Prof. Dr. Stefan Jost, KAS: The first point is political power, to take the decisions from Manila to the regions. Second is that the Philippines wants to have equal conditions as much as possible for everyone – better conditions, more equal conditions in all parts of the country.

How can we achieve this? The answer is federalism, and there's the question what kind of federalism. The other question is how to do it – in an amendment, in a constitutional change? That's more a technical discussion than what is the content. It's not enough to press the button, that's only the start of a hard long process. You need other complementary and substantial reform. Federalism, for instance, will work better if you have an electoral system – change it so that senators will be elected in the regions.



MINDANAO, SECURITY & MARTIAL LAW

Third Session

Keynote Speaker

Undersecretary Cesar B. Yano

Department of National Defense

Distinguished Panel

Lt. Gen. Cirilito Sobejana

*Commander, Western Mindanao Command,
Armed Forces of the Philippines*

Dr. Francisco Lara, Jr.

*Peace and Conflict Advisor-Asia,
International Alert*

Prof. Christian Lloyd Espinoza

Assumption College of Davao

Moderator:

Fr. Eliseo Mercado, Jr., OMI, IAG Senior Policy Adviser



Kusog Mindanaw Chairman Fr. Eliseo Mercado, Jr., OMI moderated this session.

This session will tackle issues that concern our safety and security and the measures that address those issues. This has been a primary concern since the Marawi Siege of May 2017, followed by a series of bombings in Cotabato City on December 31, 2018, and, before that, the Lamitan bombing (July 31, 2018) and quite recently, the Jolo Cathedral bombing (January 27, 2019) and the bombing of a military camp in Indanan, Sulu (June 28, 2019).

The measure used to respond to the concern of security is martial law. In the Philippines, the only territory under martial law is Mindanao. We have our speakers to discuss this issue.

Mindanao, Security & Martial Law



Keynote Message of Department of National Defense Secretary Delfin Lorenzana delivered by Undersecretary Cesar B. Yano

Kusog Mindanaw is bringing in yet again a compelling platform for leaders and stakeholders from various sectors to come together and promote discussions on matters of utmost significance to the whole Mindanao region. This manifests the healthy convergence of the government, the civil society and the private sector for a whole-of-nation approach towards peace and development.

As the Secretary of National Defense and the Cabinet Officer for Regional Development and Security or the CORDS for BARMM, I value the task of linking efforts of the national government to stakeholders and beneficiaries. I am fully supportive of your agenda which captures various matters that are central to the mandate not only of the Department of National Defense but also of the other agencies of government.

The impact of this year's Kusog Mindanaw promises to be more significant as it coincides with our transition towards the full implementation of the Bangsamoro Organic Law which is fully supported by the entire security sector. In this challenging phase of the transition, we commit to provide a safe and secure environment for the new Bangsamoro region to commence a brighter life for its people and to plan for the greater years ahead. But we are fully cognizant that we in the security sector alone cannot do the job, we need everybody's involvement.

As a Mindanawan who has been serving in the government for roughly half a century, I could say that I have never been this optimistic that the dreams and aspirations of our Moro brothers and sisters will fully, although gradually, come true. With the strong transitional authority in place enabled by the President's strong political will and leadership and supported by the national government that is now more attentive and driven, I am confident that we can vigorously implement the Bangsamoro normalization process.

Yes, there are challenges which we have to hurdle though. As we are aware, the normalization is the second track in the Comprehensive Agreement coming after the political track. Our involvement in this process is bolstered by the President's Executive Order No. 79, enjoining various government agencies to implement a normalization program that is multi-faceted and covers the aspects of socio-economic development, security, sustainable livelihood, political participation, confidence building and transitional justice and reconciliation. Crucial to this is the gradual decommissioning of MILF forces and weapons to be administered by the Independent Decommissioning Body, the disbandment of private armed groups in the Bangsamoro core territory and its adjacent regions and the creation of a technical working group that will look into the cases of persons charged with or convicted of crimes and offenses connected to the armed conflicts.

I am pleased to note that the IDB is set to decommission 30 percent of former MILF combatants and weapons this year and the rest are to be decommissioned until 2022. Members of the Armed Forces of the Philippines and the Philippine National Police support this normalization process through the training of Joint Peace and Security Teams including selected members of the Bangsamoro

Islamic Armed Forces who will serve as the operating units for the transitional component of the normalization program.

As equally important as our involvement in the Bangsamoro transition, members of the armed forces remain committed to continuing the effective implementation of martial law in Mindanao. With the thrust and confidence of the Filipinos in the government, the President and the Department of National Defense including the AFP will remain steadfast in our duties to safeguard the communities in Mindanao from the threats of rebellion, terrorism and violent extremism. The fulfillment of these duties is soundly grounded on our inherent mandate to protect all fundamental rights of the people which are guaranteed by our constitution.

In the implementation of martial law, members of the armed forces are mandated to observe and adhere to the rule of law, protect human rights and uphold international humanitarian law. As martial law administrator, I must say that our implementation of measures is one that is non-invasive and non-intrusive but nonetheless highly effective towards neutralizing members of local terrorist groups and the communist terrorist groups. For all these relative successes we thank you for your support.

Complementing military operations, the armed forces lead various activities to further secure their areas from the influence of extremism. These include engagement with key leaders and stakeholders, establishment of barangay intelligence networks, maritime law enforce patrols, joint operations with the PNP and other intelligence operations.

Most importantly, the AFP has strived to dominate the information realm to counter radicalism and extremist ideals which is done through the TRIMP or TV, radio, internet messaging and print

information drive and campaign.

We also attribute our success to closer engagements of the AFP with local chief executives to maximize collaboration for smooth martial law implementation. It must be emphasized that the local chief executives take up a crucial responsibility in the implementation of martial law in their respective constituencies. However, we have noted some unauthorized absences of local chief executives which have been reported to the President. This measure is in support to our local government reform agenda and the keyword here is good governance.

We are also careful of the possible economic and development impact of martial law, thus we have instructed that investment owners, would-be investors and contractors get information on security situation of their areas of interest. This is done during local peace and order council meetings to guarantee their protection from coercion and extortion by terrorist groups and other unscrupulous groups.

The National Economic and Development Authority (NEDA) has authorized the Armed Forces' involvement as observer in the regional project monitoring committees and local project monitoring committees nationwide to ensure the timely completion of government projects especially those needing physical protection – all for the benefit of local communities. Admittedly, it requires a lot of efforts to uphold transparency and accountability in the implementation of martial law. That is why we need to put sustainable security measures in place so we can avoid the need for it in the future.

Amid all these initiatives, let me solicit your support in calling our legislators to amend the Human Security Act of 2007 to the passage of the Anti-terrorism bill. Once enacted into law it is hope to better

equip our security agencies in addressing terror threat. Another legislative measure being pushed by the Defense department along with the Department of Education is the restoration of mandatory ROTC for Grades 11 and 12. Once passed, it is designed to develop in the youths love for country, among others.

On behalf of the entire security sector working dedicatedly to protect our country and its peace, we are counting on your continued support, believing in the Bayanihan spirit, a quality that is distinctly Filipino.

Sama-sama nating kamtan ang kapayapaan tungo sa maunlad na kinabukasan ng bayan. Mabuhay tayong lahat. Mabuhay ang mahal nating Pilipinas.

Mindanao Security Situation



Lt. Gen. Cirilito Sobejana, Chief of the Western Mindanao Command of the Armed Forces of the Philippines, briefed Kusog Mindanaw on the security situation and their efforts in the Bangsamoro region and across his command's area of responsibility. The following are highlights of his presentation.

The Area of Responsibility (AOR) of Western Mindanao Command (Wesmincom) covers four regional areas in Mindanao: BARMM, Zamboanga Peninsula, part of Northern Mindanao and the SOCSKSARGEN region. The security challenges I will share are within the scope of Western and Central Mindanao only.

Communist Terrorist Groups (CTGs)

There are three prominent CTG groups that operate in Western Mindanao: Platoon 1 of Guerilla Platoon 12 which has been encroaching in the boundaries of Misamis Occidental and Lanao del Norte; Western Mindanao Party Committee operating in Misamis Occidental, Zamboanga del Norte and Zamboanga Sibugay extending to Zamboanga del Sur; and the Sub-Regional Committee Daguma that operates in the boundaries of Sultan Kudarat and South Cotabato. There are also attempts of infiltration by this group in the hinterland municipalities of North Cotabato, particularly in Alamada, Libungan Midsyap and Aleosan.

These groups have the capability to conduct limited attacks to AFP and PNP units and other targeted government entities, ambushes, sabotage of vital facilities, including burning of equipment in government flagship projects, liquidation, bombing and extortion.

These groups depend mostly on extortion to build up their logistics and also generate financial support from both local and international

organizations supportive of them.

Currently, these CTGs have the total manpower of 408 and 287 firearms and 35 influenced barangays.

The Abu Sayyaf Group (ASG)

The ASG is one of the most notorious local terrorist groups in the country. Currently, the concentration of its forces is in Sulu while small groups of ASG still operate in Basilan and the lower part of Zamboanga peninsula. This group is capable of conducting limited attacks, ambushes and kidnapping operations, and, more recently, the exploded IEDs in different parts of the island province of Sulu. They are known for employing IEDs in their terroristic activities. As part of their capability build up, they conduct extortions targeting politicians, businessmen and teachers in their immediate influenced areas. The group has a total number of 373 members with 419 firearms, affecting 138 barangays.

Foreign Terrorist Fighters (FTFs) and Daulah Islamiyah (DI)

The DI is the Daesh affiliate in the Philippines. It comprises several local terrorist groups that pledged allegiance to Daesh. These are the Maute Group from the provinces of Lanao, the Maguid Group or formerly Ansar al-Khilafah Philippines based in Palimbang, Sultan Kudarat and some parts of Sarangani Province, and the Turaife Group from Maguindanao. These terror groups are capable of conducting limited attacks, providing protection and safe haven to foreign terrorists in exchange for training like IED fabrication and conducting bombing operations.

The BIFF

They continue to act as peace spoiler in Central Mindanao. Despite its dwindling resources, the group can carry out hostile actions like ambushes, harassments, sabotage, IED-making and bombing to demonstrate their relevance and resiliency as a security threat in the area. Manifestation of these hostile actions are their involvement in the series of IED attacks targeting the military groups and civilians in Maguindanao, Sultan Kudarat, North Cotabato and the neighboring cities.

The group continues to intensify the manufacture of IEDs in relation to their bombing operations. With their setbacks incurred in the conduct of focused military operations, the group is also conducting consolidation and reorganization to strengthen its forces. To mitigate its losses, the BIFF will maintain its alliance with the Daulah Islamiyah Turaife Group and the Maute Group. Moreover, the group remains committed to the teachings of its late founding leader regarding the group's secessionist objectives, which is to establish independent Islamic state in Mindanao. They have a total manpower of 280 with 240 firearms, affecting 50 barangays.

Our special concern: Peace-inclined armed groups

• The MILF

The MILF remains active in adhering to the agreement in the peace pact with the government. It has shown commitment and support to the government fight against terrorism and illegal drugs. With the passing of BOL, the MILF envisions faster development in the BARMM and sustainable peace in the region. There are seven recognized MILF camps in the AOR of Wesmincom: Camp Bilal, Camp Busra, Camp Abu Bakar, Camp Darapanan, Camp Badre, Camp Rajah Muda, and Camp Omar Ibne Al Kalib. They have an estimated total members of 7,008 manpower and 4,505 firearms.

• The MNLF

The MNLF sustains its commitments with the government since the completed peace pact with them. So far it pledged support to government efforts against terrorism and illegal drugs, actively cooperating in developmental activities pursued by government in their identified communities. The MNLF has an estimated number 4,233 members, 1,441 firearms, a total of 88 camps and 392 communities in the Western Mindanao area.

The Western Mindanao Command

The mission of Wesmincom is to conduct development support and security operations to defeat the local terrorist groups such as the ASG,

DI and BIFF; defeat the Western Mindanao Regional Party Committee of the CPP NPA and support the peace process with MILF and MNLF in order to significantly contribute to the peace, security and development efforts of the government in Western Mindanao for 2019.

We are guided by a two-pronged strategy: population-centric approach and enemy-centric approach. The first approach employs the whole-of-nation approach that seeks to bring about convergence for regional peace and security and a shared concept of security. While doing this, good governance must be felt by the public. The enemy-centric approach concerns the three tiered defense system, including efficient and effective intelligence for target acquisition and situational awareness, protection of vulnerable area/facilities, quick contingency and legal/law enforcement operations.

Martial Law and Experiences on the Ground



Prof. Christian Lloyd Espinosa sought to bring the voices of marginalized sector in articulating his perspective on martial law in Mindanao. The following are excerpts from his talk.

President Duterte's martial law is quite unique in the world because when a president declares martial law, one would expect that people will be worried or afraid of it just like the previous martial law here in the Philippines or in other countries like Venezuela and Turkey. In the Philippines, things seem normal—people treat it like nothing has changed.

In defense of the declaration and extension thrice over, they would say that you would only fear martial law if you are a terrorist or communist or if you support such groups. This has always been a convenient excuse.

This is coming from the narratives of the victims themselves, particularly indigenous peoples and peasants in areas where I did some work. At that time there were 30 civilians confirmed dead under martial law and these are ordinary peasants, indigenous peoples and activists.

Extension after extension, the killings continue unabated, and the deaths are usually believed to be politically motivated. None has been resolved because perpetrators were unidentified. But if you look at the pattern, groups that have been tagged as sympathetic or fronts of the communist party are the most prominent target

of these killings.

The AFP report has no mention of complaints of human rights violation when in fact, as early as 2018, there were at least 155 cases of human rights violations filed by different groups at the Commission on Human Rights. Even international groups have urged the government to lift martial law because of its propensity to result to massive human rights violations. If you take a look at narratives coming from people from the countryside then you will really see how it has impacted. The question is was it because of martial law— because even prior to martial law, the killings have always been there.

So the question is, what actually it is that martial law can achieve security-wise that the state or president or state security forces could not address? There is no need for him to declare martial law if the need is to address terrorism because he has simply the power to call out the state forces to quell the threat.

Congress has extended it, the Supreme Court has favored it, and it's more of a political question and a different topic to discuss. However, in our particular experience—and some will view this as unrelated, but we view it as directly connected to the imposition of martial law, although it is still vague as to what the rationale is. For example, on June 9, one of our former instructors and one of our colleagues in the Research Department, Margarita Valle, was actually arrested at Laguindingan airport because she was said to be, she was perceived or identified to be a top communist leader. She was held incommunicado for more than 8 hours, even if she presented all her IDs: she was a journalist, educator, scholar – her identity can easily be verified online. This is what we fear martial law can actually be doing because martial law, with its accompanying suspension of the writ of habeas corpus, you can get incarcerated even without any charges and this is what we see

as what is happening right now and we have a direct experience of this. Ms. Valle has already filed formal charges in court against CIDG and other respondents.

So we ask: in terms of security, how do we view security? Do we view it as security of the president's position, security of the state? What about security of the IPs, security of the people, security of those who may not agree with you or the state, who under the constitution are actually guaranteed the right to express so long as they are within the bounds of the law, such as some of the activists that were gunned down were doing before they were killed?

Another question: in terms of economic development, how has martial law actually contributed because one of the narratives in the extension is that martial law is actually good for business? We don't see any convincing figure to directly connect martial law to economic development particularly in Mindanao. As I see it, even without martial law you can still bounce back.

On the issue of federalism, that does not necessarily mean integrating martial law into the entire package of it because we can discuss economic development without actually imposing martial law. Security is always going to be an issue but as to what extent that security is going to be, are we going to allow any breach to happen like what is happening right now?

The narratives coming from the ground is not quite covered in the media and, if they are, they get drowned with all the noises.

What is it that can be achieved with ML? If the state claims that it is actually able to address more effectively any threats, how come that we still have a lot of threats going on? We've heard so much about obliterating insurgency since way, way back. Look at

where it got us. Insurgents are still there.

Let's talk about security from a multi-lens perspective: diplomacy, safety of our people – this is missing in the entire equation. Something should be considered in our policy framing. When we treat security as something purely military or purely about the state, that's the time we begin to commit mistakes.

Bangsamoro, Security and Peacebuilding



The following are excerpts from Dr. Francisco Lara, Jr.'s talk at Kusog Mindanaw 2019 conference. Dr. Lara is the Peace and Conflict Advisor for Asia of International Alert.

We should begin by looking at how people look at Mindanao, more specifically Muslim Mindanao. There are at least two narratives that shape our understanding of life in Mindanao, especially in the Bangsamoro.

One narrative speaks of the discrimination, injustice and despotism that has fueled many wars in Mindanao, feelings that were nurtured by these violent flashpoints. Lest we forget, this year is the 51st anniversary of the Jabidah massacre, the 37th anniversary of the Patikul massacre, the 10th anniversary of the Ampatuan massacre, this November, the 4th year anniversary of the Mamasapano tragedy. These events are critical junctures for us in Mindanao, and for many people, their understanding of the region is shaped by those violent flashpoints.

But there is a second narrative about Mindanao, and it accentuates the stories of the many political settlements that have been achieved that have produced some measure of security and peace no matter how fragile. Lest we forget it is also the 32nd anniversary of the GRP-MNLF ceasefire, the 22nd anniversary of the signing of the cessation of hostilities between the government and the MILF, the 23rd anniversary of the signing of the Final Peace Agreement between government and the MNLF, the 5th anniversary of the CAB, and the fifth month since the referendum

that led to the passage of the BOL.

I ask those of you who are here today in Kusog Mindanaw. What narratives influenced the way you look at the region, because that's very important when one looks at peacebuilding, state building and development in the region. These events certainly represent two faces of the history of Mindanao: they speak of resilient conflict but they also hold the promise of a lasting peace – the sort of peace that is purchased through a process of political settlements rather than defeat and surrender.

Why is this important? I think it is important to see the problems we face in terms of changing structures, the constitution and other institutions as no different than the process of undertaking a political settlement. It is a sort of societal change that will require the agreement and the support of at least two of the most important sectors in society, and that is the elites, and secondly, the military.

Let's face it. I do not talk about the masses of the people, not because they are unimportant. I focus on elites and the military because at the end of the day, they are the only groups that can topple a state. The business sector is the only sector who can pay for a coup d'état or who can pay for a revolution to succeed.

In today's discussion of political settlements, that focus has now been ingrained in the literature. In 2012 if you recall, different organizations, the United Nations, the World Bank, Christian Aid, talked already political settlements in this manner. For us to change society, we need to be able to get the powerful blocks in society behind us. Let's face it—for all of us in civil society, we have been active for so many years, we speak to the same audience, we convince the same people, we use the same propaganda we've used twenty years ago, and it has led to very little change.

Is the impasse in the passage of federalism and the movement of that institutional change actually created by a lack of coherence between the conditions that bring about institutional change and the conditions of protection and welfare that people need – in short the conditions of peace and security? In the absence of peace and security, I argue, none of the economic, social or other developments will happen. I speak like this not because I am an advocate of security only. I was part of the peace process as well in both peace processes and we argued always that there must be a room for negotiation and discussions even if you want to fight on the ground. You can talk and fight but don't stop talking.

We are in a transition, let's accept it. This is a transition period and a transition period following the political settlement of the CAB five years ago, and some people say even earlier when the ceasefire was signed between the MILF or the MNLF with the government.

Any transition period brings with it TIVs or transition-induced violence. And we need to address and accept transition-induced violence as a necessary condition during the transition. Some people call this in the literature black swans. Black swans are unexpected events in economics, or the inverted U—it's going to get worse before it gets better, conflict will rise before it goes down. This is a necessary feature of a transition period and we are right smack into that transition's period so if a Marawi happens, that's part of the transition period, if a Mamasapano massacre happens, that's part of the transition period.

The point is how do we navigate and how do we save fragile peace agreements in the midst of such violence. It is a recurring presence in conditions of transition. In the case of violence, for example, in the Philippines, our own studies show how things have shifted over the past five years. Violence has mutated from rebellion-related

violence to multiple, multi-causal types of violence, including identity, resource, land issues, etc.

Second, the shift from vertical violence or attacks against the state towards more horizontal violence. If you look at Marawi, some people describe Marawi as a type of political violence but it is hardly the source of violence that is actually targeted against the state. The Marawi incident is horizontal. It is the desire of one particular group to dominate the thinking and the beliefs of other groups. This is why for the first time you saw groups killing fellow Muslims which has never happened before. And so we say beware how do you describe those things. If it was rebellion, the fight in Marawi was incidental to prevent one group from dominating others, ergo it's horizontal.

Third, and this is very important, the patterns of development or the trajectories that the new BTA or the BARMM will impose will be a site of violence. Right now, pardon me for being honest, we have heard talks about people feeling that they are excluded, particular tribes saying where are we in this BARMM, particular sectors women, the youth who see the same old, greying figures in the rebellion lording it over within the transition authority and this is troublesome and it is a cause for worry. Also because in studies of conflict, normally a new government that comes in tend to be rather than accumulative, the tendency is to be extractive. We all know that in studies of institutional change, an extractive system is where you find resilient poverty.

What do I mean by extractive system? When the BARMM says that well the first source of income will be barter trade that's extractive, when you bring in plantations, that's extractive, when you bring in mining firms, that's extractive. I see the point that the Bangsamoro or the BARMM may want to find immediately new sources of income. Well it can so long that it understands that the

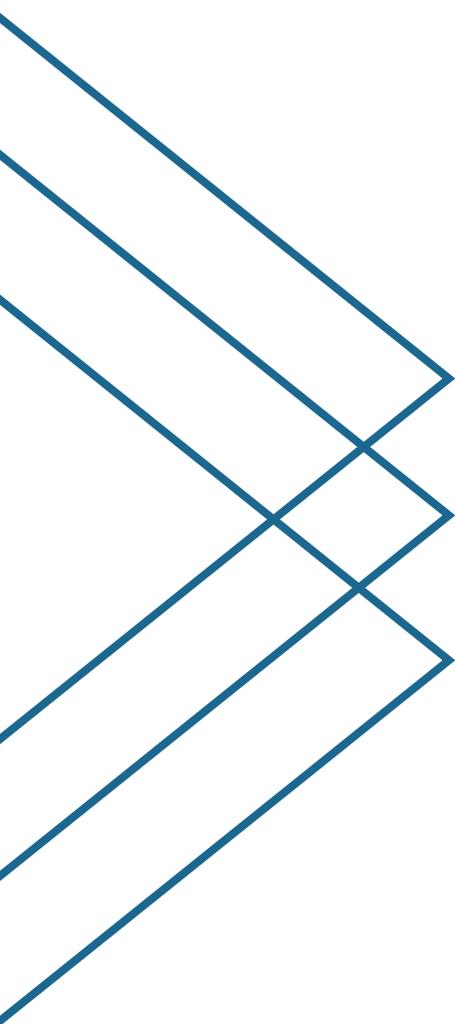
more extractive it is, the more it creates conditions of inequality so that is going to create conflict again and that is part of what we would call transition on those violence.

In essence, TIV will accompany the process of state building and the primary task in state building is to strengthen the legitimacy of the new rulers. The passage of the BOL does not mean that the , the MILF or the BARMM is legitimate in the eyes of many Muslims. That is the reason why I stated in a press conference of IAG right after the plebiscite when I was asked, is this a sign of political maturity in the Bangsamoro, I said well, the BOL was approved but I cannot say it is a sign of political maturity so long as people vote according to what the clans tell them and so long as the people vote according to what the fronts order them to vote. That is not political maturity. The point is to be able to get them out of their dependence to the fronts and their dependence to the clans and the only way that can be done, the most important, history tells us, is protection. People have very little use for welfare goods in the Bangsamoro. That is why they continue to elect leaders who are not accountable, who don't build roads, who don't give any money for development. Protection and protection first—so long as the Bangsamoro cannot provide that protection, they will not get the legitimacy they deserve. Secondly, that protection is also measured in terms of how local states are able to provide their citizens with the means to go about their business without being taxed. In my study of legitimacy construction, I noted that in the Bangsamoro people continue to perpetually elect in cycles of electoral competition people who are corrupt, unaccountable, etc. Why? Because the exchange deal is you elect me to power, akin ang pera, bahala kayo sa negosyong gusto nyung gawin hindi ko kayo i-ta-tax (the funds go to me, it's up to you to put up your business, I won't tax you). Therefore there is an economic foundation to the issue of legitimacy. My question now to the BARMM, are you prepared to not tax people, forego taxes in the

barter trade?

Demobilization of arms is an elephant in the room. We talk about normalization, decommissioning of weapons when we all know that no weapons owned by our combatants will actually leave their ownership. Now there is a new term – MILF-owned weapons. I am not against it. In fact I'm willing to say, don't demobilize or decommission the MILF. What scares me is if the MILF loses command and control over its troops. The MILF can be the vision of what Nur Misuari has been fighting for as early as 1996—a regional security force. Nur did not get that. The MILF is willing to surrender their weapons (face value). It's an elephant in the room because we know they still have arms. I don't know why there's all this fuss about decommissioning when it is really a drop in the bucket. The real issue is whether we will be willing to immediately register their weapons and turn them into a force, a strike force that can attack drugs, illicit weapons, kidnap for ransom, etc. We've been advocating this for a long time.

The second story is about looking at land. One thing that worries me is we've been proposing a land commission and we found out that it's going to be delayed. That's very strategic in getting more importantly our brother IPs into the state building project, but not only that, it will be a major source of decline in violence.



Open Forum



Martial law clarified

Comment from a participant: Under the 1987 Constitution, even if martial law is declared, the civilian government operates normally. At most, it is an emergency power to address the problem of rebellion. When the president declares martial law, the Constitution is very clear about limitations—in fact only 60 days, but Congress has power to extend it indefinitely. When the president declares martial law and suspends the writ of habeas corpus, the arrested person has the constitutional right to go to court and question the legality of the arrest. If there is no valid basis for the arrest, the court will order the release immediately. The order is called writ of habeas corpus. When you are arrested, you file a petition for habeas corpus, the court will order the person detaining you to explain the reason for detaining you. However with martial law declared, the privilege of the writ may be suspended, but the suspension is only in relation to offenses which are related to rebellion or invasion. The provision is very clear that the period of detention is maximum of 72 hours and if no case is filed against you in relation to rebellion or invasion, you have to be released. The laws are there: if abuses are committed, file a case, because the legal system still operates. In fact, there are those who say that martial law under the 1987 Constitution is toothless.

Prof. Christian Lloyd Espinosa: This makes for a very good question, If martial law is toothless to begin with, exactly why is there ML? We need to appreciate the rhetoric coming from security cluster—there are some merits. The thing is that, if there are successes, what are these? Leaders of the NPA surrendering? If we say there are benefits to martial law, to whose benefits and what will our security cluster do with the human rights violations that are being reported?

Usec. Cesar Yano: The number of surrenderees can be one of the

indicators of success, but there are other areas, like normalization, like how many lives were normalized.

The government has this expanded comprehensive local integration program in the case of communist insurgency wherein those who surrendered are given housing, livelihood and cash as payment for their firearms and other benefits as a way of giving them a chance to go back to mainstream society.

Dr. Franciso Lara, Jr.: I don't think martial law is useless. People are talking about it, it has psychological effect, people are anxious. Second, martial law should be declared if there is clear and present danger like what happened in Marawi. When you look back at history, what did President Arroyo did after the Ampatuan massacre? She imposed some sort of control on the province, so it does work. Third, it brings people together to the analysis of the gravity of the situation. The problem of martial law is not because it was undertaken in the ARMM. Why in the ARMM? Because there is a credible force outside the state, the amount of weapons in the hands of people in the ARMM outguns even the state.

That is not the case in other places of Mindanao. From the very start, after the first six months—but certainly after 6 months—martial law should have been removed from the rest of Mindanao, especially in NPA areas because the NPAs imposed their own martial law.

The state undertakes martial law because it wants to borrow the same set of disciplining that the rebels undertake, but then in those areas the state should do better because you are the symbol of democracy. The reason why people would go to you in those areas—CARAGA, Davao provinces—is because you provide a model different from what the rebels provide. This is not the case when you declare martial law. You are no different so the IPs are caught in the middle, they are locked in a proxy war – IPs siding with military, IPs siding with rebels.

The reasons that enable a rebellion to start to grow are the not the same reasons that make a rebellion endure. At the time of founding of the NPA there were valid reasons: Marcos dictatorship, human rights abuses, militarization, fascism. Thirty years later, do the same reasons exist? Nevertheless, the insurgency thrives, because the reasons that enabled them to thrive are no longer the grievances of the past but their access to resources at present. There's mining, there are those who are willing to pay, and they implement their own type of martial law, and that includes executing IP leaders, arresting people.

What is the purpose of martial law extension? Is it to deter lawlessness in our midst? Is it a tool to curb corruption within local government units if any? As we see it, it hampers their right to travel in Marawi and visit their houses? What is the definition of state building? Is it to hasten reconstruction of Marawi?

Dr. Francisco Lara, Jr. : State building is process of strengthening the state which all of us have stakes in— the reason we're interested in federalism.

A lot of people are happy because of BARMM, but not all people are because of perceived inequalities. BARMM is a medium of optimism now, but the process is unfinished. I doubt if people are willing to participate in the process if their most urgent need is not addressed. The process should be together, some work done on security, some work done on state building. The problem why there is so much fear about state building is because people associate it with security sector all of the time and when they associate it with the security sector all the time, the problem with security sector is it's hardly adequate when it comes to resilience, social cohesion. It is only beginning to learn those capabilities now.

Usec. Cesar Yano: The extension of martial law rests in Congress. What we are doing is apply this to LGUs by requiring them to be present in their respective offices, not a requirement but we are using this as a tool for good governance. How long? If the situation still warrants it.

As far as visiting their homes, it's not about martial law but the safety of individuals, because there are still 49 unexploded big bombs in the Most Affected Area of Marawi and that area is 250 hectares composed of 24 barangays out of the 96 barangays.

Lt. Gen. Cirilito Sobejana: Martial law is to address lawlessness, to introduce good governance and state building, because we believe that there can be no security without inclusive development and there can be no inclusive development without good governance.

It has been 26 years since the ASG started in Basilan and in spite of national security measures and the Balikatan, the country is not able to control or neutralize it. What are the elements that maintain the movement?

Lt. Gen. Cirilito Sobejana: The ASG is a challenge for us, but the AFP is just part of the solution. We are not the total solution to the problem—we need partners. The contribution of AFP to solving insurgency, lawlessness, terrorism is only thirty percent; seventy percent comes from civilian government, the community as a whole, LGUs, NGOs, civil society. That's why the President issued Executive Order No. 70 series of 2018, which calls for whole-of-nation approach, the creation of national task forces to end local armed conflict. We learned from experiences in the past and we are using responsive template that evolved from. There is a significant reduction in the strength of the enemy because of concerted efforts.

How do you make a distinction between elements of a private army, lost command, regular members of the BIAF, bodyguards of politicians during elections, or even cattle rustlers especially in IP communities and because everybody carries arms?

Lt. Gen. Cirilito Sobejana: We have a lot of private armies—I suggest we change the name, call them political armed groups (PAGs). Our armed forces has three major services: army, air force and navy, each service with distinct uniform. The BIAF no longer exists after normalization—we should not see anybody wearing BIAF uniform. We have the CAFGU that can easily be identified because they are required to wear uniform. If you see anybody with arms but not in uniform, they must be lawless elements so you should report them to authorities.

Prof. Christian Lloyd Espinosa: This is what makes matters complicated especially in IP areas. NPAs have no uniform, if somebody would be extra-judicially or arbitrarily killed, it's so convenient to say that this person is NPA. We should go beyond uniforms and go back to the question as to why are there movements such as the NPA because that's never been really addressed.

Is federalism an antidote to Mindanao secession?

Usec. Cesar Yano: There is no full proof that it can really solve the problem because we have not tried this. Perhaps if we do this, there might be an improvement of the present situation because in a federal setup, states compete, and this gives incentives for states to really work hard.

Decommissioning, normalization, demobilization, surrender of firearms – what do these terms mean and do you expect an exit agreement before 2022?

Dr. Francisco Lara, Jr.: In 2012, we were commissioned by then

GPH peace panel chairman Marvic Leonen to make the first draft of normalization. We will use the term “normalization” for the process of changing the conditions of war and turning rebels into ordinary citizens. One component of normalization process is the decommissioning of weapons. We do not use the term “disarmament”, because by using that, you are saying in effect that they are being disarmed and that they surrender.

There are several kinds of decommissioning that are possible: cantonment, balik baril program. There is not much difference from the other systems that did not really succeed. Even decommissioning now talks about only a small number of weapons. That’s why I said decommissioning is an elephant in the room because it will not be able to address the problem of security. It’s very important to focus on the people’s feeling of security, what makes them feel secure. The Northern Ireland experience, for example—the Irish Republican Army (IRA) is fewer than MILF, but it took them ten years to complete the process of decommissioning. Why ten years? Because it took ten years for the paramilitary of IRA to be confident enough to give up—not their small weapons because that remained with them—their heavy armaments. Decommissioning takes time.

Then, demobilization is removing the command structure, or from being combatants, make a political party, turn combatants to political activists. Finally, the third component is development inputs.

What will end communist insurgency?

Dr. Francisco Lara, Jr.: The key to solving the insurgency problem is to be able to muster enough reciprocity between two camps; they should be planning and working together.

What is the role of IPs in normalization because right now, they are not represented in the Joint Peace and Security Team (JPST)?

Lt. Gen. Cirilito Sobejana: JPST is a 30-man team: 15 from BIAF, 7 from PA, 8 from PNP. Its purpose is to cover the vacuum created following the decommissioning of the BIAF. The BIAF will be disarmed and JPST will take over to provide security in the areas where BIAFs came from. I agree that IPs who are also residing in the place are not part of it, but then we have the CAFGU program. We are recruiting IPs as part of the CAFGU auxiliaries. They are required to render duty fifty percent of the time—meaning in one month, they will serve 15 days only. IPs have a role to play by being law abiding citizens and providing us the needed information.

Dr. Francisco Lara, Jr.: One possible solution there is to bring IPs into committees because policing involves work at community level, getting people to buy in into process—create other committees for IPs, say for resilience or social cohesion at the community level and don't insist on joining JPST if that is not feasible.

ABOUT THE INSTITUTE FOR AUTONOMY AND GOVERNANCE

The Institute for Autonomy and Governance (IAG) is a southern Philippines-based think tank at the forefront of capacity building, research, forums, training and technical assistance for advancing public policy for peace, security and good governance in the region. Our work for the past two decades has contributed in defining needed measures toward human security and meaningful self-governance in the Bangsamoro region.

IAG has engaged with regional and national executive authorities and policymakers, Moro revolutionary fronts, local government units, security sector and key leaders and thinkers toward building consensus on political, economic, and security issues.

As a homegrown public policy center with strong national and international linkages, IAG is able to help raise the bar of regional and local public policymaking to international standards even as we maintain sensitivity to the complexities and peculiarities of local settings, earning the trust and respect of a broad range of stakeholders.

We have regularly provided capacity-building programs to the Regional Legislative Assembly during the time of the ARMM, the Bangsamoro Transition Authority of the present BARMM, and constituent Local Government Units (LGUs).

IAG is committed to the development of public policies that promote and protect the rights and welfare of vulnerable groups. We championed and provided technical assistance in crafting local and regional policies, including the Bangsamoro Organic Law provisions on Indigenous Peoples, women, youth and children.

The pioneering researches we conducted on youth vulnerability, traditional madaris and the baseline studies on violent extremism in the Philippines are driving P/CVE policies and programs in the country.

Our facilitation of inter-religious and political dialogue is well recognized and we lead in promoting inclusivity and social cohesion in the Mindanao peace process. IAG convenes the annual Kusog Mindanaw conference that brings together Mindanao sectoral leaders in dialogue on issues of peace, security, governance and development.

IAG provided technical assistance in the establishment of the Iranun Development Council (IDC), an economic and development aggragation of five local government units in Maguindanao. We currently implement the same principle of interlocal cooperation, this time with five municipalities on the western seaboard of Basilan province that make up the Western Basilan Alliance.

IAG helped raised capacities of local government units, military and police in peacebuilding and security sector reforms. From a series of training-workshops we conducted for the uniformed men and women of the Armed Forces, we produced a security sector reform training manual, a vital resource from which Filipino soldiers can glean a broader understanding of their duties as peacekeepers.

IAG maintains a network of more than 100 civil society organizations in Mindanao that we assist in capacity building in peacebuilding, governance and politics.

We have published numerous policy papers and journals on political, economic, and security issues that define the needed measures to be undertaken for meaningful self-governance in the southern Philippines.



The Institute for Autonomy and Governance (IAG) is an independent and non-partisan think tank founded in 2001 to generate ideas on making autonomy an effective vehicle for peace and development in the Southern Philippines.

IAG is an institutional partner of the Konrad Adenauer Stiftung in the Philippines.

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