

## **Constitutional Reform in the Philippines: Out of Crisis, What?**

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February 19, 2006

*"By so attending to the game as played by rulers and politicians, are we not privileging a pre-constructed field, thus neglecting and misjudging the degree to which boundaries have shifted or the degree to which the field itself, or its axis, has changed? This underscores the importance of perspective, of taking in the entire field of political practice rather than over emphasizing one aspect of that field (such as elections) or the elements of the field pre-selected by either a model of analysis or the politician's own construction of political action."* Resil B. Mojares, "The Dream Goes On and On: Three Generations of the Osmeñas, 1906-1990", in **Anarchy...**, p.313.

The ongoing crisis of the Philippine political order is going to bring constitutional reform much sooner than we thought possible, or push it back many years into the future. For Pres. Arroyo, offering constitutional reform can be a way of undercutting calls for extra-constitutional change. For Arroyo opponents on the Right, constitutional reform forms part of the promise of a more stable future even as they work to destabilize the present political order. All key political players from Pres. Arroyo, to former president Ramos, the heads of both the Senate and the House, the leagues of local officials, the anti-Arroyo opposition among politicians and civil society alike have all declared support for constitutional reform. But as in two prior bursts of constitutional reform activity in the past decade, reform seems, as the song goes, ever so near and yet so far.

As with many political controversies in the Philippines, what is openly discussed is only the tip of the issue iceberg. To fully understand the current debate, to hazard a guess about its future, we have to locate this debate in a broader, certainly a different frame of analysis from that of its participants. The very antics of politician participants, the way issues have been defined already provide an excellent case study of why political reform is necessary and how it might be accomplished. The discourse and actions of participants set the limits for political reform at this time. But longer term changes in political economy, in the composition of the elite, in the pattern of interaction between international, national and local political actors will generate pressure for political reform that can only be partly controlled by any specific set of political actors.

It is necessary to locate chacha within longer term movements in politics otherwise one might be tempted to believe it is the same, more than slightly ridiculous politicians' game replayed over and over again. Indeed the same set of players, instruments, plots and even conclusions keep happening over and over again. The main players are House Speaker De Venecia, Senate President Franklin Drilon, President Arroyo. De Venecia pushes quick amendments through a constituent assembly (he prefers

the acronym 'consa', its opponents 'con-ass'), and calls for the president to step down after a parliament is elected. The president resists, manipulates De Venecia, who then relents. The president takes the side of the Senate, supports a constitutional convention (concon), then when the stakes change, takes the side of the House and supports 'con-ass'. When Senate opposition cannot be overcome, House proponents then turn to 'people's initiative'. Even NOEL (No Elections) as a 'sweetener' has been replayed. With slight variations, this is the game that has been played over and over again in the last four years.

Apart from the politicians who have hostages constitutional reform to their personal and political party ambitions, chacha discourse has been shaped by civil society organizations which have worked carefully and painstakingly over the course of the last few years. Their influence was shown most strikingly in 2003 when they succeeded in getting support from a broad range of opinion leaders including Cory Aquino, Cardinal Jaime Sin, and the leaders of the El Shaddai and the Iglesia ni Cristo in their campaign to stop a De Venecia-led drive to get the Senate to support a Constituent Assembly. The most organized of these groups is the Citizens Movement for a Federal Philippines (CMFP) and groups which have concentrated on pushing a shift to a parliamentary form of government. Another group, Citizens for a Constitutional Convention (C4CC), is now in the midst of a national caravan as the culmination of a campaign to bring the discussion to the provinces.

Thanks largely to the work of the Citizens' Movement for a Federal Philippines, federalism has gained enough headway in public discourse that it will be close to the top of the chacha agenda. In a way, federalism is a logical extension of the decade long decentralization process. Having tasted new powers, local citizens and officials do not want the central government to control what powers are given to them, especially not how much money goes to them. Every president has violated the automatic appropriation of the local government IRA (internal revenue allotment) since the local government code was passed in 1991. Federalism would enshrine local powers in the constitution beyond the reach of central governments. But this breadth of support has caused an unannounced rift within the CMFP in the last few months with some leaders supporting GMA and others against.

*Sulong Pilipinas*, a broad alliance of progressive groups and civil society organizations opposed to the watering down of national patrimony provisions in the constitution was launched July 25, 2004. The alliance is spearheaded by the Freedom from Debt Coalition. In contrast to the Bayan-led coalition which is opposed to constitutional reform outright, the new group includes pro-and-anti constitutional reform adherents and has chosen to focus its work on defending progressive economic provisions. While mainly interested in the shift to a parliamentary form of government, pro ConAss groups have adopted the revisions of national patrimony provisions proposed by the Narvasa commission during the Estrada presidency. Newer formulations have been devised in the recent concon.

The discussion on constitutional reform in the third quarter of 2005 and the

beginning of 2006 is intense but marked by an air of unreality. Political groups pushing constitutional reform most strongly, those identified with beleaguered Pres. Arroyo, are traditional politicians led by House Speaker Jose De Venecia, precisely the groups and individuals who exemplify old-style politics. The groups opposed to constitutional reform at this time, including cabinet secretaries who have resigned and civil society groups who have campaigned on the issue for years, are those who have unquestioned records as political reformers. The intensity of the push for rapid constitutional reform through a constituent assembly is at fever pitch precisely at a time when everyone knows it does not have a ghost of a chance because of Senate opposition.

The reason for this inversion of roles is encapsulated in the slogan “Gloria has to face the music, before we dance the chacha<sup>1</sup>”. Longtime proponents of constitutional reform believe that Pres. Arroyo is using chacha as a smokescreen, as an issue for distracting public attention away from charges of corruption and election fraud that threatens to get her removed from office. Her propaganda line is that whatever shortcomings she has, she is a victim of a defective political system that now has to be changed. Chacha also serves a practical requirement for Arroyo survival, getting the support of local officials and congress persons who are the most avid proponents of chacha. In fact, chacha is impossible under current conditions because everyone is preoccupied with the intense struggle between pro-and anti Arroyo groups.

At first glance it appears that the current debate is the same as earlier ones. The fate of constitutional reform is hostage to the partisan requirements of groups and individuals who hold power. It is different because the crisis confronting the Arroyo regime is not just one more instance of the refusal of competing elite factions to accept the legitimacy of elections as a means for mediating elite competition. I believe the crisis is much deeper, that the crisis of the Arroyo administration manifests the cumulative impact of a long simmering crisis of representation. It is not just Pres. Arroyo who is being challenged, it is the capacity of the whole political system to select leaders capable of responding to the needs of the Philippines in the 21<sup>st</sup> century.

The manipulation of the 2004 presidential election by operatives of Pres. Arroyo is the last nail in coffin of the Commission on Elections (Comelec), an agency whose death has been a long time coming.<sup>2</sup> With the recent Senate report condemning the commission for entering into an illegal contract, two key institutions, the Senate and the Supreme Court have condemned the Comelec. But even if all seven Comelec commissioners resigned, even if the whole nationwide apparatus of the Comelec which has been implicated in cheating is revamped, these moves would still not be adequate responses to the crisis. What has come to the fore is that it is not just the Comelec which has to be revamped, it is not even just the whole electoral system which has to be changed, it is the whole political system which is on dock. The wider context of constitutional reform has changed radically. The boundaries have shifted.

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<sup>1</sup> In acronym crazy Philippines, 'charter change' morphs into chacha.

<sup>2</sup> The best reports on election fraud in 2004 are in the website of the Philippine Center for Investigative Journalism and the Newsbreak magazine.

There is, to start with, a palpable difference in the public mood. Many people who opposed cha cha in the past are now in favor. The civil society and Catholic Church coalitions which stopped chacha during the FVR and Erap terms now support chacha. At this time, it is the crisis that is the best argument for chacha. We might agree with analyst Amando Doronila that "...constitutional change...is a political option that offers the country an exit mechanism from the series of political stalemates that have debilitated it."<sup>3</sup> The repetition of crisis, even 'people power' solutions resulting in changes in leadership have led people to search for other solutions. With all major political players, pro and anti-GMA alike supporting chacha, even people who are not quite sure, are resigned to chacha happening.

Surveys show slow but steady increases in public support. The Fourth Quarter 2005 Social Weather Stations (SWS) survey released on January 11, 2006 shows that 54 percent of the public now approve of chacha. In 1992-93, 97% and 91% preferred direct election of president. There is now split opinion on letting legislators elect the executive. Support for regional governments as precursors of a federal system has remained firm. Whereas in 1999 most disapproved of allowing more foreign participation in the economy, now 41% are in favor. The connection to the current crisis is clear cut. Support for chacha is linked to GMA stepping down. A large plurality (43%) disapprove of GMA becoming prime minister. Eighty four percent want her to step down in 2005 or 2006.<sup>4</sup>

One of the implications of the altered terrain of chacha is that contending positions have moved away from pro and anti-chacha to questions of mode of change, and beyond, that of what kind of change. While proponents of chacha through constituent assembly and constitutional convention both publicly support a shift from a presidential to parliamentary form of government and from a unitary to federal system, there is a deep divide between the two sides. At the root of this division is the difference between one side which wants to transform the political system to assure the reproduction of the political class which has controlled Philippine politics for most of the last century and the side which wants to transform the distribution of political and social power in the society.

In the end, substantive reform happens only when the balance of political power has shifted. This is where the link between the struggle over President Arroyo's continued stay in office and constitutional reform lies. The resignation of reformist members of her cabinet, and her unabashed use of patronage to remain in power has placed her completely on the side of reaction. The more desperate GMA's maneuvers to survive, the more damage she is doing to vital democratic political institutions. If she remains in office until the end of her term in 2010, it will mean that the forces of reform have lost. But if she is overthrown, substantive constitutional reform, one that rearranges the

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<sup>3</sup> Amando Doronila, "ConCon Call GMA Way of Defusing Tensions", PDI, June 6, 2005

<sup>4</sup> SWS Surveys of Public Opinion on Amending the Constitution, Presented to a Round Table Discussion of the Bishops-Businessmen's Conference on Human Development, 9 February 2006, AIM Conference Center, Makati City.

balance of political power, will be possible.

### **Chacha under Arroyo**

Through most of the period of the Arroyo presidency (January 2001 – present), the constitutional reform dynamic has been determined by three institutions, the presidency, the Senate and the House of Representatives, and their leaders, President Arroyo, Senate President Franklin Drilon, and House Speaker Jose De Venecia. Other players, former President Fidel Ramos (FVR) and pro-chacha civil society coalitions among others, have played important roles at key junctures, but the main dynamic has been determined by Arroyo, De Venecia and Drilon. Throughout this period, Pres. Arroyo has played a tactically adroit game, playing off the other two main players against each other, shifting positions whenever necessary, with little apparent regard for anything other than preserving her political advantage.

Pres. Arroyo's (GMA) hesitations about chacha are yet another expression of her being a *segurista* (risk averse), not wanting anything new that she cannot fully control. As long as GMA felt secure in her position, she maneuvered against chacha, never openly opposing it because too many powerful groups supported it, but putting obstacles in its way. When her position was being challenged, she used chacha to secure the support of key players like JdV and local government officials who want chacha. GMA's positioning on chacha is also a function of her being president, being at the top of the existing political system. Why change a system where you have overwhelming power? It is this determining fact of our politics which, in reverse, is partly behind other politicians being interested in changing the system.

If you are Speaker De Venecia or Senate President Drilon, or any one of the senators and other politicians who have illusions of someday becoming the chief executive, you confront one ego deflating fact, GMA as president for nine years stretching to 2010. If you are close to the top of the politician pile, it is difficult to accept playing second fiddle to GMA for all those years. Part of it surely is male chauvinist reaction to being upstaged by a diminutive woman, one who is arrogant and prone to public fits. This 'unease' among politicians does not have to take such specific shapes as 'De Venecia as Prime Minister'. It is probably as inchoate as "Do you realize none of us have a shot at the top job until 2010?"

The most persistent proponent of constitutional reform in the Arroyo years is House Speaker Jose De Venecia. Using his control of the House, the Speaker has pushed constitutional reform with dogged persistence. His first major move was at the Political Summit of political parties on May 3, 2002. Although the summit declaration expressed preference for an elected Constitutional Convention (Concon), the Speaker has mainly pushed a constituent assembly because of his preference for sooner rather than later. Not incidentally, it is an amendment process where he would have greater control. A consummate politician, the Speaker has come out for an elected constitutional convention when conditions required. He has threatened to cut PGMA's term, discreetly proposed the

cancellation of elections (NOEL), then turned around and denounced these moves. A good match for GMA in the game of unprincipled political maneuvering.

The main obstacle to JdV's plans has been the Senate. It should not be difficult to understand the senators' objections. The logic of a shift to a parliamentary form of government is the abolition of the Senate in its present form. Even if the new parliament were to be bicameral, it is likely that the second chamber would represent states in a federal system, not the nationally elected training ground for presidential hopefuls that the current senate has become. As a result, Senate positioning on chacha has been a mirror opposite of House positions. Where the House wants speed and control through a constituent assembly (con-ass), the Senate has preferred an elected constitutional convention to slow the process down and remove control from the House. In addition, because the Senate has only a few members (24), political party dynamics, individual interests and preferences, even who one has lunch with on a regular basis affects the balance on key issues such as chacha.

Senate President Drilon has led and organized Senate defenses. In early 2003, De Venecia hubris, maneuvering to remove Senator Franklin Drilon from the Senate Presidency, worst, failing, generated an insuperable obstacle. Angered, Drilon filed a Senate resolution calling for constitutional reform through a constitutional convention and got 14 votes, more than enough to block De Venecia ally, then Senate constitutional reform committee chair, Sen. Edgardo Angara. In July 2003, the Senate constitutional reform committee voted 8-2 for concon. Although a ConAss proponent, Senator Angara ended up having to defend the committee position for concon. The Committee vote added four more senators supporting ConCon 2004 to the 14 who signed the Drilon resolution, creating a massive obstacle to the House' con-ass ambitions which has remained to this day.

In 2004-2005, developments within the Liberal Party became one of the main determinants of Senate positioning on chacha. Whereas Senate President Franklin Drilon had been supportive of a constitutional convention in 2003, in 2004 he did little to get constitutional reform going in the Senate. This had to do with dynamics within the Liberal Party (LP) which he joined just before the May 2004 election. The LP was the biggest gainer in the election, now had a powerful 5 member bloc within the Senate, and was quickly gaining new members. Party member Mar Roxas topped the 2004 Senate race and quickly developed ambitions to run for president in 2010. Then, in July 2005 came the LP move against GMA which makes the five LP senators, and Senate President Frank Drilon opposed to chacha which will keep GMA in power. Together with the opposition, the LP can block the GMA/JdV chacha initiative easily. Only six votes are needed to block amendments.

During the first few years of her presidency, Pres. Arroyo played coy on the issue of constitutional reform. While making the required bow to reform, the President allowed her Presidential Adviser for Special Concerns, Norberto Gonzales, to support De Venecia's ambitions. Privately, she told Senate and cabinet allies that she was really for

concon. When the chacha issue heated up in the second half of 2002 under the prodding of De Venecia, GMA held her cards close to her chest. De Venecia's con-ass campaign received a death blow when former President Cory Aquino and the late Cardinal Sin publicly came out against con-ass, followed later by the El Shaddai and the Iglesia ni Christo. But it was only after it was clear that De Venecia's attempt to unseat Drilon from the Senate presidency had failed that GMA declared, on January 17, 2003, that she supported Drilon's position for a concon.

With the President and the Senate leadership supporting a constitutional convention, one might have thought that this would be enough to convince De Venecia that the only way he could get constitutional reform was through a constitutional convention. Instead, De Venecia renewed his con-ass campaign in the second half of 2003, only relenting early in January 2004 and agreeing to support the civil society, Drilon call for elections of concon delegates at the time of the 2004 elections. By then it was too late, Drilon could not get the Senate to go along and election fever had begun to dominate all political activity. Although Drilon was not running and De Venecia had a safe seat, another key player was running. After having announced that she was not running for reelection at the very end of 2002, GMA had changed her mind in October 2003. By early 2004 she was deep into her campaign.

It was only after the May 2004 elections that GMA and her lieutenants became more active, this time to block De Venecia's ambitions. The President now made it clear there was no way she would give up power in the middle of her six year term.<sup>5</sup> During the campaign for the May 2004 elections, Arroyo hinted that she might be prepared to step down in 2007 to make way for a shift to a parliamentary system. After she won, she changed her mind without so much as a 'by your leave'. She reactivated her old political party, Kampi, in the House. Led by her son Mikey Arroyo and brother-in-law Iggy Arroyo, and well known political operator, Antipolo congressman Ronaldo Puno, Kampi recruited within the ruling party, Lakas, then threatened to block De Venecia's reelection as Speaker. For good measure, the President announced that she supports a shift to a federal, parliamentary set-up, but through an elected Constitutional Convention.

After the new congress began its work in July 2004, concern about a fiscal crisis provided an excuse for concentrating on passing tax bills and a moratorium on the constitutional reform issue. Despite this, De Venecia ally and House constitutional reform committee chair, Cong. Constantino Jaraula reintroduced House Resolution 16 early in 2005, expecting that once the last of the tax bills passed, constitutional reform could get off to a running start. Having failed to implement a parliamentary shift at the time of the 2004 elections, De Venecia's renewed ambition was for elections for parliament at the time of the May 2007 elections. Knowing De Venecia's preference for a con-ass, at the end of May 2005, PGMA announced that she would ask the legislature to convene a Constitutional Convention to pass amendments for a shift from a presidential to

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<sup>5</sup> Ignacio Bunye "The provisions of the new constitution cannot affect the incumbent President." Philippine Daily Inquirer, 29 September 2004

parliamentary government, and from unitary to federal system. But although the last tax bill, the VAT passed in late May, Pres.Arroyo announced that she did not want to reopen constitutional reform until 2006. This way, if reform would be through a constitutional convention, there was no way a new parliamentary government could be elected in 2007.

### **Crisis Round**

The political terrain of chacha changed radically with the onset of the current political crisis in mid-June 2005. The constitution comes in, not just as reform, but as a factor in the struggle between pro and anti-Arroyo forces. Pres. Arroyo and her supporters fiercely defend the administration in terms of “upholding the constitution”. Middle and upper class opponents of Arroyo would prefer “a constitutional solution”, - Vice President Noli De Castro succeeding Arroyo, or since many also object to De Castro, the third in the line of succession, Senate President Franklin Drilon. These desiderata, however, require unseating Pres.Arroyo through constitutional means, through resignation or impeachment. By the second week of September, Pres.Arroyo had successfully closed off both options.

Predicting what will happen to constitutional reform under current political conditions is difficult because it is only one component of the whole political equation, one that is both an instrument and an outcome. Whatever the outcome of this struggle, chacha is likely to be part of the package. “Somewhere down the reform agenda of all the proposed variations of a transition government is the revision of the 1987 constitution. Most of the groups are amenable to supporting the shift to a parliamentary, federal form of government, an amendment that's a priority among charter-change advocates within the administration... Calling for a shift in the form of government is actually a common ground between the opposition and administration in the face of what both camps acknowledge to be Pres.Arroyo's battered credibility.”<sup>6</sup>

As in the last three years, the champion promotor of chacha in the past year remains Speaker De Venecia. At the beginning of the current crisis, he supported FVR's July 8 'bargain' with GMA where in return for support at that time, GMA agreed to a tight schedule for chacha where GMA would resign, a new constitution is written by a 'constitutional commission' then approved in a plebiscite, finally elections for a new parliament held as early as May 2006. Three weeks later, De Venecia was made to understand that, in her SONA (State of the Nation Address), GMA would support chacha through con-ass, and express her willingness to step down to make way for a new parliamentary government. She delivered on one promise, support for con-ass, but reneged on 'stepping down' reportedly on the advice of Cong. Butch Pichay who said such a promise would 'make her look weak.' She reportedly assured De Venecia that anyway she would abide by what the Constitution framers will decide. <sup>7</sup>

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<sup>6</sup> Miriam Grace A. Go and Isagani De Castro, Jr., “Talk About a Revolution”, **Newsbreak**, July 18, 2005, p. 27.

<sup>7</sup> Ellene Tordesillas, “Brandy for GMA”, **Malaya**, October 12, 2005

From late July until early September, the House of Representatives was preoccupied with the impeachment complaint against GMA. To make sure De Venecia stayed on the anti-impeachment side, Palace operatives assured him that GMA was still prepared to step down. **Inquirer** columnist Manolo Quezon has an elegant description of this three-way 'dance'. "In the great division among our people that took place in recent months, it was the Speaker who provided the "foot soldiers," so to speak, at the command of former President Ramos when the latter decided to support the President. In truth, what Ramos possessed at the time was an impeccable sense of timing, and a residual prestige. It would depend, however, on the Speaker to hold the line and man the trenches with loyal troops and efficient lieutenants in what has become a political battle of attrition. The Speaker might have been able to justify fighting "creeping impeachment" by "stealthily railroading" the throwing out of the impeachment, but his unpopularity and that of his parliamentary cause would only be worth it if the President did her part by gambling big on achieving constitutional change. She has done the opposite: she has gambled small, and it may be that her real bet is on herself."<sup>8</sup>

As if to make up for his weaker political position, the Speaker went on the offensive soon after impeachment was killed. "We don't have any choice. Even she doesn't have any choice (but to fulfill her promise)," De Venecia said during a forum late September where he laid out five possible chacha outcomes. De Venecia said whichever of the five alternatives Mrs. Arroyo chooses would dilute her powers, owing to the election of a prime minister in a parliamentary system.<sup>9</sup> The Palace responded in kind. Palace loyalists within the rump party, Kampi, opposed the immediate passage of the con-ass resolution that De Venecia wanted. Kampi leaders said the House should wait until the constitutional commission created by executive order was finished with its work in mid-December. In mid-November, Kampi used bigger guns, they threatened to unseat De Venecia as speaker by floating the candidacy of Cong.Pichay.

FVR played 'bad cop', hinting that he was about to join the opposition, saying GMA 'in conscience' has to sacrifice to resolve the crisis by cutting her term, even discreetly floating the possibility that he might organize a coup.<sup>10</sup> But because, by November the opposition was in disarray and GMA seemed to have the upper hand, the FVR-JdV combine was forced to back down. JdV and his lieutenants began to talk about GMA remaining in power until 2010. At the very end of November, the House passed a resolution calling for con-ass with an explicit proviso that after a parliament is elected in 2007, GMA would concurrently be president and prime minister. At this point, GMA turned around and became a avid public proponent of chacha. But the convoluted politics of chacha would first go through Pepe Abueva and the concom.

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<sup>8</sup> Manolo Quezon, "The Long View : The Speaker's position", **Philippine Daily Inquirer**, August 29, 2005

<sup>9</sup> Paolo Romero, "De Venecia unveils 5 options for GMA", **The Philippine Star** 09/28/2005

<sup>10</sup> **Manila Times**, 2 December 2005; see also Anjo Perez and Louie Perez, "GMA, De Castro urged to make 'supreme sacrifice'", **Manila Bulletin**, October 26, 2005.

The Consultative Commission headed by Pepe Abueva and Lito Lorenzana is a sideshow that gained prominence because, at the time, it was useful to key players. It is the outcome of a bargain between the Citizens Movement for a Federal Philippines (CMFP) a civil society organization led by Abueva and Lorenzana, and CMFP national chair Rey Magno Teves, where in return for supporting GMA in the 2004 election, the CMFP would get an official forum for advocating a parliamentary/federal shift. By the time the Palace got around to fulfilling their end of the bargain, the current crisis was on and Abueva and his faculty at Kalayaan College had to throw in supporting GMA in the crisis. The creation of the Con-com is mandated under Executive Order 453, which the President issued on Aug. 20. Although CMFP leaders, Abueva (Chair) and Lorenzana (Secretary General) were allowed the key positions, Palace operatives picked the majority of Concom members.

The concom draft amendments submitted to GMA in mid-December were actually a reasonably accurate 'reading' of current thinking, of what might be called the center of gravity of opinion, on parliamentary and federal government within the elite. In contrast to the end November House draft which abolished the party list system altogether, the concom draft pushed party list representation to 30 percent of the unicameral parliament, a small but significant improvement from the current system, but with language that undermines the idea of proportional representation. (see below, p. ) The concom draft also introduced the idea of what can be called 'creeping federalism' where local government units take the initiative in determining the boundaries of federal states and when they would claim federal status. The main drawback is that the main outlines of the new system is left up to parliament to decide. But no one pays attention to these advances in chacha discourse because the concom recommended the cancellation of the 2007 elections.<sup>11</sup>

The way the 'no election' (NOEL) proposal went from its questionable birth as a transitory provision in the concom's December 15, 2005 report to its ignominious death in less than two months provides a microcosm of chacha and its 'pushers'. The NOEL proposal had been voted down in the concom plenary, but the issue was reopened and approved a day later. It was pushed by local government executives in ULAP, but would have gotten nowhere without Malacanang support. The president immediately submitted the concom report to the House without changes or comments and palace spokespersons supported the NOEL proposal. But GMA backtracked when NOEL was roundly attacked, most strongly by FVR who called it a 'monumental blunder', later by Catholic bishops.

GMA did not want to antagonize her two main bases of support, local officials and House members, but at the same time, she could not disregard opposition from media, academe and almost all senators. So Malacanang waffled. The almost comic result was a Palace spokesperson report that the Council of State meeting it had just called rejected NOEL, then two days later, said actually it did not. The House leadership tried to

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<sup>11</sup> INQ7.net, **Philippine Daily Inquirer**, December 16, 2005; Consultative Commission, "Proposed Revision of the 1987 Constitution", December 2005, 64 pages.

hide its support of NOEL in a seemingly innocuous item in its chacha proposal's transitory provisions. In the plebiscite for the ratification of the new Constitution, the people will have the option to postpone all elections until the second Monday of May 2010. When the Catholic Bishops Conference of the Philippines (CBCP) singled out NOEL for attack in early February, GMA came out against it for the first time and NOEL finally died. The House meekly followed suit.<sup>12</sup>

As in earlier House attempts to force the pace of chacha, the Senate stood in the way. In theory, the administration majority of 15 senators in a 23 member Senate is massive. But chacha proponents would first have to overcome Senate President Drilon's control over the Senate agenda. Drilon is committed to chacha through an elected concon, and even then only after GMA is gone. Drilon is supported by four other senators who are LP members. Then there is the Wednesday Club of senators who have lunch together every Wednesday who oppose chacha because it would get in the way of the presidential ambitions of former club member, now Vice President Noli de Castro. The eight opposition senators, except for Senator Ed Angara, would oppose anything the president supports.<sup>13</sup> That leaves only a handful of 'administration' senators who would support the president's position on chacha.

Unable to imagine how to break Senate opposition, JdV and his people have proposed patently unconstitutional means including overriding the Senate by insisting that the two Houses vote jointly, and using a 'peoples initiative' a mode of amendment which has been struck down by the Supreme Court in two decisions. Under the constitution, a three fourths vote of "all members of Congress" is required to amend the charter. "Since it says a three-fourths vote of all members of Congress," House Committee on Constitutional Reform chair, Cong. Constantino Jaraula says, "we will just add the total membership of the House at 236 and the total membership of the Senate which is 24 (actually 23 in 2005). That gives us a total of 260. Therefore, three fourths of that will be 195." Jaraula said that the House would exercise this "option" of going alone if the Senate refused to sit down with congressmen to debate the proposed amendments.<sup>14</sup>

Yet another method for bypassing the Senate was explored in mid-November, passing amendments through a "peoples' initiative". Art.XVII, Sec.2 of the 1987 constitution says amendments may be "directly proposed by the people through initiative

<sup>12</sup> LP members of the House of Representatives later pointed out that NOEL has actually not been removed from the House draft. It has merely been hidden. **Philippine Star**, 17 February 2006.

<sup>13</sup> At present, the Senate majority is made up of 15 senators -- Drilon, Senate President Pro Tempore Juan Flavio Velasco, Senate Majority Leader Francis Pangilinan, Miriam Santiago, Manuel Villar, Joker Arroyo, Ralph Recto, Ramon Magsaysay Jr., Manuel "Mar" Roxas II, Ramon "Bong" Revilla Jr., Richard Gordon, Pia Cayetano, Lito Lapid, Rodolfo Biazon and Juan Ponce Enrile who defected to the majority last month. The Senate minority is composed of Senate Minority Leader Aquilino Pimentel Jr., Senators Luisa "Loi" Estrada, Jinggoy Estrada, Sergio Osmeña III, Panfilo Lacson, Alfredo Lim, Jamby Madrigal and Edgardo Angara. **Philippine Daily Inquirer**, September 29, 2005.

<sup>14</sup> **Philippine Daily Inquirer**, 17 August 2005, p.A4. See also **Philippine Star**, 19 Aug 2005, p.4

upon a petition of at least 12 percent of the total number of registered voters, of which every legislative district must be represented by at least three percent of the registered voters therein.” With the support of local government officials, proponents believe they could easily organize the required number of votes. The problem is that, in two decisions in 1997, the Supreme Court ruled that this mode of amending the constitution could not be availed of because existing legislation is inadequate. Despite the opinion of Arroyo's Secretary of Justice, Raul Gonzales, that this method might be “more feasible and faster”, like the first proposal, it can only be done if the Supreme Court cooperates in bypassing the Senate, a patently unconstitutional maneuver.<sup>15</sup>

Even if 'peoples initiative' proponents manage to get the Supreme Court to revise its decisions on the adequacy of existing implementing laws, they also have to surmount the issue of what amendments are possible in a 'peoples initiative'. According to retired Supreme Court Justice Isagani Cruz (Constitutional Law)<sup>16</sup>: “Amendment means isolated or piecemeal change only, as distinguished from revision, which is a revamp or rewriting of the whole instrument.” Only amendment, not revision is allowed in a “peoples initiative”. Perhaps because chacha by peoples initiative proponents know the difficulty of getting past the Supreme Court on this and the enabling law issue, the House proposal added another 'sweetener', this time specifically for the Supreme Court. Under Article VIII (on the judiciary), Section 11 of the House committee on constitutional amendments draft, the retirement age for justices and judges would be "extended" from 70 to 75 years.<sup>17</sup>

By February 2006, House bravado about 'going it alone' had passed. The House chacha resolution is a “Concurrent Resolution” and Rep. Constantino Jaraula, chair of the House Committee on Constitutional Amendments and the resolution's author, says the resolution would be sent to the Senate "as soon as possible" for its concurrence.<sup>18</sup> The initiative for pushing chacha has moved to Malacanang. The main administration chacha initiative is the collection of signatures for a 'peoples' initiative' being organized by the Union of Local Authorities of the Philippines (ULAP). With the support of local government officials, the required five or so million signatures will be collected. But whether it will come to anything will depend on whether the Supreme Court is willing to reverse itself. Newly appointed Department of Interior and Local Government (DILG) secretary and former congressman Ronaldo Puno says Kampi will seize the initiative for securing the necessary 195 House votes to push con-ass.<sup>19</sup>

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<sup>15</sup> “DoJ Chief: Chacha via people's action can work fast”, **Manila Standard Today**, November 15, 2005, p.A3.

<sup>16</sup> Isagani Cruz, *Constitutional Law* (1991 Edition), p. 10, Quoted in Atty. Neri Javier Colmenares, “Legal Memorandum on the Proposed Constitution of the House of Representatives' Committee on Constitutional Amendments”, January 26, 2006, 25 pages.

<sup>17</sup> Jess Diaz, “Draft Charter extends terms of SC justices”, **Philippine Star**, January 27, 2006.

<sup>18</sup> “Cha-cha House resolution to be referred to Senate committee: Drilon”, **Philippine Star**, 1 December 2006

<sup>19</sup> Michael Lim Ubac, “New DILG secretary's priority: chacha”, **Philippine Daily Inquirer**, February 10,

Another mode of constitutional reform is called the “Bernas Formula” after the eminent constitutional law expert, and member of the Constitutional Commission which drafted the 1987 Constitution. Pointing to unclarities in the mode of amending the constitution, Fr. Joaquin Bernas says, one way of interpreting Sec.1, Art.XVII is that it is possible to process constitutional amendments following the normal legislative process in both houses as long as specific provisions on extraordinary majorities are followed. Under these provisions, for example, proposed amendments would have to be approved by three fourths vote.<sup>20</sup> This was welcomed by senators who were worried that the House would insist on the two houses meeting and voting jointly with equal voting power. This mode of amendment was explored by the Liberal Party as a way of breaking the impasse between the House and the Senate prior to the start of the crisis in June 2005.

The first attempt at using this formula was made by Rep Hermilando Mandanas, 2<sup>nd</sup> dist, Batangas, and an LP member. He says that based on Sec 1, Art XVII of the 1987 constitution, “any amendment to, or revision of, this constitution may be proposed by: (1) The Congress, upon a vote of three fourths of all the members; ...” Sec 105, Rule XV of the Rules of the House of Representatives: Form of Proposals and Procedure for Adoption. - Proposals to amend, or revise the Constitution shall be by resolution which may be filed at any time by any member. The adoption of resolutions proposing amendments to or revision of the Constitution shall follow the procedure for the enactment of bills.”

Mandanas earlier this year introduced Hs Res 686, changing the term of office of all local officials, and members of the House of Representatives from 3 to 4 years, and extending the terms of these officials by one year, from May 2007 to May 2008. Another, Hs Res.687, what Mandanas calls “...uniting the executive and legislative functions of government” is really only to allow members of the legislature to become members of the cabinet, and to require “That the President shall nominate and appoint at least sixty per centum (60%) of the members of the cabinet, including the Executive Secretary, from among the members of Congress.” Mandanas also introduced HR 688 which allows Congress to create more autonomous regions than the two allowed in the 1987 constitution.<sup>21</sup>

It is not just GMA who looks to the constitution as a way out of the current political impasse. There is a proposal floating around in the ranks of the anti-GMA camp for forcing GMA to step down which includes complex chacha maneuvers. In this proposal, first floated by El Shaddai's Mike Velarde and Cardinal Vidal, a “bullet amendment” - one single amendment cutting GMA's term and calling for Presidential elections in 2007 – will be passed by a Constituent Assembly. Delegates to a concon would be elected together with a new president. A later version would also force Vice

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<sup>20</sup> Fr. Joaquin G. Bernas, S.J., “Sounding Board : Let's get it over with” **Philippine Daily Inquirer**, August 1, 2005

<sup>21</sup> **Philippine Star**, April 8, 2005, p.13

President De Castro down, and make Senate President Drilon temporary president until 2007. To persuade the House and local government officials to go along, their terms would be extended until 2010, starkly showing that both the GMA and anti-GMA camps are breaching the limits of democratic practice to achieve their goals.

As the preceding account of the elite chacha factions and their convoluted dynamics show, it will be difficult to predict what will happen to chacha in the coming months. It is unlikely that the current version of the JdV/GMA chacha plan which would have GMA remain in power until 2010 will get past an oppositionist Senate. An elite crafted formula for bringing GMA down, at best will only produce a concon. Things could be worst if by some stroke of collective bad luck the JdV/GMA plan for chacha succeeds. The only chance for progressive groups to secure the kind of constitutional reform it wants is if GMA is ousted by extra constitutional means and a transition government takes over. The logic of such an alternative would require, as preparation for an elected government, a radical revamp of the Comelec and a new electoral system within a new form of government. Constitutional reform could then be accomplished the way Cory Aquino did it in 1986, through an appointed constitutional commission.

## **Proposed Amendments**

### **House of Representatives**

One of the striking things about the chacha struggle is that the kind of change traditional politicians want has been rather explicit. Reformers have focused their energies on fighting for a democratic process of constitutional reform through concon. While civil society groups have expressed preference for a parliamentary and federal form of government, they have left room for disagreement and democratic negotiation on the specific character of new institutions. Specific groups have focused energies on specific changes, the House on a shift to a parliamentary form of government, the CMFP for federalism. To win allies, these groups have adopted the advocacies of others. In the course of the last couple of years, specifics have been changed, but the basic advocacies have remained.

The Speaker has made his agenda very clear. “House Concurrent Resolution No.16 Calling for the Senate and the House of Representatives to Constitute Themselves as a Constituent Assembly to Introduce Amendments to the Constitution” was approved 19 March 2003. It proposed specific amendments which clearly laid out the Speaker's plans.

1. Art.II (Declaration of State Principles and State Policies), Sec.1 would specify that the Philippines is “...Federal Republic with a Parliamentary Government”...
2. Art.VI. A President as “Head of State” but mainly vested with ceremonial powers. The President is to be elected by direct vote to a term of five years.
3. Art.VII. Sec.2, No.1 The parliament will have not more than 300 members elected in single member districts, for a term of five years (Sec.4). Districts will

- be contiguous territory with at least 250,000 population. (No.3)
4. Party list members will constitute 20% of the total number of district members. But details on how they would be elected will be “as provided by law”. Art VII, Sec 2, No. 2
  5. Sec.3 has an anti-turncoatism provision.
  6. Sec.5 requires the election of a successor before a vote of no confidence on a Prime Minister can be passed. No confidence votes may not be passed one year after an election, and one year before the next election.
  7. Art.XI, Sec.5 “Parliament shall determine the distribution of powers between the Federal Government and parliament on the one hand and the states and state assembly on the other, their concurrent jurisdictions, as well as the assignment of residual powers. The next two sections further increase the power of parliament over federal states. Sec.5 “In matters within the exclusive legislative power of the parliament, the state assemblies have power to legislate only where and to the extent that they are given such explicit authorization by federal law. Sec.7 “Legislative powers not expressly granted in this constitution to the parliament or to the state assemblies are powers reserved to parliament.”
  8. Art.XIII, Sec.2 “The parliament shall by law define national policy for the use and development of natural resources which shall include the sharing of revenues from the utilization of the resources between the federal government and the local states.”

These proposed amendments are carefully crafted to maximize the Speaker's strengths, especially the support of the members of the House of Representatives. The new political system would give unprecedented power to current members of the House of Representatives. The new parliament would be elected in the same single member districts where local political clans have concentrated their efforts for political control. To make room for new aspirants, especially in areas where contests for control are intense, the number of single member districts would be increased from the current 236 to 300. Terms would be increased from 3 years to 5 years and the limit on the number of terms is removed. While a concession is made to party list members by keeping their number to 20 percent of single member district representatives, how they are elected would be left up to the new parliament to legislate.

Under this proposal, current members of the House are well provided for, to say the least. The allocation formula setting the population base at 250,000 for single member districts is the current formula. Contests for membership in the first parliament will be in exactly those districts that current House members already control or at least are familiar with. Even if a new redistricting law gets passed in the future, the people who control the House today expect, and would be in a position to control a parliament elected using this proposal.<sup>22</sup> As if this was not enough, De Venecia and his cohorts have allowed their

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<sup>22</sup> The proponents are apparently gearing up for some major gerrymandering. Art. XVII, Sec. 9 of the House 2005 Proposal says “ 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”.

greed to run rampant. The Transitory Provisions (Art.XIX) of the House 2003 draft provide that 19 seats will be allotted to top parties in the current House through a proportional representation formula based on the 2001 election results. By 2005, De Venecia was telling members of the House that all party list seats will be allocated according to the proportion of single member seats won by major political parties.<sup>23</sup>

Most importantly, the power of the parliament would be maximized with the abolition of the presidency and the Senate, the House' main competitors under the current form of government. While there would be a directly elected President, she/he would only have ceremonial powers not unlike those of the Queen of England. Even local governments are not spared. While rhetorical concessions are made to federalism, the distribution of powers between the central and local governments would be left up to the new parliament. Not incidentally, the Speaker/Prime Minister would be the all powerful center of the new political system. He cannot even be removed through a vote of no confidence until after his successor has been elected, making his removal extremely difficult.

Although the House's plans had not gotten very far towards realization by the latter part of 2005, its ambitions had grown. House Committee on Constitutional Amendments Report No. 1065 submitted to plenary as House Concurrent Resolution No.26 on September 28, 2005 strengthened the 'House as Parliament' even further. The ceremonial President would now be elected by parliament. The 300 seat limit was removed and party list representation was abolished altogether. Although the shift to a federal form of government is supposed to be one of two major changes, it was now postponed for 10 years and the process and the division of powers left completely up to the new parliament.<sup>24</sup> The committee report was adopted by the House 29 November 2005.<sup>25</sup>

The congressmen also allocated themselves a three year extension of their term in a new parliament by supporting NOEL in 2007. An attempt was made to hide the patent greed underlying this provision by making it look as if it would be up to the people to determine this in a plebiscite. Art. XVIII, Sec. 3 : says “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.” After the almost universal condemnation of NOEL, the House withdrew this particular provision. But only after

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<sup>23</sup> This was reported in conversations with Akbayan members of the House.

<sup>24</sup> The provision on the federal form of government was relegated to a section in the article on the 'National Assembly'. Section 24, Article VII. “A federal system of government consistent with the Unitary Parliamentary system provided for herein shall be installed within ten (10) years from the approval of these Amendments. The National Assembly shall provide by law the division of the country into as many “independent states”, allocating uniform powers thereto, and reserving to the Federal government powers on national defense, foreign relations, monetary policies, and such other powers it may deem imperative.”

<sup>25</sup> “House adopts resolution calling for Con-Ass mode”, Ben R. Rosario, **Manila Bulletin**, 1 December 2005.

GMA had already condemned it.

The committee report consists of three parts: the resolution urging the Senate and the House to convene itself into a constituent assembly to propose constitutional amendments, the draft rules of the assembly and the panel's proposed amendments. It is in the transitory provisions of the proposed amendments that the committee allows Mrs. Arroyo to serve both as President and Prime Minister until 2010. Section 8, Art. XVIII says:

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.

President Arroyo will not only have undiminished authority under the cha-cha initiative of her allies in the House of Representatives; she will in fact have additional powers.<sup>26</sup> Constitutional law expert, Fr. Joaquin Bernas SJ has an extensive list:

“While the provision says that the incumbent President will have all the powers she has now, in fact she will have more, because some of the limitations on her powers today will be removed.

“To start with, the limitations on the commander-in-chief powers carefully elaborated in the 1987 Constitution will be removed. In effect, the proposal will resurrect the vast powers exercised by President Marcos, which powers were upheld by the martial law Court and overruled by the 1987 Constitution.

“Next, the prohibition of the appointment of the President's spouse and close relatives to key government positions will be removed.

“Gone, too, will be the prohibition of appointments two months immediately preceding an election.

“Likewise, gone will be the need for the Monetary Board's concurrence before the President can contract or guarantee foreign loans.

“The appointing authority will also be enhanced by the proposal that the confirmation of promotions in the military will be required only for the ranks of brigadier general and commodore. The President then will be able to appoint colonels and naval captains without need of confirmation.

“The President's treaty powers will also be enhanced by the removal of the

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<sup>26</sup> Jess Diaz, ‘Under House Cha-cha, GMA will be president-PM’, **Philippine Star**, November 11, 2005

prohibition of the presence of foreign military forces.

“And when she calls a special session, she will be able to specify what subjects the Parliament may take up.

“The Chief Executive will also have greater leeway in the handling of public funds because, in the use of discretionary funds and leftovers from special funds, there are no constitutional rules.

“Can she be removed by a no-confidence vote? Parliament can try. But she will have the power to dissolve Parliament. And the Supreme Court is being stripped of the power to determine whether she has gravely abused her discretion.”<sup>27</sup>

Another analyst elaborates on the removal of limits to the executive's martial law powers under the 1987 constitution. “The deletion 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... 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, especially since Pres. Arroyo, has the power to dissolve Parliament under Art. VII, Sec. 6 of the House Proposal.”<sup>28</sup>

The main interest of the congress people who crafted the latest proposed constitutional amendments is to arrogate as much power to themselves, and to eliminate

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<sup>27</sup> Fr. Joaquin G. Bernas, S.J., “Sounding Board : A parliamentary system?” **Philippine Daily Inquirer**, February 6, 2006.

<sup>28</sup> Atty. Neri Javier Colmenares, “Legal Memorandum on the Proposed Constitution of the House of Representatives' Committee on Constitutional Amendments”, January 26, 2006, 25 pages.

their main institutional competitors, the Senate and the Presidency. To win business support for their audacious political project, it makes sense to give them what they apparently want, the removal of restrictions on the entry of foreign investment. But to remove constitutional restrictions on the exercise of emergency power, to delete outright many of the human rights and social justice provisions of the 1987 constitution exposes the House leadership's authoritarian ambitions. Removing restrictions on the reopening of US military bases in the Philippines is gratuitous, especially because there is no indication the US wants those bases back.<sup>29</sup> In the end, this 'reactionary overreach' may yet spell the end of House chutzpah, for in the process, they will have built the broadest possible coalition against their plans.

### **Consultative Commission**

The Con-Com's package contained few surprises: the shift to a "classical" form of parliamentary government, a gradual, "constituent-initiated" transition to federalism, and the lifting of the ban on foreign ownership of natural-resource companies, public utilities, educational institutions and other industries. These proposals hew closely to those that had been made by the House of Representatives and Speaker Jose de Venecia,<sup>30</sup> with one stunning exception. The concom draft expresses in writing what De Venecia and his people have only talked about and is not in the 2005 House draft. The 30 percent 'proportional representation' (PR) segment of the parliament would not be elected but would go to the parties in proportion to the percentage of single member seats they won in the preceding election.<sup>31</sup>

With one seemingly innocuous provision, the concom erases the potential impact of PR elections on building new, more disciplined, program-oriented political parties.<sup>32</sup> Adding insult to injury, the concom makes one purely rhetorical concession to the spirit of the party list provision in the 1987 constitution. In Art.VII, Sec.2 (2) "The members chosen by the political parties shall constitute thirty *per centum* of the total number of members including those elected by Parliament. In the choice of such members, the political parties shall ensure that the labor, peasant, urban poor, veterans, indigenous peoples, women, youth, differently-abled, and such other sectors as may be provided by law, except the religious sector, are properly represented." This is repeated in Art.XI,

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<sup>29</sup> The House proposal eliminates Sec. 25, Art. XVIII of the 1987 constitution on foreign military bases.

<sup>30</sup> "The Con-Com finishes the job, but what next?" PCIJ, December 16, 2005 @ 7:15 pm · Filed under 'In the News, Charter Change' , [www.pcij.org/blog](http://www.pcij.org/blog)

<sup>31</sup> This was not something forced on Abueva at the concom, he has advocated this for some time. See, for example, Jose Abueva, "Some Advantages of Federalism and Parliamentary Government for the Philippines", p.14.

<sup>32</sup> Article VII, Sec. 2. (1) Parliament shall be composed of as many members as may be provided by law, who shall be elected from Parliamentary 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 shall be chosen on the basis of proportional representation by the political parties according to the votes each party obtained in the preceding elections.

SEC. 9. "Parliament shall, by law, (1) promote the development of a party system in which various interests and sectors in society shall be represented, including women, labor, the poor, peasants, indigenous peoples, persons with disability and the youth."

Hidden behind this completely meaningless bow to sectoral representation in a section on political parties is a provision to "encourage the development of two major political parties to ensure that a majority can assume responsibility and accountability in governance". [Sec.9 (2)] This will be done by providing "financial assistance to the political parties on the basis of their share of the votes cast for the political parties in the previous Parliamentary elections". This is common practice in many established democracies. What is not is the provision that "The two dominant political parties shall be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, and similar bodies. Other political parties shall be entitled to appoint poll watchers in accordance with law." (SEC. 11) This will skew the electoral playing field strongly in favor of two dominant parties. Even the right of remaining parties to poll watchers can be manipulated by the two main parties in their favor in legislation.

Showing who of its two masters was more in control, the concom not only would allow GMA to remain president, she is given extensive appointing powers to the parliament. She can appoint at least one third of the Cabinet to parliament as well as thirty other people "who are experienced and experts in their fields". These appointments would enable GMA to put her personal party Kampi on par with Lakas and enable her to more easily curb De Venecia's ambitions. Although not all the deletions on human rights and the executive's emergency powers from the 1987 constitution made in the House draft are made in the concom draft, it adds a potentially more powerful provision on the exercise of civic and political rights. Art IV, Bill of Rights, SEC. 4. says "No law shall be passed abridging the **responsible** exercise of the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." <sup>33</sup>

The provisions on a shift to a federal system are the most careful, and most sophisticated from an institutional design vantage point. This is understandable given that the concom chair and secretary general are strong advocates of federalism. Most people would agree that a shift to a federal system cannot be rushed, thus the concom's proposal for what might be called "creeping federalism". The concom's suggested process would start with strengthening local autonomy. Art.XII, Sec.3 says "Parliament shall strengthen the existing Local Government Code to provide for a more responsive and accountable local government structure instituted through a system of decentralization and devolution with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources."

The next step addresses another major consideration, getting local people to take

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<sup>33</sup> See Raul C. Pangalangan, "Tinkering with Free Speech: the latest Con", **Philippine Daily Inquirer**, 6 January 2006

the initiative in determining the boundaries of federal states and when they take that step. Art.XII, Sec. 12 says: “An autonomous territory may be created in any part of the country upon a petition addressed to Parliament by a majority of contiguous, compact and adjacent provinces, highly urbanized and component cities, and cities and municipalities in metropolitan areas through a resolution of their respective legislative bodies.” Parliament then passes “...an organic act which shall define the basic structure of government for the autonomous territory, consisting of a unicameral territorial assembly whose members shall be elective and representative of the constituent political units. The organic acts shall provide for courts consistent with the provisions of their constitution and national laws.” (Sec.13) Section 16 delineates the powers of the federal state. The new federal state will be formed after it is approved in a plebiscite within the territory.

“Within one year and after at least sixty percent of the provinces, highly urbanized cities and component cities of the country shall have joined in the creation of different autonomous territories, upon petition of majority of such autonomous territories through their respective regional assemblies, the Parliament shall enact the basic law for the establishment of a Federal Republic of the Philippines, whereby the autonomous territories shall become federal states.” (Art.XX, SEC. 15, Transitory Provisions) Through this measure, the shift to federalism is allowed sufficient implementation time, one that is not predetermined, and is paced by local initiatives. To assist the process, “...a constitutional Preparatory Commission shall be created that shall study and determine all constitutional, legal, financial, organizational, administrative, and other requirements necessary or appropriate... ’ (Sec.16)

### **National Patrimony Provisions**

Of the three major areas of advocacy on chacha, the House and a civil society coalition C4CC (Citizens for Concon) have been the main advocates of a shift to a parliamentary system, and the CMFP and local officials for federalism. Removing the restrictions on foreign ownership of sectors of the economy has not had a consistent advocate during the Arroyo years. Part of the reason has been the determined opposition of civil society groups backed by sections of the Catholic church. Knowing this, De Venecia and the House tended to shy away from the issue in its advocacy in 2002-2003. Organized business groups have not been very active either; only foreign chambers of commerce have consistently advocated this step, but with obvious limitations. It has only been in the last year that key players have pushed. As a result, both the House and concom drafts have lifted the restrictions.

Right off the bat, the concom draft deletes the provision in the “National Economy” declaration of principles of the 1987 constitution which says “...the State shall protect Filipino enterprises against unfair foreign competition and trade practices.” (Art.XIV, Sec.1, A. National Economy) Where the 1987 constitution limits congress' power to determine which industries would have 60 percent Filipino ownership requirements by identifying a number of them, the concom now gives parliament more

leeway: “Parliament shall, upon recommendation of the economic and planning agency, provide for limitations on foreign ownership in certain areas of investments when the national or public interest dictates.” Similarly, limiting the exploitation of natural resources to citizens or corporations 60% owned by Filipinos has been replaced with "under such terms and conditions as may be provided by law" in the concom draft.

The concom, however, limits the acquisition of alienable lands of the public domain to Filipino citizens. “Save in cases of hereditary succession, no private agricultural lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Lands classified in accordance with law as industrial, commercial or residential may be transferred or conveyed to foreign individuals or corporations with foreign ownership. Parliament shall define the conditions for ownership of allowable lands by foreign individuals and by corporations with foreign ownership”. (Art.XIV, Sec. 6, “National Patrimony”) Restrictions on foreign ownership of public utilities in the 1987 constitution have been deleted. (Sec.11)

Where the concom draft leaves it up to parliament to decide on rules governing foreign investment, the House draft removes distinctions between foreign and Filipino-owned enterprises. Sec. 2 of Art. XII of the House Proposal provides that “The State may directly undertake the exploration, development, and utilization of natural resources, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens or with corporation or association domestic or foreign.” Similar restrictions on the ownership and operation of public utilities (Sec.11), media and advertising were removed. As in the concom draft foreign ownership is allowed only with residential and industrial lands. (Sec.1)

The debate on this issue has not really been 'joined'. It is, potentially, the most emotionally explosive of the three major constitutional reform issue clusters. It is not an easy issue to deal with. On one hand, there is no evidence that foreign investors will respond to changes in the economic provisions of the constitution. Instead, foreign investors generally point to political factors – corruption, unstable regulatory and policy environment, peace and order problems – as the main investment disincentives. On the other hand, constitutional restrictions have not exactly been effective. As one analyst put it, rather plaintively, “It would seem that constitutional constraints become ineffective when the government wishes it so.”<sup>34</sup>

“...inroads to foreign participation have been made possible by the acts of the Executive departments of the government. Courts generally presume the validity of those acts. The policy to invite foreign investments has allowed for the liberal construction, though not expressly stated, of protectionist provisions in favor of foreign participation. The methodology is simple – break-up concepts and definitions. The broken down components can then be parceled out to foreign participants hoping that when these

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<sup>34</sup> Eric Quevedo, “Reflections on the National Patrimony Provisions of the Philippine Constitution”, p.1

parceled out components are summed up again, they do not add-up to operation or control of the public utility by a foreign entity.”

### **Crisis and Reform**

The intensifying polarization into pro-GMA and anti-GMA camps has spilled over into the chacha issue. The proposals of the pro-GMA chacha camp and the means for achieving its agenda has become more and more 'radical'. Faced with Senate intransigence, the House-Malacanang-Local Government Officials combine is pushing ahead with extra-constitutional means. The House' 'shift to parliament' agenda has now incorporated the removal of restrictions on foreign participation in the economy, and more ominous, the adoption of authoritarian constitutional formulations. Since the pro-anti-chacha camps roughly coincide with the pro-anti-GMA camps, overall polarization precludes negotiation. The pro-GMA chacha camp has, as a result, also decided to 'go for broke'. Its as if the leadership has decided that if you do not have to negotiate chacha outcomes, you might as well 'load' your agenda, go from a 'minimum' to a 'maximum' program.

The current crisis has also deepened the perception that what is at work here is not just a regime crisis but that of the whole political system. The main point of GMA's SONA in late July 2005 was the need for system change. She has consistently pushed this. In September 2005, for example she said that charter change is one major step the nation must take to achieve peace and stability over the "rapidly degenerating political system."<sup>35</sup> The opposition has also taken this position, pointing to the need to shift to a parliamentary form of government where replacing a discredited executive would not be as difficult as it is now. Various opposition groups want an extra constitutional transition period where a number of changes in the political and economic system can be accomplished expeditiously.<sup>36</sup> This is a major shift in chacha discourse compared to previous periods of chacha contention during the Ramos and later, the Estrada administrations.

Under Ramos, perception of systemic crisis was limited, allowing Ramos to rope chacha into a personal agenda, enabling him to run for a second term. This, in turn, provoked reform elements in civil society, church and business to oppose chacha outright. Unfortunately for Ramos, his one major attempt at political reform was poorly managed. A conspicuously authoritarian draft revised constitution formulated by (of all places) a team at the National Security Council, was exposed by the media.<sup>37</sup> By the time the charter change campaign got going again, it was too close to the elections to effectively hide its term-limit extension goals. The Ramos government, ironically, was a victim of its success in projecting political stability. Constitutional change is usually preceded by some political crisis which overcomes the conservatism of the political public and generates a

<sup>35</sup> "GMA: Cha-cha to bring unity", **The Philippine Star**, September 9, 2005

<sup>36</sup> See, for example, Laban nang Massa, **Transitional Revolutionary Government**, November 2005.

<sup>37</sup> **Manila Times**, September 5,6, 1995

mood supportive of change.

The problem of the Ramos regime was that it did not have credibility as a proponent of political reform. It maintained its authority and pushed its economic reform agenda by using time-tested trapo tactics. The regime's vulnerability to the requirements of trapo politics made it difficult to clinch a thoroughgoing reform image. The regime was unable or unwilling to take the political risks necessary for pushing the boundaries of discourse on political reform. It is as if the regime itself was uncertain about whether it was a "business as usual" trapo regime or a reformist regime. Ramos was correct in saying that we need to build a strong Philippine state, one that is capable of asserting our country's "strategic interests". But the strong state that "has relative autonomy over the influence of oligarchic groups" that Pres. Ramos wants is possible only in a revolutionary or a Marcos-style authoritarian state. Impatient with the narrow parameters of legitimate political action allowed a ruling regime under the existing political system, military and allied business groups within the Ramos regime pushed for greater regime latitude, for "a strong state". But the only way to strengthen the state that they could imagine was to create an authoritarian political system.

The Estrada regime attempt to organize chacha was even more inept. Estrada made a bow to demands for a more democratic constitutional reform process through a Constitutional Convention (Concon) by saying that he would recommend that a Concon be convened to deal with political reform. But only in 2004, after a first step has been taken to get a Constituent Assembly (CA) to approve his economic reform package. The President's promise to limit step one to economic reform was an attempt to assuage public fears that cha cha would be manipulated by politicians to serve their narrow political ends by, among other things, removing term limits. Despite claims to transparency, the administration's cha cha moves looked shadowy and forced. A decision by the cabinet to support chacha through a concon was overruled by Estrada without prior notice. As a result, the civil society-Catholic Church coalition which defeated the Ramos initiative again mobilized a massive rally on August 20, 1999 which effectively killed the Estrada chacha initiative.<sup>38</sup>

In the last few years, the push for amending the constitution has come mainly from politicians whose political careers are constrained by term limitations imposed by the 1987 constitution. This is perfectly understandable since politicians constitute the main group with both the motive and the political means for amending the constitution. The most noteworthy instances of constitutional change in the past were linked to the political ambitions of incumbent presidents, Quezon in 1940, Marcos in the early 1970s, and Ramos in the mid-nineties. It is also understandable that the strongest

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<sup>38</sup> I was invited to be part of a working group to implement the cabinet decision. I sat with a dozen cabinet members at a Manila Hotel restaurant waiting for President Estrada to finish his speech to the Manila Overseas Press Club in the evening of August 9, 1999. In the middle of Estrada's speech, someone ran out and told the group that Estrada had proposed a completely different chacha agenda. To this day, no one from the group has ever figured out what happened, who pushed the chacha agenda Estrada announced.

opponents of constitutional change at this time are politicians in the opposition who do not want a change in the rules of electoral competition before they have had a chance to defeat incumbents. Among them the most vehement opponents are those with presidential ambitions. It makes sense therefore that the decisive obstacle to amendment through legislative action faced by the administration is in the Senate which has the largest collection of presidential aspirants.

Changing discourse on chacha in the past decade has been influenced by deepening crisis. Successive crisis have brought out more and more the bankruptcy of the 1935 political system restored by Cory Aquino. The military challenges to that system during the Aquino presidency, then in 2003, most recently, in February 2006, can be seen as instances of the refusal of a key apparatus of the state to accept the political system. The most important crisis was the extra constitutional ouster of Pres. Joseph Estrada in 2001. The Estrada presidency and its extra constitutional demise, EDSA 2 and EDSA 3, the chaotic May 2001 elections, then the threat of an FPJ candidacy converged to heighten a sense of political crisis in the political class. Although inchoate, the crisis is a crisis of representation, a deep and abiding concern about the ability of our political institutions to produce competent and trustworthy leaders.

It is this crisis which has become explicit, even obvious in the current impasse. The longer the crisis of the Arroyo regime lasts, the more people understand that what is at stake here is not just the fate of Arroyo but that of the political system as a whole. Removing Arroyo alone is not appealing not just because people have doubts about her constitutional successor, Vice President Noli De Castro, but because people worry about who might get elected president in a snap election. These are the concerns which have enabled people to overcome their fears about an extra constitutional post Arroyo transition government. As more and more people understand that what is at stake is the shaping of a new political system, the implications of the De Venecia chacha agenda has begun to hit home.

If the House proposal gets implemented, we will go from the frying pan to the fire. The corrupt, patronage ridden political system we have had for most of the last 70 or more years will remain and get worst. The link between our personalistic, clan based, and violent local politics and the central government are congress persons elected in single member districts. Congressional horse trading was mitigated by having to make deals with a powerful president and the Senate. Under the House proposal, their competitors for power, the senators and the president, will be removed. Political parties will remain weak because members of parliament who depend mainly on their own resources to get elected in single member districts will not be amenable to the tighter party discipline required in a parliamentary system. As if these were not bad enough, the new regime would have authoritarian powers.

Unfortunately, the agenda of those groups who want real change is not as worked out, nor as forcefully asserted as the agenda of the House and local government officials. More attention has been focused on opposing the maneuvers of De Venecia, on asserting

the need for a concon instead of con-ass. Groups pushing a shift to a federal system have been more organized. But the 'federalism' project has been badly damaged by the recent compromises of its leaders. It is Dr. Abueva who has pointed to the link between 'vertical' structural reforms (from unitary to federal) and 'horizontal' reforms (presidential to parliamentary),<sup>39</sup> but whether he realizes it or not, the concom draft he helped to craft plays right into the hands of traditional politicians such as De Venecia and Arroyo.

The problem is that while self-interest tends to produce focus and persistence, thoroughgoing political change<sup>40</sup> has not yet found a consistent 'social sponsor'. Civil society groups started by opposing the Ramos and Estrada initiatives, and only later started pushing a parliamentary-federal combination. Even now, many social movement groups are not supportive of chacha because they fear that progressive provisions in the 1987 constitution, in particular, the national patrimony provisions will be thrown out. Business people want these provisions thrown out, but do not care to examine the impact of political institutions on business enough to support changing the political system. The Catholic church weighed in on the issue to oppose trapo initiatives, but remain uncertain about what kind of change to support.

The problem of shaping a social base for constitutional reform is part of a larger problem. As Mario Taguiwalo put it: “Since 1986, many key middle forces people have attained positions of power and influence in our political system. We have, however, demonstrated a history of profligate dissipation of our opportunities at exercising political power for enduring and lasting reforms. Many middle-forces leaders simply got co-opted by traditional politics. Those middle-forces leaders who entered power through sectoral channels created reform initiatives that have not been scaled up or sustained... There were many other examples of fine middle forces leaders serving our country with distinction and honor, but were not, however, able to build a larger momentum for alternative governance worthy of our aspirations.”

The current crisis provides a unique opportunity for shaping a power bloc around a political project for thoroughgoing change. After eight months of struggle, it does not appear that Taguiwalo's 'middle forces' are capable of ousting GMA on their own. The challenge is to shape a political project around an alliance of middle class groups, a resurgent democratic Left coalition, the Laban nang Massa, and reformist soldiers. Despite remaining differences, there is enough consensus around a reform program. What has been difficult is uniting around the role of the military in ousting Arroyo. The events of the past week preclude a military-led reform process. Without skipping a beat, civilian leaders have picked up the challenge – that of recasting not just the constitution, but the whole of Philippine society.#

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<sup>39</sup> Jose Abueva, “Some Advantages of Federalism and Parliamentary Government for the Philippines”, p.3

<sup>40</sup> For one particular perspective, see Paul Hutchcroft and Joel Rocamora, “Strong Demands and Weak Institutions: The Origins and Evolution of the Democratic Deficit in the Philippines”, *Journal of East Asian Studies*, 3 (2003), 259-292.

