

Summary Report of the Preparatory Commission on Constitutional Reforms*

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I. PREFACE

The Preparatory Commission on Constitutional Reform (Commission) was created by virtue of EO No. 43, later amended by EO No. 70, extending the period for completion of the Commission's work to 31 December 1999. The originally comprehensive scope of the Commission's work was delimited by the President's request that it "facilitate the study of proposals on economic reforms that can be accomplished through constitutional amendments." Accordingly, and in view of the limited time to complete its work, the Commission resolved to confine its review of constitutional provisions only to those considered to be economic in nature.

The history of the drafting and adoption of the three Philippine Constitutions reveals that threshold questions such as the appropriateness of embodying economic principles in the Constitution and on whether or not these economic principles were to be further detailed in constitutional policies were not specifically addressed. Under the shadow of more pressing political and social concerns, discussions on economic policies, such as those in the 1986 Constitutional Commission, became secondary, and important public attention to those questions was not sufficiently given. Even then, whatever discussions took place assumed that economic policies such as equity ratio requirements, were to be the subject of the Constitution.

This is where the Preparatory Commission on Constitutional Reform finds its place. For the first time, a deliberative, non-partisan body, for the sole purpose of evaluating and recommending proposals on the economic provisions of the Constitution, was established.

By virtue of its composition and the process by which it concluded its work, the Commission operated in an environment where thorough discussion and non-partisan debate took place. The Commission saw that it could help enlighten the public on the respective merits of the arguments for and against change. The Commission considered this educative role as critical to its mission and sense of purpose.

The Commission conducted its work by initially collecting data as well as proposals from various sectors. It sent out some 200 requests for proposals, opinions or comments to government agencies, educational institutions, private organizations and individuals. An electronic database was compiled consisting of the three Philippine Constitutions, the constitutions of 148 other countries, as well as the works of scholars on constitutional studies and related fields.

After the initial phase of data collection, the Commission divided itself into eight Committees for a closer evaluation of specific proposals. The Committees conducted meetings, gathered statistical and other research data, and held consultative hearings with specialists, resource persons, government officials and private sector organizations. During the research and investigation phase, the Committees attempted to reach as many of the different sectors as possible. However, time and budgetary constraints prevented them from meeting with many of these sectors. Each Committee reported its findings and made initial recommendations to the Commission *en banc*. The findings and recommendations were thoroughly debated in the Commission.

The Commission deliberations and Committee work yielded some salient and interesting findings — hereunder set forth — which are important to the national dialogue on economic reforms and the Constitution. It should be understood that the submission of the Commission's work is not part of the amendment process outlined in Article XVII of the Constitution.

1. Comparative East Asian Survey

A survey of East Asian economies and their approaches to foreign investment policies disclosed that, invariably, the mode of regulation by all the countries is by legislative action rather than by constitutional mandate. There are no provisions in their constitutions prescribing specific citizenship or foreign investment equity ratios similar to those in the Philippine Constitution. Thailand is one exception as its constitution contains a restriction against foreign ownership of mass media companies.

Save for this, there are no constitutional restrictions on the development of natural resources, on the operation of public utilities or the grant of congressional franchises, on investments in advertising and education, on the

practice of professions, nor even on land ownership in countries where private ownership is recognized. Numerous laws and regulations in these countries do exist regulating or limiting foreign investment. Nevertheless, it is noteworthy that economic partners in cooperation with the legislature are afforded the flexibility to modify economic policies from time to time without contravening the fundamental law of the land.

2. The Origin and Impact of the Protectionist Tradition

Some important provisions in the Constitution are a continuing reflection of a spirit in our fundamental laws since 1935 and were carried over into the 1973 and 1987 Constitutions. That spirit or tradition is nationalistic protectionism and this was embodied in several provisions of the following articles, namely: Art. XIII of the 1935 Constitution (Conservation and Utilization of Natural Resources), Art. XIV of the 1973 Constitution (The National Economy and the Patrimony of the Nation) and finally, Art. XII of the 1987 Constitution (National Economy and Patrimony). This inward-looking nationalism in our constitutions was articulated in provisions that reserved stipulated areas of enterprise to Filipino citizens. What many do not realize is that Philippine protectionism can be directly traced to United States colonial policy. After the American take-over of the Philippines, United States policy-makers prohibited large American corporate investments in agricultural and industrial enterprises in the Philippines that would compete with agricultural and industrial interests in the United States. That basic policy was spelled out in U.S. Public Law 235 of the U.S. Congress, approved on July 1, 1902, which became the first organic act of the Philippines. Part of this colonial tradition, also derived from U.S. Public Law 235, was that economic development in the Philippines would have to be supported by domestic capital resources. The natural consequence of such exclusionary policies was the inability to undertake important development projects and enterprises due to lack of capital.

3. Capital Resource Requirements

The country requires an enormous amount of capital to spur the development of public utilities and basic infrastructure. Infrastructure (transportation, communication, power and water) connects people, enhances economic activity, facilitates domestic and foreign trade and helps make our country globally competitive. At the GNP growth rate of 5.2 - 5.8% per year targeted in the Medium Term Development Plan, the Philippines has a savings-investment gap of PhP158.4 billion (U.S.\$4.1 billion) for the period 2000-2004, or an average gap of PhP31.7 billion (U.S.\$ 826 million) per year. On the other hand, if the country wishes to match the pre-crisis 8% growth rate of the neighboring ASEAN countries, our savings-investment gap will be PhP3.091 trillion (U.S.\$76.7billion) for

the same five-year duration, or an average of PhP618.3 billion (U.S.\$ 15.3 billion) per year.

A similar requirement holds true for the development of the country's natural resources, mass media — in light of its expected convergence with information technology — and educational institutions. Available statistics lead to the indubitable conclusion that domestic capital resources are severely limited, and compared to neighboring ASEAN countries, our domestic capital formation is grossly inadequate. The country has thus been unable to address basic social and human needs.

4. Restrictions on Land Ownership

Allowing foreigners to own land is currently the subject of much debate. Actually, the issue relates to only a small portion of the total Philippine land area of 30 million hectares. Lands in the Philippines are either public or private. The bulk of private lands is devoted to agricultural and residential use, and a small portion is classified as commercial or industrial. It is this latter tumor fraction, currently estimated at less than 1% of the total land area, that the Commission viewed as having direct relevance to foreign investment. The Commission's recommendation for possible liberalization amid foreign ownership relates only to that small fraction — private lands classified as commercial and industrial.

5. Plenary Legislative Power

In other areas of investment, such as the advertising industry or education, there did not appear to be any compelling policy reason to preserve constitutional restrictions on foreign equity participation. Any protection or regulation is better accomplished and can be periodically adjusted, when necessary or desirable, through appropriate legislation. The idea that economic policy-making ought to be the responsibility of the country's economic policy planners and Congress became a common theme in the discussions on the other economic sectors and eventually became a major principle in the recommendations.

In fine, the Commission recommends reposing the responsibility for economic policy formulation in the Executive Department and Congress, where it properly belongs. The Commission believes that policies on equity participation, management, ownership in economic enterprises and factors of production are dynamic and therefore, must not be carved in stone. These questions are better addressed by the electorally-accountable bodies of government, which must decide these questions after weighing the costs and benefits attendant to such decisions.

It is important that Congress be given the flexibility to adopt economic policies that respond to the requirements of the environment, restricting or liberalizing them as the needs arise and as opportunities present themselves.

The Commission recognized that economic development requires addressing many other factors, and constitutional amendment alone will not solve all of the country's economic woes. A Committee proposed amending certain constitutional provisions to address the problem areas of graft and corruption, government inefficiency, peace and order and local government responsiveness. However, the Commission *en banc* decided that it did not have the mandate to propose amendments in those areas, as many [m]embers were of the opinion that those proposals, though intended for economic reform, were also political in character.

The Commission also recognized that it had to propose a transitory provision to address the legal hiatus that naturally arises when amendments are effected. Inasmuch as it did not reach a consensus on an exact formula for phasing-in the proposed changes, the Commission decided to recommend that the decision of maintaining or imposing economic policies of the nature described above, be immediately assumed by Congress.

The Report of the Preparatory Commission on Constitutional Reforms consists of three main parts: Part 1, The Report to the President, includes the Summary Report, the Reports on Deliberation Sessions, Committee Reports, Comparative Table and The List of Issues; PART 2, The Record of the Commissions consists of the Transcript of Proceedings; and, PART 3, the Reference Materials and Annexes, is comprised of [two volumes] of assorted documents used by the Commission.

In transmitting this report to the President, the Commission hopes that it will have contributed in some small measure to a reasoned national dialogue on the economic provisions in our Constitution. As the country enters the new millennium, the Commission shares the declared goal and aspiration of the President, also reflected in our Constitution, to promote a just and dynamic social order "that will ensure the prosperity and independence of the nation and free the people from poverty."¹

II. ANTECEDENTS AND OVERVIEW

I. Preliminary Work

On 26 November 1998, President Joseph E. Estrada promulgated EO No. 43, creating the Presidential Commission on Constitutional Reforms, providing therein for its composition, powers and the time frame for the conduct of its work. This was amended by EO No. 70 on 19 February 1999,

1. PHIL. CONST. art II, § 9.

which modified the Commission's composition and extended the time frame from 30 June 1999 to 31 December 1999.

Organization of the Commission commenced with the appointment of the Chairman Andres R. Narvasa and Executive Director José M. Roy III on 1 March 1999. With the assistance of supportive friends and consultants², the conceptualization of the work and objectives of the Commission began to take shape during weekly meetings at the Presidential Management Staff (RMS) Building on Arlegui Street.

Shortly afterwards, Alherto Fenix, Jr., Margarito Teves, Justice Conrado Vasquez, Froilan Bacungan, Ceferino Padua and Dr. Cicero Calderon were named members of the Commission. This core group worked with the Chairman and the Executive Director to lay down the framework for the work of the Commission. Regular meetings were conducted at the Operations Room of the PMS Building. Among the principal issues resolved by the Commission was one that had to do with the status of the Commissioners.³ It was the [o]pinion of the Commission that the Chairman and members are not public officers in the strict legal sense, but would serve as an independent study group composed of members of the academe and the private sector whose goal would be to review the need for, and advisability of, revising certain provisions of the Constitution. This position was made clear in the Primer of the Commission, where it was explained the PCCR was no more than a collection of individuals under contract with the President, hired as his personal consultants, to carry out the specific function of rendering advice on certain matters that were entrusted to them for study. This view was confirmed by the President in his note dated 16 April 1999.⁴ These preliminary sessions also resulted in the adoption of a "Game Plan"⁵ providing guidelines for the attainment of the objectives of the Commission.

2. Mobilization and Operations

The Game Plan called, initially, for the organization of a Secretariat and the creation of an electronic database that would store relevant information on constitutional amendment or revision gathered by the Commission,⁶ and the

2. Among those present during the early stages were Sec. Edgardo J. Angara, Sec. Leonora de Jesus, and Cong. Raul Daza, who was later appointed member of the Commission.
3. The matter was discussed in the session of Mar. 11, 1999.
4. In a letter dated Apr. 13, 1999
5. Part III, Annex C, INFORMATION KIT, VOL. I.
6. This was later modified to include some 200 constitution of countries around the world, constitutions of the Philippines, scholarly works and treatises on constitutional studies, proposals, studies and other information received by the Commission.

completion of data-gathering before formally scheduling deliberations of the Commission on amendments to the Constitution. Work began with the organization of the Secretariat⁷ and the setting up of its offices at the [second] floor of the Bahay Ugnayan.⁸ Delays, however, in fitting out the offices and acquiring the needed equipment made it difficult to accelerate the process of data gathering.

Eventually, the staff of the Secretariat was organized and appointed. It consisted of 12 persons, including the Executive Director and two Deputy Executive Directors. On 11 June 1999, the Commission hired CD Asia Technologies, a firm specializing in electronic data encoding and retrieval, to produce a CD-ROM compiling the data to be used by the Commission in its work.⁹ In the course of building its database, the Secretariat wrote to some 200 government agencies, national organizations of private and quasi-public character, including so-called non-governmental organizations, soliciting proposals, opinions or comments on constitutional amendment or revision. Many proposals were received, including a number from elected officials and private citizens, pertaining to both economic and political reforms.¹⁰

3. Delimiting the Scope of Work

The Commission originally intended to accommodate and deliberate upon all proposals received, there then being no limitation expressed in EO No. 43 and 70 on the scope of its mandate. However, in a letter dated 16 August 1999, following several public pronouncements of similar tenor, President Estrada requested the PCCR — through its Chairman — to limit its studies to the economic provisions of the Constitution, and to leave the matter of political reforms to a Constitutional Convention that may be called after the expiry of his term, an injunction with which the Commission promptly complied.

At the same time, it was agreed that all members of the Commission would limit public discussion on constitutional changes, and that it should be

7. Approved by the Department of Budget and Management on May 27, 1999, per letter of Secretary Benjamin Diokno to Chairman Andres Narvasa.
8. Renovation and refinishing work commenced in Apr. 1999 and was completed by Aug. 1999 when the secretariat occupied the office. One week later, the office became fully operational when a computer network was installed — among the most modern in use by any government office at the time.
9. As envisioned, this CD-ROM with constitutions of the Philippines and of more than 150 nations of the world, the work of scholars on constitutional studies and related fields, proposals received by the Commission and the records of deliberations of the 1986 Constitutional Commission and the PCCR.
10. 78 proposals were received as of Dec. 1, 1999.

left to the Chairman or his designated spokesperson to give out any information required for press releases. It was further agreed, in order to meet the deadline set in Executive Order No. 70, that the work would be divided among the members of the Commission.

4. The Committee Process

By consensus of the members, a Steering Committee was created¹¹ and given the task of identifying topics for the Body's deliberation and of creating Committees that would identify and present the economic provisions and issues regarding these for discussion.

The Steering Committee identified eight topics that were assigned to particular Committees, *viz.*:

1. Exploration, development and utilization of Natural Resources (Concepcion, Corpuz, Dario, Gozon, Padua, Romulo)
2. Land ownership, Use and Disposition (Calderon, Corpuz, Dario, Fenix, Paderanga, Padua, Pimentel)
3. Public Utilities and Franchises (Daza, Fenix, Romulo, Teves, Virata)
4. Trade and Competition Policy (Concepcion, Mallare, Paderanga, Sereño, Roy)
5. Practice of Professions and Educational Institutions (Angeles, Bautista, Calderon, Dizon, Villegas)
6. Mass Media and Advertising (Bautista, Gozon, Mallare, Villegas)
7. Bureaucracy, Decentralization and the Economy¹² (Bacungan, Dario, Dizon, Felipe, Pimentel, Sereno, Teves, Virata)
8. The Amendment Process (Daza, Narvasa, Vasquez)

When the Committees had been set up, the Commission suspended its sessions to allow those bodies to meet and deliberate on the issues for presentation to, and discussion by, the Commission *en banc*. Each Committee was asked to prepare an outline of the topic assigned to it for eventual presentation to the Commission *en banc*. Many of the Committees opted to conduct consultations with experts and other resource persons, in lieu of holding public hearings.

11. Headed by Chairman Narvasa and composed of Commissioners Bacungan, Gozon, Sereno, Teves and the Executive Director, as members.
12. This Committee resulted from the merger of two committees, namely the Committee on Government Officers and Agencies and the Economy and the Committee on Local Government and Economic Development.

A fundamental agreement was reached for the purpose of guiding the deliberations: "economic provisions" should be understood to refer to those provisions that pertain principally to economic policy and activity.

The individual Committees commenced their work in earnest on 16 September 1999. It scheduled meetings among their respective members to deliberate on the scope of their studies and to identify the relevant issues and provisions that they would focus on. Each Committee accumulated data from government bureaus and offices, academic institutions, international agencies, the private sector and other research institutions, as well as internet sources.

The Committees organized and conducted public hearings and invited resource persons and experts, including representatives from the relevant government agencies and industry sectors, to make both personal and written presentations of their positions and views.

The Committees analyzed and reviewed the available statistical data and deliberated on the different positions presented to them before coming up with recommendations. Legal and economic aspects were examined, and comparisons made with the corresponding provisions of the Constitutions and laws of other Asian countries. Committee members and executive assistants held numerous discussions among themselves.

The general approach of the Committees, as of that of the Commission, was to seek a consensus among its members. When, as it often happened, a consensus could not be reached immediately, the Committees deliberated on the merits of the various approaches and positions, and a vote was taken to determine the majority view, before conclusions and recommendations were submitted to the Commission *En banc*.

The Committee Chairmen then took up the task of drafting the Committee reports and presentations. These reports were reviewed by the Committee members and made to reflect the votes taken and the dissents, if any, of time members who disagreed with the majority recommendation.

5. The Commission Deliberations and Debates

Each Committee was asked to submit to the Secretariat an advance written copy of the report that would be the subject of its presentation. The Secretariat distributed copies of these to the Commissioners before the scheduled presentation and deliberation dates so as to give the Commissioners time to study them and prepare for their discussion.

Presentations of, and the deliberations on, Committee Reports began on Thursday, 7 October 1999 and ended on 2 December 1999. Each committee presented its report to the Commission, using software, slides and other

visuals, to optimize the presentation. Each presentation was followed by deliberations and open debate.

The Commissioners posed questions to the Committee members regarding the veracity and accuracy of the material contained in the report as well as time validity of the conclusions drawn therefrom. The deliberations and debates that followed were intense and often contentious. Virtually none of the conclusions presented by the Committees was accepted without undergoing close scrutiny by the other members of the Commission. Discussions revolved around the various positions taken by the Committees and the Commissioners on the desirability or necessity of the amendments or revisions proposed and the advantages or disadvantages of adopting amendments that would liberalize the economic provisions of the Constitution. The Commissioners raised questions of policy and, sometimes, of even the political desirability or acceptability of a proposal.

The Commission *en banc*, however, at various times of the period of debate, reiterated and re-affirmed its goal and consensus: to arrive at a considered and well-studied conclusions and recommendations based on the objective data and promote the aspiration of doing what would contribute to raising the standard of living of the Filipino.

While, as already stated, consensus was the preferred approach, in most instances one could not be reached, except on the most general points. In those instances, it was agreed to defer voting the conclusions and recommendations of the Committees until the integration sessions that were scheduled at the conclusion of the deliberation period.

As each of the deliberation sessions closed, the Commission attempted to gather a general sense of the Commissioners' positions in order to guide the Committee on Trade and Competition Policy (Steering Committee) in its preparation of the integration reports that would be presented for voting by the Commission *en banc*.

On 15 October 1999, the Commission *en banc* heard the views of resource persons for and against constitutional change. In the morning, Prof. Solita Monsod and Dr. Alejandro Lichauco appeared and explained why they rejected any proposed amendments of the Constitution. Bagong Alyansang Makabayan (BAYAN) and the Kilusang Mayo Uno (KMU) were also invited to the hearing but neither replied nor sent a representative.

In the afternoon, Sec. Edgardo Espiritu of the Department of Finance, Sec. Jose Pardo of the Department of Trade and Industry, and National Economic and Development Authority Director-General Felipe Medalla addressed the Commission. The three economic managers reiterated the government's position and justification for proposing revisions and amendments relating to economic liberalization.

6. The Integration and Voting Process

The Steering Committee and Secretariat, in consultation with the Convenors of the various Committees, prepared integration reports that summarized the deliberations and views expressed in each of the Deliberation Sessions for reference of the Commissioners during the final integration and voting sessions. In addition, the Steering Committee and Convenors drafted the final wording of proposed amendments to various provisions. In the integration and voting sessions, the Commission, pursuant to established procedure, limited the discussions to parliamentary inquiry and clarification.

Under the parliamentary rules adopted, amendments to the proposed provisions would be allowed on mere motion of the party proposing them. The Committee Convener or proponent of the proposed amendment or revision had the option of accepting the suggested amendment. Absent such agreement or acceptance, the proposed amendment was subjected to a vote of the Commission *en banc* to approve or reject it. Thereafter, if there were no further parliamentary inquiries or motions to amend, the proposed final wording was submitted to the Commissioners for their individual votes.

A more detailed account of the deliberations is found in the appended section containing the Reports on the Deliberation Sessions. The actual findings and recommendations of each Committee may be found in the appended section of Committee Reports.

III. THE RELEVANT PROVISIONS

The Commission focused its review on economic provisions only, namely:

- (1) Article XII on the National Economy and Patrimony
- (2) [Sections] 9 and 19, Article II, Declaration of Principles and State Policies
- (3) [Section] 11, Article XVI on General Provisions (relating to Mass Media and the Advertising Industry)
- (4) Sub-section (2), [Section] 4, Article XIV on Education, Science, Technology, Arts, Culture and Sports

In conducting deliberations and hearings, the various committees narrowed the scope of inquiry to certain issues, hereunder described, a number of which were recurring and common to all topics, *viz.*:

I. Citizenship Requirements

If there is one consideration that may be said to override all others and permeate discussions about change in the economic provisions of the

Constitution, that consideration is the provisions on ownership of land by individuals, ownership and management of mass media. Educational institutions, public utilities and natural resources have proved to be sensitive issues sparking strong public reaction from some sectors. A closer analysis of these issues, however suggests that relaxation of the citizenship requirements may [be conducive] to an investment environment with greater potential for attracting foreign direct investment (FDI). Of particular concern are strict citizenship restrictions on the management of certain enterprises where equity participation of non-citizens is permitted.

2. Equity Ratios for Foreign Investment

It appears that the matter of attracting FDI is immediately affected by provisions of the Constitution prescribing limitations on investment opportunities by requiring a minimum quantum of Filipino ownership, educational institutions and the ownership of land by corporations, participation of foreign equity being invariably limited to no more than 40% of a given enterprise.¹³

3. Ambiguity in Language

The 1987 Constitution, with its length and language, may not unreasonably be likened to an extended list of entitlements, without, however, a sufficient hierarchical guide to address competing claims. Particularly notable is the phraseology of Section 19, Article II on the Declaration of Principles and State Policies, aspiring for an "independent" national economy "effectively controlled" by Filipinos. The language of Section 19, taken together with other provisions in the Constitution on the Patrimony of the nation, has thus given rise to controversial policy decisions affecting foreign investments. Attention was also given to the clarification of certain provisions that may be interpreted as constitutional restrictions, assuming the adoption of constitutional amendments towards liberalization.

4. Flexibility in Policy Formulation

The Constitution has removed from the policy-making institutions of government the prerogative to determine and shape national economic policy in line with the changing economic environment. A fundamental problem is encountered, for instance, in Section 1, Article XII, which dictates that the economic base shall be agricultural development and agrarian reform, precluding a shift to other economic models of

13. A notable difference is found in the case of the advertising industry, where the Constitution prescribes a maximum equity participation of 30% for non-Filipinos.

development.¹⁴ Other existing provisions contain inflexible rules that prevent responsive government action to address problems in the management of economic affairs. Most notably, the state is in no position to alter policy formulations in certain areas, because limitations or restrictions are expressly stated in the Constitution. Plainly, these issues cannot be addressed by ordinary legislation, but require the more tedious process of constitutional amendment. Ideally, Congress and other institutions of government should be able to craft and formulate policies responsive to the changing economic environment.

5. The Amendment Process

Undoubtedly, the management of the amendment process will prove an important factor in the adoption of changes to the Constitution. While a constituent assembly is perceived as having the advantages of being swifter and less costly, a constitutional convention receives considerable support from certain sectors because it is thought to be non-partisan and independent and less susceptible to the "conflict of interest" apprehension of the public. In either case, the political considerations must be carefully weighed in deciding which of these permissible modes to adopt.

6. Other Factors Affecting Foreign Direct Investment

Among the most common objections to any amendment of the Constitution is that it has no bearing on [FDI], since foreign investors are more concerned with non-constitutional issues, such as graft and corruption, peace and order, good public and private governance, availability of adequate infrastructure and utilities, to name but a few. However, advocating amendments to the Constitution should not be equated with abandoning the efforts of government to address these problems. On the contrary, the recommendations call for increased efforts to ensure optimum conditions for the success of effective liberalization. In this connection, the Commission created the Committee on Bureaucracy, Decentralization and the Economy to look into peripheral issues anchored on the theme of good government. While these recommendations are not strictly economic in nature, their correlation as factors affecting foreign investments warrants serious attention.

IV. GENERAL ECONOMIC DATA

The world has become smaller; national economies are becoming more interrelated and interdependent in such areas as the exchange of information, goods, and skills. This is the world in which the Philippines must compete.

14. It has been noted that the global economy is moving towards a "knowledge-based" format as the basis of economic growth.

Below are some socio-economic indicators bearing on the proposed amendments concerning economic development.

I. Poverty and Infant Mortality

The infant mortality rate (*i.e.*, the number of deaths of infants under one year old per 1,000 live births) is a key indicator of a nation's development, because high rates go hand-in-hand with poverty of families, malnutrition of infants, and inadequate public health services. In Southeast Asia and East Asia the lowest infant mortality rates are in Singapore, Taiwan, Hong Kong, and Japan, averaging 3 or 4 deaths per 1,000 live births. The rate in Malaysia and South Korea is 8 for every thousand live births. The rate in Vietnam and Thailand is in the high 20s. in China it is 31; in the Philippines 35; and in Indonesia, 47. Those in Myanmar, Laos and Cambodia range from 79 to 103.

CHART I
INFANT MORTALITY

Country	Number of Deaths per 1,000 Live Births
Singapore	• 3
Taiwan	• 4
Hong Kong	• 4
Japan	• 4
South Korea	• 8
Malaysia	• 8
Vietnam	• 29
Thailand	• 26
China	• 31
Philippines	• 35
Indonesia	• 47
Myanmar	• 79
Laos	• 91

Cambodia • 103

Source: Asiaweek, October, 1999

High infant mortality rates are due solely to poverty and underdevelopment, and totally unrelated to theological and political dogmas. When allowed to persist, high infant mortality rates are regarded as the cruellest mode of population reduction or control.

2. Population and Gross Domestic Product

CHART 2
POPULATION AND GDP STATISTICS

Country	Population	Per Capita GDP (U.S.\$ adjusted for PPP)
Singapore	3.9	28,565
Hong Kong	6.8	23,105
Japan	126.5	22,720
Taiwan	21.9	17,495
South Korea	46.6	12,995
Malaysia	22.4	10,680
Thailand	61.7	6,285
China	1,254.4	3,860
Philippines	73.9	3,475
Indonesia	204.7	3,275
Vietnam	79.4	1,775
Cambodia	10.9	1,350
Laos	5.2	1,325
Myanmar	48.8	850

Source: Asiaweek, October, 1999

Of the four ASEAN Countries not included in the table, Myanmar has the lowest per capita share at \$825; the figures for Laos and Cambodia hover at just above \$1,300; the figure for Vietnam is at \$1,775.

Due to the high Gross Domestic Product (GDP) and Gross National Product (GNP) levels, Japan does not need to curtail social services, despite its large population. On the other hand, the lower per capita GDP in the Philippines and its high population level indicate a strain on family incomes and government budgets for social services. Of more than 190 countries in the world, the Philippines is the [16th] most populous.

3. Bank Assets as Sources of Capital and Credit

A nation's capacity to attain development is largely defined by its ability to pay for its "costs." These "costs" include capital and credit resources to support enterprises that provide employment, generate income and savings, and produce commodities for consumption and trade. Much of the capital and credit resources are based on bank assets.

The following table ranks selected ASEAN and East Asian Countries in this regard, viz.:

CHART 3
BANK ASSETS IN SELECTED ASIAN COUNTRIES

Country	Population	Per Capita GDP (U.S.\$ adjusted for PPP)
Taiwan	3.9	28,565
South Korea	6.8	23,105
Hong Kong	126.5	22,720
Singapore	21.9	17,495
Thailand	46.6	12,995
Malaysia	22.4	10,680
Philippines	61.7	6,285
Indonesia	1,254.4	3,860

Source: Asiaweek, October, 1999

Bank assets in the Philippines are only some 40% of Malaysia's and 35% of Thailand's, and are piddling when compared to those of Taiwan, South Korea, and Hong Kong. The low amount of bank assets is reflective of a nation's ability to generate capital for local investment; through domestic savings of the population. Incidentally, the rate of savings is a function of the level of income and productivity.

4. Gross Domestic Savings and Gross Domestic Investment

The term Gross domestic Product refers to the value of all goods produced and services undertaken locally. In developing countries, rates of GDP growth reflect the rise or fall in the standard of living. Increase in GDP is affected by Gross Domestic Investment (GDI), which in turn is related to the amount of capital available from Gross Domestic Savings (GDS). The Philippines has limited capital resources compared to its neighbors, and even more limited domestic savings and investment figures. From 1994-1998, Philippine Gross Domestic Investment and Gross Domestic Savings as percentages of GDP lagged behind our neighbors Singapore, Thailand,

Malaysia. The Philippines' GDS ranged from 16.8% to 20.3%, while those of our neighbors ranged from 32.9% to 52.2%. Since 1994, GDI has been limited to 19.3% to 23.5% and while Thailand's was in the vicinity of 24.7% to 41.7%.

CHART 4A
GROSS DOMESTIC SAVINGS OF SELECTED ASIAN COUNTRIES
(PERCENTAGE OF GDP, 1994 TO 2000)

Country	1994	1995	1996	1997	1998	1999*	2000**	Average
Singapore	48.80	50.90	51.20	51.80	52.20	50.00	49.00	50.56
Malaysia	38.80	39.50	42.60	43.80	48.00	47.10	46.10	43.70
Thailand	34.70	33.60	33.70	32.90	35.90	33.20	33.00	33.86
Indonesia	29.10	28.50	27.30	29.90	19.10	18.50	19.10	24.49
Philippines	17.00	16.80	18.50	20.30	20.00	20.20	20.30	19.01

* Target
** Forecast

Source: Asian Development Outlook, Asian Development Bank, 1999

CHART 4B
GROSS DOMESTIC INVESTMENTS OF SELECTED ASIAN COUNTRIES
(PERCENTAGE OF GDP, 1994 TO 2000)

Country	1994	1995	1996	1997	1998	1999*	2000**	Average
Singapore	32.70	33.10	35.30	37.40	34.00	34.60	34.50	34.21
Malaysia	40.40	43.50	41.50	42.00	33.20	34.60	35.00	38.60
Thailand	40.30	41.60	41.70	35.00	24.20	24.70	27.00	33.50
Indonesia	31.10	31.90	30.70	31.30	18.00	7.50	20.00	24.36
Philippines	23.50	21.60	23.10	23.80	19.30	20.00	21.00	21.76

* Target
** Forecast

Source: Asian Development Outlook, Asian Development Bank, 1999

It is important to note that the GDP of the Philippines is at a level lower than that of its ASEAN neighbors. As [the Philippines] attempt[s] to catch up with the economies of [its] neighbors, [it] will want to increase our growth rates. This is not possible without increasing investment and access to capital resources. Unfortunately, domestic sources of capital are insufficient to meet these needs.

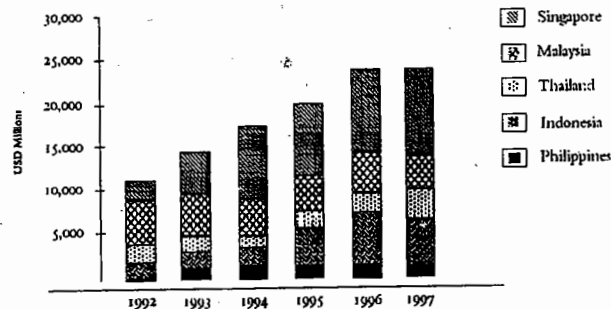
5. Foreign Direct Investment

Among the supplementary foreign sources of capital are Official Development Assistance (ODA), loans, portfolio investments and Foreign Direct Investment (FDI).

There is, however, not enough ODA available for the Philippines. Foreign loans are also problematic because there are high costs and "country limits" related to borrowing.¹⁵ Portfolio investments are unreliable because of their dependence on constantly fluctuating market forces, hence, subject to the whim of the portfolio manager, whose main interest is obtaining the highest available rate of return in the various world markets. FDI is, therefore, the preferred method of capital supplementation.¹⁶

The Philippines has lagged behind its neighbors in attracting FDI. To illustrate, from 1992 to 1997, among Singapore, Malaysia, Thailand and Indonesia, the Philippines received the least FDI, or only a 5.8% of the total of over U.S.\$111 billion invested in all these countries during the same period.

CHART 5
FOREIGN DIRECT INVESTMENT
(IN US\$ MILLIONS, 1992-1997)



Source: Asian Development Outlook, Asian Development Bank, 1999

15. Some quarters claim that the Philippines is nearing, or has reached, its international borrowing limits.
16. The amount of available FDI plays a role in promoting or increasing the rate of national economic growth and development. It requires a long-term commitment to a project or enterprise, which brings with it ancillary benefits, such as technology transfer, employment, etc.

6. Indications of Economic Data

In sum, the general economic data show that the economy is underperforming, *i.e.*, not working at optimum levels of productivity. Constitutional traditions of nationalistic protectionism and conservation of the national patrimony now require review and re-examination. Economic protectionism must yield to growth policies aimed at fostering prosperity and equity to uplift the present poor and benefit the coming generations.

V. SUMMARY OF DELIBERATIONS AND DISCUSSIONS

The government's economic managers believe that liberalizing some of the restrictive provisions of the Constitution will promote the country's competitiveness in an integrating global economy. Liberalization would also tap foreign capital as means of accelerating economic growth, and assure that government and Congress would have flexibility to react to the changing economic environment unhampered by Constitutional restrictions.

The government representatives noted that the Regalian doctrine in the case of natural resources and land use, coupled with the inherent regulatory and supervisory power of the State over all persons and entities doing business in the Philippines, are effective mechanisms to assure full protection of the national interest by the government. Apart from this, the long-term potential benefits that would be realized by the introduction and transfer of new technologies, expert organizational and management experience, increased revenues for government, employment of local workers and advantages to the consumer in terms of choice and price, far outweigh the perceived disadvantages deriving from amending the economic provisions of the Constitution. Fundamental changes in the legal framework are needed to respond to and take advantage of the developments in international trade and competition. In this sense, amendment of the Constitution at this time enables the Philippines to prepare for the inevitable, and optimize opportunities with respect to liberalization of global trade towards a free market regime.

On the other hand, those opposed to liberalization argued three points: first, liberalization would lead to the loss of the Filipino patrimony over the national wealth and natural resources, which are limited and exhaustible. [S]econd, there are already in place various schemes and legal devices that allow foreign investment and participation in these sectors and the additional costs of amending the Constitution do not justify the incremental benefits to be derived. [T]hird, the incremental benefits would be very little given that more important to encouraging foreign investment than Constitutional amendment would be other factors such as market size, growth rates, economic stability, quality of the regulatory framework and corruption levels, transparency, adequate infrastructure, improvement of skill levels, etc. It is also argued that many industries and sectors are not prepared for

liberalization, which if pursued at this time, would result in a high social cost in terms of the displacement of workers. Hence, it is said that existing policies must be retained until our industries are capable, as it were, of standing on their own.

A summary of the discussions on the various sectors and issues before the Commission now follows.¹⁷

I. Trade and Competition Policy

Apart from issues of style, the criticism has been made that the basic legal framework of the Constitution presents practical and philosophical difficulties in approaches to economic, trade and investment policies. Foremost among these is the inclusion in the Constitution of restrictive rules that deprive policy makers of flexibility in policy formulation. Necessary adjustments in the economic policy have been rendered virtually impossible by constitutional provisions ordaining an economy based on agricultural development. These and similar statements result in confusing signals to policy makers.

The challenge, therefore, was to restructure the economic policy-making framework of the Constitution with a view to achieving reconciliation with pragmatic dilemmas presented by a complex and competitive economic environment.

In responding to this task, particular attention was given to certain underlying principles to ensure a more enduring yet flexible constitutional policy. Two fundamental notions evolved out of the discussions of the Committee on Trade and Competition Policy, and subsequently, the Commission. The first is the notion of "minimalism," which describes an approach characterized by the minimal use and simplified statement of principles in the Constitution, in order to avoid ambiguity in intent; and, the second is the notion of "transference," which leaves to legislation the matter of economic, trade and investment policy adjustment.

2. Public Utilities, Franchises and Infrastructure

Infrastructure connects people, provides public services that assure a basic standard of living, facilitates and enhances domestic and foreign trade and enables a country to develop and become globally competitive. It is the

17. See generally PREPARATORY COMMISSION ON CONSTITUTIONAL REFORMS, REPORT OF THE PREPARATORY COMMISSION ON CONSTITUTIONAL REFORMS, Part I-C (1999) (for a more detailed account of the sessions) [hereinafter REPORT OF THE PREPARATORY COMMISSION].

backbone of a country's economic development program. Essentially, transportation, communication, power and water are the sectors that comprise the basic infrastructure of a country.

The Asian Development Bank (ADB) estimated that Asia¹⁸ infrastructure needs for the 1990s would amount to roughly U.S.\$ 1 trillion. The World Bank (WB) placed the region's infrastructure needs from 1995 to 2004 to be in the order of \$1.5 trillion.

Prior to the Asian crisis, Malaysia and Thailand were spending up to three times more than the Philippines in [infrastructure] investments in infrastructure. Following the crisis, lack of external and internal funding forced many countries — including the Philippines — to drastically reduce their infrastructure expenditures by as much as 50%.

CHART 6
COSTS OF ASIAN INFRASTRUCTURE PROJECTS, 1995-1998 (IN US\$ M)

	1995	1996	1997	1998	Total
Energy and Power	11,017.1	17,269.0	11,399.5	10,237.7	49,923.3
Water	559.5	1,374.6	0	246.0	2,180.1
Transport	8,059.5	15,168.3	10,813.3	1,230.0	35,271.5
Telecommunications	1,502.3	7,089.6	3,405.9	359.0	12,356.8
Total	21,138.8	40,901.5	25,618.7	12,072.8	99,731.7

Source: Capital Data Project Financeware, from Capital Data Limited London

CHART 7
COSTS OF ASIAN INFRASTRUCTURE PROJECTS, 1995-1998 (IN US\$ M)

	1995	1996	1997	1998	Total
Energy and Power	2,152.5	572.2	2,355.0	1,928.9	7,008.6
Transport	0	517.2	1,328.0	0	1,845.2
Telecommunications	280.0	191.6	885.0	0	1,356.6
Total	2,432.5	1,281.0	4,568.0	1,928.0	10,210.4

Source: Capital DATA, Euromoney, Years ending December

18. Hong Kong, China, Thailand, Philippines, Taipei, South Korea, Malaysia and Singapore.

The ADB's revised projections for the Philippines' infrastructure needs from 1995 to 2005 amount to U.S.\$ 41.72 Billion. According to the 1998-2004 Medium-term Development Plan or MTDP, successful implementation of the government's infrastructure program will enable the country to achieve an average GNP growth rate of 5.2-5.8% from 1999-2004. This target GNP, however, is modest compared to the 7-8% average annual growth rate attained by our ASEAN neighbors during the pre-crisis period of 1994-1997.

The arguments in favor of further liberalization of public utilities emphasized the need for additional capital and financial flows into the sector in order to achieve higher economic growth targets. Liberalization would only be in keeping with the trend in other Asian countries. Development of infrastructure is achieved by investment in the utilities and franchise sectors. Often cited as a major impediment to foreign investments, the need to improve the infrastructure of the Philippines plays a crucial role in the economic prospects of the nation. The lack of domestic capital renders foreign direct investment the most likely source for development projects. As an added feature, there are incidental benefits to welcoming foreign investors, such as the introduction of technology and management expertise, broader employment opportunities, healthy competition beneficial to the consumer, to name but a few.

Position papers from various organizations expressed their support for liberalization and addressed certain issues the Commission presented. Regarding the issue of allowing foreigners into the management of public utilities, position papers from the various organizations supported a policy of non-discrimination and merit-based selection. On the issue of granting franchises to foreigners, the Commission noted the emergence of a global trend toward preference for reposing the authority in specialized, regulatory agencies, since this would result in greater efficiency and expertise in the supervision of the industry.

3. Mass Media and Advertising

Mass media includes print and broadcast media, such as newspapers, magazines, radio, and television; advertising is the promotion via these media of goods and services. These are capital and/or technology intensive industries that must keep pace with rapid changes. Due to digitalization and the revolution in information technology, television, telecommunications, computers and the internet are converging in ways previously unforeseen. Large amounts of capital are required for the acquisition of the latest equipment and technological innovations.

The arguments in favor of liberalizing mass media and advertising stressed that the Constitution might be too rigid and unresponsive, thus

denying Filipinos access to these technological innovations. Furthermore, as already pointed out, among the emerging trends in electronic mass media is the concept of "convergence," or the blurring of the distinction between [these] industries. Different nationality restrictions on mass media and telecommunications impede the possibility of realizing convergence. For example, it is uncertain which ratio to apply: the 100% local ownership mandated for mass media or the 60-40 arrangement for the telecommunications industry. In addition, such restrictions give rise to lack of capital, inaccessibility of management expertise and the inability to forge strategic partnerships with international media companies.

Fear of foreign influence through control of television, radio and newspapers is unfounded, since "de-territorialization" of knowledge and information dissemination has long since enabled access to global audiences; foreign media is already here, there is no denying their influence on the Filipinos.

As an internal issue, industry representatives observed that competition from foreign journalists and broadcasters could possibly provide the necessary competition to uplift the standard of reportage.

On the other hand, objectors argued that liberalizing ownership of media will allow public opinion to be molded by foreigners who may be motivated by profit and not national interest. This may have significant effects in the political arena. However, it has been observed that Filipino owners of mass media can equally be driven by profit and not by national interest.

By the same token, it is argued that Filipino culture is already under attack from Western values which are now freely and widely available in the Philippines, and may eventually result in the loss of a national identity.

Anent, the advertising industry, it is noted that the top ten firms are partly foreign-owned. A further increase in foreign participation would adversely affect the viability of Filipino advertising firms and stunt the development of local talent.

However, except for the Philippines, there is no constitution in the world that includes advertising in its provisions. The Commission believes that advertising should be regulated by law, rather than by the Constitution.

4. Educational Institutions

Education is a particularly vital sector, in that the participation of an educated citizenry in governance is essential to the vitality of a democratic state. Progress, in general, can only come from the ideas evolved through a high quality of education. Education is thus an end in itself, as well as a

means to an end, in that it empowers people to maximize their contribution to social, political and economic development.

According to the Department of Education, Culture and Sports (DECS), there were, in 1997, a total of 52,216 educational institutions, with a total enrolment, all told, of just under 19 million. The focus of the Commission was on private educational institutions, which in the same year numbered 9,031 or 17.3% of the total. Statistics show that only four in every ten secondary students continue their education at the tertiary levels.¹⁹

It is well known that the educational sector has been undergoing difficulties with regard to the sourcing of funds for infrastructure, modern equipment, resources and increased salaries for teachers. The latest techniques of education involve greater use of information technology and alternative media, all of which require large amounts of investment. Equally important, is that education is the largest single item in the national budget. Maintaining a virtually closed system makes the financial cost of its upkeep almost exclusively a responsibility of government. This could be shared with, or alleviated by, investments in schools from foreign institutions and the like.

Fears of a colonial education are unfounded, as the conditions prevailing during the colonial era no longer subsist. Globalization has reinvented the concept of nationalism. Education today is a global concept, requiring that Filipino graduates are able to compete with their counterparts from other countries. To be sure, even under a colonial education system, the Filipinos opted for independence. This shows that there is no relationship between patriotism or nationalism and the citizenship of owners and administrators of schools. Moreover, the curricula of schools will be prescribed and supervised by the DECS. At present, the Constitution already allows foreigners, through religious orders and mission boards, to own and operate schools. There appears, however, no compelling reason to distinguish between religious orders and mission boards on the one hand, and private educational institutions from other countries, for example, on the other.

Finally, the constitutional restrictions on foreign control and administration of educational institutions deter the entry of foreign capital and modern facilities and equipment. Investors would prefer to have a say on how their money would be utilized. The restriction on foreign representation in management and administration defies the fundamental reason behind equity participation in a business enterprise.

The foremost objection to liberalization is the fear that foreign participation might influence the education of our youth. It has been stressed

19. In the school year 1995-96, there were a total of 4,883,507 students enrolled in secondary schools throughout the country. Those enrolled in institutions of higher education in the same year however, totaled only 2,017,972 students.

that the educational system is vital to the development of a patriotic citizenry, a development that may be hampered by allowing foreigners to run schools. Today, there are criticisms that the Philippine educational system has been producing professionals and consumers rather than citizens. As a final argument, opponents of liberalization state that the problem in educational institutions is over-regulation by government that limits the freedom of school administrators in pursuing management objectives.

5. Practice of Professions

The current provision in the Constitution permits, in cases provided for by law, the practice of professions by foreigners in the Philippines. Reciprocity agreements, treaties and similar arrangements with other jurisdictions may be implemented by legislation. It appears, however, that the notion of "reciprocity," for purposes of evaluating conditions for the transnational practice of professions, is inadequate. Currently, there are 31 laws relating to licensed professions with reciprocity provisions. These laws allow professionals of foreign states to practice here, provided it is proven to the satisfaction of the Professional Regulation Commission that, by specific provision of law, the country of origin of the foreigner, allows Filipinos to practice their professions on terms of strict and absolute equality, including the unconditional recognition of prerequisite degrees issued by institutions of learning duly recognized by the Republic of the Philippines. While the mechanism for transnational practice of professions appears to be in place, the implementation of these provisions leaves room for improvement. This concern, however, is better addressed by Congress and the appropriate regulatory agencies. Similarly, related issues such as discrimination or unequal treatment of Filipino professionals, the standard of pay and working conditions are matters that possibly involve legislative action or government intervention. Incidentally, it is worth noting that the latter set of issues, unless addressed by government, has been cited by professional organizations as reason to limit the practice of professions to Filipinos.

Be that as it may, the Commission notes the global trend favoring the liberalization of transnational practice of professions and recommends that the government look into developments in this regard to secure the interests of the Filipino professional. Finally, special mention must be made of the law profession, which falls under the control and supervision of the Supreme Court. Again, the Commission urges the Court to take positive steps for the adoption of rules and other guidelines for opening-up the practice of law.

6. Land Ownership, Use and Disposition

The total land area of the Philippines comprises approximately 30 million hectares, of which 15.88 million hectares are non-alienable and non-

disposable land (primarily forest land), with the remaining 14.12 million hectares being alienable and disposable. Of these, 8.11 million hectares, representing 27.06% of the total land area of the Philippines, are judicially and administratively titled.

These titled lands are divided into government-owned land and private land. Private lands are further classified according to their use. The presumption is that these lands are agricultural, and are only afterwards classified further as industrial, commercial, and residential, having at some time been converted thereto from agricultural use.

It is this last classification of private lands into agricultural and thence by conversion to industrial, commercial and residential lands that is under review with regard to the implied constitutional restrictions on foreign ownership.

The responsibility for approving, regulating and monitoring land conversions from agricultural use to industrial, commercial and residential use is not well-defined and lies with several government bodies and agencies, principally the Department of Agrarian Reform, the Department of Agriculture, Local Government Units, and the Housing and Land Use Regulatory Board.

The Commission strongly recommends to Congress that, as a condition *sine qua non* to allowing foreigners to own commercial or industrial land, it shall enact a Land Use Law and designate the agency which will have exclusive jurisdiction over matters of land use and classification.

The arguments in favor of liberalizing ownership of industrial and commercial land emphasize the increase in investment opportunities, the preference of foreign investors to own the land on which they build their factories, and the increase in job opportunities. This is a logical consequence of the desire of every entrepreneur to control the factors of production. Ownership also strengthens commitment of the investor to the enterprise or project.

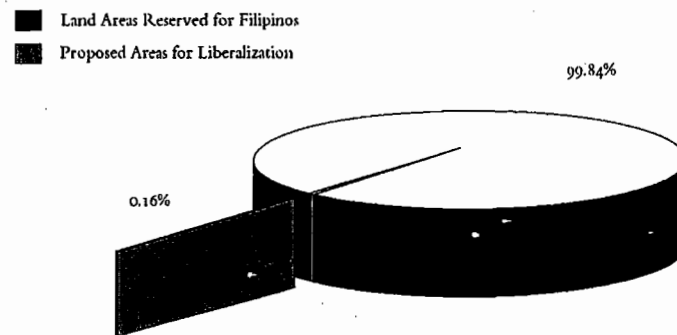
The fear of those opposed to liberalization is that the Filipinos might lose control of their land. Another objection is the lack of the empirical evidence to show that investors will actually bring in investments after the lifting of the constitutional restrictions. It is further argued that present legislation allows long-term leases of land to foreigners in "eco-zones."

Even after a diligent search for accurate data, from both private sources and government agencies, the Commission was unable to obtain statistics on the precise number of hectares of private lands classified as agricultural, residential, industrial or commercial. However, some indication of the land area involved is provided by the satellite mapping, which showed that as of

1987, actual built-up areas amounted to 131,400 hectares. Built-up areas refer to those lands used for residential, industrial or commercial purposes.

Now, since the effectivity of the Comprehensive Agrarian Reform Program in 1987 and until June 1999, approved applications for land use conversion from agricultural to residential, industrial or commercial land covered 29,841.62 hectares. Taken together with the 1987 figure, the estimated total area for residential, industrial and commercial land area is approximately 160,000 hectares. Other statistics show that about 70% of built up areas is committed to residential use, hence the remaining 30% represents industrial or commercial lands that presently falls within the ambit of the recommendation to permit foreign ownership. This represents less than 1% of the total Philippine land area of 30,000,000 hectares. An attempt to graphically demonstrate the affected portion of Philippine will be as follows:

CHART 8
RATIO OF LAND PROPOSED FOR LIBERALIZATION



Sources: Swedish Aerospace Corporation, 1987; Land Management Bureau, 1998; Department of Agrarian Reform, 1999.

7. Natural Resources

Arguments in favor of liberalizing the energy and mining sectors stress that liberalization would support and create jobs through the inflow of capital, technology and expertise. Removal of [c]onstitutional limitations will not result in total liberalization, but merely transfer the regulation of these sectors to Congress. The resulting flexibility will enable economic planners to develop economic policies responsive to changing circumstances.

The tree farming and fisheries sectors have not been faring well. Foreign capital and introduction of new technology are necessary to revitalize these two sectors. More importantly, the conservation and replenishment of these resources can be better assured. Depletion of these resources has been exacerbated by the lack of planning and technical know-how.

Opponents of liberalization maintain that the use of Philippine resources should be reserved to Filipinos. Liberalization would legitimize exploitation by foreigners of natural resources and repatriation of profits.

The Commission took into account the various views expressed. The foregoing summary cannot fully represent the totality of the deliberations, which is better gleaned from the Reports of Session Deliberations and other documents appended to the Committee Reports.²⁰ To provide a better insight on the substance of the deliberations, additional background information on the affected sectors is presented over the following pages.

a.) Energy Sector

The Philippine Energy sector has performed reasonably well over the past five years, in large part due to the inflow of foreign capital and technology that followed the Ramos Administration's program to address the power shortage crisis of 1992 and 1993.

In overcoming the power crisis of 1992 and 1993, exploration, development and extraction of local energy sources like oil, natural gas and geothermal resources were revitalized to improve self-reliance in energy, and reduce, if not obviate, costly oil importation. Increasing the use of indigenous energy sources from 31 percent in 1992 to 41 [%] as of December 1998, was made an economic priority.

Summarized below are the various types of available indigenous energy resources in the country, indicative of the vast potential waiting to be unlocked through appropriate development:

CHART 9
ENERGY SOURCES

Type of Energy	Description / Notes
Oil	• Production of 10.26 Million Barrels of fuel oil since 1992, with value of ₱160 Million
Gas	• Discovery of Camago-Malampaya in 1992, estimated to have 26 to 59 million barrels of oil and 3.2 trillion cubic

20. See generally REPORT OF THE PREPARATORY COMMISSION, *supra* note 16, Part 2 and 4 for a more extensive discussion on the subject matter.

	feet of gas
Geothermal	• Philippines has five geothermal fields which displaced 89.10 million barrels of fuel oil equivalent, with value of over \$1.4 billion; 29 potential geothermal fields are undergoing explorations
Coal	• Over the last six years, coal production reached 8.88 million metric tons, displacing 31.34 million barrels of fuel oil equivalent, with value of U.S.\$ 512 Million
Hydro	• Since 1992, displacement of 72.38 million barrels of fuel oil equivalent, with value of U.S.\$1.2 Billion
Alternative or New and Renewable	• Relates to solar, biomass fuel, wind energy, and other types of indigenous sources of energy
Source: Medium Term Philippine Development Plan, NEDA, 1999.	

Energy requirements are projected to increase by 30% , from 245.42 million barrels of fuel oil equivalent (MBFOE) in 1999 to 318.35 MBFOE in 2004. NEDA forecasts only a slight increase in the proportionate total share of indigenous energy, from 103.81 MMBFOE or 42.30% in 1999 to 145.59 MMBFOE, or 45.73%, in 2004. Indeed, to maintain, let alone increase its total share in the energy mix, a higher growth rate in the use of indigenous energy is in order.

The estimated financial requirements for energy resource development over the 5 year period from 1999-2004 amount to PhP117.4 billion or roughly U.S.\$ 3 billion for direct development of energy resources, or a total of PhP486 billion (over U.S.\$12 billion) for energy projects, inclusive of distribution and other related infrastructure and investment activities. These will have to be supplied by the private sector and foreign capital, and will require hard currency, as the main costs for these projects involve the purchase of foreign technology, equipment and expertise.

By way of example, the giant Malampaya project will come on line in the next five years. This natural gas project involves capital investments of some U.S.\$ 4.5 billion, funded mainly from foreign capital, that will provide special, world-class technology, including a satellite-guided platform to ensure stability of the drilling platforms in the high seas.

b.) Fisheries and Marine Resources

The adoption of the 200-mile Exclusive Economic Zone (EEZ)²¹ in September 1979 extended the maritime jurisdiction of the Philippines by a half million square kilometers of territorial waters. The Total Marine

21. See United Nations Convention on the Law of the Sea.

Territorial Water Area (including the EEZ) is about 2,200,000 square kilometers. The coastal area is 26.6 million hectares, which is 12% of the zone. The coastline length is about 17,460 kilometers, double that of the continental United States. The oceanic area is 193.4 million hectares or 88% of the zone.

The Philippines has limited continental shelves (200 meters and below) in the 200 mile zone, comprising only 18.46 million hectares, varying from about one (1) to 43 miles (or 1.61 to 69.23 kilometers) in distance from the shore. It is in these continental shelves where most commercial fisheries are located. Coral reef area comprises about 27,000 square kilometers.

Total Philippine fish production in 1998 was at 2.79 million metric tons, valued at PhP 84.9 billion, broken down into the three general categories as follows:

Category	Production (Million Metric Tons)
Commercial Fisheries	• 932.7 MMT (33.8%)
Municipal Fisheries	• 910.60 MMT (32%)
Aquaculture	• 942.7 MMT (34.2%)

In terms, however, of Gross Value Added and share of GDP, the fisheries industry has been static. Fisheries' contribution to the country's Gross Domestic Product was 2.8 % (PhP 74.1 Billion) at current prices and 3.9% (PhP 34.7 Billion) at constant prices. The slow and continuous decline in the industry becomes more apparent when total production is evaluated as kilograms of fish available per person per year. Since the population has grown at approximately 2.3% per year, compared to the average 1.8% annual increase in fish production, this translates to a net loss of locally derived fish protein to Filipinos. In 1995, fish consumption was at 31 kilograms per capita per year (KCY); in 1997 it declined to 27 KCY. According to the Department of Science and Technology's Fourth Nutrition Survey (1993), the nutritionally recommended level is at 36 KCY. This decline poses serious risks to our food security and national health.

Among the three categories in fisheries, municipal fisheries registered the worst production performance, in terms of both volume and value. Commercial fisheries fared a little better though annual growth rates have

been declining since 1990. Although aquaculture has been the best performer, since 1995, it has shown negative growth rates.

The problems of the fisheries industries are exacerbated by continued increases in fishing efforts resulting from population growth in coastal areas.²² Other concerns pertain to degradation of coastal habitats due to industrial pollution and siltation from deforestation. The continued use of habitat-and fishery-destructive practices damage coral reef habitats and kill small fish essential for reproduction.²³ Government has also failed to address the problem of rampant illegal fishing. Ironically, government sanctions, in some measure cause the destruction of mangrove forests.²⁴ Finally, there exists at the local and national levels, the absence of a viable master investment plan and failure to promote innovative, ecologically sound projects²⁵ which help sustain and rehabilitate marine resources and the environment.

The revitalization of the fisheries industry requires a coordinated and well thought out long-term master plan.²⁶ The current five-year plan of the Bureau of Fisheries and Aquatic Resources envisions increasing commercial fisheries production by 3.225[%] or a projected increase of 160,000 metric tons just to maintain the status quo in fish consumption and self-sufficiency. In order to achieve this basic increase, the industry will have to develop increased capacity for its distant water fleets, exploit new fishing grounds, strengthen policing and surveillance of fishing grounds, and establish new infrastructure facilities. These types of improvements require capital investments that could be supplemented of complemented by foreign technology and expertise, as well as capital.

c.) Mining Sector

The Philippines is a nation endowed with rich mineral resources that rank among the world's largest.²⁷ However, its mining industry has been in steady decline and it has suffered from stagnation and negative growth over the last

22. Over 755 of the country's population live in the coastal zone.

23. Such as cyanide, explosives and scare techniques.

24. Government permits are required for conversion to fish and shrimp ponds, construction of houses and other structures and land reclamation.

25. Eco-tourism projects featuring marine reserves, sanctuaries, mangrove parks, marine creatures viewing, etc.

26. There was a medium-term Fisheries Management and Development program (FMDP) for the period 1993-1998 that envisioned spending a total of PhP 19,209 B (less than U.S. \$ 500 Million).

27. It ranks second in terms of gold reserve endowment per square kilometer, ranks fourth in copper reserves and sixth in chromite. The Philippines has copper ore reserves of over 4 Billion tons.

15 years. From 1993 to 1998, the mining and quarrying industry suffered a negative 1.2% industry growth rate, and industry performance consistently fell below target growth rates. Its share to GDP remained flat over the period ranging from 1.6 to a low of 1.1% of GDP/GNP

The mining industry used to be a significant contributor to the national economy; with 69 operating mines generating 20% of the country's export earnings in 1980 (U.S.\$ 1.2 billion). Today, only seven companies dominate the mining industry. In constant 1985 prices, 1996 mining revenue was only U.S.\$ 537 Million or a mere 4.11 of export earnings in 1996.

It is estimated that the minimum capital required to develop and operate a single copper or gold or nickel mine would normally be in the U.S.\$ 200 Million to U.S.\$ 300 million range.

Estimates indicate that developing the major copper and gold finds in Dipidio/Tampakan will require an investment commitment of over U.S.\$ 2 B. Approximately U.S.\$ 3-5 billion would be needed to find and develop new mining projects over the next 10 to 15 years for the mining industry to re-establish itself as a major earner of foreign exchange. The projections of the government indicate that foreign sources will have to provide the major part of the needed funds.

d.) Timber and Forestry Resources

Out of a total land area of 30 million hectares, the Philippines in 1934 had a total of 17 million hectares of forested area, of which 11 million hectares comprised virgin forest. According to the latest statistics, the country's forest cover is now reduced to 18% of the total land area of the country — this represents the last remaining forest area of 5.4 million hectares, of which less than a million hectares are virgin forest.²⁸

The rapid depletion has led to heavy soil erosion and sedimentation of rivers and reservoirs, flash floods and drought. Together with improper land use practices, erosion has virtually laid waste to an area of close to 11 million hectares. This area, which covers more than a third of the country, contributes only 1.7% of GDP.

Declining and non-secure wood supplies have brought investments in forest industries to a standstill; many industrial plants based on wood closed

28. Apart from this very disturbing statistic, the industry growth rates are even more alarming. The forestry industry contracted by an average of negative 20.9% from 1993 to 1998, and by 1998, its Gross Value Added had shrunk to Php 897 million down to Php 3.5B in 1993, representing not even half percent of GDP and GNP.

down, resulting in loss of employment and foreign exchange earnings.²⁹ In addition, nationwide losses in productivity and utility of infrastructure related to forest denudation, together with other attributable costs total around Php 10.6 Billion per year.

The Forest Master Plan calls for a total expenditure of about Php 35 to 40 Billion every 5 years, or a total of Php 192 Billion (around U.S.\$ 5 Billion) over 25 years. The Commission notes that this is a conservative figure that serves as the minimum level to counter damage and depletion to the forests.³⁰

In all these areas, the use of additional foreign technology, expertise and capital could prove beneficial. Already, foreign capital and technology [are] being utilized [in] tree farming.

As regards other programs, the Government has also adopted a Socialized Industrial Forest Management Agreement (SIFMA) to allow for community-based forest management under EO No. 263, RA 7856 or the National Integrated Protected Areas System (NIPAS) Act of 1992 also imposed a ban on logs and lumber exports.

Undoubtedly, a more progressive policy in the management planning of forestry and timber resources development is essential for the sustainable use and rehabilitation of these resources.

8. The Amendatory Process

EO No. 43, it will be recalled, requires the Commission not only "to study and recommend proposed amendments and/or revisions to the 1987 Constitution," but also "the manner of implementing the same." There are, to be sure, three basic modes recognized by the Constitution for its revision or amendment. However, the Commission limited itself to a comparative analysis of advantages and disadvantages between a constitutional convention and a constituent assembly. More importantly, public concerns were considered, such as transparency, degree of public participation, peso-cost and speed, among others. The conclusions reached prescribe a two-fold recommendation, providing recourse to the alternative mode, in the event that the preferred mode does not materialize.

29. Wood-based manufactures contributed of all manufactures 1970, but only 5% in 1988.

30. Included in the projected expenditures are items for plantations forests, wood-based industries, non-wood industries and infrastructure facilities

9. The Transitory Provision

The Commission acknowledges that acceptance of its proposed amendments would signal a shift in the policy framework embodied in the Constitution. The temporal aspect of such a shift, therefore, became a crucial issue in the deliberations. Moreover, to merely amend the Constitution without managing the period of transition would leave intact numerous laws implementing restrictions found in the 1987 Constitution. For these reasons, the Commission rejected the idea of leaving the matter entirely in the hands of Congress, and deliberated on a transitory provision.

One view favored the inclusion in the transitory provision of a grace period to allow for legislative and regulatory reforms. However, it was reasoned that this would impose upon Congress the laborious task of reviewing the entire legal code for amendments should adoption of the Commission's proposals come to pass. Therefore, the preferred option was to provide a general repealing clause to address these statutory restrictions. This, the Commission concluded, would leave Congress with a "clean slate," in conjunction with a free hand, for the exercise of its plenary power to establish such levels of regulation or restriction as it may be deemed appropriate.

VI. SURVEY OF ASIAN CONSTITUTIONS AND REGULATIONS

1. Constitutional Restrictions

The various committees examined the constitutions of other Asian countries to observe whether other developing or neighboring countries imposed constitutional prohibitions similar to those found in the Philippine Constitution. The survey revealed that no provision in these constitutions contained specific restrictions or limitations on foreign investment in the development of natural resources or grant of public utilities or infrastructure franchises.

Similarly, no constitutional provision affecting foreign investment in the areas of advertising, education and the practice of professions were discovered. Thailand, however, like the Philippines, has a specific provision in its Constitution restricting foreign ownership of mass media.

Interestingly, none of the Asian countries surveyed contained constitutional restrictions on land ownership by foreigners.³¹

31. Except China and Vietnam, where private land ownership is not recognized at all, by virtue of their communist systems of government.

2. Legislative and Regulatory Restrictions

The committees also studied the treatment of foreign investment by law or regulations in the Asian countries surveyed, finding numerous and varied approaches to the regulation of foreign investment —

* In Singapore, Malaysia, Hong Kong and Vietnam, there are no laws restricting foreign investment or participation in natural resources and related businesses, though there are guidelines and procedures to ensure conformity with government policies.

* Hong Kong restricts foreign ownership in broadcast media to 49%, while land rights are open equally to foreigners. Outright ownership of land is not allowed to both foreign and local investors, but there is a system of leasing lands for 99 years.

* Except for Hong Kong and South Korea, the other countries surveyed have varying degrees of restrictions or regulations on foreign land ownership.

* South Korea does not allow foreign investment or ownership in coastal and inland fisheries, and has restrictions on mass media ownership, but has recently liberalized its policies on land ownership by foreigners.

* Indonesia and Taiwan do not allow foreign investment and ownership in the fisheries and forestry sectors.

* Indonesia prohibits ownership of land by foreigners but allows long term leases of land, and up to 95% foreign ownership in infrastructure and public utility projects.

* Japan, China and Thailand have numerous and complex restrictions including requirements that foreign investment and ownership must be in the minority (N.B. Thailand is currently undertaking a review of its investment policies and laws).

* Brunei generally limits foreign investment and ownership of local enterprises to 70% and requires royal permission for land acquisition by foreigners.

The Commission notes that [what are significant] are the legal approaches and formulations of policy that have been adopted with respect to foreign investment in the countries surveyed. There appears to be a consistent rule that governments and their legislatures are allowed some degree of flexibility in regulating economic matters and issues relating to foreign investment. This is achieved by placing these matters at the legislative or policy [level], rather than at the constitutional, level.³²

32. See generally REPORT OF THE PREPARATORY COMMISSION, *supra* note 16, Part 1-B and Part 2 for summaries of the relevant Constitutional provisions of the

The Commission also observes, therefore, that while numerous restrictions and regulations pertaining to foreign investment do exist in various Asian countries, only in the Philippines are these contained in the Constitution. This effectively deprives the legislature and policy makers of flexibility in altering or modifying these restrictions in accordance with the economic needs of the country.

VII. OTHER FACTORS AFFECTING ECONOMIC GROWTH

Any economic reforms must be accompanied by corresponding non-economic reforms. Existing policies designed to prevent graft and corruption, as well as streamline government service must be examined and, where necessary, strengthened.

The Commission acknowledges the key role of the bureaucracy and decentralization in development. Nevertheless, the majority believes that the recommendations regarding these matters are beyond the mandate of the Commission, which was to focus solely on economic issues.

The recommendations of the Committee of Bureaucracy, Decentralization and the Economy on amending particular provisions regarding bureaucracy and devolution include amending:

1. Article IX-B, Section 2, regarding appointments to the civil service to be based on merit and fitness, with certain exceptions
2. Article III, Section 7, with respect to freedom of information
3. Article X, Section 5, governing public spaces as well as conferring tax raising powers to local government units for purposes of balancing their budgets.
4. Article XVI, Section 6, to provide for the creation of municipal and provincial police forces
5. Article IX-D, Section 2, mandating the performance of pre-audits on government transactions by the Commission of Audit

The Commission believes the [foregoing] matters to be important and necessary to any program designed to foster economic development.³³

selected Asian nations, the relevant statutory regulations restricting or limiting foreign investments, and the full texts of the constitutions of different countries, which were made part of the of the record of the Commission.

33. See generally *id.*, Part I-C and Part I-D, which provides the full text of the proposals in the appended reports on the deliberation sessions and Committee Reports.

VIII. PLANNING AND POLICY-MAKING

Commissioners Virata and Paderanga proposed amendments regarding Sections 9 and 20 of Article XII. The Commission believed that although these proposed amendments had valid basis, without the benefit of extensive study by a standing Committee, the recommendations of the individual Commissioners could not be included in the proposed economic amendments. Therefore, it was agreed to append the recommendations and concerns to the report in view of the general consensus that the issues raised merited serious consideration.

The proposal of Commissioner Paderanga, echoed by Commissioner Virata, was to delete the word "independent" from Article XII, Sections 9, which referred to the National Economic Development Authority (NEDA). The two Commissioners argued that an independent economic and planning agency was intractable, and indeed, undesirable, due to the reality that economic policy is effectively drawn up only through close cooperation and implementation, i.e., the executive and legislative branches. In this light, Commissioner Paderanga stated that all past Directors-General of the NEDA (including Commissioner Virata) had been of the opinion that to institutionalize the independence of the NEDA simply was not feasible.

The Commissioners likewise proposed the replacement of the NEDA with a body similar to the former National Economic Council, which was composed of members of the Congress, Executive, as well as the private sector.

Commissioners Paderanga and Virata, supported by Commissioner Roy, then moved to delete or revise Section 20 of Article XII, which refers to the central monetary authority, i.e., the *Bangko Sentral ng Pilipinas* (BSP). They expressed the concern that for a body to be constitutionally charged with the responsibility for formulating and implementing monetary policy in addition to supervising and regulating the banking system could lead to conflicts of interest that may impinge on the BSP's economic management. Furthermore, the constitutional independence of BSP, which is mandated in this section, may in future not be considered desirable as trends in central banking change.

The full text of these two proposals may be found in the appended Reports on Deliberation Sessions.

IX. RESTORING CONSTITUTIONAL INTENT

Some decisions of the Supreme Court have caused concerns in respect of their implications in the areas of trade and investment. A concrete example of the deleterious impact of such decisions on the economy was the decrease in Taiwanese investment in the Philippines within a period of one year following a Supreme Court ruling that practically imposed upon a foreign

investor the choice of site of a proposed petrochemical complex.³⁴ Other decisions, though not relying solely on Section 19 have likewise derailed foreign investments, by construing the Constitution as prescribing a "Filipino first policy."³⁵ This policy has been used, rightly or wrongly, to challenge foreign investments before the Court.

Foremost among the problematic provisions is Section 19, Article II, Declaration of Principles and State Policies, which reads: "The State shall develop a self-reliant and independent national economy, effectivity controlled by Filipinos."

While this provision is concededly hortatory or recommendatory in nature, legal significance beyond mere declaratory function has been attached to it. The Commission believes that the amendment of [Section] 19 is possible, without diminishing its import.

Actually, the salutary aspirations expressed in Section 19 are already voiced in Section 9 of Article II, *viz.*:

The State shall promote a just dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all.

In addressing these issues, the Commission was guided by the objective of reformulating [Section] 19 in a manner that would raise no doubts about its hortatory function. To be sure, the most controversial point dealt with was the meaning of the phrase "effectivity controlled by Filipinos." The Commission observed that the language of the existing provision, coupled with that of other provisions in the Constitution, left the Court with little choice but to interpret its meaning and effect in a narrow and restrictive manner.

Notwithstanding possible criticism from some sectors, amendment of [Section] 19 is supported by the Commission, considering that it is a potential obstacle to the entry of much-needed foreign investment.

34. Based on BOI figures, Taiwanese investments decreased from \$3.4 billion in 1990 to merely P 329 million in 1991, following promulgation of Garcia v. Board of Investments, the Department of Trade and Industry, Luzon Petrochemical Corp and Pilipinas Shell Corporation, 177 SCRA 374 (1989) and 191 SCRA 288 (1990).

35. See e.g. Manila Prince Hotel v. Government Insurance System, Manila Hotel Corporation, Committee on Privatization and the Office of the Government Corporate Counsel, 267 SCRA 408 (1997).

X. CONCLUSION AND RECOMMENDATIONS

The Commission came to the following conclusions and recommendations after extensive deliberations on the various issues and committee presentations, and considering the views of the government's economic managers, as well as those of persons and groups opposed to the revision of the economic provisions of the Constitution, and the proposals and position papers submitted by various sectors and the general public. These conclusions and recommendations should be considered in the context of the various Summary Reports of Deliberation Sessions, the Committee Reports, and other documents made integral parts of this Report.

1. On the general economic policy provisions, the Commission supports the view that certain provisions of the Constitution relating to economic principles ought to be clarified and reviewed, with a view to avoiding ambiguity, moderating the traditions of protectionism, and affording flexibility to future policy-makers.

Additionally, the Commission endorses the recommendation of the Committee on Trade and Competition Policy regarding the advisability of revising the provisions pertaining to the economic and planning agency and the central monetary authority. [In connection with this], the Commission notes the advantages of creating an economic policy-making body headed by the President and composed of the members from the executive and legislative departments, and representatives from the private sector; also that the functions reposed in the central monetary authority pose conflicting priorities, specifically in conducting monetary policy, *vis-à-vis* the supervision of banks.

2. It will serve the country's economic interests to afford maximum flexibility to Congress and the country's economic managers to determine from time to time, pursuant to the current economic needs and circumstances of the country and the particular industry sector, policy and regulation relating to foreign investments. In this connection, given the tremendous capital and technological requirements needed to bring the state of the Philippine economy up to par with those of its neighbors, it is considered view of the Commission that as far as juridical entities are concerned, the specific capital ratio requirements in the Constitution relating to natural resources, and public utilities must be removed, while restrictions on individual foreigners should remain. This will encourage the inflow of foreign investments necessary to harness the wealth of the country's natural resources for the greater good and optimize opportunities in the public utilities and franchises sectors for much needed infrastructure development and the provision of efficient and adequate public services. Once Congress and the government's

economic managers determine that here is no longer any need for foreign direct investments, then it can restore the desired nationality ratios.

3. On the issue of improving the government bureaucracy and promoting honesty and transparency in government as an essential component for providing an efficient and productive business and investment climate, the Commission concludes that it should strongly endorse these concerns for the attention of the President and recommend the addition of a policy statement to this effect in the Constitution.
4. Referring to the Fisheries and Timber Industries, the Commission concludes and recommends that there is [a] vital need for a new and more aggressive Master Rehabilitation and Investment Plan in order to save and revitalize these industries, and that foreign technology and expertise, by way of international assistance (in both the official and private sectors), should be encouraged. Only after more concrete plans are formulated to establish the amounts of foreign technology, expertise, capital and infrastructure requirements, would a rational policy of attracting foreign investment prove fruitful. At that time specific foreign and local capital ratios could be implemented by legislation or regulation.
5. On the issue of exclusivity of marine resources, the Commission recommends that the provision ought to be revised so as, again, to allow a measure of flexibility to support Filipino initiatives and subsequent scientific or commercial cooperative ventures with foreign counterparts in conformity with international treaty commitments and the pertinent growth and economic policies of government.
6. Relative to proposed changes to the current constitutional restrictions on the transfer of private lands to foreign citizens, the Commission's view is that ownership of agricultural and residential lands ought to remain with Filipinos, but, that, to further economic growth and productivity in other sectors, the ownership of private lands devoted to commercial or industrial uses ought to be liberalized and made available to foreign investors in accordance with guidelines to be established by law. In this connection, the Commission also recommends the certification by the President, as an urgent measure, of legislation to regulate matters relating to land use and classification, already the subject of several bills currently pending before Congress.
7. On the constitutional requirement that the boards of directors and management of corporations engaged in public utilities or educational activities must be Filipino or Filipino-controlled, the

Commission concludes that the role of foreign expertise and managers ought to be recognized and that these are matters better left to law and regulation. The Commission, however, concludes that the grantees or franchisees, if corporations, ought to be corporations incorporated under Philippine law.

8. The Commission concludes that the Regalian doctrine, coupled with the inherent authority of government to exercise regulatory powers over these sectors natural resources development and public utilities), as well as the plenary legislative power of Congress, provide ample safeguards for the effective control and management of these sectors and the protection of state interest, in accordance with pragmatic principles of stewardship.
9. The Commission is also of the view that the nationality and capital ratio requirements for educational institutions need not be addressed in the Constitution and are better left to legislative or policy determination, consistent with the principle of academic freedom. Considering the long-term implications of upgrading the educational system, particularly at the tertiary level, and the increasing competitiveness of these institutions throughout the world, every advantage should be availed of to ensure the best possible education for the Filipino youth, which remains the greatest asset and hope for the future of the country.
10. The Commission concludes that the nationality and capital ratio requirements for mass media and the advertising industries need not be addressed in the Constitution, given the large capital requirements and the rapid development of technology, permitting convergence of broadcast media, computers, the internet and telecommunications. Again, maximum flexibility ought to be afforded Congress and policy makers to enable formulation of policies responsive to technological advances.
11. On the mode of effecting the amendments to the Constitution, the Commission concludes and recommends that, given the limited nature of the recommended changes, the most cost-efficient option would be to convene Congress as a constituent assembly, failing which, the only alternative would be revision by a constitutional convention.
12. On the manner of effecting the foregoing amendments in view of numerous laws and regulations already in existence, the Commission concludes that a transitory provision that would implement liberalization pending action by Congress, would be useful and beneficial.

The goal of these changes is to spur economic growth, increase jobs and income, and improve the productivity and competitiveness of the Philippine economy. It is the sincere hope of the Commission that attaining these goals will aid the current and future administrations and policy-makers in the pursuit of national objectives of providing food security, alleviating poverty and improving the standard of living of Filipinos.

The Commission recognizes that the proposals for changes to the economic provisions contained in this report, while recommended and certainly important and useful, will not guarantee the immediate inflow of increased foreign investment. There are other factors that necessarily come into play and affect the decisions of foreign investors, such as political and regional stability, transparency of government regulations, an improved bureaucracy, investment incentives, the quality of the labor force and local infrastructure, efficient and adequate public utilities, the state of information technology and the like.

In line with the above conclusions and caveats, the Commission hereby makes the following recommendations for the amendment of certain economic provisions of the Constitution. Following below is the text of the proposed wording being recommended by the Commission.

XI. THE PROPOSED AMENDMENTS

(1) ARTICLE II:

SECTION 19. THE STATE SHALL DEVELOP A SELF-RELIANT, PRODUCTIVE AND COMPETITIVE ECONOMY THAT WILL BEST SERVE THE INTEREST OF THE FILIPINO PEOPLE.

Twelve Commissioners voted to accept this proposal (Angeles, Calderon, Concepcion, Dizon, Fenix, Gozon, Mallare, Paderanga, Romulo, Roy, Sereno, and Villegas), three voted to reject it (Felipe, Padua and Pimentel) and eight members were not present at the time of the vote.³⁶

(2) ARTICLE XII:

NATIONAL ECONOMY AND PATRIMONY

SECTION 1. THE GOALS OF THE NATIONAL ECONOMY ARE IMPROVING PRODUCTIVITY AS THE KEY TO RAISING THE QUALITY OF LIFE FOR ALL, ESPECIALLY THE UNDERPRIVILEGED, AND MORE EQUITABLE

36. Pursuant to parliamentary procedure, the Chairman, as Presiding Officer, did not vote unless to make or break a tie.

DISTRIBUTION OF OPPORTUNITIES, INCOME AND WEALTH.

Eighteen Commissioners voted to accept this proposal (Angeles, Calderon, Concepcion, Corpuz, Daza, Dizon, Fenix, Gozon, Mallare, Paderanga, Padua, Pimentel, Romulo, Roy, Sereno, Vasquez, Villegas, and Virata), one (Felipe) reserved his vote and three members were not present at the time of voting.

SECTION 2. ALL LANDS OF THE PUBLIC DOMAIN, WATERS, MINERALS, COAL, PETROLEUM AND OTHER MINERAL OILS AND ALL FORCES OF POTENTIAL ENERGY, FISHERIES, FORESTS OR TIMBER, WILDLIFE, FLORA AND FAUNA, AND OTHER NATURAL RESOURCES, ARE OWNED BY THE STATE. WITH THE EXCEPTION OF AGRICULTURAL LANDS, ALL OTHER NATURAL RESOURCES SHALL NOT BE ALIENATED. THE EXPLORATION, DEVELOPMENT, AND UTILIZATION OF NATURAL RESOURCES SHALL BE UNDER THE FULL CONTROL AND SUPERVISION OF THE STATE.

THE STATE SHALL PROTECT THE NATION'S MARINE WEALTH IN ITS ARCHIPELAGIC WATERS, TERRITORIAL SEA, SEABED, AND EXCLUSIVE ECONOMIC ZONE. THE STATE SHALL REGULATE THE DEVELOPMENT OF THE NATION'S NATURAL RESOURCES TOWARDS THE EFFICIENT USE OF THESE RESOURCES FOR THE GENERAL WELFARE, CONSISTENT WITH SOUND ENVIRONMENT POLICIES.

THE CONGRESS, MAY, BY LAW, RESERVE THE SMALL-SCALE UTILIZATION OF NATURAL RESOURCES TO FILIPINO CITIZENS, OR CORPORATIONS OR ASSOCIATIONS SIXTY PERCENTUM OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS.

Seventeen Commissioners voted to accept the proposal (Bautista, Calderon, Concepcion, Corpuz, Dario, Daza, Dizon, Felipe, Fenix, Gozon, Mallare, Paderanga, Romulo, Roy, Sereno, Teves and Villegas), 3 cast negative votes (Padua, Pimentel and Vasquez) and 3 were not present to vote.

SECTION 6. THE USE OF PROPERTY BEARS A SOCIAL FUNCTION, AND ALL ECONOMIC AGENTS SHALL CONTRIBUTE TO THE COMMON GOOD. INDIVIDUALS AND PRIVATE GROUPS SHALL HAVE THE RIGHT TO OWN, ESTABLISH AND OPERATE ECONOMIC

ENTERPRISES, SUBJECT TO THE AUTHORITY OF THE STATE TO PROMOTE DISTRIBUTIVE JUSTICE AND TO INTERVENE WHEN THE PUBLIC INTEREST SO REQUIRES.

This provision was adopted without a vote, there being no objection, except for the reservation of C. Felipe.

SECTION 7. SAVE IN CASES OF HEREDITARY SUCCESSION, PRIVATE LANDS, OTHER THAN THOSE CLASSIFIED IN ACCORDANCE WITH LAW AS INDUSTRIAL OR COMMERCIAL, MAY BE TRANSFERRED OR CONVEYED ONLY TO FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS AT LEAST SIXTY PERCENTUM OF WHOSE CAPITAL IS OWNED BY SUCH CITIZENS.

Although the proposal was recast at a later session, the original vote of the proposal remained as the official tally: 15 affirmative votes were cast (Bautista, Calderon, Concepcion, Corpuz, Daza, Dizon, Fenix, Gozon, Mallare, Paderanga, Romulo, Roy, Sereno, Teves and Villegas) as opposed to 5 negative votes (Dario, Felipe, Padua, Pimentel and Vasquez). Three Members were not present to vote.

SECTION 10. THE STATE SHALL REGULATE AND EXERCISE AUTHORITY OVER FOREIGN INVESTMENTS WITHIN ITS JURISDICTION AND IN ACCORDANCE WITH ITS NATIONAL GOALS AND PRIORITIES.

On the question of accepting the proposal to delete the first two paragraphs of Section 10, 15 voted in the affirmative (Bautista, Calderon, Concepcion, Corpuz, Dario, Dizon, Fenix, Gozon, Mallare, Paderanga, Romulo, Roy, Sereno, Teves and Villegas), 5 voted against it (Daza, Felipe, Padua, Pimentel and Vasquez) and 3 were not present to vote.

~~SECTION 11. NO FRANCHISE, CERTIFICATE, OR ANY OTHER FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC UTILITY SHALL BE GRANTED EXCEPT TO INDIVIDUAL CITIZENS OF THE PHILIPPINES OR TO CORPORATIONS OR ASSOCIATIONS ORGANIZED UNDER THE LAWS OF THE PHILIPPINES; NOR SHALL SUCH FRANCHISE, CERTIFICATE OR AUTHORIZATION BE EXCLUSIVE IN CHARACTER OR FOR A LONGER PERIOD THAN FIFTY YEARS. NEITHER SHALL ANY SUCH FRANCHISE OR RIGHT BE GRANTED EXCEPT UNDER THE CONDITION THAT IT SHALL BE SUBJECT TO AMENDMENT, ALTERATION, OR REPEAL WHEN THE COMMON GOOD SO REQUIRES. THE STATE~~

~~SHALL ENCOURAGE EQUITY PARTICIPATION IN PUBLIC UTILITIES BY THE GENERAL PUBLIC.~~

After amendments to the wording were thoroughly discussed, the proposal as styled above was adopted by *viva voce*, with the ayes clearly prevailing in favor of accepting the proposed provision.

SECTION 13. THE STATE SHALL PURSUE A TRADE POLICY THAT ENHANCES FILIPINO COMPETITIVENESS AND SERVES THE GENERAL WELFARE.

THE STATE SHALL ENSURE A CULTURE OF HONESTY AND EFFICIENCY IN THE BUREAUCRACY, WHICH SHALL BE RESPONSIVE TO THE NEEDS OF A GROWING ECONOMY.

Only two objections were offered to the proposal to amend [Section] 13 (Daza and Padua), the rest of the Commissioners were deemed to have approved the same, but for C. Felipe, who voiced his reservation.

(3) ARTICLE XIV ON EDUCATION:

DELETION OF FIRST TWO PARAGRAPHS OF SECTION 4(2):

~~SECTION 4. (1) THE STATE RECOGNIZES THE COMPLEMENTARY ROLES OF THE PUBLIC AND PRIVATE INSTITUTIONS IN THE EDUCATIONAL SYSTEM AND SHALL EXERCISE REASONABLE SUPERVISION AND REGULATION OF ALL EDUCATIONAL INSTITUTIONS.~~

~~(2) EDUCATIONAL INSTITUTIONS, OTHER THAN THOSE ESTABLISHED BY RELIGIOUS GROUPS AND MISSION BOARDS, SHALL BE OWNED SOLELY BY CITIZENS OF THE PHILIPPINES OR CORPORATIONS OR ASSOCIATIONS AT LEAST SIXTY PER CENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS. THE CONGRESS MAY, HOWEVER, REQUIRE INCREASED FILIPINO EQUITY PARTICIPATION IN ALL EDUCATIONAL INSTITUTIONS. THE CONTROL AND ADMINISTRATION OF EDUCATIONAL INSTITUTIONS SHALL BE VESTED IN CITIZENS OF THE PHILIPPINES.~~

On the deletion of the first and second paragraphs of sub-section(2), [Section] 4 of Article XIV, 10 Commissioners cast affirmative votes (Concepcion, Daza, Fenix, Gozon, Mallare, Romulo, Roy, Sereno, Teves and Vasquez), 8 voted against the deletion (Calderon, Dario, Dizon, Felipe, Padua, Pimentel, Villegas and Corpuz) and 5 were not present at the time of voting.

NO EDUCATIONAL INSTITUTION SHALL BE ESTABLISHED EXCLUSIVELY FOR ALIENS AND NO GROUP OF ALIENS SHALL COMPRISE MORE THAN ONE-THIRD OF THE ENROLLMENT IN ANY SCHOOL. THE PROVISIONS OF THIS SUBSECTION SHALL NOT APPLY TO SCHOOLS ESTABLISHED FOR FOREIGN DIPLOMATIC PERSONNEL AND THEIR DEPENDENTS AND, UNLESS OTHERWISE PROVIDED BY LAW, FOR OTHER FOREIGN TEMPORARY RESIDENTS.

On the proposal to delete the third paragraph, 2 voted in the affirmative (Fenix and Mallare, 15 voted against deletion (Calderon, Concepcion, Corpuz, Dario, Daza, Dizon, Felipe, Gozon, Pimentel, Romulo, Roy, Sereno, Teves, Villegas, and Vasquez), one abstained (Padua) and 5 were not present at the time of the vote.

(4) ARTICLE XVI ON MASS MEDIA

DELETION OF SECTION 11:

~~SECTION 11. (1) THE OWNERSHIP AND MANAGEMENT OF MASS MEDIA SHALL BE LIMITED TO CITIZENS OF THE PHILIPPINES, OR TO CORPORATIONS, COOPERATIVES OR ASSOCIATIONS, WHOLLY OWNED AND MANAGED BY SUCH CITIZENS.~~

~~THE CONGRESS SHALL REGULATE OR PROHIBIT MONOPOLIES ON COMMERCIAL MASS MEDIA WHEN PUBLIC INTEREST SO REQUIRES. NO COMBINATIONS IN RESTRAINT OF TRADE OR UNFAIR COMPETITION THEREIN SHALL BE ALLOWED.~~

~~(2) THE ADVERTISING INDUSTRY IS IMPRESSED WITH PUBLIC INTEREST, AND SHALL BE REGULATED BY LAW FOR THE PROTECTION OF CONSUMERS AND THE PROMOTION OF GENERAL WELFARE.~~

~~ONLY FILIPINO CITIZENS OR CORPORATIONS OR ASSOCIATIONS AT LEAST SEVENTY PER CENTUM OF THE CAPITAL OF WHICH IS OWNED BY SUCH CITIZENS SHALL BE ALLOWED TO ENGAGE IN THE ADVERTISING INDUSTRY.~~

~~THE PARTICIPATION OF FOREIGN INVESTORS IN THE GOVERNING BODY OF ENTITIES IN SUCH INDUSTRY SHALL BE LIMITED TO THEIR PROPORTIONATE SHARE IN THE CAPITAL THEREOF, AND ALL THE EXECUTIVE AND MANAGING OFFICERS OF SUCH ENTITIES MUST BE CITIZENS OF THE PHILIPPINES.~~

Only 5 negative votes were cast (Calderon, Dario, Felipe, Padua and Pimentel) as against 13 affirmative votes (Angels, Bautista, Concepcion, Fenix, Gozon, Mallare, Romulo, Roy, Sereno, Teves, Vasquez, Villegas and Virata), and 5 members who were not present at the time the vote was taken.

(5) Proposed TRANSITORY PROVISION:

TRANSITORY PROVISION:

UPON THE EFFECTIVITY OF THE AMENDMENTS TO ARTICLES II, XII, XIV AND XVI OF THE CONSTITUTION, ALL PROVISIONS OF EXISTING LAWS AND REGULATIONS IMPOSING NATIONALITY PROHIBITIONS OR RESTRICTIONS ON THE ACQUISITION AND OWNERSHIP OR PRIVATE LANDS CLASSIFIED IN ACCORDANCE WITH LAW AS COMMERCIAL OR INDUSTRIAL, THE GRANT OF CONGRESSIONAL FRANCHISES, THE OWNERSHIP AND OPERATION OF PUBLIC UTILITIES, MASS MEDIA, ADVERTISING, EDUCATIONAL INSTITUTION OF NATURAL RESOURCES, ARE HEREBY REPEALED UNLESS OTHERWISE LATER PROVIDED BY LAW.

Adopted by acclamation, without a vote, noting the express reservation of C. Felipe.