

Constitutional Electoral Reform
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Background

Governments, as commonly defined, are “the organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power within it.”¹

It is a basic observation that a government, by itself, does not guarantee democracy. In its primordial function, it exercises authority within a state. Whether that authority is used to maintain, develop, and strengthen democracy is a question that is only answerable by the process by which the state is constituted.

Obviously, a state constituted based on the political will of a single leader, a small group of people, and even an elite class in society, has a complementary government that expresses this political will. A democracy—based as it is on the consent of the governed—requires the state to be based on the whole body of its citizenry expressing their political will in free and fair political processes.

Having said this, there exists a whole spectrum of varying levels of democratization—from democracy struggling to be born within a non-democratic state to a transitional democratic state and to a full-fledged democratic state. Asia, in particular, exhibits this bewildering array of non-democratic and democratic state processes.

When Marcos left the Malacañang Palace on February 25, 1986, he left behind a legacy of destroyed democratic institutions, a politicized military, a warped governmental organization, and an economy in deep debt crisis.

President Corazon Aquino declared a revolutionary government—based on the successful people power revolution—and revoked the Marcos constitution. She proclaimed the “Freedom Constitution” in order to prepare the ground for a transition to a democratic political system.

In February 7, 1987, the people overwhelmingly approved the 1987 Constitution. This constitution is in force and effect for the last 20 years of the post-Marcos democracy. It has not been amended although the three succeeding presidents (Ramos, Estrada, and Arroyo) have tried or is trying to make their own revisions or amendments to the fundamental law of the land.²

¹ Merriam-Webster Online: <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=government>.

² The current Arroyo administration is currently undertaking a two-path mode (constituent assembly and people’s initiative) of constitutional change primarily aimed at bailing herself out of the present political crisis. The Supreme Court, in a recent October 25, 2006 decision, dealt a fatal blow to the president’s

The 1987 constitution mandated the attainment of full democracy for the Philippines, encompassing the whole people. It restored the presidential system with restricted powers for the president. It also broadened people's participation in governance with a party-list system and role for non-governmental organizations. It also mandated the establishment of a multiparty political system and banned political dynasties.

However, because of the urgent requirement to stabilize the Aquino regime against the strong remnants of the dictatorship, the constitutional framers resorted to quick compromises to finish their tasks. In many important but controversial provisions, they left it to Congress to pass enabling laws.

The peace negotiations with the National Democratic Front (NDF) faltered amidst coup threats from the military and distrust on both sides. Human rights violations, including assassinations, arrests, and forced disappearances, were carried out against the NDF forces. This forced the latter to call for the continuation of the armed struggle, this time against what it perceived as a US-backed Aquino government.

The weak Aquino regime was besieged throughout its rule by coup d'état attempts and threats. It later compromised with the military and former Marcos forces. It removed progressive allies from its government, carried out a massive military campaign against the NDF forces, recruited military people to occupy civilian posts, and allowed former Marcos cronies to return to the country.

On the other hand, the NDF forces split on questions of strategy. In 1992, a significant part decided to recognize the democratic space created after the downfall of Marcos and take part in the parliamentary arena. The Communist Party of the Philippines and the New People's Army (NPA) reaffirmed the strategy of a protracted people's war.

The Ramos government resumed peace negotiations in 1992 with the NDF, the Moro National Liberation Front (MNLF), and the Rebolusyonaryong Alyansang Makabayan-Soldiers of the Filipino People-Young Officers Union (RAM-SFP-YOU).³ It succeeded in hammering out peace agreements with the RAM-SFP-YOU and the MNLF. However, another Moro rebel group, the Moro Islamic Liberation Front (MILF) did not participate in the negotiations and younger cadres of the MNLF founded the Abu Sayyaf—an Islamist group allied to Jemaah Islamiya and linked to Al Quida.

The government failed to get an agreement with the NDF. However, forces identified with the latter took advantage of the democratic space to participate in the open people's movement and later, in the party-list elections.

charter change by means of people's initiative by disallowing its petition on grounds of violation of constitutional requirements.

³ These were the three armed movements fighting the government. NDF represented the CPP-led forces, the MNLF represented the Moro rebel movement, and the RAM-SFP-YOU represented the coup forces.

Throughout most of the 1990s, there was a relatively low level of political tension as constitutional reforms took root and the internal conflicts abated. Civil society engagements with government increased and non-governmental organizations participated in party-list and local electoral contests.

However, not all reforms were implemented, particularly those dealing with the dismantling of the Marcos-promoted economic and political elite and the development of a strong political party system. The military also enjoyed continued political favors and remained a distinct political block. Likewise, religious groups grew in power and influence as they substituted for political party bases.

Personality politics replaced party-based platform-based politics. Movie actors and other popular figures joined seasoned traditional politicians in government. It reached a high point in the election of Joseph Ejercito⁴ to the presidency.

Joseph “Erap” Ejercito Estrada proved to be incompetent and corrupt. In 2000, he was subjected to an impeachment trial. However, the effort of his Senate supporters to shield him aroused the ire of the people and ignited what came to be known as People Power 2 or EDSA 2. He left Malacañang Palace under pressure.

Then Vice-President Gloria Macapagal-Arroyo benefited from the ouster of Estrada. She became the fourth president of the post-Marcos republic on the heels of Estrada’s departure.

However, the Estrada group never accepted the constitutionality of his ouster. They staged the so-called “EDSA Tres” to storm Malacañang Palace, the seat of presidential power. Failing in this, they joined the political opposition in exposing the various corruption scandals in the Arroyo administration. They also supported the candidacy of another movie personality, Fernando Poe, Jr. in the 2004 elections.

From the start, the Arroyo administration was under siege from the political opposition. In the absence of major political and economic reforms as mandated by EDSA 2, her support eroded. With major corruption scandals also hounding her, even her EDSA 2 supporters distanced themselves from her.

Facing a popular opposition candidate in the 2004 elections, President Arroyo cobbled together a coalition of traditional politicians, many of whom were former Marcos cronies and carried out an expensive campaign, using both government and her coalition resources.

She won the presidential election by a small margin of over a million votes. Accusations of electoral cheating ensued. This reached a crescendo when tapes of her conversations with an election commissioner came to light. Calls for her resignation or ouster have since been heard from all sides.

⁴ He is better known by his movie name Joseph Estrada. He only served for a little more than two years of his six-year term—a victim of People Power 2.

The electoral system suffered from the continuous assaults on its credibility. The Commission on Elections, as an election administrator, suffered the most. One of its commissioners was implicated in the 2004 electoral cheating charges and it was itself embroiled in an anomalous

The 2007 elections reflected this disenchantment when people turned out in droves to watch over the polls (and the Commission!). As the *Bantay-Eleksyon 2007*, a new electoral monitoring coalition, said in its report:

*“The midterm 2007 elections were generally in consonance with international criteria for free and fair elections. Credit is due primarily to the people themselves who came out and participated in the process as voters, monitors, media watchdogs, citizen-voter educators, and citizen arms.”*⁵

The same report noted that:

*“However, there are major areas of concern that threatens the very existence of free and fair elections in the Philippines. These are in the areas of election administration, enforcement of election laws, prosecution of election offenders, voter registration, election modernization, political party strengthening, and citizen-voter education.”*⁶

To be sure, many of these areas of concern can be remedied by law or by judicious actions of the Executive Department and the Commission on Elections. However, many others can be traced to the constitutional provisions on the electoral system and on the Commission of Elections.

Advocacy for electoral reforms cover a broad range of subject matter: from the rules of the electoral process itself, to reforms in the electoral administration, to reforms in the political party system and conduct of electoral contestation, to electorate behavior and choice, and the broadening of meaningful participation of politically-marginalized sections of the body politic.

The 1987 Constitution laid the ground for broadening Philippine democracy—broadened even beyond the pre-martial law democracy. It envisioned—and provided for—the right of suffrage for overseas Filipinos, a system of direct people’s initiative and referendum in lawmaking, the establishment of a party-list system for marginalized and underrepresented sectors, Autonomous regions for Muslim Mindanao and the Cordilleras, local sectoral representation, guarantee of opportunities for public service and prohibition of political dynasties, recognition and participation of non-governmental organizations in governance, and various human rights safeguards. This is to enable the participation of the people, particularly from the grassroots, in democratic governance and the electoral process.

⁵ Bantay-Eleksyon 2007. *Qualified Success, But... The Report on the 2007 Elections*. p. 9.

⁶ *Ibid.*

It also specified the various measures that need to be implemented to ensure the holding of free, orderly, honest, peaceful, and credible elections managed by a constitutional body—the Commission on Elections. These include, among others, banning of religious denominations and sects, violent groups, and foreign-supported groups, the limiting of election spending, the establishment of a free and open party system, and the accreditation of citizen arms.

The 1987 Constitution is significant in its attempt not only to do away with the vestiges of dictatorial rule but also in its attempt to correct the infirmities of the pre-martial law democracy.

Twenty years after the constitution was ratified, only some of these provisions have been implemented, with considerable weaknesses in each case. Political and electoral reforms necessarily have to be done in order to carry out the democratic mandate of the constitution.

Elections play a major, if not central role in the political life of the democratic nation. Electoral reforms necessarily play an important role in enabling the broad participation of the people in the electoral process and maintaining and enhancing the credibility of the whole exercise. In turn, political stability provides a major condition for a sustainable economic and social development.

The development objective includes the broadening of democratic participation in the electoral process and the enhancement of the conduct of honest, clean and fair elections in the Philippines. If achieved, democracy in the Philippines will have been strengthened, rebellion substantially solved, and the country put on the track towards the level of political stability required for strong and continuing development in the era of globalization.

Reforms of the electoral and political processes in the Philippines are part of the primary strategies for achieving political stability and broadening people's participation in democratic governance. Specifically, these reforms consist of the extending the right of suffrage to disenfranchised citizens such as the overseas Filipinos, development of a politically-aware and informed citizenry, development of electoral ethics, training of competent democratic leaders from marginalized and underrepresented sectors, ensuring the holding of free, orderly, honest, peaceful, and credible elections, modernization of the electoral process, and structural reforms in electoral management.

A strategy of partnership among the democratic government, political parties, and civil society is crucial to the success of political and electoral reforms. Within government, Congress plays a crucial role in passing enabling laws for the reform provisions in the constitution. The Commission on Elections also plays a crucial role in the implementation of credible electoral processes. Political parties—and their candidates—need to develop into genuine articulators of the democratic interests of the people. Civil society ensures the growth of the fullest democracy by engaging

government and political parties, and also by strengthening people's participation in both electoral processes and in governance.

The Campaign for Electoral Reforms

The tripartite approach to political and electoral reforms was used in the convening of the 2002 Electoral Reform Summit and the subsequent first-ever National Conference of Philippine Political Parties. The former was convened jointly by the congressional committees on suffrage and electoral reforms, the Commission on Elections, and the Consortium on Electoral Reforms, the national civil society coalition of electoral reform stakeholders. The proposals contained in the Summit declaration were subsequently adopted by the latter.

The electoral reform summit put forward major electoral reform measures within the framework of the constitution. These include the passage of election-related laws enabling constitutional reform provisions, such as the ones on political party reform and campaign financing, local sectoral representation, election modernization, overseas absentee voting and amendments to the party-list law. The summit also put forward an action program centered on election administration reforms, citizen-voter education, constitutional reforms through a constitutional convention, and building of a strong civil society electoral reform stakeholder coalition network.

Most of the above proposals were accepted by the major political parties and included in their own declaration. From this high-level agreement, Congress, the executive department, and the Commission on Elections proceeded to put elements of electoral reform measures in the government's Medium-Term Philippine Development Program (MTPDP), in the presidential and congressional agenda, and in the policies of the electoral administration body.

The electoral reform process would have been fast and easy if the political controversy surrounding the presidency, highlighted by the questioned 2004 presidential elections, had not overtaken it. The charges of electoral cheating, with the alleged involvement of election officials, effectively derailed the schedule for the passage of crucial electoral reform bills. The other two parties in the tripartite approach—government and electoral administration—became embroiled in the political crisis.

A few bills were processed. The overseas absentee voting bill was passed in time for the 2004 elections. The others were either passed or reached the plenary in the lower House but failed to finish the legislative process in the Senate. When the 12th Congress ended in June 2004, it also ended the entire legislative processing of the electoral reform bills.

These were re-filed in the 13th Congress but the again the unresolved political crisis intervened to delay their passage. A new 2004 electoral reform summit failed to overcome the obstacles. However, there was a reaffirmation of commitment to pursue electoral reforms.

In the 2007 Electoral Reform Summit, only the civil society sector was able to maintain the momentum for reforms as Congress and the Comelec became embroiled in and were handicapped by the continuing political crisis.

The tripartite approach is effective in pushing forward political and political reforms within a constitutional framework. As long as there is the constitutional basis, it is relatively easy to engage policy-makers in electoral reforms.

At the same time, in a situation where political power is still in contention and the protagonists refuse to play by commonly accepted constitutional rules, the priority is to defend—or to fight for—the democratic constitution and the democratic political order it establishes. This situation calls for the re-examining constitutional rules of political conduct. Constitutional reforms then become part and parcel of the advocacy for electoral reforms.

The Constitutional Electoral System

Several provisions of the 1987 Constitution sets down the framework and substance of the current Philippine electoral system. The major relevant provisions are as follows:

Declaration of Principles and State Policies (Article II):

Section 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

Section 4. The prime duty of the Government is to serve and protect the people.

Section 26. The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

Bill of Rights (Article III):

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Suffrage (Article V)

Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year, and in the place wherein they propose to vote, for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

Section 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Legislative Department (Article VI)

Section 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

Section 4. The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election. No Senator shall serve for more than two consecutive terms.

Section 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

Section 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election. No Member of the House of Representatives shall serve for more than three consecutive terms.

Section 8. Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May.

Section 9. In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

Section 19. The Electoral Tribunals ... shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of the President and the Speaker.

Executive Department (Article VIII)

Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with, and in the same manner, as the President.

....

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

Section 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days, enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

Judicial Department (Article VIII)

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Constitutional Commissions (Article IX)

A. COMMON PROVISIONS

Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Section 2. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Section. 3. The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure.

Section 4. The Constitutional Commissions shall appoint their officials and employees in accordance with law.

Section 5. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Section 6. Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Section 8. Each Commission shall perform such other functions as may be provided by law.

C. THE COMMISSION ON ELECTIONS

Section 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective positions in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.

(9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Section 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre- proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Section 5. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission.

Section 6. A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.

Section 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

Section 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.

Section 9. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

Section 10. Bona fide candidates for any public office shall be free from any form of harassment and discrimination.

Section 11. Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission.

Local Government (Article X)

GENERAL PROVISIONS

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms.

AUTONOMOUS REGIONS

Section 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Accountability of Public Officers (Article XI)

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

Social Justice and Human Rights (Article XIII)

ROLE AND RIGHTS OF PEOPLE'S ORGANIZATIONS

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

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

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

HUMAN RIGHTS

Section 18. The Commission on Human Rights shall have the following powers and functions:

(1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

(7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;

General Provisions (Article XVI)

Section 5. (2) The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.

(3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics.

No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote.

Amendments or Revisions (Article 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; or*
- (2) A constitutional convention.*

Section 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.

The Congress shall provide for the implementation of the exercise of this right.

Section 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.

Section 4. Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

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

Given the present framework and process of the elections, issues have cropped up in the course of the 20-year conduct of the Philippine elections. Most of these issues usually come up in every election. This fact points to the possible constitutional source of the issues.

1. Actualization and scope of the right of suffrage

The right of suffrage is constitutionally guaranteed for all qualified citizens. However, there are several issues here in practice.

One, there is the question of accurately determining voter identity and qualification. There is often in every election the charge of padding of the voter's list, multiple registration of voters, multiple voting, or misidentification of voters. Related to this is the unreliability of the national voters list—often at variance with the expected voting-age population.

Second, there is the question of the widespread practice of vote-buying (or its opposite of vote-denial).

Third, there is the question of voter criteria in voting—the prevalence of uncritical choices based solely on candidate popularity and, conversely, the low voter appreciation of party programs and platforms. This is related to the question of the inadequacy of citizen-voter education.

2. Realization of the right to public office

As part of the right of suffrage, the constitution guarantees the right of qualified citizens to run for public office. Again, there are issues in its practice.

One, there is the question of the practical limitation of astronomically high campaign expenditures. This favors only the economic elite and their chosen candidates.

Second, there is the demonstrated incompetence of the merely popular electoral winners bereft of real programs and platforms.

Third, there is the widespread disregard of electoral rules and procedures by many candidates, often leading to electoral cheating fraudulent practices.

Fourth, there is the presence of armed partisan groups in many electoral contests. This often led to various levels of electoral violence.

3. Enabling the ban on political dynasties

The constitutional ban on political dynasties—which needs an enabling law—has not been implemented. Coupled with the weak political party system, this led to the opposite result—the proliferation and pervasive dominance of political dynasties from national down to the barangay level.

The patronage system in politics has been strengthened as a result.

4. Enabling the growth of political parties

The constitution only stipulates the development of a multi-party system. It does not require nor delineate the process of building a strong political party system.

Creating a political vacuum, this has led to the development of personality-oriented political groupings, pseudo-parties, and narrow coalitional politics.

5. Guaranteeing the role and participation of civil society in the electoral process

The constitution recognizes the participation of people’s organizations in government. However, though there are a lot of gains in this regard—particularly with regards a consultative process—this falls far short of the envisioned participation.

One, many constitutional provisions in this regard, such as the party-list system, local sectoral representation, access to information, direct democratic practices of recall, initiative and referendum, and local autonomy, do not yet have enabling laws; if enabled, implemented restrictively; or, if implemented, undermined by dynastic politics.

Second, the constitution failed to task the state to help develop and ensure genuine participative democracy. This is reflected in non-inclusion in budgetary priorities, lack of programs for democracy education, problems in government responses to sectoral advocacies and issues, and proliferation of fake non-governmental organizations funded by politicians.

6. Selection, qualification, appointment, and disciplining process for election commissioners

The members of the Commission on elections—the chairman and six commissioners—are all appointed by the President at the latter’s complete discretion. This easily leads to a lack of transparency and accountability in the appointments.

In addition, the provision for *ad interim* appointments is open to abuse and has often been abused. This procedure—supposedly done only in case of contingency—has led to bypassing or weakening the check provided by Congress.

There is also the question of appointing retired public officials who find it difficult in fulfilling the field work required of election administration. The requirement of lawyer-commissioners often led to a shortage of managers for election administration. In a mandated modernized election environment, information technology skill for a commissioner has not been emphasized.

Conversely, there are no safeguards against appointing partisan election officials or members of contending political parties in the elections.

Once one is appointed, the constitutional requirement for impeachment makes it difficult to remove an erring or incompetent election commissioner. This leads to a weakening of the system of check and balance.

7. Authority and powers of the election commission

The Commission on Elections currently performs the work of election administration and quasi-judicial functions in relation to election protests. This requires most of them to be lawyers.

In practice, election administration suffers while the whole Commission organization becomes vulnerable to partisan political pressure. Additionally, appointments to the Commission and the various posts under it are subjected to partisan lobby and political pressure.

8. Handling of electoral protests

Since the Commission on Elections handles electoral protests on a quasi-judicial basis and based on a per-election Comelec resolutions and issuances, jurisprudence on electoral protest cases is difficult to establish. The work of electoral administration also limits the attention and effort of the Comelec in settling electoral protests—these tend to be decided on after a long delay or even overtaken by the next election.

The cases become the subject of intense lobbying by contending politicians and may lead to partisan decisions by the Comelec, threats or even physical violence against its officials, and impacts directly on the credibility and neutrality of the Comelec in the partisan political environment of the elections.

9. Electoral process

The whole electoral process, from voter registration, electoral preparations, accreditation of parties and candidates, campaign, counting and canvassing, and proclamation of winners—in every election—have been the subject of various anomalies and violation of election laws.

These include the unreliability of the voters' lists, security of sensitive election paraphernalia, partisanship in accreditation, premature campaigning, expensive and wasteful campaign materials and activities, use of election violence, cheating in counting canvassing, and undue delay or premature proclamations.

Contributory or even key factor in these is the low quality of election administration, and the required political will by the administrators.

10. Initiative and referendum processes

The constitution allows recall, initiative and referendum—all the instruments of direct democracy, in the tradition of people power. However, these are not propagated nor resorted to by a largely uninformed citizenry.

Worse, these have become, in not a few instances, instruments by elected representative officials or their traditional political rivals to pursue purely partisan ends using the same uninformed electorate.

Generally speaking, the constitutional provisions on the electoral process need to be revisited, tightened up in some aspects, and revised to include new or amended provisions to ensure the full participative democracy mandated by it.

Framework for constitutional electoral reform

The Philippine experience of the post-Marcos democracy points to the crucial role of the government in promoting democracy. It represents the focal point for rebuilding the various institutions of democracy destroyed by the Marcos dictatorship. It also is the constitutional structure for ensuring the growth of democracy even as it removes all vestiges of non-democratic practices.

The Aquino government enjoyed the popular support of the anti-dictatorship forces as well as the people. It also has a very high level of support and recognition of the international community. It has the unenviable opportunity to correct historical errors and problems besetting the nation and institute the necessary political and social reforms to build and consolidate Philippine democracy.

It and succeeding governments failed to achieve even the constitutionally-mandated reforms. All of them, in their own time, succumbed to the temptations of power. Accusations of corruption dogged their every step.

They also failed to go beyond the short-sighted interests of the economic and political elite they represented. As a result, the economic, social and cultural conditions of the lower classes deteriorated even when the whole economy improved.

The constitution itself needs to be revisited to pinpoint the weaknesses and loopholes that need to be addressed

Broadening people's participation in democracy

Constitutional reforms should lead to the nurturing of a democratic culture in society, including the military and police agencies. Disempowered, underrepresented and marginalized sectors should be guaranteed representation and participation in the democratic process. Election of the people's representatives should be made possible and vested or undemocratic interests should be restricted.

Reforms should also enable the opening of democratic dialogues with alienated sectors, especially those involved in internal conflicts. The electoral process should guarantee their participation as long as they forego undemocratic and violent strategies and methods.

The constitution should therefore foster loyalty and adherence to democratic ideals and guarantee the broadest people's participation in governance and the electoral process.

Ensuring free and fair elections and other democratic processes

Constitutional reforms should lead to the institutionalization of democratic political processes such as free and fair elections, direct democratic practices of referenda, recall and initiatives, and people's consultations.

Transparency and accountability are at the heart of the democratic order and should permeate all components of the electoral process as well as the governance process.

Consolidating democratic institutions

Constitutional reforms should lead to the building or strengthening of democratic institutions both inside and outside government such as the legislature, the courts, electoral bodies, political parties, anti-corruption agencies, human rights monitors, the mass media, civil society organizations, and local assemblies.

The institution of elections stands as the crucial institution for consolidating Philippine democracy because of its ability to be inclusive of all the diverging political forces and interests. However, to be able to do this, it must be seen as free and fair, enabling all of these forces and interests to compete for power on an equal basis.

Major proposals for Constitutional Reform of the Electoral Process

Mandating political party system development, citizen-voter education on democracy, participation of people's organizations in the electoral process and in government, and banning of political dynasties.

This basically means addressing, at the constitutional policy level, the problems of all components of the electoral process, particularly those of the electorate, political parties and candidates, and the over-all quality of participation of the citizens in the electoral process.

Mandating of a permanent voter's list accessible to all citizens, a viable process of registration dispute resolution, and adequate safeguards against voter fraud.

This means the strengthening of safeguards for the protection and guarantee of the exercise of the right of suffrage by individual citizen-voters by ensuring the “one voter, one vote” principle.

Appointment of a Commission on Elections and the local election boards on a per-election basis, while maintaining a permanent election administration secretariat, limiting its work to election administration, and development of professional election personnel with civil service qualifications.

This means the clear constitutional delineation of the basic administrative nature of the work of the commission on elections from the requirements of adjudication of electoral protests. The latter is returned to the judiciary, which has the training and background for settling disputes.

To minimize the growth of partisan lobby and syndicate activities, the Commission on Elections and local election boards—tasked with the administration of elections on their levels—will be constituted on a per-election basis and starting its work a few months before elections and immediately ceasing after all candidates have been proclaimed.

A permanent secretariat shall be constituted, headed by a Director-General, to handle record-keeping, research, training, and other administrative work of the Commission in between elections. During elections, it shall serve as the secretariat and assisting organization for the Commission.

The secretariat personnel shall be qualified professionals in the civil service and undergo regular evaluation and training.

Appointment of the Commission on Elections and local election boards through a transparent and democratic process, with participation of all stakeholders, and deputation of reputable citizens for election work.

A permanent council composed of representatives of political parties, civil society monitors, academe, private sector, media, and churchpeople shall be constituted to agree on a short list of nominees, from whom the President will appoint the members of the Commission on Elections. The Comelec thereafter appoints the local election boards, in consultation with the council.

Abolition of all existing electoral tribunals and transferring all judicial proceedings regarding the electoral process within the judiciary, either through special electoral tribunals or designated competent courts.

The Presidential, Senate, and House of Representatives Electoral Tribunals should be abolished and their work transferred to the judiciary. This is in order to prevent partisan politics from impacting on the electoral protest adjudication process.

The Comelec shall likewise cease its quasi-judicial functions and transfer these to the courts. Administrative cases involving election personnel and cases involving the administration of elections shall remain with the Comelec and election boards. Comelec decisions on these are final.

All electoral disputes will be handled by designated special courts at every level where these occur, the lowest of which is the municipal court. Appeals are addressed to the Court of Appeals or to a higher special court. These should decide on election cases on an urgent basis with specific deadlines.

Ensuring free and fair elections through provisions on election expenditure limits, auditing of election finances of parties and candidates, strict prohibition against use of government funds, personnel and resources in campaigns, and banning of vote-buying, turncoatism, and use of election violence.

This basically means setting forth constitutional parameters of a free and fair elections, the development of a strong political party system, and the basic rules in the electoral process.

Removing barangays from the general supervision of the president and as basic political unit of the national government, and stipulating its role as autonomous self-government of the community.

This will go a long way in creating a non-partisan atmosphere at the community level, lessening the partisanship of barangay officials, and removing them from the political maneuverings of contending political forces.

The barangay will remain as basic unit of the city or town for delivery of government services and liaison between government and the community. As autonomous self-governments, they are mandated as the first line of government to ensure the community's well-being, peace and order, health, education, and economic development.

Barangay elections should be designed as non-contentious as possible and ensure the representation of the widest sections of the community.

Prohibition of interference by government personnel, including the police and the military, in the electoral process, except when expressly deputized and only within their normal mandates.

The concept of the electoral process as a citizen democratic activity requires that the government (or more accurately, the incumbents in government running in the elections) should be prevented from using government personnel and resources for the campaigns.

One constitutional measure should be to require incumbents running for office to vacate the office to an officer-in-charge from the moment he or she files for candidacy. It should also be constitutionally defined where and when government personnel, including the police and military, can be deputized for election duties.

Advocacy for constitutional electoral reforms

A balance should be struck between the requirements of constitutional brevity and spelling out of crucial measures to achieve the necessary constitutional reforms. However, our experience shows that the problem at the moment is the looseness of various formulations, including the infamous requirement for “enabling laws.”

A constitutional convention with a transparent and participative process will be the best for the discussion of the reforms. To this end, civil society reform advocates should flesh out the discussions and formulate suggested provisions of amendments for the revised constitution.

This paper also does not take into account specific or particular changes that may be necessary if the federal and/or parliamentary proposals are accepted. These have to be taken up when and if these fundamental changes are made in the constitution.

At any rate, advocates should be confident that—whatever the system or form of government is adopted—the substantive proposals will not change. They are anchored on the democratic content of our government. #

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