

**LEGAL MEMORANDUM <sup>1</sup>ON CHARTER CHANGE UNDER THE DUTERTE ADMINISTRATION:  
Resolution of Both Houses No. 8 Proposed Federal Constitution  
by Atty. Neri Javier Colmenares<sup>2</sup>**

**Introduction**

The specter of another charter change (Cha Cha) is again haunting the Filipino people. While there is nothing intrinsically wrong with amending the Constitution, the moves to amend the Constitution under the Duterte administration are not merely proposing a shift to Federalism, but are actual efforts at centralizing power to Pres. Rodrigo Duterte, granting him legislative powers, institutionalizing the discredited economic liberalization policy and diluting people's rights.

There are two pending charter change proposals, the PDP-Laban Proposal which is basically more of a shift to Parliamentary-Federal form of government and Resolution of Both Houses No. 8 (RBH 8) filed in the House of Representatives on August 2, 2016. This paper will focus on RBH 8 as it is the pending bill being considered by Congress today that will be tackled by Congress when it reconvenes in January 2018.

**RBH 8 is an extremely dangerous piece of legislation both in terms of procedure and content.** It contains provisions that abolishes Congress, grants Pres. Duterte legislative powers, practically abolishes the current constitutional commissions, and overhauls the judiciary from the Court of Appeals and Sandiganbayan down to the Regional Trial Courts and terminates thousands of government employees and officials. Considering that Pres. Duterte has the power to appoint all their replacements, RBH 8 makes him the sole appointing authority of almost the entire government, in one fell swoop.

RBH 8 also eliminates the "protectionist" provisions in the 1987 Constitution by institutionalizing the opening up of the country and the economy to transnational corporations. Worse, it essentially disallows the people from exercising the same 'people

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<sup>2</sup> Atty. Neri Colmenares is a human rights lawyers and is also the Chairman of the National Union of Peoples Lawyers. He has written various papers on human rights, international humanitarian law, and lectures in the Mandatory Continuing Legal Education (MCLE) seminars on various political and constitutional issues, including Jurisprudence in Amending the Constitution (The Chacha Jurisprudence). He has studied the various charter change proposals since 2004 and written papers critiquing these proposals such as: (i) CODAL Legal Memorandum on Charter Change (January 20, 2005); (ii) House Resolution 1065: Charter Change under Pres. Gloria Arroyo (November 27, 2005); (iii) Neglect of Education in the Charter Change Proposal (June 6, 2006); (iv) Charter Change: Corrupting the Electoral System (January 26, 2006); (v) Charter Change of the House: Recipe for Dictatorship (January 17, 2006); (vi) Legal Memorandum on Charter Change Series of 2008 (September 9, 2008); (vii) Memorandum on the Surgical Charter Change (August 12, 2008); (viii) Legal Study on Constituent Assembly under HR 1109: A Comparative Analysis with HR 1450 (2009); (ix) The Latest Chacha Moves of Congress: Destroying Philippine Economy and the Future (2010); and (x) Critique of the Economic Chacha under Pres. Aquino (2013). He was an *Associate* of the Asian Law Centre when he was taking up his PhD at the University of Melbourne (deferred) and has recently appointed *Associate* of the Centre for Indonesian Law, Islam and Society (CILIS) at the Faculty of Law in Melbourne.

power’ launched against a dictator in 1986 and dilutes many of the rights provided by the 1987 Constitution.

The 1987 Constitution contains two procedures in revising<sup>3</sup> the Constitution—the convening of a Constitutional Convention (Concon) or through Congress itself acting as a “constituent assembly” or “Con Ass”.

RBH 8 does not propose amendments via a Constitutional Convention but instead through Congress, where Pres. Rodrigo Duterte enjoys a super majority. Congress, acting as a constituent assembly can “expeditiously” approve RBH 8. The procedure under RBH 8 is “con-ass” where Congressmen and Senators are the ones tasked with amending the Constitution—and approve the speedy approval of the anti-people provisions under it.

However, a Congress which has traditionally been compliant to presidential intervention and control cannot be given the task of revising the Constitution, especially under the present context. Additionally, Congress has previously passed many laws that have proven very detrimental to the people’s interest. It must be noted that, *inter alia*, our electricity remains high because Congress passed the EPIRA Law, gasoline and fuel are expensive because Congress passed the Oil Deregulation Law, mining companies ravage our natural resources because Congress passed the Mining Act and all efforts to repeal these anti people laws were resisted by Congress for years. Congress, as a constituent assembly, would also be the center of lobbying of big business interested in the economic provisions of the Constitution.

## I. A DUTERTE APPOINTED GOVERNMENT IN THE GUISE OF REORGANIZATION

### Abolition of Congress: Repeat of Presidential Decrees

RBH 8 grants Pres. Rodrigo Duterte complete control of the Legislative and other branches of government. RBH 8 abolishes Congress and terminates the terms of all its members including the employees of the legislative branch and **grants Pres. Rodrigo Duterte the power to make laws while Congress remains “abolished”**. RBH 8 also requires the wholesale reorganization of the courts and the independent Constitutional Commissions, and grants Pres. Duterte the opportunity to simultaneously appoint all the members of these Commissions and even justices of the Court of Appeals, Sandiganbayan and Regional Trial Courts in one fell swoop.

The current move to propose amendments to the Constitution has become a very dangerous “indecent proposal” when it calls for the abolition of Congress and grant Pres. Rodrigo Duterte the power to issue laws and presidential decrees. Section 6 Article XVIII of the Transitory Provision of Resolution of Both House No. 8 (RBH 8) not only abolishes Congress but also grants Pres. Duterte the power to exercise legislative powers:

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<sup>3</sup> The third procedure, the People’s Initiative, is mandated to propose piecemeal amendments to the Constitution.

Section 6 “Upon ratification of this Constitution, **the present Congress shall be dissolved** and the incumbent **President shall exercise legislative powers** until the first Federal Congress is convened

There is no explanation why this grant of legislative power to Pres. Duterte is necessary. This is a constitutional power grab no different from the grant of legislative powers to Pres. Ferdinand Marcos who also abolished Congress when he imposed martial law.

### **Control of the Independent Constitutional Commission**

Under RBH 8, the independent constitutional commissions will undergo a major change in jurisdiction and composition—including **the cutting of the terms of office of all its Commissioners**. Section 10 of Article IX RBH 8 also grants Pres. Duterte the power to appoint all the officials of the abolished and reorganized constitutional commissions particularly the Commission on Elections (COMELEC), Commission on Audit and the Civil Service Commission.

Under Section 1 of the same Section 10 of RBH 8, the Commission on Audit (currently composed on three commissioners) is for all intent, abolished and replaced by a new COA composed of nineteen (19) members:

*“Section 1. (1) There shall be a **Commission on Audit composed of a Chairman and eighteen (18) Commissioners** x x x (2) the Chairman and the Commissioners shall be appointed by the President xxx (3) **a Commissioner shall be assigned to each Region and his decision on any case or matter that is within the scope of his regional assignment shall be final and executory, if no appeal to the Regional Court of Appeals is filed x x x.**”*

### **COMELEC and its personnel reorganized and appointed by Pres. Duterte**

While it has similar provisions to those on The Commission on Audit and Civil Service Commission under Section 10 of Article IX in RBH 8, the impact of the regionalization of the Comelec Commissioners is to grant a single person, not a division, not an *en banc* but a single Commissioner, the power over all election cases in a particular Federal State:

*“Section 1. (1) There shall be a Commission of Elections **composed of a Chairman and eighteen (18) Commissioners** x x x (2) the Chairman and the Commissioners shall be appointed by the President x x x (3) **a Commissioner shall be assigned to each Region and his decision on any case or matter that is within the scope of his regional assignment shall be final and executory, if no appeal to the Regional Court of Appeals is filed x x x.**”*

From seven (7) Commissioners, the COMELEC will now expand to nineteen (19) Commissioners. There will still be a Comelec commission *en banc*, not to decide on electoral issues but merely on policies and drafting of IRRs: *“Members of the Commission shall meet en banc to discuss election related policies and to issue measures, rules and regulations for*

*the enforcement of election laws x x x*" The Chairman of the Comelec is now reduced to a ministerial functionary without even a Region to administer. In fact, under this set up, the Commissioner has more power over election cases than the Comelec Chairman.

The Civil Service Commission will also be abolished and reorganized and its Chairman and 18 commissioners appointed by Pres. Duterte once RBH 8 is ratified. From a Commission composed of three (3) members, COA will now have nineteen (19) members.

### **Cutting the Terms of Office of all Commissioners'**

If RBH 8 were ratified last year, there would have been no need for COMELEC Chairman Andres Bautista to resign, as the current Comelec will be practically abolished anyway and its members appointed by Pres. Duterte. **The proposed constitutional changes are not only limited to jurisdiction and scope but also to the officers of these Commissions. RBH 8 demands that the term of office of ALL incumbent members of Constitutional Commissions be cut and reduced to one year, unless "sooner removed":**

*"Section 12 The incumbent members of the Civil Service Commission, the Commission on Elections and the COA shall continue in office for **one year after the ratification of this Constitution, unless sooner removed for cause** or become incapacitated or appointed to a new term thereunder. In no case shall any member serve longer than seven years including service before the ratification of this Constitution.*

Rarely does a President have the opportunity to appoint all commissioners of all the independent commissions. Pres. Duterte has the power to appoint all fifty-seven (57) Chairmen and Commissioners of the COMELEC, COA and CSC.

### **Presidential Control of the Justice System under Section 9 of RBH 8**

Section 9 on Art. VIII (Judiciary) of RBH 8 starts ominously by stating new descriptions of Philippine courts, which means under the new Constitution the nature and jurisdiction of these courts will change:

"Section 9 Art. VIII (Judicial Department) is hereby revised as follows:

Section 1 The Judicial power shall be vested in one **Federal** Supreme Court of the Philippines, the **Regional** Court of Appeals, the Sandiganbayan and in such Regional **district** courts as may be established by law **in the different regions** of the Federal State."

Under the new Constitution, all Regional Trial Courts in the country, and their jurisdiction, are changed into *Regional District Courts* which means the reorganization of all these courts. Section 6 of the same Section 9 on Judiciary then provides for the reorganization of the Court of Appeals into 18 Regional CA's. While it grants the Supreme Court the supposed power to reorganize the CA, it may be argued by supporters the

Duterte administration that since the old Court of Appeals no longer exists under the new Constitution, the justices in the 18 Regional Appeals Courts will have to be appointed or reappointed:

*Section 5 **There shall be established in each Region a Regional Court of Appeals**, which shall have exclusive jurisdiction to hear cases within the territorial boundaries of the Region. x x x The present Court of Appeals shall be reorganized by the Supreme Court to give effect to this constitutional mandate.”*

Then the Sandiganbayan is reorganized and the respective jurisdiction of its divisions changed under Section 7:

*“Section 7. The Sandiganbayan shall continue to exercise its powers and discharge its functions as the graft court. **Upon ratification of the Constitution, the existing seven divisions of the Sandiganbayan shall be reorganized and distributed in the NCR, Calabarzon, Central Luzon Region, Central Visayas, Bicol Region and Davao Region.** Their territorial jurisdiction shall be defined by the Supreme Court. **As the need arises, the Supreme Court may create additional graft courts in other regions.”***

While RBH 8 does not categorically demand the resignation of the judiciary, its reconstitution into Federal courts also changes the jurisdiction of these courts. The Duterte administration could insist that this change in the jurisdiction and function of these courts require a reappointment under a new Constitution.

If Pres. Duterte asserts that the reorganized judiciary requires reappointment, then the President practically appoints all of justices and judges in the judiciary, a rare case when the President has the opportunity to simultaneously appoint the entire judiciary:

*“Section 9. The Members of the Federal Supreme Court, justices of the Regional Court of Appeals and the Sandiganbayan, and the judges of the lower courts **shall be appointed by the President** from a list of at least three nominees prepared by the JBC. Such appointments need no confirmation.”*

To entice support from the Judiciary for its complete reorganization, RBH 8 gives some incentives such as increase in their tenure in office to seventy-five (75) years old (Section 12) and income tax exemption for all judges and justices:

*Section 18. x x x Upon the ratification of this Constitution, the salaries of the Chief Justice and the Associate Justices of the Supreme Court, justices of the Regional Court of Appeals and the Sandiganbayan, and of judges of the lower courts **shall not be subject to income tax.”***

**Dangerous Transitory Provisions: Displacement of thousands of government employees**

Section 17 Article XVIII of RBH 8 contains the Transitory Provisions. It contains the following:

**a) Abolishing Congress and granting Pres. Duterte the power to issue Presidential Decrees and other laws**

*“Section 6. Upon ratification of this Constitution, **the present Congress shall be dissolved and the incumbent President shall exercise legislative powers until the first Federal Congress is convened.**”*

**b) Abolition of Metro Manila Authority**

*“Section 7. The **Metropolitan Manila Authority shall cease to exist** upon the election and assumption to office of the NCR Governor. Affected employees shall be absorbed by the NCR Governor.”*

**c) Term of office of ALL incumbent members of Constitutional Commissions are reduced to one year, unless “sooner removed”. Pres. Duterte completely controls through appointment, all the mentioned Constitutional Commissions:**

*“Section 12 The incumbent members of the Civil Service Commission, the Commission on Elections and the COA **shall continue in office for one year after the ratification of this Constitution, unless sooner removed for cause** or become incapacitated or appointed to a new term thereunder. In no case shall any member serve longer than seven years including service before the ratification of this Constitution.”*

**d) While the term of office of the President and Vice President is expressly assured, there is no similar express provision for other members of the government:**

*“Section 5. The six-year term of the incumbent President and Vice President elected in the 9 May 2016 elections **shall end on noon of June 30, 2022.**”*

**e) Confusing provisions and difference in tenure for incumbent justices and judges may lead to vague and dangerous interpretation.** If the Court of Appeals is reconstituted into 18 regional CAs, then RBH 8 may argue that they must first be reappointed to the new “Regional CA”. While those to be appointed by Pres. Duterte have a tenure of up to 75 years old, current or incumbent justices and judges reappointed by Pres. Duterte shall be forcibly retired by age 70:

*Section 9. The incumbent Members of the Judiciary shall **continue in office until they reach the age of seventy years (70)** or x x x are removed for cause.”*

On the other hand, Section 12 of Article VIII on the Judiciary of the same RBH 8 provides that :

“Section 12. Members of the Supreme Court, justices of the Regional Court of Appeals, and the Sandiganbayan and judges of lower courts shall hold office during good behavior **until they reach the age of seventy-five (75) years of age** x x x “

- f) **Restructuring all Regional Trial Courts and the creation of Regional District Courts, and the appointment of all their judges by President Duterte. Once Pres. Duterte exercises legislative powers he can pass laws that may once more amend, by law, their jurisdictions.**

“Sec. 8 All courts existing at the time of the ratification of this Constitution shall continue to exercise their jurisdiction until otherwise provided by law. Lower courts that are created by virtue of this Constitution shall be immediately constituted x x x.”

- g) **Income tax exemption for top government officials.** While government has persistently opposed income tax relief to many Filipinos for many years, RBH 8 sweepingly and swiftly grants income tax exemption to the members of Congress and other top officials of government including Pres. Duterte:

“Section 15. Until the Federal Congress provides otherwise, the President, Vice-President, Senate President, Speaker of the House, the Chief Justice, the Senators and Members of the House of Representatives, Justices of the Supreme Court, Chairpersons of the Constitutional Commissions shall continue to receive the annual salaries that they are presently receiving at the time of the ratification of the Constitution **WITHOUT ANY INCOME TAX DEDUCTIONS.**”

- h) **Retirement of “affected” government personnel in Congress under an enticing retirement package:**

Section 6 xxx Affected personnel of the Senate and the House of Representatives shall be entitled to **separation pays in the amount of two-and-a-half (2.5) months for every year of government service.** This entitlement shall be in addition to the retirement and other benefits under GSIS law and other social legislations.

- i) **However, RBH 8 provides a different and discriminatory treatment and retirement package for government employees who are not from Congress** such as those government personnel who are separated from service as a result of the

“reorganization” coming from courts, independent commissions and other bodies abolished or reorganized by the new Constitution:

“Section 14 **Career civil service employees** other than the affected personnel of the Senate and the House of Representatives **who are separated from the service x x x as a result of the reorganization following its ratification** shall be entitled to appropriate separation pay and to retirement and other benefits accruing to them under the laws of general application in force at the time of retirement. x x x This provision also applies to **career officers whose resignation, tendered in line with the existing policy**, had been accepted.”

From the above provisions, even career officers who resign, “in line with the existing policy” (whatever this policy is), only gets the regular benefits existing at the time of resignation.

## II. **ECONOMIC PROVISIONS: COMPLETE OPENING OF THE COUNTRY’S RESOURCES AND ECONOMY TO FOREIGN CORPORATIONS**

The failed Cha Cha attempt during the Aquino administration last Congress was resurrected by RBH 8 when it institutionalizes liberalization and privatization in provisions on Philippine patrimony. RBH 8 failed to note that liberalization and privatization have been the policies of government for more than 20 years but has failed to deliver its promise of development and progress.

While the Constitution does contain “protectionist” economic provisions, it has long been violated by the government itself who favors transnational corporations, big mining firms, greedy oil companies and private investors in public utilities such as electricity, telecommunications and mass transportation as exemplified by the woeful MRT service. The “60-40%” Filipino equity requirement for foreign corporations is an example of a constitutional provision more followed in the breach by many foreigners who employ dummies and other schemes to skirt over this restriction.

In fact, these protectionist constitutional provisions never had a chance to be fully implemented since 1987. Now they will be officially removed from the Constitution, and what has been the pro-foreigner policy on the sly, will be institutionalized under the new Constitution.

RBH 8 does not actually and directly “repeal” the protectionist constitutional provisions. The people have previously opposed, and will continue to oppose, such a direct repeal. RBH 8 instead innocuously restates the same protectionist provision but inserted the phrase “unless otherwise provided by law”. It was clear, however, during the previous “chacha” attempts that Congress will immediately pass a law to “provide otherwise” and repeal these protectionist provisions once RBH 8 is ratified. Congress is granted the power to “otherwise” the Constitution.



Section 13 of RBH 8 containing amendments to Article XII (Federal State and regional Economy and Patrimony) seeks to amend the following provisions by allowing Congress, not a constituent assembly or a Constitutional Convention, the power to amend the Constitution and decide on the following:

**a) Allowing foreigners and foreign corporations ownership of lands**

The 1987 Constitution prohibits foreigners from acquiring lands in the Philippines, which essentially means that Congress is also prohibited from passing a law that allows foreigners ownership of lands. This is because such sale will drive up the price of lands, and will deprive poor Filipinos of the opportunity to own land, making more real the 70's quote "mga Pilipinong squatter sa sariling bayan". It will also endanger food security for Filipinos and the chance of a genuine agrarian reform in the country. Additionally, allowing foreigners or countries such as China or Russia or the US, ownership of lands or landing beachheads in coastal areas endangers Philippine security and sovereignty. The Constitution wisely prohibits Congress from passing a law that allows foreigners the right to acquire lands.

Under RBH 8, Congress as a constituent assembly amends the 1987 Constitution, to grant Congress the power to pass a law that will allow, what was before then prohibited by the Constitution—foreigners to acquire lands in the Philippines.

**Article XII Section 7 of RBH 8 grants the State or Regional Legislature, the power to allow foreigners ownership of lands including agricultural lands.**

**b) Allowing foreign corporations to solely explore, develop and utilize our natural resources**

The 1987 Constitution does not grant foreigners or foreign owned corporations the power to solely explore, develop and utilize our natural resources because as the Constitution declares, all natural resources must be "under the full control of the state". The Constitution wisely prohibits Congress from passing a law that allows foreigners the power to solely exploit our natural resources. This is because all waters, lands, minerals, coal petroleum, the flora and the fauna, must be for the benefit of the Filipino people and allowing foreign corporations to solely explore and utilize our natural resources will deprive the Filipino people of access to their very own resources.

Additionally, allowing foreigners or countries such as China or Russia or the US, to solely "explore, develop and utilize" our natural resources endangers Philippine security and sovereignty.

RBH 8 amends the Constitution so that Congress is now allowed to pass a law that will countermand this constitutional policy:

Article XII Sec. 2 x x x The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The **FEDERAL** State may directly undertake such activities, or it may enter into co-production, joint venture, or

production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens **UNLESS OTHERWISE PROVIDED BY LAW**

**RBH 8 Article XII Section 2 grants Congress the power to allow foreigners or 100% foreign owned corporations the power to solely exploit our natural resources.**

**c) Allowing private corporations to lease more than 1000 hectares of lands beyond 50 years**

The 1987 Constitution only allows private corporations to lease, not own, alienable lands of the public domain for twenty five (25) years and (1) renewable for not more than 25 years (2) not to exceed 1000 hectares in area.

The Constitution wisely prohibits Congress from passing a law that allows private corporations to lease more than 1000 hectares of lands for more than 50 years because lands of public domain must for the benefit of the Filipino people not for private corporations and leasing thousands of hectares to private corporations for more than 50 years is tantamount to an exercise of ownership by these corporations.

**Article XII Section 3 of RBH 8 grants the State or Regional Legislature, the power to allow private corporations the power to lease more than 1000 hectares for more than 50 or even 100 years.**

**d) Allowing Foreigners to operate public utility**

The 1987 Constitution does not allow foreigners or foreign owned corporations from acquiring a franchise to operate a public utility in the Philippines. Only a corporation at least 60% of whose capital is owned by Filipinos are allowed, provided that such franchise should not be exclusive in character and for more than 50 years.

The Constitution wisely prohibits Congress from passing a law that allows foreigners or 100% foreign owned corporations from operating public utilities like electricity service, water utilities or telecommunication facilities because public utilities are important industries that cannot be left to the control of foreign corporations whose main interest is surely not for the Filipino people.

Additionally, allowing foreigners or countries such as China or Russia or the US to control our public utilities such as telecommunication, electricity and water supply in Philippine cities endangers Philippine security and sovereignty.

RBH 8 amends the Constitution so that Congress is empowered to pass a law that countermands the above constitutional policy:

**Article XII Section 11.** No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations

organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years **UNLESS OTHERWISE PROVIDED BY LAW.**

**Article XII Section 11 of RBH 8 grants the Congress the power to allow private corporations to pass a law allowing foreigners 100% ownership of public utilities.**

**e) Allowing foreigners control of the governing body and management of public utilities, even if they do not own it**

The 1987 Constitution encourages public equity participation and requires the government to encourage the public to acquire equity or buy shares of stocks in public utilities so that they can participate in the management of these public utilities. At the same time, the Constitution does not allow foreigners participation in the governing body or management of the public utility beyond their proportionate share in its capital.

The Constitution wisely prohibits Congress from passing a law that allows foreigners whose share in capital is only 30%, for example, to exercise management or control of a public utility beyond that 30%. And rightly so. For why should a foreigner or a corporation have 100% control and management of a public utility if its shares in its capital is less than that?

Additionally, allowing foreigners or corporations from countries such as China, Russia or the US to control our public utilities such as electricity and water supply to Philippine cities, especially since they did not even contribute more than 30% or 40% of the capital, endangers Philippine security and sovereignty.

RBH 8 for some strange reason allows foreign corporations the power to pass a law which absurdly, allows foreign corporations control of a public utility beyond their proportionate share in the capital:

“Article XII Sec 11 xxx The State shall encourage equity participation in public utilities by the general public. **UNLESS OTHERWISE PROVIDED BY LAW**, the participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.”

**Article XII Section 11 of RBH 8 grants the Federal or Regional Legislature, the power to give 100% management and control to foreigners even if they own or contributed only a small percent of its capital.**

## f) Allowing Foreigners to own or manage universities and educational institutions

The 1987 Constitution does not allow foreigners or 100% foreign owned corporations (except those already established by religious groups) ownership of schools or universities. Only Filipinos or a corporation at least 60% of whose capital is owned by Filipinos are allowed to own schools and universities. Additionally, the Constitution does not allow foreigners control or administration of schools and educational institutions. Foreigners, cannot skirt the ownership prohibition by controlling or managing a school they do not even own.

The Constitution wisely prohibits Congress from passing a law that allows foreigners or foreign owned corporations to control schools and universities considering that the education of our youth is important to national development and independence, and an integral part of our culture that must not be left to the control of foreigners. In fact, one of the first things many invaders and colonizers do, is control of the educational system to create a subservient populace and colony.

Additionally, allowing foreigners or countries such as China or Russia or the US to control our educational system endangers Philippine security and sovereignty.

RBH 8 amends the Constitution in order to grant Congress the power to countermand the above constitutional policy:

“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, **UNLESS OTHERWISE PROVIDED BY LAW.**”

**Article XIII (G) Section 20 (2) of RBH 8 grants the Congress, the power to allow foreigners to own schools and universities in the Philippines, or to manage and control educational institutions.**

Worse, in another absurd provision, RBH 8 **DELETED** the 1987 Constitution’s requirement that Congress “*may require increased Filipino equity participation in all educational institutions*” and inserted a provision which grants Congress the power to pass a law which will allow foreigners full control and management of an educational institution:

“**[DELETE** 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, **UNLESS OTHERWISE PROVIDED BY LAW.**”

## Opening Ownership of mass media

Section 15 of RBH 8 amending Article XVI (General Provisions) also contains similar provisions that grants Congress the power to allow foreigners and private corporations more power over the lives and resources of the Filipino people.

- i) The 1987 Constitution prohibits foreigners or foreign corporations ownership or management of mass media.

The Constitution wisely prohibits Congress from passing a law that allows foreigners control of mass media since this powerful tool could be used to interfere in Philippine politics, or dictate the national discourse of the country on important issues such as the South China Sea dispute.

Additionally, allowing foreigners or countries such as China or Russia or the US control over our mass media endangers Philippine security and sovereignty.

**Article XVI Section 11 (1) of RBH 8 grants Congress the power to give foreigners ownership and control of our mass media.**

- ii) The 1987 Constitution provides that “the participation of foreign investors in the governing bodies of corporations in the advertising industry shall be limited to their proportionate share in the capital”.

The Constitution wisely prohibits Congress from passing a law that will allow foreigners control of a corporation beyond its share in capital especially since this restriction is a very just provision. If foreigners own 30% of the capital in a corporation, then they should only have 30% share in the control of said corporation. It is unjust, among others, for a foreign corporation to exercise 100% control of the governing body if its share in the capital is only 30% or less.

**For some strange and unexplained reason, Article XVI Section 11 (2) of RBH 8 grants Congress, the power to give 100% management and control of an advertising corporation to foreigners even if they own or contributed only a small percent of its capital.**

Article XVI Section 11 (2) 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  
**UNLESS OTHERWISE PROVIDED BY LAW.**

All these amendments will practically empower Congress acting as a mere legislative body, to amend the Constitution and counter its “protectionist” philosophy. Worse, this Cha-cha will institutionalize the economic strategy that has stunted Philippine economy and impoverished the Filipino people—an economy that caters to the needs of other countries and not the needs of its people.

### III. DILUTING PEOPLES RIGHTS

RBH 8 also dilutes the hard won rights of the Filipino people under the 1987 Constitution. In fact it contains a provision which essentially prohibits people power, possibly fearful of the people's resort to the exercise of their sovereign power to check a repressive or dictatorial president.

#### 1) Sovereignty merely limited to suffrage: People Power prohibited

All Philippine Constitutions since 1935 provides that "sovereignty resides in the people and **ALL** government authority emanates from them". Even the Malolos Constitution provides in Title I Article 3 that "Sovereignty resides exclusively in the people" without any qualification.

This sovereign power of the people was, however, diluted by RBH 8 when it declared in Section 1 of Section 3 of RBH 8 amending Article II (Declaration of Federal State Principles and Policies) that:

"Sovereignty resides in the Filipino people **THROUGH SUFFRAGE** and all government authority xxx emanates from them."

This provision limits the people's exercise of sovereignty through elections and practically prohibits people power or any form of reforms through people's action outside the regular elections, as if the sovereign power of the people ceases in between elections. This seeks to counter the Supreme Court decision in the Freedom Constitution cases against then Pres. Cory Aquino which recognized the Cory Government even if it was installed by the people<sup>4</sup> outside of the elections. Under RBH 8 Ferdinand Marcos remains the legitimate president after 1986 since Cory Aquino's assumption to the presidency was not an exercise of the people's sovereign will as she came to power not through election, which is the only exercise of sovereignty recognized by RBH 8, but through people power.

#### 2) Dangerously vague provisions which can be twisted as basis for repressive measures such as:

2.1) Section 15 Art II *"The Federal State and all its Regions shall be a drug free country"*

2.2) The principle that Philippines renounces war as a matter of policy is now qualified with a phrase "The Federal State abhors any act of terrorism" which sets up the provision for possible reinterpretation.

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<sup>4</sup> Even the Catholic church through Cardinal Vidal recognizes this sovereign power of the people beyond mere elections, when he declared after Marcos won the "snap election" against Cory Aquino that "if a government does not of itself freely correct the evil it has inflicted on the people then it is our serious moral obligation as a people to make it do so".

2.3) This writer is uncertain how new phrases inserted in the Constitution by RBH 8 such as policies for the “maintenance of LAW and order”, “INTERNAL COHESION” in Section 7 of Article II will be interpreted by Pres. Duterte .

**3) Difficulty in amending the Constitution especially on issues which may be interpreted as violative of “national integrity or territory”.**

RBH 8 makes any amendment to the Federal Constitution extremely difficult as its necessity or wisdom is subject to the interpretation and decision of the President and other political leaders:

*Article XVII, Section 5 “(a) **No amendment or procedure shall be commenced or continued where the integrity of the national territory is placed in jeopardy.**”*

This writer is not aware of any similarly absurd restriction in other Constitutions. It practically limits the will of the people to demand change in the Constitution if the Federal Constitution is found abhorrent to people’s interest. Worse, efforts to amend the Constitution to accommodate the Moro people or the peace process may be declared “unconstitutional” as it may be deemed a threat to “territorial” integrity by Malacanang or Congress and racist or anti-peace elements.

With the above amendments including the restrictions on the sovereign power of the people, and the impending deletion of the protectionist provisions of the 1987 Constitution, various pro-people policies—such as land reform, industrialization, and the rights of the people—such as right to education, healthy environment, freedom of assembly, and expression will also be diluted.

**IV. CONSTITUENT ASSEMBLY AS A PROCEDURE: Allowing Congress to Amend the Constitution is Dangerous under the Duterte Administration**

The Resolution of Both House No. 08 grants Congress the power to propose amendments to the Constitution on the following ground:

*“**WHEREAS**, it is more expeditious and less costly to revise the 1987 Constitution through a Constituent Assembly inasmuch as a Constitutional Convention will necessitate the election of delegates who will later propose and deliberate on the revisions and entail the appropriation of Php 8 Billion, more or less, when the Seventeenth Congress can readily constitute itself into a constituent assembly using the funds allocated to the Legislative Branch”*

Essentially, therefore, RBH 8 justifies the grant to Congress of the task of drafting the amendments to the Constitution is to save funds and ensure fast and expeditious revision of the Constitution.

Allowing Congress the power to draft the amendatory provisions for the Federal Constitution is dangerous because it is to the interest of Pres. Duterte and his

administration to centralize powers to himself and at the same time, take out the protectionist provisions and allow liberalization and privatization provisions in the Constitution.

**a) Congress has passed many laws that did not inure to the peoples benefit and cannot be tasked with amending the Constitution**

Congress passed laws such as EPIRA, Oil Deregulation Law, and the Mining Act. Additionally, there had been instances when Congress was embroiled in corruption and lobby money by big business during approval of laws such as EPIRA.

On the other hand Congress refused to pass pro-people laws such as the *Anti-Dynasty Law* and the *Freedom of Information Law* for decades now. A Congress that has passed many laws that proved to be a heavy burden on the people, while refusing to pass the Anti-Dynasty Law and the FOI Law cannot be given the important task of amending the Constitution. In fact, except for general statements, RBH 8 does not even assure the passage of an effective FOI law or Anti Dynasty Law in the proposed Constitution.

**b) The justification of resorting to Con Ass to save Php 8 Billion is incongruent to the record of Congress which has allowed useless spending of billions of pesos on unnecessary, corrupt or irregular projects.**

Congress has approved the spending of billions of pesos for useless and anti people projects such as Php 30 Billion to pay big business under the *Risk Manage Fund* which was allocated by Congress in the Appropriation Laws and Php 20.9 Billion Bottoms up budget (Grassroots Participatory Budgeting) which even the Duterte Administration called a “political tool” and a “campaign kitty” during the elections.

Meanwhile, Congress despite its “power of the purse”, has allowed the continued existence of off budget pork barrel items such as the Malampaya Fund (Php 173 Billion collected in 2013) and Road Users Tax funds (Php 90.72 Billion collected as of 2012) which have been the subject of graft and corruption investigations by the Commission on Audit (COA). For an institution that has helped waste public funds in the budget, to suddenly take up the task of amending the Constitution to defray expenses of public funds is not convincing.

**c) Both Houses of Congress had extreme difficulty in doing its main job of legislation and cannot demand additional tasks when it had a dismal record in passing laws.**

Both Houses of Congress which hardly fulfilled its legislative function of passing laws cannot arrogate unto itself one more task of amending the Constitution which is more complicated—and more difficult than passing laws or making privilege speeches.

**The 16<sup>th</sup> Congress passed a total of 74 national laws in the three years of its existence.** Even if we count the 38 Local Laws it passed, the total laws passed by the 16<sup>th</sup> Congress is barely 10-20%% of bills filed.



It must be noted that the House of Representatives alone was allocated a budget of Billions of pesos from 2013 to 2016 or at least Php 200 Million spent for every law passed. This does not yet include the billions allocated to the Senate. On the other hand Congress failed to pass for many years the Anti-Dynasty Law and the Freedom of Information Law. The people must tell Congress and their district representatives and Senators to first do their main job of legislating instead of dabbling in constitutional amendments.

**d) Expeditious approval of chacha is very dangerous**

RBH 8 justifies “Con Ass” as more expeditious than a Constitutional Convention. This is very true since a Constitutional Convention may spend time debating the benefits to the Filipino people of every amendment. However, an important amendment that will depart from the unitary-presidential system since the 1935 Constitution requires in depth discussions and studies. So the emphasis on “expeditiousness” by RBH 8 is misplaced. If Congress does not find it necessary to rush the passage of the Anti-dynasty law, or Freedom of Information Law, its emphasis for rushing CHACHA is certainly out of place.

**e) RBH 8 does not contain express restrictions to the conflict of interest issues of members of Congress: term extension still possible**

e.1 There is no express provision in RBH 8 that disqualifies all members of the “Con Ass” from running in the next congressional elections. The members of the 1986 Constitutional Commission that drafted the 1987 Constitution were prohibited from running “for any office in the first local and the first national elections to be held after the ratification” of the 1987 Constitution. This prohibition was intended to avoid conflict of interest and assure that the constitutional drafters will not electorally benefit from the Constitution they drafted. There is NO SUCH RESTRICTION UNDER RBH 8. All members of Congress, therefore, may still run in the next election after the ratification of the Federal Constitution as there is no prohibition similar to the that of the drafters of the previous Constitution.

e.2 Congress, acting as a Constituent Assembly may still eliminate term limits of Congressmen and Senators as there is no assurance in RBH 8 that term limits will not be extended. In fact, once ratified, it is not clear if the previous terms of incumbent congressmen under the 1987 Constitution will be counted under the new Constitution. In fact, in the PDP Laban proposed constitutional amendment, there will be no term limits at all as all members of Congress are allowed run forever.

RBH 8 does not assure that once Congress is convened as a constituent assembly, there will be no attempts to extend terms or delete the term limits of the President and other politicians. The Constituent Assembly is a distinct body with a function distinct to that of Congress. Congress acting as a constituent assembly is not bound by any resolution, including RBH 8, passed by Congress acting as a legislative body.

**Summary**

RBH 8 is a very dangerous piece of legislation as it centralizes power in Pres. Rodrigo Duterte in the process of ostensibly amending the Constitution to pave the way to federalism. The proposed Chacha will abolish Congress, the Constitutional Commissions, and restructure the judiciary. Thousands of affected government officials and employees will be “retired”. Meanwhile Pres. Duterte is given the power to make laws, just like Marcos. And simultaneously appoint or reappoint thousands in one fell swoop giving him almost complete control of the entire government.

RBH 8 also grants Congress the power to amend Constitutional policies and eliminate economic provisions that protect Filipinos from foreigners and other countries—basically resulting in a dangerously changeable Constitution depending on the whim of Congressmen and Senators.

Worse, this Chacha dilutes many of the rights of the Filipino people.

With RBH 8 tasking Congress itself to amend the Constitution through “CON ASS”, the Cha Cha under Pres. Duterte is worse than the Cha Cha under previous administrations. In fact, especially under the current context, this Cha Cha is the most dangerous than all Cha Chas combined.