



About this series

The International Institute for Democracy and Electoral Assistance (International IDEA) and the Institute for Autonomy and Governance (IAG), in partnership with the Philippines Congressional Policy and Budget Research Department (CPBRD) and the Senate Economic Planning Office (SEPO), held a series of Learning Sessions on Constitutional Change and Federalism from May 2018 to April 2019.

As the Charter Change debate persists in the Philippines, questions around the substance, process and scope of constitutional reform remain. Regardless of the outcome of these debates, Congress has a substantial role to play in voting on draft texts and amendments, and even possibly drafting constitutional language itself. As such, the Learning Sessions were designed to target members of the House of Representatives and the Senate, providing a safe space for technical discussions on relevant and pressing issues. Each session focused on a specific issue, including a conceptual framework based on international experience and expertise, and a contextualized consideration of the issue as it pertains to the Philippines, presented by national experts. The Charter Change Issues Briefs series consolidates and memorializes these inputs for future reference and further reach.

Federal Systems, Intergovernmental Relations and Federated Regions

Charter Change Issues Brief No. 5 provides an overview of the fifth and final Learning Session, entitled *Federal Systems, Intergovernmental Relations and Federated Regions*, conducted on 15 August 2018 at the Philippines House of Representatives and on 16 August 2018 at the Senate of the Philippines, with the following resource persons: Amanda Cats-Baril, Constitution-Building Advisor for Asia and the Pacific, International IDEA; Dr Julio Teehankee, member of the Consultative Committee to Review the 1987 Constitution; Professor Edmund Tayao, member of the Consultative Committee; Wendell Tamayo, support staff for the Consultative Committee; and Michael Henry Yusingco, attorney and Senior Fellow at the Ateneo Policy Center. This brief is based on technical insights shared by these experts during the Learning Session.

Learning Session No. 5 overview

Demands for a federal transition in the Philippines focus on the ways in which federalism might be able to address persistent governance challenges that the country is facing. These include but are not limited to: demands for greater autonomy from Mindanao and, to a lesser extent, Cordillera regions; more efficient and effective service delivery at the subnational level; promotion of economic growth; and equitable development throughout the nation. At present, the three regions of Metro Manila, Calabarazon (Cavite, Laguna, Batangas, Rizal and Quezon) and Central Luzon account for 62.9 per cent of gross domestic product (GDP) in the Philippines, while 14 out of the 17 regions account for only 37.1 per cent combined. Economic distribution across the Philippines has remained consistently disproportionate for the past four decades, with the poor regions of Western Mindanao left behind due to protracted conflict. The current system of government has been in existence since Spanish colonial rule and the logic behind it then was

Overall, it is important to note that while federalism is often looked to as a means of addressing certain challenges and/or conflicts in society (ranging from secessionist movements to unequal development), federalism is not a panacea cure for these challenges. Transitions to federalism are difficult to implement, require patience and institutional and behavioural change, and often give rise to as much conflict and as many challenges as they are meant to resolve.

to facilitate the extraction of goods from the colony (the Philippines) to the colonizing country (Spain). Colonial rule has now been replaced by what is referred to as ‘Imperial Manila’. While there have been attempts to address this problem, such as decentralization, most of the interventions have failed since all have been confined within the current unitary form of government. This means that the attempts have largely taken the form of legislative and policy change; many observers have noted problems with this approach. For one, it leads to fragmentation and piecemeal policy development; for another, it fails to guarantee that levels of government have meaningful autonomy and resources to exercise functions. These critiques have fuelled the suggestion that constitutional reform is necessary to truly address the challenges that the Philippines is facing.

Federalism, however, is a complicated and technical subject, and it should be considered carefully and designed with an understanding of the context in which it will operate. The inputs of Learning Session No. 5 were intended to help further discussions and consideration of the potential benefits of federalism in the Philippines.

Conceptual framework

Federalism: Key Features, Issues and Design Considerations

Amanda Cats-Baril, Constitution-Building Advisor for Asia and the Pacific, International IDEA

Depending on how federalism is defined, close to 40 per cent of the world’s population live in ‘federal’ countries and there are approximately 33 federal countries around the world, although this number varies over time. Importantly, there are as many models of federalism as there are federal countries—showing that there is no ‘one size fits all’ solution in federal arrangements. The principles, features and practices laid out in this Brief are therefore meant as guidance in considering the design of a federal system but not as prescriptive advice. Context-specific adaptations to federal principles and processes are necessary and desirable. Overall, it is important to note that while federalism is often looked to as a means of addressing certain challenges and/or conflicts in society (ranging from secessionist movements to unequal development), federalism is not a panacea cure for these challenges. Transitions to federalism are difficult to implement, require patience and institutional and behavioural change, and often give rise to as much conflict and as many challenges as they are meant to resolve. This should not discourage desires for federalism but rather inform them, cautioning the need for expectation management and attention to detail in the design and undertaking of federal transitions.

In comparison with other systems

Federalism can be understood when looked at in comparison with alternative systems for structuring a state:

1. A unitary state under which political power is allocated to and exercised by a single/central government that has final authority in all matters, even if some powers are unilaterally decentralized or devolved to subnational units. Examples of unitary states in Asia

and the Pacific include Sri Lanka and Thailand. While power may be devolved and decentralized by the central government in these systems, the decentralization remains vulnerable because the central government can unilaterally take power back as the division of powers is not constitutionally guaranteed and protected from unilateral change, as it is in a federal state.




2. Devolution or regionalism offers varying degrees of decentralization within an otherwise unitary state, with some subnational or regional areas having more space to develop their own representative institutions to a degree limited by the central government. Examples of devolved systems include the Spain and the United Kingdom.
3. Special autonomy arrangements exist where certain parts of the country are given autonomy (final authority and/or power to set up own institutions and exercise certain power) even though otherwise the state operates as a unitary system. Indonesia provides one example in the Asia and the Pacific region, and the Philippines itself calls for special autonomy arrangements in the 1987 Constitution (Article 10).
4. Confederations are a union of otherwise sovereign states, where the centre is typically weak and subunits retain high degrees of sovereignty. In these systems, the central government rarely interacts directly with the populations in the subunits. This was the original model in the United States under the Articles of Confederation (1781), and is the current structure of the European Union.

Key considerations in federal system design

There are some critical variables and variations in context that influence how federal systems emerge. Some of the classic distinctions are between the types of federalism that embody ‘coming together’ or ‘holding together’ experiences. ‘Coming together’ federalism brings together formerly independent states (e.g. United States), whereas ‘holding together’ federalism tends to involve the delineation and establishment of subnational units within a formerly unitary state (e.g. Ethiopia and Nepal) (International IDEA 2017). There are also important differences in the sociopolitical contexts in which federalism emerges, in particular whether the population of a territory is plurinational, like Nepal and Switzerland, or more homogenous like Argentina or Germany. These contextual features should be accounted for in designing the details of a federal system and can sometimes even be considered in the delineation of subnational units, as was the case in India where language was used as a criterion in delineating state boundaries.

Although different political realities and balances of power between and amongst constituent units of the state will have an impact on the design of federal systems, in essence federalism is often about striking a balance between ‘a desire for unity and communality on certain issues with a desire for diversity and autonomy on others’ (International IDEA 2017: 5; see Figure 1). The design of federal systems can therefore be used to address and accommodate the contextual variations (and tensions) identified above promoting self and shared rule simultaneously, or ‘unity in diversity’.

Figure 1. Federalism as unity in diversity

Separate states	A unitary state	A federation
		
Diversity and autonomy without unity or communality	Unity and communality without diversity or autonomy	Diversity and autonomy within unity and communality

Source: International IDEA, Federalism, International IDEA Constitution-Building Primer No. 12 (Stockholm: International IDEA, 2017), <<http://constitutionnet.org/sites/default/files/2017-10/federalism-primer.pdf>>, accessed 13 August 2019

Core features of federal systems

Given the great diversity in the design of federal systems, it is difficult to fix a set definition, but there are several core features of federalism that can be used to identify federal countries, as defined by George Anderson of the Forum of Federations (Anderson 2008). Perhaps the primary feature of a federal system is at least two levels of government, each with their own institutions, which have the autonomy to exercise powers assigned to them by the constitution and the authority to deal directly with the people (or a subset of the people) on those matters. Therefore, there also needs to be a written constitution which establishes these levels of government for a federal system to exist and operate. The constitution will assign responsibility and accountability to each levels of government for managing and delivering certain competencies, which means that the assignment of powers should be clear to avoid accountability deficits and power struggles, as much as possible. Regardless of clarity, there should be provisions for resolving any disputes that arise from implementation of a federal system (i.e. between levels of government) through an independent body. In many countries, the judiciary will be arbitrators of federal disputes; for example, in the United States the Supreme Court has made critical decisions about the scope and limits of state and federal governments' powers. In other countries, however, disputes may first be managed by other forms of intergovernmental relations mechanisms (see below).

In a federal system, the constitution—or at least those aspects of a constitution that affect the federal system of government—typically cannot be changed unilaterally by one level of government. A federal constitution should provide for the division of legislative, fiscal, executive and sometimes judicial power between the constitutionally recognized levels of government, giving this division constitutional protection. As such, the constitution guarantees separation of powers between levels of government and prevents the central government from pulling or limiting the power of the subnational governments unless there is consent from both levels to change its provisions. In

If there is an essence of federalism, it is that there are two constitutionally established orders of government with some genuine autonomy from each other, and the governments at each level are primarily accountable to their respective electorates. (George Anderson, *Federalism: An Introduction*, 2008: 4)

this way, federalism is not a delegation of power from the center to the provinces as is the case in devolved systems; rather, each level of government is imbued with its own powers by the constitution. This makes the levels of government co-equal in their sources of authority and origin. It should be noted, however, that this does not mean federal systems promise more autonomy than decentralized systems; in fact, some unitary countries exhibit greater degrees of decentralization in practice than federal systems (Anderson 2008).

Critically, federal systems should provide a mechanism for the participation of subnational units in central decision-making. This typically occurs through a second chamber of the federal legislature but there are other ways as well (discussed below). In this way, federalism combines self-rule and shared rule. The division of powers and exercise of authority in certain core competency by the subnational government represents the self-rule aspect, often talked about in reference to autonomy. The aspect of shared rule is equally critical to making federalism work as, if well-designed, it ensures that subnational units have a sense of ownership, investment and belonging to the state as a whole. The shared rule aspect of federalism, and associated mechanisms and processes, can also be a means of ensuring positive intergovernmental relations in a federal system, which is critical since cooperative intergovernmental relationships between levels of government help to build a spirit of partnership that is central to make federalism work.

Beyond these core features, several other considerations, common across most federal countries, should be mentioned. Often, as discussed in Charter Change Issues Brief No. 4, federal systems will provide for some sort of revenue redistribution or other equalization measures to ensure (at a minimum) that basic services are provided across all federated states. Another key issue, related to the concept of policy competition discussed in Charter Change Issues Brief No. 4, is freedom of movement within a federation, such that citizens may choose where to work and live. Federal systems should also ensure the protection of minorities and human rights within states/regions, an issue raised in Learning Session No. 3 on human rights. Different federal systems will do this in different ways but it is important that some assurances are provided to minority-within-minority groups, that they will not be disempowered or worse under a federal system (Ginsburg 2018).

Division of powers

Division of legislative powers

The division of legislative powers refers to the constitutional assignment of the power to pass laws in different subject areas (competencies) to different levels of government. These can be divided among two, or three, levels of government, if local government also has legislative power, as it does in Nepal under the 2015 Constitution. Most federal constitutions have a unique division of legislative power but three general categories of powers exist: exclusive, residual and concurrent. Exclusive powers are powers of legislation that can only be enacted by the level of government to which the power is assigned. There can be an exclusive list for each

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (10th Amendment of the United States Constitution)

level of government. Concurrent powers are powers of legislation that multiple levels of government hold. Residual powers are those powers that are not specifically mentioned in the constitution but may arise later over the course of its implementation.

In some countries, for example Argentina, Australia, Pakistan and the United States, there is one list of powers that outlines what falls within the authority of the central government, with everything else not explicitly mentioned—residual powers—preserved for the subnational units (see sidebar). Other countries, such as Canada, have two lists, which explicitly assign exclusive powers to both the provincial and central governments. Even in systems with two lists, some provision should be made for how residual powers that are not explicitly divided will be assigned; in Canada, for example, residual powers are held to lie with the centre. Some federal constitutions, for example in India, Nigeria and South Africa, also include a list of concurrent powers, over which both the federal and the subnational governments are given authority. In this type of situation, clear rules and mechanisms for dispute resolution in the event of conflicts in the exercise of powers becomes even more important (International IDEA 2017).

Under a federal system, cooperation between the two levels of government is essential to making division of powers operational and ensuring federalism has the desired impacts on effective governance. Often, the principle of subsidiarity, holding that power should be granted to the lowest level of government (closest to the people) that can most effectively implement it, is applied when dividing legislative powers. Factors that influence assignment of powers to subnational governments include whether the government will be able to effectively and efficiently exercise the powers within its boundaries; and if the subnational government will be more responsive to the issue, for example if it relates to issues specific to local contexts. Factors that influence the assignment of powers to the centre, on the other hand, include whether the power can be characterized as ‘national’ (e.g. treaty ratification, defence); if its exercise has cross-border effects or affects other states (i.e. environmental regulations or immigration); and, if there is a need for uniformity, such as standard-setting, to ensure that services are delivered at a basic minimum quality across the country.

One issue worth extra consideration in the division of powers debate is that of local government. Some constitutions establish local government as a third level of government, with its own legislative and other powers. Others vest local government as a competency of either the national or subnational governments—representing another critical choice in federal systems. In Nigeria, the states possess the competency to oversee local governments, and it has created some problems as the state governments have in the past refused to appropriate monies to local governments and also—for example—failed to conduct elections at the local level citing resource constraints. In response, a movement has developed to reform the constitution to establish a special/dedicated funding account for local government directly from the central government, instead of the joint account shared by the state and local governments. Local governments want direct access to allocations from the central government.

South Africa places a constitutional obligation on the national government, the provinces and local authorities to work in their ‘distinctive, interdependent and interrelated’ spheres of authority, and:

‘co-operate with one another in mutual trust and good faith by:

- i. fostering friendly relations;**
- ii. assisting and supporting one another;**
- iii. informing one another of, and consulting one another on, matters of common interest;**
- iv. coordinating their actions and legislation with one another;**
- v. adhering to agreed procedures; and**
- vi. avoiding legal proceedings against one another.’**

(Constitution of South Africa, Section 40 and 41)

On the other hand, local government as a central government competency may also create problems, as shown in Nepal under its 2015 Constitution Schedule 5 which gives the central/federal government general power over ‘local affairs’, with no mention of the same in the powers of provincial governments. Since the local and central governments have a direct link with each other, and are also the levels of government which the longest historic track record (pre-existing the new constitution) and therefore legitimacy, the new provinces have struggled to develop relationships with and incentivize cooperation from local governments.

Division of executive powers

Executive powers can also be distributed between national and state governments. Federal laws can be executed by the federal government, as is the case in Canada and the United States, but sometimes states and regions will be responsible for administering or executing federal laws within their boundaries. This is the case to varying degrees in Germany, India and South Africa. Cooperation between the central and state governments in the implementation of federal laws is critical to the functioning of a federal system. If executive power is to be divided, and if some authority to ‘execute’ national laws is to be given to subnational units, a decision must be made as to which legislation should be administered by these units. This requires several correlated decisions, including: what kinds of and how much central legislation is administered by the subnational units; how trust and cooperation, as opposed to coercion, will be encouraged between the levels of government (see South Africa example of constitutional encouragement of cooperative federalism in sidebar); what say subnational unit governments will have in the development of federal legislation that they will be co-responsible for implementing; the extent and means of control of the central government over the administration of its legislation.

Symmetric and asymmetric federalism

Federal systems can be symmetrical or asymmetrical in nature. Federal systems are symmetrical when all subnational units have the same degrees of autonomy as one another, represented by the same competencies and the same relationship with the central government. It is worth noting that even non-federal, decentralized systems can also be symmetrical or asymmetrical. For example, Indonesia is a non-federal country but Aceh and other regions enjoy enhanced autonomy under the Constitution, making it an example of an asymmetrical arrangement (Ginsburg 2018). De jure asymmetry is where one unit is given more or less autonomy than other units in the federal constitution. This is in contrast to de facto asymmetry, in which—regardless of what is written in the constitution—different regions will exercise more or less power than others depending on a number of factors, including economic strength of the region and population size, among other issues. De facto asymmetry—where in fact differing levels of power are exercised—can exist in a de jure symmetrical systems, when powers are formally equally assigned amongst subnational units.

Arrangements around the raising, sharing, and spending of money are critically important, both politically and economically, for the functioning of federal systems. (George Anderson, *Federalism: An Introduction*, 2018: 30)

In practice, asymmetrical arrangements have proven critical in conflict mitigation and meeting differing demands for decentralization, as well as taking account of the unique identity and capacities of different regions (Ginsburg 2018). Asymmetry may be beneficial in meeting historical and long-standing claims for regional autonomy, such as that in the Bangsamoro and Cordillera regions in the Philippines. Moreover, asymmetric arrangements can help mitigate secessionist claims. Contrary to the belief that giving more autonomy to subnational units will make them want greater separation from the centre, it is often the case that giving more autonomy to these units can strengthen national unity, making autonomy arrangements and the realization of the internal right to self-determination ‘anti-secessionist’ cures (Cats-Baril 2018). Importantly, in order for autonomy to be meaningful, it is necessary that the distribution of resources matches the distribution of powers and responsibilities; if a subnational unit has greater autonomy, and therefore corresponding increased responsibility to provide services for its population, fiscal arrangements should enable it to garner sufficient resources to provide those services either through transfers from the central government or through devolving resource mobilization powers.

Fiscal federalism

The division of powers and responsibilities in a federal system requires an accompanying division of resources to enable the effective discharge of functions by different levels of government. The framework, mechanisms and processes related to this division of resources are broadly covered under the concept of fiscal federalism. Fiscal imbalances between the centre and the subnational units, as well as among subnational units, are inevitable in all countries; often, as is the case in the Philippines, countries with centralized systems will see a particular over-concentration of economic resources at the centre. As such, federal constitutions often call for revenue-sharing, meaning the distribution of funds to other levels of government for general and/or specific purposes.

Most federations, with the United States as a notable exception, also call for equalization mechanisms to create more equitable revenue-sharing between units, recognizing different subnational units’ capacities and needs. This is in line with the principle of solidarity, which holds that subnational units across a federal territory should be able to maintain the same standards of basic service delivery. If constituent units have the same responsibilities and functions as one another under a symmetrical system, but differing capacities to raise and access resources, there will be variation in the quality of delivery of those responsibilities and functions (Anderson 2008).

Equalization is often managed and administered by an independent body but it can also be accomplished and integrated in normal budget processes. If an intergovernmental fiscal commission is called for in a constitution, attention should be paid to its composition requirements and appointment procedures. In India, the Commission is appointed by the President; in South Africa, in an attempt to acknowledge the technical nature of equalization, the Financial and Fiscal Commission is to be composed of independent experts, some appointed by the President in consultation

with heads of other levels of government (Section 221). Equalization is not a static exercise and the size and formulas for distribution can be reviewed regularly for appropriateness. This is the practice in Germany, India and South Africa, where the reviews are conducted by independent financial commissions. Importantly, consideration should be given as to whether or not decisions and statements issued by the commissions are binding or not. In some countries, like India and South Africa, the recommendations are advisory and must be approved by the legislature.

Fiscal federalism is also significant in terms of ensuring the shared and self-rule aspects of federalism itself. Beyond equalization formulas, it is important to think about how taxation powers are distributed, which is intimately linked to ensuring meaningful autonomy in decision-making and service delivery at the subnational level. If a federated unit cannot generate sufficient revenues, it will remain dependent on the central government for fiscal support, thereby affecting the dynamics of the entire federal system and opening the possibility of coercive (as opposed to cooperative) relationships between the central and subnational governments. One way to avoid this is to constitutionally devolve more taxing powers to subnational units.

The exact practice of dividing taxation powers varies between federations, but there are various issues to take into account. On the one hand, there are advantages to having each level of government accountable for raising the monies they administer; however, varying capacity and tax bases must be taken into consideration, meaning that some support in resource generation and provision might be required from the central government. On the other hand, there are administrative advantages to centralizing revenue collection even if taxation power is itself decentralized (Anderson 2018). In the United States, both the federal and the state governments can impose and collect taxes for their own purposes. In Germany, the central government imposes taxes but most are collected through the state-level governments.

Representation at the centre

The shared-rule dimension of federalism is as important as the self-rule dimension, although it often receives less attention politically. Shared rule is the way in which the subnational units are given recognition and included in central institutions and decision-making processes; this can enhance a feeling of national unity and ownership over state affairs. Shared rule can be designed in a number of ways, through representation in different branches of government (executive, the judiciary and other institutions, such as independent commissions). Most often, it takes the form of representation in the legislature, often in a separate organ/chamber in bicameral legislatures (e.g. the United States Senate). The representation in the legislature could be based on the principle of equality of subnational units (promising each unit equal representation), or be weighted according to population (e.g. Germany, India). The upper house in bicameral systems can be elected by the peoples of the subnational units directly, or indirectly elected and appointed by subnational unit legislatures (International IDEA 2017).

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of-

- a. inquiring into and advising upon disputes which may have arisen between States;**
- b. investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or**
- c. making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,**

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

(Indian Constitution, Article 263 'Provisions with respect to an Inter-State Council')

Besides representation in legislatures, other mechanisms exist for shared rule. It should be noted that these also contribute to, and in many circumstances qualify as, mechanisms for intergovernmental relations (discussed in more detail below). Shared rule can be accounted for in executive institutions; for example, in Nigeria Article 33 of the Constitution requires that a presidential candidate has to win not only a plurality of votes cast nationally but also a minimum of 25 per cent of the votes in two-thirds of Nigeria's states. This ensures that the states have a voice in determining the presidency and also encourages more moderate and inclusive politics by making it difficult for a divisive or non-inclusive candidate to be elected. Representation can also be ensured in the judiciary as a body, formally or informally. In Canada, for example, it has become convention that one-third of the members of the Supreme Court are appointed from Quebec to ensure that province is represented in the court as an arbitrator of federal affairs (International IDEA 2017).

Finally, commissions for intergovernmental relations can also ensure representation at the centre, such as the Financial and Fiscal Commission in South Africa, and therefore serve as mechanisms of shared rule.

Intergovernmental relations

Intergovernmental relations vary from country to country and evolve over time, playing out in formal and informal ways. In the federal context, intergovernmental relationships encompass both relationships between the centre and the federated units, and relationships among the federal units. Intergovernmental relations can be cooperative or conflictual. Cooperative relationships are characterized by co-decision, coordination and consultation, while conflictual relationships are characterized by collusion, competition, control and even coercion.

Intergovernmental relations can be facilitated and shaped by intergovernmental mechanisms, which can encourage more cooperation and ease conflictual dynamics. Federations often establish, principally through the constitution, intergovernmental coordination mechanisms, which can bring together the highest executive of the federal and regional governments, or serve as a platform for coordination among regions. India's Inter-State Council is good example of a formal mechanism; it was established in 1990 on the basis of Article 263 of the Indian Constitution. Informally, mechanisms can also evolve over time. For example, in Canada the First Ministers' conference serves as a forum for the prime minister and the premiers (heads) of each province and plays a critical role in intergovernmental relationships, even though it is informal in nature, having no basis in the written constitution. In addition to the executive branch, mechanisms may be established at the parliamentary, judicial and sectoral levels as discussed in the section on Representation at the centre above.

Decentralization is used globally to deepen democracy and compensate for perceived or real governance deficits

Expert insights

The imperatives of federalism and the proposed draft charter

Dr Edmund Tayao, member of the Consultative Committee to Review the 1987 Constitution

There are a number of motivations behind the Philippines' interest in moving towards federalism. The question of whether federalism will indeed be able to fulfil these motivations and imperatives is considered below.

Redistribution of resources towards subnational units

One of the primary motivations for federalism for the Philippines is to increase the regions' capacity to exercise authority over spending and service delivery in their territories. As such, in designing a potential federal system for the Philippines, consideration should be given to the principle of form (funds) follows function, in which substantial resources should also be secured for the regions, to support the functions they are assigned under a new constitution. This principle suggests that resources should be distributed according to the functions assigned to the respective levels of government (see expert framework above).

Decentralization for democratization

Decentralization is used globally to deepen democracy and compensate for perceived or real governance deficits; in the Asia Pacific region alone, Cambodia, Indonesia, the Philippines, Thailand, Nepal and Vietnam have all turned to decentralization for democratization purposes. Many of the Arab Uprisings also resulted in reforms to decentralize power, moving power away from central and towards local and subnational governments. The theory is that democracy will be strengthened by engaging all levels of government more effectively in public administration.

The size and area of political jurisdiction is significant in public administration. While Indonesia is not a federal country, government functions are decentralized to subnational levels of government. When comparing the political jurisdictions of Indonesia and the Philippines, Indonesia has a larger political jurisdiction in terms of area and size. The Philippines has more provinces than Indonesia, but in terms of land area, Indonesia is bigger. These smaller political jurisdictions in the Philippines hinder the effective delivery of public services, such as traffic management and pollution control, because of limited area coverage and jurisdictional concerns. Amalgamation of smaller units into larger subnational units is proposed as a means to improve public service delivery by uniting or integrating local governments into a bigger political body. This will hopefully address the current fragmentation that is inhibiting the delivery of democracy in the Philippines.

Besides enhancing public administration, federalism and decentralization can also promote more responsive governance and infrastructure development. Currently, the Philippines suffers from fragmentation

FAST FACTS: 4Ps

The Pantawid Pamilyang Pilipino Program (4Ps) is a human development measure of the Philippine government that provides conditional cash grants to the poorest of the poor, to improve the health, nutrition, and the education of children aged 0-18. It is patterned after the conditional cash transfer (CCT) schemes in Latin American and African countries, which have lifted millions of people around the world from poverty. (Philippine Official Gazette)

in responsibilities and resources related to infrastructure development and service delivery, which undermines government accountability and effectiveness. Under a federal system, regions can act as powerful hubs to undertake interregional infrastructure projects at the subnational level, such as road networks, irrigation, agro-industrial services, tertiary hospitals and medicine warehouses.

Resolving issues in local governance

In a unitary government, even if powers are devolved to the subnational government, there is always a risk that they will be recentralized under the national government. This phenomenon occurs across the globe, but it has been seen in the Philippines, under the 1987 Constitution. Regarding the implementation of the 4Ps (see sidebar), some local governments do not have the capacity to carry out such a programme at the local level. As a result, the implementation of the programme is heavily dependent on assistance from the central government anyway, regardless of the original intention of empowering local governments to manage the program. The lack of capacity of the local governments, means in actuality that the central government continues to exercise allegedly devolved powers. Charter Change for federalism would potentially create an opportunity to strengthen local governance, but in restructuring it is important to consider the absorptive capacity of subnational units in terms of providing services at the local level.

Economic growth and viability

As discussed in Charter Change Issues Brief No. 4, federalism can create a favourable environment for business and economic growth. If local economies are better integrated through regional preparation, consolidation and enhancement of local socio-economic plans to meet region-specific demands and needs of local industries, more equitable economic growth would be facilitated throughout the Philippines. Federated regions are geared towards increased economic viability. In the current structure of revenue generation under the 1987 Constitution, local government units (LGUs) are given the power to collect and administer real property taxes including business taxes. Other revenue-generation mechanisms could be devolved to local and regional governments under a new federal system. Under the current system, revenue generation does not fully support the expenditures assigned to local government. In a federal structure of government, LGUs and regional governments could retain tax powers under the current Local Government Code but also have enhanced resource mobilization capacity to meet newly devolved responsibilities.

Federalism is a transition; it is a journey. Amending the Constitution is just a start of the journey towards federalism. Strong political and electoral reforms are needed to make sure that the journey towards federalism will not benefit those who are already in power. (Julio Teehankee, member of the Consultative Committee)

FAST FACTS: Bayanihan

‘South East Asian. A traditional system of mutual assistance in which the members of a community work together to accomplish a difficult task. In later use also: a spirit of civic unity and cooperation among Filipinos.’ (Oxford Dictionary of English)

Charter Change Proposals

Overview of draft provisions on federalism by the Consultative Committee to Review the 1987 Constitution

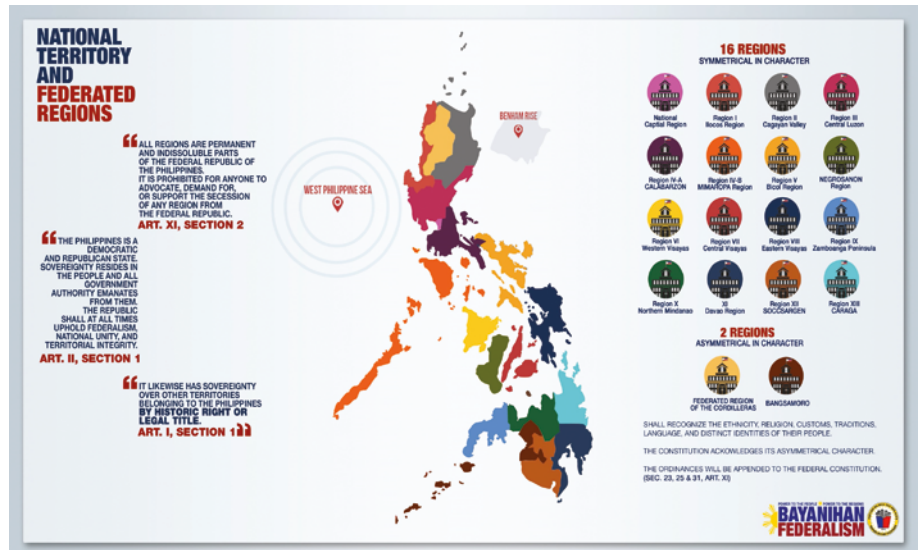
Dr Julio Teehankee, member of the Consultative Committee to Review the 1987 Constitution

Federalism has been on the political agenda in the Philippines since President Duterte’s election campaign, in which federalism featured as one of the major themes. Despite how prominently federalism is in political debates, discussions on federalism are reminiscent of the parable of the blind men and the elephant, where each blind man has his own interpretation of what that elephant is. Federalism can mean different things to different people. As discussed in the conceptual framework above, federalism is about constitutionally guaranteed multi-level and multi-order governance, and about shared and self-rule. The federalism debate in the Philippines is about location, concentration of sovereignty and the absolute power held by the state and among regions.

The style of federalism for the Philippines, if designed and implemented, would be more of the ‘holding together’ type (see expert framework above), examples of which show that one way for a country to overcome internal conflict is for the central government or national government to give power to local constituent units. Bayanihan federalism, as envisioned by the draft constitution drawn up by the Consultative Committee to Review the 1987 Constitution (ConCom), has three defining characteristics: it is evolving, cooperative and bottom-up. The federal transition in the Philippines is not meant to be a single all-encompassing event, but rather to evolve over time. There will be a list of competencies for federated states; those that can be readily handled by the federated states will be devolved to them immediately, while those competencies that the regional governments lack the capacity to deliver will be supported by the federal government through block grants, at least transitionally. While the Philippines federal transition would represent a ‘holding together’ at the national level, at the regional level it will be a coming-together type of federalism, since the existing 81 provinces would be merged into 16 regions.

The design of the 2018 ConCom constitutional draft is Bayanihan federalism and emphasizes cooperative federalism. While some critics claim that federalism will only benefit two or three regions in the Philippines, the Filipino concept of Bayanihan (see sidebar) symbolizes the idea that all regions can prosper and progress, with regions that are underdeveloped supported by others that have more resources.

Figure 2. ConCom federalism proposal



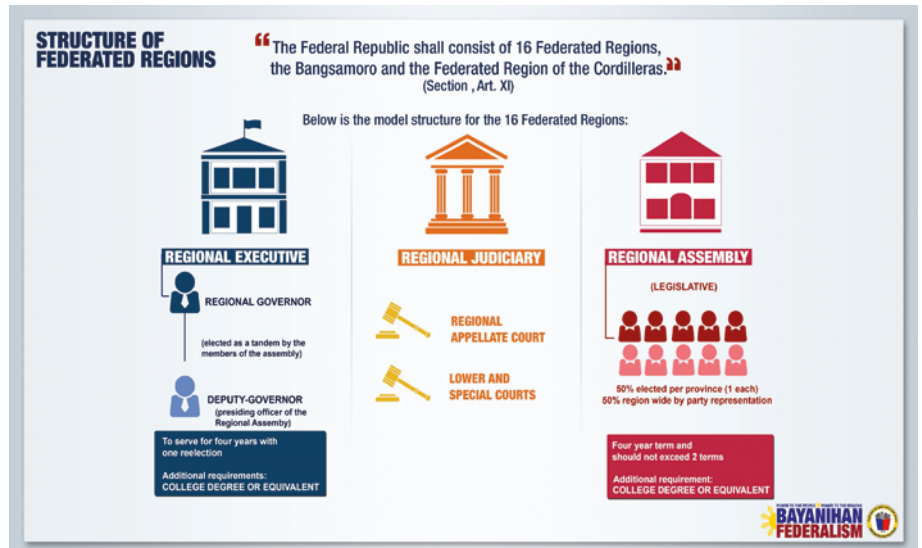
Source: Consultative Committee to Review the 1987 Constitution (ConCom 2018)

The ConCom design shows a preference for a strong federal government (see Figure 2). Thus, it is centralized federalism with empowered regions. The draft calls for the creation of 16 federated (symmetrical) regions, which will have the same powers in relation to each other and the central government; in addition, there are asymmetrical powers for Bangsamoro and Cordillera regions, which will have their own setup and their own organic law.

In the distribution of power, each level of the government has its own exclusive powers. The powers essential for running the nation state—such as defence, immigration, foreign relations, monetary controls—are retained by the federal government. There are also reserved powers for the regions. Shared powers are identified as all those that are not specifically mentioned in the lists of exclusive and reserved powers. The principle is that these powers should be assigned based on relative capacity, and managed by federal law in cases of conflict.

Regional governments (see Figure 3) will include a regional executive consisting of a Regional Governor and a Regional Vice Governor. They will be elected but not directly elected. At the regional level, there will be a ministerial or parliamentary system, with a regional assembly, composed of two types of representative from different regions: one representative per province (or independent chartered city or highly urbanized city), and one representative based on proportional representation. The division of judicial power among levels of government will largely remain the same as under the 1987 Constitution, with the current regional trial courts becoming regional appellate courts, basically a change in nomenclature.

Figure 3. The structure of federated regions in the ConCom proposal



Source: Consultative Committee to Review the 1987 Constitution (ConCom 2018)

Intergovernmental relations are the oil that enables interaction and conflict resolution among two orders—the federal (centre) and the constituent unit (state/region).
(Julio Teehankee, ConCom)

Lastly, as intergovernmental relations are critical to making federalism work, the Bayanihan draft includes mechanisms for facilitating multilateral intergovernmental relations. Section 8 of Article XIII of the draft charter provides for the creation of a Federal Inter-governmental Commission (FIGC) (see Figure 4). The draft also calls for a Council of Governors to facilitate horizontal inter-regional relationships, which could potentially influence regions’ collective bargaining power with the central government.

Figure 4. ConCom’s proposed Federal Intergovernmental Commission



Source: Consultative Committee to Review the 1987 Constitution (ConCom 2018)

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This publication has been supported by the Australian Department of Foreign Affairs and Trade through the Enhancing Political Dialogue for Inclusive Peace in the Bangsamoro (ENPOLD) program.



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