

# Testing Constitutional Waters: Balancing State Power, Economic Development and Respect for Human Rights

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## I. INTRODUCTION

As a developing nation, the Philippines is seriously confronted with meeting the economic demands of a politically divided society. The current government of President Gloria Macapagal-Arroyo has in fact undertaken steps to pursue accelerated economic development during her term. However, the recent spate of political events and internal armed conflicts have contributed to the fragility of the institutions of government, highlighted by the continuing threat by a coalition of opposition groups to realize a change in the Presidency either through constitutional means<sup>1</sup> or by force.<sup>2</sup>

Meanwhile, Chief Justice Artemio V. Panganiban's policy statement on liberty and prosperity is highly instructive in light of the Arroyo government's economic thrust. The new Chief Justice outlined his judicial philosophy as follows:

These twin visions of a reformed judiciary and a revitalized legal profession should ultimately achieve the two lofty goals of safeguarding the liberty and nurturing the prosperity of our people, under the rule of law... In

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1. *Opposition files an impeachment complaint*, [http://www.manilastandardtoday.com/?page=news01\\_june27\\_2006](http://www.manilastandardtoday.com/?page=news01_june27_2006) (last accessed July 1, 2006). (The impeachment complaint was signed by over 300 oppositionists, following an overnight vigil in Congress. It imputes several allegations against the President such as cheating in the 2004 elections, human rights violations and corruption. Several other complaints followed including one filed by Kilusang Makabayang Aktibista and another lodged by student leaders.).
  2. *Reds alarm national security adviser*, [http://www.manilastandardtoday.com/?page=news06\\_jan16\\_2006](http://www.manilastandardtoday.com/?page=news06_jan16_2006) (last accessed July 6, 2006) ([a]ccording to National Security Adviser Norberto Gonzales, the goal of the CPP-NPA is to connive with political groups in overthrowing the government and to be a part of the government that will take over the Arroyo administration.). See *Joma offer confirms NPA-Magdalo alliance*, [http://www.manilastandardtoday.com/?page=politics04\\_feb28\\_2006](http://www.manilastandardtoday.com/?page=politics04_feb28_2006) (last accessed July 6, 2006).

controversies involving liberty, the scales of justice should weigh heavily against the government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak. However, in conflicts affecting policies on prosperity and economic development, doubts must be resolved in favor of the political branches of government: namely, the Presidency and Congress... While political liberty, the clarion call of the past, must be continuously safeguarded, the prosperity of our people requires as much nurturing in the 21<sup>st</sup> century as that accorded to liberty in the past. To be relevant, courts must be constantly attuned to the needs of the present and the future, so that they can respond timely and prudently to the people's ever-expanding well-being.<sup>3</sup>

This paper aims to examine the interplay between the exercise of state power and economic development, including its implications on human rights. In other jurisdictions, state power has been exercised to emphasize pursuit of economic development but apparently to the sacrifice of other fundamental rights. The Supreme Court is mandated to ensure that the exercise of state power by the Executive or Congress shall not infringe upon fundamental liberties of the citizens.

The power of judicial review under the 1987 Constitution has often been viewed as having been expanded by the second paragraph of Article 8 of the same, which states:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.<sup>4</sup>

With the new judicial philosophy being propounded, is it reasonable to assume that the thrust of economic development by the Executive Branch may be pursued consistently with human rights standards in the face of political obstacles confronting the government?

The present writers will argue that the current government will best serve the interest of the Filipino people in the long run by walking the tight rope of balancing economic development with human rights protection. With the attempt at radical economic reforms through charter change, respect for the people's sovereign is likely to be tested once more before the Supreme Court. The double standard of judicial review<sup>5</sup> which distinguishes

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3. Chief Justice Artemio V. Panganiban, *Liberty and Prosperity*, at <http://www.supremecourt.gov.ph/vision-mission.php> (last accessed July 1, 2006).

4. PHIL. CONST. art. VIII, § 1.

5. Vicente V. Mendoza, *The Nature and Function of Judicial Review*, 31 (1) *Journal of the Integrated Bar of the Philippines* 22 (2005).

between civil and political rights, on one hand, and social and economic rights, on the other hand, as regards the extent of scrutiny by the courts, may yet face re-examination when applied to cases which are political in character but with serious economic and human rights implications.

## II. THE PRESIDENTIAL GOAL

### *A. Economic Condition*

The Philippine economy has consistently experienced a pattern of limited growth spurts followed by a deceleration in development. For instance, in the years 1976-1977, 1988-1989 and 1996-1997, the Philippine economy reached its peak only to take a plunge and start another growth cycle.<sup>6</sup>

In 2004, an economic study showed the economy's resilience to adverse conditions within the region and even in the domestic setting. The Philippines' Gross Domestic Product (GDP) grew by 6.5 percent in the first three quarters of the year despite the uncertainties brought by the elections and civil unrest.<sup>7</sup> However, this modest development is not sufficient to outweigh the country's unemployment problem which even increased to 17.6 percent in July 2004.<sup>8</sup> Mounting public debt obligations and the volatile condition of foreign direct investments dropped from \$1.8 billion in 2002 to \$310 million in 2003.<sup>9</sup>

### *B. Ten-Point Agenda and the Medium Term Development Plan*

President Gloria Macapagal-Arroyo, an economist and newly re-elected in the 2004 elections, understood the weight of the economic challenge before her. She identified that budget deficit was the most pressing problem of the country and articulated how closing the government's eyes on the matter can kill the economy and how chronic deficit leaves very limited resources for infrastructure investments crucial to job creation.<sup>10</sup>

This is the reason why at the onset of her second term, the President laid down a ten-point agenda she called her legacy. In her address, she

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6. Germilino M. Bautista, *An Assessment of the Philippine Economy*, at [http://www.kyotoreview.cseas.kyoto-u.ac.jp/issue/issue3/article\\_313.doc](http://www.kyotoreview.cseas.kyoto-u.ac.jp/issue/issue3/article_313.doc) (last accessed May 30, 2006).
  7. Country Economic Review: Philippines, Asian Development Bank, at <http://adb.org/Documents/CERs/PHI/2004/default.asp> (last accessed May 28, 2006).
  8. *Id.*
  9. *Id.*
  10. Gloria Macapagal-Arroyo, Address at the State of the Nation Address (July 26, 2004) [hereinafter Arroyo, SONA 2004].

acknowledged her key responsibility of “leaving [the nation] better than when she took it in hand.”<sup>11</sup> Thus, she targeted that at the end of her term in 2010, six million jobs would have been created by tripling the amount of loans given to small and medium enterprises through the development of land for agricultural purposes. She also emphasized her goal of balancing the budget by collecting the right revenues and spending wisely. The plan also included the decentralization of progress around the nation “with economic activity growing and spreading to new centers of government, business and community in Luzon, Visayas and Mindanao,” and the development of the Subic-Clark corridor “as the most competitive international service and logistic center in the Southeast Asian Region.” Her goals were sealed with a pledge of doing “everything necessary to expand the economy, engage it deeper in the world of commerce and advance the interests of our country and our people the world over.”<sup>12</sup>

Aside from the ten-point agenda, the Arroyo administration has formulated a Medium Term Development Plan, a detailed strategy to reduce poverty through job creation and business ventures.<sup>13</sup> Among its targets are for exports to exceed \$50 billion by 2006 and for poverty incidence to be reduced to below 20 percent by 2009. In the words of the President herself—

The basic task of the Medium Term Philippine Development Plan for the period 2004-2010 is to fight poverty and build prosperity for the greatest number of the Filipino people. We must open up economic opportunities, maintain socio-political stability, and promote good stewardship—all to ensure a better quality of life for all our citizens. We will focus on strategic measures and activities that will spur economic growth and create jobs. This can only be done with a common purpose to put our economic house back in working order.<sup>14</sup>

### *C. Challenges to Economic Growth*

Alongside the administration’s duty of uplifting the economy of the country, it is also confronted with the burden of keeping its own integrity afloat. The past two years of the Arroyo Presidency has been marred by various issues ranging from the legality of her victory, the wire-tapping controversy, and certain unpopular policies.

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11. Gloria Macapagal-Arroyo, Address at the 2004 Inauguration (June 30, 2004).

12. *Id.*

13. Medium Term Development Plan 2004-2010, at <http://www.news.ops.gov.ph/mtpdp2004-2010.htm> (last accessed May 14, 2006).

14. Gloria Macapagal-Arroyo on the Basic Task of the Medium Term Development Plan, at <http://www.news.ops.gov.ph/mtpdp2004-2010.htm> (last accessed May 14, 2006).

But the government's decisiveness in achieving economic prosperity remains steadfast in the other statements made by the President in different fora. She has made a stark contrast between the "Philippines that works: strong, growing, efficient, and providing economic opportunity," and "the Philippines whose political system drags down the economic take-off and make millions lose hope."<sup>15</sup>

In a speech before Filipino businessmen, the President addressed her detractors to "stop opposing the progress of the nation... to stop undermining our relations with the United States and other allies." She referred to the workings of destabilizers as "besmirching the name of our people and our nation at a time when we are gaining momentum economically."<sup>16</sup> In the same vein, in a speech she delivered before the Oriental Mindoro Investment Summit,<sup>17</sup> an event she referred to as a "boost to economic activity," the President acclaimed the various investments being made in the province and at the same time reminded everyone "to move the nation forward, rather than jamming the gears of the nation into reverse."<sup>18</sup>

The President's proposed solution to combat the economic challenges faced by the country revolves on "toughness on the part of the government, cooperation on the part of business, patience on the part of the people, and active support on the part of the Congress."<sup>19</sup> By making tough choices, the President hopes to push for her reforms. It is in pursuance of this determination that four policies were created by the government, all of which faced fierce opposition from different sectors. The following discussion will tackle four important Supreme Court decisions on these policies.

### III. EXECUTIVE POWER AND RESPECT FOR HUMAN RIGHTS

#### A. Executive Order No. 420

Executive Order No. 420<sup>20</sup> was issued by the President on 13 April 2005 requiring all government agencies and government-owned and controlled

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15. Gloria Macapagal-Arroyo, Address at the 31<sup>st</sup> Philippine Business Conference and Exposition (Oct. 13, 2005).

16. *Id.*

17. Gloria Macapagal-Arroyo, Address at the Oriental Mindoro Investment Summit (Apr. 6, 2006).

18. *Id.*

19. Arroyo, SONA 2004, *supra* note 10.

20. Requiring All Government Agencies and Government-Owned and Controlled Corporations to Streamline and Harmonize their Identification (ID) Systems, and Authorizing for Such Purpose the Director-General, National Economic

corporations to adopt a unified multi-purpose ID system,<sup>21</sup> uniform data collection<sup>22</sup> and format for their existing identification systems.

The economic development purpose of the issuance is emphasized in the two whereas clauses, namely:

WHEREAS, there is urgent need to streamline and integrate the processes and issuance of identification cards in government to reduce costs and to provide greater convenience for those transacting business with government.

WHEREAS, a unified identification system will facilitate private businesses, enhance the integrity and reliability of government-issued identification cards in private transactions, and prevent violation of laws involving false names and identities.<sup>23</sup>

*Kilusang Mayo Uno, et al. v. The Director General, et al.*<sup>24</sup> stemmed from the alleged unconstitutionality of E.O. 420 as usurpation of legislative power by the President and its infringement on the people's right to privacy.

The Court found the petitions unmeritorious. Firstly, it reasoned out that under the 1987 Constitution, the "President shall have control of all executive departments, bureaus and offices."<sup>25</sup> Directing government offices to adopt a unified ID system for greater efficiency of government services and transactions as well as convenience on the part of the public falls under the power of control of the President.<sup>26</sup>

Unlike the case of *Ople v. Torres*,<sup>27</sup> wherein the "National Computerized Identification Reference System" was struck down for the lack of proper safeguards in the utilization of the data obtained, E.O. 420 was upheld as constitutional because it "narrowly limits the data that can be collected, recorded and shown compared to the existing ID systems of the government entities." The safeguards provided by E.O. 420 also assure the confidentiality of restricted data to be collected.

#### *B. Executive Order No. 464*

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and Development Authority to Implement the Same, and for Other Purposes, Executive Order No. 420 [E.O. 420] (2005).

21. *Id.* § 1.

22. *Id.* § 3.

23. E.O. 420, 3rd and 4th Whereas Clauses.

24. *Kilusang Mayo Uno, et al. v. The Director General, et al.*, G.R. No. 167789, Apr. 19, 2006.

25. PHIL. CONST. art. VII, § 17.

26. *Kilusang Mayo Uno, et al.*, G.R. No. 167789.

27. *Ople v. Torres*, 293 SCRA 140 (1998).

In the midst of several invitations to various executive officials to appear as resource speakers in public hearings in the Senate regarding, among others, the flagship economic development railway project of the North Luzon Railways Corporation (North Rail Project) and the Fertilizer Fund Scam, in addition to AFP officials who were invited principally in connection with the issues hounding the President, such as the wire-tapping controversy, Executive Order 464<sup>28</sup> was issued providing:

Appearance by Heads of Departments Before Congress—In accordance with Article VI, Section 22 of the Constitution and to implement the Constitutional provisions on the separation of powers between co-equal branches of the government, all the heads of departments of the Executive Branch of the government shall secure the consent of the President prior to appearing before either House of Congress.

When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.<sup>29</sup>

Aside from requiring the President's consent, the order also provides that executive privilege shall cover "all confidential or classified information between the President and the public officers covered by this executive order," and proceeds to enumerate matters and persons covered by the privilege.<sup>30</sup>

The issuance was challenged in the case of *Senate of the Philippines, et al. v. Eduardo Ermita, et al.*<sup>31</sup> principally on the basis that the said executive order undermines the inquisitorial function of Congress and violates the right of people to information on matters concerning the public.<sup>32</sup>

It is also of interest to note the right enshrined in the Constitution stating:

The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.<sup>33</sup>

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28. Ensuring Observance of the Principle of Separation of Powers, Adherence to the Rule on Executive Privilege and Respect for the Rights of Public Officials Appearing in Legislative Inquiries In Aid of Legislation Under the Constitution, and for Other Purposes, Executive Order No. 464 [E.O. 464] (2005).

29. *Id.* § 1.

30. *Id.* § 2(a).

31. *Senate of the Philippines, et al. v. Eduardo Ermita, et al.*, G.R. No. 169777, Apr. 20, 2006.

32. *Id.*

33. PHIL. CONST. art. XIII, § 16.



The Court differentiated Congress' power of inquiry and the question hour in deciding the constitutionality of E.O. 464.

Section 21 of Article VI of the Constitution refers to inquiry in aid of legislation. It has been earlier ruled by the Court that this power is "essential and appropriate auxiliary to the legislative function."<sup>34</sup> The need to obtain information in aid of legislation gives Congress the power to compel disclosure thereof.<sup>35</sup>

The question hour on the other hand is enshrined in Section 22 of Article VI of the Constitution. The provision states that:

The heads of the department, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments...<sup>36</sup>

The distinction between the two processes lies in Congress' power to compel attendance. The Court stated that "When the inquiry in which Congress requires their appearance is 'in aid of legislation,' under Section 21, the appearance is mandatory..." because of the necessity of the information sought to be obtained in legislative functions.<sup>37</sup> But when Congress' purpose is only to "be informed on how department heads are implementing the statutes which it has issued, its rights to such information is not as imperative as that of the President... in keeping with the separation of powers... Congress may only request their appearance."<sup>38</sup>

In view of the fact that Section 1 of E.O. 464 makes specific reference to Section 22 of Article VI of the Constitution, its application or securing the consent of the President must be limited only to appearances in the question hour and does not extend to inquiries in aid of legislation.

On the claim of executive privilege, the Court resolved that it is not sufficient to simply declare that a certain matter is privileged. Without any assertion of a particular basis for the claim, it cannot be assumed that it falls under the traditional privileges or whether under the circumstances, it may be granted.<sup>39</sup> It cannot be implied. Sections 2(b) and 3 of E.O. 464 were invalidated for the lack of precise reasons for the claim of executive privilege.

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34. *Arnault v. Nazareno*, 87 Phil. 29 (1950).

35. *Id.* at 45.

36. PHIL. CONST. art. VI, § 22.

37. *Senate of the Philippines, et al. v. Eduardo Ermita, et al.*, G.R. No. 169777, Apr. 20, 2006.

38. *Id.*

39. *Id.*

*C. Batas Pambansa Blg. 880 and Calibrated Preemptive Response*

In 21 September 2005, Executive Secretary Eduardo Ermita made a statement in a press release, setting forth the policy of Calibrated Preemptive Response (CPR).<sup>40</sup> Specifically, the policy mandated the police to strictly enforce a “no permit, no rally policy” and authorized them to disperse groups and take into custody persons who breach this standard. The policy was made in the midst of different demonstrations especially in the business district of Makati. Intelligence reports on the threat posed by anti-government groups to start political chaos and to persuade people to go against the government was given as a justification for the policy.<sup>41</sup> It states:

The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand while those with ill intent are herding a witting or unwitting mass of people and inciting them to actions that are inimical to public order, and the peace of mind of the national community.

Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.<sup>42</sup>

CPR and Batas Pambansa Bilang 880<sup>43</sup> requiring a permit for holding rallies, were assailed by several petitioners in *Bayan, et al. v. Eduardo Ermita, et al.*<sup>44</sup> BP Blg. 880 provides:

Permit when required and when not required—A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in a private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.<sup>45</sup>

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40. Statement of Executive Secretary Eduardo Ermita: On unlawful mass actions, at <http://www.news.ops.gov.ph/archives2005/sep21.htm#mass%20actions> (last accessed May 14, 2006).

41. *Id.*

42. *Id.*

43. An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government for Other Purposes, Batas Pambansa Blg. 880 (1985).

44. *Bayan, et al. v. Eduardo Ermita, et al.*, G.R. No. 169838, Apr. 25, 2006.

45. B.P. Blg. 880, § 4.

Petitioners were organizations and individuals who participated in different mass actions which they alleged were “violently dispersed by the police.”<sup>46</sup> Some also alleged that they were injured, arrested and detained in the course of the dispersal. They sought to stop the violent dispersals of rallies under B.P. 880 and the CPR.

The power to deny permits independent of B.P. 880 was emphasized by respondent Manila Mayor Joselito Atienza in that “his denial of permits were under ‘clear and present danger’ rule as there was a clamor to stop rallies that disrupt the economy and to protect lives of other people.”<sup>47</sup>

In deciding the case, the Supreme Court reiterated that “the right to peaceably assemble and petition for redress of grievances is, together with the freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection.”<sup>48</sup> However, the Court also quoted *Primicias v. Fugoso*,<sup>49</sup> in upholding that the right is not unfettered stating that:

[I]t is a well settled principle growing out of the nature of a well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to rights of the community or the society.<sup>50</sup>

In that case, the Court recognized the power of the government to regulate such rights in the exercise of its police power.<sup>51</sup>

B.P. Blg. 880 was upheld as “not an absolute ban of public assemblies but a restriction that simply regulates the time, place and manner of the assemblies.”<sup>52</sup> The case of *Reyes v. Bagatsing*,<sup>53</sup> which gave rise to the assailed law, also supported the decision in upholding the requirements necessary to hold a public assembly.

However, the Court was not as indulgent in considering the policy of CPR. The Court took cognizance of the affidavit of the respondent Eduardo Ermita stating that the policy of the CPR is “in consonance with the legal definition of ‘maximum tolerance’ under Section 3(c) of B.P. Blg. 880, which is the highest degree of restraint that the military, police and other

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46. *Bayan, et al.*, G.R. No. 169838.

47. *Id.*

48. *Id.*

49. *Primicias v. Fugoso*, 80 Phil. 71 (1948).

50. *Id.* at 75.

51. *Id.*

52. *Bayan, et al. v. Eduardo Ermita, et al.*, G.R. No. 169838, Apr. 25, 2006.

53. *Reyes v. Bagatsing*, 125 SCRA 553 (1983).

peacekeeping authorities shall observe during a public assembly or in the dispersal of the same,”<sup>54</sup> and that the use of the term “Calibrated Preemptive Response” was only to “disabuse the minds of the public from the notion that the law enforcers would shirk their responsibility of keeping the peace even when confronted with dangerously threatening behavior.”<sup>55</sup> In view of this, the Court ruled what should be followed is maximum tolerance mandated by B.P. Blg. 880 and that the CPR serves no valid purpose if it purports the same thing. Deviation from what is authorized by the law as maximum tolerance or the highest degree of restraint that peacekeeping authorities should exercise during assemblies is illegal.

*D. Proclamation 1017*

The President issued Proclamation 1017<sup>56</sup> declaring a “state of national emergency” and General Order No. 5<sup>57</sup> calling out the AFP and PNP to carry out necessary and appropriate actions to suppress acts of terrorism and lawless violence in the country. Warrantless arrests were thus made premised on a violation of B.P. Blg. 880 and the crime of inciting to sedition. Rallies were dispersed and a newspaper company’s office was searched without warrant and its materials for publication were seized.<sup>58</sup> The grounds for the issuance of P.P. 1017 were the collusion of leftist and rightist movements with some military officers and the political opposition in planning to unseat or assassinate the President.<sup>59</sup> The threat was seen as a clear and present danger sufficient to make the pronouncement. Furthermore, the Proclamation indicated the impact on the economy as follows:

WHEREAS, this series of actions is hurting the Philippine State—by obstructing governance including hindering the growth of the economy and sabotaging the people’s confidence in government and their faith in the future of this country;

WHEREAS, these actions are adversely affecting the economy;<sup>60</sup>

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54. *Bayan, et al.*, G.R. No. 169838 (citing Respondents’ Consolidated Memorandum).

55. *Id.*

56. Proclamation No. 1017 (Feb. 24, 2004).

57. Directing the Armed Forces of the Philippines in the Face of National Emergency, to Maintain Public Peace, Order and Safety and to Prevent and Suppress Lawless Violence, General Order No. 5 (2006).

58. Senate of the Philippines, et al. v. Eduardo Ermita, et al., G.R. No. 169777 April 20, 2006.

59. Proclamation 1017, 4TH and 5TH Whereas Clauses.

60. *Id.*

Comparable to the case of *Integrated Bar of the Philippines v. Zamora*,<sup>61</sup> the Court upheld in the case of *David, et al. v. Arroyo, et al.*,<sup>62</sup> the calling out powers of the President “whenever it becomes necessary,” as evident from Section 18 of Article VII of the Constitution.<sup>63</sup> As enunciated in the case of *Lansang v. Garcia*,<sup>64</sup> “judicial inquiry can go no further than to satisfy the Court

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61. *Integrated Bar of the Philippines v. Zamora*, 421 SCRA 656 (2004).

62. *David, et al. v. Arroyo, et al.*, G.R. No. 171396, May 3, 2006.

63. The Constitution provides:

The President shall be the 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 or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. 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 the Congress. The Congress, voting jointly, 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, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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

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

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

64. *Lansang v. Garcia*, 42 SCRA 448 (1971).

not that the President's decision is *correct*," but that "the President did not act *arbitrarily*."<sup>65</sup> As it appears from the records of the case, sufficient reports and narration of events gave the President bases to make the proclamation.

However, the Court also stressed the distinction between declaring a state of national emergency and the exercise of emergency powers such as the taking over of privately owned public utilities and businesses imbued with public interest. Section 17, Article XII of the Constitution permitting such takeover in times of national emergency<sup>66</sup> must be construed together with Section 23 of Article VI which provides:

(1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the power to declare the existence of a state of war.

(2) In times of war and other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise such powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.<sup>67</sup>

Section 17, Article XII of the Constitution is "just another facet of the emergency powers generally reposed upon Congress."<sup>68</sup> The President's exercise of such power depends on Congress' delegation of power under Article VI. She may declare a state of national emergency but this is not a blanket authority for her to order the taking over of privately owned public utilities and businesses with public interest.

The Court further held that the warrantless arrests of petitioners, the dispersal of rallies, the imposition of standards on media or any prior restraint on the press and seizure of articles for publication are not authorized by the Constitution, the law and jurisprudence.<sup>69</sup>

#### *E. Exercise of State Power in Pursuit of Economic Development*

Taking the policies collectively, it can be seen that the government has already made its tough choices to push for its economic agenda. CPR came

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65. *Id.* at 480 (emphasis supplied).

66. The Constitution provides:

In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest.

67. PHIL. CONST. art. VI, § 23.

68. David, et al. v. Arroyo, et al., G.R. No. 171396, May 3, 2006.

69. *Id.*

in the light of investors' apprehension in coming over to the Philippines and the complaints of businessmen over how rallies disrupt business.<sup>70</sup> The ID system was intended to reduce costs for the government and to increase efficiency in transactions.<sup>71</sup> P.P. 1017 was issued as a response to the actions against the government that were "hurting the Philippine State—by obstructing governance including hindering the growth of the economy and sabotaging the people's confidence in government and their faith in the future of this country."<sup>72</sup>

In prioritizing its economic program, the implication that the government is sending is that it will remain unwavering in its implementation, no matter what the costs may be and even if it steps into the delineation of what is supposed to be the civil rights of the people such as the right to peaceably assemble.<sup>73</sup> The issue now seems to revolve on the nation's economic interest as against the people's other rights.<sup>74</sup>

The Rapu-Rapu mining controversy is another test to the government's tenacity in relation to economic growth. The fact-finding commission created by the government to investigate the Lafayette tailings spill which allegedly caused harm to the environment, specifically fish kill, has recommended that the Australian mining company's environmental compliance certificate be revoked and for it to cease operations.<sup>75</sup> In its tenth recommendation, the Fact-Finding Commission emphasized the following:

Review the Philippine Mining Act, specifically the provisions on the ownership and management of mining firms and operations, to protect the interest of the Filipino people and the Philippine government. Look to the need for creating an independent Mining Authority that will focus on the mining industry alone in terms of complete and timely monitoring especially on the impact of mining operations to people's health and

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70. Christine Avendano & Tonette Orejas, *Arroyo: Tough gets going*, [http://www.news.inq7.net/nation/index.php?index=1&story\\_id=51064](http://www.news.inq7.net/nation/index.php?index=1&story_id=51064) (last accessed May 20, 2006).

71. E.O. 420, 3rd Whereas Clause.

72. Proclamation 1017, 4th Whereas Clause.

73. PHIL. CONST. art. III, § 4.

74. Emil Jurado, *Assembly, dissent vs. national interest*, [http://www.manilastandardtoday.com/?page=emilJurado\\_sept27\\_2005](http://www.manilastandardtoday.com/?page=emilJurado_sept27_2005) (last accessed May 29, 2006).

75. Judy Quiros & Dennis Jay Santos, *Delicate Balancing Act: Gov't verdict on Lafayette*, [http://www.news.inq7.net/nation/index.php?index=1&story\\_id=77038](http://www.news.inq7.net/nation/index.php?index=1&story_id=77038) (last accessed May 29, 2006).

environment and on the just share that must go to the government and the Filipino people.<sup>76</sup>

The government's response affirmed its commitment to the mining industry in ruling out the repeal of the mining law. With an estimated five to seven billion dollar yearly export revenue,<sup>77</sup> the government declared that the report of the commission will be considered but also stressed that "mining remains a priority area for development."<sup>78</sup>

The pattern evident in the government's policies is not a novel strategy and certainly not confined to the Philippines. Neighbouring Asian countries have been following the same approach to development throughout the years.

#### IV. BALANCING HUMAN RIGHTS AND ECONOMIC DEVELOPMENT: REGIONAL EXPERIENCE

##### A. Malaysia

The Malaysian Charter on Human Rights provides:

The right to holistic development is a basic human right. In order to attain socially equitable and environmentally sustainable development, there must be respect for civil and political rights as well as social, cultural and economic self-determination of all people. People's participation in the development process is essential to ensure that development is socially just and culturally appropriate.<sup>79</sup>

Then Malaysian Prime Minister Datuk Abdullah Haji Badawi expressed the same in the Vienna Conference by saying that, "Malaysia takes a holistic view of human rights. We believe that civil, political, economic, social and cultural rights are indivisible and interdependent."<sup>80</sup> However, the Malaysian government, specifically under Datuk Seri Mahathir Mohamad, adhered to a separate treatment of economic and political rights.

According to Mahathir Mohamad, Malaysia will continue to uphold the principles of democracy "but will avoid practicing democracy in its absolute

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76. *Report on the Mining Operations in Rapu-Rapu Island*, Final Report on the Fact Finding Commission to the President of the Republic of the Philippines, May 19, 2006.

77. Quiros & Santos, *supra* note 75.

78. Statement of Secretary Ignacio R. Bunye: Re Responsible Mining, at <http://www.gov.ph/news/?i=15214> (last accessed May 29, 2006).

79. Malaysian Charter on Human Rights, art. 4, *cited in*, MALAYSIAN HUMAN RIGHTS REPORT 8 (1998).

80. Datuk Abdullah Haji Badawi, Address given at the World Conference on Human Rights, Vienna, Austria (June 14-25, 1993).



sense and that unlimited freedom is dangerous... that in the country's plural society, riots could easily take place if people were free to incite racial feelings, conduct street demonstrations, go on strikes all the time..."<sup>81</sup>

Indeed, Malaysia has seen a rapid increase in its economic development in the recent years. Since 1991, Malaysia's economic prosperity has been following the developmental plan laid down by Mahathir Mohamad in Vision 2020.<sup>82</sup> According to the concept of Rukunegara, "there is a national ideology that ties up the promotion of human rights with economic development."<sup>83</sup> The ideology proposes that at a certain stage of economic development, the government is licensed to encroach upon certain civil or political rights.

For instance, certain projects were embarked on by the Malaysian government without any consultation with the citizens directly affected by them. An example of this is the construction of RM 13.6 billion Bakun hydroelectric dam displacing 10,000 indigenous people in Sarawak.<sup>84</sup>

It is also not unheard of that opposition to the sternness of the Malaysian government is usually suppressed by the police or through the courts.<sup>85</sup> In addition to that, there exist several laws restricting freedom of speech to a vast extent like the Sedition Act of 1969<sup>86</sup> which encompasses a very broad definition of "sedition" and the Internal Security Act of 1960.<sup>87</sup>

### B. Singapore

There was a time when Singapore was confronted by a myriad of problems. There was lack of employment to support its booming population, poor housing programs and limited educational facilities.<sup>88</sup>

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81. Sedfrey M. Candelaria, Lecture at the University of the Philippines Law Center on the Philosophy of Human Rights and the Emerging Perspectives: Western versus the Eastern Concept of Human Rights—The ASEAN Scenario (Dec. 8, 1997) (citing THE NEW STRAIT TIMES, 1 (May 30, 1993)).

82. Malaysia commits itself to be an economically developed country by 2020, alongside other social goals.

83. Candelaria, *supra* note 81.

84. MALAYSIAN HUMAN RIGHTS REPORT 13 (1998).

85. *Id.*

86. Sedition Act of 1969, *cited in*, MALAYSIAN HUMAN RIGHTS REPORT 224 (1998).

87. Internal Security Act, 1960, *cited in*, MALAYSIAN HUMAN RIGHTS REPORT 219 (1998).

88. Pang Eng Fong, *et al.*, *The Management of People in MANAGEMENT OF SUCCESS, THE MOULDING OF MODERN SINGAPORE* 128 (Kernial Singh Sandhu, Paul Whitely eds., 1989).

But the traces of Singapore's past is hardly evident now. The progress that it has attained has been attributed by Lee Kuan Yew, Singapore's Prime Minister from 1959 to 1990, to the kind of policies pursued by the government. These policies which have intruded into the private lives of the Singaporeans, have also been considered as the basis of Singapore's economic stability.<sup>89</sup>

A clear government intrusion was manifest when the Singapore Family Planning and Population Board designed a population control policy of both incentives and disincentives but with greater prominence on discouraging births.<sup>90</sup> Some of the disincentives were higher hospital fees for the delivery of each additional child in excess of two; no income-tax relief starting with the fourth child and less priority in housing programs for bigger families.<sup>91</sup>

The policy created a lopsided effect in that women who were able to graduate tended to have less children than their non-graduate counterparts. This was considered a threat to the maintenance of Singapore's standards at the time. As a remedy, policies were formulated to encourage educated women to get married and have children. On the other hand, the government encouraged the less educated to be ligated by providing incentives.<sup>92</sup> The policies met a lot of criticisms due to its encroachment on matters of marriage and procreation.<sup>93</sup>

But for Lee Kuan Yew, the unpopular policies were necessary. For him, his main task was to alleviate Singapore from poverty, the reason why there was a low regard for human life. Everything else was of lesser importance.<sup>94</sup>

Singapore is also committed to the concept of growth through Confucianism and the ideology of shared values. The pillars of the ideology are: (1) nation before community and society before self; (2) the family as the basic unit of society; (3) respect and community support for the individual; and, (4) consensus instead of conflict and religious harmony.<sup>95</sup>

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89. Jon S.T. Quah & Stella R. Quah, *The Limits of Government Intervention in MANAGEMENT OF SUCCESS, THE MOULDING OF FUTURE SINGAPORE* 102 (Kernal Singh Sandhu, Paul Whitely eds., 1989).

90. *Id.* at 113.

91. *Id.*

92. *Id.* at 114.

93. *Id.*

94. Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East West Dialogue*, 18 *Human Rights Quarterly* 641 (1996) (citing interview with Lee Kuan Yew).

95. Candelaria, *supra* note 81.

## V. DISPROVING THE FULL-BELLY THESIS OF THE ASIAN PERSPECTIVE

As seen in Malaysia and Singapore's setting, the Asian argument is that civil and political rights need to take a backseat to give way to basic material needs.<sup>96</sup> In other words, it assumes that "man's belly must be full before he can indulge in the luxury of worrying about his political freedoms."<sup>97</sup>

Amado Doronilla, a respected columnist, seems to agree with this point. According to him:

[t]here's no dispute that democracy and political rights are a good thing—they are essential preconditions on which economic progress can be built. But it might be well to remember that Filipinos do not live on democracy, political rights and political news alone. They also have to be able to eat three meals a day, which is the concern of the economy.<sup>98</sup>

However, there are counter-arguments to this stand. First, it is argued that, "civil and political rights are needed to implement reasonable developmental policies and to ensure equal distribution of wealth as well as economic growth."<sup>99</sup> Political participation where ordinary people can air their opinions is needed for economic planners to make adjustments. Administratively, participation can equate to prevention of errors and protection of the people's interest.<sup>100</sup> There is also no proof that there is a connection between political authoritarianism and economic development.<sup>101</sup>

The second argument is that "civil and political rights are needed in order to guarantee social and cultural rights."<sup>102</sup> Although physical security is a necessity (both physical integrity and economic subsistence), people also need a sense of social order and of belonging therein. For instance, rights promoting self-respect coming from the fulfillment of one's role in the community is provided for by the International Convention on Civil and Political Rights.<sup>103</sup>

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96. Bell, *supra* note 94, at 644.

97. Rhoda Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Saharan Africa*, 5 *Human Rights Quarterly* 467 (1983).

98. Amado Doronilla, *Back on the Economic Radar Screen*, *PHIL. DAILY INQUIRER*, May 10, 2006, at A13.

99. Howard, *supra* note 97, at 469.

100. *Id.*

101. *Id.*

102. *Id.*

103. International Covenant on Civil and Political Rights, U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).

Third, civil and political rights are necessary in and of themselves. It has been observed that, “[i]n some cases, ordinary people will trade-off their full bellies for freedoms of non-material nature; risking lives and physical integrity for moral integrity, to speak of injustice.”<sup>104</sup>

Moreover the 1993 Vienna Declaration provides that:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>105</sup>

In sum, there are sufficient human rights standards that may guide the courts in deciding cases involving the exercise of state power in pursuit of economic development with serious human rights implications.

#### VI. CHARTER CHANGE: A CONSTITUTIONAL IMPERATIVE?

Believing that the political system is imposing a burden on national progress, President Arroyo expressed her desire that a charter change be undertaken. It was her opinion that the government has done its best but that it may not be sufficient under the present system which has ceased to be effective.<sup>106</sup> She advocated for change in the shortest time possible.

To jumpstart the process, Executive Order No. 453<sup>107</sup> was issued creating a consultative commission to propose the revision of the Constitution. Its foremost task is to propose amendments to the 1987 Constitution that will enable the country to respond to global challenges and resolve economic and political problems.<sup>108</sup> The commission’s proposals would then be passed to the President and then to Congress.

However, the initial expectation of changing the Constitution through an assembly has seen very little chance of survival given the failure of both Houses of Congress to agree on how to go about the task. Another mode of

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104. Howard, *supra* note 97, at 483.

105. Vienna Declaration, U.N. Doc. A/CONF.157/24 (1993).

106. Gloria Macapagal-Arroyo, State of the Nation Address (July 25, 2005) [hereinafter Arroyo, SONA 2005].

107. Creating a Consultative Commission to Propose the Revision of the 1987 Philippine Constitution in Consultation with Various Sectors of Society, Executive Order No. 453 [E.O. No. 453] (2005).

108. E.O. No. 453, 1st Whereas Clause.

proposing amendments to the Constitution is being explored, but like the Congress' situation, it is also proving to be problematic.

*A. Charter Change as a Route Toward Economic Development*

There are three matters highlighted by the consultative commission headed by Jose B. Abueva that need to be addressed by charter change.

1. Liberalizing Charter Provisions on National Patrimony and Economic Policy<sup>109</sup>

It was submitted that the restrictive provisions of the Constitution regarding National Patrimony dismiss foreign investors.<sup>110</sup> By liberalization, the country will be able to attract investments and reduce poverty and social inequality.<sup>111</sup>

2. Reforming Political Parties and the Electoral System<sup>112</sup>

Abueva stressed that political parties in the Philippines are personal alliances, undemocratic and have no sound platforms.

109. Jose B. Abueva, *Why Liberalize the Charter Provisions on National Patrimony and Economic Policy? A Primer*, at [http://www.sigawngbayan.com/abueva\\_primers\\_03.htm](http://www.sigawngbayan.com/abueva_primers_03.htm) (last accessed June 22, 2006) [hereinafter Abueva, *Why Liberalize the Charter Provisions*]; see Highlights of the Proposed Amendments to Articles II, XII, XIV, and XVI of the 1987 Constitution (as adopted in Plenary on Dec. 8, 2005), at [http://www.sigawngbayan.com/abueva\\_primers\\_03.htm](http://www.sigawngbayan.com/abueva_primers_03.htm) (last accessed June 22, 2006).

110. Identified as restrictive economic provisions under art. XII of the 1987 Constitution are in the areas of:

1. exploration, development, utilization of natural resources;
2. ownership of industrial, commercial, residential land;
3. operation of public utilities ownership of (tertiary) educational institutions;
4. practice of professions (esp. high technology);
5. ownership and management of mass media; and
6. ownership and management of advertising.
7. Filipinos do not have capital for large-scale mining or oil drilling, labor-intensive factories, power and waterworks utilities, advanced colleges and universities, modern engineering, cinema or entertainment, and advertising. This is because of our low savings rate of 18% of GDP, only half of the 35% needed to spur investments.

111. Abueva, *Why Liberalize the Charter Provisions*, *supra* note 109.

112. Jose B. Abueva, *Why Reform Our Political Parties and Electoral System? A Primer*, at [http://www.sigawngbayan.com/abueva\\_primers\\_04.htm](http://www.sigawngbayan.com/abueva_primers_04.htm) (last accessed June 22, 2006).

By proposing a shift to a parliamentary form of government, “the majority party or coalition in the Parliament will elect the Prime Minister who is normally the leader of the majority party. This puts a premium on the strength and unity of each political party and its ability to put up good candidates and offer the people an attractive political platform or program of government.”<sup>113</sup>

3. Establishing Autonomous Territories in Transition to the Federal Republic of the Philippines<sup>114</sup>

The unitary system of the government, being highly centralized deprives the local governments of resources to provide the people’s needs, fails to respond to cultural diversity and has marginalized certain sectors of society. Federalism will promote the distribution of power and self-reliance in local governments.<sup>115</sup>

Analogous to these proposals, Sigaw ng Bayan, a coalition consisting of more than 300 people’s organizations pushing for charter change through people’s initiative, has created a petition to propose a shift from the bicameral-presidential government to a unicameral-parliamentary system. The rationale for such change is to foster efficiency, hasten governmental action and to cultivate harmony between the executive and the legislature.<sup>116</sup>

What can be construed from the proposals to amend the Constitution is that such change is of the essence given the situation that the Philippines is in. Liberalizing the country’s policy on national patrimony and economy is needed in keeping with the President’s goal of an economic take off through a government that promotes both economic security and free enterprise.<sup>117</sup> Lifting the restrictions on foreign investors is expected to boost commercial activity in the areas of mining, oil production and media among others.<sup>118</sup>

Charter change is also expected to resolve the political degeneration that has long plagued the Philippines. The shift to a parliamentary form and

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113. *Id.*

114. Jose B. Abueva, Why Establish Autonomous Territories in Transition to the Federal Republic of the Philippines? A Primer, at [http://www.sigawngbayan.com/abueva\\_primers\\_02.htm](http://www.sigawngbayan.com/abueva_primers_02.htm) (last accessed June 22, 2006).

115. *Id.*

116. The People’s Initiative Petition, at [http://www.sigawngbayan.com/e\\_petition.htm](http://www.sigawngbayan.com/e_petition.htm) (last accessed June 22, 2006).

117. Arroyo, SONA 2005, *supra* note 106.

118. Abueva, Why Liberalize the Charter Provisions, *supra* note 109.

changing the political structure of the government pose an attractive alternative to our present situation:

The country will no longer be saddled with the problem of electing a president with a fixed term of six years, and who can only be removed through impeachment, resignation, death or incapacity, but by a mere “no confidence” vote on a prime minister by his peers. And under a parliamentary/federal form of government, there will be no need for mob rule or People Power or Edsas to rid the country of an incompetent and corrupt president.<sup>119</sup>

Clearly, the advocates of charter change see it as the lifeline of a country desperate to breakaway from economic and political doom.

But apart from the more noble objectives of charter change, a cunning agenda for pushing for reforms is being attributed to the administration. If as planned, the presidential form of government gives way to a parliamentary form, the President leaves her office along with all the controversies she is hurdling, as the President who spearheaded the overhauling of what is seen as an imperfect Constitution.<sup>120</sup> Those on the other side of the political fence deem charter change as a tactic to divert the people’s attention from the issues hounding the President and, ultimately, a bridge that leads to her graceful exit.<sup>121</sup>

The apprehension of some sectors over charter change stems from various reasons such as the vested interests of the personalities behind it<sup>122</sup> and the legality of the of the procedure employed.<sup>123</sup> However, for the proponents, what is glaring is the country’s need for change.

#### *B. Procedural Aspects of Amending the Constitution*

Three methods are provided in the 1987 Philippine Constitution by which proposals to amend it may be made.

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119. Emil Jurado, *Chacha Strikes at Core of Degenerate System*, [http://www.manilastandardtoday.com/?page=emilJurado\\_july28\\_2005](http://www.manilastandardtoday.com/?page=emilJurado_july28_2005) (last accessed June 23, 2006).

120. Fel Maragay, *Awkward Time for Charter Change*, [http://www.manilastandardonline.com:8080/mnlastd/?page=felMaragay\\_july28\\_2005](http://www.manilastandardonline.com:8080/mnlastd/?page=felMaragay_july28_2005) (last accessed June 23, 2005).

121. Pulse Asia’s October 2005 Ulat ng Bayan Survey Report: Media Release on Constitutional Change, at [http://pulseasia.newsmaker.ph/pulseasia/images/t4\\_consti\\_change05.gif](http://pulseasia.newsmaker.ph/pulseasia/images/t4_consti_change05.gif) (last accessed June 22, 2006).

122. Isagani Cruz, *Should We Dance?*, PHIL. DAILY INQUIRER, May 28, 2006, at A14.

123. Fr. Joaquin G. Bernas, S.J., *My Charter Change Credo*, PHIL. DAILY INQUIRER, May 29, 2006, at A14.

First is through Congress, by a vote of three-fourths of all of its members,<sup>124</sup> sitting as a constituent assembly. The Senate and the House of Representatives then become a constituent body with special power to formulate a new constitution or propose amendments to it.<sup>125</sup> The constitutional provision though, is silent on two important matters. One is whether Congress has to “assemble in joint session before it can propose amendments or call a constitutional convention.”<sup>126</sup> Alternatively, “may the two Houses as they are and where they are propose amendments or call a constitutional convention by a vote of three-fourths of their respective membership?”<sup>127</sup>

Renowned constitutionalist Fr. Joaquin G. Bernas, S.J. believes that the House of Representatives and the Senate may independently propose amendments with the vote of three-fourths of all its members. Afterwards, it is to proceed to the other House to undergo the same process. Disputes and disagreements may be handled by a conference committee.<sup>128</sup> Another possibility is for Congress to convene in a joint session and vote separately on the propositions.<sup>129</sup>

However, it is submitted that what cannot be compromised is that both Houses should vote separately. This can be gleaned from the Constitution itself which has vested a bicameral body the authority to propose amendments to it.<sup>130</sup>

The second method is through a constitutional convention.<sup>131</sup> Congress may call a convention either “by a vote of two-thirds of all its members,”<sup>132</sup> or by a majority vote of all its members, it may also “submit to the electorate the question of calling such a convention.”<sup>133</sup> The convention itself may determine the vote required to approve the proposal.

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124. PHIL. CONST. art. XVII, § 1, ¶ 1.

125. A Primer on Constitutional Reform/FAQ, at [http://www.ipd.ph/chacha/primer/chacha\\_primer.html](http://www.ipd.ph/chacha/primer/chacha_primer.html) (last accessed June 23, 2006).

126. JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1283 (2003) [hereinafter BERNAS, COMMENTARY].

127. *Id.*

128. *Id.* at 1298.

129. *Id.*

130. *Id.*

131. PHIL. CONST. art. XVII, § 1, ¶ 2.

132. PHIL. CONST. art. XVII, § 3.

133. PHIL. CONST. art. XVII, § 3.



Both amendments and revisions through a constituent assembly or convention need to be ratified by a majority vote of the people in a plebiscite.

The last method to propose amendments is through initiative embodied in Article XVII, Section 2 of the Constitution which provides:

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered votes therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.<sup>134</sup>

This mode bestows upon the people the power to propose amendments. Unlike the other methods, the people may only propose amendments and not revisions.<sup>135</sup>

### *C. The Roadblocks to Charter Change*

#### *I. Procedural*

The endeavor to change the Constitution through the people's initiative is only viable if there is an enabling law passed. This was enunciated by the Supreme Court in the case of *Santiago v. Commission on Elections*,<sup>136</sup> wherein another people's initiative led by the group PIRMA sought to amend several provisions of the Constitution. The Supreme Court held that section 2, Article XVII providing for initiative is not self-executory. It quoted Fr. Joaquin G. Bernas, S.J. saying that, "although this mode of amending the Constitution is a mode of amendment which bypasses congressional action, in the last analysis it still is dependent on congressional action."<sup>137</sup> The Court further said:

Bluntly stated, the right of the people to directly propose amendments to the Constitution through the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized

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134. PHIL. CONST. art. XVII, § 2.

135. BERNAS COMMENTARY, *supra note* 126, at 1300.

136. *Santiago v. Commission on Elections*, 270 SCRA 106 (1997).

137. *Id.* at 136.

or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.<sup>138</sup>

Since there is no implementing law, the people's initiative has no leg to stand on. The Constitution itself provides that Congress shall legislate for the implementation of this right.<sup>139</sup> In addition to that, the Supreme Court has said its piece on the matter affirming the Constitution.

But it is not only the method of initiative that poses procedural issues. As earlier mentioned, the provision vesting Congress the authority to form a constituent assembly does not specify whether a joint session is necessary.

The Senate has passed a resolution that each House should vote separately with three-fourths of each of its members voting in favor of the proposals.<sup>140</sup> However, the Lower House is of the position that the three-fourths vote applies to all members of Congress.

## 2. Senate Resistance

The Senate maintains that it is not totally against charter change but is strongly doubtful of the means being employed to do so. Senate President Franklin Drilon reiterated that, "[t]he people's initiative has no enabling law. There is a standing injunction from the Supreme Court against the people's initiative."<sup>141</sup>

But what may be under the surface of this resistance is the Senate's impending doom once charter change is adopted and a shift to a parliamentary form of government is made. It is not at all surprising that the Senate is not taking the matter lightly and is heavily guarding its interest.<sup>142</sup>

The economic gains sought to be achieved through charter change has yet to hurdle the proper constitutional route this movement will take. This time the highest value of upholding the sovereign will is at stake in an imminent constitutional litigation. While it may be too soon to speculate on how the Supreme Court may decide a matter on charter change, it is wise to prepare for the most persuasive legal arguments which may be brought before the highest tribunal in light of the politically sensitive implications of charter change on the legitimacy issue of the Arroyo Presidency, the right of the people to participate in national decision-making and the need for

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138. *Id.*

139. PHIL. CONST. art. XVII, § 2.

140. Res. No. 75, 13th Cong, 2nd Sess. (Mar. 21, 2006).

141. Transcript of Ambush Interview with Senate President Franklin M. Drilon, at [http://www.senate.gov.ph/press\\_release/2006/0622\\_drilon1.asp](http://www.senate.gov.ph/press_release/2006/0622_drilon1.asp) (last accessed June 23, 2006).

142. Cruz, *supra* note 122.

genuine economic and political reforms to address the roots causes of the armed conflicts in our country.

## VII. CONCLUSION

The task of balancing the exercise of state power, economic development and human rights reposes upon our courts. It has been argued elsewhere that the act of judging is an inescapably social act.<sup>143</sup> The need to strike a healthy balance between the exercise of judicial review and democracy has been demonstrated by the Supreme Court in the recent significant cases. Did the Court deliberately apply in a consistent manner a judicial philosophy which safeguards the liberty and nurtures the prosperity of the people?

It is the impression of the present writers that in these cases of political significance but with serious economic implications for the country, the Supreme Court has been extremely cautious in not undermining the confidence of both the public and the business sector in the institution of the Judiciary, which has been viewed as the ultimate test of a functioning democracy in our country today. Judicial pronouncements such as those recently rendered by the Supreme Court create a sobering effect on our volatile political landscape.

The theory of indivisibility of human rights is an important legal yardstick which the Court may apply on issues which partake of a political character but have serious economic and human rights implications for a State. One may indeed strike a healthy balance despite the temptation to propel a nation towards economic development with little regard for the political and social costs. The thrust of the economy, after all, is the enhancement of the quality of life for all.

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143. Richard Devlin, *Judging and Diversity: Justice of Just Us*, 20 (3) Provincial Judges Journal 16 (1996).