

Philippines: We Will Need Charter Change for the Peace Process

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Right now, the prevailing majority sentiment seems to be that charter change is not urgent nor even a priority for the country. For many, it is not even needed, so they ask: Why? Those who have recently and prominently called for it early in this new administration, notably former Chief Justice Reynato S. Puno, spoke on the 1987 Constitution having spawned a failed state, one crippled by a weak electoral system, social inequalities and a politically vulnerable judiciary. Another former Chief Justice, Artemio V. Panganiban, disagrees “with due respect,” and says the priority is solving excessive corruption and grinding poverty. Other pundits object to charter change at this time due to its great monetary cost at a time of many rising costs, reduced budgets and impending increased taxes. There are also the oft-expressed apprehensions regarding the “tinkering” (alternatively, “monkeying around”) with the Constitution by the suspect Congress of perceived self-serving politicians, especially for the tired old issue of lifting or changing term limits.

No one has really brought into this debate, as if it is not in the national consciousness, the likely need (and also priority and urgency) for charter change arising from the all-important peace processes, particularly with the Moro Islamic Liberation Front (MILF) and the Communist-led National Democratic Front of the Philippines (NDFP), that are both about to finally get underway in earnest this February — which also happens to have been for some long time Constitution Month (with February 8 as Constitution Day based on the approval date of the final draft of the 1935 Constitution by the then Constitutional Convention). **If there is one reason for charter change in the near future, it is this.** But before we go to the link between charter change and the peace process, the important point to get here, first of all, is the country’s priority need for a just and lasting peace on two “major, major” fronts of insurgency in the country for the past more than four decades already.

Do we not see how this four-decade internal armed conflict (which by the way has two sides: insurgency and counter-insurgency) relates to grinding poverty and social inequalities? The conflict contributes to grinding poverty and social inequalities and is of course at the same time fueled by them, in a vicious cycle that has become almost a chicken-and-egg question. Do we not see how this four-decade internal armed conflict relates to excessive corruption, particularly with the huge war budget of the military? A huge war budget that could otherwise have been used for much needed social services and reform programs to address social inequalities, if not also for spurring economic growth and development.

The four-decade internal armed conflict has been a strategic albatross around our country’s neck that has resulted in our being left behind economically by closest neighbors Brunei, Malaysia and even Indonesia in what is supposed to be an East Asian Growth Area. The same might be said vis-a-vis our other Southeast Asian neighbors Singapore, Thailand and Vietnam. None of these other neighboring countries have not had to face two major fronts of internal armed conflict over four decades. As the Vietnam war ended in 1975, it was the still the early years of martial law in our country. That military response to the Communist and Moro insurgencies, aside from its agenda of perpetuating the Marcos dictatorship, as we know, did not quell those insurgencies but instead generated more resistance. This is the lesson that gives logic to the peace process as a better

alternative to resolve our two major internal armed conflicts. But we also have to do a better job with the peace process which is getting to become as protracted as the “people’s war,” to use NDFP terminology.

Part of doing a better job with the peace process is of course getting the solutions right and also getting the timing right. Timing here can refer both to completing this already several decades process “within a reasonable time” and to seizing the right/ripe moment/timing for this. As is often said, timing is everything. To the extent that charter change is a logical conclusion to the peace process, then the timing which former Chief Justice Puno spoke about for charter change – early enough in the term (certainly not beyond mid-term) of the popular new President Aquino – is also the best time for completing and concluding our two major peace negotiations.

The latter goal, which is certainly a clear and present goal of the new administration, will not be well achieved without the necessary charter change, among other components of a wholistic solution, that those peace negotiations are certain to indicate in due course. President Aquino has to see this because his cooperation, if not active support and even leadership/ statesmanship, for charter change is indispensable. It takes time and lead time to set up the best possible mechanism for charter change, including how this and the peace process, might ideally dovetail with each other. And it is not too early for this, as we must have the necessary foresight and planning.

Neither is it too early to say that our two major peace negotiations are certain to indicate necessary charter change among other components of a comprehensive solution. The indications have already been there for some time. In the guiding framework Hague Joint Declaration of 1 September 1992 between the Government of the Republic of the Philippines (GRP) and the NDFP, they both already agreed that “The substantive agenda of the formal peace negotiations shall include human rights and international humanitarian law, socio-economic reforms, political and constitutional reforms, end of hostilities and disposition of forces.” (underscoring supplied)

This actually matches the first among the well-established “Six Paths to Peace” in the government’s comprehensive peace framework, first formulated under President Ramos (EO 125) and reaffirmed under President Arroyo (EO 3; incidentally, her peace adviser then is also the new President Aquino’s peace adviser now): “PURSUIT OF SOCIAL, ECONOMIC AND POLITICAL REFORMS. This component involves the vigorous implementation of various policies, reforms, programs and projects aimed at addressing the root causes of internal armed conflicts and social unrest. This may require administrative action, new legislation, or even constitutional amendments.” (underscoring supplied)

Some of those possible constitutional amendments as may be proposed by the GRP-NDFP peace negotiations could even also match those among former Chief Justice Puno’s seven-point proposals for charter change. We refer in particular to his proposal to make Congress more representative because marginalized sectors continue to be “underrepresented or unrepresented” in government. This also relates to his concern about a weak electoral system. Early articulations of electoral reforms in the NDFP’s agenda for the peace talks included allowing a fair chance for parties of the lower and middle classes, and also mechanisms to ensure fair and free elections. There were also early articulations for military reforms, such as removal of U.S. control over the Armed Forces of the Philippines (AFP), and the reorganization, reorientation and reduction of the AFP. The latter would definitely be logical and viable as a consequence of a successful comprehensive peace settlement with the two major insurgencies. The reorientation of the AFP would or should definitely involve not only instilling utmost respect for human rights but also solving excessive corruption. The importance of electoral and military reforms for this particular peace process is their critical bearing on the NDFP’s justification for its resort to armed struggle as the necessary main form of struggle for achieving social and political change because of blockages in the elite-dominated electoral system and military suppression of legitimate social unrest.

The other priority problem of grinding poverty, often pointed to as a root cause of social unrest, should be mainly addressed by socio-economic reforms. Former Chief Justice Puno's proposal to mandate education and health as rights "in the same manner as our civil and political rights are demandable from government" is quite constitutionally revolutionary in the context of existing Philippine jurisprudence and governmental budget realities. But the reduction of the AFP from war mode to peace mode would certainly free up funds for reallocation to education, health and other social services. But for a truly just and lasting solution, it will not do to have just socio-economic reforms without also political and constitutional reforms to effectively address comprehensively the various interrelated root causes of the conflict.

The GRP-MILF peace negotiations, on the other hand, do not speak explicitly about "constitutional reforms (or amendments)." But all the signs (if only we will read them) point to charter change as more clearly needed in this Mindanao peace process. The aborted 2008 GRP-MILF Memorandum of Agreement on Ancestral Domain (MOA-AD) was eventually declared unconstitutional by the Supreme Court (SC, including by then Chief Justice Puno) because, among others, its proposed Bangsamoro Juridical Entity (BJE), in "associative relationship" with the Central Government, was seen by the SC as "cannot be reconciled with the present Constitution..." The proposed BJE can be described as an attempt to seek a higher and better form of Bangsamoro autonomy or self-government beyond that of the constitutionally-mandated Autonomous Region in Muslim Mindanao (ARMM) but short of independence.

The ARMM as a Bangsamoro autonomous or self-governing entity has been proven by more than two decades of experience (Part I: under RA 6734, from 1989 to 2001; Part II: under RA 9054, from 2001 to the present), infamously capped by the Maguindanao Massacre of 2009, to have failed to achieve its promised peace, development and even meaningful autonomy. A higher and better degree/level of autonomy or self-government than that of the ARMM would necessarily have to go beyond the present level ("think outside the box") of the constitutional provisions on autonomous regions on which the ARMM and its Organic Acts are based. Those organic springs cannot rise higher than their constitutional source.

This all relates to the MILF's famous 1997 starting single talking point for the peace talks: "To solve the Bangsamoro problem... with the end in view of establishing a system of life and governance suitable and acceptable to the Bangsamoro people." Of course, it is best that it also be acceptable to the Filipino people. Thus, the MOA-AD with its proposed BJE was a fair attempt, although stricken down (whether rightly or wrongly) as unconstitutional, to balance what Cotabato Archbishop Orlando B. Quevedo, OMI, called "two fundamental postulates for lasting peace in Mindanao:" (1) the national sovereignty and territorial integrity of the Philippines; and (2) the Bangsamoro people's right of self-determination. The latter is understood as a generally accepted principle in international law whereby a historically, culturally and ethnically distinct people (like the Bangsamoro) are to "freely determine their political status and freely pursue their economic, social, and cultural development." Stated otherwise, in simpler terms, it is the fulfillment of the legitimate aspirations of a distinct people's identity, way of life and longing for self-rule. This, not excessive corruption and grinding poverty, is at the root of the Bangsamoro problem, although those two particular maladies have been highlighted in the ARMM and should also be addressed as part of the problem.

There is one key lesson from the precursor peace negotiations between the GRP and the Moro National Liberation Front (MNLF), which first started way back in 1975 and culminated two decades later in 1996 with a Final Peace Agreement and a side political agreement of Chairman Nur Misuari and the MNLF being placed at the helm of the old ARMM. We refer to the lesson on the Moro front that a negotiated political settlement, while basic for a peace settlement, can only go so far if not accompanied by a negotiated constitutional settlement. After all, the core of the Bangsamoro

problem is their structural relationship with the Philippine republic, a relationship circumscribed by the Constitution. Any negotiated restructuring of that constitutional association between the Bangsamoro people and the Philippine republic would necessarily entail charter change.

A higher and better form of Bangsamoro autonomy or self-government beyond that of the ARMM through necessary charter change has not necessarily been ruled out by the SC Decision on the MOA-AD. On the contrary, it recognizes the likely need for charter change pursuant to peace processes, but only really requiring that the constitutional processes for charter change be followed. We shall let the SC Decision of the majority, through the ponente (decision writer), still incumbent Senior Associate Justice Conchita Carpio Morales, speak for itself on this:

"As the experience of nations which have similarly gone through internal armed conflict will show, however, peace is rarely attained by simply pursuing a military solution. Oftentimes, changes as far-reaching as a fundamental reconfiguration of the nation's constitutional structure is required...."

"In the same vein, Professor Christine Bell, in her article on the nature and legal status of peace agreements, observed that the typical way that peace agreements establish or confirm mechanisms for demilitarization and demobilization is by linking them to new constitutional structures addressing governance, elections, and legal and human rights institutions."

"... If the President is to be expected to find means for bringing this conflict to an end and to achieve lasting peace in Mindanao, then she must be given the leeway to explore, in the course of peace negotiations, solutions that may require changes to the Constitution for their implementation..."

"The President may not, of course, unilaterally implement the solutions that she considers viable, but she may not be prevented from submitting them as recommendations to Congress, which could then, if it is minded, act upon them pursuant to the legal procedures for constitutional amendment and revision...."

"The sovereign people may, if it so desired, go to the extent of giving up a portion of its own territory to the Moros for the sake of peace, for it can change the Constitution in any [way] it wants...."

It is the Separate (Dissenting) Opinion of then Associate Justice Minita V. Chico-Nazario, which best appreciates the need to "think outside the box" here:

"... In negotiating for peace, the Executive Department should be given enough leeway and should not be prevented from offering solutions which may be beyond what the present Constitution allows, as long as such solutions are agreed upon subject to the amendment of the Constitution by completely legal means."

"Peace negotiations are never simple. If neither party in such negotiations thinks outside the box, all they would arrive at is a constant impasse...."

"It must be noted that the Constitution has been in force for three decades now, yet, peace in Mindanao still remained to be elusive under its present terms. There is the possibility that the solution to the peace problem in the Southern Philippines lies beyond the present Constitution. Exploring this possibility and considering the necessary amendment of the Constitution are not per se unconstitutional. The Constitution itself implicitly allows for its own amendment by describing, under Article XVII, the means and requirements therefor."

Having basically addressed the questions of "Why?" and even "When?," there then follows the need to address the questions of "How?" and "Who (i.e. by whom)?" These questions are, however, better dealt with separately in another article.

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P.S.

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