Final Draft

INITIATING CHANGE?

People's Initiative as a Mode of Changing the 1987 Constitution

By: Joy Aceron and Francis Isaac

On October 25, 2006, the Supreme Court decided to dismiss the petition filed by Atty. Raul Lambino of *Sigaw ng Bayan* (Cry of the People) and Gov. Erico Aumentado of the Union of Local Authorities of the Philippines (ULAP) for a people's initiative that would introduce changes in the present Constitution.

Such a decision was reminiscent of the Court's earlier ruling in 1997 denying an almost similar petition submitted by a group called People's Initiative for Reform, Modernization and Action (PIRMA).

While monumental failures are often ignored by writers and historians, or are best given paper tombstones in the footnotes of academic journals, the writers of this paper seek to do otherwise and shall instead revisit the ill-fated attempts of PIRMA and Sigaw ng Bayan in the hope of finding some explanation for their debacle.

In addition, the paper shall also try to review the deliberations of the 1986 Constitutional Commission (CONCOM) so as to determine the framers' intention in adopting people's initiative and how they envisioned this system to be operationalized.

Finally, the paper hopes to explore the pros and cons of people's initiative as presently designed. The paper shall not post specific recommendations, but instead shall raise issues that must be resolved to make people's initiative operational and practicable.

Initiative 101

But before we can proceed with our discussion, the question must first be asked: What exactly do we mean by "people's initiative"?

In an article written for the *Encyclopedia of Public Choice*, University of Southern California professor John Matsusaka described initiative as a "process that allows ordinary citizens to propose new laws by petition, that is, by collecting a predetermined number of signatures from their fellow citizens." This proposal then becomes a law "if approved by a vote of the electorate at large." [1]

Andrew Heywood in his book *Politics*, for his part, linked the notion of initiative with that of referendum, describing it as a "type of referendum through which the public is

[1] Matsusaka, John. (Forthcoming). "Initiative and Referendum," in *Encyclopedia of Public Choice*. C.K. Rowley and F. Schneider (eds.). Kluwer Academic Publishers; p. 1.

able to raise legislative proposals."[2] Referendum, on the other hand, refers to "a vote in which the electorate can express a view on a particular issue of public policy."[3]

A similar idea was advanced by authors Rod Hague and Martin Harrop, who defined initiative as "a procedure which allows a certain number of citizens to **initiate a referendum on a given topic**"[4] (emphasis added). This simply means that once a petition has gathered the required number of signatures from the list of registered voters, the "petitioners" (or those who initiated the proposal) can now compel the public to vote on a proposed statute, charter amendment or ordinance.

In addition, an initiative can be further classified into:

- ***direct initiative***, wherein a measure is put directly to a vote after being submitted by a petition, without even being reviewed or scrutinized by the government in advance; and
- ***indirect initiative***, which takes place when a petition is first submitted to the government (or in most cases, the legislature) before being placed on the ballot.

According to Matsusaka, initiative first appeared in the Federal Constitution of Switzerland in 1848[5] and was first put to practice in 1891. But, as early as 1845, the Swiss canton of Vaud had already had this mechanism incorporated into its own legal structure.[6] With this constitutional proviso, Swiss citizens who are able to gather at least 100,000 signatures are allowed "to make a request to amend a constitutional article, or even to introduce a new article into the constitution."[7]

Once the necessary number has been reached, the initiative measure will then be brought to parliament, which will then issue an opinion whether to vote for or against the proposed amendment. This measure will then be voted upon in a referendum which will be called after a waiting period of two to three years from the date that the said initiative was brought to parliament. To facilitate the voting, the proposed measure will be printed in the ballot, as well as the recommendation of parliament.

If the legislature decides to propose an alternative amendment, this will also be included in the ballot. In which case, the electorate would have to cast two votes: one for whether or not they are in favor of an amendment; and if they are, they would then have to fill up a second ballot to choose between the original citizen-initiated proposal or the one introduced by the parliament.

For the Swiss Constitution to be amended, an initiative would both have to achieve a majority of the national popular vote as well as a majority of the canton-wide vote in

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[2] Heywood, Andrew. (2002). *Politics* (Second Edition). Palgrave Foundations: Hampshire and New York; p. 424.
[3] Ibid., p. 226.
[4] Hague, Rod and Martin Harrop. (2004). *Comparative Government and Politics: An Introduction* (Sixth Edition). Palgrave Foundations: Hampshire and New York; p. 162.
[5] Matsusaka, op. cit., p. 2.
[6] http://www.britannica.com/eb/article-9063016/referendum-and-initiative.
[7] http://en.wikipedia.org/wiki/Initiative.

more than half of the cantons. It must be pointed out, however, that most of the initiative measures introduced in Switzerland since 1891 have failed to obtain the consent of the electorate and have thus ended in defeat.

The system of initiative, however, was not adopted in the United States until 1893 when it was first introduced in the counties of California. But it would take another five (5) years before it can be adopted on a state level when South Dakota approved this measure with a vote of 23,816 to 16,483, without even prior knowledge of the Swiss example.

A year later, San Francisco followed suit, becoming the first American city to introduce initiative as part of its legal mechanism. Then in 1902, Oregon became the second state to adopt what would become known as the "Oregon model" —a measure which quickly spread throughout the United States, subsequently becoming one of the most significant reform measures of the Progressive Era (1890s-1920s).

At present, "24 states and and roughly half of all cities (including 15 of the 20 largest) provide the initiative."[8] Of this number, 18 states allow for a constituonal initiative process, which can be done directly in 16 of the states and indirectly in the remaining two.

Though popular initiative (as it is otherwise called) has been most widely used in Switzerland and the United States, the said mechanism is also provided for in several countries in Western Europe. In the post-World War II constitutions of France and Italy for instance, popular referenda have been obligatory if ever their respective charters are to be amended. National referendums have also been held in Denmark, Greece and Ireland in order to adopt proposed constitutional amendments.

Initiative has also made its way in the former Soviet Union, with 15 of its successor states adopting it as part of their constitutions. Similar provisions were also introduced in Australia and New Zealand, as well as in India, Japan, South Korea and Taiwan.

Spirit of the Law

Since it is largely conceived as an electoral device "by which voters may express their wishes with regard to government policy or proposed legislation,"[9] the concept of initiative has often been understood as a tool for direct democracy, since it "empowers the electorate at large to make policy decisions or override the decisions of their representatives."[10]

Hague and Harrop also advanced similar views, saying that, "referendums, and similar devices such as the initiative and the recall, are devices of direct democracy, which enable voters to decide issues (for) themselves."[11]

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[8] Matsusaka, op. cit., p. 2.
[9] http://www.britannica.com/eb/article-9063016/referendum-and-initiative.
[10] Matsusaka, op. cit., p. 1.
[11] Hague and Harrop, op. cit., p. 160.

Prof. Tari Renner of the Illinois Wesleyan University, for his part, described initiative and referendum as "the central mechanisms for direct democracy in America," citing data indicating a significant increase in the use of initiative and referendum procedures at the state, local and city levels.[12]

The correlation between initiative and direct democracy was again emphasized by the Initiative and Referendum Institute, when it described the above-mentioned mechanism as "practices of modern direct democracy," which emphasizes the "rights and capabilities of the general citizens to make decisions on government policies, regulations, legislations or constitutional matters, either binding or non-binding."[13]

Introducing Initiative

This concept of initiative was later introduced here in the Philippines shortly after EDSA Uno—at the time when the present Charter was still being crafted by the Constitutional Commission (CONCOM). In fact, the first recorded discussion on people's initiative occurred on July 8, 1986, when the CONCOM's Committee on Amendments and Transitory Provisions presented Proposed Resolution No. 322, which recommended that, "any amendment to, or revision of this Constitution may be proposed…directly by the people themselves thru initiative."[14]

This proposal was subsequently incorporated into the final draft of 1987 Constitution, particularly in Article VI, Section 32, which states that:

> The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefore signed by at least ten *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 thereof.[15]

A similar manner was also provided in amending the Constitution, as stipulated in Article XVII, Section 2 of the said Charter, wherein

> (a)mendments of this Constitution may 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 amendments 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.[16]

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[12] Renner, Tari. http://www.iandrinstitute.org/Local%20I&R.htm
[13] http://www.iandrinstitute.org/Quick%20Fact%20-%20What%20is%20I&R.htm#Initiatives
[14] *Record of the Constitutional Commission*. July 8, 1986; p. 371. Herein after cited as Record.
[15] "The Constitution of the Republic of the Philippines, 1987," in *The Constitutions of the Philippines*. (2005). Anvil Publishing, Inc.: Pasig; p. 22.
[16] Ibid., p. 61.

The defenders of the said measure then cited two reasons for its incorporation in the new Constitution:

1. that it would result in the institutionalization of people power by giving an avenue wherein direct democracy can actually be exercised; and
2. that people's initiative can act as a "safety valve" in the event that Congress (acting as a Constituent Assembly) cannot muster the three-fourths votes needed in amending the present Charter, or the two-thirds vote required for the calling of a Constitutional Convention.

The first rationale was most clearly expressed by Commissioner Felicitas Aquino when she observed that the underlying precept of the said proposal was to institutionalize "popular participation in the drafting of the Constitution or in the amendments thereof."[17]

This was further noted by fellow CONCOM member Francisco Rodrigo, who described the proposal (despite his opposition) as a measure that sought "to give the people directly, through 'initiative,' the power to propose amendments to the Constitution."[18]

Farmer activist turned-CONCOM delegate Jaime Tadeo also framed his discourse in the same way when he reminded his colleagues that the Aquino government (under which the CONCOM was formed) was brought about through the People Power Revolution of 1986, which was a clear manifestation of direct democracy. Arguing that they were all appointees of the Chief Executive and were therefore obliged to institutionalize people power, the then-Chairman of the *Kilusang Magbubukid ng Pilipinas* (KMP) asserted that:

> *kaya tayo naririto ay dahil sa people power. Noong pumunta tayo rito, punung-puno ang ating damdamin kung paano natin i-institutionalize ang people power. Paano natin ito ilalagay sa Saligang Batas? Ang sabi natin, ang isang magandang nakita namin sa UP draft ay ang system of recall and system of initiative…Ang system ay lalong iiral sa magsasaka at manggagawa na siyang pinakamalalaking sector para magkaroon siya ng tinatawag na political power.*[19]
>
> the reason why we are here is because of people power. When we came here, our emotions were filled with the hope of institutionalizing people power. How do we put this into the Constitution? We said, one of the good suggestions that we saw in the UP draft is the system of recall and the system of initiative…This system will be operationalized among the farmers and workers who constitute the biggest sector so that they can have political power. (translation by the authors)

Fellow Commissioner Jose Luis 'Chito' Gascon also made a similar stance when he told the Commission:

> the basic issue of establishing a government is people power; we are trying to establish a government for the people, of the people and by the people. So it must be responsive to

[17] Ibid.; July 9, 1986, p. 392.
[18] Ibid; July 8, 1986, p. 373.
[19] Ibid.; July 9, 1986, p. 397.

> them. I feel that through this process of initiative, we assert that the power of the government emanates from the people and that the people's will must prevail. Because of such, I would like to support the basic principle that initiative must be enshrined in the Constitution.[20]

By arguing in this manner, a number of CONCOM delegates have therefore asserted that the system of initiative allows the people to actually exercise both its constituent and legislative powers[21] — a measure which Commissioner Rene Sarmiento described as the "reserve power of the sovereign people."[22]

It is thus no surprise that noted constitutionalist Fr. Joaquin Bernas, in his subsequent commentary on the 1987 Constitution, insisted that, "although legislative power has been vested in Congress by the people, the people themselves have retained a measure of legislative power" through the system of initiative. The Jesuit priest further averred that, by incorporating this mechanism into the said Charter, "the people have reserved to themselves the authority to correct legislative mistakes or to supplement legislative inadequacies whether on the national level or on the level of local legislation,"[23] as well introducing amendments in the present Constitution.

Commissioner Jose Suarez, for his part, defended the measure by claiming that, while a constitutional convention and a three-fourths vote of all the members of Congress may be sufficient in changing the Constitution "under normal circumstances,"[24] a situation may arise when the "National Assembly cannot muster the necessary three-fourths vote in order to constitute itself as a constituent assembly or that the two-thirds vote required for the calling of a constitutional convention could not be obtained."

If this occurs, an extraordinary situation develops wherein "a single individual can take it upon himself or herself to resort to the exercise of this method of initiating an amendment to the Constitution."[25]

He further added, while he was being interpellated by Commissioner Rodrigo, that

> a time may come when in spite of the clamor of the people for proposing amendments to the Constitution, the National Assembly may not be able to muster enough votes in order to constitute itself as a constituent assembly or to call for a constitutional convention. So, in that sense, it is a very practical avenue or safety valve which is available to the people.[26]

Another CONCCOM delegate, Blas Ople, concurred with this statement, adding that it is about time for this institution of democratic participation to be introduced in the Philippines, and that the country is more than ready for people's initiative. He said:

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[20] Ibid; July 9, 1986, p. 398.
[21] Ibid; July 8, 1986, pp. 377-378.
[22] Ibid; July 8, 1986, p. 380.
[23] Bernas, Joaquin. (2007). *The Philippine Constitution for Ladies, Gentlemen and Others*. Rex Bookstore, Inc.: Manila; p. 89.
[24] Record; op. cit., July 8, 1986, p. 377.
[25] Ibid.; July 9, 1986; p. 390.
[26] Ibid; July 9, 1986, p. 397.

> We are not really reinventing the will (sic) in installing initiative as an additional mode of proposing an amendment to the Constitution, and as a reserve power of the sovereign people, when they are dissatisfied with the National Assembly and, therefore, if there is a default of the National Assembly in responding to a critical situation requiring a constitutional amendment, this initiative vests the power of direct action in the people themselves. It is largely, I think, reserve power, precisely a fallback position of the people in the event that they are dissatisfied.[27]

After several weeks of intense discussion and debate, the CONCOM finally approved on Third Reading Proposed Resolution No. 322 on August 1, 1986, with 41 votes and one (1) abstention. This resulted in the formal incorporation of people's initiative in the draft document of what was to become the 1987 Constitution of the Republic of the Philippines.

But despite the rigorous process that the Commission has undertaken, the delegates in the end opted not to provide any detailed mechanics on how it will be implemented, leaving the matter largely in the hands of the incoming Congress—a decision which would haunt the subsequent attempts to put this Constitutional provision into practice.

Two Case Studies: Initiative at Work?

Sign of Failure: The Case of PIRMA

While people's initiative has been incorporated in the Constitution as early as August 1986, its implementation was never really put to the test until after a decade later, when the People's Initiative for Reform, Modernization and Action (PIRMA) held its first convenors' meeting in November 1996. Led by former Philippine ambassador to the United Kingdom, Alberto Pedrosa, and his columnist wife, Carmen, the group then organized a press conference a month later on December 6, wherein it declared its intention of changing the Constitution through a process of people's initiative.

If successful, the proponents plans to do away with the current presidential system and shift to a parliamentary form of government, claiming that this would lead to greater continuity in government policies, as well as address the usual gridlock between the legislature and the executive branch. PIRMA also called for the lifting of term limits of all elected public officials, including that of then-President Fidel V. Ramos so as to "enable him to complete his government's economic and social reform agenda"[28] beyond 1998.

Immediately after its first public appearance, the group began gathering the signatures needed in changing the Charter—a move which gained the endorsement of the *Liga ng mga Barangay* which was then headed by Caloocan Councilor Alex David. According to David, their decision to support PIRMA's effort was prompted by an earnest desire "to

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[27] Ibid.; July 9, 1986, p. 405.
[28] Hernandez, Carolina. (1997). "The Philippines in 1996: A House Finally in Order?", in *Asian Survey*. Vol. 37, No. 2. February 1997; p.208.

correct an injustice in the constitution which…stripped the people of their right to re-elect good leaders as many times over as they want."[29]

Based on its initial plan, PIRMA wanted their proposed national plebiscite to coincide with the barangay elections in May 1997, presumably to help reduce the cost of the said exercise. But as Chay Florentino Hofileña suggests, the move may have also been motivated by more realistic calculations, with PIRMA reckoning that the Senate would most likely prevent the government from allocating the P900 million needed for holding a separate national plebiscite.[30]

But regardless of their intention, the issue has become largely academic by the beginning of the second quarter, after PIRMA failed to meet its self-imposed deadline of March 12, 1997—60 days prior to the scheduled barangay elections on May 12 of that same year.

Despite this initial setback, PIRMA claimed to have gathered 5.6 million signatures by the first half of 1997, which they then presented to the COMELEC on June 23. This was done so as to pressure the poll body to finally set a schedule for a possible national plebiscite. Additional bundles would soon follow after that, increasing the number of signatures to 5.9 million.

Assuming that the said signatures were totally legitimate, journalist Miriam Grace Go estimates that PIRMA was able to cover not only 12 percent, but 17 percent of the estimated 35 million registered voters at that time—numbers which far exceeded the requirements stipulated in the Constitution.

The problem with PIRMA, however, was its dubious public image. Despite being considered citizens of good standing, the group's leaders were not able to shake off the suspicion that Malacañang was somehow funding the campaign—or at the very least was giving the proponents a helpful nudge. This was of course the primary reason why public support for the bid did not materialize, and why it triggered an avalanche of protest from various sectors.

The Catholic Church, for instance, was quite adamant in its opposition to Charter Change (humorously called Cha-Cha for short), claiming that "there has been no genuine, palpable agitation from 'the people' to amend the charter."[31] The late Manila Archbishop Jaime Cardinal Sin even took a combative mood in his homily during the 11th anniversary celebration of the First People Power Revolution—drawing parallelisms between the Martial Law regime and the proposal to change the Constitution.

"What we were ready to die for in February 1986, we should be ready to fight for again…If need be, we will be there again," the Cardinal said.[32]

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[29] Go, Miriam Grace. (2000). "PIRMA: Dead Three Times Over," in *Politik 94/00*. Chay Florentino-Hofileña and Glenda Gloria (eds.). Ateneo Center for Social Policy and Public Affairs: Quezon City; p. 84.
[30] Florentino-Hofileña, Chay. (1997). "Tracking the Charter Amendment Debate: 1995-Mid March 1997," in *Shift*. Glenda Gloria (ed.). Ateneo Center for Social Policy and Public Affairs: Quezon City; p. 152.
[31] Ibid., p. 153.
[32] Quoted in ibid., p. 146.

The anti-PIRMA coalition also included former President Corazon Aquino, as well as people who were closely identified with her administration, such as CONCOM Chair Cecilia Munoz-Palma, University of the Philippines (UP) President Jose Abueva and former National Economic Development Authority (NEDA) Director General Solita Monsod. They then went on to form *Demokrasya-Ipagtanggol ang Konstitusyon* (DIK) which became the main organizational arm of the elite opposition within the broad anti-Cha-Cha coalition.

Even the country's major opposition parties such as the Laban ng Demokratikong Pilipino (LDP), the Nationalist People's Coalition (NPC), the Partido ng Masang Pilipino (PMP), the People's Reform Party (PRP) of Miriam Defensor-Santiago, the Liberal Party (LP), the Nacionalista Party (NP) and the PDP-LABAN all joined forces to oppose PIRMA's proposals, and even went to the extent of supposedly raising P1.75 million to fund protest actions against moves to change the Constitution.

Unsurprisingly, then-presidential aspirants Joseph Estrada, Gloria Macapagal-Arroyo and Miriam Santiago also opposed the move, since a change in the Constitution could very well undermine their chances in the upcoming elections in 1998.

Ironically, the Left (which campaigned against the ratification of the Constitution in 1987) also took an oppositional stance towards PIRMA; with separate protest actions being undertaken by the mainline Bagong Alyansang Makabayan (BAYAN), as well as the two major breakaway groups Sanlakas and Siglo ng Paglaya (SIGLAYA).

Indeed, the opposition against PIRMA was so massive that Joel Rocamora was prompted to describe the situation in the following way:

> In quick succession, Left organizations including BAYAN and Sanlakas; human rights groups such as PAHRA and Karapatan; opposition politicians; the Catholic Bishops Conference and the Bishops-Businessmen's Conference and various other sectors publicly opposed the PIRMA proposal. Media, save for a few commentators, assailed PIRMA's agenda. And if term extension proponents called on people to sign on, opponents banded together under "BURA" (erase) to oppose the initiative.[33]

Thus, it was not surprising that in the survey conducted by the Social Weather Station (SWS) in December 1996, about 69% of the respondents said that they were not in favor of changing the Constitution—a number that was six percent higher than the one held in the previous September.

But the biggest blow to PIRMA came on March 19, 1997, when the Supreme Court decided to discard the group's petition for a people's initiative, saying that, while the Constitution provides for such a process in amending the Charter, an implementing legislation has yet to be enacted by Congress. The justices further argued that while Republic Act 6735 (or the Initiative and Referendum Act of 1989) has been in existence

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[33] Rocamora, Joel. (1997). "The Constitutional Amendment Debate: Reforming Political Institutions, Reshaping Political Culture," in *Shift*. Gloria (ed.); pp. 90-91. In acronym-crazy Philippines, BURA refers to "Bury the Useless Reform Agenda."

since August 4, 1989, it only applies to local and national laws and does not cover constitutional amendments via people's initiative.

To make matters even more difficult for PIRMA, the high tribunal ordered the Commission on Elections to refrain from entertaining any petition designed to amend the Constitution—a directive to which the poll body readily obliged.

These developments then prompted the leaders of PIRMA to file a motion for reconsideration before the Supreme Court; but this was soon overshadowed by the massive rally held at the Luneta by the broad anti-Cha-Cha coalition on September 21, 1997. An event that was able to gather an estimated crowd of 700,000 people, the rally was hailed as a success, as it was able to mobilize the various forces across the political spectrum.

Two days later (on September 23) the Supreme Court decided to finally junk the petition of PIRMA—effectively ending the first attempt at people's initiative under the new Constitution.

Sigaw ng Bayan's Unanswered Cry

Two days prior to the 22nd death anniversary of contemporary Filipino martyr and anti-dictatorship icon, Benigno "Ninoy" Aquino, Jr., President Gloria Macapagal-Arroyo signed Executive Order No. 453 on August 19, 2005 creating what has been subsequently dubbed as the Consultative Commission.

Chaired by former UP President Jose Abueva, the Commission was tasked to "conduct consultations and studies and propose amendments and revisions to the 1987 Constitution, principally the proposals to shift from the presidential-unitary system to a parliamentary-federal system of government, to refocus economic policies in the Constitution to match the country's vision for global competitiveness, and to review economic policies which tend to hinder the country's global competitiveness and adversely affect the people's welfare."[34]

Two months later, on October 24, 2005, Malacañang issued E.O. No. 453-A which increased the Commission's membership from 50 to 55, stating that the said decision was needed, "to ensure broader participation and more extensive representation of national, regional and sectoral constituencies."[35]

The said body was given three (3) months to complete its work, submitting its final Report to the Chief Executive on December 16, 2005. Among its proposals, the Commission recommended an immediate "shift to a 'classical' form of parliamentary government, a gradual, 'constituent-initiated' transition to federalism, and the lifting of the ban on foreign ownership of natural-resource companies, public utilities, educational institutions and other industries."[36]

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[34] Executive Order No. 453. August 19, 2005.
[35] Executive Order No. 435-A. October 24, 2005.
[36] Rocamora, Joel. (2006). "Constitutional Crisis in the Philippines: Out of Crisis, What?", in *Political Brief*. First Quarter 2006; p. 35.

A few months later, a group calling itself *Sigaw ng Bayan* (Cry of the People) began a campaign to revise the present Constitution through people's initiative. Led by a former Consultative Commission member, Atty. Raul Lambino, the group began gathering signatures in February 2006, so as to comply with the required 12 percent of the total number of voters nationwide and three percent per legislative district, before they could call for a plebiscite on their proposed constitutional changes.

Their efforts soon got the support of the Union of Local Authorities in the Philippines (ULAP) and the Department of Interior and Local Government (DILG)—with the latter even issuing Memorandum Circular 2006-25 on March 10, 2006 directing all local officials to hold barangay assemblies on a nationwide level.

This was done on March 25, 2006. Gladstone Cuarteros of the Institute for Popular Democracy (IPD) had criticized the move, saying that while the assemblies were supposed to provide people with the space wherein they can discuss issues of overriding import, the assemblies were actually used "to gather the signatures that would support the formal petition that the proponents will file with the Comelec."[37]

He further alleged that the DILG had even resorted to underhanded means to acquire the needed signatures, since a number of "administration supporters have been found to be doling out rice, sardines and noodles in areas where the signatures were being gathered, if not outrightly paying for the signatures."[38]

The multi-sectoral formation Citizens for Con-Con (C4CC) also came out to assail the said barangay assemblies, labeling it as "People's Initiative ni Gloria (PIG)." It further argued that the groups that supervised these assemblies (namely ULAP and DILG) were highly questionable, since the two were closely linked to Malacañang.[39]

The efforts of ULAP and Sigaw ng Bayan also did not deter their opponents from launching their own counter-campaign against charter change. This soon led to the formation of a new multi-sectoral coalition called *Sa Tamang Oras at Panahon* (STOP Cha-Cha), composed of groups from civil society, the academe, business and the Church, as well as a number of anti-Cha-Cha legislators. Its launching in April 2006 was attended by former President Aquino and Ipil Bishop Antonio Ledesma—Vice-President of the highly influential Catholic Bishops Conference of the Philippines (CBCP).

Shortly thereafter, the group began a series of community assemblies in the major cities of the country, as well as posting paid advertisements in the leading dailies and in provincial cable television operators. Its lawyers also filed several injunctions, asking the courts to bar COMELEC from verifying the alleged signatures that will be presented by Sigaw ng Bayan.

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[37] Cuarteros, Gladstone. (2006). *Where is the "Cha-Cha" Train Now?* July 24, 2006.
[38] Ibid.
[39] Citizens for Con-Con. *Primer on Cha-Cha ni Gloria*. Quezon City; p. 2. No date of publication.

Then, in June 2006, another group had also emerged, this time led by activists mostly coming from the Ateneo de Manila University (ADMU). Assailing the campaign launched by Sigaw ng Bayan since "there is still no enabling law, much less implementing rules to conduct such initiative,"[40] the group instead proposed a constitutional convention as the best means by which to change the Charter. One Voice, moreover, viewed themselves as non-partisan; while STOP Cha-Cha on the other hand, has openly called for the removal of President Arroyo.[41]

Sigaw ng Bayan, responded to these criticisms by claiming that they were able to gather at least 9.5 million signatures—a number which was way beyond the required 12% or 5.2 million signatures. But if public opinion surveys are to be believed, the results of these studies simply did not bear this out.

The June 26-28, 2006 survey conducted by SWS, for instance, showed that 67% of Filipino adults will mostly likely vote "no" on charter change if a plebiscite is held on that day. And among those surveyed, only 15% have said that they been approached to sign a petition favoring constitutional amendments. From this number, a mere 6.8% said that they actually signed the petition, while another 7.2% opted not to sign the initiative.

Similar results were also gathered by Pulse Asia in an earlier survey that they had conducted. In a poll made in April 2006, the said research group revealed that only 32% are in favor of a shift to a parliamentary system, while an overwhelming 74% were opposed to the proposal that only members of parliament will get to vote for the President. The same survey also indicated that nearly 80% of the respondents wanted to retain the right to directly elect the President. As for the proposed shift from a bicameral to a unicameral legislature, 53% were opposed to the idea while another 24% remained undecided.

The proponents of charter change, however, simply dismissed these survey results, as Sigaw ng Bayan and ULAP, along with the Charter Change Advocacy Commission (CCAC), filed a petition before the COMELEC asking that amendments in the present Constitution be allowed through a people' initiative. Four days later, separate counter-petitions were filed by One Voice, Akbayan party-list and at least three lawyers' organizations, asking the poll body to junk the earlier appeal by Sigaw ng Bayan et al.

After less than a week—on August 31, 2006—the COMELEC issued a ruling against the petition, prompting ULAP and Sigaw ng Bayan to file a similar appeal to the Supreme Court the following day.

But even in the high court, the proponents of charter change were vigorously challenged by their oppositors. One of the first groups to do so was One Voice, which filed a counter-petition on September 5, 2006.

In a 48-page document submitted before the Supreme Court, One Voice contended that "there is no sufficient law providing for the authority and details for the exercise of

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[40] One Voice. (2006). *Opposition-in- Intervention Before the Supreme Court*. September 5, 2006; p. 7.
[41] Cuarteros; op. cit.

people's initiative to amend the Constitution,"[42] thereby making the Sigaw ng Bayan's plea bereft of any merit. It argued further that people's initiative could only introduce amendments in the present Charter, whereas the petitioners' proposals on the other hand, "pertain to revisions and not mere amendments to the Constitution."[43]

This was then followed by a comment-in-intervention from the Philippine Constitution Association (PHILCONSA) filed on September 18, 2006; a well as a separate counter-petition signed by former President Joseph Estrada and several opposition senators which they submitted the following day.

Even the Senate took part in the debate when it issued a resolution on September 23 urging the Supreme Court to dismiss the petition filed by Sigaw ng Bayan and its allied organizations.

Then, a month thereafter, the oppositors were finally able to heave a sigh of relief as Sigaw ng Bayan met an unhappy fate in the hands of the Justices on October 25, 2006, with the high tribunal voting against their petition, with an 8-7 decision. This resulted in the subsequent demise of Sigaw ng Bayan, effectively undermining all efforts for constitutional reform through people's initiative—at least for the time being.

Reasons Behind the Decision

Some of the reasons why the Supreme Court decided to dismiss Sigaw ng Bayan's petition are as follows:

- *first*, the petition failed to meet the requirements as provided for in the Constitution; and
- *second*, the nature of the proposal is that of a revision, and not a mere amendment.

In the main decision written by Associate Justice Antonio Carpio, the Court argued that the initiative petition filed by Sigaw ng Byan et al. was not able to comply with Article XVII, Section 2 of the present Charter that governs any direct proposal from the people. Such provision, according to the high tribunal, means that the full text of the proposed amendment/s should either be written on the face of the petition, or attached to it. And if the amendment/s have simply been attached as a separate document, the petition must state such fact.

The Supreme Court further explained the reason for this procedure, to wit:

> This is an assurance that every one of the several millions of signatories to the petition had seen the full text of the proposed amendments before signing. Otherwise, it is physically impossible, given the time constraint, to prove that every one of the millions of signatories had seen the full text of the proposed amendments before signing.[44]

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[42] One Voice; op. cit, p. 14.
[43] Ibid., p. 35.
[44] Raul L. Lambino and Erico B. Aumentado, together with 6,327,952 Registered Voters v. the Commission on Elections, G.R. No. 174153, October 25, 2006.

The petitioners, however, have failed to comply with this requirement since "the signature sheet merely asks a question whether the people approve a shift from the Bicameral-Presidential to the Unicameral-Parliamentary system of government." In addition, Sigaw ng Bayan did "not show to the people the draft of the proposed changes before they are asked to sign the signature sheet," thus making the entire process highly questionable.[45]

The Court also questioned ULAP's qualification as a proponent of people's initiative, and asserted that what was proper was for the "proponents to secure the signatures in their private capacity and not as public officials." Local officials, however, "are not disinterested parties who can impartially explain the advantages and disadvantages of the proposed amendments to the people, since they present favorably their proposal to the people and do not present the arguments against their proposal."[46]

In addition, the Supreme Court pointed out that the petition filed by Sigaw ng Bayan et al. directly violates the constitutional proviso disallowing any revision through people's initiatives. As the high tribunal explained:

> A people's initiative to change the Constitution applies only to an amendment of the Constitution and not to its revision. In contrast, Congress or a constitutional convention can propose both amendments and revisions to the Constitution.[47]

The Court also tried to distinguish an amendment from a revision in the following way:

> We can visualize amendments and revisions as a spectrum, at one end green for amendments and at the other end red for revisions. Towards the middle of the spectrum, colors fuse and difficulties arise in determining whether there is an amendment or revision…Where the proposed change applies only to a specific provision of the Constitution without affecting any other section or article, the change may generally be considered an amendment and not a revision.[48]

With this in mind, the high tribunal argued that "the present initiative is indisputably located at the far end of the red spectrum where revision begins," since its primary purpose is "a radical overhaul of the existing separation of powers among the three co-equal departments of government, requiring far-reaching amendments in several sections and articles of the Constitution."[49]

This was also pointed out in a separate concurring opinion made by Chief Justice Artemio Panganiban who asserted that, "only amendments, not revisions, may be the proper subject of an initiative to change the Constitution." This is because "changing the system of government from presidential to parliamentary and the form of the

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[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.

legislature from bicameral to unicameral contemplates an overhaul of the structure of government."[50]

In conclusion, the Chief Justice added that the proposed changes of Sigaw ng Bayan "have an overall implication on the entire Constitution; (for) they effectively rewrite its most important and basic provisions."[51]

Such a decision of the Supreme Court reflects the earlier intention of the drafters of the Constitution to use people's initiative as a means by which to amend, but no to revise, the present Charter. This was most vigorously explained by Commissioner Jose Suarez who, as head of the Committee on Amendments and Transitory Provisions, defended the said measure in one of the CONCOM's plenary sessions in July 1986:

> The committee members felt that this system of initiative should be limited to amendments to the Constitution and should not extend to the revision of the entire Constitution, so we removed if from the operation of Section 1 of the proposed Article on Amendments or Revision. Also this power could be susceptible to abuse to such an extent that it could very well happen that the initiative method of amendment could be exercised, say, twice or thrice in a matter of one year; thus the necessity for putting limitations to its exercise…The general idea agreed upon is for us to try to make the process of amendment a little more difficult in order that we can have an enduring and lasting Constitution.[52]

Suarez had also made an earlier distinction between amendments and revisions, saying that the latter "may involve a rewriting of the whole Constitution." An amendment, on the other hand, "envisages a change of specific provisions only." Therefore, its intention "is not the change of the entire Constitution, but only the improvement of specific parts or the addition of provisions deemed essential as a consequence of new conditions or the elimination of parts already considered obsolete or unresponsive to the needs of the times."[53]

Bernas, for his part, defended such limited efficacy of people's initiative as a mode of extensive constitutional reform in more pragmatic terms, saying that, "it would be practically impossible to have an overall review of the Constitution through the action of the entire electoral population."[54]

It is however important to note that then Associate Justice Reynato Puno gave a dissenting opinion to the decision of the Supreme Court. Justice Puno's position is to remand the Sigaw ng Bayan petition to the Comelec for further verification of signatures and the sufficiency of the Initiative and Referendum Act. He opined that "the law is sufficient to be a vehicle for the right of the people to propose amendments to the Constitution."

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[50] Raul L. Lambino and Erico B. Aumentado, together with 6,327,952 Registered Voters v. the Commission on Elections, G.R. No. 174299, October 25, 2006 (Separate Concurring Decision, Panganiban, CJ.).
[51], Ibid.
[52] Record; op. cit., July 9, 1986, p. 386.
[53] Ibid.; July 8, 1986, p. 373.
[54] Bernas, op. cit., p. 316.

Weighing In the Options: Arguments for and Against People's Initiative

"Failure," as the poet John Keats once said, "is, in a sense, the highway to success, inasmuch as every discovery of what is false leads us to seek earnestly for what is true."

It is in this vein that we have undertaken a thorough review of the unsuccessful attempts of PIRMA and Sigaw ng Bayan, so that we can determine the reasons for their failure and identify the options that we may possibly undertake.

Option 1: Discard People's Initiative as One of the Modes in Amending the Constitution

While this may seem drastic for some, such an option is not totally bereft of reason. And the authors of this paper have actually come up with at least three (3) arguments why this must be so.

ARGUMENT 1: A Petition for People's Initiative Does Not Necessarily Embody the People's Will.

This was clearly seen in the attempts of PIRMA and Sigaw ng Bayan to change the Constitution. And while they may have gathered signatures that went beyond the 12% requirement, their respective campaigns have also generated massive opposition from both the Church and civil society, leading to numerous protest actions and huge open-air rallies in Luneta and Ayala Avenue.

The surveys conducted by Pulse Asia and SWS also did not indicate any massive support for people's initiative, and instead revealed public resistance (or at the very least lukewarm disagreement) over the proposed measure. This therefore puts into question whether the proposals of PIRMA and Sigaw ng Bayan would have won if ever an honest-to-goodness plebiscite called for that purpose.

The experience of Switzerland also indicates that while the popular initiative has often been availed by certain segments of the electorate to propose amendments in the Swiss Federal Constitution, these have often been defeated in the polls. As such, while an initiative proposal may have come directly from ordinary citizens, there is still the probability that the vast majority of the voting public would find such amendments unacceptable. In other words, there is no direct correspondence between a "people's initiative" and the "people's will."

This was also pointed out by Political Science Professor Kay Lawson, since those who are usually able to mount expensive initiative campaigns are far from your average, well-intentioned citizen. Rather, they are relatively affluent groups or individuals who have the time, influence and resources to undertake protracted campaign work and political advertising. As she herself remarks:

> It is often taken for granted that electoral systems allowing initiatives and referenda provide for more participation than those that do not…The matter is not as simple as it looks, however. It is no easy job to gather large numbers of signatures for a petition in a short period of time, and some observers have suggested that well-financed groups have

> an even greater advantage when this system of lawmaking is used than when laws are made by ordinary legislative processes. Such groups are better able to hire the workers needed to gather the necessary number of signatures and to bombard the general public with the political advertising likely to persuade them to vote "correctly" than are less wealthy groups—or so it is argued.[55]

Such observation bears a certain degree of resemblance to our own experience here in the Philippines, wherein the leaders of PIRMA and Sigaw ng Bayan were often associated with Malacañang. Even ULAP, for very obvious reasons, is far from unassuming since its membership includes local government officials with relatively easy access to state resources.

ARGUMENT 2: People's Initiative is Not Necessary Since There are Two Other Modes of Changing the Constitution

During the deliberations of the CONCOM, Francisco Rodrigo opposed the proposal to incorporate people's initiative into the draft Constitution. He did so by arguing that the two traditional modes (i.e., constituent assembly and constitutional convention) are more than adequate to introduce the changes that are needed by the Charter.

In an address before the entire Commission, Rodrigo stated that

> this new provision is not necessary. There is no need for it. The present provisions of the Constitution on the proposals for amendments to the Constitution are most satisfactory, very democratic. This is done by either the National Assembly composed of representatives elected by the people all over the Philippines by a vote of three-fourths or by a constitutional convention, again composed of delegates elected from all parts of the Philippines. And, usually, these delegates are elected on the basis of their stand on certain constitutional provisions. Madam President, ours is a republican government which means a representative government. This satisfies the essence of democracy…Let us not go into controversial matters like this which can hardly be understood by our people who, after all, are the ones who are going to either ratify or reject the Constitution. Let us go to the basics. Let us not depart radically from what we have found to be satisfactory in our country or the last half-century or more than half-century, and that is the republican form of government—a government run by duly elected representatives of the people. This is practical. It is not perfect, but it is the best kind of government that we know.[56]

Philippine history, moreover, offers more than enough examples to support Rodrigo's argument. The 1935 Constitution, for instance, was drafted by a 202-member constitutional convention which was subsequently ratified on May 14, 1935.

Amendments were later introduced by the legislature acting as a constituent assembly, and which was ratified on June 18, 1940. The changes included:

1. changing the tenure of the President and Vice-President from a six-year term without reelection to a four-year term with one reelection;

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[55] Lawson, Kay. (1989). *The Human Polity: An Introduction to Political Science* (Second Edition). Reprinted by KEN, Inc.: Quezon City; p. 228.
[56] Record; op. cit., July 9, 1986, p. 397.

2. transforming the legislature from a unicameral chamber to a bicameral one; and
3. the creation of the COMELEC to supervise all election-related activities.

But the country would witness even more far-reaching changes in the Constitution at the beginning of the 1970s when the 1971 Constitutional Convention (CON-CON) held its inaugural session in June 1971, hoping that "a new constitution could establish a new set of principles and laws that would cure the country's ills."[57] Deliberations were then held until November 1972, after which the delegates recommended the adoption of a parliamentary form of government. The new Constitution, however, would soon be hijacked by the Martial Law regime, which used the said document to cover itself with the mantle of legitimacy.

ARGUMENT 3: People's Initiative Can Bring More Harm Than Good for It Can Actually Curtail the Dynamism of Civil Society

State structures are based on rules, rationality and formal procedures. They are also largely hierarchical since "each lower office is under the control or supervision of a higher one."[58] Therefore the state, as Max Weber suggests, will often be characterized by "a continuous organization of official functions bound by rules,"[59] so as to ensure predictability and a standard response to all possible situations.

Civil society, on the other hand, is usually composed of flat organizations with strong horizontal relationships, which thrives in conditions that require flexibility and spontaneity. This is so since civil society groups are "voluntary and self-generating" in character, whose primary concern is to "seek benefits, policy changes, or accountability from the state."[60]

Because of their difference in approaches, civil society organizations may sometimes lose their dynamism once state-civil society interactions are formalized. This is brought about by the fact that such interactions are often bound by rules, and where strict procedures are largely observed.

A similar observation was also made by Nina Izsatt in her study of civil society engagements with local governments, saying that such structures can actually "reduce the potential for dynamic participation and can be restrictive." She, however, also clarified that the state can also play a facilitative role since "the presence of structures in which to participate makes institutionalizing participation more feasible."[61]

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[57] Timberman, David. (1991). *A Changeless Land: Continuity and Change in Philippine Politics*. The Bookmark, Inc.: Makati; p. 65.
[58] Weber, Max. (1974). *The Theory of Economic and Social Organization*. A.M. Henderson and Talcott Parsons (trans.). The Free Press: New York; p. 331.
[59] Ibid., p. 330.
[60] Siliman, G. Sidney and Lela Garner Noble. (1998). *Organizing for Democracy: NGOs, Civil Society and the Philippine State*. Ateneo de Manila University Press: Quezon City; p. 13.
[61] Izsatt, Nina. (2002). "Legislating Citizens' Participation in the Philippines," in Citizen Participation in *Local Governance: Experiences from Thailand, Indonesia and the Philippines*. Institute for Popular Democracy: Quezon City; p. 74.

Option 2: Retain and Reform People's Initiative as One of the Modes of Changing the Constitution

The authors believe that this course of action will most likely be less controversial and will be more easily accepted by the broad public, or at least by most of the social sectors. This, however, does not mean less work, for reforms would have to be made in order to ensure that the mechanism of people's initiative can function the way it was envisioned to be.

ARGUMENT 1: Discarding People's Initiative Would Most Likely Generate Massive Opposition

If Section 2 of Article XVII is deleted from the Constitution at this point in time, it would most probably lead to massive opposition from the various social sectors. Two reasons can be cited for this possibility:

first, the public has grown accustomed to the concept of people's initiative that it would nearly be impossible to scrap the said mechanism and expect no reaction from the electorate.

Second, while various civil society organizations were very much active in opposing the initiative petition of PIRMA and Sigaw ng Bayan, they have not opposed the concept of people's initiative in principle, but the motivations behind the move and the petitioners' alleged closeness with the administration.

In fact, a number of civil society actors have even used people's initiative to enact local legislation, while other farmers' groups tried (but failed) to use the same mechanism to legislate a People's Agrarian Reform Law at the national level.

Third, deleting the initiative proviso will be highly suspicious, for it would most likely been seen as an elite attempt to further entrench themselves in power. And this is very much related to our second argument.

ARGUMENT 2: People's Initiative Is Meant to Address the Limitations of Representative Democracy as Practiced in the Philippines

In his book *A Changeless Land*, American author David Timberman described Philippine post-War politics as largely controlled by a narrow elite. Describing such as situation as "elite democracy," Timberman further explained that, since the country was granted independence in 1946, the elites were able to practically monopolize economic resources and were able to achieve an iron grip on political power, at both the local and national levels. He further underscored that prior to the declaration of Martial Law:

> political and economic power was held by a relatively small number of families whose wealth and power (were) derived from their ownership of land and industry…And despite regular elections, economic inequality and the absence of effective mass organizations

> meant that the majority of the population had little influence on the determination of government priorities and policies.[62]

But even the downfall of the Marcos administration did not fundamentally alter the allocation of power and resources in the Philippines. In fact, what EDSA I did at the most was restore most of the power arrangements that were existing prior to the declaration of Martial Law. As UP Political Science Professor Olivia Caoili explains:

> what been restored are the democratic political institutions but the underlying socioeconomic inequalities continue to plague the country. What effectively exists is elite democracy. Some of the problems that beset the pre-Martial Law Congress continue to influence policy-making, i.e. the particularistic, family-dominated political practices; the personality-oriented political parties that are built on coalitions of factions or regional alliances and an exclusivistic political elite.[63]

This elite democratic restoration clearly underscores the weakness of our democratic institutions in representing and articulating the interests of the broader public. Under such an arrangement, political parties do not function as "inputting devices"[64] which allow for interest aggregation and articulation, but as instruments of patronage and elite consolidation. As Joel Rocamora bitingly remarks in his critique on present-day Philippine political culture:

> Our political parties…are not divided on the basis of long-term upper class interests, much less the interests of the lower classes. They are temporary and unstable coalitions of upper class factions pieced together for elections and post-election battles for patronage. They come together only to put down assertions of lower class interests. The rest of the time they maneuver in particularistic horsetrading and the perennial search for "deals."[65]

It is in this context that the mechanism of people's initiative can be full appreciated. By opening a space wherein ordinary citizens can actually participate in decision-making, the limitations of representative democracy (as practiced in the Philippines) can actually be addressed. By proving avenues for direct democracy, the Constitution enables the less affluent sectors to circumvent the power of the elites and put their agenda before the entire nation.

ARGUMENT 3: <u>People's Initiative Can be a Source of Political Education for the People</u>

The stability of any society largely depends on the degree of political socialization among the citizens. If done successfully, the members of a particular community are able to share common values and beliefs, and could even partake of the same worldview. This, however, relies heavily on political education, and how values and ideas are disseminated throughout the body politic. And often times, debates

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[62] Timberman; op. cit., p. 35.
[63] Caoili, Olivia. *The Philippine Congress: Executive-Legislative Relations and the Restoration of Democracy*. Paper presentation at the 15TH World Congress of the International Political Science Association. Buenos Aires, Argentina, 21-25 July 1991, p. 15.
[64] Heywood; op. cit., p. 252.
[65] Rocamora; op. cit., p.106.

generated by attempts to alter the Constitution actually function as a form of political education.

This was clearly seen during the PIRMA and Sigaw ng Bayan controversies, when both the airwaves and the print media were flooded by discussions regarding the merits and demerits of charter change. It also forced us to take an even closer look into other related issues such as the possible need to shift to a parliamentary system, the wisdom of having a federal structure, and the sheer absence of a strong party system that would govern the actions and behavior of our governmental leaders.

By engaging in such dialogues, the people are able to determine the most appropriate institutional arrangement for the nation. It is also in these moments of public dialogue that our sense of citizenship comes into play, allowing us to exercise the Greek notion of *arête* through our involvement in state affairs.

Overcoming the One Crucial Barrier

For all the hullaballoo that has been generated by the Charter Change debate, the heart of the matter remains relatively simple: that is, to enable ordinary citizens to have a meaningful degree of participation in the drafting of the Constitution. This is so for it is the Constitution that governs citizens' interaction and provides a normative framework on which polities are built.

But for Charter Change to be meaningful and participatory, the people must be able to own the process. It is for this reason that people's initiative remains an ideal mode of changing the Constitution since the amendments are supposed to come directly from the people.

However, the recent failed attempts to change the Constitution through people's initiative seem to indicate that the provision is nothing but a rhetoric of direct democracy. It is written in the Constitution, but in reality it cannot be put to practice.

There are several issues that are confronting the implementation of people's initiative. What is the mechanism for the verification of the signatures in the petition, whether the signatories actually read and understood the petition? Where would the resource for this mechanism come from? Can Local Government Unit officials or their associations participate in the people's initiative process? In general, how do we ensure that the process genuinely reflects the will of the people and not the influence of the powers-that-be?

But above all these emerging issues, the one crucial impediment to actualizing people's initiative is its requirement specified in the Constitution. The requirement to take effect a Constitutional Change through people's initiative makes the implementation of people's initiative implausible or self-contradicting.

Is it really plausible for an ordinary citizen organization to gather the required signature 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"?

And if indeed an ordinary citizen organization can meet this requirement, doesn't this make the organization no longer ordinary? Wouldn't the amount of resources necessary to meet the requirement automatically put to question the forces behind the citizen organization concerned?

The most crucial issue therefore that must be resolved to make people's initiative an operational and practicable mechanism for Charter Change is its requirement. Resolving it would require a Constitutional Change process that will have to be done through the two other modes, CONASS and CONCOM. Until then, initiating change through people's initiative will most likely be a lost cause.

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