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In 2004, President Gloria Macapagal-Arroyo was re-elected as the 14th President of the Philippines. One of the main focuses of her administration was the Philippine economy. Her goal was simple — to make the economy better than it was when she had started her term. She began her presidency by plotting out a 10-point agenda, as well as introducing the Medium-Term Development Plan. However, these were met by several challenges, such as the “Hello, Garci” issue, the controversial move for charter change, and the declaration of a state of emergency in the Philippines, among others.

Notwithstanding these challenges, Arroyo still persevered, intent on accomplishing what she had set out to do. During her term, several executive issuances — Executive Order No. 420, Executive Order No. 464, Batas Pambansa Blg. 880, and Proclamation No. 1017 — were promulgated in pursuit of her goal to grow the Philippine economy. These issuances were opposed by various sectors before the Supreme Court, eventually leading to several landmark decisions, namely, *Kilusang Mayo Uno v. The Director General, National Economic Development Authority*; *Senate of the Philippines v. Ermita*; *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita*; and *David v. Macapagal-Arroyo*.

In this Article, Sedfrey M. Candelaria and Floralie M. Pamfilo analyze these landmark decisions and the interplay between economic development and the exercise of State power, and the implications of these two concepts on human rights.

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# Balancing State Power, Economic Development, and Respect for Human Rights

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## I. INTRODUCTION

As a developing nation, the Philippines is seriously confronted with meeting the economic demands of a politically-divided society. The current administration of President Gloria Macapagal-Arroyo has in fact undertaken steps to pursue accelerated economic development during her term. However, the recent spate of political events and internal armed conflicts have contributed to the fragility of the institutions of government, highlighted by the continuing threat by a coalition of opposition groups to

realize a change in the Presidency either through constitutional means<sup>1</sup> or by force.<sup>2</sup>

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

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

This Article aims to examine the interplay between the exercise of State power and economic development, including its implications on human

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1. *Opposition files an impeachment complaint*, MANILA STAND. TODAY, June 27, 2006, available at [http://www.manilastandardtoday.com/?page=news01\\_june27\\_2006](http://www.manilastandardtoday.com/?page=news01_june27_2006) (last accessed July 1, 2006). The impeachment complaint was signed by over 300 oppositionists, following an overnight vigil in Congress. It imputes several allegations against Arroyo, such as cheating in the 2004 elections, human rights violations, and corruption. Several other complaints followed, including one filed by Kilusang Makabayang Aktibista and another lodged by student leaders.
  2. *Reds alarm national security adviser*, MANILA STAND. TODAY, Jan. 16, 2006, available at [http://www.manilastandardtoday.com/?page=news06\\_jan16\\_2006](http://www.manilastandardtoday.com/?page=news06_jan16_2006) (last accessed July 6, 2006). According to National Security Adviser Norberto Gonzales, the goal of the Communist Party of the Philippines–National People's Army is to connive with political groups in overthrowing the government and to be a part of the government that will take over the Arroyo administration. See *Joma offer confirms NPA-Magdalo alliance*, MANILA STAND. TODAY, June 27, 2006, available at [http://www.manilastandardtoday.com/?page=politics04\\_feb28\\_2006](http://www.manilastandardtoday.com/?page=politics04_feb28_2006) (last accessed July 6, 2006).
  3. Artemio V. Panganiban, *Liberty and Prosperity*, available at <http://www.supremecourt.gov.ph/vision-mission.php> (last accessed July 1, 2006).

rights. In other jurisdictions, State power has been exercised to emphasize the pursuit of economic development but apparently to the sacrifice of other fundamental rights. The Supreme Court is mandated to ensure that the exercise of State power by the Executive or the Congress shall not infringe upon fundamental liberties of the citizens.

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

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

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

The Authors argue that the current administration will best serve the interest of the Filipino people in the long run by walking the tight rope of balancing economic development with human rights protection. With the attempt at radical economic reforms through charter change, respect for the people's sovereign is likely to be tested once more before the Supreme Court. The double standard of judicial review<sup>5</sup> which distinguishes between civil and political rights, on the one hand, and social and economic rights, on the other hand, as regards the extent of scrutiny by the courts, may yet face re-examination when applied to cases which are political in character but with serious economic and human rights implications.

## II. THE PRESIDENTIAL GOAL

### A. *Economic Condition*

The Philippine economy has consistently experienced a pattern of limited growth spurts followed by a deceleration in development. For instance, the

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4. PHIL. CONST. art. VIII, § 1, para. 2.

5. Vicente V. Mendoza, *The Nature and Function of Judicial Review*, 31 IBP J. 22 (2005).

Philippine economy reached its peak in the years 1976-1977, 1988-1989, and 1996-1997, only to take a plunge and start another growth cycle every time.<sup>6</sup>

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

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

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

This is the reason why, at the onset of her second term, Arroyo laid down a ten-point agenda that she called her legacy. In her address, she acknowledged her key responsibility of "leaving [the nation] better than when she took it in hand."<sup>11</sup> Thus, she targeted that, at the end of her term

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6. Germelino M. Bautista, *An Assessment of the Philippine Economy*, available at <https://kyotoreview.org/issue-4/an-assessment-of-the-philippine-economy/> (last accessed July 6, 2006).

7. Asian Development Bank, Country Economic Review: Philippines (December 2004), available at <https://www.adb.org/sites/default/files/institutional-document/32592/files/ce-phi-2004.pdf> (last accessed Jan 9, 2018).

8. *Id.*

9. *Id.*

10. Gloria Macapagal-Arroyo, 14th President of the Philippines, *Fourth State of the Nation Address*, Address Delivered at the Opening of the 1st Regular Session of the 13th Congress (July 26, 2004) (transcript available at <http://www.officialgazette.gov.ph/2004/07/26/gloria-macapagal-arroyo-fourth-state-of-the-nation-address-july-26-2004/> (last accessed July 6, 2006)) [hereinafter Arroyo, SONA 2004].

11. Gloria Macapagal-Arroyo, 14th President of the Philippines, *Second Inaugural Address of President Gloria Macapagal-Arroyo*, Address Delivered at the 2004

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

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

[t]he basic task of the Medium[-]Term Philippine Development Plan for the period 2004-2010 is to fight poverty and build prosperity for the greatest number of the Filipino people.

We must open up economic opportunities, maintain socio-political stability, and promote good stewardship — all to ensure a better quality of life for all our citizens. We will focus on strategic measures and activities that will spur economic growth and create jobs. This can only be done with a common purpose to put our economic house back in working order.<sup>14</sup>

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Presidential Inauguration (June 30, 2004) (transcript *available at* <http://www.officialgazette.gov.ph/2004/06/30/second-inaugural-address-of-president-gloria-macapagal-arroyo-june-30-2004> (last accessed July 6, 2006)).

12. *Id.*

13. National Economic and Development Authority, Medium-Term Development Plan 2004-2010, *available at* <http://www.philconstruct.com/docs/downloads/NEDA%2ODOCS/Medium%20Term%20Development%20Plan%202004-2010.pdf> (last accessed July 6, 2006).

14. Helen Flores & Ghio Ong, Government on track to reduce poverty by half, *PHIL. STAR*, Feb. 2, 2008, *available at* <http://beta.philstar.com/headlines/2008/02/02/42251/government-track-reduce-poverty-half> (last accessed July 6, 2006).

*C. Challenges to Economic Growth*

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

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

In a speech before Filipino businessmen, Arroyo addressed her detractors to "stop opposing the progress of the nation ... [and] to stop undermining our relations with the United States and other allies[.]"<sup>16</sup> She referred to the workings of destabilizers as "besmirching the name of our people and our nation at a time when we are gaining momentum economically."<sup>17</sup> In the same vein, in a speech she delivered before the Oriental Mindoro Investment Summit,<sup>18</sup> an event she referred to as a "boost to economic activity," Arroyo acclaimed the various investments being made in the province and at the same time reminded everyone "to move the nation forward, rather than jamming the gears of the nation into reverse."<sup>19</sup>

Arroyo's proposed solution to combat the economic challenges faced by the country revolves on "toughness on the part of the government,

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15. Gloria Macapagal-Arroyo, 14th President of the Philippines, *Speech of President Arroyo during the 31st Philippine Business Conference and Exposition*, Address Delivered at the 31st Philippine Business Conference and Exposition (Oct. 13, 2005) (transcript available at <http://www.officialgazette.gov.ph/2005/10/13/speech-of-president-arroyo-during-the-31st-philippine-business-conference-and-exposition> (last accessed July 6, 2006)).

16. *Id.*

17. *Id.*

18. Gloria Macapagal-Arroyo, 14th President of the Philippines, *Speech of President Arroyo during the Oriental Mindoro Investment Summit (ORMINVEST)*, Address Delivered at the Oriental Mindoro Investment Summit (Apr. 6, 2006) (transcript available at <http://www.officialgazette.gov.ph/2006/04/06/speech-of-president-arroyo-during-the-oriental-mindoro-investment-summit-orminvest> (last accessed July 6, 2006)).

19. *Id.*



cooperation on the part of business, patience on the part of the people, and active support on the part of the Congress.”<sup>20</sup> By making tough choices, Arroyo hopes to push for her reforms. It is in pursuance of this determination that four policies were created by the government, all of which faced fierce opposition from different sectors. The following discussion will tackle four important Supreme Court decisions on these policies.

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

#### A. Executive Order No. 420

Executive Order (E.O.) No. 420<sup>21</sup> was issued by Arroyo on 13 April 2005, requiring all government agencies and government-owned and controlled corporations to adopt a unified multi-purpose identification (ID) system,<sup>22</sup> and a uniform data collection<sup>23</sup> and format for their existing identification systems.

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

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

[Whereas], a unified identification system will facilitate private businesses, enhance the integrity and reliability of government-issued [ID] cards in private transactions, and prevent violation of laws involving false names and identities.<sup>24</sup>

*Kilusang Mayo Uno v. The Director General, National Economic Development Authority*<sup>25</sup> stemmed from the alleged unconstitutionality of E.O. No. 420

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

21. Office of the President, Requiring All Government Agencies and Government-Owned and Controlled Corporations to Streamline and Harmonize their Identification (ID) Systems, and Authorizing for Such Purpose the Director-General, National Economic and Development Authority to Implement the Same, and for Other Purposes, Executive Order No. 420 [E.O. No. 420] (Apr. 13, 2005).

22. *Id.* § 1.

23. *Id.* § 3.

24. *Id.* whereas cl. paras. 3 & 4.

25. *Kilusang Mayo Uno v. The Director General, National Economic Development Authority*, G.R. No. 167798, Apr. 19, 2006.

due to the usurpation of legislative power by Arroyo and its infringement on the people's right to privacy.

The Court found the petitions unmeritorious. Firstly, it reasoned out that under the 1987 Constitution, “[t]he President shall have control of all executive departments, bureaus[,] and offices.”<sup>26</sup> Directing government offices to adopt a unified ID system for greater efficiency of government services and transactions as well as convenience on the part of the public falls under the power of control of the President.<sup>27</sup>

Unlike in the case of *Ople v. Torres*,<sup>28</sup> wherein the “National Computerized Identification Reference System” was struck down for the lack of proper safeguards in the utilization of the data obtained, E.O. No. 420 was upheld as constitutional because it “narrowly limits the data that can be collected, recorded[,] and shown compared to the existing ID systems of the government entities.”<sup>29</sup> The safeguards provided by E.O. No. 420 also assure the confidentiality of restricted data to be collected.

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

In the midst of several invitations to various executive officials to appear as resource speakers in public hearings in the Senate regarding, among others, the flagship economic development railway project of the North Luzon Railways Corporation (North Rail Project) and the Fertilizer Fund Scam, in addition to Armed Forces of the Philippines (AFP) officials who were invited principally in connection with the issues hounding the President, such as the wire-tapping controversy, E.O. No. 464<sup>30</sup> was issued providing —

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

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26. PHIL. CONST. art. VII, § 17.

27. *Kilusang Mayo Uno*, G.R. No. 167798.

28. *Ople v. Torres*, 293 SCRA 141 (1998).

29. *Kilusang Mayo Uno*, G.R. No. 167798.

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

When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.<sup>31</sup>

Aside from requiring the President's consent, the order also provides that executive privilege shall cover "all confidential or classified information between the President and the public officers covered by [the] executive order," and proceeds to enumerate matters and persons covered by the privilege.<sup>32</sup>

In the case of *Senate of the Philippines v. Ermita*,<sup>33</sup> the issuance was challenged principally on the basis that it undermines the inquisitorial function of the Congress and violates the right of the people to information on matters concerning the public.<sup>34</sup>

It is also of interest to note that the right is enshrined in the Constitution, stating that "[t]he right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms."<sup>35</sup>

The Court differentiated the Congress' power of inquiry and the question hour in deciding the constitutionality of E.O. No. 464.

Section 21, Article VI of the Constitution refers to inquiry in aid of legislation. It has been earlier ruled by the Court that this power is an "essential and appropriate auxiliary to the legislative function."<sup>36</sup> The need to obtain information in aid of legislation gives the Congress the power to compel disclosure thereof.<sup>37</sup>

The question hour, on the other hand, is enshrined in Section 22, Article VI of the Constitution. The provision states that "the heads of the department, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide,

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31. *Id.* § 1.

32. *Id.* § 2 (a).

33. *Senate of the Philippines v. Ermita*, 488 SCRA 1 (2006).

34. *Id.*

35. PHIL. CONST. art. XIII, § 16.

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

37. *Id.* at 45.

appear before and be heard by such House on any matter pertaining to their departments.”<sup>38</sup>

The distinction between the two processes lies in the Congress’ power to compel attendance. The Court stated that “[w]hen the inquiry in which the Congress requires their appearance is ‘in aid of legislation,’ under Section 21, the appearance is mandatory” because of the necessity of the information sought to be obtained in legislative functions.<sup>39</sup> But when the Congress’ purpose is only to “be informed on how department heads are implementing the statutes which it has issued, its rights to such information is not as imperative as that of the President[, and,] in keeping with the separation of powers ... Congress may only *request* their appearance.”<sup>40</sup>

In view of the fact that Section 1 of E.O. No. 464 makes specific reference to Section 22, Article VI of the Constitution, its application — or, in other words, securing the consent of the President — must be limited only to appearances in the question hour and should not be extended to inquiries in aid of legislation.

On the claim of executive privilege, the Court resolved that it is not sufficient to simply declare that a certain matter is privileged. Without any assertion of a particular basis for the claim, it cannot be assumed that it falls under the traditional privileges or, whether under the circumstances, it may be granted.<sup>41</sup> It cannot be implied. Sections 2 (b) and 3 of E.O. No. 464 were invalidated for the lack of precise reasons for the claim of executive privilege.

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

In 21 September 2005, Executive Secretary Eduardo Ermita made a statement in a press release, setting forth the policy of Calibrated Preemptive Response (CPR).<sup>42</sup> Specifically, the policy mandated the police to strictly enforce a “no permit, no rally policy” and authorized them to disperse groups and take into custody persons who breach this standard. The policy was made in the midst of different demonstrations especially in the business

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38. PHIL. CONST. art. VI, § 22.

39. *Senate of the Philippines*, 488 SCRA at 57-58.

40. *Id.*

41. *Id.*

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

district of Makati. Intelligence reports on the threat posed by anti-government groups to start political chaos and to persuade people to go against the government were given as a justification for the policy.<sup>43</sup> It states

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

Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.<sup>44</sup>

The CPR and the *Batas Pambansa Bilang (B.P. Blg.) 880*,<sup>45</sup> which requires a permit for holding rallies, were assailed by several petitioners in *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita*.<sup>46</sup> B.P. Blg. 880 provides —

Permit[,] when required and when not required — A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in a private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.<sup>47</sup>

Petitioners were organizations and individuals who participated in different mass actions which they alleged were “violently dispersed by the police.”<sup>48</sup> Some also alleged that they were injured, arrested, and detained in the course of the dispersal. They sought to stop the violent dispersals of rallies under B.P. Blg. 880 and the CPR.

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43. *Id.*

44. *Id.*

45. An Act Ensuring the Free Exercise by the People of Their Right Peaceably to Assemble and Petition the Government for Other Purposes [The Public Assembly Act of 1985], *Batas Pambansa Blg. 880* (1985).

46. *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita*, 488 SCRA 226 (2006).

47. The Public Assembly Act of 1985, § 4.

48. *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP)*, 488 SCRA at 233.

The power to deny permits independent of B.P. Blg. 880 was emphasized by respondent Manila Mayor Joselito Atienza in that “his denial of permits were under ‘clear and present danger’ rule as there was a clamor to stop rallies that disrupt the economy and to protect [the] lives of other people.”<sup>49</sup>

In deciding the case, the Supreme Court reiterated that “the right to peaceably assemble and petition for redress of grievances is, together with the freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection.”<sup>50</sup> However, the Court also quoted *Primicias v. Fugoso*<sup>51</sup> in upholding that the right is not unfettered, stating that

it is a well settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to rights of the community or the society.<sup>52</sup>

In that case, the Court recognized the power of the government to regulate such rights in the exercise of its police power.<sup>53</sup>

B.P. Blg. 880 was upheld not as “an absolute ban of public assemblies but a restriction that simply regulates the time, place[,] and manner of the assemblies.”<sup>54</sup> The case of *Reyes v. Bagatsing*,<sup>55</sup> which gave rise to the assailed law, also supported the decision in upholding the requirements necessary to hold a public assembly.

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

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49. *Id.* at 247.

50. *Id.* at 249.

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

52. *Id.* at 75.

53. *Id.*

54. *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP)*, 488 SCRA at 259.

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

public assembly or in the dispersal of the same,”<sup>56</sup> and that the use of the term “Calibrated Preemptive Response” was only to “disabuse the minds of the public from the notion that the law enforcers would shirk their responsibility of keeping the peace even when confronted with dangerously threatening behavior.”<sup>57</sup> In view of this, the Court ruled that what should be followed is maximum tolerance mandated by B.P. Blg. 880 and that the CPR serves no valid purpose if it purports the same thing. Deviation from what is authorized by the law as maximum tolerance or the highest degree of restraint that peacekeeping authorities should exercise during assemblies is illegal.

*D. Proclamation No. 1017*

Arroyo issued Proclamation (Proc.) No. 1017<sup>58</sup> declaring a “state of national emergency” and General Order No. 5<sup>59</sup> calling out the AFP and Philippine National Police (PNP) to carry out necessary and appropriate actions to suppress acts of terrorism and lawless violence in the country. Warrantless arrests were thus made premised on a violation of B.P. Blg. 880 and the crime of inciting to sedition. Rallies were dispersed and a newspaper company’s office was searched without warrant and its materials for publication were seized.<sup>60</sup> The grounds for the issuance of Proc. No. 1017 were the collusion of leftist and rightist movements with some military officers and the political opposition in planning to unseat or assassinate the Arroyo.<sup>61</sup> The threat was seen as a clear and present danger sufficient to make the pronouncement. Furthermore, the Proclamation indicated the impact of such threats on the economy as follows — “[Whereas], this series of actions is hurting the Philippine State — by obstructing governance including hindering the growth of the economy and sabotaging the people’s

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56. *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP)*, 488 SCRA at 234-35.

57. *Id.*

58. Office of the President, Proclamation Declaring a State of National Emergency, Proclamation No. 1017 [Proc. No. 1017, s. 2006] (Feb. 24, 2006).

59. Office of the President, Directing the Armed Forces of the Philippines in the Face of National Emergency, to Maintain Public Peace, Order and Safety and to Prevent and Suppress Lawless Violence, General Order No. 5, Series of 2006 [G.O. No. 5, s. 2006] (Feb. 24, 2006).

60. *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP)*, 488 SCRA at 264-65.

61. Proc. No. 1017, whereas cl. paras. 3 & 5.

confidence in government and their faith in the future of this country; [and] [Whereas], these actions are adversely affecting the economy[.]”<sup>62</sup>

Comparable to the case of *Integrated Bar of the Philippines v. Zamora*,<sup>63</sup> the Court upheld in the case of *David v. Macapagal-Arroyo*<sup>64</sup> the calling out powers of the President “whenever it becomes necessary,” as evident from Section 18 of Article VII of the Constitution.<sup>65</sup> As enunciated in the case of

62. *Id.*

63. *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000).

64. *David v. Macapagal-Arroyo*, 489 SCRA 160 (2006).

65. PHIL. CONST. art. VII, § 18. The Constitution provides —

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he [or she] may call out such armed forces to prevent or suppress lawless violence, invasion[,] or rebellion. In case of invasion or rebellion, when the public safety requires it, he [or she] may, for a period not exceeding [60] days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within [48] hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within [24] hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within [30] days from its filing.

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



*Lansang v. Garcia*,<sup>66</sup> “judicial inquiry ... can go no further than to satisfy the Court not that the President’s decision is *correct*,” but that “the President did not act *arbitrarily*.”<sup>67</sup> As it appears from the records of the case, sufficient reports and narration of events gave Arroyo bases to make the Proclamation.

However, the Court also stressed the distinction between declaring a state of national emergency and the exercise of emergency powers such as the taking over of privately-owned public utilities and businesses imbued with public interest. Section 17, Article XII of the Constitution permitting such takeover in times of national emergency<sup>68</sup> must be construed together with Section 23 of Article VI, which provides —

- (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the power to declare the existence of a state of war.
- (2) In times of war and other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise such powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.<sup>69</sup>

Section 17, Article XII of the Constitution is “just another facet of the emergency powers generally reposed upon Congress.”<sup>70</sup> The President’s exercise of such power depends on Congress’ delegation of power under Article VI. She may declare a state of national emergency but this is not a

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

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

*Id.*

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

67. *Id.* at 481 (emphasis supplied).

68. PHIL. CONST. art. XII, § 17. The Constitution provides that “[i]n times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately[-]owned public utility or business affected with public interest.” *Id.*

69. PHIL. CONST. art. VI, § 23.

70. *David*, 489 SCRA at 251-52.

blanket authority for her to order the taking over of privately-owned public utilities and businesses with public interest.

The Court further held that the warrantless arrests of petitioners, the dispersal of rallies, the imposition of standards on media, or any prior restraint on the press and seizure of articles for publication are not authorized by the Constitution, the law, and jurisprudence.<sup>71</sup>

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

Taking the policies collectively, it can be seen that the government has already made its tough choices to push for its economic agenda. The CPR came in the light of investors' apprehension in coming over to the Philippines and the complaints of businessmen over how rallies disrupt business.<sup>72</sup> The ID system was intended to reduce costs for the government and to increase efficiency in transactions.<sup>73</sup> Proc. No. 1017 was issued as a response to the actions against the government that were "hurting the Philippine State — by obstructing governance including hindering the growth of the economy and sabotaging the people's confidence in government and their faith in the future of this country."<sup>74</sup>

In prioritizing its economic program, the implication that the government is sending is that it will remain unwavering in its implementation, no matter what the costs may be and even if it steps into the delineation of what is supposed to be the civil rights of the people, such as the right to peaceably assemble.<sup>75</sup> The issue now seems to revolve on the nation's economic interest as against the people's other rights.<sup>76</sup>

The Rapu-Rapu mining controversy is another test to the government's tenacity in relation to economic growth. The Fact-Finding Commission created by the government to investigate the Lafayette tailings spill, which allegedly caused harm to the environment, specifically fish kill, has

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71. *Id.*

72. Christine O. Avendaño & Tonette Orejas, *Arroyo: Tough gets going*, PHIL. DAILY INQ., Sep. 23, 2005, available at [http://www.news.inq7.net/nation/index.php?index=1&story\\_id=51064](http://www.news.inq7.net/nation/index.php?index=1&story_id=51064) (last accessed May 20, 2006).

73. E.O. No. 420, whereas cl. para. 3.

74. Proc. No. 1017, whereas cl. para. 4.

75. PHIL. CONST. art. III, § 4.

76. Emil Jurado, *Assembly, dissent vs. national interest*, MANILA STAND. TODAY, Sep. 27, 2005, available at [http://www.manilastandardtoday.com/?page=emilJurado\\_sept27\\_2005](http://www.manilastandardtoday.com/?page=emilJurado_sept27_2005) (last accessed May 29, 2006).

recommended that the Australian mining company's environmental compliance certificate be revoked and for it to cease operations.<sup>77</sup> In its tenth recommendation, the Fact-Finding Commission emphasized the following

Review the Philippine Mining Act, specifically the provisions on the ownership and management of mining firms and operations, to protect the interest of the Filipino people and the Philippine government. Look to the need for creating an independent Mining Authority that will focus on the mining industry alone in terms of complete and timely monitoring especially on the impact of mining operations to people's health and environment and on the just share that must go to the government and the Filipino people.<sup>78</sup>

The government's response affirmed its commitment to the mining industry in ruling out the repeal of the mining law. With an estimated five-to seven-billion-dollar yearly export revenue,<sup>79</sup> the government declared that the report of the Commission will be considered but also stressed that "mining remains a priority area for development."<sup>80</sup>

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

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

##### A. Malaysia

The Malaysian Charter on Human Rights provides —

The right to holistic development is a basic human right. In order to attain socially equitable and environmentally sustainable development, there must

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

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

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

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

be respect for civil and political rights as well as social, cultural[,] and economic self-determination of all people.

People's participation in the development process is essential to ensure that development is socially just and culturally appropriate.<sup>81</sup>

Then Malaysian Prime Minister Datuk Abdullah Haji Badawi expressed the same in the Vienna Conference by saying that, "Malaysia takes a holistic view of human rights. We believe that civil, political, economic, social[,] and cultural rights are indivisible and interdependent."<sup>82</sup> However, the Malaysian government, specifically under Datuk Seri Mahathir Mohamad, adhered to a separate treatment of economic and political rights.

According to Mahathir Mohamad, Malaysia will continue to uphold the principles of democracy "but will avoid practicing democracy in its absolute sense and that unlimited freedom is dangerous ... [I]n the country's plural society, riots could easily take place if people were free to incite racial feelings, conduct street demonstrations, [and] go on strikes all the time."<sup>83</sup>

Indeed, Malaysia has seen a rapid increase in its economic development in the recent years. Since 1991, Malaysia's economic prosperity has been following the developmental plan laid down by Mahathir Mohamad in Vision 2020.<sup>84</sup> According to the concept of Rukunegara, "there is a national ideology that ties up the promotion of human rights with economic development."<sup>85</sup> The ideology proposes that at a certain stage of economic development, the government is licensed to encroach upon certain civil or political rights.

For instance, certain projects were embarked on by the Malaysian government without any consultation with the citizens directly affected by

81. SUARA RAKYAT MALAYSIA, MALAYSIAN HUMAN RIGHTS REPORT 8 (1998) (citing Malaysian Charter on Human Rights, art. 4, ¶ 1).

82. Datuk Abdullah Haji Badawi, Former Prime Minister of Malaysia, Address Delivered at the World Conference on Human Rights, Vienna, Austria (June 14-25, 1993).

83. Sedfrey M. Candelaria, Lecture at the University of the Philippines Law Center on the Philosophy of Human Rights and the Emerging Perspectives: Western versus the Eastern Concept of Human Rights — The ASEAN Scenario (Dec. 8, 1997).

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

85. Candelaria, *supra* note 83.

them. An example of this is the construction of a RM13.6 billion Bakun hydroelectric dam displacing 10,000 indigenous peoples in Sarawak.<sup>86</sup>

It is also not unheard of that opposition to the sternness of the Malaysian government is usually suppressed by the police or through the courts.<sup>87</sup> In addition to that, there exist several laws restricting freedom of speech to a vast extent like the Sedition Act of 1969,<sup>88</sup> which encompasses a very broad definition of “sedition,” and the Internal Security Act of 1960.<sup>89</sup>

### *B. Singapore*

There was a time when Singapore was confronted by a myriad of problems. There was lack of employment to support its booming population, poor housing programs, and limited educational facilities.<sup>90</sup>

But the traces of Singapore’s past are hardly evident now. The progress that it has attained has been attributed by Lee Kuan Yew, Singapore’s Prime Minister from 1959 to 1990, to the kind of policies pursued by the government. These policies, which have intruded into the private lives of the Singaporeans, have also been considered as the basis of Singapore’s economic stability.<sup>91</sup>

A clear government intrusion was manifest when the Singapore Family Planning and Population Board designed a population control policy of both incentives and disincentives but with greater prominence on discouraging births.<sup>92</sup> Some of the disincentives were higher hospital fees for the delivery of each additional child in excess of two; no income-tax relief starting with the fourth child; and less priority in housing programs for bigger families.<sup>93</sup>

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86. SUARA RAKYAT MALAYSIA, MALAYSIAN HUMAN RIGHTS REPORT 13 (1998).

87. *Id.*

88. SUARA RAKYAT MALAYSIA, *supra* note 86, at 224.

89. *Id.* at 219.

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

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

92. *Id.* at 113.

93. *Id.*

The policy created a lopsided effect in that women who were able to graduate tended to have less children than their non-graduate counterparts. This was considered a threat to the maintenance of Singapore's standards at the time. As a remedy, policies were formulated to encourage educated women to get married and have children. On the other hand, the government encouraged the less educated to undergo tubal ligation by providing incentives.<sup>94</sup> The policies met a lot of criticism due to their encroachment on matters of marriage and procreation.<sup>95</sup>

But for Lee Kuan Yew, the unpopular policies were necessary. For him, his main task was to alleviate Singapore from poverty, the reason why there was a low regard for human life. Everything else was of lesser importance.<sup>96</sup>

Singapore is also committed to the concept of growth through Confucianism and the ideology of shared values. The pillars of the ideology are: (1) nation before community and society before self; (2) the family as the basic unit of society; (3) respect and community support for the individual; and, (4) consensus instead of conflict and religious harmony.<sup>97</sup>

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

As seen in Malaysia and Singapore's setting, the Asian argument is that civil and political rights need to take a backseat to give way to basic material needs.<sup>98</sup> In other words, it assumes that a "man's belly must be full before he [or she] can indulge in the luxury of worrying about his [or her] political freedoms."<sup>99</sup>

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

[t]here's no dispute that democracy and political rights are a good thing — they are essential preconditions on which economic progress can be built. But it might be well to remember that Filipinos do not live on democracy,

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94. *Id.* at 114.

95. *Id.*

96. Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East West Dialogue*, 18 HUM. RTS. Q. 641 (1996).

97. Candelaria, *supra* note 83.

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

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

political rights[,] and political news alone. They also have to be able to eat three meals a day, which is the concern of the economy.<sup>100</sup>

However, there are counter-arguments to this stand. First, it is argued that “civil and political rights are needed to implement reasonable developmental policies and to ensure equal distribution of wealth as well as economic growth.”<sup>101</sup> Political participation where ordinary people can air their opinions is needed for economic planners to make adjustments. Administratively, participation can equate to prevention of errors and protection of the people’s interest.<sup>102</sup> There is also no proof that there is a connection between political authoritarianism and economic development.<sup>103</sup>

The second argument is that “civil and political rights are needed in order to guarantee social and cultural rights.”<sup>104</sup> Although physical security is a necessity (both physical integrity and economic subsistence), people also need a sense of social order and of belonging therein. For instance, rights promoting self-respect coming from the fulfillment of one’s role in the community are provided for by the International Covenant on Civil and Political Rights.<sup>105</sup>

Third, civil and political rights are necessary in and of themselves. It has been observed that, “[i]n some cases, ordinary people will trade-off their full bellies for freedoms of non-material nature; risking lives and physical integrity for moral integrity, to speak of injustice.”<sup>106</sup>

Moreover, the 1993 Vienna Declaration provides that —

All human rights are universal, indivisible[,] and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic[,] and

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

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

102. *Id.*

103. *Id.*

104. *Id.*

105. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

106. Howard, *supra* note 99, at 483.

cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>107</sup>

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

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

Believing that the political system is imposing a burden on national progress, Arroyo expressed her desire for a charter change to be undertaken. It was her opinion that the government has done its best but that it may not be sufficient under the present system, which has ceased to be effective.<sup>108</sup> She advocated for change in the shortest time possible.

To jumpstart the process, E.O. No. 453<sup>109</sup> was issued creating a consultative commission to propose the revision of the Constitution. Its foremost task is to propose amendments to the 1987 Constitution that will enable the country to respond to global challenges and to resolve economic and political problems.<sup>110</sup> The commission's proposals would then be passed to the President and then to Congress.

However, the initial expectation of changing the Constitution through an assembly has seen very little chance of survival given the failure of both Houses of Congress to agree on how to go about the task. Another mode of proposing amendments to the Constitution is being explored, but like the Congress' situation, it is also proving to be problematic.

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107. World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (July 12, 1993).

108. Gloria Macapagal-Arroyo, 14th President of the Philippines, *Fifth State of the Nation Address*, Address Delivered at the Opening of the 2d Regular Session of the 13th Congress (July 25, 2005) (transcript available at <http://www.officialgazette.gov.ph/2005/07/25/gloria-macapagal-arroyo-fifth-state-of-the-nation-address-july-25-2005> (last accessed July 6, 2006)) [hereinafter Arroyo, SONA 2005].

109. Office of the President, Creating a Consultative Commission to Propose the Revision of the 1987 Philippine Constitution in Consultation with Various Sectors of Society, Executive Order No. 453, Series of 2005 [E.O. No. 453, s. 2005] (Aug. 19, 2005).

110. *Id.* whereas cl. para. 1.



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

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

- (1) Liberalizing charter provisions on national patrimony and economic policy.<sup>111</sup> It was submitted that the restrictive provisions of the Constitution regarding national patrimony dismiss foreign investors.<sup>112</sup> By liberalization, the country will be able to attract investments and reduce poverty and social inequality.<sup>113</sup>
- (2) Reforming political parties and the electoral system.<sup>114</sup> Abueva stressed that political parties in the Philippines are personal alliances, undemocratic and without sound platforms. By proposing a shift to a parliamentary form of government, “the

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

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

- (1) exploration, development, and utilization of natural resources;
- (2) ownership of industrial, commercial, and residential lands;
- (3) operation of public utilities;
- (4) ownership of (tertiary) educational institutions;
- (5) practice of professions (especially high technology);
- (6) ownership and management of mass media; and
- (7) ownership and management of advertising.

Filipinos do not have capital for large-scale mining or oil drilling, labor-intensive factories, power and waterworks utilities, advanced colleges and universities, modern engineering, cinema or entertainment, and advertising. This is because of our low savings rate of 18% of GDP, only half of the 35% needed to spur investments.

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

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

majority party or coalition in the Parliament will elect the Prime Minister who is normally the leader of the majority party. This puts a premium on the strength and unity of each political party and its ability to put up good candidates and offer the people an attractive political platform or program of government.”<sup>115</sup>

- (3) Establishing autonomous territories in transition to the Federal Republic of the Philippines.<sup>116</sup> The unitary system of the government, being highly centralized, deprives the local governments of resources to provide the people’s needs, fails to respond to cultural diversity, and has marginalized certain sectors of society. Federalism will promote the distribution of power and self-reliance in local governments.<sup>117</sup>

Analogous to these proposals, Sigaw ng Bayan, a coalition consisting of more than 300 people’s organizations pushing for charter change through people’s initiative, has created a petition to propose a shift from the bicameral-presidential government to a unicameral-parliamentary system. The rationale for such change is to foster efficiency, to hasten governmental action, and to cultivate harmony between the Executive and the Legislature.<sup>118</sup>

What can be construed from the proposals to amend the Constitution is that such change is of the essence given the situation that the Philippines is in. Liberalizing the country’s policy on national patrimony and economy is needed in keeping with Arroyo’s goal of an economic take-off through a government that promotes both economic security and free enterprise.<sup>119</sup> Lifting the restrictions on foreign investors is expected to boost commercial activity in the areas of mining, oil production, and media, among others.<sup>120</sup>

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

115. *Id.*

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

117. *Id.*

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

119. Arroyo, SONA 2005, *supra* note 108.

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

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

The country will no longer be saddled with the problem of electing a president with a fixed term of six years, and who can only be removed through impeachment, resignation, death[,] or incapacity, but by a mere 'no confidence' vote on a prime minister by his [or her] peers. And under a parliamentary/federal form of government, there will be no need for mob rule or People Power or Edsas to rid the country of an incompetent and corrupt president.<sup>121</sup>

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

But apart from the more noble objectives of charter change, a cunning agenda for pushing for reforms is being attributed to the administration. If as planned, the presidential form of government gives way to a parliamentary form, Arroyo leaves her office along with all the controversies she is hurdling, as the President who spearheaded the overhauling of what is seen as an imperfect Constitution.<sup>122</sup> Those on the other side of the political fence deem charter change as a tactic to divert the people's attention from the issues hounding Arroyo and, ultimately, as a bridge that leads to her graceful exit.<sup>123</sup>

The apprehension of some sectors over charter change stems from various reasons such as the vested interests of the personalities behind it<sup>124</sup> and the legality of the of the procedure employed.<sup>125</sup> However, for the proponents, what is glaring is the country's need for change.

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121. Emil Jurado, *Chacha Strikes at Core of Degenerate System*, MANILA STAND. TODAY, July 28, 2005, available at [http://www.manilastandardtoday.com/?page=emilJurado\\_july28\\_2005](http://www.manilastandardtoday.com/?page=emilJurado_july28_2005) (last accessed June 23, 2006).

122. Fel Maragay, *Awkward Time for Charter Change*, MANILA STAND. TODAY, July 28, 2005, available at [http://www.manilastandardonline.com:8080/mnlastd/?page=felMaragay\\_july28\\_2005](http://www.manilastandardonline.com:8080/mnlastd/?page=felMaragay_july28_2005) (last accessed June 23, 2005).

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

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

125. Joaquin G. Bernas, S.J., *My Charter Change Credo*, PHIL. DAILY INQ., May 29, 2006, at A14.

*B. Procedural Aspects of Amending the Constitution*

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

The first is through Congress, by a vote of three-fourths of all of its members,<sup>126</sup> sitting as a constituent assembly. The Senate and the House of Representatives then become a constituent body with special power to formulate a new constitution or to propose amendments to it.<sup>127</sup> However, the constitutional provision is silent on two important matters. One is whether Congress has to “assemble in joint session before it can propose amendments or call a constitutional convention.”<sup>128</sup> Alternatively, “may the two Houses as they are and where they are propose amendments or call a constitutional convention by a vote of three-fourths of their respective membership?”<sup>129</sup>

Renowned constitutionalist Fr. Joaquin G. Bernas, S.J. believes that the House of Representatives and the Senate may independently propose amendments with the vote of three-fourths of all its members. Afterwards, it is to proceed to the other House to undergo the same process. Disputes and disagreements may be handled by a conference committee.<sup>130</sup> Another possibility is for Congress to convene in a joint session and vote separately on the propositions.<sup>131</sup>

However, it is submitted that what cannot be compromised is that both Houses should vote separately. This can be gleaned from the Constitution itself, which has vested a bicameral body with the authority to propose amendments to it.<sup>132</sup>

The second method is through a constitutional convention.<sup>133</sup> The Congress may call a convention either “by a vote of two-thirds of all its

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

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

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

129. *Id.*

130. *Id.* at 1298.

131. *Id.*

132. *Id.*

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

members,”<sup>134</sup> or, by a majority vote of all its members, “submit to the electorate the question of calling such a convention.”<sup>135</sup> The convention itself may determine the vote required to approve the proposal.

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

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

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least [12%] of the total number of registered voters, of which every legislative district must be represented by at least [3%] of the registered votes therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.<sup>136</sup>

This mode bestows upon the people the power to propose amendments. Unlike the other methods, the people may only propose amendments and not revisions.<sup>137</sup>

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

#### I. Procedural

The endeavor to change the Constitution through the people’s initiative is only viable if there is an enabling law passed. This was enunciated by the Supreme Court in the case of *Santiago v. Commission on Elections*,<sup>138</sup> wherein another people’s initiative led by the group PIRMA sought to amend several provisions of the Constitution. The Supreme Court held that Section 2, Article XVII of the Constitution providing for initiative is not self-executory. It quoted Bernas, saying that, “although this mode of amending the Constitution is a mode of amendment which bypasses congressional

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134. PHIL. CONST. art. XVII, § 3.

135. PHIL. CONST. art. XVII, § 3.

136. PHIL. CONST. art. XVII, § 2.

137. BERNAS, *supra* note 128, at 1300.

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

action, in the last analysis[,] it still is dependent on congressional action.”<sup>139</sup> The Court further said —

Bluntly stated, the right of the people to directly propose amendments to the Constitution through the system of initiative would remain entombed in the cold niche of the Constitution until Congress provides for its implementation. Stated otherwise, while the Constitution has recognized or granted that right, the people cannot exercise it if Congress, for whatever reason, does not provide for its implementation.<sup>140</sup>

Since there is no implementing law, the people’s initiative has no leg to stand on. The Constitution itself provides that the Congress shall legislate for the implementation of this right.<sup>141</sup> In addition to that, the Supreme Court has said its piece on the matter affirming the Constitution.

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

The Senate has passed a resolution that each House should vote separately and with three-fourths of each of its members voting in favor of the proposals.<sup>142</sup> However, the House of Representatives is of the position that the three-fourths vote applies to all members of Congress.

## 2. Senate Resistance

The Senate maintains that it is not totally against charter change but is strongly doubtful of the means being employed to do so. Senate President Franklin M. Drilon reiterated that “[t]he people’s initiative has no enabling law. There is a standing injunction from the Supreme Court against the people’s initiative.”<sup>143</sup>

But what may be under the surface of this resistance is the Senate’s impending doom once charter change is adopted and a shift to a

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139. *Id.* at 136.

140. *Id.*

141. PHIL. CONST. art. XVII, § 2.

142. S. Res. No. 75, 13th Cong., 2d Sess. (2006).

143. Press Release *by* Senate of the Philippines, 17th Congress, Transcript of Ambush Interview with Senate President Franklin M. Drilon, June 22, 2006, available at [http://www.senate.gov.ph/press\\_release/2006/0622\\_drilon1.asp](http://www.senate.gov.ph/press_release/2006/0622_drilon1.asp) (last accessed July 6, 2006).

parliamentary form of government is made. It is not at all surprising that the Senate is not taking the matter lightly and is heavily guarding its interest.<sup>144</sup>

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

## VII. CONCLUSION

The task of balancing the exercise of State power, economic development, and human rights reposes upon our courts. It has been argued elsewhere that the act of judging is an inescapably social act.<sup>145</sup> The need to strike a healthy balance between the exercise of judicial review and democracy has been demonstrated by the Supreme Court in the recent significant cases. Did the Court deliberately apply in a consistent manner a judicial philosophy that safeguards the liberty and nurtures the prosperity of the people?

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

The theory of indivisibility of human rights is an important legal yardstick that the Court may apply on issues that partake of a political character but have serious economic and human rights implications for a state. One may indeed strike a healthy balance despite the temptation to propel a nation towards economic development with little regard for the

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144. Cruz, *supra* note 124.

145. Richard Devlin, *Judging and Diversity: Justice or Just Us?*, 20 PROVINCIAL COURT JUDGES J. 16 (1996).

political and social costs. The thrust of the economy, at the end of the day, is the enhancement of the quality of life for all.