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**LEGAL MEMORANDUM ON THE PROPOSED
CONSTITUTION OF THE HOUSE OF
REPRESENTATIVES' COMMITTEE ON
CONSTITUTIONAL AMENDMENTS**

**Drafted by Atty. Neri Javier Colmenares
22 January 2006**

OUTLINE

The "Proposed Amendments to the 1987 Constitution by the House Committee on Constitutional Amendments", referred to as the "House Proposal" in this paper, is no better than that proposed by the Consultative Commission (CONCOM) even if it contains less controversial provisions than the latter. The proposed Constitution used as the working draft by the Constitutional Amendments Committee, still contains provisions that are disastrous to the political, economic and other human rights of the Filipino people. In fact, the House Proposal has far worse provisions in relation to checking the martial law powers of the president/prime minister as it completely reverted to the provisions of the Marcos Constitution during martial law.

The House Proposal constitutes a direct threat to the interest of the Filipino people in the following major aspects :

- I. Provisions that assure Pres. Gloria Arroyo's stay in Office and the Grant of Dual Powers: Sweeps Aside Questions on her Mandate**
- II. Provisions that Merely Dispense Economic and Political Favors to Public Officials in Order to Get Support for Revising the Constitution.**
- III. Provisions that Threaten and Curtail Human Rights.**
- IV. Provisions that Provide for Greater Economic Power to Foreign Investors and Transnational Corporations and Result in Greater Damage to the Economic Interest of the Filipino People.**

- V. **Provisions that Support the Political and Military Interest of Foreign Governments such as the United States to the Detriment of Philippine National Interest.**
- VI. **Provisions on a Unicameral Parliamentary System that Further Institutionalize Government Unaccountability and Curtail People's Participation in Governance.**
- VII. **Deletion of Provisions in the 1987 Constitution that May be Used to Protect the Political and Economic Interest of the Filipino People**
- VIII. **Vague and Badly Drafted Provisions that may Lead to a Constitutional Crisis**

DISCUSSION

I. Provisions that Assure Pres. Gloria Arroyo's stay in Office and the Grant of Dual Powers: Sweeps Aside Questions on her Mandate

By assuring her stay in office until 2010 and increasing her presidential powers, the House Proposal virtually brushes aside questions on the mandate of Pres. Arroyo and virtually absolves her of the charges of corruption, human rights violations and electoral fraud.

Dual powers for Pres. Arroyo as Head of Government and Head of State

The House Proposal grants Pres. Gloria Arroyo greater powers until 2010 under Section 8, Art. XVIII, to wit :

Sec. 8. From the ratification of the foregoing Amendments to June 30, 2010, the incumbent President shall continue to exercise the same power as she has now, except those that she will delegate to the Prime Minister who shall serve as chief operating officer of the government, conformably with the Parliamentary system.

This provision practically assures Pres. Arroyo of her commander-in-Chief powers, her control and supervision over the Ministries and Cabinet, her executive powers of supervision over local governments, her powers to contract loans, ratify treaties, inter alia, as these are "*the same powers she has now*". She is not even constitutionally required to delegate powers to her "COO" since this is within her discretion under the above provision. She may not even grant any power to the Prime Minister who will be at her mercy.

Worse, under Art. VII, Sec. 6 (3) of the House Proposal she is granted an additional power that she is constitutionally prohibited from exercising under the current presidential system—the power to dissolve the legislature. With the power to dissolve Parliament, Pres. Arroyo has virtual control of the legislature as even the opposition will be forced to tow her line or face the consequence of running for another expensive reelection if she dissolves Parliament. Her budget, her bills such as the Anti-Terrorism

Bill, and all her policies will be approved or supported by a fearful rubber stamp parliament, akin to Marcos' "Interim Batasang Pambansa." Pres. Arroyos 'dual power' makes her the most powerful and dangerous public official in the country. She practically controls the most important body in a parliamentary system—the Parliament. No parliamentary system in the world grants any person the dual powers of head of Government and State since that would be tantamount to dictatorship. The House Proposal will establish the only parliamentary system in the world where the supposedly ceremonial head of state is more powerful than the Prime Minister.

Furthermore, the House Proposal has a penchant for granting 'dual powers', without showing any concern that this dangerous situation may lead to a dictatorship. It also provided in Art. VII, Sec. 5 of the House Proposal another 'dual power' scenario by providing that "*In case of permanent disability, death, removal from office, or resignation of the President, the Prime Minister shall act as the president until a successor has been elected...*"

In this case, the Prime Minister will retain the vast powers of both the PM and the President, indeed a recipe for dictatorship and an unaccountable government. Is there any justification why, instead of requiring the immediate election of a new President, the House Proposal surprisingly makes the Prime Minister successor to Pres. Arroyo in case she dies or is removed? There is no apparent reason at all. It must be noted, however, that Speaker de Venecia may run for Prime Minister and may succeed Pres. Arroyo if she is forcibly removed by her erstwhile allies in Congress, thereby inheriting her dual powers.

Note that the House Proposal does not establish a procedure for succession in the case of '*permanent disability, death, removal from office or resignation*' of the Prime Minister. In a politically unstable and corrupt government like the Philippines, failure to provide such a procedure is a recipe for political chaos.

Considering that many Filipinos believe that Pres. Arroyo is not the legitimate President of the Philippines, the House Proposal's provision for her continued stay in office until 2010 disregards the serious issues raised against her mandate and mounting calls that she steps down from office.

Considering that many Filipinos charge her with using the powers of her office to commit electoral fraud, corruption and human rights violations, the House Proposal's grant of dual powers to her unjustifiably absolves her of these charges and brushes aside the call that she first account for these crimes.

If only for this, the people must resist charter change.

II. Provisions that Merely Dispense Economic and Political Favors to Public Officials in Order to Get Support for Revising the Constitution.

The Constitution proposed by the House of Representatives and currently used as a '*working draft*' by the Committee on Constitutional Amendments, contains provisions that merely dole out economic and political favors to public officials in order to gain support, and has no relevance to the political and economic reforms promised by its proponents.

Its proponents aim to bribe the Senators and opposition members of Congress by dangling the 'no election' scenario which will extend their terms to 2010. They also hope to bribe all public officials by extending their terms to 5 years and removing term limits. Its provision increasing the retirement age of the Supreme Court is nothing more than an attempt to influence its decision in support of the proposed Constitution should it be challenged in the judiciary. The proposed Constitution's deletion of the 1987 constitutional provisions absolutely prohibiting the reappointment of members of the Constitutional Commissions and the Ombudsman further opens up these agencies to corruption. The proponents also seek to bribe all political parties, including the opposition, by providing for 'subsidies' to political parties. Its provisions giving VP Noli de Castro a ceremonial role and an assured cabinet post until 2010 are intended to placate the De Castro who will be substantially marginalized by charter change.

The way the House Majority and the Arroyo administration crafted the unpopular 'working draft', the proposed Constitution may be approved and ratified, not on the merits of its proposals but rather on the amount of benefits it doles out.

No Election, No Term Limits and Extension of Terms to Five Years

The proposed Constitution seeks to dangle possible term extension to Senators and ALL public officials by providing for a 'no election' scenario under Art. XVIII, Sec. 3 :

*Sec. 3. However, if in the Plebiscite for the ratification of the foregoing proposed amendments, the people shall decide to **set the first elections under the parliamentary system** to the second Monday of May 2010, then the interim parliament shall be extended until June 30, 2010.*

The deceptive phrase '*the first election under the parliamentary system*' is actually not limited to the parliamentary elections but includes elections of all local officials. This is meant to ensure total support by local officials during the ratification campaign for the Constitution. Sec. 3 also intends to attract support from Senators and opposition members in the Lower House whose terms end in 2007. The Senators, however, will be Members of Parliament (MPs) without a district and second class citizens of the 'Interim Parliament', a recipe for defeat should these Senators run against the incumbent District MPs in the 2010 district elections.

The rush for the ratification of the proposed Constitution by June this year stems from its proponent's perception that it will lose a lot of support if it is not ratified before the May 2007 elections. Furthermore, the Arroyo administration may be an attempt to nip in the bud the impeachment complaint that will also be filed in June.

Section 3 of Article VI and Sec. 8, Art. X are additional carrots for all local officials, including current members of Congress as these not only increase their term to 'five' years but also abandons the constitutional rule on term limits. Sec. 3, Art. VI provides that "*The Members of Parliament shall be elected ... for a term of five years **without limit as to the number thereof...***"

Sec. 8, Art. X on Local Government also provides that "*The term of office of **elective officials** ... shall be five years*". It needs to be stressed that under the Parliamentary System, Pres. Arroyo may still become the Prime Minister after 2010. The provision on term limits was expressly provided by the 1987 Constitution for two reasons :

1. Restricting the president to only one term is intended to preempt the incumbent from using her term and the office to promote and ensure her reelection.
2. Restricting the terms of other officials is intended to destroy political dynasties wherein politicians hold power for decades on the basis of their stranglehold on a political office.

With the deletion of the term limits, the Philippine electoral system regresses to the Marcos era of political dynasties and nepotism.

The 'No Election' scheme violates the people's rights to governance enshrined in the 1987 Constitution through provisions on the right to suffrage in Article V, peoples' participation in governance in Art. XIII, Sec. 16, and the constitutional principle in Art. II, Sec. 1 which declares that "*sovereignty resides on the people and all government authority emanates from them.*"

The '*no election*' scenario virtually creates an unaccountable government—a ruthless attack on the principles of democracy and people participation in governance. The '*no election*' provision and the resulting extension of terms of all elective officials are nothing more than undisguised attempts to bribe members of Congress and all public officials, including the opposition, in exchange for their support for the proposal and also ensure Pres. Gloria Arroyo's hold on power, at least, until 2010.

Increase in Retirement Age of Judiciary

A major cause for concern is the threat on the independence of the Supreme Court by the sudden increase from the current retirement age of members of the entire judiciary including the Supreme Court in Sec. 11, Art. VIII which provides that :

*Sec. 11. The Members of the Supreme Court, and Justices and judges of lower courts shall hold office during good behavior until they reach the age of **Seventy-Five (75) years** or become incapacitated to discharge the duties of their office. They shall have the option to retire at the age of seventy years with full benefit.*

Strangely, this increase from the retirement age of seventy (70) currently provided in Sec. 9, Art. VIII of the 1987 Constitution was never explained by the House proponents especially since this was never raised as an issue against the current Constitution. This is no other than an attempt to bribe members of the Supreme Court who will inevitably tackle the constitutionality of the constituent assembly and the ratification of the Constitution.

Allows Reappointment for Members of COMELEC, COA, CSC and Ombudsman

The proposed Constitution also seeks to get the support of even the members of the Constitutional Commissions namely the COMELEC [see Art. IX (C) Sec.1 (2)], Commission on Audit [see Art. IX (D) Sec. 1 (2)], Civil Service Commission [see Art. IX (B) Sec. 1 92)] and the Ombudsman [see Art. XI, Sec. 11] by deleting the phrase '*without reappointment*' provided for in the 1987 Constitution which absolutely prohibits their reappointment; and replacing it with the innocuous "without **immediate** reappointment"

in the House Proposal. The proposed Constitution provides in Article IX [C], Sec. 1 (2) on the Commission on Elections (COMELEC) states:

*(2) The Chairman and the Commissioners shall be appointed by the Prime Minister...for a term the seven years **without immediate reappointment**. The incumbent chairman and commissioners shall be allowed to serve out their respective terms.*

The appointments of the Ombudsman, CSC and COA also contain the same qualification. This means that Chairman Benjamin Abalos, for example, may be reappointed to the COMELEC after he sits out one term after the end of his tenure. This vague provision will also spawn a constitutional question on when a reappointment may be considered 'immediate'. This '*insertion*' is without any basis considering that the non reappointment of officers like the 'Ombudsman' has never been an issue against the 1987 Constitution. This will only make members of the COMELEC, COA, CSC or the OMBUDSMAN who hope to be reappointed, beholden to the Prime Minister and the ruling party during their first term. More than bribery, this provision is a major blow to the battle against corruption and the constitutional "check and balance" principle.

Subsidizing Election Campaign of Political Parties

The proposed Constitution also seeks to gain the support of political parties by shockingly providing in Art. IX [C] Sec. 6 that political parties will receive '*subsidy*' courtesy of the impoverished Filipino people:

*Sec. 6. Political parties must be strengthened and **must receive equitable subsidy from Government**. ..*

This broad, unqualified and mandatory provision will surely get the support of political parties who will benefit from the subsidy given them for their election campaigns. Whereas politicians spend money on voters in the previous elections—the proposed Constitution orders the people and tax payers to spend for the reelection of these politicians. The people will be spending for the election campaign of Pres. Arroyo. Considering that the people are made to suffer the burden of increase in taxes such as the EVAT, it is immoral and unjust for government to use the peoples' money to finance the electoral campaign of traditional politicians.

This also abandons the principle, reiterated in the Decision of the Supreme Court in the Bayan Muna petition to disqualify MAD from the party list elections, which prohibits political parties from being funded by government.

Cabinet Membership for VP De Castro until 2010

Lastly, the proposed Constitution seeks to gain the support of Vice-President Noli de Castro by assuring him of a cabinet post under Sec. 2, Art. XVIII on the Transitory Provisions:

*Sec. 2. The incumbent Vice-President shall **automatically become Member of Parliament and of the Cabinet until 2010**. **He shall preside over the Parliament** for the immediate election of the Prime Minister, upon nomination of the incumbent President.*

Thereafter, the Parliament shall elect the Speaker, and both shall assume their respective offices immediately.

This badly crafted provision may be interpreted to grant Pres. Gloria Arroyo the power to nominate the Prime Minister, adding one more reason why the Prime Minister should be beholden to Pres. Arroyo. Vice-Pres. de Castro should realize that after presiding over the opening of the Interim Parliament (*Interim Batasang Pambansa* in Filipino), he immediately becomes an ordinary Member of Parliament (MP) without a constituency—which makes it difficult for him to successfully run in his district in Mindoro in the 2010 elections, should he have political ambitions after 2010. *Lastly*, since the appointment and removal of cabinet members are at the discretion of the Prime Minister, he may not even be assured of a cabinet post until 2010.

The proposed ‘charter change’ is unpopular according to surveys. To circumvent the people’s will, the House Majority plans to get support for its passage by inserting provisions that have no relations at all in the supposed economic and political reforms they claim to undertake, but merely meant to bribe public officials to support the proposed Constitution. This certainly does not augur well for the Filipino people and their struggle for a better society.

III. Provisions that Threaten and Curtail Human Rights.

The deletion of the safety mechanisms to check the martial law powers of the President or Prime Minister, the insertion of additional grounds to declare martial law and suspend the Writ and the deletion of the ban on private armies and paramilitary forces in the House Proposal all constitutes as direct threats to the exercise of civil and political rights of the Filipino people.

Martial Law Safety Mechanisms Removed

The martial law safety mechanisms found in Art. VII, Sec. 18 of the 1987 Constitution were surreptitiously deleted in Section 12, Art. VII-A of House Proposal, notably the following very important provisions:

[DELETED: Provision limiting martial law and the suspension of the writ to a period of sixty (60) days.

[DELETED: “Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to Congress. Congress, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by Parliament, if the invasion, rebellion shall persist and public safety requires it. Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of call.”

[DELETED: “The Supreme Court may review in an appropriate proceedings filed by any citizen, the FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW... and must promulgate its decision within 30 days from its filing.”

[DELETED: “The state of Martial Law DOES NOT SUSPEND THE OPERATION OF THE CONSTITUTION nor supplant the functioning of civil courts and legislative assemblies nor AUTHORIZE THE CONFERMENT OF JURISDICTION ON MILITARY COURTS.. nor automatically suspend the privilege of the writ..”

[DELETED: “The suspension of the ...writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected to the invasion.”

[DELETED: “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.” (All Underscoring supplied).]

The deletion¹ of these provisions makes Pres. Arroyo [and the succeeding prime minister, if any] a very powerful President, considering that the Parliament and Supreme Court no longer have the authority to check her martial law powers. It must be noted that Pres. Arroyo will maintain her commander-in-chief and martial law powers under Art. XVIII Sec. 8 of the House Proposal which provides that *“the incumbent President shall exercise **the same powers as she has now**”*.

Due to our experience during martial law when the Supreme Court used the political question doctrine to shirk from its duty to look into the arbitrariness of the martial law declaration, the 1987 Constitution expressly enshrined the power of the Court to look into the factual basis of martial law. The House Proposal eliminates this role and duty of the Supreme Court.

Furthermore, the life and effectivity of the martial law declaration is no longer limited to the 60-day period assured under the 1987 Constitution but, like the Marcos martial law regime, may go on for years. A lengthy martial law period is in fact very likely considering that Legislative powers are clipped under the House Proposal by the deletion of Pres. Arroyo’s duty to report to parliament within 48 hours from the declaration of martial law and the legislature’s power revoke a martial law proclamation.

The 1987 provisions requiring Congress to assemble within 24 hours from the declaration of martial law and the express mandate that martial law does not supplant the civil courts and the legislature were meant to avoid a repeat of the closure of Congress by the executive upon martial law’s declaration. With the deletion of these provisions, the closure of Parliament becomes easier if martial law is declared,

¹ Note that while the House Proposal deleted constitutional checks on Pres. Arroyo’s martial law powers, the provision granting the Executive the power to take over companies during ‘national emergency’ was retained in Art. VI, Sec. 15 of the House Proposal.

especially since Pres. Arroyo, has the power to dissolve Parliament under Art. VII, Sec. 6 of the House Proposal.

With the emasculation of the legislature and the judiciary, Pres. Arroyo who will exercise the dual power of Head of State and Government has all the powers of a dictator, similar to those that Pres. Marcos exercised except that, unlike Marcos, her dictatorial powers are clearly enshrined in the Constitution.

Restrictions on Suspension of Writ Deleted

Under the 1987 Constitution, if the Writ of Habeas Corpus is suspended due to rebellion, the Writ is only suspended as to those charged with rebellion. This was meant to avoid a repeat of our martial law experience where the suspension was applied to everyone including ordinary criminals, in fact, including innocent civilians such as those who merely violate curfew.

Furthermore, since under the 1987 Constitution, civil courts continue to exist even if the writ is suspended, the state is constitutionally required to charge the detained person before a court within 3 days from arrest. One of the reasons for this is to ensure that the suspension of the writ will not be used against the political opponents and personal enemies of the Commander-in-Chief. Under the House Proposal, people could languish in jail for years without charges, similar to what happened during martial law, including those charged with crime not related to the basis for which the Writ was suspended.

The deletion of the safety mechanisms against martial law is a direct threat to the people and human rights as it gives a power hungry President-Prime Minister the absolute power to violate peoples' rights.

New grounds for Declaring Martial Law and Suspension of Writ

The House Proposal added a new ground for the declaration of martial law and suspension of the writ—the *imminent danger* of invasion or rebellion or insurrection under Art. VII-A, Sec. 12:

*Sec. 12. The Prime Minister shall be commander-in-chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, **insurrection** or rebellion. In case of invasion or rebellion **or imminent danger** thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.*

The grounds for the declaration of martial law or suspension of the writ under the 1987 Constitution were limited to “*rebellion and invasion, when public safety requires it*”. The surreptitious insertion of the amorphous concept of ‘*imminent danger*’ essentially grants broader powers to Pres. Arroyo [or the subsequent Prime Minister] to declare martial law or suspend the Writ on the basis of what she perceives as ‘danger’ and the imminence thereof. With the Supreme Court’s judicial authority to look into the exercise of martial powers withdrawn, the House Proposal makes it easier for Pres. Arroyo to declare martial law, even if the grounds for such does not exist.

Under the House Proposal, therefore, EDSA 1 and 2 can be the basis for the declaration of martial law or suspension of the writ—on a claim that the massing of people shows ‘imminent danger’ of an insurrection or rebellion. Considering Pres. Arroyo’s penchant to call any criticism against her as ‘*destabilization*’ and a threat to national security, she may in fact declare martial law the moment people power starts. Under the House Proposal, there will be no need for an anti-terrorism law, as the warrantless arrest of those considered the ‘*enemies of the state*’ will be constitutionally enshrined.

With additional powers for the President [to dissolve parliament] under the House Proposal, Pres. Arroyo may declare martial and dissolve the parliament, a throw back to the martial law era when Pres. Marcos closed congress upon declaration of martial law—the only difference is, this act will now be constitutionally protected.

Due to the intent of the proponents to rush the proposed Constitution and the lack of proper consultation with concerned sectors, many of the “insertions” are vague and conflict with other provisions. Note that the above provision conflicts with the Art. II, Sec. 15 of the Bill of Rights of the 1987 Constitution, which the proponents inadvertently retained in their proposed Constitution:

Sec. 15 “ The Privilege of the Writ of Habeas Corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.”

Lastly, it is very strange, that the drafters of the House Proposal who are members of the legislature, will design a Constitution that clips legislative powers and turns them over to the executive. Based on the provisions above, it is not far fetch to suspect that the House Proposal was exclusively crafted by the Executive Department.

Prohibition of Private Armies and Paramilitary Groups Deleted

It must be strongly stressed that the House Proposal deleted Art. XVIII, Sec. 24 of the 1987 Constitution which provides that :

Sec. 24. Private armies and other armed groups not recognized by the duly constituted authority shall be dismantled. All paramilitary forces including the CHDF not consistent with the citizens armed forces established in the Constitution, shall be dissolved or, where appropriate converted into regular force.

This provision was one of the most important human rights provisions after martial law. This deletion is more than symbolic, as it virtually eliminates any constitutional obstacle to the formation of more paramilitary groups and private armies. The proliferation of private armies and the dreaded paramilitary groups like the ‘Tadtad’ is a major threat to human rights especially after the creation of independent fiefdoms called ‘Federal States’.

IV. Provisions that Provide for Greater Economic Power to Foreign Investors and Transnational Corporations and Result in Greater Damage to the Economic Interest of the Filipino People.

The House Proposal takes away any form of protection to the Filipino peoples' economic interest. Its economic provisions go beyond the mere '*easing of restrictions on foreign investments*' as it grants aliens the right to own lands in the Philippines and exploit natural resources, both rights previously reserved to Filipinos under the 1987 Constitution. Worse, it opens to foreign ownership the operation of public utilities.

Under the Art. XII, Sec. 7 of the 1987 Constitution, only Filipinos and Filipino owned corporations can own private lands, utilize our natural resources and operate public utilities. The House Proposal grants aliens the right to own Residential and Industrial lands in the Philippines—virtually creating a situation where foreigners own vast tracts of land while millions of Filipinos remain landless. It also allows them decisive control over our economy by allowing them to exploit our natural resources and operate public utilities.

Foreign investors and TNCs granted power to own lands in the Philippines

Sec. 1, Art. XII of the House Proposal expressly declared that '*Parliament may provide by law ownership of **Residential and Industrial lands by foreigners** in connection with their investment in the country under such conditions it may deem necessary for the protection of the Filipino people.* (underscoring supplied)

This insertion² is totally new as it now officially opens ownership of prime lands to foreigners. The provision that such ownership must be provided by law is of no comfort as Parliament is expected to easily pass such a law considering that Pres. Arroyo and Congress have long been working for the elimination of restrictions against foreign enterprises in order to fully implement globalization in the country.

The provision limiting alien ownership to 'residential and industrial' lands is deceptive, as agricultural and commercial lands are easily re-classified to industrial lands so that they may be purchased by foreigners. Due to extreme poverty in the Philippines, foreigners will own vast tracks of land while millions of Filipinos remain landless.

Foreign Investors allowed to exploit natural resources

b. Sec. 2 of Art. XII of the House Proposal provides:

*"The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens [DELETED: OR CORPORATIONS OR ASSOCIATIONS AT LEAST SIXTY PER CENTUM OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS] **or with corporation or association domestic or foreign.**" (new provision underlined)*

² This 'abandons' the rule in Sec. Art. XII, Sec. 7 of the 1987 Constitution which provides that "*save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public domain.*"

This practically opens the utilization of natural resources such as mining, logging, and fishing to corporations fully owned by foreigners, by deleting the provision limiting such to corporation at least 60% of which capital is Filipino owned.

The impact of this provision will practically ease out Filipino participation in the exploitation of our natural resources in favor of transnational corporations with huge amount of capital and resources.

Aliens to operate and control public utilities

c. Sec. 11, Art. XII of the House Proposal provides :

*Sec. 11. No franchise, certificate or any other form of authorization for the operating of a public utility shall be granted except to citizens of the Philippines or corporations or associations organized under Philippine laws **[DELETED: AT LEAST SIXTY PER CENTUM OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS]** nor shall such franchise, certificate, authorization be exclusive in character or for a longer period than fifty years... (deleted provision in bold red).*

Again, the 60-40 requirement was deleted paving the way for control by a corporation fully owned by aliens, of public utilities such as those in electricity, water and communication. It must be noted that Art. XVI, Sec. 11 of the 1987 Constitution restricting ownership of the mass media and advertising industries to Filipinos were also removed in the House Proposal. Alien control of public utilities is not only inimical to Philippine economic interest, but also constitutes a threat to national security as Filipinos become dependent on public service owned and controlled by foreigners.

It is therefore misleading for Pres. Arroyo and Speaker Jose de Venecia to trivialize the impact of their proposed economic revisions as mere '*easing up of restrictions*' on foreign ownership. Granting aliens and foreign corporations the right to own private lands, to directly utilize and exploit our natural resources and directly control our public utilities not only hit local businesses but also further open up the people to the vagaries of globalization and cause more poverty.

V. Provisions that Support the Political and Military Interest of Foreign Governments such as the United States to the Detriment of Philippine National Interest.

The House Proposal carries provisions that allow greater political and military access to the Philippines by the United States and other foreign powers, and are inimical to the interest and security of the Philippines and the people.

Return of the US Military Bases

The House Proposal eliminates the last constitutional obstacle to the deployment of US troops and the reestablishment of US military bases in the Philippines with the deletion from the House Proposal of Sec. 25, Art. XVIII of the 1987 Constitution which provides that:

*Sec. 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, **foreign military bases, troops, or facilities shall not be allowed in the Philippines** except under a treaty duly concurred in by the Senate, and when the Congress so requires, ratified by the Filipino people in a national referendum held for the purposes, **and recognized as a treaty by the other contracting State.** (underscoring supplied)*

The dismantling of the U.S. military bases in 1992 has long created a vacuum in US military presence in Southeast Asia, a strategic location for U.S. forward military position in the Asian region. Previous U.S. attempts at reestablishing military bases here have been unsuccessful due the people's militant opposition using, among others, this provision, forcing the US and Philippine government to resort to unconstitutional executive agreements like the Visiting Forces Agreement (VFA). The deletion of this provision in the proposed Constitution will eliminate any constitutional impediment to the reestablishment of US military bases in the Philippines.

Easier Process for the Ratification of Treaties and International Agreements

Art. VI, Sec. 14 (1) of the House Proposal lowers legislative voting threshold necessary for concurring in the ratification of a treaty or executive agreement. Through this provision, the legislature's power is clipped further while increasing the powers of the Executive:

*Sec. 14 (1) Except as other wise provided in this Constitution, no treaty shall be valid unless concurred in by a **MAJORITY** of all members of Parliament.*

This replaces Art. VII, Sec. 21 of the 1987 Constitution which requires that "No treaty or international agreement shall be valid and effective unless concurred in by at least **TWO-THIRDS** of all the members of the Senate". The lowering of the "concurrence threshold" under the House Proposal will ensure unhampered passage of treaties concluded by Pres. Arroyo [and the Prime Minister] with the US considering that the President -Prime Minister under a parliamentary system has the support of at least a majority of parliament. The House Proposal will result in the Philippines being easily bound to economic and military agreements with the United States, the WTO and other foreign governments.

War is No Longer Renounced as an Instrument of National Policy

The House Proposal also amended Sec. 2, Art. II of the 1987 Constitution by replacing the term 'renounces' found in the 1935, 1973 and 1987 Constitutions with the weaker term 'abhors', when it provides that :

*SEC. 2. The Philippines **ABHORS** [renounces] war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.*

Unlike the previous Constitutions which requires the positive act of renouncing war as an instrument of national policy, the 'working draft' now allows the Philippines to resort to war as a matter of policy even if it claims to find war '*abhorrent*'. The amendment removes a policy hindrance to the entry of the Philippines in U.S. led '*wars against terrorism*' in various countries around the world. The proposal also strikes a major blow to peace advocacy and the peace process in the Philippines. The Arroyo government is no longer constitutionally required to pursue the peace talks as a matter of policy.

The Philippine government has long been criticized for its subservience to US policy dictates. This is never more exemplified than the current government handling of the rape case and the VFA issues. The proposed changes in the 1987 Constitution is a cause for major concern.

VI. Provisions on a Unicameral Parliamentary System that Further Institutionalize Government Unaccountability and Curtail People's Participation in Governance.

Due to our experience during martial law, when there was no accountability, consultation and transparency in governance, the 1987 Constitution was crafted to provide Filipinos and their organizations with the opportunity to participate in running government affairs. The House Proposal substantially dilutes the role and participation of the people in their design of the unicameral parliamentary system.

Marginalizing Sectoral representation in Government

The House Proposal persists in marginalizing sectoral representation in government and threatens the continued existence of the party list system. It deleted for example, Sec. 9, Art. X of the 1987 Constitution which provides for sectoral representation in local government, taking away the constitutional basis for the election of the youth, women and other sectors to LGUs.

With regards the party list, Art. VI of the House Proposal does not actually retain the same assurance for the existence of the Party list system. In fact it is highly possible that the phraseology used was meant to give party list groups the false assurance that they will be retained under a new Constitution, when in fact, it is not so secured. Art. VI, Sec 5 of the 1987 Constitution provides:

*SEC. 5. (1) The House of Representatives shall be composed of not more than two hundred fifty members, unless otherwise fixed by law, who shall be elected **from legislative districts** apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who as provided by law, shall be elected through a party list system of **registered national, regional and sectoral parties or organizations**.*

Unlike the above Section 5 which makes the party list system integral to the composition of the legislature, Art. VI Sec. 2 of the House Proposal separates the party list system to another subsection, not only institutionalizing its status as an inferior member of the legislature, but also, making it easier for the system to be completely deleted from the Constitution:

Sec. 2 (1) The Parliament shall be composed of as many members as may be provided by law to be apportioned among provinces, representative districts and cities in accordance with the number of their respective inhabitants....

(2) The Parliament shall also include as Members thereof those, who, as provided by law, shall be elected through a party list system whose representatives shall constitute twenty percent of the total number of Representatives including those in the party list.

Note that the party list system was made a subsection rather than a part of the section 1 describing the composition of the legislature. More importantly, the House Proposal deleted reference to “*registered national, regional and sectoral parties or organizations*”.

The segregation of the Party List system, as if on an afterthought and the retention of the phrase ‘*as may be provided by law*’ makes the system vulnerable to being deleted during the plenary debates or subject to being rendered ineffective by the passage of a law that negates its existence. While the district representatives source their membership in the Parliament from the Constitution, the party list system’s participation is based on “*law*”. With the deletion of reference to ‘*sectoral parties and organizations*’, it is also easier for parliament to pass a law which will limit the party list system to, for example, major political parties, essentially dissolving the party list system as it is now.

It is expected that Parliament will craft a law that will allow traditional political parties such as Lakas-NUCD, Kampi, NPC, LDP, *inter alia*, to run for election under the party-list system virtually destroying chances of people’s representatives through genuine party list groups of getting a seat in Parliament. This will also reverse the Supreme Court’s ruling in the Bayan Muna petition reserving the party list election to the representatives of the marginalized and underrepresented and disqualifying major political parties such as LAKAS-NUCD and NPC from participating in the party list elections.

Since the party list system, like the District Representatives, is already in existence there is no need that its participation in governance be restricted further by law.

More restrictive campaign period for party list groups

Art. IX [C], Sec. 9 of the House Proposal provides :

Sec. 9. ...The Campaign period shall start forty-five days before the election date, excepting therefrom legal holidays and Sunday before election day.

This is probably one more proof of the narrow and parochial mindset of some of the members of the House of Representatives. Currently, members of the House of Representatives are allowed to campaign 45 days before election, similar to the above provision, since they only campaign in their district. However, candidates

who run a national campaign (such as the President, Vice-President, Senators and Party List organizations) are allowed to campaign for 90 days before election, since mounting a national campaign in all provinces takes a longer time. In fact, despite the longer campaign period, party list groups who lack funds and resources still find it difficult to campaign nationwide. While district representatives are allowed to campaign for 45 days in a single district, party list groups are given the same period to campaign in more than 200 districts.

By limiting the campaign period to 45 days, party list groups will find it impossible to bring their message to the people. This will not only hinder their campaign among their constituencies but also decrease people's awareness on and participation in the party list election.

No party-list representation in the Legislative Commissions

Furthermore, under the House Proposal it is almost impossible for the party list representatives to become members of the Electoral Tribunal under Art. VI, Sec. 23, the Commission on Impeachment under Art. VI, Sec. 24, and the Commission on Appointment under Art. VI, Sec. 25.

Note that under Art. VI, Sections 17 and 18 of the 1987 Constitution, the party list system is expressly provided in the composition of the Electoral Tribunal and the Commission on Appointments, thus:

Sec. 18. There shall be a Commission on Appointments consisting of ...twelve members of the House of Representatives elected ... on the basis of proportional representation from the political parties and parties or organizations registered under the party list system.

On the other hand, Art. VI, Sec. 25 of the House Proposal delete any reference to the party list: *“There shall be a Commission on Appointments composed of fifteen chosen by the Parliament from among its members on the basis of proportional representation of the parties therein.”*

There currently exists a 3-seat cap in the party list elections, limiting winning party list organizations to a maximum of three seats in Congress. It is therefore impossible for the party list to be able to sit in any legislative commissions, further marginalizing the already “marginalized and underrepresented” sectors. Absent express declaration in the Constitution that the Party-List system will be given a seat, akin to affirmative action, in these Commissions there is no chance that the sectors will be represented therein. Traditional political parties will dominate, as they do now, these legislative Commissions.

Deletion of ‘legislative districts’ as the basis for representation in parliament

The 1987 Constitution requires under Art. VI, Sec. 5 (1) that the members of Congress shall not be more than *“two hundred fifty members unless otherwise fixed by law”* who shall be *“elected from legislative districts apportioned among provinces, cities and the Metropolitan area”*.

The Art. VI, Sec. 2 (1) of the House Proposal, however, not only deleted the qualified limitation of the members to 250, but also deleted reference to legislative district, to wit :

Sec. 2 (1) The Parliament shall be composed of as many members as may be provided by law apportioned among the provinces, representative districts, and cities ...”

The deletion of *‘elected from legislative districts’* may open up the whole membership of the Parliament to city representatives, town representatives or metropolitan representatives, depending on how Parliament will design it through law. With the total number of MPs dependent on Parliamentarians, massive gerrymandering will take place while the *‘federal system’* or *‘redistricting’* is being designed. It must be noted that *‘redistricting’* is the first agenda of the Parliament under Art. XVII, Sec. 9 of the House Proposal:

Sec. 9. The Parliament shall immediately provide by law the general redistricting of all Legislative Districts according to the standards provided hereto, in time for the elections of 2007 or 2010.

With the deletion of reference to legislative district, there may be a scramble for carving out independent fiefdoms among the incumbent members of the interim parliament.

Difficulty in impeaching corrupt impeachable public officials

The House Proposal makes impeachment of the President (or any impeachable official for that matter) difficult by deleting Art. XI, Sec. 3 (3) of the 1987 Constitution which provides that only **“1/3 of all members”** of the legislature are required to affirm the Articles of Impeachment in order to initiate impeachment. It also deleted Art. XI, Sec. 3 (4) which provides that in case the verified complaint is filed by **“at least 1/3 of all the members”** of the legislature, “the same shall constitute the Articles of Impeachment” and trial shall forthwith proceed. What is being discussed here is the mere initiation of an impeachment complaint, the reason why only 1/3 endorsement is required.

Under Art. XI, Sec. 3 (3) of the House Proposal “A **majority** of all members of the Parliament may either reject or approve the Resolution”. The increase of the threshold to *‘majority’* and the deletion of the *‘creeping impeachment’* rule make it highly difficult to impeach a President considering that said president was elected by at least the majority of Parliament. Said President also has the power to *‘dissolve’* parliament, which makes impeachment doubly difficult.

The Office of the Ombudsman: Regulated by Law

The vague provision in Art. XI, Sec.5 hinders accountability and transparency as it gives the Parliament power over the supposed watchdog by inserting the seemingly innocuous *‘or as may be provided by law’*:

Section 5. The independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall

deputy, and at least one Deputy for Luzon, Visayas and Mindanao, and a separate Deputy for the military establishment, shall continue to function as now organized **or as may be provided for by law**”

This certainly implies that the structure and function of the office of the Ombudsman and its Deputies, may be designed by members of the Parliament by law. This will make the supposedly independent Ombudsman and his or her Deputies subject to the influence of the legislature.

Cabinet and other Appointive Officials no longer subject to CA Confirmation

Under the House Proposal there is no longer any provision that the appointment of Colonels or naval captains of the AFP, Ambassadors, Cabinet members and consuls will undergo scrutiny by the Commission of Appointments as provided for under Art. VII, Sec. 16 of the 1987 Constitution which provides:

Sec. 16. The President shall nominate, and with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, either public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution.

On the other hand, Art. VII-A, Sec. 13 of the House Proposal merely provides that:

Sec. 13. The Prime Minister shall appoint the heads of bureaus and offices, the officers of the armed forces of the Philippines from the rank of Brigadier General or Commodore, subject to confirmation of the Commission on Appointments, ... “

The House Proposal, therefore, no longer requires that CA confirmation of the appointment of Cabinet members (heads of executive departments), ambassadors and other public ministers and consuls, colonels of the armed forces and all other officers whose appointment is vested in the President under the Constitution. The CA confirmation process is a mechanism for accountability and screening out corrupt public officials or human rights violators in the AFP officer corps.

The House Proposal thereby dis-empowers the people from participating in the process of selecting high public officials, and AFP Colonels by amending Art. VII, Sec. 16 of the 1987 Constitution. OFWs for example are denied the opportunity to raise issues against corrupt and incompetent ambassadors and consuls, while human rights groups are denied the right to intervene in the promotion of Colonels who commit human rights violations.

Withholding Transparency and Accountability in Incurring Foreign Debt

Art. VII, Sec. 20 of the 1987 Constitution provides that the Chief Executive may contract or guarantee foreign loans only *“with the concurrence of the Monetary Board”*. It further provides that *“The Monetary Board shall, within thirty days*

from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on the application for loans to be contracted or guaranteed by the government or GOCC which would have the effect of increasing the foreign debt...”

These provisions are ominously absent from the House Proposal under Art. VII-A, Sec. 15 which merely provides that :

Sec. 15. The Prime Minister may contract and guarantee foreign and domestic loans on behalf of the Republic of the Philippines, subject to such limitations as may be provided by law.

The mechanism under the 1987 Constitution was expressly provided as a result of the practice of Pres. Marcos of incurring massive foreign debts, many of which we continue to pay until now such as the Bataan Nuclear Plant loan, without any accountability and transparency. The issue of transparency in incurring foreign debts was a major issue after Marcos due to the intense poverty and economic dislocation it created. The removal of the mechanism under the House Proposal brings us back to the Marcos era where the Executive is totally unhampered in incurring foreign debts. Noting the growing deficit of the cash-strapped Arroyo government, this deletion could mean further massive and unhampered increase in foreign loans.

Deleted AFP as Protector of the People

It must also be noted that Art. II, Sec. 3 of the House Proposal deleted the provision that requires the AFP to be the ‘protector of the people’ on the ground, according to the proponents, that this was used by the military to launch coup d’etat. Said provision was replaced by the duty to ‘*secure the fundamental rights of the people*’. The proponents feign naiveté by claiming that coups result from the provision of a constitutional duty rather than on the issues of corruption and lack of professionalism in the AFP. Furthermore, the AFP must not only be ordered to secure fundamental rights, but rather, ‘secure and protect’ ALL the rights of the People.

VII. Deletion of Provisions in the 1987 Constitution that May be Used to Protect the Political and Economic Interest of the Filipino People

Many other provisions under the 1987 Constitution that promotes accountability and government position against graft and corruption were deleted. These deletions are very suspicious since these were never raised as issues against the current Constitution.

The following provisions in the 1987 Constitution were ominously deleted in the House Proposal:

Spouses of High Public Officials such as the First Gentleman may be appointed to public office

- (i) The provision against nepotism under Art. VII, Sec. 13 of the 1987 Constitution was ominously deleted :

Sec. 13 “ The spouse and relatives by consanguinity or affinity with the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commissions, the Office of the Ombudsman, or as members of the Cabinet, chairmen or heads of bureaus or offices, including government owned or controlled corporations”.

With the deletion, Pres. Arroyo is no longer constitutionally prohibited from appointing Mike Arroyo to the Ombudsman and Mikey Arroyo to the COMELEC.

No Safety Mechanism from an incapacitated President/Prime Minister

- (ii) Art. VII, Sec. 11 of the 1987 Constitution which provides for the removal of the President [Prime Minister] when majority of all the members of the Cabinet informs the legislature that the President [or the prime minister] is unable to discharge the powers and duties of the office.

Deletion of the main basis of the impeachment complaint against Pres. Arroyo

- (iii) It is certainly ominous that Art, VII, Sec. 17 of the 1987 Constitution which provides that the executive ‘*shall ensure that all laws be faithfully executed*’ was deleted. [See Art. VII-A, Sec. 11 of the House Proposal]. This provision was used as one of the main basis of the impeachment complaint against Pres. Arroyo.

Judicial Power of the Supreme Court substantially diluted with the deletion of Constitutional Basis of Grave Abuse of Discretion as a means for acquiring Jurisdiction.

- (iv) The definition of ‘judicial power’ to determine “*whether there has been a grave abuse of discretion on the part of any branch of government*” which was enshrined in Art. VIII, Sec. 1 was deleted. Art. VIII, Sec. 1 of the House Proposal no longer contains that definition. According to the Proposal’s official proponent, Rep. Jarulla, the House intends to cut the Supreme Court’s penchant to intervene in ‘executive functions’ using the grave abuse doctrine as justification.

Dual Citizenship no longer inimical to national interest

- (v) Art. IV, Sec. 5 deletes the 1987 provision finding ‘dual citizenship’ inimical to national interest.

Deleted Provision requiring that Public Funds be used for Public Purpose

- (vi) The House Proposal does not contain Art. VI, Sec. 25 (6) of the 1987 Constitution which provides that :

- (6) Discretionary funds appropriated for a particular official shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

The House Proposal withdraws Tax Exemption for lands, buildings and improvements used for educational purpose

- (vii) **Tax exemption** for the lands, buildings and improvements actually, directly and exclusively used for 'educational' purposes was withdrawn under Art. VI, Sec. 17 (3) of the House Proposal, which will surely raise protest from church and educational institutions.

Deleted the constitutional requirement that special fund be used only for special purpose

- (viii) The House Proposal does not contain Art. VI, Sec. 29 (3) of the 1987 Constitution which provides that :

(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such a purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any shall be transferred to the general funds of the government.

Due to our experience in the misappropriation of special funds such as the Road Users Tax, this deletion is really ominous.

Made initiative power of the people to repeal laws more difficult

- (ix) The House Proposal, under Art. VI, Sec. 22, makes it more difficult for the people to repeal laws passed by legislature by increasing the signatures required for an initiative petition **from ten (10%) percent under Art. VI, Sec. 32 of the 1987 Constitution to TWELVE (12 %) percent.**

Deleted constitutional prohibition of appointments two months before election

- (x) Art. VII, Sec. 15 of the 1987 Constitution which provides that '*two months immediately before the next election and up to the end of his term*' the Chief Executive **shall not make appointments**, is ominously absent from the House Proposal.

Considering our experience with Pres. Arroyo's appointment of Virgilio Garcillano to the COMELEC, the deletion of this provision is a major cause for concern.

Deleted the Constitutional duty of the legislature to provide for free high school

The House Proposal deleted Art. XVIII, Sec. 20 of the 1987 Constitution which provides that:

Sec. 20. The first Congress shall give priority to the determination of the period for the full implementation of free secondary education

Deleted constitutional basis for the distribution of public lands to agrarian reform beneficiaries

The House Proposal deleted the following provision under Art. XVIII of the 1987 Constitution:

Sec. 22 At the earliest possible time, the Government shall expropriate idle or abandoned agricultural lands as may be defined by law, for distribution to the beneficiaries of agrarian reform.

VIII. Vague and Badly Drafted Provisions that may Lead to a Constitutional Crisis

The following are vague, badly drafted and deceptive provisions in the House Proposal that may, wittingly or unwittingly, lead to at worst, a constitutional crisis.

(a) The House Proposal is not a mere amendment as it is a REVISION of the Constitution. As such, the so-called 'initiatives' organized by PIRMA or ULAP to cannot initiate charter change.

Art. XVIII, Sec. 1 of the House Proposal provides that :

Sec. 1. The unicameral parliamentary system and the parliament ...shall begin immediately upon the ratification of these **Amendments,...**

It is misleading for the House Proposal to term their proposed Constitution as mere 'amendments'. The House Proposal provisions granting larger economic rights to aliens, shifting to unicameral parliamentary system, removing martial law safety mechanisms etc. substantially revise the 1987 Constitution. There is a difference between the two processes.

According to Retired Justice Isagani Cruz (Constitutional Law)³:

Amendment means isolated or piecemeal change only, as distinguished from revision, which is a revamp or rewriting of the whole instrument.

Thus, there was a mere amendment of the Constitution of 1935 when the term of office of the president was changed from six to four years. But there was a revision when the Constitutional Commission of 1986 rewrote the Marcos charter and produced what is now the 1987 Constitution.

³ Isagani Cruz, Constitutional Law (1991 Edition), p. 10

Art. XVII of the 1987 Constitution on “Revision or Amendments” (and even Art. XVII of the House Proposal itself) admits to the difference. Art. XVII in Sections 1 and 2 differentiates the two processes:

Sec. 1 Any amendment to, or revision of, this Constitution may be proposed by:

- (1) The Congress, upon a vote of $\frac{3}{4}$ of all its members; or
- (2) A Constitutional Convention

Sec. 2 Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition ...

While it grants Congress and a Constitutional Convention, in Sec. 1, the powers of both amendment and revision, it merely limits the people’s initiative to ‘amendment’ under Sec. 2. This is logical since, it is practically impossible for the ‘initiative’ to propose many complicated amendments or wholesale revisions through a signature campaign. Only a deliberative body like Congress or a Convention is capable of coming up with a series of amendatory provisions.

Since the House Proposal (and even the CONCOM Proposal) is a revision of the 1987 Constitution, the move of local government officials to amend it via a signature petition under Sec. 2 will not have any legal effect as it is void for being unconstitutional.

It is important that the House Proposal is not ‘mistakenly’ define its proposals as mere ‘amendments’.

(b) Federalism not provided by the Constitution

Art. II, Sec. 25. The State shall ensure the autonomy of local governments OR CLUSTERS THEREOF, towards the establishment of a Federal System of Government.

Art. X, Sec. 1. The existing Autonomous Region of Muslim Mindanao shall continue until the ultimate establishment of a federal system as herein mandated.

Art. X, Sec. 15. There shall be created autonomous regions of Muslim Mindanao and in the Cordilleras ... They shall be CORRESPONDINLY ADJUSTED AND ALIGNED under a Federal System mandated herein.

It seems even those who wrongly support charter change and advocate for a Federal System are being deluded by the proponents of the House Proposal.

Firstly, nowhere in the Constitution proposed by the House is Federalism provided or ‘mandated’. The provisions above are vague general statements (with vague constitutional concepts such as clusters, adjusted and aligned etc) that actually amount to no demandable right for a Federal system. This is not surprising since Speaker De Venecia, who is reported to want to become Prime Minister will not want his powers to be reduced which is what will happen under a Federal structure. Should

Parliament pass a law to establish Federalism, that law would be void as it has no constitutional basis—the Constitution has not granted parliament that power.

Secondly, should parliament pass a law, the Federal System will result in confusion and political crisis and instability. Considering that there are no criteria on what should constitute a 'state', the allocation of powers for a 'state', and the functions of a 'state', leaving the design of the Federal System in the hands of parliament will be a major disaster. Traditional politicians who are members of parliament will ensure that their vested (local) interest are factored into the design of a Federal state, gerrymandering will take place and federal fiefdoms will proliferate. .

It must be noted that the House Proposal assured the ARMM's existence until the establishment of the 'federal system', after which, it will be dissolved. The Cordillera Region was not mentioned at all.

It is strongly recommended that the references to 'federalism' under the House Proposal be deleted. It is being falsely used as the main reason for the 'no-election' scenario among local officials (false, because there is no transition period to federalism among LGUs under the House Proposal). More importantly, Federalism will merely intensify poverty and exploitative and repressive political-economic relations in the autonomous 'states', and is not the solution to the problems that plague the country. Such vague references to federalism in the House Proposal will only lead to a constitutional crisis if Parliament attempts to establish it by law.

(c) Art. II, Sec. 15 conflicts with Art. VII-A, Article 12 on the grounds for suspension of the privilege of the Writ

While under Art. II, Sec. 5 the basis for suspension of the writ is limited to invasion and rebellion, Art. VII A provides for an additional ground.

*Art. II, Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of **invasion or rebellion** when public safety requires it.*

On the other hand, Art. VII-A, Sec. 12 provides that the writ may be suspended "*in cases of invasion or rebellion **or imminent danger** thereof.*"

The grant of additional powers to the executive in Art. VII-A, absolutely conflicts with the Bill of Rights in Art. II which will surely result in a constitutional crisis.

(d) Art. III, Sec. 19 provides that "neither shall death penalty be imposed" unless the "*parliament shall provide for it*".

Is it safe to presume that should the House Proposal be ratified, no death penalty will be imposed, until parliament provides otherwise ?

(d) Age and residency Qualification of the Prime Minister is less stringent than all other public officials.

The Prime Minister, who must come from Parliament and is the highest public official in a parliamentary system, is essentially required to be at least 25 years old and

must have resided in the Philippines for at least one year in order to become prime minister.

On the other hand the President must be at least fifty years old and a Philippine resident of 10 years. Other appointive public officials are required to be at least 40 years old. It seems absurd why the proposed Constitution will impose stringent qualification requirements on others officials but not on the Prime Minister who is the head of the entire government.

(e) The Prime Minister has the power to appoint and remove a member of the Cabinet, but the President is the one empowered to accept their resignation.

Under Art. VII, Section 6 (4) the President has the duty and function to *'accept the resignation of the Cabinet, as provided herein [sic]'*.

(f) A non-existent "Justice Secretary" sits in the Judicial Bar Council under Art. VIII, Sec 8.

There is no position as Justice Secretary in a parliamentary system.

Additionally, under the 1987 Constitution only **one** representative from the Bicameral Congress sits in the JBC. It is unclear why, now that it is unicameral, the House Proposal increased the representation to **TWO**.

(g) Art. XVIII, Sec.6 provides for that "law" may revise the jurisdiction of all courts, which includes the Supreme Court. The Jurisdiction of the Supreme Court cannot be provided by law, only by the Constitution.

(h) There is no express provision in the House Proposal on when the proposed revision of the Constitution takes effect.

(i) Art. VII-A, Sec. 14 provides for vague concepts with regards pardon and amnesty.

Sec. 14. The Prime Minister may, ...grant reprieves, commutations, and pardons,... after final conviction, and with the concurrence of the parliament, grant amnesty.

"Final conviction" is a vague term. The 1987 Constitution uses the more accurate *'after conviction by a final judgment'*. The House Proposal does not provide the vote requirement necessary to concur with an amnesty proclamation. Under the 1987 Constitution a 'majority' vote is required.

(j) Art. XII, Section 20 seems to propose that we change the name of the current 'Bangko Sentral ng Pilipinas' to "Central Bank".

(k) Art. XII Sec. 2 may conflict with the third paragraph of the same section on exclusive use by Filipino citizens.

The 5th paragraph of the same Section is now out of place with the grant of rights to foreigners.

(I) Vague qualification for Party-List candidates

Art. VI, Sec. 4 of the House Proposal which states that “no person shall be a member of parliament unless he is a natural born citizen... a registered voter in the district in which he shall be elected, and a resident thereof for a period not less than one year immediately preceding the day of the election, except those under the party list”, does not clarify which of the qualifications do not apply to the party list..