



# proposals for constitutional reforms

part

# 3



## proposals

From the point of view of citizens or civil society, the current constitutional reforms involve mainly political reforms. These fulfill the requirements for broader and effective participation of the citizenry in politics and governance and for ensuring working democratic political institutions.

The principal constitutional reforms being proposed on the level of both political parties and civil society are *a shift to a unicameral(one chamber) parliamentary system* and the *establishment of a federal republic*. These two major proposals aim to further democratize the Philippine state while ensuring effective governance.

## Shift to a Unicameral and Parliamentary System

The parliamentary form was narrowly defeated by only one vote during the discussions at the 1986 Constitutional Commission. An earlier straw vote indicated a preference by the majority.

The unfortunate consequence of this vote was the mix-up of provisions proper to a parliamentary form into the presidential system which eventually won. The straw vote had been used by the Commission as a guide to fashion earlier provisions.

Among the affected provisions were the creation of a party-list system, the establishment of a multi-party system, and the treatment of Congress as a one chamber body in some provisions (including the Congressional action as a constituent assembly).

Ironically, the constitution failed to correct in a thorough manner the vast powers of the presidency, particularly over the budget and fiscal policy, appointments, national defense and foreign affairs—despite the clipping of its martial law powers. The presidency enjoys almost as much power as in the days of the former dictator Marcos,

because of the constitutional recognition of unrepealed Marcos decrees.

The presidential system is based on the principle of checks and balances of the three great branches of government—the legislative, the executive and the judicial branches. It assumes that these three cannot step into each other's mandate while, at the same time, being capable of checking the other's excesses.

However, the post-Marcos experience has shown that the presidency is effectively shielded from—and in fact influences—both Congress and the Supreme Court through various means such as its effective control of the budget, appointments, and judicial opinions. The weak political party system and a compromised justice system worsen the situation.

The present two chamber congress has led to the various legislative gridlocks between the Senate and the House of Representatives, with few important bills passed and leaving the presidency a clear field to make decisions proper to the legislature.



The rise of personality-oriented politics, particularly at the level of the president, is embodied in the coalition—rather than party—tickets of all the post-Marcos elections. The electoral coalitions are centered on the personality of presidential candidates and not on a platform of government embodied in political parties.

There are various proposals for a parliamentary system, ranging from a modified French system with a powerful president and an administrator prime minister to a prime minister wielding both state and government powers. Incorporated into these proposals are the usual parliamentary features such as multi-representations of legislative districts, a party-list system, and a system of recall, parliamentary party coalitions and parliamentary party shadow cabinets.

### **A Federal Philippine Republic?**

Another major constitutional reform proposal before the body politic is the proposal for the establishment of a federal Philippine republic rather than the present unitary system. This proposal stems from the logic of the decentralization principle embodied in the Local Government Code and presented by proponents as the basic solution to many of the prevailing problems of development and rebellion. It should not be confused with the earlier historical proposal for a federal state within the United States of America, as proposed by the Federal Party in early 1900s.

The proposal basically calls for the establishment of a number of regionally-based republics unified under a federal constitution. The basis for such republics would be the ethno-linguistic groups such as the Ilocanos, Tagalogs, Ilonggos, Cebuanos, or Warays. As republics, there would be separate constitutions, separate governments, and separate sets of laws. All

## Addressing the Challenges of Globalization

A third major set of constitutional reforms being proposed are those dealing with the provisions on national patrimony and national development. The proposal is to redefine patrimony and development in order to make them flexible to attract foreign investment capital and enable the country to compete in the global market for capital and trade goods.

The principal proposal from the business community is to allow foreign ownership of land or enterprises in formerly restricted areas of our economy such as residential, agricultural, and industrial lands, and in media and education. It would also authorize Congress to define restrictions and regulations for foreigners doing business in the country.

The economic proposals fall within the broader debate on our response to the various challenges posed by rapid development in a globalized economy and trade. The debate centers around protecting vulnerable sectors while ensuring sustainable development in an environment of interlinked national and regional economies in the world.

would naturally still be subject to the federal constitution, government and laws.

The big difference is that each republic would have the authority to conduct its own internal governance, only leaving to the federal government cases covered by federal jurisdiction. Most probably, these would include matters related to defense, foreign relations, and monetary affairs. Development, citizen welfare, and local governance, as well as culturally-sensitive questions, would most likely be handled by each republic.

It is hoped by the proponents of a federal republic that the Moro question could best be decisively addressed by giving the Moro people their own republic within the framework of federalism. There remains the question if a federal republic would address separate CPP-NPA rebellion which is national in character and has a comprehensive agenda of its own.



## Etcetera

There are other key areas in the 1987 Constitution that need to be addressed.

One, the issue of many words and many details while leaving big loopholes. The main argument here is that the Constitution should only be a statement of national policy and strategy and not a collection of specific laws and regulations. Congress, it is felt, should flesh out constitutional provisions.

At the same time it should be noted that more than fifty provisions in the 1987 Constitution actually require Congressional enabling laws to be implemented. There is a need to rationalize the provisions insofar as the Constitution should contain firm and implementable policy provisions while being flexible enough for Congress to pass implementing laws (and not enabling laws).

Second, the provisions related to the national territory need to be reviewed in the

light of the UN Convention on the Law of the Sea. The question of an “archipelagic state” has implications for national security. The question of the Paris Agreement and its application to current territorial delimitation, as well as the Spratly and Sabah claims, need to be aligned.

Third, the provision regarding the “Armed Forces of the Philippines [as] the protector of the people and the State” (Article II, Section 3 of the 1987 Constitution) also need to be reviewed in light of the post-Marcos coup attempts and the increasing political role of the AFP.

The whole Constitution needs to be revisited. After almost 20 years, the experience of our people in building Philippine democracy and in facing up to contemporary demands of a 21<sup>st</sup> century society should be incorporated into this basic document.