

■ By JM Villero

EVEN before the Arroyo-assembled Consultative Commission (ConCom) wrapped up its supposed consultations and submitted to Malacañang its proposed changes to the 1987 Constitution, fears were already high that the country's fundamental law would suffer a major defacement, especially in its nationalist, libertarian and pro-people provisions.

What was even feared more was that the mangling of the Constitution's pro-people provisions would be done with hardly any resistance, as public and media attention would be riveted on the more controversial proposals.

True enough, right after the Abueva-led commission presented to the Palace its 64-page *Proposed Revision of the 1987 Constitution*, bedlam erupted

The music behind the cha-cha comes from the clarion-calls of globalization and neo-liberalization.



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SHALL WE DANCE? (Part 2)

Arroyo's cha-cha as a danse macabre

(Second of a two-part series on Charter change)

over the no elections ("No-El") and the parliamentary-federal shift recommendations. Drowned out in the din of reactions were the reasoned voices that came from those who looked at the more treacherous proposals,

specifically the ones that threatened human rights and civil liberties and assured the wholesale surrender of the national patrimony and the sell-out of the Philippine economy.

The Abueva blueprint: A quick look

After 113 days of debates and provincial trips (lubricated by a kick-off budget of P10 million), the 55-member commission proudly presented what they believed are constitutional amendments that would be "for the good of the country." In accepting the draft, the president hailed it as a "road map... towards the fulfillment of [the Filipino people's] dreams." Landmarks in this road map include the following:

- adoption of a parliamentary form of government, with a 10-year period of transition to federalism
- postponement of the 2007 elections, with GMA serving until 2010
- removal of term limits for elected officials
- inclusion of a "Bill of Duties" as counterpart to the Bill of Rights
- removal/amendment of certain provisions that protect civil liberties
- removal of provisions that curb the martial law powers of the president
- removal/amendment of provisions on nuclear



Threatened: legitimate exercise of freedom of speech and assembly.

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weapons and foreign military presence

- removal of restrictions on foreign ownership/exploitation of natural resources, public utilities, educational institutions and the media

Road map to hell?

The commission's overhaul of the Constitution immediately starts out by whittling down the preamble, which now reads:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to establish a Government that shall embody our ideals, promote the general welfare, conserve and develop the patrimony of our nation, and secure to ourselves and our posterity the blessings of democracy under a regime of justice, peace, liberty, and equality, do ordain and promulgate this Constitution.

Erased from the original (1987) preamble are the phrases "to build a just and humane society and"; "and aspirations"; "independence"; "under the rule of law"; and "truth, freedom, love". A new term ("liberty") has been added; while the phrase "promote the common good" has

been replaced with "promote the general welfare".

Article II (Declaration of Principles and State Policies) was mangled. In Section 1, which states that "The Philippines is a democratic and republican State," the word "democratic" shall be deleted. Quite ominous, in light of the AFP's grim human rights track record, is the removal of the 2nd and 3rd sentences in Section 3, which, in the 1987 charter, reads:

"Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."

Likewise boding ill for the labor sector is the proposed revision of Section 11:

The State affirms labor as a primary and responsible social economic force. The State shall protect and promote the welfare of both workers and employers.

where the phrase "and responsible social" was tacked on. According to Atty. Neri Javier Colmenares of the

Counsels for the Defense of Civil Liberties (CODAL), the addition of "employers" in the second sentence negates the primacy of labor. Not coincidentally, Section 8 of the same Article has been altered: "The right of the people to form unions, associations, or societies for purposes not contrary to law shall not be abridged." The significant phrase "including those employed in the public and private sectors" has been taken out.

Worse, 15 of the 28 provisions in article II - those provisions that have given the 1987 Constitution a progressive semblance - have been erased. These are:

- **Section 5**, on the maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare
- **Section 8**, the policy of freedom from nuclear weapons within the Philippine territory
- **Section 9**, the promotion of a just and dynamic social order to ensure the nation's prosperity and independence and the people's freedom from poverty by

providing social services, full employment, a rising standard of living, and an improved quality of life for all

- **Section 13**, on the vital role of the youth in nation-building
- **Section 15**, on the right to health
- **Section 16**, on the right to a balanced and healthful ecology
- **Section 17**, on giving priority to education, science and technology, arts, culture, and sports
- **Section 19**, on developing a self-reliant and independent national economy controlled by Filipinos
- **Section 20**, on the indispensable role of the private sector
- **Section 21**, promoting comprehensive rural development and agrarian reform
- **Section 23**, recognizing the role of non-governmental, community-based, or sectoral organizations



Allowing foreign ownership of dwindling urban lands will further worsen the squatter problem in the country. PEPITO FRIAS



In the margins of the city: Along railroad tracks and fences, the city's landless create the rudiments of living. PHILRIGHTS



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- **Section 24**, on the vital role of communication and information in nation-building
- **Section 26**, which guarantees equal access to opportunities for public service and prohibits political dynasties
- **Section 27**, on maintaining honesty and integrity in the public service and taking measures against graft and corruption

These are the very provisions that reflect our country's commitment to international human rights instruments such as the Universal Declaration of Human Rights as well as the international covenants on economic, social and cultural rights as well as on civil and political rights, to which the Philippines is a signatory.

A slight insertion in Section 4 of the Bill of Rights has drawn much ire. The suggested provision is:

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

The addition of the qualifier "the responsible exercise" begs the question of what constitutes "responsible exercise". Taken in light of the Arroyo government's most recent policies (CPR, no permit no rally policy, EO 464), and her recent complaints against media portrayal of her administration, this revision portends grave danger to the people's basic rights and freedoms.

The operative word seems to be "responsible", which, as already noted, has likewise been tacked on to the provision on Labor.

Peddling the national patrimony

Most far-reaching are the revisions being proposed in the

provisions on National Economy and Patrimony that tear to shreds any barriers to the exploitation, operation, use and ownership of practically all the natural resources of the country. Removed also are provisions that seek to protect Filipinos from unfair foreign competition and trade practices; that reserve the use of marine wealth to Filipinos only; that bar foreigners from owning lands.

For example, in section 1 of Article XII (National Economy and Patrimony), the following were removed:

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices. In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

while in Section 2, the preferential claim of Filipinos over their marine resources was erased:

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

In the 1987 Constitution, the right to exploit the country's natural resources (such as lands

of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all sources of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources) was granted only to Filipino citizens and to corporations with at least 60% Filipino ownership. In the proposed revision, this restriction has been removed, thus laying bare the entire national patrimony to foreign control and exploitation. Moreover, while the 1987 Constitution stipulates a 25-year limit (renewable for not more than 25 years) on any entity which seeks to develop and utilize natural resources, the proposed revision contains no such limit.

Under the present Constitution, private corporations "may not hold such alienable lands of the public domain except by lease, for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1,000 hectares in area." The proposal of the ConCom removes all these restrictions, by simply stating that private corporations "may hold such alienable lands of the public domain by lease," and without requiring any limits as to period of lease and size or area.

The Constitutional injunction upon the legislature to enact measures prohibiting logging has likewise been removed, with the deletion of the third sentence in Section 4 of Article XII, which states that Congress "shall provide... measures to prohibit logging in endangered forests and watershed areas."

While foreigners are barred from owning private lands right now, a revised Constitution will not do so anymore, because, as proposed, industrial, commercial and residential lands "may be transferred or conveyed to foreign individuals or corporations with foreign ownership."

The 1987 Constitution shall be stripped of provisions that safeguard certain areas of investment against foreign ownership, as guaranteed in Section 10 of Article XII. Instead of reserving to Filipino citizens and to corporations 60%-owned by Filipinos, the proposed charter leaves it to the Parliament to "provide for

limitations on foreign ownership in certain areas of investments," conditioned upon the dictates of "the national or public interest." (underscoring supplied)

The stipulation that the State shall give preference to Filipinos "in the grant of rights, privileges, and concessions covering the national economy and patrimony" has been deleted. Along with this, the operation of public utilities – off-limits to foreigners under the Section 11, Article XII of the 1987 Constitution – will then be open to non-Filipino citizens and corporations.

Also thrown to the trash bin is Section 13 of the same Article, to wit: "The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity." (underscoring supplied)

Even the ownership and control of colleges and universities – presently reserved for Filipinos and corporations with 60% Filipino capitalization – shall be handed out to aliens.

The ConCom likewise recommended the deletion of provisions that limit ownership and management of mass media and the advertising industry to local citizens and corporations, as well as the prohibition on mass media monopolies and combinations of trade restraint or unfair competition.

Martial law designs

The lawyers' group CODAL, in calling the proposed Charter revisions "a recipe for martial law," could not be more accurate. A new basis for the proclamation of martial law is proposed: the imminent threat of rebellion, thus making it easy to declare martial law on the strength of "destabilization" or even "people power." (The working draft of the House Committee on Constitutional Amendments, chaired by Lakas Rep. Constantino Jaraula, adds another basis for declaring martial law: insurrection). The ConCom's proposal leaves out a very important mandate of the Supreme Court, that of reviewing the basis of the proclamation of martial law or the suspension of the privilege of the writ. Also deleted are the following provisions in Article VII, Section 18 of the 1987 charter:



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A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Accountability of Public Officers

While the proposed charter revisions harp on "responsibility" when it comes to labor and the exercise of basic rights (to assemble and petition the government for redress) and freedoms (of speech, of expression, of the press), the same onus is removed from public officers. The Constitution's directive upon public officers and employees to serve the people "with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives" has been pared down, with the words "responsibility" and "justice" taken out.

The ConCom has limited the grounds for impeachment: violation of the Constitution,

treason, bribery and graft and corruption; to be removed as impeachable offenses are high crime and betrayal of public trust.

The power of the judiciary to check possible abuses by the other branches of government shall be clipped, with the deletion of the following in Article VIII, Section 1:

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

More reprehensible changes

Other reprehensible revisions shamelessly recommended by the ConCom are the deletion of the "nuclear free" provision; the removal of the provision which bans foreign military bases, troops, or facilities without a treaty; and the lowering of voting requirements for treaty ratification, from 2/3 of all Senate members, to majority of Parliament members.

Participation of marginalized sectors (labor, peasant, urban poor, indigenous cultural communities, women, youth, etc.) in the legislature, enshrined in the present charter through the provisions on party-list representation, is also threatened. The proposed revision is mute on how the parliament will accommodate party-list representatives.

To be eligible to run for Parliament, a new qualification is being proposed: a college degree.

Legislative hearings and inquiries in aid of legislation (Article VI, Section 21 of the 1987 Constitution) will be scrapped; just as the legislative prerogative to invite heads of departments to appear before lawmakers "on any matter pertaining to their departments" (recently prohibited by the president through EO 464) shall not be done.

Implications of the Proposed Amendments

It is not difficult to envision the disastrous results that the proposed Constitutional changes will bring upon the Filipino people, especially upon the suffering poor and the disempowered.

The economy and national patrimony are laid wide open for foreign plunder. If the president is to be believed, purging the Constitution of its pro-Filipino provisions will benefit the economy, specifically through the inflow of foreign investments that will create more jobs. But the country's experience in foreign direct investments put a lie to such claims: foreign investors do not actually bring in new equity capital because a substantial part of their investments are sourced from local borrowings (thus edging out Filipino entrepreneurs). They then accumulate superprofits that are repatriated to their parent companies abroad. In short, foreign investments, instead of bringing in more capital, only serve to siphon out the wealth of the country.

Moreover, foreign capital does not ease the unemployment problem. According to studies, jobs generated by this type of investment account for only 0.8 to 1.8 percent of the labor force. Consider too that over-exploitation is a grim reality faced by laborers in such businesses, with starvation-level minimum wages, repressive policies and violation of union rights. Then add to this the number of workers who lose their jobs because of Filipino firms going broke from the onslaught of foreign competitors. Really, the

promise of jobs being created through the influx of foreign investments as a result of cha-cha is just that: an empty promise.

In fact, according to the Ecumenical Institute for Labor Education and Research, foreign investment has a harmful impact on employment: unemployment is higher “precisely during those periods characterized by greater participation of foreign direct investors in the economy.”

Granted, for the sake of argument, that foreign investment is indeed the answer to the country’s economic woes. But to blame the Constitution for the lack of investment inflow is to beat the wrong bush. Even the World Bank, in its latest Country Assistance Strategy for the Philippines, does not specifically mention the Constitution as an impediment to investment:

The lackluster investment climate in the Philippines can be attributed to: a fragile fiscal and debt position; perceived corruption; infrastructure weaknesses; uncertainty and inconsistency in the application of regulations, especially in the infrastructure sector; concerns about law and order; the high costs of doing business; and a sluggish financial system.

The ConCom’s revision of economic provisions that will most immediately harm the poor is, perhaps, that on land ownership. How this will enliven the investment climate is still a big question. According to Rep. Wigberto Tañada, “there is no causal relationship between the land ownership policy of a host country and the rate of foreign investments flowing into [that] country.” Countries like China, Singapore and Vietnam, which do not allow foreign ownership of land, are more successful in attracting foreign investors. In fact, the favorite investment destination, China, has very restrictive policies to protect its natural resources from foreign exploitation.

Allowing foreigners to acquire lands will only worsen the agrarian problem in the



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countryside, where a watered-down agrarian reform program has barely made a dent on the landlessness problem (which has fueled several decades of communist insurgency). The Department of Agrarian Reform claims that 72% of the 8 million hectares targeted for land reform have already been accomplished as of 2003, but this accomplishment is being questioned on the ground that the figure only accounts for hectareage “that has been awarded but not actually distributed.” (underscoring supplied)

In the urban areas, allowing foreign ownership of land would result in higher land prices. As real estate prices in the urban areas soar, affordable housing will be beyond the grasp of lower- and middle-income families. According to recent estimates, around 57% of the country’s city dwellers “live on property to which they have no legal titles.” Increased land prices would thus exacerbate the urban housing problem in the country’s major cities. According to the Philippines Homeless People’s Federation, “without secure land, houses and communities, more and more of the poor’s scanty resources go into just surviving, catching people up in a hopeless cycle of squatting and eviction which only further impoverishes the poor, and prevents them from developing themselves.”

Exempting the country’s 13 million hectares of farmlands from foreign ownership will

prove futile, for it will only be too easy for landowners to convert their lands into industrial, commercial or residential land. Research by the Philippine Peasant Institute reveals that as of June 2002, DAR-approved land-use conversions already cover 35,697 hectares of prime farmlands (41,165.52 hectares as of March 2005, according to the Kilusan para sa Pagsulong ng Repormang Agraryo), and this “does not include the estimated 200,000 hectares of illegally converted land that was reported way back in 1994, and the 38,908 hectares converted under the Department of Justice (DOJ) Opinion 44 from 1990 to 1999.” Deprived of lands to till, more and more rural dwellers will be deprived of sources of subsistence; they will flock to urban areas where jobs are not available and join the millions of urban poor settlers.

As agricultural land areas shrink, the country’s agricultural production (already inadequate as it is right now) will also dwindle, thereby severely undercutting the country’s food adequacy and endangering the country’s food security, not to mention its detrimental effects on the environment. Because of the government’s skewed development priorities, the country is now a net food importer (rice, livestock and other marine products), despite being a relatively agricultural economy. The capability of the country to feed its own population will be severely compromised if more

farmlands are converted to non-farm uses and gobbled up by alien money.

Also detrimental to the Filipinos is the proposal to allow foreign corporations to take over public utilities. Public utilities (water, electricity, telecommunications, transportation, etc.), being essential to the everyday lives of consumers, are crucial to national security and should therefore be controlled by those who shall put the interests of the people over lust for profit.

The same holds true for educational institutions and media and advertising outfits. Allowing foreign ownership will not only restrict access of Filipinos to these vital institutions (which would be a violation of the right to information and education), it will also defile the Filipinos’ culture and set of values and weaken the Filipinos’ sense of nationhood. The schools and the mass media are key agents of socialization, learning and even social control; foreign control over these powerful shapers of people’s minds can only be disastrous to a multi-ethnic nation like the Philippines.

Civil liberties and basic freedoms are threatened. First, the phrase “the responsible exercise of freedom of expression”, seemingly innocuous, demolishes the very right it seeks to uphold, as the exercise of such freedom will now be subject to rigorous and even whimsical government standards. When one recalls how Arroyo has been complaining about media portrayal of her government, the word “responsible” takes on a more worrying implication. Second, the proposed charter change gives the president or prime minister vast martial law powers, even as it broadens the grounds for martial law and removes any safety mechanisms such as the 60-day effectivity limit and the power of the Supreme Court to check on the factual basis of martial rule. In light of the Arroyo government’s vicious response to the ongoing series of protests (through her “calibrated preemptive response” and the “no permit, no rally” policy), giving such extraordinary

powers to a beleaguered but spiteful president is the height of folly.

The ban on nuclear weapons and foreign troops and bases is removed. Without the constitutional provisions banning nuclear weapons and the entry of foreign troops and bases without a treaty, there will be no legal impediment to the return of the US military bases. The deletion of these provisions brings the Constitution into line with the controversial Visiting Forces Agreement, the Mutual Logistics Support Agreement and the Balikatan exercises.

The Global Dancing Arena

The music behind cha-cha comes from the clarion-calls of globalization and neo-liberalization. It is not surprising therefore that foreign corporate interests and their local allies are applauding the latest cha-cha proceedings. Foreign businesses will gain much if all legal barriers to their entry into the local economy are finally removed.

Cha-cha is not unique to the Philippines. According to the research institute IBON, around 130 countries have revised, amended or adopted new constitutions "to accommodate a framework for the sort of 'market democracies' that open up domestic labor, economic sectors and natural resources," thereby reversing the nationalist constitutions of Latin America, Asia and Africa and drastically overhauling the 'socialist' constitutions of former Soviet republics.

Despite its flaws and its wordiness, the 1987 Constitution contains provisions that can, and did, safeguard the economy from the total onslaught of global capital and protect vulnerable sectors of the economy. Deleting these provisions will facilitate and hasten the implementation of neo-liberal economic policies, specifically the privatization and liberalization of the public sector and deregulation in vital economic areas. This means removing any obstacle to the flow of goods, services and capital, transferring government-provided basic social services (like health, education, electricity, water) to the private

sector, and relaxing the government's power to regulate the economy. All these policies are aimed at giving the market forces full command of the national economy, with minimal - if any - government intervention, except to provide an environment conducive to business operations. These policies cannot be totally put in place under a Constitution that gives preferential rights to Filipinos. So, the fundamental law of the land must be rewritten to make it abide by the dictum of globalization.

But the globalization commitment of the Philippine government has always been detrimental to the people, especially the marginalized groups. The liberalization of the economy, which has already been going on for the past decades and been accelerated in the last two decades (in spite of the Constitution) has only worsened poverty and income disparity not only in the Philippines but in all other economies whose frail industries cannot compete with those of the developed countries. (See article on the World Trade Organization on p. 3).

The net effect of all these Constitutional revisions will be increased poverty and suffering for the masses, especially the vulnerable and disempowered majority who, at present, can barely access the most basic rights to food, education, employment, and housing, as well as the erosion of the freedom and liberty of the Filipino people.

Fulfillment of Whose Dream?

Clearly, President Arroyo's cha-cha attempts is done upon the behest of the neo-liberal agenda. That a new Constitution will also keep her in Malacañang - with more powers to boot - until 2010 and even beyond is a bonanza that she cannot afford to let slip. By gouging out the Constitutional provisions that protect national and economic sovereignty, she pleases the foreign powers-that-be and ensures support for her presidency. By dismantling a sometimes-unruly bi-cameral Congress, she consolidates her forces and strengthens her grip over the legislature. By hacking

off the progressive and libertarian content of the 1987 Constitution, she guarantees that her rule will not be spoiled by any challenge or resistance from the people. By hewing away the Constitutional guarantees of checks and balances, she makes herself answerable to no one.

Indeed, Arroyo will no longer have to complain about panting after the school-yard bully. For she will be the only bully left.

Revising the fundamental law of the land is not a task to be taken blithely. Neither should it be done with sinister and self-serving motives. The Constitution embodies and articulates the nation's collective dreams and aspirations, the people's ideals and their sense of nationhood. To trifle with this basic document is to insult the very core of the nation's dignity; to revise the Constitution, under foul motives, is to blight the future of a whole nation. When the intent behind the rewriting of the nation's fundamental document is less than noble, then a nation whose survival is at stake should rise up and put a stop to this criminal act.

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