

13 December 2005

Her Excellency
Gloria Macapagal Arroyo
Malacañang Palace
Manila

Dear Madam President:

We, the undersigned members of the Consultative Commission, wish to express our serious reservations about the adoption by the Commission's majority of the recommendation that the country should now shift from our present presidential form of government to a parliamentary form, and from the present unitary structure of our Republic to an eventual federal structure.

We are of the considered opinion that the positions taken by the Commission's majority on these issues are based on deeply flawed and faulty arguments. We are also of the opinion that the system of 'consultations', as conducted, did not allow for an adequate airing of the relevant issues and that the results being reported by the Commission cannot therefore reflect the informed opinions of those 'consulted'. Moreover, we feel that the Commission's interpretation of the results of said 'consultations' is highly questionable.

Obviously, changing the nation's Constitution is not a trivial matter. We believe that any proposed amendments to the nation's Constitution should be logical and reasonable responses to specific concerns and/or systemic deficiencies. We believe that any proposed changes must be firmly anchored on a logical and reasonable belief that these will accelerate the pace of economic development, improve the standard of living of the Filipino people, and promote the general good.

Further, we believe that any attempt at constitutional reform must be based on a full understanding of the real problems that such reform should – and can – solve, and that such understanding requires a genuine consultation with as many sectors of Filipino society as possible. We believe that, in such an attempt, an honest and serious effort to solicit and hear the opinions and sentiments of all interested Filipinos should be made. We do not believe that such an effort was made.

For the record, we summarize below our major objections to the proposed shift to a parliamentary form of government. We bring these up here because these very serious objections were never fully dealt with – and were even cavalierly brushed aside – by the proponents of the parliamentary form.

- 1) The fusion of the executive and legislative branches of government in a single body – Parliament – concentrates too much power in the hands of politicians. The power of the Prime Minister and his ruling coalition in a parliamentary government to decide on projects, appropriate the funds needed for these projects, and then implement these projects effectively gives them discretion over the entire national budget (except of course for debt servicing and other fixed expenditures), and there are few checks to control possible abuse. The so-called ‘internal checks’ that might originate from the opposition parties in Parliament are believed inadequate and probably work only in theory, particularly in the Philippine situation where party affiliations are rarely based on hard principle and politicians often belong to the same social circle. Even in countries with mature parliamentary systems, abuse of the enormous power vested in parliamentary governments is actually fairly common. Cronyism tends to flower in a parliamentary environment.
- 2) The inherent instability in the tenure of the Prime Minister and his utter dependence on the votes of the other members of Parliament for his stay in office from one day to the next enshrines ‘horse trading’ and ‘transactional’ decision-making as the parliamentary way of governance. The ability to change leaders frequently and at any time is not a virtue (as proponents of the parliamentary form claim), but a very serious shortcoming. Because a parliamentary government can fall any time a sufficient number of members of Parliament withdraw their support from the ruling coalition, the Prime Minister and his ruling gang are forever hostage to the demands of every member of Parliament. Thus, the decisions that can be expected to be made by a parliamentary government will usually cater to special interests and will often be short-term in orientation and probably inconsistent with other decisions. And, because members of Parliament are elected by local constituencies, the special interests they will promote will rarely be expected to be congruent with the larger national interest.
- 3) It is not true that it is their form of government that makes other countries perform better economically than the Philippines. There is no established connection between form of government and economic performance, or between the parliamentary form and the rate of economic growth. In fact, for every country with a parliamentary government that is racing ahead of us economically, one can cite a country with a presidential system that is doing as well or better. Here in Asia, for example, Malaysia and Thailand, which have parliamentary governments, are growing faster than we are, but so are South Korea and Taiwan, and they have presidential governments. (China and Vietnam, both economic racehorses, are not even democracies.) The economic performance of a country is a function of its economic policies, resource endowments, and certain environmental conditions, *not* its form of government. In fact, in a parliamentary system, it is much more difficult for government to adhere to economic policies that are right for the country as a whole because such are often in conflict with the special interests typically

represented by members of parliament. Of course, all politicians represent special interests. This problem, however, is compounded in a parliamentary system because the fusion of executive and legislative power in the parliamentary form simply puts too much power in the hands of politicians.

- 4) Given that even those who advocate the parliamentary form concede that political and economic power in this country is too concentrated (in less than 1% of the population), the obvious appropriate response should be to adopt ways that disperse power, not ways that concentrate it further. Thus, a shift to a parliamentary system is a totally inappropriate reaction to the country's present political and economic realities because it concentrates power even more, instead of spreading and diminishing it. Moreover, it allows such concentrated power to be wielded more easily and more effectively than is possible in a presidential system where the executive and legislative branches remain separate.
- 5) A statistic often cited by pro-parliamentary advocates is that there are more parliamentary governments than there are presidential ones. If that is intended to be an argument, it is an irrelevant one unless one first establishes the premises that, one, parliamentary governments are more successful than presidential ones, and, two, that such successes are the result of the parliamentary form. Neither of these statements can be supported. That there are more parliamentary governments than presidential ones is simply the result of Great Britain having had more colonies than anyone else.
- 6) The huge expenditure required of a presidential candidate in a national election is said to be a major reason why there is so much graft and corruption in government. It is then argued by proponents of the parliamentary form that, because elections in a parliamentary system are local ones and the expenditures required of candidates are much less, the subsequent need to 'recover' campaign expenditures through graft and corruption is also less. The whole argument is simplistic. Graft and corruption happens because of a mix of many factors including poverty, greed, a cultural predilection for 'arreglo', the availability of opportunity, and weak monitoring systems and law enforcement. The more important point, however, is that solutions to this problem do not require a change in the form of government. Electoral reform that includes campaign expense subsidies and judicial reform that makes catching grafters and administering justice more effective are means that are not dependent on the form of government. Besides, elections in a parliamentary system for someone who desires to be Prime Minister may not turn out to cost much less (and might even cost more) than running nationally in a presidential election. It should be borne in mind that candidates for Prime Minister may reasonably be expected to substantially finance the campaigns of the district candidates who he expects will vote for him and form part of his coalition in Parliament. In addition, the need for a Prime Minister to retain his support means continuing expenses in terms of projects and business favors.

- 7) It is not true – as proponents of the parliamentary form like to claim – that the ‘legislative gridlock’ built into the presidential system is the reason why this country has not been able to keep economic pace with its high-performing neighbors. This argument simply cannot be supported by historical fact. There was no legislative gridlock at all during the Marcos years and yet it was during this period that the Philippines fell behind its neighbors in economic performance. There was hardly any legislative gridlock during the Aquino years and the Philippines fell even farther behind. The Philippines’ failure to keep pace with its neighbors has been a consequence of protectionist economic policies, peace and order problems, and too much government regulation and bureaucracy. ‘Legislative gridlock’ is actually a special and recent problem.

- 8) Governance is an acquired skill and doing it well requires climbing up a learning curve. All nations making the transition from tribal or autocratic systems of government to representative democracy must navigate this learning curve, whether they are led by their respective histories down the presidential path or down the parliamentary path. Filipinos have been negotiating the learning curve of a presidential system for the past one hundred years or so and, as a result, have acquired considerable familiarity and experience with its nuances, its strengths, and its weaknesses. In fact, because of this experience, most Filipinos already have strong opinions on what features of this system of government need modification or correction. This will not be the case with a parliamentary system. In shifting to it, Filipinos must begin again at the bottom of the learning curve. That is, of course, justifiable if there are compelling reasons and clear benefits for making the shift. In this case, however, no clear benefits to the nation as a whole can be demonstrated by those who propose our adoption of a parliamentary government. And the reasons are apparently compelling only to a few.

With respect to changing from a unitary structure to an eventual federal structure, our main objections are also enumerated below. Likewise, the advocates of the federal structure have been unable to respond adequately to these objections.

- 1) The devolution of power to local governments can be accomplished without resorting to ‘federalization’. What local government officials repeatedly say they want are the power to deal with local issues and local projects at the local level (without having to get approval from ‘Imperial Manila’) and the automatic release to them of their shares of national tax revenue. But local autonomy is already provided within the framework of the existing Constitution and this includes the power to impose local taxes that accrue exclusively to the local government units, the entitlement to a fair share in the utilization of natural resources within their areas, and the automatic release to local units of a

just share in national tax revenues. Any problems and shortcomings particularly with respect to the size of the share of local governments in national tax revenues or in the benefits derived from the exploitation of natural resources within their boundaries, or in the release of these shares to them by the national government can be addressed by simple legislation and administrative fiat. There is absolutely no need for the creation of another territorial and political subdivision – the independent federal State made up of a group of provinces – in order to address those issues.

- 2) The aforementioned creation of new territorial and political subdivisions in the country will be (in the words of one commissioner) an ‘administrative and fiscal nightmare’. The introduction of a whole new layer of government (the federal State’s) will increase complexity, bloat the bureaucracy, and increase spending on government. (Each federal state will have a separate state government, a separate state legislature, and a separate state judiciary.) This means more government rather than less, and we object to this on ideological grounds. The additional autonomy that federal states might gain over that which the existing provinces, cities, and municipalities could have under an enhanced local autonomy code is of dubious benefit. It is not worth the additional problems and expenditures that ‘federalizing’ will entail.
- 3) Most of the proposed new political instrumentalities will not be financially viable, at least for many many years. In a federal setup where each state is presumably on its own, conflicts may therefore arise because the few affluent states could balk at transferring significant amounts of their resources to the many marginal ones. If this is not managed properly, the country’s problem of uneven area development could very well intensify.
- 4) Another area of potential conflict is how the servicing of our large foreign debt will be allocated among the various individual states. Clearly, the few revenue-rich ones will be forced to bear a far larger burden than the many revenue-deficient ones and this could be a continuously contentious issue. Should these revenue-rich states start refusing what they may perceive as an unfair burden, it could very well jeopardize the country’s ability to meet its international debt obligations and this could have catastrophic consequences. This sharing of the foreign debt burden is actually a dangerous problem which might even trigger talk of secession.
- 5) The above issue will also arise with respect to the sharing of the expenses of the central government including the maintenance of the armed forces, the national police, Congress, etc. Invariably, revenue-

rich states will be forced to bear a proportionately larger share of the burden and they may eventually feel that this is unfair and begin to insist on a more even distribution. Again, this can be a source of dangerous conflict.

- 6) Almost all existing federal republics in the world are made up of previously independent states that decided to band together in order to share the expenses of government and of national defense and security, to supplement each other's resources, and to build larger, more viable markets. Even today, the move toward the consolidation of small units into larger groupings (e.g., the European Union) continues for the purpose of sharing resources, enlarging markets, and increasing global competitiveness. In contrast, the proposed 'federalization' of the Philippine Republic is aimed at artificially forcing the break-up of an already small unitary unit into even smaller units. This hardly makes economic sense.
- 7) The 'federalization' of the country could reverse any progress already made toward inculcating in every Filipino the idea of being part of one Filipino nation and one Filipino community. Instead of promoting the idea that we are one people, dividing up the country into groupings most likely based on common or similar dialects could very well return us to tribal modes of thinking. This could be fatal to any attempt to engage the whole nation in concerted efforts to achieve 'national' purposes. 'Federalization' could very easily lead to the eventual break-up of the Filipino nation.

For the reasons cited above, we wish to express our sincere conviction that the constitutional changes that will be presented to the Filipino people by the Commission – and perhaps subsequently by Congress – will not be beneficial to the nation as a whole and will only aggravate the problems the country now faces. We are concerned that the Filipino people are about to be stampeded into an action – ratification – that they will not have had time to contemplate and consider fully.

We would like to emphasize that we are not against constitutional change and we believe that several changes are necessary to address real problems. We believe however that such changes must be the right changes. The often-heard statement that 'the presidential system has failed us, therefore we must change to a parliamentary system' betrays a very superficial and shallow kind of thinking. Making the wrong analysis and settling on the wrong choice of changes will only make our situation worse than it already is. We believe that shifting to a parliamentary form of government and to a federal structure are precisely the wrong kind of changes.

In the light of the foregoing and in the light of our own individual objections to the conclusions and recommendations approved by the majority in the Commission, we regret that we are unable to sign and endorse the Commission's Final Report.

In lieu of this, we are submitting to your office a working draft – with annotations – of an amended Constitution that we feel better represents the kind of change that we would like the Filipino people to consider. What we propose is to retain our existing presidential form of government with a unitary structure, but with some modifications. These modifications include limitations in the prerogatives of public officials, electoral reforms, additional modes of removing or recalling elected officials, reforms in the Judiciary to make the administration of justice more effective, a more powerful Ombudsman (reconstituted as an Anti-Corruption Commission), clearer definitions of peoples' rights, enhanced local autonomy, and economic reforms.

On the matter of economic reforms, we strongly support the liberalization of the economy and the removal of citizenship restrictions on the exploitation of natural resources, the operation of public utilities, and the ownership of mass media, advertising companies, and educational institutions. We also support the lifting of the restrictions on foreigners owning land. In general, we support provisions that are consistent with an open economy, free competition, and minimum regulation.

The attached working draft provides, we believe, logical and appropriate responses to certain problems that have been identified as plaguing Filipino society (at least insofar as a Constitution is capable of addressing such problems). We would like to emphasize, however, that it is offered here *not as a final product*, but as a starting point for discussion by all interested Filipinos. For this purpose, we will make this working draft available to all interested entities, civic and professional groups, schools, and media outfits, so that anyone interested can review it and make comments and suggestions.

This submission is our collective contribution to the “great debate” on charter change. We hope that you will find it enlightening and useful.

In closing, please accept our sincere thanks for having given us all the opportunity to be part of this significant development in our nation's history.

Very truly yours,

ANTHONY Y. ACEVEDO

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CONSULTATIVE COMMISSION
TO PROPOSE REVISIONS TO THE 1987 CONSTITUTION

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CC: Senate President Franklin M. Drilon
Speaker Jose C. de Venecia Jr.

RBA: 13dec2005

Minority Group Report – Working Draft of Revised Philippine Constitution

Proposed Revision of the 1987 PHILIPPINE CONSTITUTION

MAIN FEATURES OF WORKING DRAFT:

- 1) The presidential form is maintained, and the executive branch of government remains separate from the legislative branch (Congress).**
- 2) As it is at present, the President and the Vice President will be elected nationally for a term of six years. The President cannot be reelected.**
- 3) The qualifications required of a candidate for the position of President or Vice President shall now include a tertiary educational degree and public service experience of at least one full term as Governor of a province or as a member of Congress, or at least three years as a senior official (Bureau/Agency head or higher) in the executive branch of government.**
- 4) The existing two chambers of Congress are fused into a single chamber. Congress will be made up of Regional Representatives elected by region and District Representatives elected by legislative district. There will be two Regional Representative per region and one District Representative per legislative district (set at a ratio of 1 for every 250,000 population, no limit on number).**
- 5) The qualifications required of a candidate for the position of member of Congress shall now include a tertiary educational degree.**
- 6) The Speaker and Deputy Speaker of Congress and the Chairmen of all standing Committees of Congress will be chosen only from the Regional Representatives.**
- 7) The terms of the members of Congress shall be three years. There shall be no term limits for the members of Congress.**
- 8) Elective office, except that of the President and Vice President, will be open to all citizens (not just natural-born ones).**
- 9) The present Supreme Court will be broken up into two: a new Constitutional Court (7 members) and a Supreme Court (9 members). The Constitutional Court will have jurisdiction over constitutional issues, conflicts between government units, and impeachment cases against elected officials. The Supreme Court will remain the highest court for resolving private legal issues. Both Courts will sit only *en banc*.**

- 10) **The administrative supervision over the lower courts that is now being performed by the Supreme Court will be transferred to the Judicial and Bar Council which will be reconstituted as a new Judicial Commission. This is done to free the Supreme Court and allow it to concentrate on its adjudication functions.**
- 11) **The Commission on Human Rights is reconstituted with additional powers as a new Constitutional Commission called the Rights Enforcement Commission.**
- 12) **The Office of the Ombudsman is reconstituted with additional powers as a new Constitutional Commission called the Corruption Commission.**
- 13) **The power of the President to appoint officers in the Armed Forces is limited to the positions of Chief of Staff and the Major Service Commanders.**
- 14) **Additional restrictions are placed on appropriating and disbursing discretionary funds.**
- 15) **The fundamental rights of citizens are strengthened.**
- 16) **The old Regalian doctrine under which the State owns natural resources is replaced with a doctrine of State stewardship.**
- 17) **Free enterprise, open market competition, and private initiative are enshrined as principles of national economic policy.**
- 18) **All citizenship restrictions for the ownership of alienable land, the exploitation of natural resources, the operation of public utilities, the ownership of mass media, advertising companies, and educational institutions, and the practice of professions are removed.**
- 19) **The unitary (meaning, not federal) structure of the Republic is retained, but local autonomy is enhanced.**
- 20) **There will be additional modes of removing public officials: by judicial impeachment through a case filed in the Constitutional Court and through recall elections upon petition by 12% of voters who voted in the last general election in the subject area (the whole country in the case of the President).**

(Enclosure: Complete Working Draft)