

A Reader on Charter Change

Prepared by the

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FOREWORD

Proposals to amend the Constitution have again gained prominence – hogging media headlines and sparking spirited discussions among many sectors of Philippine society.

In connection with this, the Congressional Planning and Budget Department (CPBD) conducted a series of dialogues between House Members and experts/proponents of the amendments last January 2003, on the topics of *Federalism, Parliamentary form of government, unicameral legislature, economic provisions* and *electoral reforms*.

In this reader, we have sought to capture the highlights of said discussions as a briefer on the proposals. Hopefully, the discussions here will help provide a better view of what can work for the country.

We are grateful for the support extended by Chairman Antonio Eduardo B. Nachura, Vice-Chairman Mauricio G. Domogan and the Members of the House Committee on Constitutional Amendments. We would like to thank the other House Members who actively participated during the dialogues.

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RODOLFO V. VICERRA

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PARLIAMENTARY FORM OF GOVERNMENT

Among the major proposals espoused by advocates of Constitutional Change is the shift from the current presidential to a parliamentary form of government. Arguments have been raised by various sectors for and against its adoption. This section discusses the different types of parliamentary system, arrangements adopted by other countries and the issues for and against such system.

Essential Features of a Parliamentary Government

1. **Executive Power** is exercised by the Prime Minister with the assistance of a Cabinet composed of the heads of various departments or ministries. The National Assembly chooses the Prime Minister from the elected representatives of the Parliament. Members of the Cabinet are chosen by the Prime Minister from the National Assembly.
2. **The Prime Minister and members of the Cabinet do not have a fixed term of office.** They can be removed from office any time should their policies and performance fail to gain the support and confidence of the National Assembly.
3. In case of deadlock between the executive and the legislature, the legislature may force the Cabinet to resign in a no-confidence vote. A new Prime Minister is then elected, and a new Cabinet that enjoys the

confidence of the National Assembly shall be formed by the new Prime Minister.

4. If the Prime Minister feels he has popular support but is unjustifiably being opposed by the National Assembly, he may call on the President to dissolve the National Assembly. A midterm election will be held wherein the people will decide on whom to give their support: to the Prime Minister and his Cabinet or to the National Assembly.

Variations in Parliamentary Forms of Government

5. Under a Parliamentary setup, the legislature can be unicameral (*e.g., Singapore, South Korea, New Zealand, and Finland*) or bicameral (*e.g., Malaysia, Thailand, Australia, UK, France, and Germany*).
6. Also, government may either be **unitary** (*e.g. France, Singapore, South Korea, Thailand, United Kingdom*) or **federal** type of state (*e.g. Germany, Malaysia, Australia, and Belgium*).
7. The Head of State can be a monarch or a president. The position of the monarch is ceremonial in countries like the UK, Malaysia and Thailand. In Germany and France, the presidents serve as heads of state. The President may be elected directly by an absolute majority vote of the people, by the Parliament, or by an electoral college consisting of representatives from the national legislature and state assemblies (*e.g., India*).

Division of Powers

8. The Head of State

The President may act as the chief of state and be powerful like Charles de Gaulle of the Fifth French Republic, or he may have limited powers like the President of the German Bundesrepublik.

Under a monarchy, the powers of the head of state (*e.g. king of Thailand, Queen of England*) are limited to perfunctory appointment of the prime minister who is actually elected by the parliament; dissolving the legislature and ordering new elections upon the recommendation of the Parliament; and creating titles and bestowing decorations.

In many countries under parliamentary governments, all authority is nominally vested on the President. When this authority is exercised by the cabinet, they assume full responsibility for acts performed in his name.

Functions and duties of the president generally include: representing the nation in foreign affairs; ratifying treaties and submitting certain policies to a national referendum; granting pardon/amnesty; awarding decorations and honors; accrediting and receiving foreign envoys, appointing high government officials; and dissolving the parliament and calling for new elections. In some countries like France and South Korea, the president is given broad authority to act on emergency situations.

In France, the President does not merely perform ministerial functions. He is the most-influential authority in policy-making and presides over the country's Council of Ministers, which directs the country's policy. The President appoints the Prime Minister even without consulting the Parliament, although the Prime Minister is responsible to the parliament. The Prime Minister and the Cabinet only play a secondary role in the determination of the nation's policy. While the parliament can bring government (i.e. Prime Minister, Cabinet) down in a no-confidence vote, the French President can dissolve the parliament any time and call for new elections.

9. The Prime Minister and his Cabinet

The Prime Minister is the head of government and the leader of the majority party in the parliament. He/She acts as chief executive and chief legislator, linking the political and administrative branches of government. The Prime Minister directs the operations of government and ensures the execution of laws.

In Canada, the Prime Minister selects the ministers from among the members of the parliament and dismisses them at his pleasure. However, in other countries like France, the cabinet or council of ministers are chosen by the president. Cabinet members are precluded from holding other positions including a seat in the legislature. This restriction reflects greater separation of executive and legislative powers compared to other parliamentary systems.

The cabinet or the state council which is composed of ministers/heads of the different departments are individually and collectively accountable to the parliament. The cabinet may be required to resign if they lose the confidence of the parliament.

In the case of *South Korea*, the state council deliberates on important executive policies and assists the president in the conduct of state affairs. Matters falling under council's jurisdiction include general plans and policies; declaration of war and peace, foreign policy issues; draft amendments to the Constitution; national referendum proposals, bills, treaties, and presidential decrees; the budget; emergency orders; important military affairs; dissolution of a political party; and appointment of high officials in government.

10. The Legislature

The legislature is vested with powers to: enact laws; approve the budget; inspect and investigate the activities of the ministers and the agencies they supervise; elect the head of government and remove the prime minister in a vote of no-confidence; and in extraordinary cases impeach the president, cabinet members and other high officials.

Advantages of a Parliamentary Government

11. It is perceived to be more dynamic and responsive to the needs of the people because of the union between the executive and legislative powers in Parliament.

Members of the Cabinet are also lawmakers, hence, the assurance that laws needed to respond to the priority problems are the ones passed and efficiently implemented.

12. It can prevent/reduce legislative gridlock and promote a cooperative relationship between the executive and legislative. The presidential type of government results in frequent deadlocks on policy decisions. Deadlocks usually happen when a President in power belongs to a party different from that of the controlling party in Congress. Where the policies pursued by the executive are not supported by the legislative, government finds it difficult to function effectively.
13. It is more flexible. People can change their leaders when they lose their confidence in them. Under the Presidential form, the President and the Members of Congress hold office for a fixed term and may not be removed during their term even if they no longer enjoy the people's trust and confidence.
14. It has greater capacity to ensure stability and continuity in governance and prevent military coups and extra Constitutional action by the executive. It also has better accountability mechanisms giving it greater capability to create a political environment conducive to the growth of coherent, disciplined and strong political parties.
15. The Prime Minister and the Cabinet are accountable to the Parliament. Any change in leadership is based on a conflict on issues of policies and programs. Under this

system, the people will be in a better position to scrutinize the platform and performance of parties in power rather than merely focusing on the personalities of those in power.

Issues Against the Parliamentary Government

16. The dynamics of the parliamentary system require a genuine multi-party system based on distinct ideologies. However, the Philippines does not have such system as shown by the frequency of party switching or “turn-coatism”. Without distinct parties with strong party discipline who will act as opposition to the party in power, the parliamentary system will likely lead to an oligarchy because of the “built-in fusion of executive and legislative powers” (Paredes).
17. The tenure of the parliament and/or the Cabinet is not fixed and may create uncertainty. Frequent elections may invariably follow disagreements over policy. The Prime Minister will not be in the position to effectively carry out his program of government because of frequent demands for changes from Parliament or a powerful group therein.
18. Dissolution of Parliament and a change in the Cabinet may result in the paralization of governmental functions. This is especially true when major governmental activities are carried out by non-career personnel or political appointees. The parliamentary system requires a highly competent civil service that is insulated from political machinations.

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UNICAMERAL LEGISLATURE

A second very controversial issue in the move to amend the Constitution is the proposed shift to a unicameral from the present bicameral legislature. The Philippines has had experience under both systems—unicameralism during the Batasan years and bicameralism before the 1972 Martial Law and then after the ratification of 1987 Constitution.

Arguments for Unicameralism

Records of the 1986 Constitutional Convention and earlier researches point to several arguments favoring a unicameral set-up of the legislative department:

1. The unicameral structure is efficient and less costly to maintain. It eliminates the time-consuming process of having two separate deliberations that may invariably lead to conflicts and deadlocks between the two Houses of Congress.
2. A unicameral set-up affords a simpler, less redundant legislative organization. By unifying decision making under a single deliberative body, legislative activity becomes clearer, more accountable and more understandable to the public.
3. A single legislative chamber can exercise more effective control over the country's fiscal policies and annual budget appropriations.

4. A two-chamber Congress does not assure a better deliberated legislation. Although it affords a second review or consideration of bills, the bicameral system does not necessarily preclude hasty passage of legislation.
5. It is more economical as funds will be allocated only to a single assembly and a smaller secretariat support organization. Government savings can run as high as P1.2 Billion per year (based on proposed 2003 budget), which can be allocated to more social services.

Issues Against a One-Chamber Legislature

1. A Second Chamber (Senate) provides an opportunity to scrutinize the details of legislation more thoroughly. Since the two chambers are often drawn from different constituencies, issues are examined from different perspectives. A two-chamber legislature serves as a "check and balance" to abuse of legislative power.
2. Since the senators are elected nationwide, they are expected to be less parochial than the district representatives. They are said to be better able to tackle broader issues of national importance.
3. The scope of legislative responsibility is said to be unified with the presence of a second chamber which represents the overall interest of the people.
4. The bicameral system is common to constitutional monarchies (*e.g., England*) where the upper chamber

(House of Lords) is composed of individuals of aristocratic origins, even under a parliamentary setup. In unitary states, it reflects the desire to have within the parliament a mechanism—i.e., a "*revising Chamber*", to maintain a careful check on the first Chamber.

5. In federal states, bicameralism reflects the dualistic structure of the state. Federal bicameralism in the US provides equal representation of States (irrespective of its population) in the upper Chamber, and representation proportional to population in the lower Chamber.
6. A unicameral set-up under a federal state may require a redefinition of the jurisdiction of the national legislature. The area of responsibility of members of parliament shall focus on federal-level concerns, and any state or local matters will be tackled by the respective state legislatures.

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FEDERALISM

The Philippines has had long history with a centralized system of governance. As far back as the colonization of Spain, the country has been governed from Manila, the nation's capital. The inability of the government to effectively address the needs of the regions has resulted in the inequitable development among the regions.

The country has enacted several legislation that would bring the government closer to the people through administrative deconcentration and political devolution, including the Local Government Code (LGC) of 1991. Despite the success of local governments in the implementation of the LGC, much is still to be desired in the decentralization of governance in the country.

In the current debate for Charter Change, proponents of federalism believe that it is the answer to the age-old problems of inequitable distribution of wealth, slow pace of development in the country side, and the peace and order situation in Mindanao.

What is Federalism?

1. Federalism is a system where government and administration are exercised in two levels: the national (or the federal) and the regional (or state). Each is assigned specific functions and is independent of each other. Each state exercises individual autonomy, the

separate powers of which are assigned in the Constitution.

2. In essence, federalism is the equitable distribution of powers and resources between the federal and the states.
3. The federal government will have jurisdiction over foreign affairs, armed forces, currency, national finance, national taxation, customs, basic justice and basic curriculum.
4. It will be responsible for the stability of the currency through an independent Federal/Central Bank and the collection of Personal Income Taxes. Other taxing powers are vested in the states, i.e., sales tax, business tax.
5. The federal government shall also help ensure the balanced and equitable development of the whole country and the welfare of all citizens, especially the poor, the needy and disadvantaged.
6. Other areas of governance involving social and economic development will be placed in the hands of the states, i.e., health, housing, agriculture, trade and commerce, environment, power, transportation, communications, mining, forestry, marine resources, public works and the police. The States and their component local government units are responsible for economic planning and development. Basic public transportation like roads, railways, hospitals, airports,

schools, harbors and the like are the States' responsibilities.

Towards A Philippine Federal Republic

7. Under the federal system, the Philippines can be reconstituted into any appropriate number of states, each one having its own constitution. This will allow each state to address their peculiar and particular diversities, but all flowing from the basic framework defined in a federal constitution.
8. There are various proposals to federate the country's provinces. One proposal is to make the existing administrative regions as the country's states. The Citizen's Movement for a Federal Philippines is proposing that creation of 11 states while Dr. Gaudioso Sosmeña Jr. is proposing the creation of seven states. Still another proposal made by Senator Aquilino Pimentel Jr. is to consolidate the existing regions into ten states with Metro Manila becoming a Special Administrative Region.
9. Each state will have a governor, state assembly and state high courts and lower courts.

Advantages of Federal System of Government

10. A federal republic will bring about peace and unity in ethnic, religious and cultural diversity. This is especially true in Mindanao where for generations, the Christian settlers have not found just and lasting peace with Muslim residents. The traditional policy of assimilation

and subordination has failed. On the other hand, responsive federalism will lead to accommodation within the Republic and discourage secessionism.

11. Federalism will improve governance through a new division and specialization of government functions. There will be a broad devolution of power, authority, and the needed revenues and resources from the national government to the States. Local governments will be closer to the people and have greater impact on their lives.
12. Federalism will empower state and local leaders and citizens throughout the country. With policies, programs, and decisions made outside the national capital, local leaders will assume greater responsibility for leadership and service delivery. People will be more involved and will demand better performance and accountability. As a consequence, they will be more willing to pay taxes to finance government programs for their own direct benefit.
13. Federalism will hasten the country's development. Since planning and policy decision making will be given to the States, there will be less bureaucratic obstacles to the implementation of economic programs and projects. There will also be inter-state and regional competition in attracting domestic and foreign investments and industries. Resources will be better distributed among the provinces/regions since government revenues will be devolved. States will have more funds for infrastructure and other economic projects. Federal grants and equalization funding from

the federal government and the more prosperous states will help support the less endowed and developed regions, and the poor and the needy across the land. This will result in more equitable development.

14. Federalism will enhance democracy. The citizens will have more opportunities to participate in state affairs beyond voting.

Disadvantages of Federal System of Government

15. The shift to a federal structure entails another tier of government financial costs. It would require additional appropriations for the establishment of State Governments, Courts and Legislatures.
16. Considering the Filipino political set up, there is a possibility that political clans will strengthen their stranglehold in the regions and perpetuate political dynasties.
17. Given the varying degrees of development and resources in the different regions, the poorer regions may be further left behind in development. This will cause greater migration to richer regions with its attendant social ills. There may be greater uneven development.

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POLITICAL AND ELECTORAL REFORMS

The proposed change in the form of government, from Presidential to Parliamentary, would require significant changes in the country's electoral and political party system. Certain preconditions must exist to make the parliamentary system work in the country. Foremost is the need for a strong party system that has mass-based support and determined ideology-orientation.

What is important to consider in this debate is that any kind of political party system, regardless of its inherent merits, is as good as its political parties. The quality and genuineness of the political parties are what make for a responsive and relevant party system.

Philippine political parties today are said to be weak in this sense. They are most active only during election periods. In between elections, nobody is around to oversee appointments or key policy statements. The personalistic character of the political parties has been blamed for frequent turncoatism and defections to the party of whoever sits in the Palace.

Need for Strong Policy Oriented Political Parties

1. A parliamentary government requires strong party discipline. It needs members of parliament who are elected more for the party they represent rather than

for their personalities. Without this condition, undisciplined party members will not only create tension in the legislative program but also instigate political instability as governments become more vulnerable to leadership change.

2. The debate on whether to adopt a strictly two-party system or multi-party system under a parliamentary government must also be resolved. The 1987 Constitution introduces "a free and open party system" (Sec. 2(5), Article IX-C) which may be interpreted as a way of encouraging the multi-party system. While the system has its merits, e.g. broader political representation for the majority of the Filipino people, it is also criticized to give rise to weak coalition governments, and resulting in a minority President. The multi-party system is also susceptible to turncoatism resulting in a weak opposition.

Strengthening Political Parties

3. Serious flaws and limitations in the electoral system must also be addressed to enhance political representation. Because elections today have become expensive, only rich people or those with financial backing of the wealthy are able to run effective electoral campaigns. Thus, there is a need to institute a campaign finance reform to ensure the electoral process to be less personality-and money-driven.
4. Political parties must establish a distinctive, well-defined, well-articulated and well-advocated party platform adhered to by all members. There must be a

high level of party discipline, imposed by the parties as well as the entire party system.

5. There is a need to regulate the internal organization of the political party which includes a) internal organization by means of drafting its constitution, by laws and platforms; b) membership rights, obligations and discipline of party members; c) selection of candidates for elections; and d) transparency in the use of party funds and party accountability.
6. National parties should be mandated to craft a clear policy agenda and program of governance consistent with their philosophy and ideals. The members of the national party shall act in accordance with the defined party platform and pursue programs to fulfill party commitments
7. Political parties need to also develop and enforce an internal code of conduct and ethical standards for its party members which must include the values and standards for public life, and disciplinary procedures for party members.
8. Political turncoatism should be penalized. A political turncoat is defined in the proposed Political Parties Act (House Bill No. 4395) as any member who changes party affiliation after being elected on that party's ticket.

Improving the Electoral Process

9. Campaign finance activities should be regulated to dramatically reduce corruption. Financial records of political parties, being public institutions, should be subjected to Commission on Audit (COA) review.

10. HB No. 4395 proposes the creation of a State fund for COMELEC registered national parties. The State Fund will exclusively be used to augment the campaign expenditures as well as operations of the national parties. In exchange for state subsidy, national parties that qualify to avail state funds shall institute internal control mechanisms to promote accountability and transparency.

Other Institutional Reforms

11. The role of COMELEC needs to be strengthened, especially its monitoring function, in order to effectively enforce election rules and regulations. Effective monitoring of election offenses and applying sanctions to parties and candidates guilty of violations is a step toward pressuring political parties for self-regulation.

12. The process of removing Commissioners of COMELEC (and all Constitutional Commissions for that matter) should be changed. The present process, which is through impeachment, is too political and divisive. It subjects the COMELEC to the political pressures of an impeachment threat. Only the President

and the Chief Justice of the Supreme Court should be removed through impeachment. Constitutional Commissioners should go through the same process as officials in any government agency.

13. Election related cases should only be lodged with the COMELEC. The House and Senate Electoral Tribunals should be abolished. This would result in savings for the government and at the same time reduce political discretion in the resolution of election cases.
14. Party representatives should be allowed sit in the Board of Election Canvassers and in the Board of Election Inspectors to ensure representation and transparency of the process.

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PROPOSED ECONOMIC REFORMS

In 1999, President Joseph Estrada issued Executive Order 43 to create the Philippine Commission on Constitutional Reforms (PCCR) to "facilitate the study of proposals on economic reforms that can be accomplished through constitutional amendments." President Estrada's administration recognized that the economic provisions of the 1987 Constitution were very restrictive stifling government's flexibility to formulate economic policy and to attract investments. The findings and recommendations of the PCCR are discussed below.

Economic Policy Formulation.

1. The restrictive provisions of the 1987 constitution have limited the ability of our country to compete in the global economy. PCCR submits that "the basic legal framework of the (1987) Constitution presents practical and philosophical difficulties in approaches to economic, trade and investment policies." It has limited the flexibility of the government to respond to the changes in the global environment, hence adversely affecting the economy's capacity to achieve higher growth.
2. These restrictive provisions can be found in Sections 9 & 19 of Article II, Declaration of Principles and Article XII on the National Economy and Patrimony.

3. Section 19 of Article II needs to be reviewed because of ambiguity in language. The phraseology aspiring for “independent” national economy “effectively controlled” by Filipinos taken together with other provisions in the Constitution gives rise to controversial policy decisions that affect investments. A concrete example is the Supreme Court decision on the choice of site for a proposed petrochemical complex. When the decision was made in 1990, investments from Taiwan fell from P3.4 billion in 1990 to P329 million in 1991.
4. The provision of Section 1 Article XII dictates that the economic base of the country shall be agricultural development and agrarian reform. This precludes a shift to other economic models for development. *Note that in other countries the share of agriculture to total GNP ranges only from 5-16% as compared to the Philippines' 20%.* This provision together with other provisions in the Constitution “prevents responsive government action to address problems in the management of economic affairs”. It is proposed by PCCR that the constitution give Congress and other government institutions the flexibility to craft and formulate policies responsive to the changing economic environment.

Removing Equity Restrictions on Foreign Investments

5. We need to attract foreign capital badly needed to finance economic growth. The study cited that to achieve a growth rate of 5.2 – 5.8%, the Medium Term Development Plan for 2000 – 2004 estimates an

additional investment requirement of P31.7 billion a year (US\$826 million). To reach a growth rate of 8%, the additional capital resource requirement will increase to P618.3 billion per year (US\$15.3 billion).

6. Compared to other Asian countries it is only in the Philippine Constitution where restrictions on foreign investments are expressly stated. In other countries, foreign investment policies are regulated by legislation. There are no provisions prescribing citizenship or foreign investment equity ratios in their constitutions. The only exception is the constitution of Thailand which restricts foreign ownership in mass media companies. Some quarters say that this kind of provision in the Philippines' and Thailand's Constitution is no longer relevant because of mass access to foreign satellite television and the internet.
7. The Commission recommended that the following restricted areas in the 1987 Constitution be liberalized and subjected to regulation by law. The arguments for liberalizing these sectors are given below:

7.1. Public Utilities, Franchises and Infrastructure

PCCR recommended that foreigners be allowed to invest in and manage public utilities, transportation, communication, power and water supply based on a policy of non-discrimination and merit. The power granting franchises should be given to specialized regulatory agencies, which would result in greater efficiency and expertise in the supervision of the industry.

7.2. Mass Media and Advertising

The equity restrictions in the Constitution has denied Filipinos access to new technological innovations which require huge investments that local companies find difficult to raise.

Certain sectors oppose the liberalization of mass media because of the fear of foreign influence. However this is unfounded because foreign media is already accessible to Filipinos through cable television and the Internet.

In the case of advertising the arguments for liberalizing this sector are the need for new capital, technology and expertise. It has been noted by the study that the ten top advertising firms are already partly owned by foreign entities.

7.3. Educational Institutions

The educational sector in the Philippines is also being left behind because of lack of funds for new technology, basic facilities and infrastructure. The latest techniques in education need greater use of information technology and alternative media, which require huge investments. There is a need therefore to open up this sector to foreign investors to give our students access to better education and raise educational standards up to par with other countries.

Sectors opposed to this proposal cite the possible influence of foreigners shaping the students patriotic values. The PCCR study however contends that the curricula will still be controlled by the Department of Education. At present, the Constitution already allows foreigners to own and manage educational institutions but only through religious orders and mission boards.

7.4. Land Ownership

The recommendation of the PCCR is to liberalize the ownership of industrial and commercial land, which represents less than 1% of the total land area of the Philippines, in order to attract more investments and increase job opportunities.

Those against this proposal advocate that liberalizing land ownership would make Filipinos lose control of their land. Also there is lack of evidence that land ownership would improve attractiveness of Philippines as an investment site and the current law allowing long term lease is sufficient to attract investors to the economic zones. *(Some countries like China and Vietnam do not even allow private land ownership but are receiving huge amounts of foreign investment.)*

7.5. Natural Resources

The huge capital requirement to develop our natural resources particularly the energy, mining, fisheries and forestry sectors is the main argument

to liberalize these sectors. Likewise, the entry of foreign investors into these areas of the economy is expected to bring in not only capital but new technology and expertise in operating these industries. The PCCR recommended that these sectors be regulated by law and not through the Constitution.

✍✍ The capital needed to develop the country's energy resources to meet the energy requirements of the economy is estimated at P486 billion for a five year period 1999 – 2004. (Medium Term Development Plan)

✍✍ The mining industry's performance has been on a steady decline since 1993. This sector used to be a significant contributor to the national economy in 1980, generating 20% of the country's export earnings. To revive this sector there is a need to infuse huge investment capital. To develop and operate a single copper or gold mine requires around US\$200 million to US\$ 300 million.

✍✍ Fisheries production in the country hardly grew to meet the needs of the population. The growth of the sector from 1997 to 2000 averaged 1.97 % compared the population growth of 2.4%. To revitalize the fisheries industry we need to develop capacity for distant water fleets, exploit new fishing grounds, strengthen policing and surveillance of fishing grounds, and establish new

infrastructure facilities. Equally important in this program is the strengthening of government regulations against illegal fishing and environmental measures to restore the ecology of Philippine waters.

✍✍ The country's forest cover has been reduced to 18% of total land area of the country or around 5.4 million hectares. Forest denudation has cost the economy P10.6 billion a year in terms of losses in productivity and utility of infrastructure. It has brought about environmental disasters such as flash floods and drought, causing more damage to the country. Forest Master Plan estimates a total expenditure of P35 to P40 billion a year to counter damage and depletion of our forests. To do this, we do not only need capital but also foreign technology and expertise.

Reference:

Proceedings of the Preparatory Commission on Constitutional Reforms, 1999.

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PROPOSED MODES OF AMENDING THE CONSTITUTION

The debate on constitutional change involves not only the proposed amendments but also on how the amendments will be undertaken. The House Committee on Constitutional Amendments recently filed a resolution calling for a Constituent Assembly to amend the Constitution. The current controversy dwells on whether this is the appropriate mode to amend the Constitution.

Modes of Amending the Constitution

1. Article XVII of the 1987 Constitution identified three modes to which amendments can be processed: (a) Constituent Assembly; (b) Constitutional Convention; or (c) by a People's Initiative.
2. Congress may convene itself into a Constituent Assembly upon the vote of three-fourths of its members. Congress may call for a Constitutional Convention with a vote of two-thirds of its members. Congress may also by a majority vote let the electorate decide on the mode through a referendum.
3. The people may directly propose amendments to the Constitution provided that there is a petition of at least 12% of all registered voters, and provided that every legislative district is represented by at least 3% of its registered voters.

4. Congress has the sole discretion to identify which mode to employ in revising the Charter. At present, however, debates are focused only on Congress constituting itself into a Constituent Assembly and the election of delegates to a Constitutional Convention (ConCon).

What is a Constituent Assembly

5. As a Constituent Assembly, the Senate and House of Representatives become a constituent body exercising special power to formulate a new constitution or propose amendments to the constitution. The product of the Constituent Assembly will be approved by the people through a referendum.
6. Countries with mature democracies like the United States and France amended their constitutions through their Congress and Parliament convening as Constitutional Assemblies. In the Philippines, the 1935 Constitution was amended four times and 1973 Constitution three times through a Constituent Assembly.

Advantages of a Constituent Assembly

7. Amending and revising the Constitution through a Constituent Assembly is said to be the most practical and least expensive mode.
 - 7.1. There is no need to hold another costly election since members of both the Senate and House of

Representatives, who have been directly elected by the people, will be the ones who will constitute the Assembly.

- 7.2. The Joint Resolution that will create a Constituent Assembly can limit the agenda of amendments and protect the good provisions of the current constitution.
- 7.3. Further in the ratification of the proposed amendments, the people can approve only those that will benefit the country and disapprove the amendments they deem unacceptable.
- 7.4. Moreover, members of Congress already know what agenda to pursue, thus reducing horse trading and political accommodations. Having been directly elected by the people they are responsible for their actions to the electorate.
- 7.5. To address the concern of perceived lack of trust, the proceedings should be made transparent and civil society organizations can serve as watchdogs to the process. The Constituent Assembly will solicit and consider the concerns of all sectors in their discussion, as they do in considering legislation.

What is a Constitutional Convention?

8. A Constitutional Convention is a body established by law to frame a new Constitution or revise an existing one for the approval of the people. It requires the

direct election of the delegates by the people from the different districts and sectors of society.

Advantages of a Constitutional Convention

9. The members of a Constitutional Convention are directly elected by the people and do not hold any other office. This is supposed to ensure that national interest will prevail over the vested interests. Delegates are elected for the sole purpose of amending or revising the Constitution. They will be more focused on the job of producing a well-crafted Constitution.
10. Sectors that do not presently have representation in Congress may be given the opportunity to sit in the Constitutional Convention and enable them to participate in its drafting.

Disadvantages of a Constitutional Convention

11. A Constitutional Convention is said to be very expensive. Aside from the additional expenses in the elections, the convention will also entail additional expenses for its operations. It is estimated that maintenance of the body will cost government an additional P2 billion per year at the least.
12. Election of delegates does not ensure wide representation from all sectors of the economy. Owing to the political structure of the country, strong political clans may field their relatives to be convention delegates. Moreover, the elections could be used for bargaining between rival political parties. The

composition of the 1971 Constitutional Convention shows that majority of the delegates belonged to political parties and large interest groups and relatives of incumbent politicians at the time.

13. A Constitutional Convention has plenary authority and therefore the President or the Supreme Court cannot set a limit to its life and agenda. This makes the work of the convention unpredictable they because they can revise any provision they wish to revise. Further, endless debates could occur prolonging the process and making it very expensive.
14. In the ratification process, the people will have to approve or disapprove the proposed Constitution as a whole. Therefore, good provisions may or may not be preserved.

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