

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila
EN BANC

BAGONG ALYANSANG MAKABAYAN (BAYAN),
represented by its Secretary General **RENATO**
M. REYES, JR., BAYAN MUNA PARTY-LIST
REP. NERI J. COLMENARES and REP. CARLOS
ZARATE, GABRIELA WOMEN’S PARTY-LIST
REP. LUZ ILAGAN and REP. EMERENCIANA DE
JESUS, ACT TEACHERS PARTY-LIST REP.
ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST
REP. FERNANDO HICAP, KABATAAN PARTY-
LIST REP. TERRY RIDON, , MAKABAYANG
KOALISYON NG MAMAMAYAN (MAKABAYAN),
represented by **SATURNINO OCAMPO and LIZA**
MAZA, BIENVENIDO LUMBERA, JOEL C.
LAMANGAN, RAFAEL MARIANO, SALVADOR
FRANCE, ROGELIO M. SOLUTA, and
CLEMENTE G. BAUTISTA,
Petitioners,

- versus - **G.R. S.P. NO. _____**

DEPARTMENT OF DEFENSE SECRETARY
VOLTAIRE GAZMIN, DEPARTMENT OF
FOREIGN AFFAIRS SECRETARY ALBERT DEL
ROSARIO, EXECUTIVE SECRETARY PAQUITO
OCHOA, JR., ARMED FORCES OF THE
PHILIPPINES CHIEF OF STAFF GENERAL
EMMANUEL T. BAUTISTA, DEFENSE
UNDERSECRETARY PIO LORENZO BATINO,
AMBASSADOR LOURDES YPARRAGUIRRE,
AMBASSADOR J. EDUARDO MALAYA, JUSTICE
UNDERSECRETARY FRANCISCO BARAAN III,
AND DND ASST. SECRETARY FOR STRATEGIC
ASSESSMENTS RAYMUND JOSE QUILOP AS
CHAIRPERSON AND MEMBERS,
RESPECTIVELY, OF THE NEGOTIATING PANEL
FOR THE PHILIPPINES ON EDCA,
Respondents.

X-----X

PETITION FOR CERTIORARI AND PROHIBITION (WITH PRAYER FOR TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION)

PETITIONERS, by counsel, to this Honorable Court, most respectfully state that:

PREFATORY

In this petition to nullify the Enhanced Defense Cooperation Agreement (EDCA), we face a formidable opponent. The daunting adversary is certainly not the United States' military and industrial complex that backstops the EDCA. No matter how mighty this establishment has evolved, it can be overcome. The disquieting task surely does not involve untangling the arguments that prop the EDCA. The more the EDCA is publicly commended, the grosser the muck it becomes. No one needs to tell us, this Honorable Court included, that the EDCA was devised to serve only the global domination of the United States and solely its interests and values. The EDCA is a particle singularly devoted to the US Asia-Pacific pivot and uniquely expressive of America's current hegemonic military strategy. By all accounts, especially in the context of the US Government's candor, the EDCA serves all things *but* Filipino.

The formidable opponent that this petition faces is not, in fairness, the lies that the Americans have been peddling for over a century now. The US Government has been forthright – in their lies. The benevolent assimilation, the white man's burden, the bells of Balangiga, the first volley of canon off Manila Bay, the jail break of Lance Corporal Daniel Smith, the irreparable damage to Tubbataha, for example, were glossed with such forthrightness that has turned these ordinary frauds into extraordinary deceptions, which thereafter has graduated to self-deprecating belief about the reality of ourselves as a nation. The American colonial master has never meant what it has said and has done only things that serve itself; it has couched its intentions and plans in deceptive language that got for it what precisely it had wanted. This was the US Government's plot then; it remains its scheme now.

Regrettably, even as their leader symbolizes diversity, the American dream, his forebears once upon a time sold as slaves, the affinity with sports and constant movement, those things that the commoner can aspire for and in the balance of probabilities perhaps

achieve, when he touched down in the Philippines, our brown-nosing leaders had to pull out all the stops to exhibit the obsequious hospitality that the Filipino has been stereotyped to possess, each leader seeking that 15-minute photo-op to stand close by, or at least within his spitting distance, the most powerful person in the world, his message was more of the same that for over a hundred years has shaped Philippine-American relations – the continued implantation of US sovereignty and interests in Philippine soil.

In the context of the most imbalanced relations between supposed sovereign equals, the formidable adversary is actually worse than the objection to the stereotype that we are pliant, reliable, and yes, servilely flexible. We are the bamboo that bows to all adversities and tribulations again and again – but do nothing much to conquer or master them. In the case of the EDCA, the prevailing view is not just to accommodate but to give, offer, beseech, like a tithe to the god or a vassal to the lord. Was it a coincidence that the US President was in the Philippines when the EDCA was formally concluded? *Indeed, the greatest enemy is among us.* The fearsome foe is our own embodiment of authority, the constituent of a plethora of powers, our own officialdom from the President to the lowest of his minions, who gifted the US Government with the EDCA and have been all too willing and obliging to embarrass, shame and contradict themselves just to say that the EDCA is a partnership between equals and a memorial of a dignified friendship. *When one has given all to the other, from the shirt to the innermost recesses of the soul, for nothing or even for something, where is the equality in that?*

The text and subtext of the arguments in this petition are openly directed at this subservience of the Philippine Government to the blatant and outright prevarications and lies that US interests have peddled for more than a century now. The arguments at their core consist of the reality of trampled sovereignty and subordinated, nay, subjugated, Philippine public interests. *The arguments underlie the advocacy towards dignity and against discrimination.* Dignity underscores the equal worth of all beings.¹ Discrimination is the perpetuation of historical prejudice and stereotypes.² They encapsulate the centuries-long opposition to a lopsided foreign policy that has been the hallmark of Philippine relations with the US.

¹ Judith Resnick and Julie Chi-hye Suk, “Adding Insult to Injury: Questioning the Role of Dignity in Conceptions of Sovereignty” (2003). *Faculty Scholarship Series*. Paper 765 at <http://digitalcommons.law.yale.edu/fss/765> (last accessed on May 17, 2014).

² *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

*Where there is a deep-seated and ingrained institutional bias for American sovereignty in Philippine soil, where the American colonial masters of today as they were in yesteryears can do no wrong, where the jurisprudence developed by this Honorable Court has been consistently a case law of militarized dog-ma repeated over and over against the challenges and alternatives to the history and currency of subservience and subjugation, we the petitioners implore this Honorable Court to pause, reflect, and for once rule that only a consciousness of dignity and discrimination can correct this historic injustice.*³

It has been said “[y]ou don’t comb the mirror, you comb your own hair and the mirror changes.”⁴ It is only in defending our own rights and recognizing our dignity that we can reap the benefits. *But if in doing so, we get to live a life far from the approving nods of the powerful figures, would we, especially this Court, cower, hide or submit?* “When you really want something to happen, the whole universe conspires so that your wish comes true.”⁵ We hope this Honorable Court would take the route less travelled and aspire for greatness of the soul and mind than the convenience of a derisive applause of a master to a slave –

*Alone, it soars the empty skies
 Its shadow sweeps the deserted land
 The shattering cry is echoed
 By the wind that blows the leaves that dried.*

*It turns and hovers
 And looks with such pain
 At the empty houses
 As it bids its last goodbye.*

*The fields are gold with the ripening grains
 Bowing to the fullness of its fruits
 But the last man has left, and the crops bow in
 sorrow
 It wonders, as it departs, who will reap the richness
 of this land?*

³ Jennifer Nedelsky, “Embodied Diversity and the Challenges to Law” (1997), 42 McGill LJ 91 at 107. Professor Nedelsky offers the following comment on the act of judging: “What makes it possible for us to genuinely judge, to move beyond our private idiosyncracies and preferences, is our capacity to achieve an ‘enlargement of mind.’ We do this by taking different perspectives into account. This is the path out of the blindness of our subjective private conditions. The more views we are able to take into account, the less likely we are to be locked into one perspective.... It is the capacity for ‘enlargement of mind’ that makes autonomous, impartial judgment possible....”

⁴ David Icke.

⁵ Paulo Coelho, ‘The Alchemist.’

*The rivers, once pure and tranquil
 Is red with the blood of its children
 Boiling, raging, waiting for the sound of rain
 To once more bring life to this forsaken land....⁶*

We have been a slave for not only 12 years but 12 years times 10.

It is time to break the chains.

NATURE OF THE PETITION

1. The Petition is a taxpayers' suit and concerned citizens' suit to –
 - a. strike down and declare as unconstitutional the EDCA that was entered into by the respondents on behalf of the Philippines, with the government of the United States of America (US); and
 - b. enjoin all the respondents from implementing the above unconstitutional Agreement and to restrain them from any and all acts relative thereto.
2. The writ of certiorari and prohibition is being sought by the petitioners on the ground that the respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction when they entered into the EDCA with the US government in utter disregard of the national sovereignty, territorial integrity and national interest provision of the Constitution, other provisions of the Philippine Constitution and various Philippine laws and principles of international law.
3. The EDCA was negotiated in secrecy for nearly two years. During the period that the respondents and the US were negotiating EDCA, only bits and pieces of information were released regarding the terms of the Agreement.
4. With the signing of the Agreement on April 28, 2014, there is no plain, speedy and adequate remedy in the ordinary course of law for Petitioners but to avail themselves of the instant Petition pursuant to Sections 1 and 2 of Rule 65 of the Revised Rules of Court.

⁶ Mary Ann Manja Bayang, "Going Home. Where To?" (2012) an unpublished paper submitted to the University of Sydney.

5. Considering the transcendental implications of the assailed actions and proceedings of respondents to the Filipino people and the nation, petitioners implore the Honorable Supreme Court to judiciously exercise its expansive power of judicial review as mandated in Article VIII, Section 1 of the Constitution, to wit:

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

6. The exercise of judicial review to determine whether the Executive branch of the government through the respondents has exceeded its powers and prerogatives is a duty “specifically enjoined upon it by the Constitution as part of a system of checks and balances”⁷ especially where it involves the national interest and survival, the integrity of our territory, and the sanctity of the Constitution.
7. As respondents' actions are causing and will cause grave injustice and irreparable violation of the Constitution and the Filipino people's rights; and given the transcendental importance of the case, petitioners, as taxpayers and concerned citizens, seek the issuance of a temporary restraining order and/or writ of preliminary injunction ordering the respondents to cease and desist from proceeding with the implementation of EDCA and from further threatening and performing acts that are violative of the constitution.
8. A certified true copy of the questioned Enhanced Defense Cooperation Agreement is hereto attached as **Annex “A”**.

TIMELINESS OF THE PETITION

9. On April 28, 2014, Secretary of the Philippine Department of National Defense Voltaire Gazmin and United States Ambassador to the Philippines Philip Goldberg signed the EDCA, two hours before the arrival in Manila of US President

⁷

Dabuet vs Roche Pharmaceuticals, 149 SCRA 386.

Barack Obama. The text of the agreement was not made public during US President Obama's visit.

10. On April 29, 2014, a few hours after US President Obama left Manila, the text of the EDCA was made public for the first time via the official government website www.gov.ph.
11. Thereafter, several news reports came out regarding the locations that the US may be given access to. Respondent AFP chief General Emmanuel Bautista said details on "agreed locations" under the EDCA will be ironed out during a meeting of top military officials from the Philippines and the US in October this year.
12. Hence, this Petition, which raises constitutional issues, is timely filed, and the issues are ripe for judicial review.
13. Petitioners have properly verified this petition and duly certified the same against forum shopping. They have also served copies of the Petition upon the respondents by registered mail. A duly accomplished affidavit of service attesting thereto is attached to this petition. The corresponding docket fees were also paid upon the filing of the petition.

PARTIES

The Petitioners

14. **Petitioner Bagong Alyansang Makabayan (BAYAN)**, is an umbrella organization and broad alliance of church groups, peasant organizations, labor federations, youth and student movements, women's groups, fisherfolk, indigenous peoples, lawyers, health workers, migrant groups, and other professionals. It is represented in this Petition by its Secretary General **Renato M. Reyes, Jr.** who is authorized by virtue of a Certificate dated May 21, 2014, a copy of which is hereto attached as **Annex "B."** Its national office is at No. 1 Maaralin corner Matatag St., Brgy. Central, Quezon City.

15. **Petitioners Rep. Neri J. Colmenares and Rep. Carlos Zarate** are both incumbent Bayan Muna Party-List representatives in Congress.
16. **Petitioners Rep. Luzviminda C. Ilagan and Rep. Emerenciana A. de Jesus** are incumbent party-list representatives of Gabriela Women's Party in Congress.
17. **Petitioner Rep. Antonio L. Tinio** is the incumbent representative of ACT Teachers Party-List in Congress.
18. **Petitioner Rep. Fernando L. Hicap** is the incumbent representative of Anakpawis Party-list in Congress.
19. **Petitioner Rep. James Terry L. Ridon** is the incumbent representative of Kabataan Party-List in Congress.

Petitioner – Party-List Representatives all hold office at the House of Representatives, Batasan Hills, Quezon City.

20. **Petitioner Makabayang Koalisyon ng Mamamayan (Makabayan)** is a political coalition of progressive party-list organizations, duly organized and existing under and by virtue of Philippine laws. Makabayan is represented here by **Saturnino C. Ocampo** and **Liza Maza**, its president and co-chairperson, respectively, who have been authorized to represent it in this petition through a Secretary's Certificate dated May 21, 2014, a copy of which is hereto attached as **Annex "C."** Makabayan is holding office at No. 20 Marunong St., Barangay Central, Quezon City.
21. **Petitioner Bienvenido Lumbera** is a National Artist for Literature, a recipient of the Ramon Magsaysay Award for Journalism, Literature and Creative Communications. He is also the chairperson of Concerned Artists of the Philippines, an organization of artists, musicians, writers, filmmakers and cultural workers from various disciplines that works toward a nationalist, people-oriented art and culture. His postal address is 15-B Manigo St., Brgy. UP Village, Quezon City.
22. **Petitioner Joel C. Lamangan** is a film and television director and an actor with postal address at Room 209 Cabrera Bldg., Timog Ave., Quezon City.

23. **Petitioner Renato Constantino** is a nationalist, activist and civil libertarian.
24. **Petitioner Rafael V. Mariano** is the national chairperson of Kilusang Magbubukid ng Pilipinas, **a democratic and militant movement of landless peasants, small farmers, farm workers, rural youth and peasant women**, duly organized and existing under and by virtue of Philippine laws. Its office is at 217-B Alley 1, Road 7, Project 6, Quezon City.
25. **Petitioner Salvador France** is the vice-chair of Pambansang Lakas ng Kilusang Mamamalakaya ng Pilipinas (or "PAMALAKAYA"), a national federation of fisherfolk organizations in the Philippines, whose members are affected by the naval exercises conducted by US troops. He holds office at No. 56 K-9th Barangay Kamias, Quezon City.
26. **Petitioner Rogelio M. Soluta** is the national secretary-general of Kilusang Mayo Uno, an independent labor center in the Philippines promoting genuine, militant and anti-imperialist trade unionism. He holds office at c/o Balai Obrero Foundation, No. 63 Narra Street, Barangay Claro, Project 3, 1102 Quezon City.
27. **Petitioner Clemente G. Bautista, Jr.** is the national coordinator of Kalikasan People's Network for the Environment, a network of people's organizations, non-governmental organizations and environmental advocates. He holds office at No. 26 Matulungin St., Brgy. Central, Diliman, quezon City.
28. All of the petitioners may be served the processes of this Honorable Court at the addresses of their lawyers indicated below.

The Petitioners submit that they have *locus standi* to file the instant Petition, having clear personal interests in the matter under judicial review. The proceeding before this Honorable Court involves the assertion and protection of a public right and therefore "the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, a part of the general "public" which possesses the right."⁸ Considering that EDCA would also

⁸ Legaspi vs. Civil Service Commission, 150 SCRA 530.

require the disbursement of public funds and waiver on the payment of taxes, fees, and rentals, petitioners have *locus standi* as taxpayers.

Additionally, Petitioner-Party List Representatives seek recourse from the courts because an act of the Executive injures the institution of Congress and causes a derivative but nonetheless substantial injury. Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.⁹ It has been recognized that a member of the Legislature has the requisite personality to bring a suit where a constitutional issue is raised.¹⁰

The Respondents

29. **Respondent Voltaire Gazmin** is the incumbent Secretary of the Department of National Defense who signed the lopsided EDCA for the Philippines.
30. **Respondent Albert Del Rosario** is the incumbent Secretary of the Department of Foreign Affairs tasked to implement our national foreign policy.
31. **Respondent Paquito Ochoa, Jr.** is the Executive Secretary of President Benigno Simeon Aquino, III who, upon the direction and control of President Aquino as his alter ego, allowed the negotiation and signing of the assailed EDCA despite its contravention of the Constitution.
32. **Respondent General Emmanuel T. Bautista** is the Chief of Staff of the Armed Forces of the Philippines which is tasked under EDCA to implement the same and, in particular, to provide the US the so-called “agreed locations.”

⁹ Senate of the Philippines v. Ermita, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and Francisco v. House of Representatives, 460 Phil. 830, 842 (2003), citing *Pimentel Jr., v. Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 623, 631-632.

¹⁰ See for instance, Gonzales v. Macaraig, G.R. No. 87636. November 19, 1990, citing Tolentino v. COMELEC, G.R. No. L-34150, 16 October 1961, 41 SCRA 702.

33. **Respondent Negotiating Panel for the Philippines on EDCA**, composed of Defense Undersecretary Pio Lorenzo Batino as Chair; Ambassador Lourdes Yparraguirre, Ambassador J. Eduardo Malaya, Justice Undersecretary Francisco Baraan III, and DND Asst. Secretary for Strategic Assessments Raymund Jose Quilop as members, with instructions from the higher-ups, negotiated for such an unequal agreement with the US.
34. All of the respondents may be served the processes of this Honorable Court through the Office of the Solicitor General, 134 Amorsolo Street, Makati City.

STATEMENT OF FACTS¹¹

35. The defeat of the Spanish fleet at the hands of US naval forces at the Battle of Manila Bay on May 1, 1898, cleared the way for the U.S. occupation of Manila and the eventual transfer of the Philippines from Spanish to American control.
36. On June 12, 1898, so-called Philippine Independence was declared in Kawit, Cavite. Part of the declaration of independence read:

“And summoning as a witness of the rectitude of our intentions, the Supreme Judge of the Universe, and under the protection of the Mighty and Humane North American Nation, we proclaim and solemnly declare, in the name and by authority of the inhabitants of all these Philippine Islands, that they are and have the rights to be free and independent; that they are released from all obedience to the Crown of Spain.....”¹² But Philippine Independence was farthest from the mind of the US and soon enough their real intentions began to unfold.
37. On December 10, 1898, the Treaty of Paris was signed by the United States of America and Spain. Under the Treaty, Philippines, Guam and Puerto Rico were ceded to America by Spain. America paid Spain US\$20-million for the Philippines.

¹¹ <http://www.history.com/this-day-in-history/the-battle-of-manila-bay>
¹² Renato Constantino, *The Philippines: A Past Revisited*, p. 204

38. Eleven (11) days later or on December 21, 1898, even before the Treaty of Paris could be ratified by the US Senate, President William McKinley, issued the “Benevolent Assimilation” Proclamation declaring that the United States “come not as invaders or conquerors, but as friends, to protect the natives in their homes, in their employment, and in their personal and religious rights.”
39. McKinley further declared that the United States wanted to “win the confidence, respect, and affection of the inhabitants of the Philippines by assuring them in every possible way that full measure of individual rights and liberties which is the heritage of free peoples, and by proving to them that the mission of the United States is one of benevolent assimilation substituting the mild sway of justice and right for arbitrary rule.”
40. But despite such words, the proclamation actually directed US military commanders to extend US sovereignty over the Philippines.
41. By July 1899, before the Philippine-American War broke out, there were more than 11,000 American soldiers in the country. By the end of that year there were 55,000.¹³
42. Philippine revolutionaries who fought against Spanish rule during the war immediately turned their guns against the new occupiers, and 10 times more U.S. troops died suppressing the Philippines than in defeating Spain.
43. Big-business, prominent bankers and politicians supported the colonization of the Philippines. Their position was reflected by the following words from US Senator Albert Beveridge “The Philippines are ours forever, ‘territory belonging to the United States,’ as the Constitution calls them. And just beyond the Philippines are China's illimitable markets. The Philippines gives us a base at the door of all the East... The Power that rules the Pacific.... is the power that rules the world...”¹⁴

¹³ Ibid, at p. 208.

¹⁴ US Congressional Records, Senate 56th Congress, 1st Session, January 9, 1900, pp. 704-712)

44. To pacify the country, wave upon wave of American soldiers were deployed in the country. At the height of the war, around 126,000 American soldiers were stationed in the country. ¹⁵
45. To house the growing number of US military personnel and ensure their strategic deployment in the country, US President Theodore Roosevelt issued an executive order in 1901 establishing the Subic Bay Naval Reservation while maintaining the US Navy headquarters in Cavite. In 1902 President Roosevelt signed another executive order establishing Fort Stotsenburg in the location that was later occupied by Clark Airbase. Fort Stotsenburg was first used as a military camp by US cavalry forces at the outbreak of the Philippine-American War.
46. The war that ensued was a brutal one. Estimates of those who died range from a low of 12,000 to 20,000 Filipino combatants and 200,000 to 600,000 civilians. ¹⁶
47. The military victory enabled the United States of America to establish control over the Philippines politically and economically. Successive military governors exercising military, executive and civilian functions were appointed.
48. The military governors eventually gave way to civilian governors. A local legislature and judiciary were later established. But it was only in 1946 that the Philippines formally declared independence from the United States.
49. In order to maintain the economic and political hold of the US on the Philippines, the US military bases in the country remained after the declaration of Philippine Independence.
50. On March 14, 1947, the Philippines and the United States through President Manuel Roxas and US Ambassador Paul V. McNutt signed the **Agreement Between the United States of America and the Republic of the Philippines Concerning Military Bases**. The agreement entered into force on March 26, 1947.

¹⁵ Renato Constantino, *The Philippines: A Past Revisited* : p. 241.

¹⁶ Ibid, at p. 245.

51. The Military Bases Agreement (MBA) gave the US government the “right to retain the use of the (US) bases in the Philippines.” The MBA granted the US forces the use of certain lands of the public domain, free of rent, owing to the “mutual interests” of both countries.
52. The MBA gave the US control of at least 16 bases including Clark Airbase and Subic Naval Base, as well as access to and use of Philippine facilities such as the Mactan Island Army and Navy Base and the Floridablanca Airbase in Pampanga.
53. On March 21, 1947, Pres. Roxas and McNutt signed the RP-US Military Assistance Agreement (MAA) which was considered a sister agreement to the RP-US Military Bases Agreement (1947). The MAA provided for the creation of the Joint U.S. Military Advisory Group (JUSMAG), and the permanent stationing of US military officials in Manila for the logistical and training requirements of the Armed Forces of the Philippines.
54. On August 30, 1951, representatives of the Philippines and the US signed the Mutual Defense Treaty (MDT) in Washington D.C. The MDT provided for mutual defense against external armed attack. Under the MDT, “each Party recognizes that an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.”
55. To provide a semblance of Philippine control of the American bases, Olongapo, which was then an American territory, was formally turned over by the US to the Philippines on October 28, 1959. In the succeeding years, 17 of the 23 military installations operated by the US were also turned over to the Philippines.
56. On September 16, 1966, the US and Philippine governments agreed to reduce the term of the bases treaty to 25 years starting from that year and ending in 1991.
57. Over the years, American military bases in the country served as launching sites for US involvement in various wars such as the war in Vietnam. The US bases also served supply storage, repair and rest and recreation facilities for US military personnel.

58. The MBA Review of 1979 placed Clark and Subic under the control of the Philippine government, making them US installations inside Philippine military installations. The review also provided for each base to be formally under a Filipino base commander. As supposed owners of the facilities, the Philippines flew its flag in these bases together with the US flag. The Philippine government also provided perimeter security for the bases.
59. In 1987, the Philippine Constitution was ratified, which explicitly prohibits foreign military bases, troops, or facilities in the country beyond the year 1991, except under a treaty concurred in by the Senate.
60. On September 16, 1991, the Philippine Senate exercising its mandate under the Constitution, voted not to renew the bases treaty. This supposedly signaled the end of US military presence in the Philippines.
61. But this was not the case.
62. On May 27, 1999, the Philippine Senate ratified the RP-US Visiting Forces Agreement (VFA) which defined the treatment of visiting US troops who participated in joint military exercises among other activities. The VFA dealt with the issues of criminal jurisdiction, tax exemptions and the movement of US troops and vessels.
63. Petitioner Bayan challenged the VFA before the High Court by claiming it was too broad and would allow the permanent stationing of an unlimited number of troops, for an unlimited time, and for undefined activities.
64. However, the constitutionality of the VFA was upheld. This paved the way for renewed US military presence in the country.
65. On January 2002, the Philippines and the US began what was known as Balikatan 02-1 which sent US troops to Mindanao to assist Philippine forces in the “war on terror” against the Abu Sayyaf. The Joint Task Force 51, which would later be known as the Joint Special Operations Task Force Philippines (JSOTF-P), was deployed in Mindanao. Some 600 US Special Forces elements engaged in various anti-terror operations were

being rotated in Zamboanga, establishing a permanent and continuing presence in the region, under the VFA.

66. The 600 US Special Forces would remain stationed in Camp Navarro in Zamboanga City till today, 12 years after their first mission.
67. Aside from those stationed in Camp Navarro in Zamboanga City, US military personnel sporadically arrive in the Philippines under the VFA to participate in military exercises or for rest and recreation. With their presence in the Philippines, inevitably, American military personnel would get involved in incidents resulting to criminal offenses. One such case was the Subic rape case which became the subject of the case decided by the Honorable Court in ***Nicolas vs. Romulo***.
68. On November 21, 2002, the Philippine and US governments through Commodore Ernesto de Leon, Deputy Chief of Staff for Plans, on behalf of the Armed Forces of the Philippines (AFP) Chief of Staff, and Col. Mathias Velasco, representing the Commander of the US Pacific Command, signed the MLSA at Camp Aguinaldo. The pact dealing with logistic support for visiting US troops and vessels was considered an executive agreement not needing Senate ratification. The MLSA provided for logistics services but did not allow the setting up of permanent structures of facilities for US troops. The MLSA was the second agreement after the VFA which would pave the way for the return of US basing opportunities in the Philippines. The MLSA had a term of 5 years and would be renewed by the Arroyo government in 2007 and the Aquino government in 2012.
69. On September 23, 2009, in light of the Subic rape case and after hearings regarding the implementation of the VFA, the Philippine Senate passed Resolution 1356 calling on the Executive to renegotiate the VFA, and if the US refused, issue a notice of termination of the agreement.
70. On January 3, 2011, the US government through President Barack Obama announced its strategic pivot towards Asia as laid out in the document ***“Sustaining US Global Leadership, Priorities for 21st Century Defense”***.¹⁷ With its pivot strategy, the US seeks to redeploy 60% of its warships to Asia.

¹⁷ A copy is hereto attached as Annex “D”.

71. The document asserted that “U.S. economic and security interests are inextricably linked to developments in the arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia, creating a mix of evolving challenges and opportunities. Accordingly, while the U.S. military will continue to contribute to security globally, **we will of necessity rebalance toward the Asia-Pacific region**”.
72. To achieve the pivot, the US “whenever possible, will develop **innovative, low-cost, and small-footprint approaches** to achieve our security objectives, relying on **exercises, rotational presence, and advisory capabilities**,” the document stated.
73. In line with the strategic pivot to Asia, the US and the Philippines held the first Ministerial Dialogue in Washington D.C. on April 30, 2012. The dialogue included the Departments of Defense and Foreign Affairs and the US State Department and Department of Defense. The two countries adopted a policy of “increased rotational presence” of US troops, increased military exercises and more frequent port calls by US ships. The two sides also discussed granting the US military further access to areas in the Philippines including airstrips.
74. On January 17, 2013, the US minesweeper USS Guardian, in blatant violation of Philippine laws, entered a protected area and ran aground on Tubbataha reef, causing damage to more than 2,000 square meters of the World Heritage Site. Various groups filed a petition before this Honorable Court seeking damages as well as a stop to further US-PH military exercises. No payment for the reef has been made by the US up to the present, much less recognition of Philippine jurisdiction.
75. On August 16, 2013, the US and the Philippines began negotiations for the Framework Agreement for Increased Rotational Presence and Enhanced Defense Cooperation which sought to give the US military access to Philippine facilities. The framework agreement was deemed in the form of an executive agreement not needing the Philippine Senate’s concurrence. The negotiators would eventually change the title of the framework agreement to the Enhanced Defense Cooperation Agreement (EDCA).

76. The EDCA would be the third military agreement with the US after the VFA which would secure new US basing opportunities in the Philippines.
77. On April 28, 2014, Philippine Department of National Defense Secretary Voltaire Gazmin and United States Ambassador to the Philippines Philip Goldberg signed the Enhanced Defense Cooperation Agreement two hours before the arrival in Manila of US President Barack Obama. The text of the agreement was not disclosed during the Obama visit. It was later revealed that EDCA would allow US troops to build facilities within AFP facilities and to preposition weapons and equipment.
78. It was only on April 29, 2014, a few hours after Obama left Manila, that the text of the EDCA was made public for the first time via the official government website www.gov.ph.
79. Upon review, the petitioners learned of the following provisions of EDCA:
 - a. The EDCA grants US personnel and US contractors the right to access and use “Agreed Locations” which can be anywhere in the Philippines as these are yet to be identified and the list of “Agreed Locations” attached to the document as an “Annex”.
 - b. The Philippine Government, under EDCA, “shall assist in facilitating transit or temporary access by United States forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).”
 - c. The activities that can be undertaken in the “Agreed Locations” include : “training, transit, support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies and materiel; deploying forces and materiel” and **“such other activities as the Parties may agree.”**

- d. The EDCA authorizes US forces to “**preposition and store defense equipments, supplies and materiel**” at the “Agreed Locations” which shall be “**for the exclusive use of US forces.**”
- e. Under the EDCA, the Philippines supposedly retains ownership and title to the “Agreed Locations”. But this “ownership and title” are only illusory as the US forces have “operational control”, “unimpeded access”, and authority to “exercise all rights and authorities necessary for (its) operational control or defense”.
- f. Furthermore, the “Agreed Locations” shall only be “returned to the Philippines..... once no longer required by US forces for activities” to be undertaken under EDCA.
- g. Despite the huge benefits and unlimited potential that US is getting out of EDCA, the remuneration for such benefits and potential is miniscule if non-existent at all. While US forces “shall be responsible on the basis of proportionate use for construction, development, operation and maintenance costs at Agreed Locations”, the use of the “Agreed Locations” shall be made available to US force “**without taxes, rental or similar costs**”.
- h. Likewise, with respect to the use water, electricity and other public utilities, the Philippines “grants to United States forces and United States contractors the use of water, electricity, and other public utilities on terms and conditions, including rates or charges, no less favorable than those available to the AFP or the Government of the Philippines in like circumstances, less charges for taxes and similar fees, which will be for the account of the Philippine Government.”
- i. The Philippines also authorizes US forces to “operate its own telecommunications system...including the right to use all necessary radio spectrum allocated for this purpose.” And all these “free of cost”.
- j. Philippine courts also have no jurisdiction to any dispute that may arise due to EDCA as EDCA provides that these shall be resolved “exclusively through consultation between the Parties”. **EDCA expressly prohibits the referral of these disputes to any local or international courts or tribunal.**

- k. Lastly, EDCA provides for its automatic renewal after its initial term of ten years.
- 80. EDCA is so grossly lopsided in favor of the US that the secrecy surrounding its negotiations can only be viewed as an attempt to thwart any criticism or even public debate regarding its content.
- 81. Not only is EDCA grossly one-sided and greatly disadvantageous to the Filipino people, EDCA also constitutes a derogation of our country's dignity and an unconscionable sellout of our sovereignty.
- 82. Hence, this petition.

GROUND IN SUPPORT OF THE PETITION

I

A. THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY ENTERED INTO THE EDCA AS IT CONSTITUTES A DEROGATION OF NATIONAL SOVEREIGNTY AND TERRITORIAL INTEGRITY.

- a. The "Agreed Locations" where US forces, personnel and contractors would be given free and blanket access and authority to conduct activities are limitless in number, boundless in areas and are as yet unidentified. There are no clear guidelines on the identification or selection of "Agreed Locations".
- b. The respondents yielded to the US forces the operational control of Agreed Locations for construction activities. The respondents also capitulated all of the Philippines' rights and authorities to the US government within the Agreed Locations for their operational control and defense. These acts of the respondents deprived the Philippine authorities of the right to exercise the Police Powers of the State over these so-called Agreed Locations.

- c. The respondents through the EDCA and with grave abuse of discretion permitted that the prepositioned defense equipment, supplies and materiel in the Agreed Locations are for the exclusive use of the US forces and granted them full control over their access to, use, and disposition of the same as well as the unencumbered right to remove them at anytime from the territory of the Philippines.
 - d. The respondents, through the EDCA, with grave abuse of discretion, authorized the Americans blanket authority to take “appropriate measures” to protect US personnel and private contractors, which may include arrests and even the use of lethal force. The US is merely obliged to “coordinate” such forceful measures with the Philippine Government.
 - e. The respondents committed grave abuse of discretion when it deprived the Supreme Court through the EDCA of judicial power over the acts of US forces and contractors committed within the Philippines resulting to any civil, criminal or administrative liability.
- B. RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION BY ENTERING INTO THE EDCA BECAUSE IT CONTRAVENES OUR NATIONAL INTEREST. EDCA IS ALSO CONTRARY TO PUBLIC POLICY AND PUBLIC INTEREST.**
- a. The Philippine authorities were deprived of the Power of Taxation under EDCA.
 - b. US forces were granted the exclusive option to choose the contractor, supplier, or person who will provide the materiel, supplies, equipment, or services in agreed locations and activities, in accordance with the laws and regulations of the Unites States.
- 1. EDCA violates the constitutional provision against the presence of nuclear weapons in Philippine territory.**

2. The EDCA in reality has no term limit or the period of its effectivity is totally based on the discretion of the US.
3. The underlying purposes of EDCA reveal that it is not for the interest of the Filipino people.

II

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY SIGNED THE EDCA, ESSENTIALLY A BASING AGREEMENT, IN VIOLATION OF THE CONSTITUTION AND CONTRARY TO THE TENETS OF INTERNATIONAL LAW.

1. The EDCA clearly involves the entry of foreign troops and facilities into Philippine territory.
2. EDCA is a basing agreement that is not allowed under the 1987 Constitution, except under stringent conditions.
3. EDCA must be in the form of a treaty duly concurred in by the Senate.

III

EDCA IS NOT IN IMPLEMENTATION OR FURTHERANCE OF THE MUTUAL DEFENSE TREATY AND THE VISITING FORCES AGREEMENT

IV

EDCA IS CONTRARY TO VARIOUS PROVISIONS OF THE CONSTITUTION AND OTHER LAWS

1. EDCA is Contrary to the Constitutional Provisions on Taxation and the National Internal Revenue Code.

2. **EDCA is Contrary to Constitutional Provisions on Labor and the Labor Code.**
3. **EDCA is Contrary to the Constitutional Provisions on the Protection of the Environment.**
4. **EDCA is Contrary to Constitutional Provisions on Local Government and the Local Government Code.**
5. **EDCA Violates the National Building Code (R.A. 6541)**

ARGUMENTS AND DISCUSSION

I

- A. **THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY ENTERED INTO THE EDCA AS IT CONSTITUTES A DEROGATION OF OUR NATIONAL SOVEREIGNTY AND TERRITORIAL INTEGRITY.**

83. The 1987 Constitution of the Philippines gives primary importance to the ideal of Sovereignty.

ARTICLE II

Declaration of Principles and State Policies

Principles

SECTION 1. The Philippines is a democratic and republican State. **Sovereignty resides in the people** and all government authority emanates from them.

SECTION 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

X x x x

SECTION 7. The State shall pursue an independent foreign policy. **In its relations with other states the paramount consideration shall be** national sovereignty, **territorial integrity**, national interest, and the right to self-determination.

84. Any concept of Sovereignty must necessarily connote that a State exercises the powers of government over a certain territory and population.

85. Article 1 of the Montevideo Convention on Rights and Duties of States of 1933, provides:

The State as a person of international law should possess the following qualifications:

(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.¹⁸

86. Black's Law Dictionary (6th edition) has defined Sovereignty as -

The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with **the right and power of regulating its internal affairs without foreign dictation**; also a political society, or state, which is sovereign and independent.

x x x

By "sovereignty" in its largest sense is meant supreme, absolute, uncontrollable power, the absolute right to govern. The word which by itself comes nearest to being the definition of "sovereignty" is will or volition as applied to political affairs.

87. In this regard, Sovereignty is similar to the idea of Independence, as defined in the Black's Law Dictionary (5th edition),

Independence: The state of condition of being free from dependence, subjection, or control. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power.

¹⁸ (1934) 165 *League of Nations Treaty Series*, at 19.

88. In Bouvier's Law Dictionary, (8th edition), sovereignty is defined as the effective exercise of Legislative, Executive and Judiciary Powers.

When analysed, sovereignty is naturally divided into three great powers; namely, the legislative, the executive, and the judiciary; the first is the power to make new laws, and to correct and repeal the old; the second is the power to execute the laws both at home and abroad; and the last is the power to apply the laws to particular facts; to judge the disputes which arise among the citizens, and to punish crimes.

89. The most comprehensive and succinct definition of Sovereignty so far observed is that of Mr. Helmut Steinberger,¹⁹

Sovereignty in the sense of contemporary international law denotes the basic international legal status of a State that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public international law.

90. Sovereignty is therefore the unbridled exercise of the State's powers all throughout its territory without external interference. In traditional conception, the State exercises 3 inherent powers: (a) Police Power,²⁰ (b) Power of Eminent Domain ²¹ and (c) Power of Taxation.²²

- i. Police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. The justification is found in the Latin maxims *salus populi est suprema lex* (**the welfare of the people is the supreme law**) and *sic utere tuo ut alienum non laedas* (**so use your property as not to injure the property of others**). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments

¹⁹ Steinberger, Helmut, "Sovereignty", in Bernhardt, R. (ed.), *Encyclopedia of Public International Law*, Vol. IV (Amsterdam, etc.: Elsevier, 2000), at 511.

²⁰ ***Ichong v. Hernandez***, G.R. No. L-7995, 31 May 1957.

²¹ ***Republic of the Philippines v. Philippine Long Distance Company***, G.R. No. L-18841, 27 January 1969.

²² ***Lladoc v. Commissioner of Internal Revenue***, G.R. No. L-19201, 16 June 1965.

through which the State, as *parens patriae*, gives effect to a host of its regulatory powers.²³

The power to “regulate” means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.²⁴

- ii. The right of eminent domain is the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose.²⁵ It is a power inherent in sovereignty.
 - iii. The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it.²⁶ It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need.²⁷ Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.²⁸
91. While in *Bayan Muna v. Romulo*,²⁹ the Honorable Court held that “treaties and international agreements have a limiting effect on the otherwise encompassing and absolute nature of sovereignty. And that by their voluntary acts, states may decide to surrender or waive some aspects of their sovereignty. “The usual underlying consideration in this partial surrender may be the greater benefits derived from a pact or reciprocal undertaking. On the premise that the Philippines has adopted the generally accepted principles of international law as part of

²³ JMM Promotions & Mgt. Inc. v. CA, G.R. No. 120095, August 5, 1996, 260 SCRA 319.

²⁴ Phil. Assn. of the Service Exporters, Inc. v. Torres, G.R. No. 101279, August 6, 1992, 212 SCRA 298.

²⁵ Bernas, S.J, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2009 edition, p.396-397 citing Charles River Bridge vs. Warren Bridge, 11 Pet. 420, 641 (U.S. 1837)

²⁶ Mactan Cebu Int’l. Airport Authority v. Marcos, 330 Phil. 392 (1996).

²⁷ Proton Pilipinas Corp. v. Republic of the Philippines, G.R. No. 165027, October 16, 2006, citing Province of Tarlac v. Alcantara, 216 SCRA 790, 798 (1992).

²⁸ NPC v. City of Cabanatuan, 449 Phil. 233 (2003).

²⁹ G.R. No. 159618, February 1, 2011

the law of the land, a portion of sovereignty may be waived without violating the Constitution."

92. In EDCA, however, the respondents' waiver of sovereignty is so gross that it constitutes **a derogation of our country's dignity and an unconscionable sellout of our sovereignty.**
93. In entering into this lopsided Agreement, Philippine authorities are also deprived under EDCA of exercising the inherent police power of the State, as well as the powers of eminent domain and taxation.

The "Agreed Locations" where US forces, personnel and contractors would be given free and blanket access and authority to conduct activities, are limitless in number and boundless in areas and are as yet unidentified. There are no clear guidelines on the identification or selection of "Agreed Locations".

94. In dealing with other states, Article II, Section 7 of the 1987 Philippine Constitution also explicitly provides that the State shall give paramount consideration to territorial integrity.
95. The concept of territorial integrity is as old as the sovereign State. It is one of the rights inherent in sovereignty and independence. Its chief importance lies in the field of the international law on the use of force (the *jus ad bellum*). The concept includes the inviolability of the territory of the State, including territory under the effective control and possession of a State.³⁰
96. The principle of territorial integrity prohibits interference within the domestic jurisdiction of states and forbidding the threat or use of force against the territorial integrity and political independence of states.

³⁰ Michael Wood, The Princeton Encyclopedia of Self Determination.
www.pesd.princeton.edu.

97. The following discussion will show that the respondents, in entering into EDCA, failed to ensure the permanent inviolability of our national territory and its effective control by the government and the State as mandated by the Constitution.

98. Article II of the EDCA defined Agreed Locations as -

4. “Agreed Locations” means facilities and areas that are provided by the Government of the Philippines through the AFP and that United States forces, United States contractors, and others as mutually agreed, shall have the right to access and use pursuant to this Agreement. Such Agreed Locations may be listed in an annex to be appended to this Agreement, and may be further described in implementing arrangements.

99. Article III, paragraph 2 of EDCA also provides, to wit:

2. When requested, the Designated Authority of the Philippines shall assist in facilitating transit or temporary access by United States forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).

100. The “Agreed Locations” are the areas that US Armed Forces, personnel and contractors will have **free and blanket access** to undertake: “training, transit, support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies and materiel; deploying forces and materiel; and such other activities as the Parties may agree.”

101. The Philippine government would also facilitate “temporary transit and access” of US Armed Forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).

102. The Agreed Locations are not only limitless both in terms of number and place but also unidentified as the Philippine and US authorities may provide for them in the yet unwritten or unpublished Annex of EDCA. The Philippine and US

authorities may still insert additional or expanded Agreed Locations in its “implementing arrangements” as provided under Article II, Paragraph 4 of EDCA.

103. The Philippine and US authorities may place these so-called Agreed Locations anywhere in the Philippines and may not even be clearly listed or described at all. Additionally, the fact that the Philippine and US authorities could insert agreed locations at any time after the Annex is appended through mere “*implementing arrangements*” renders the entire process non-transparent since they may surreptitiously add new or expanded agreed locations long after the EDCA is in motion hidden from public view.
104. The identification and determination of “Agreed Locations” will be subject to negotiations only by the respondents and the representatives of the US and will not be subject to the scrutiny of the public and of Congress.
105. The agreement does not also set any limits on what areas throughout the country that US troops can access, the number of US troops that can access these areas or facilities, and the duration of their stay.
106. Several news reports came out regarding the locations that the US may be given access to, these are the three former US bases—Clark airfield, Subic Bay, Poro Point and Camp Aguinaldo, the military’s general headquarters in Manila. Also included as possible locations are Fort Magsaysay in Nueva Ecija, Naval Station in San Miguel, Zambales, and Oyster Bay in Palawan.
107. Based on news reports, too, the US is also considering whether to seek access to four civil airports—Palawan, Cebu, General Santos, and Laoag—as well as Batanes airfield for refueling and emergency servicing.
108. During a Senate hearing on May 13, 2014, Defense Undersecretary Pio Lorenzo Batino said **any part of the Philippines** can become an “agreed location” that US troops can access under the EDCA.

109. Clearly, the respondents' act of granting US forces, personnel and contractors unimpeded use and access of limitless, boundless and yet unidentified portions of Philippine land in relation to Section 4, Article III, and Section 3, Article VI of EDCA violates the above-mentioned constitutional provisions.

The respondents yielded to the US forces the operational control of Agreed Locations for construction activities. The respondents also capitulated all of the Philippines' rights and authorities to the US government within the Agreed Locations for their operational control and defense. These acts of the respondents deprived the Philippine authorities of the right to exercise the Police Powers of the State over these so-called Agreed Locations.

110. Article III, paragraph 4 of EDCA grants to the US operational control of "Agreed Locations", thus -

ARTICLE III

X X X

4. *The Philippines hereby grants to the United States, through bilateral security mechanisms, such as the MDB and SEB, **operational control of Agreed Locations for construction activities and authority to undertake such activities on, and make alterations and improvements to, Agreed Locations.** United States forces shall consult on issues regarding such construction, alterations, and improvements based on the Parties' shared intent that the technical requirements and construction standards of any such projects undertaken by or on behalf of the United States forces should be consistent with the requirements and standards of both Parties. (emphasis supplied)*

X X X

111. The respondents likewise granted authority to the US forces to exercise all rights and authorities within the Agreed Locations that are necessary for their operational control or defense. Thus -

X X X

ARTICLE VI

X X X

3. *United States forces are authorized to **exercise all rights and authorities within Agreed Locations** that are **necessary for their operational control or defense, including taking appropriate measure to protect United States forces and United States contractors.** The United States should **coordinate** such measures with appropriate authorities of the Philippines.(emphasis supplied)*

X x x

112. In *Doctrine for the Armed Forces of the United States*, Joint Publication 1, published on 25 March 2013, **operational control** includes the authority for the following:

- (1) *Exercise or delegate operational control and tactical control or other specific elements of authority and establish support relationships among subordinates, and designate coordinating authorities.*

- (2) *Give direction to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations and joint training.*

- (3) *Prescribe the chain of command to the commands and forces within the command.*

- (4) *With due consideration for unique Service organizational structures and their specific support requirements, organize subordinate commands and forces within the command as necessary to carry out missions assigned to the command.*

- (5) *Employ forces within the command, as necessary, to carry out missions assigned to the command.*

- (6) *Assign command functions to subordinate commanders.*

- (7) *Plan for, deploy, direct, control, and coordinate the actions of subordinate forces.*

- (8) *Establish plans, policies, priorities, and overall requirements for the ISR activities of the command.*

- (9) *Conduct joint training exercises required to achieve effective employment of the forces of the command, in accordance with joint doctrine established by the CJCS, and establish training policies for joint operations required to accomplish the mission.*

This authority also applies to forces attached for purposes of joint exercises and training.

- (10) *Suspend from duty and recommend reassignment of any officer assigned to the command.*
- (11) *Assign responsibilities to subordinate commanders for certain routine operational matters that require coordination of effort of two or more commanders.*
- (12) *Establish an adequate system of control for local defense and delineate such operational areas for subordinate commanders as deemed desirable.*
- (13) *Delineate functional responsibilities and geographic operational areas of subordinate commanders.*

X X X

- 113. The US retains **operational control** of the Agreed Locations. EDCA, however, did not specify what US institution, entity or organization is principally tasked with the operational control of the Agreed Locations.
- 114. The US forces shall also **“exercise all rights and authorities”** to ensure operational control and defense. This includes putting in place security measures that would necessarily limit the Filipinos’ access to their facilities. This also means that US forces can arrest, detain or even use force against Filipinos allegedly in “self-defense.”
- 115. The Philippine authorities’ access to the Agreed Locations, on the other hand, will have to comply with the “operational safety and security requirements” and procedures that the US forces will impose. The Filipinos, including commanding officers of the AFP are not allowed access without the permission of the US forces as provided under Article III, Paragraph 5 of the EDCA.
- 116. Former Navy officer Lt. Senior Grade Mary Nancy Gadian in her affidavit dated August 26, 2009³¹ described how “operational control” is being done in US-controlled Camp Navarro in Zamboanga City, to wit:
 X X X X

9. After the 2002-1 Balikatan Exercises, the US troops stayed and established a permanent and continuous presence in Southern Mindanao. This is particularly described below.

³¹ Arnold J. Padilla. 2+2 equals more secret US bases in PH, 02 May 2012
<http://thepoc2.cloudapp.net/features/politi-ko/politiko-features/15817-2%202-equals-more-secret-us-bases-in-ph-part-2-of-2>

10. *After the 2002-1 Balikatan Exercises, the United States established a Joint Special Operations Task Force Philippines (JSOTFP) which is based in Camp Navarro. The JSOTFP is under the US Pacific Command which is based in Hawaii. Prior to the establishment of the JSOTFP, the US had a forward unit with about 500 men in Edwin Andrews Air Base in Sta. Maria, Zamboanga City. Their base is in Okinawa, Japan. In military parlance, a “forward unit” is an advance command unit that is installed to serve as the first line of defense against the enemy. The forward unit serves as the central command’s operating arm in the area.*

11. *Prior to their presence in Camp Navarro, the US military built permanent and temporary structures in the Edwin Andrews Air Base to house their personnel and equipment (which included tanks and communication equipment) and they also built a small permanent structure near the airstrip of the Air Base. In 2001, they already had open access to the airstrip and they had planes coming in and out almost every other day. Their aircraft (C-12, C-130 and Chinook helicopters) were parked in the base operations center of the Air Base. After they established their continuous presence within Camp Navarro starting in 2002, the US continued to maintain their office and warehouse near the airstrip in Andrews Air Base. **This area is fenced and secured by Filipinos and Americans hired by Dyn Corporation, an American private military contractor. Filipinos have no access to this area. (emphasis and italics supplied)***

x x x x

30. *I experienced and witnessed the arrogant, high-handed and imperious conduct, behavior and attitude of many US military officers and enlisted personnel as well as their civilian employees towards us Filipinos. Generally, they call us like they are summoning their servants. They often impose on us their wishes and expect us to submit to their commands. On the whole, their assertions of power and authority appear like they rule over us and the country.*

x x x

117. What is being practiced and implemented in US-controlled areas in Camp Navarro gives us an idea of how the Agreed Locations will be managed under the “operational control” of the US. Clearly, in granting “operational control” and authority to

exercise “all rights and authorities” within the Agreed Locations, the respondents allowed the Philippine forces to be subordinate to the US forces. This is inconsistent with the concept of sovereignty where states are in complete and exclusive control of all the people and property within their territory, and the principle that State sovereignty includes the idea that all states are equal as states.

118. In this regard, the Philippine government is deprived of its inherent powers in these so-called Agreed Locations.

The respondents through the EDCA and with grave abuse of discretion permitted the prepositioning of defense equipment, supplies and materiel in the Agreed Locations for the exclusive use of the US forces, granting them full control over their access to, use, and disposition of the same as well as the unencumbered right to remove them at anytime from the territory of the Philippines.

119. In Article IV, Section 1 of the EDCA, the US forces are authorized to preposition and store defense equipment, supplies, and materiel, termed also as “prepositioned materiel,” **including, but not limited to**, humanitarian assistance and disaster relief equipment, supplies, and **materiel**, at Agreed Locations.

120. The “*prepositioning of equipment, supplies and materiel*” means that the US will stockpile weapons, ammunition, supplies and other materiel that its ships, planes and troops will use abroad when needed or in case of war.

121. The relevant provisions of EDCA provide the following:

Article IV
EQUIPMENT, SUPPLIES, AND MATERIAL

4. The Philippines hereby authorizes United States forces, through bilateral security mechanisms, such as the MDB and SEB, to preposition and store defense equipment, supplies,

and materiel (“prepositioned materiel”), including, but not limited to, humanitarian assistance and disaster relief equipment, supplies, and material, at Agreed Locations. United States forces shall notify the AFP in advance regarding the quantities and delivery schedules of defense equipment, supplies, and materiel that United States forces intend to preposition in Agreed Locations, as well as who will make such deliveries

X X X

3. The prepositioned material of United States forces shall be for the exclusive use of United States forces, and full title to all such equipment, supplies, and material remains with the United States. United States forces shall have control over the access to and disposition of such prepositioned materiel and shall have the unencumbered right to remove such prepositioned material at any time from the territory of the Philippines.

X X X

5. United States forces and United States contractors shall have unimpeded access to Agreed Locations for all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal of such equipment, supplies and material.

X X X

122. In US lexicon, “**prepositioned materiel**” means military stockpiles. In a US General Accounting Office (GAO) Report, prepositioned materiel is meant,³²

“The U.S. military stores, or **prepositions**, reserves of military equipment and supplies near potential conflict areas to ensure that the material would be **quickly available** to forces **in the event of a crisis**. During a crisis, prepositioning would speed U.S. response times because only the troops and a relatively small amount of materiel would need to be brought by air to the conflict area.”

³² GAO/NSIAD-99-6 Army and Air Force Prepositioning,
<http://www.gao.gov/assets/160/156383.pdf>

123. Meanwhile, the US Department of Defense Military Dictionary defines materiel as,³³

MATERIEL - All items (including ships, tanks, self-propelled weapons, aircraft, etc., and related spares, repair parts, and support equipment, but excluding real property, installations, and utilities) necessary to equip, operate, maintain, and support military activities **without distinction as to its application for administrative or combat purposes.**

124. The EDCA clearly aims to allow the US a forward base for the prepositioning of its troops, weapons and other war materiel as provided for under its Article IV, Paragraph 2:

*The Parties share recognition of the benefits that such prepositioning could have for humanitarian assistance and disaster relief. The Parties also recognize the value of such prepositioning to the **enhancement of their individual and collective defense capabilities.***

125. The Philippine and US authorities inserted in Article IV, Paragraph 2 of the EDCA “humanitarian assistance and disaster relief” when it is merely a motherhood statement on the storage of relief goods, which the country could store anyway even without any military agreement. It is the second sentence, however, that is the main purpose of Article IV, Paragraph 2 of the EDCA—that the **US can store weapons, ammunition and other war materiel and equipment in the agreed locations on the ground that it is intended to “enhance” its defense capability.** The EDCA does not prohibit the use of these prepositioned armaments in covert or overt military operations in the Philippines or abroad. In fact, Article III, Sec. 1 of EDCA allows for the deployment of materiel from the agreed locations. Agreed locations can be the staging ground for the deployment of ships, tanks, and even missiles.

126. The EDCA’s references to Humanitarian Assistance and Disaster Response (HADR) are mere placebos designed to sidetrack the issue of the real purpose of prepositioned materiel. The concept of prepositioned materiel as the Americans use it does not even contemplate HADR.

³³ http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf

127. Humanitarian assistance is not a necessary or integral part of military agreements. Other countries in fact provide the Philippines with HADR but do not seek military agreements.
128. The Philippines, also has no say as to the inspection of the contents of the prepositioned materiel from the US and, thus, cannot object if there are nuclear, biological or chemical weaponry that the US may bring in.
129. While the Philippine authorities' access to the Agreed Locations is subject to the permission of the US forces, under Article IV, Paragraph 4 of the EDCA, the Filipinos must not impede private American contractors' access to these bases.
130. The EDCA introduces for the first time in an agreement the concept of "private military contractors."³⁴

Article II DEFINITIONS

3. "United States contractors" means companies and firms, and their employees, under contract or subcontract to or on behalf of the United States Department of Defense. United States are contractors are not included as part of the definition of United States personnel in this Agreement, including within the context of the VFA.
131. Article III, Section 1 of the EDCA grants US forces and private contractors access to Agreed Locations where they can conduct a broad range of **activities including but not limited to**; training, support, refuelling of aircraft, bunkering of vehicles, temporary maintenance of vehicles, temporary accommodation of personnel, communications, prepositioning of equipment, supplies and materiel, and **deploying forces and materiel**, and **such other activities as the Parties may agree**.
132. The activity "**deploying forces and materiel**" includes the launching of military drones which have become not just surveillance planes, but deadly offensive weapons. This means that the Philippines can become a launching pad for covert or

³⁴ United States contractors - companies and firms, and their employees, under contract or subcontract to or on behalf of the United States Department of Defense, not included in definition of US personnel under VFA. The VFA only mentions US forces and "civilian personnel."

overt military operations abroad such as those undertaken in many other wars that the US is involved in.

133. The enemies of the US can also consider as an act of war on the part of the Philippines, even the mere refueling of US planes here before they attack their targets abroad. This not only drags the Filipino People into wars or conflicts which they have no reason for involvement, but it also makes the Philippines a legitimate target for attack of the many enemies of the United States. The Philippine government, by allowing the insertion of these activities, has practically placed the country and the Filipino People in danger.
134. American contractors have nearly equal status as US forces in terms of unimpeded access to facilities. United States forces may contract for the delivery of any materiel, supplies, equipment, and the undertaking of services including construction in the territory of the Philippines **without restriction as to choice of contractor, supplier, or person. Such** contracts are solicited, awarded, administered **in accordance with the laws and regulations of the United States.**
135. The EDCA gives preferential treatment to US Contractors. However, these contractors are not only used for supplies and the construction of facilities but also for security work.
136. The EDCA is swamped with provisions on “US contractors” who are supposedly civilian corporations doing work in the Philippines. It allows activities of “*contractors and vehicles, vessels and aircraft operated by or for the US forces*” which do not officially constitute part of the US forces. In fact, not only *US forces* will operate the vehicles and aircrafts but yet unidentified third parties could also operate them “**for the US.**”
137. The US is known to hire contractors to distance themselves from accountability or liability for illegal acts committed in their foreign deployments. There are reports that these contractors, some identified as former Central Intelligence Agency (CIA) operatives and mercenaries previously employed in the US Army, are employed to do illegal acts for the US such as rendition, torture and other human rights violations.

138. The Philippines has no say when it comes to the entry of notorious armed private contractors like Blackwater, or war profiteers like Halliburton, or of the hiring of blacklisted firms like GlennDefense Marine.
139. Verily, the US forces’ use of the territory of the Philippines as a forward base and station for troops and materiel contravene the 1987 Constitution on upholding National Sovereignty, Territorial Integrity, National Interest and the Right to Self-Determination.

The respondents, through the EDCA, with grave abuse of discretion, authorized the Americans blanket authority to take “appropriate measures” to protect US personnel and private contractors, which may include arrests, detention and even the use of force. The US is merely obliged to “coordinate” such forceful measures with the Philippine Government.

140. The EDCA grants the US the right to use force or any “appropriate measures” to defend the base from perceived threats as provided for under its Article VI, Paragraph 3.

Article VI
SECURITY

3. United States forces are authorized to exercise all rights and authorities within Agreed Locations that are necessary for their operational control or defense, including taking appropriate measure to protect United States forces and United States contractors. The United States should coordinate such measures with appropriate authorities of the Philippines.

141. The US does not allow the Filipinos ready access to their armories, communication centers, intelligence hubs and war materiel.

142. Article VI, Paragraph 3 of the EDCA actually allows US forces to employ “appropriate measures” which includes arresting, detaining, subjecting to interrogation or worse shooting down any Filipino they perceive to threaten their “operational control or defense.” During the heydays of Subic and Clark, US soldiers shot and killed children scavenging in their garbage dumps on the pretext that they thought the Filipinos were wild boars.³⁵
143. There is no assurance in EDCA that the US forces, personnel and contractors may be held liable for violations of the Filipinos’ Bill of Rights.
144. On the contrary, EDCA expressly exempts US forces, contractors and “others” from the jurisdiction of the country’s judicial system in case of any dispute.

The respondents committed grave abuse of discretion when it deprived the Supreme Court through the EDCA of judicial power over the acts of US forces and contractors committed within the Philippines resulting to any civil, criminal or administrative liability.

145. In the event of any legal controversies between US personnel, American contractors and the common Filipino citizens, Philippine courts have no adjudicative power over the dispute. This is a clear abrogation of the State’s judicial authority within its territory.
146. The EDCA further relinquishes Philippine sovereignty in exempting US forces, contractors and “others” from the jurisdiction of the country’s judicial system, including the Supreme Court under Article XI,

³⁵ Thus, the famous “My brother is not a pig!” line of Ms. Nora Aunor in a movie, *Minsa’y Isang Gamu-gamu*, portraying the vicious impact of US bases in the country.

*The Parties agree to resolve any dispute arising under this Agreement exclusively through consultation between the Parties. **Disputes and other matters** subject to consultation under this Agreement **shall not be referred to any national or international court, tribunal, or other similar body**, or to any third party for settlement, unless otherwise agreed by the Parties.*

147. Article XI of the EDCA ousts the Philippine justice system from any jurisdiction over many issues pertaining to EDCA and grants US forces and their contractors immunity from prosecution or liability.
148. The many possible disputes that may arise under the EDCA are: criminal acts of operatives of US forces or US contractors, contract or labor dispute, destruction of the environment as a result of US activities, or spillage of toxic chemicals. But the US can easily get away with these cases as Article XI of EDCA takes away the jurisdiction of local courts over these issues. US authorities can even insist that the EDCA has ousted the International Criminal Court of jurisdiction over acts committed in the deployment of troops and materiel abroad or in the Philippines.
149. The emasculation of Philippine courts is manifestly evident in this provision of the EDCA,

Article XI

RESOLUTION OF DISPUTES

The Parties agree to resolve any dispute arising under this Agreement exclusively through consultation between the Parties. Disputes and other matters subject to consultation under this Agreement shall not be referred to any national or international court, tribunal, or other similar body, or to any third party for settlement, unless otherwise agreed by the Parties.

150. The word "dispute" covers civil, criminal and administrative issues that may arise in the implementation of EDCA. This means that Philippine courts have no jurisdiction over civil, criminal and administrative cases even if the acts giving rise to these were committed within Philippine territory, against Filipino persons, and violates the Philippine Constitution and other domestic laws of the country.

151. The Philippine Constitution is clear that judicial power is vested in the Supreme Court and such other lower courts as may be established by law.³⁶ The same constitution lists down original and appellate jurisdiction of the Supreme Court,³⁷ as well as its power to promulgate the rules of procedure and practice (Sec. 5 (5), Art. VIII).³⁸
152. This provision clearly gives the US forces, as well as its private contractors, immunity from Philippine law.
153. Disputes arising from the implementation of the EDCA are resolved only through "consultation" and not referred to any national or international tribunal, or other similar body, or to any third party for settlement, unless the Parties otherwise agree. This only means that American criminals and violators of Philippine laws will go scot-free because of the absence of imposition of a penalty and no court or third party to check or review the legality or justness of the result of "consultations." US soldiers, mercenaries and contractors can commit crimes and violate Philippine laws with impunity.
154. The Philippine experience with the so-called Subic rape case under the VFA is a despicable and shameful reminder of what can transpire again through the EDCA.
155. Despite the fact that the Regional Trial Court of Makati found L/Cpl. Daniel Smith guilty in 2006 of raping a Filipina, he was later on secretly taken out of Philippine jail and transferred to a detention facility under the control of the United States government.
156. In that case, the VFA provisions controlled the issue of jurisdiction over the person of a convicted US personnel. Under the VFA,³⁹

The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippine and United States authorities. xxx

³⁶ Section 1, Article VIII of the 1987 Philippine Constitution.

³⁷ Section 5 (1-2), Article VIII of the 1987 Philippine Constitution.

³⁸ Section 5 (5), Article VIII of the 1987 Philippine Constitution.

³⁹ Article V, Paragraph 10 of the Visiting Forces Agreement.

157. The issue of detention was also the subject of “consultations” between the US and the Philippines. To implement the VFA provision on detention, agreements between the states were reached, as embodied in the Romulo-Kenney Agreements of 19 December 2006 and 22 December 2006, wherein Smith was returned to the custody of the US at the American Embassy in Manila.
158. The VFA contains more specific provision on the Philippine courts' jurisdiction over crimes committed within the territory. Nevertheless, complete relief, from the moral perspective and dignity of the ordinary Filipino, was never achieved. This scale of injustice is multiplied many times over with the sweeping removal of judiciary power and jurisdiction over illegal acts committed in the implementation of the EDCA.
159. American soldiers can thus once again ravage Filipinas without having to think twice about repercussions as the EDCA itself denies their accountability under Philippine Law.
160. US Military Police (MPs) can likewise shoot Filipinos on sight and they won't even have to make the excuse later on that they mistakenly thought that they were pigs.
161. The deprivation of effective Judicial Authority and the exercise of the inherent powers of the State on the part of the Philippine government as to the Agreed Locations contained in the EDCA, the personnel and materiel of the US forces therein, along with the non-disclosure of subsequent implementing agreements, amount to violations of Philippine Sovereignty and travesties to the 1987 Constitution.
162. Ironically, the Agreed Locations in Philippine territory and the activities contemplated in the EDCA come under the power and administration of a foreign country, far from the reach of Philippine laws.
163. It is resoundingly clear, therefore, that the implementation of the EDCA in the Philippines violates the country's Sovereignty.
164. The surrender of Philippine Sovereignty to the US through the EDCA constitutes manifest and patent grave abuse of discretion.

B. RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION BY ENTERING INTO THE EDCA BECAUSE IT IS CONTRARY TO OUR NATIONAL INTEREST. EDCA IS ALSO AGAINST PUBLIC POLICY AND PUBLIC INTEREST.

165. Article II, Section 7 of the Constitution provides that “The State shall pursue an independent foreign policy. **In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.**”
166. Fr. Joaquin Bernas explained that this provision is the “closest reference to military bases that a dominant majority in the Constitutional Commission would allow in the body of the Constitution.”⁴⁰
167. National interest is defined as “the interest of a nation as a whole held to be an independent entity separate from the interests of subordinate areas or groups and also of other nations or supranational groups.”⁴¹ It is “a matter which has or could have impact upon all other members of society.”⁴²
168. In “Philippine Treaty Law and Practice”⁴³ J. Eduardo Malaya, respondent herein, and Maria Antonina Mendoza-Oblena, admit that the “substantive content of Philippine foreign policy is anchored on the Constitution, specifically the precepts that in the country’s relations with other states the paramount consideration shall be national sovereignty, territorial integrity, **national interest**, and the right to self-determination, and that the country adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations,” citing Article II, Sections 2 and 7 of the Constitution.
169. However, respondents’ act of entering into the unequal agreement called EDCA is a betrayal of our national interest. While EDCA is being peddled by the government as beneficial

⁴⁰ The 1987 Constitution of the Philippines, A Commentary, 2009 edition, p. 71.

⁴¹ <http://www.merriam-webster.com/dictionary/national%20interest> with reference to H. J. Morgenthau.

⁴² <http://www.duhaime.org/LegalDictionary/N/NationalInterest.aspx>

⁴³ Published in the Integrated Bar of the Philippines Journal, Vol. 35, No. 1, August 2010, pp. 1-17.

to the Philippines, a scrutiny of the entire agreement will readily show that in reality we do not stand to gain anything from it.

170. On the contrary, EDCA is replete with provisions which are unjust, disadvantageous and prejudicial to our national interest; and inimical to public policy and public interest.

The EDCA allows the use of Philippine real property, public or private, without rent.

171. Paragraph 3 of Article III on Agreed Locations provides that “the Philippines shall make Agreed Locations available to the United States forces **without rental** or similar costs.” This is shocking and exceeds the bounds of reason.

172. Under the EDCA, the Philippines has surrendered limitless portions of Philippine land all over the country for so-called agreed locations in exchange for nothing, not even a paltry sum. This rent-free provision was also found in the rejected Military Bases Agreement (MBA), to wit:

“Whereas the Governments of US and RP are desirous of cooperating in the common defense of their two countries through arrangements...and particularly through a grant to the US by the RP in the exercise of its title and sovereignty, the use, **free of rent**, in furtherance of mutual interest of both countries, **of certain lands of the public domain.**”

173. Ironically, despite the rent-free use of the US forces on the Agreed Locations, the Philippines may even compensate them for the “improvements or construction” made on the Agreed Locations.⁴⁴

⁴⁴ *Id.*, Art. V (2)

**No taxes and fees,
 And free radio spectrum.**

174. The Philippines has also yielded to US forces and personnel and US contractors under the EDCA the use of our public utilities without taxes and fees and of radio spectrum for free, thus:

“Article VII
 Utilities and Communications

1. **The Philippines hereby grants to United States forces and United States contractors the use of water, electricity, and other public utilities** on terms and conditions, including rates or charges, no less favorable than those available to the AFP or the Government of the Philippines in like circumstances, **less charges for taxes and similar fees, which will be for the account of the Philippine Government.** United States forces’ costs shall be equal to their pro rata share of the use of such utilities.
2. The Parties recognize that it may be necessary for United States forces to use the radio spectrum. **The Philippines authorizes the United States to operate its own telecommunication systems** (as telecommunication is defined in the 1991 Constitution and Convention of the International Telecommunication Union [“ITU”]). This shall include the right to utilize such means and services as required to ensure the full ability to operate telecommunication systems, and the right to use all necessary radio spectrum allocated for this purpose. Consistent with the 1992 Constitution and Convention of the ITU, United States forces shall not interfere with frequencies in use by local operators. **Use of the radio spectrum shall be free of cost to the United States.”**

175. The above provisions plainly treats US forces and contractors as more privileged than and discriminates against ordinary Filipino citizens or corporations, as the former will pay less and will not be charged with taxes and fees in the use of water, electricity and other public utilities. . In fact, the taxes for the use of Philippine facilities will be paid under the account of the

Philippine government. It would be the Philippine government subsidizing the taxes of the US forces and their private contractors, including the multi-billion dollar companies that are part of the US military industrial complex. No other private company in the Philippines enjoys this privilege at the moment.

176. Even the use of radio spectrum is given away to the US (not merely to US forces and contractors) for free. Not only are these EDCA provisions inimical to our national interest, more importantly, they violate the following constitutional provisions:

Section 28. (1) The rule of taxation shall be uniform and equitable. XXXX

Section 28. (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

177. To reiterate, unlike ordinary Filipinos/corporations, US forces and US contractors are given favored treatment as they are not charged under the EDCA with payment of taxes and fees in the use of water, electricity and other public utilities in our own land. This is no doubt a violation of the equal protection clause.

US forces were granted the option to choose the contractor, supplier, or person who will provide the materiel, supplies, equipment, or services in agreed locations and activities, in accordance with the laws and regulations of the Unites States.

178. Article VIII on Contracting Procedures further provides that:

“1. United States forces may contract for any materiel, supplies, equipment, and services (including construction) to be furnished or undertaken in the territory of the Philippines **without restriction as to choice of contractor, supplier, or person who provides such materiel, supplies, equipment, or services.** Such contracts shall be solicited, awarded, and administered **in accordance with the laws and regulations of the Unites States.**”

179. In relation thereto, it is well to restate Article II, paragraph 3 of EDCA, which defines United States contractors as “*companies and firms, and their employees, under contract or subcontract to or on behalf of the United States Department of Defense.*” They are “not included as part of the definition of United states personnel” in EDCA as well as in the VFA.
180. It should be stressed that under EDCA, the US is vested with the sole and plenary power to choose the contractor. The Philippines has no say at all, much less to refuse the entry into our country of notorious US private military contractors that reportedly have served as mercenaries of the US forces. It has been reported that these private military contractors are employed to carry out illegal or criminal acts for the US, including torture, rendition and other human rights violations. This way, they say, the US is able to extricate its forces from direct liability.
181. An example of these infamous private military contractors is DynCorp International which has been in the Philippines since 2002 “fencing off a facility of the Joint Special Operations Task Force-Philippines (JSOTF-P) within the Edwin Andrews Air Base in Zamboanga City,”⁴⁵ denying access thereto even to Filipino camp commanders, as revealed by the military whistleblower, former Navy Lt. Senior Grade Mary Nancy Gadian who had many direct dealings with US troops in Mindanao and who exposed the various offenses committed by US troops in the Philippines.
182. The article adverted to conservative American journalist Tucker Carlson who wrote in *Esquire* in March 2004, describing DynCorp as “an American firm that specializes in high-risk contract work for the Pentagon and the State Department.” He further wrote:
- “Pick an unsafe country and DynCorp is likely to be there. In Afghanistan, DynCorp bodyguards protect Hamid Karzai, the most imperiled president on earth. In Colombia, DynCorp pilots fly coca-killing crop dusters slow and low over drug plantations, an integral part of Washington’s Plan Colombia. DynCorp is in Kosovo,

⁴⁵ From an article, “*What’s a Notorious US Military Contractor Doing Inside the AFP’s Camp in Zamboanga?*” by Alexander Martin Remollino, *Bulatlat.com*, September 12, 2009.

Israel (three of its employees were blown up and killed in Gaza last year), East Timor, Sarajevo, Saudi Arabia, **the Philippines**, Liberia, and many other sketchy places. Last spring, DynCorp – along with Kroll Inc. and as many as twenty other large private security companies, and perhaps dozens of smaller ones, employing tens of thousands of individual contractors – came to Iraq.”

183. In 2007, at the Permanent People’s Tribunal (PPT) Session on Colombia, DynCorp was indicted for its various human rights violations and crimes in Colombia, as well as other offenses committed in Nicaragua, Bosnia, Haiti, Iraq, and Afghanistan. The indictment, prepared by the José Alvear Restrepo Lawyers’ Collective, read:

“Its presence in countries receiving US military assistance (either in low-intensity situations or in settings involving open US intervention) have produced important scandals, directly implicating the enterprise in the commission of crimes and human rights violations.

“For instance, in the 1980s the enterprise was implicated in the Iran-Contra scandal. In the 1990s, the enterprise became a fundamental component for the US intervention of Haiti. Lastly, DynCorp members in Bosnia were involved in the sexual trafficking of minors, but due to their immunity no one was ever tried before any court in the world.”⁴⁶

184. In the book *Shadow Force: Private Security Contractors in Iraq* by David Isenberg⁴⁷, DynCorp was depicted as:

“An account from the actor Sean Penn, in describing a trip he made to Baghdad, demonstrates how hyperbolic the discussion of PMCs can be:

As the rifle concussion vibrates through my head, so does the name DynCorp. I’ve since done a little research, and here’s what I found: DynCorp is a ubiquitous presence in Baghdad. A PMC, or private military corporation, DynCorp was started in the late ‘40s and given a big recruiting boost by the post-Church Commission firings of thousands of CIA operatives by President Carter in the late ‘70s.

⁴⁶ *Ibid.*

⁴⁷ Published by Praeger, December 30, 2008

PMCs, and there are many of them, tend to be staffed and directed by retired generals, CIA officers, counterterrorism professionals, retirees Special Air Service men, Special Forces guys and so on. DynCorp is a subsidiary of the benignly named Computer Sciences Corporation. **DynCorp forces are mercenaries.** Their combats have included covert actions for the CIA in Colombia, Peru, Kosovo, Albania and Afghanistan.”

185. Another disreputable PMC is Blackwater USA which was re-named Worldwide in 2007, Xe Services in 2009, and Academi in 2011, due to scandals over misbehavior by its employees in Iraq. It was founded by former Navy SEAL and fundamentalist Christian Erik Prince.⁴⁸
186. Blackwater was sued under the Alien Tort Claims Act on behalf of an injured Iraqi and the families of three of 17 Iraqis killed by Blackwater employees during the September 16, 2007, Blackwater Baghdad shootings.⁴⁹
187. In August 2012, the company agreed to pay \$7.5 million in fines, without admitting guilt, to the US government to settle various charges. Most of the charges were dropped in February 2013 when it was revealed that **the employees were acting under the orders of the US government.**⁵⁰
188. Even in the recent Ukrainian crisis, Russian News Agency has reported that “mercenaries” from Greystone, Ltd., a contractor formally affiliated with Academi, were disguising themselves as Ukrainian troops’... ‘Videos that showed what was described as “heavily armed troops” composed of Blackwater and Greystone employees surfaced online in the weeks prior to the allegations.’⁵¹
189. Thus, the grant to US by EDCA of the unbridled authority to select its contractors poses great danger to the safety and security of the Filipino people. Consider this: despite DynCorp’s notoriety worldwide, US still awarded it a contract modification **valued at \$44.9 million, under a previously awarded Naval Facilities Engineering Command-Pacific**

⁴⁸ <http://www.nndb.com/company/462/000105147/>

⁴⁹ http://en.wikipedia.org/wiki/Blackwater_Worldwide

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

contract to provide operations support services within the Republic of the Philippines.⁵²

190. The DFA primer on EDCA released prior to its signing, stated that “the Agreement will further benefit the Philippines economically through the provision of **jobs and other economic opportunities** in the construction activities in the Agreed Locations and procurement of local goods and supplies by the US military and personnel.” This is a pure lie.
191. Nothing in the afore-quoted provision indicates that **priority shall** be given to Filipinos in terms of jobs and in the contracting of supplies, equipment or services for the construction of US facilities here. Proofs of this are the following:
- a. US forces have “no restriction as to choice, contractor, supplier, or person who provides such materiel, supplies, equipment, or services” in accordance with the laws and regulations of the US.
 - b. “United States forces shall” MERELY “**strive** to use Philippine suppliers of goods, products, and services to the greater extent practicable in accordance with the laws and regulations of the United States.” (Article VIII, par. 2)

It is clear that there is no commitment from the US government that it would use Philippine suppliers of goods, products and services in the construction and other activities in Agreed Locations. Moreover, in case the US decides to get the goods, products and services from Philippine suppliers, the laws and regulations of the US shall apply. There is no provision in the EDCA that would grant the same tax-free and charges-free privilege to Philippine suppliers.

192. Clearly, the promised jobs and other economic opportunities being heralded by the respondents were obviously only made-up to deceive the Filipino people into believing in the supposed benefits of EDCA.

⁵² Phil. Defense Forces Forum at
http://s3.zetaboards.com/Defense_Philippines/topic/7637046/1/

EDCA violates the constitutional provision against the presence of nuclear weapons in Philippine territory.

193. Another misleading provision in the EDCA is that “The **prepositioned materiel shall not include nuclear weapons.**” (Article IV, par. 6)

194. Article II of our Constitution is clear on the Philippine policy against nuclear weapons, thus:

Section 2. The Philippines **renounces war as an instrument of national policy**, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Section 8. The Philippines, **consistent with the national interest**, adopts and pursues a **policy of freedom from nuclear weapons in its territory**.

195. As it is, however, Article IV, par. 6 of EDCA does not prohibit nuclear weapons. It merely provides that nuclear weapons will not be among the prepositioned materiel. Nowhere in EDCA is it provided that warships and aircrafts carrying nuclear weapons are barred from Philippine territory. Stated otherwise, the provision implies that nuclear weapons may be brought into the country by US warships and aircrafts, though not necessarily for storage or prepositioning, but still in violation of the above principles and state policy declared in our Constitution. What make this worse are the following Article IV provisions in EDCA denying the Philippines access to US prepositioned materiel:

“3. The prepositioned materiel of United States forces shall be for **the exclusive use** of United States forces, and full title to all such equipment, supplies, and materiel remains with the United States. **United States forces shall have control over the access to and disposition of such prepositioned materiel** and shall have the

unencumbered right to remove such prepositioned materiel at any time from the territory of the Philippines.

4. United States forces and United States contractors shall have unimpeded access to Agreed Locations for all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel, **including delivery, management, inspection**, use, maintenance, and removal of such equipment, supplies and materiel.”

196. It is instructive at this point to refer to Fr. Bernas’ enlightened discussion on the meaning and implication of Article II, Section 8 of the Constitution, to wit:

The original formulation of this provision read thus: “The Philippines is a nuclear-free country. No portion of its territory shall be used for the purpose of storing or stockpiling nuclear weapons, devices or parts thereof.” Speaking for the provision, Commissioner Azcuna said:

I do not have to elaborate, Madame President, the enormous destructive capacity of nuclear weapons, particularly, because Asia has had the distinct misfortune of being the only place in the world where nuclear weapons were dropped and exploded during war. It was not too long ago that Asia and the world commemorated that fateful event. Since the dropping of atomic bombs in Japan towards the end of World War II, the technology of nuclear weapons has multiplied tremendously such that the weapons dropped in Japan are only used as trigger devices for the weapons of today. Those bombs were merely atomic bombs. The bombs of today are hydrogen bombs. Those bombs merely used fission as a principle. The bombs of today use fusion, the very power of the sun – fusion of nuclear particles, releasing tremendous energy.

An explosion of a nuclear bomb, Madam President, is considered an uncontrolled nuclear reactions. That is the definition of a nuclear explosion. What we seek to prevent from happening within our land is the occurrence of an uncontrolled nuclear reaction. Why put it in the Constitution? Why not leave it to the President, why not leave it to the Senate, to deal with these matters? Madam President, we are here framing a constitution. We are here in that part of the Constitution which we call the Article of the Declaration of Principles. We say that the Constitution is a reflection of the

aspirations and the ideals, and even the fears, of our people. They why be silent about this?

The provision, as it stands now, raises two questions. First, what are banned by the provision? Second, how absolute is the ban?

Clearly, the ban is only on nuclear arms – that is, the use and stockpiling of nuclear weapons, devices, and parts thereof. And this includes, according to Commissioner Azcuna “not only possessing, controlling and manufacturing nuclear weapons. But also nuclear tests in our territory, as well as the use of our territory as dumping ground for radioactive wastes.” Moreover, **the ban suggests that, in our relations with other states, there must be a mechanism for the verification of the existence or non-existence of nuclear arms.** This will therefore affect the terms of any renewal the country might agree to of existing military bases agreements with the United States. The provision must be read as a mandate to the Philippine government to insist the pursuit of a policy on nuclear weapons is a controlling guideline if there should be any new negotiation with the United States on the subject of military bases.

x x x

The original formulation of the provision, cited above, might suggest that the ban on nuclear arms is absolute. But, as explained by Commissioner Azcuna, that was never the intention:

In my sponsorship speech, I pointed out that this is a policy, albeit a basic policy because it is stated in the Declaration of Principles and State Policies in the Constitution. Consequently, what we are seeking here is primarily a statement of an orientation, a basic direction in the Constitution, that **as a matter of policy, we are against nuclear weapons in our territory. As practiced by other states, that means prohibition not only of possessing, controlling and manufacturing nuclear weapons, but also of nuclear test in our territory, as well as the use of our territory as a dumping ground for radioactive wastes.** This is embraced in the policy against nuclear weapons in one’s territory. As practiced both in Latin America, under the Treaty of Tlatelolco, as well as by the South Pacific countries that endorsed the Treaty of Rarotonga, passage of ships, whether nuclear-powered or nuclear-arms-bearing, is left to the determination of every state

on a case-to-case basis. It is not *per se* a violation of a nuclear weapons free zone to allow a ship that is nuclear-powered or bearing nuclear weapons to pass or enter one's territory. However, it has to be done in the light of policy.

There is a policy against the presence of nuclear weapons and, therefore, the exceptions to that policy would have to be strictly construed or justified. What we are saying with the formulation now is that it can be **justified only on the basis or on the crucible of the national interest.** If it is consistent with the national interest, then really there is the possibility of deviating from the policy but the policy is there. The basic direction is there. There can be deviation now and then because we said that this is not a 100 percent rule; this is not absolute. But deviations must be justified on the basis and the crucible or test of national interest.

Azcuna, however, did not explicate what the exception would be.

The exception first surfaced in the reformulation which was worded thus: "The Philippines shall, consistent with consideration solely of national interest, pursue a policy of freedom from nuclear weapons in its territory." Explaining this reformulation, Commissioner Monsod said that whether or not to allow nuclear weapons would be decided **on the basis of what is best for the "national interest"** as this might be defined by the executive and legislative departments. Later the word "solely" was dropped in order not to suggest that the nation's commitment to a policy against nuclear arms was dictated solely by national interest; the opposition could also be based, for example, on the desire for peace in the region."

But that was not to be the end of the discussion. Concerned about media reports which tended to read the provision as a total and absolute ban on nuclear arms, Commissioner Monsod wanted to be doubly sure of what the meaning was of the phrase "consistent with the national interest" and so he wanted it rephrased to read "subject to the national interest." Thus, he elicited from Commissioner Azcuna the explanation that "consistent with" means "subject to," that is, "that both adoption and the pursuit of the policy, as well as any exception therefrom, must be subject to the national interest. Still uneasy about the possibility of misinterpretation,

Commissioner Monsod asked for the approval of a clarificatory resolution. Co-authored by several Commissioners, the resolution read:

Resolved that since it is the intent and sense of the Constitutional Commission that the phrase “**consistent with the national interest**” in Section 7 [now Section 8] of the Article on Declaration of Principles involving the policy on nuclear weapons in Philippine territory **also means “subject to the national interest”** as borne by the records of the proceedings and the unanimous manifestation of the Members of the Commission, the motion to reconsider and amend such provision filed by 28 Commissioners is deemed unnecessary and withdrawn from further consideration but is hereby incorporated in the records of the Commission.

No one objected to the resolution and the problem was deemed settled.⁵³ (*Emphasis supplied.*)

197. Clearly, therefore, the ban on nuclear weapons includes those carried in transit to our territory by US warships and warplanes, which is implied in Article IV, par. 6 of EDCA. With this provision, as well as the lack of any mechanism therein for the verification of existence or non-existence of nuclear weapons, EDCA tramples upon our Constitution.

198. Another EDCA provision which poses danger to our environment and, thus, our national interest is the following:

“1. **United States forces shall not intentionally release any hazardous materials or hazardous waste owned by it**, and, if a spill occurs, shall expeditiously take action in order to contain and address environmental contamination resulting from the spill.” (Article IX, par. 3)

199. Implied in said provision is the fact that **US forces are allowed to bring** into the country hazardous materials or hazardous waste, threatening the right of the Filipino people to a balanced and healthful ecology and their right to health (Article II, Sections 16 and 15 of our Constitution).

⁵³

The 1987 Constitution of the Philippines, A Commentary, *supra*, pp. 72-75.

The EDCA in reality has no term limit.

200. Before EDCA was finally released to the public, its proponents and apologists declared that the agreement has an initial term of 10 years. But they were silent on the date of its expiration. This devious concealment is revealed in Article XII, par. 4 which provides:

Article XII ENTRY INTO FORCE, AMENDMENT, DURATION, AND TERMINATION

“4. This Agreement shall have an initial term of ten years, and thereafter, it **shall continue in force automatically** unless terminated by either Party by giving one year’s written notice through diplomatic channels of its intention to terminate this Agreement.”

201. Unlike the MBA which explicitly and without pretense provided that it shall remain in force for 99 years (then amended to 25 years in 1966), EDCA, on the other hand, resorts to deception by making it appear that its term is for 10 years only. Such lie is underscored by the mandatory clause “it **shall continue in force automatically**,” which plainly means that EDCA is a continuing agreement and will only end if either of the parties terminates it and not because of the expiration of its term.
202. Moreover, there is no mandatory requirement for review of the EDCA within a certain period before the end of the 10-year term, nor does it require renegotiation for its continuance.
203. It bears stressing too that under Article X, sections 1 and 2, and Article XX, section 1 of EDCA, the terms of the Agreement may be modified or amended by written agreement of the parties in the form of annexes or implementing arrangements. Thus, the kind and nature of the activities that may be conducted in the Agreed Locations may be increased and broadened. The new arrangements will not have to pass the scrutiny of the Congress and the Filipino People.

204. The non-disclosure of the contents of the Annexes, implementing arrangements, and the new arrangements between the US forces and the Philippine representatives violates Article II, Section 28 of the Constitution on full disclosure of matters regarding public interest, to wit:

SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a **policy of full public disclosure of all its transactions involving public interest.**

205. More importantly, Article I, section 2 of EDCA states that “this Agreement provides the principal provisions and **necessary authorizations with respect to Agreed Locations.**” This provision is a blanket authorization on all matters relating to the Agreed Locations even if the parties are yet to discuss the same. The blanket authorization may also cover the “implementing arrangements” and the amendments to the terms of the Agreement that the parties may enter into in the future. Such blanket authorization is not valid for being contrary to public policy and public interest.

The underlying purposes of EDCA reveal that it is not for the interest of the Filipino people.

206. The real motive behind EDCA is revealed in the United States Department of Defense’s document entitled “Sustaining U.U. Global Leadership: Priorities for 21st Century Defense” dated January 2012, which states in part:

“U.S. economic and security interests are inextricably linked to developments in the arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia, creating a mix of evolving challenges and opportunities. Accordingly, while the U.S. military will continue to contribute to security globally, **we will of necessity rebalance toward the Asia-Pacific region”.**

207. Indeed, EDCA does not serve and promote our national interest. Rather, it was hatched to protect **US economic and security interests** and maintain US global power projection and military superiority at a lower cost, thus:

“Whenever possible, we will develop **innovative, low-cost, and small-footprint approaches** to achieve our security objectives, relying on **exercises, rotational presence, and advisory capabilities.**”

208. Parenthetically, the US is mandated by its Budget Control Act of 2011 to reduce its federal spending which includes expenses for defense.

209. Thus, the rent-free and taxes/fees-free provisions in favor of US forces and US contractors under EDCA are meant to carry out US budget cut requirements at the expense of the Filipino people.

II

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY SIGNED THE EDCA, ESSENTIALLY A BASING AGREEMENT, IN VIOLATION OF THE CONSTITUTION AND CONTRARY TO THE TENETS OF INTERNATIONAL LAW.

EDCA is a basing agreement that is not allowed under the 1987 Constitution, except under stringent conditions.

210. The 1987 Philippine Constitution has a categorical and qualified prohibition on foreign military bases, troops, or facilities in the country beyond the year 1991. Section 25, Article XVII of the Constitution explicitly provides, that:

“After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, **foreign military bases, troops, or**

facilities shall **not** be allowed in the Philippines **except under a treaty** duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

211. In *Bayan v. Zamora*⁵⁴, the Honorable Court clarified that:

“The clause does not refer to ‘foreign military bases, troops, or facilities’ collectively but treats them as separate and independent subjects. The use of comma and the disjunctive word ‘or’ clearly signifies disassociation and independence of one thing from the others included in the enumeration, such that, the provision contemplates three different situations - a military treaty the subject of which could be either (a) foreign bases, (b) foreign troops, or (c) foreign facilities - any of the three standing alone places it under the coverage of Section 25, Article XVIII.”

212. This reflect the same disposition of the framers during the deliberations of the 1986 Constitutional Commission, to wit:

“MR. MAAMBONG: I just want to address a question or two to Commissioner Bernas.

This formulation speaks of three things: foreign military bases, troops or facilities. My first question is: If the country does enter into such kind of a treaty, must it cover the three-bases, troops or facilities-or could the treaty entered into cover only one or two?

FR. BERNAS: Definitely, it can cover only one. **Whether it covers only one or it covers three, the requirement will be the same.**

MR. MAAMBONG: **In other words, the Philippine government can enter into a treaty covering not bases but merely troops?**

FR. BERNAS: **Yes.**

MR. MAAMBONG: I cannot find any reason why the government can enter into a treaty covering only troops.

FR. BERNAS: Why not? Probably if we stretch our imagination a little bit more, we will find some. We just want to cover everything.

MR. MAAMBONG: I would like to stretch my imagination but I am just asking the honorable Commissioner in what instance the Philippine government could enter into a treaty with the American government or another government and allow troops to come in without any bases or without any facilities.

FR. BERNAS: By the term "bases," were we thinking of permanent bases?

MR. MAAMBONG: Yes.

FR. BERNAS: But let us suppose that we are in very serious danger. Then the government might say: "Well, we need foreign troops to help ourselves."

MR. MAAMBONG: And so, do we need an advanced treaty to effectuate that situation?

FR. BERNAS: Yes.

x x x

MR. MAAMBONG: x x x this may be nitpicking a little bit, but **could we enter into a treaty wherein we allow facilities to be here without necessarily allowing bases?**

FR. BERNAS: **I think that is a possibility because, for instance, one can maintain a silo here for nuclear weapons** — unless we disallow nuclear arms, of course. But they might want various kinds of facilities which are not necessarily troops, not necessarily bases.

MR. MAAMBONG: Thank you."

The EDCA clearly involves the entry of foreign troops and facilities ⁵⁵ into Philippine territory.

213. Article I of EDCA provides that defense cooperation between the Philippines and the US includes “authorizing access to Agreed Locations in the territory of the Philippines by United States forces”.

214. Article III of EDCA states that the Philippines “authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by or for United States forces” may have access to and conduct activities in Agreed Locations in the Philippines.

215. The EDCA provides who are considered US forces and US personnel for purposes of EDCA. Thus, Article II on the definitions of terms states, to wit:

“1. ‘United States personnel’ means United States military and civilian personnel temporarily in the territory of the Philippines in connection with activities approved by the Philippines, as those terms are defined in the VFA.

2. ‘United States forces’ means the entity comprising United States personnel and all property, equipment, and material of the United States Armed Forces present in the territory of the Philippines.”

216. **The activities authorized to be conducted under the EDCA constitute basing activities.** The activities authorized or agreed to by the Philippine government to be conducted on Agreed Locations are the following, among others, to wit:

⁵⁵ **Troops** is a collective term for uniformed military personnel, as defined by the US Department of Defense (DoD), Joint Publication 1-02. **Facilities** include the permanent, semipermanent, or temporary real property assets required to operate and support the materiel system, including conducting studies to define types of facilities or facility improvements, locations, space needs, utilities, environmental requirements, real estate requirements, and equipment, as defined by the Defense Systems Management College, which is chartered to provide support to the US DoD

- i. temporary accommodation of personnel [Art III (1)];

This connotes a longer period of stay by US forces and personnel in the Philippines compared to “visits” by US armed forces under the VFA.

- ii. **prepositioning** and storage of **defense** equipment, supplies, and **materiel** [Art III (1)], Art IV (1)];

The US Department of Defense Military Dictionary defines **materiel** as -

*All items (including ships, tanks, self-propelled weapons, aircraft, etc., and related spares, repair parts, and support equipment, but excluding real property, installations, and utilities) necessary to equip, operate, maintain, and support military activities **without distinction as to its application for administrative or combat purposes.***

The prepositioning program⁵⁶ of the US Navy’s Military SeaLift Command describes the role of prepositioning in the US military strategy, thus -

Prepositioning Program is an essential element in the U.S. military’s readiness strategy. Afloat prepositioning strategically places military equipment and supplies aboard ships located in key ocean areas to ensure rapid availability during a major theater war, a humanitarian operation or other contingency. MSC’s 26 prepositioning ships support the Army, Navy, Air Force, Marine Corps and Defense Logistics Agency.

Prepositioning ships provide quick and efficient movement of military gear between operating areas without reliance on other nations’ transportation networks. These ships give U.S. regional combatant commanders the assurance that they will have what they need to quickly respond in a crisis - anywhere, anytime. During a contingency, troops are flown into a theater of operations to rapidly employ the cargo from these ships.

Many of MSC’s prepositioning ships are able to discharge liquid, containerized or motorized cargo both pier side or while anchored offshore by using floating hoses and shallow-draft watercraft, called lighterage, that are carried aboard. This allows cargo to be ferried to shore in areas where ports are non-existent or in poor condition and gives the nation’s military forces the ability to operate in both developed and undeveloped areas of the world.

Prepositioning ships include a combination of U.S. government-owned ships, chartered U.S. - flagged ships and ships activated from the Maritime Administration's Ready Reserve Force. All prepositioning ships are operated by U.S. civilian mariners who work for ship operating companies under contract to the federal government.

While most active ships in MSC's Prepositioning Program strategically place combat gear at sea, there are other ships, including:

- *The Mobile Landing Platform, a new class of ships designed to serve as a mobile sea-base option that provides our Navy fleet with a critical access infrastructure supporting the flexible deployment of forces and supplies;*
- *An offshore petroleum distribution system ship that can deliver fuel from up to eight miles offshore; and*
- *Two aviation logistics support ships that are activated as needed from reduced operating status to provide at-sea maintenance for Marine Corps fixed- and rotary-wing aircraft*

iii. deployment of forces and materiel [Art III (1)];

Article III, Sec. 1 of EDCA introduces a new provision on the use of Philippine facilities for **the deployment of US forces and materiel** (for domestic and overseas operations).

- iv. communications [Art III (1)];
- v. construction and improvement of facilities [Art III (4)];
- vi. such other activities as the parties may agree[Art III (1)]

The infrastructures and facilities to be constructed and the equipment and materiel to be stored in the Agreed Locations under the EDCA are consistent with the features of a foreign military base.

217. A military base is defined as,⁵⁷

A **military base** is a facility directly owned and operated by or for the military or one of its branches that shelters military equipment and personnel, and facilitates training and operations. In general, a military base provides

⁵⁷ http://en.wikipedia.org/wiki/Military_base

accommodations for one or more units, but it may also be used as a command center, a training ground, or a proving ground. In most cases, a military base relies on some outside help in order to operate. However, certain complex bases are able to endure by themselves for long periods because they are able to provide food, water and other life support necessities for their inhabitants while under siege.

218. While the term “military base” seems to have no rigidly technical or finite definition, the US Department of Defense in its Dictionary of Military and Associated Terms loosely defines a base as: “a locality from which operations are projected or supported; an area or locality containing installations which provide logistic or other support; home airfield or home carrier.”⁵⁸ This definition is also used by the North Atlantic Treaty Organization, which uses it alternatively with the term “military installation”.
219. The EDCA brings back the US bases under a different name, under a more flexible arrangement, but with the same functions and purpose.
220. The EDCA is the latest unequal military agreement that Philippine government entered into after the 1947 Military Bases Agreement (MBA), 1951 Mutual Defense Treaty (MDT), 1999 Visiting Forces Agreement (VFA) and 2002 Mutual Logistics Support Agreement (MLSA). The EDCA grants access for American forces to Philippine facilities, putting up of US bases, stationing of troops, prepositioning of equipment and weapons. Taken with other existing military agreements such as the VFA and MLSA, the EDCA completes the return of US bases in the country, 23 years after they were kicked out by the Philippine Senate.
221. The functions of the Agreed Locations under EDCA are functions of a base and the activities conducted therein are those undertaken in military bases.
222. These Agreed Locations as defined under the EDCA can contain houses or barracks to accommodate thousands of troops; they contain weapon armories, arsenals or silos; they have secure storage buildings for prepositioned supplies and war materiel; they have their own facilities for refueling,

⁵⁸ Joint Publication 1-02, published 8 November 2010

bunkering, and repairing warships or aircrafts; they have their own perimeter wall which will prohibit unauthorized entry; they have their own telecommunication systems and a communication center; and they are even launching pads or sites for the deployment of troops and war materiel to other countries. In fact, they even have separate facilities for its water, electricity and other utilities. The so-called US Contractors will mainly construct all of these.

223. Another reason why the agreed locations are US military bases is the fact that the activities enumerated in Article III, Paragraph I include massive military activities such as “*refueling of aircraft, bunkering of vessels, maintenance vessels and aircraft.*” These require gigantic ports with the capacity to conduct repair and maintenance of immense US warships, enormous airports capable of sustaining large and heavy US planes, and colossal fuel depots capable of fueling these huge ships and planes. The US forces cannot undertake these large-scale activities secured from threats without a base.
224. The word “temporary” is a meaningless word in Article III, Paragraph 1 of the EDCA, and in the entire agreement for that matter, since the Philippine and US authorities could define temporary to mean a few days, months, years or even decades.
225. The Philippine and US authorities can deem the presence of US troops once deployed in Clark and Subic as “temporary” since none of them intended to stay in the country permanently as soldiers. The repetition of the word “temporary” in the EDCA is merely intended to delude the Filipinos into thinking that the US soldiers are merely visiting because they are supposedly “rotational.”
226. The EDCA does not even define what “rotational” means. Following the JSOTFP model, the US can perpetually rotate its troops in the Philippines under the EDCA.
227. Aside from a “main operating base”, the US also employs “forward basing” to ensure its economic and political interests. The Encyclopedia of United States National Security (by Richard J. Samuels, 2005 edition.) defines forward basing as -

Forward Basing

*During peacetime, U.S. overseas military presence in strategic regions of the world, established to support international security objectives and national interests. Forward basing refers to the equipment, U.S. armed forces, and military facilities that are stationed in a foreign country or deployed at sea during peacetime. The more general term forward presence encompasses noncombat overseas U.S. military activities and includes, but is not limited to, bases, **fixed and rotational deployments, access agreements, foreign military assistance, training of foreign armed forces, joint training exercises, intelligence sharing, and military-to-military contacts.** The goal of forward basing is to promote U.S. security and national interests. A visible U.S. overseas military presence is intended to project U.S. power, deter potential adversaries, stabilize potentially volatile regions, and shape the international environment to make it receptive to U.S. economic and political interests. Forward basing is used to support the U.S. defense policy.*

228. The Philippine Constitution explicitly prohibits foreign military bases in the country. The Constitution does not distinguish whether it is a “main operating base” or a “forward base” or other types of bases. Clearly, the activities to be conducted in the Agreed Locations and the functions of these activities constitute basing, which are prohibited by the Constitution without complying with the requisites under Section 25, Article XVII.
229. The US will retain operational control of the “agreed locations” and shall “exercise all rights and authorities” to ensure their operational control.
230. In *United States v. Apel*⁵⁹ the US Supreme Court clarified that military use is generally concurrent with jurisdiction or control over the bases or installation. “To describe a place as ‘more or less closely connected’ with military activities hardly requires that the military hold an exclusive right to the property. Rather, ‘military duty’ and ‘military protection’ are synonymous with the exercise of military jurisdiction. And that, not coincidentally, is precisely how the term ‘military installation’ is used elsewhere in federal law.”⁶⁰

⁵⁹ 134 S. Ct. 1144, 188 L. Ed. 2d 75 (2014)

⁶⁰ See, e.g., 10 U. S. C. § 2687(g)(1) (defining ‘military installation’ as a ‘base . . . or other activity under the jurisdiction of the Department of Defense’); § 2801(c)(4) (defining

231. In granting operational control and the omnibus exercise of “all rights and authorities” over the Agreed Locations⁶¹, the jurisdiction of the US Department of Defense is established and ensured. On the other hand, the AFP members and personnel are simply tasked to secure the perimeter areas of the Agreed Locations.
232. In a primer released by the Department of Foreign Affairs on EDCA, the respondents claim that “the defining features of “foreign military bases” – extraterritoriality, exclusivity in use and foreign ownership – will not be applicable in the Agreed Locations.”⁶²
233. Even if we adopt the above-mentioned features of a foreign military base, i.e., extraterritoriality, exclusivity, and ownership as the test in determining the character of the facilities to be established in the Agreed Locations, the provisions of the EDCA will show the existence of the said features.
234. First, **extraterritoriality**. “When a state asserts jurisdiction over persons or things outside of its own territorial limits, there is presented a case of extraterritoriality.”⁶³
235. The EDCA expressly provides that in soliciting, awarding and administering contracts for the materiel, equipment, supplies and services that may be undertaken in Philippine territory, the same shall be done in accordance with the laws and regulations of the US.⁶⁴

‘military installation’ as a ‘base . . . or other activity under the jurisdiction of the Secretary of a military department’); 32 CFR § 809a.0 (‘This part prescribes the commanders’ authority for enforcing order within or near Air Force installations under their jurisdiction and controlling entry to those installations’).”

⁶¹ EDCA Art VI (3)

⁶² Frequently Asked Questions on the EDCA, released by the Department of Foreign Affairs:

Is EDCA constitutional?

Yes. . . The defining features of “foreign military bases” – extraterritoriality, exclusivity in use and foreign ownership – will not be applicable in the Agreed Locations. x x x

Retrieved from <https://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/dfa-releases/2693-frequently-asked-questions-faqs-on-the-enhanced-defense-cooperation-agreement>, last accessed 17 May 2014.

⁶³ Westel W. Willoughby, *THE FUNDAMENTAL CONCEPTS OF PUBLIC LAW*, New York: Macmillan, 1924.

⁶⁴ EDCA, Art. VII (1)

236. Also, “for all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal of such equipment, supplies and materiel,” the Parties in the EDCA “share an intent that United States contractors may carry out such matters in accordance with, and to the extent permissible under, United states laws, regulations and policies.”⁶⁵
237. The foregoing clearly shows an exercise of extraterritorial jurisdiction by the US over civil acts.
238. And while EDCA is silent as to criminal liability, the US in 2000 enacted the Military Extraterritorial Jurisdiction Act (MEJA) to precisely cover the jurisdictional gaps. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces *outside* the United States are now within the “special” jurisdiction of the US:
- § 3261 (a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—
- (1) while employed by or accompanying the Armed Forces outside the United States; or
- (2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.
239. MEJA was intended to provide extraterritorial jurisdiction for circumstances where an American, who is overseas taking part in U.S. military activity or operation, commits an offense: (1) in a host country that is not exercising jurisdiction and (2) the offense would be a U.S. federal offense but cannot be reached by any other extraterritorial statute or the Uniform Code of Military Justice.
240. *Nicolas v. Romulo*⁶⁶ reminds us of the general rule in international law: “foreign armed forces allowed to enter one’s territory is immune from local jurisdiction, except to the extent agreed upon. The Status of Forces Agreements involving

⁶⁵ EDCA, Art IV (4), (5)

⁶⁶ G.R. No. 175888, 11 February 2009. Also, as cited, see Dieter Fleck, Ed., *THE HANDBOOK OF THE LAW OF VISITING FORCES*, Oxford, 2001.

foreign military units around the world vary in terms and conditions, according to the situation of the parties involved, and reflect their bargaining power. But the principle remains, i.e., the receiving State can exercise jurisdiction over the forces of the sending State only to the extent agreed upon by the parties.” *Wilson v. Girard*⁶⁷ is of a slightly different take, but comes to the same conclusion: “[a] sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its border, unless it explicitly or implicitly consents to surrender its jurisdiction.” The emphasis on express consent is implicit, as it is difficult to be certain that consent is implied.⁶⁸

241. Thus, the failure to make the provisions on jurisdiction in EDCA more explicit, whether intentional or unintentional, only supports the legal conclusion that taken altogether, the US exercises extraterritorial jurisdiction, amounting to the ouster of Philippine jurisdiction, over persons, things, and acts in Agreed Locations under the EDCA.

242. Second, **exclusivity**. Paragraph 3, Article IV of the EDCA is clear-cut:

“The prepositioned material of United States forces shall be for the **exclusive use** of United States forces, and full title to all such equipment, supplies, and materiel remains with the United States. United States forces shall have **control** over the **access to and disposition of such prepositioned materiel and shall have the unencumbered right to remove such prepositioned material at any time from the territory of the Philippines.**”

243. As discussed earlier too, US will retain operational control of the “agreed locations” and shall “exercise all rights and authorities” to ensure their operational control, which includes putting in place security measures that would necessarily limit access to their facilities. Philippine access will have to comply with the “safety and security requirements” that will be imposed by the US.⁶⁹

⁶⁷ 354 U.S. 524 (1957).

⁶⁸ Fleck, p. 101.

⁶⁹ EDCA, Art. III (5)

244. Even Philippine National Defense Undersecretary Batino was constrained to admit that EDCA may allow “primary” or exclusive use of local military facilities by the United States forces.⁷⁰
245. Thirdly, **ownership**. Scialoja defines ownership as “a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another.”⁷¹ The attributes of ownership are: *jus possidendi*, the right to possess; *jus utendi*, the right to use and enjoy; *jus abutendi*, the right to abuse or consume; *jus disponendi*, the right to dispose or alienate; *jus vindicandi*, the right to recover or vindicate; and *jus fruendi*, the right to the fruits.⁷²
246. Although EDCA provides that Philippines “shall retain ownership of and title to Agreed Locations ⁷³”, this is a meaningless provision or purely tokenism at best, when taken with the other provisions of EDCA. It is no different from the token provision in the 1979 Military Bases Review that placed Clark and Subic under the nominal ownership of the Philippine government, complete with a Philippine flag waving high in the US bases.
247. The following provisions of EDCA are relevant:

ARTICLE V OWNERSHIP

1. The Philippines shall retain ownership of and title to Agreed Locations.
2. The United States **shall return** to the Philippines **any Agreed Locations, or any portion thereof**, including non-relocatable structures and assemblies constructed, modified, or improved by the United States, **once no longer required by United States forces for activities under this Agreement**. The Parties of the Designated Authorities shall consult regarding the terms of return of

⁷⁰ Retrieved from <http://globalnation.inquirer.net/103818/official-guest-us-may-use-afp-facilities-exclusively-under-edca>, last accessed 17 May 2014.

⁷¹ Arturo Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Central Book Supply: Quezon City, 1992.

⁷² *Id.*, p. 45-46.

⁷³ EDCA Art. V (1).

any Agreed Locations, **including possible compensation for improvements or construction.**

3. United States forces and United States contractors **shall retain title to all equipment, material, supplies, relocatable structures, and other moveable property** that have been imported into or acquired within the territory of the Philippines by or on behalf of United States forces.
4. **All buildings, non-relocatable structures, and assemblies affixed to the land in the Agreed Locations**, including ones altered or improved by United States forces, remain the property of the Philippines. Permanent buildings constructed by United States forces become the property of the Philippines, once constructed, **but shall be used by United States forces until no longer required by United States forces.**

X X X

248. Article V (1) of the EDCA is merely a meaningless symbolic title because the US has (i) operational control over it including its buildings and facilities; (ii) Filipinos have no access over these without the permission of the US, (iii) the US has operational control over the construction, removal, and storage of anything within the Agreed Locations; and (iv) as provided under Article VI, Paragraph 3 of the EDCA, the *“US are authorized to exercise all rights and authorities within the Agreed Locations”*—thus ousting the Philippines from any jurisdiction over these locations.
249. Moreover, the US shall have the right to possess and use the land, buildings and other non-relocatable structures in the Agreed Locations “until no longer required by United States Forces.” This may take 100 years. And even then, turn-over of improvements and construction may involve “possible compensation for improvements or construction”.⁷⁴
250. On the otherhand, United States forces and United States contractors **shall retain title to all equipment, material, supplies, relocatable structures, and other moveable property** that have been imported into or acquired within the

⁷⁴

EDCA Art. V (2)

territory of the Philippines by or on behalf of United States forces.

251. Undoubtedly, the activities that may be undertaken, the facilities to be constructed in the Agreed Locations, and the functions of these facilities under the EDCA are features of a foreign military base, the presence of which is clearly prohibited under the Constitution.

EDCA must be in the form of a treaty duly concurred in by the Senate.

252. Since EDCA involves the entry of “foreign military bases, troops, and facilities”, the agreement must comply with the requirements under Section 25, Article XVIII of the Constitution, to wit:

Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except **under a treaty duly concurred in by the Senate** and, when the **Congress so requires**, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and **recognized as a treaty by the other contracting State**.

253. In *Bayan v. Zamora* ⁷⁵, the Court explicitly stated that at least two-thirds (2/3) of the 24-member Senate, or not less than sixteen (16) members, must act favorably on the proposed treaty.
254. Additionally, when Congress so requires, it must be ratified by a majority of the votes cast by the people in a national referendum held for that purpose.
255. Records of the 1987 Constitutional Commission yields this clarification:

⁷⁵ *Supra*.

MR. MAAMBONG: My second and last point is: If we go by sequence in this formulation, the first thing to do is for the President to enter into a treaty; then that treaty will go to the Senate; then after it has been concurred in by the Senate, it goes to the people.

FR. BERNAS: That is correct.

MR. MAAMBONG: Would it be a referendum or a plebiscite?

FR. BERNAS: It would be a referendum.

MR. MAAMBONG: Would that be the sequence?

FR. BERNAS: Yes.

MR. MAAMBONG: And after that, does it go to the other party?

FR. BERNAS: It goes to the other party. As far as the action of the other party is concerned, they could ratify it even before the referendum. But if our referendum rejects it, then there is no treaty. In other words, when the executive department enters into negotiations with the other contracting nation or contracting state, we would have to say that under our law for this purpose, these are the requirements. So they would have to be prepared to accept that. Hence, even before our people could ratify it, the other party could ratify it ahead, but for as long as our people have not ratified it, it does not bind us. Similarly, our people could ratify it ahead of the United States Senate, for example, but for as long as it is not accepted by the United States Senate, it does not bind us.”

256. What is the treaty, then, that is contemplated by the Constitution? A treaty, as defined by the Vienna Convention on the Law of Treaties, is “an international instrument concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation.”⁷⁶ There are many other terms used for a treaty or international agreement, like: act, protocol, agreement, compromis d’arbitrage, concordat, convention, declaration, exchange of notes, pact, statute, charter and modus vivendi. The same Convention brushes aside the use of differing terms, stating the above-cited provision is “without prejudice to the use of those

⁷⁶ Vienna Convention, Article 2.

terms, or to the meanings which may be given to them in the internal law of the State.”

257. In international law, there is no difference between treaties, executive agreements, and other international agreement as to their binding effect upon states concerned, as long as the negotiating functionaries have remained within their powers.⁷⁷
258. Agreements on troops deployment have always been considered treaties which require presidential ratification and Senate concurrence.⁷⁸
259. Clearly, the EDCA does not satisfy the constitutional requirements.
260. For being non-compliant, inconsistent, and contrary to the fundamental law of the land, there is no remedy but for the Honorable Court to declare EDCA void and unenforceable.

III

EDCA IS NOT IN IMPLEMENTATION OR FURTHERANCE OF THE MUTUAL DEFENSE TREATY AND THE VISITING FORCES AGREEMENT

261. The Mutual Defense Treaty provides:

⁷⁷ Hackworth, Digest of International Law, Vol. 5, p. 395, cited in USAFE Veterans Association Inc. vs. Treasurer of the Philippines, 105 Phil. 1030, 1037 [1959]

⁷⁸ J. Eduardo Malaya and Maria Antonina Mendoza-Oblena, Philippine Treaty Law and Practice, Integrated Bar of the Philippines Journal, 35: 1, August 2010, pp. 1 – 17. They enumerate the treaties which require Senate concurrence:

- a) Status of forces agreement/Visiting forces agreement
- b) Comprehensive free trade agreement/economic partnership agreement, which go beyond what the President is allowed to undertake unilaterally under Article VI, Section 28(2) of the Constitution and the Customs and Tariff Code
- c) Agreement on the avoidance of double taxation, since tax exemptions can be made only under the authority of Congress
- d) Agreement which establishes the headquarters of an international organization, with concomitant grant of immunities to the organization and its officials and staff
- e) Agreement on the transfer of sentenced persons, since the exercise of criminal jurisdiction is based on the territoriality principle; and
- f) Other agreements, “especially multilateral conventions, involving political issues or changes of national policy or involve international arrangements of a permanent character,” pursuant to the Commission of Customs ruling.

**MUTUAL DEFENSE TREATY
BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE UNITED STATES OF AMERICA
30 August 1951**

The Parties to this Treaty,

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all Governments, and desiring to strengthen the fabric of peace in the Pacific Area,

Recalling with mutual pride the historic relationship which brought their two peoples together in a common bond of sympathy and mutual ideas to fight side-by-side against imperialist aggression during the last war,

Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific Area,

Desiring further to strengthen their present efforts to collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area,

Agreeing that nothing in this present instrument shall be considered or interpreted as in any way or sense altering or diminishing any existing agreements or understandings between the United States of America and the Republic of the Philippines,

Have agreed as follows:

ARTICLE I.

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purpose of the United Nations.

ARTICLE II.

In order more effectively to achieve the objective of this Treaty, the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.

ARTICLE III.

*The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty and whenever in the opinion of either of them **the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.***

ARTICLE IV.

*Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that **it would act to meet the common dangers in accordance with its constitutional process.***

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

ARTICLE V.

For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.

X x x x

262. It is clear from the above provisions of the Mutual Defense Treaty (MDT) that the MDT applies only when there is an external armed attack in the Pacific area on either of the parties or when **the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.**

263. In such cases, under the MDT, both nations would support each other. Specifically, the United States can deploy military forces or send military troops to the Philippines to conduct combat operations or that it would “act to meet the common dangers in accordance with its constitutional processes.”
264. At present, the Philippines is not under any external armed attack or threatened by external armed attack in the Pacific for MDT to apply.
265. To justify the EDCA, the respondents claim that EDCA merely implements the MDT, therefore Senate concurrence is not required and a mere executive agreement is enough.
266. The respondents cited Article II of the MDT, i.e., “the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack” to support this claim.
267. The grant of limitless portions of Philippine land (public and private) for the unimpeded use and access by US forces, personnel and contractors, free of rent, taxes and fees; the construction of facilities for use by US forces, personnel and contractors and the conduct of activities such as temporary accommodation of personnel; communications; prepositioning of equipment, supplies and materiel; deployment of forces and materiel; storing of defense equipment, supplies and materiel, at Agreed Locations; the grant to US forces operational control of Agreed Locations for construction activities and blanket authority to undertake the said activities on Agreed Locations, the removal from the Supreme Court and other Philippine Courts the jurisdiction to hear and decide cases or disputes that could arise under the EDCA, are certainly not provided under the MDT. To reiterate, the MDT applies only when the country is under external armed attack.
268. Moreover, the above-mentioned privileges and rights that were given to US forces, personnel and contractors cover new matters that are not solely within the powers of the executive branch. The grant of said rights and privileges would require the acts of the other branches of government.

269. Similarly, the EDCA is not simply an extension of the Visiting Forces Agreement. The Visiting Forces Agreement (VFA) contemplates joint military exercises supposedly only of a short duration. The VFA does not include the conduct of activities such as prepositioning of equipment, supplies and materiel; deployment of forces and materiel; storing of defense equipment, supplies and materiel. It does not also allow or include building or construction of permanent facilities and improvement of facilities.
270. Clearly, EDCA cannot be justified as a mere extension of the VFA and the MDT.

IV

EDCA IS CONTRARY TO VARIOUS PROVISIONS OF THE CONSITUTION AND OTHER LAWS

271. The third paragraph of Article 7 of the Civil Code requires that:

*Administrative or executive acts, orders and regulations shall be **valid** only when they are not contrary to the laws or the Constitution.*

272. Being an executive act, EDCA must conform to the Constitution and the laws of the Philippines for it to be valid. But as will be shown below, EDCA is a blatant disregard of our Constitution and related laws, specifically on taxation, labor and social justice, local government, and the environment. It contravenes our National Internal Revenue Code, the Labor Code, the Local Government Code, and the Building Code.

EDCA is Contrary to the Constitutional Provisions on Taxation and the National Internal Revenue Code.

273. EDCA exempts the US forces and US contractors from taxes in the use of water, electricity and other public utilities in our country. Article VII thereof on Utilities and Communication expressly provides:

1. *The Philippines hereby **grants to United States forces and United States contractors the use of water, electricity, and other public utilities** on terms and conditions, including rates or charges, no less favorable than those available to the AFP or the Government of the Philippines in like circumstances, **less charges for taxes and similar fees, which will be for the account of the Philippine Government.** United States forces' costs shall be equal to their pro rata share of the use of such utilities.*

274. As the EDCA itself was not submitted to the Senate to obtain its concurrence thereto, such tax exemption granted to US forces and US contractors accordingly does not bear the consent of Congress, in patent violation of Article VI, Section 28 (4) of our Constitution which requires that:

“No law granting any tax exemption shall be passed without the concurrence of a majority of all the members of Congress.”

275. US forces and US contractors do not even fall under those granted tax exemptions by the following constitutional provisions:

Article VI, Sec. 28. X X X

(3) Charitable institutions, churches, personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Article XIV, Sec. 4. X X X

(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties.

Proprietary educational institutions, including those cooperatively owned may likewise be entitled to such exemptions subject to the limitation provided by law including restrictions on dividends and provisions for investment.

(4) Subject to conditions prescribed by law, all grants, endowments, or contributions used actually, directly and exclusively for educational purposes shall be exempt from tax.

276. Neither are they among the organizations listed in Section 30 of the National Internal Revenue Code as exempt from income tax.
277. Even Batas Pambansa Blg. 36 or An Act Imposing an Energy Tax on Electric Power Consumption⁷⁹ does not provide for any exemption to any person or organization from said tax.
278. Likewise, Article 283 of the Implementing Rules and Regulations of the Local Government Code, grants tax exemptions only to the following: local water utilities; cooperatives duly registered under R.A. 6938; non-stock non-profit hospitals and educational institutions; business enterprises certified by the Board of Investments as pioneer or non-pioneer for a period of six or four years, respectively from the date of registration; business entities, associations or cooperatives registered under R.A. 6180; and printer/publisher of books or other reading materials certified by DECS as school texts or references, insofar as receipts for printing and/or publishing thereof are concerned.
279. Considering the absence of any constitutional provision or any tax laws authorizing the grant of tax exemption to US forces and US contractors in the use of water, electricity and other public utilities in our country, such exemption cannot be given by mere executive fiat or in merely entering into an international bilateral agreement without offending our Constitution.
280. It should be recalled that the VFA granted tax exemption on certain items and transactions to US forces. But it must be pointed out that the VFA did not exempt them from the imposition of tax on their use of public utilities. This tax-free use of public utilities is, therefore, new in EDCA. Furthermore, US contractors were not given this preferential tax treatment under the VFA.

EDCA is Contrary to Constitutional Provisions on Labor and the Labor Code.

281. Article VIII (1) of EDCA provides:

Article VIII. CONTRACTING PROCEDURES

1. United States forces may contract for any materiel, supplies, equipment, and services (including construction) to be furnished or undertaken in the territory of the Philippines without restriction as to choice of contractor, supplier, or person who provides such materiel, supplies, equipment, or services. Such contracts shall be solicited awarded, administered in accordance with the laws and regulations of the United States.

282. On the other hand, Article XI provides:

Article XI. RESOLUTION OF DISPUTES

The Parties agree to resolve any dispute arising under this Agreement exclusively through consultation between the Parties. Disputes and other matters subject to consultation under this Agreement shall not be referred to any national or international court, tribunal, or other similar body, or to any third party for settlement, unless otherwise agreed by the Parties.

283. The above-quoted provisions are contrary to the letter and spirit of various provisions of the Constitution, namely:

Article II. Declaration of Principle and State Policies

*Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, **promote full employment**, a rising standard of living, and an improved quality of life. (emphasis supplied)*

Sec. 10. The State shall promote social justice in all phases of national development.

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article III. Bill of Rights

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

284. The above-stated provisions of the Constitution are unequivocal in their bias for the protection of labor. The Constitution not only recognizes the contribution of labor to society but guarantees as well the economic and the political rights of the workers.
285. Under Article VIII of EDCA, the United States may enter into contracts for services (including construction) – thus, involving matters with direct relation to labor and employment – which are to be *“solicited, awarded and administered”* not in accordance with Philippine laws but that of the United States.
286. This privilege granted to the United States contravenes the very provisions of the Constitution designed for the protection of labor.
287. Worse, any dispute arising under EDCA, including disputes arising out of contracts for services, *“shall not be referred to any national or international court, tribunal, or other similar body, or to any third party for settlement, unless otherwise agreed by the Parties.”*
288. Under the EDCA, too, Filipinos working for US forces or US contractors who are aggrieved cannot seek recourse or protection under our laws, in violation of our Constitution and the following provisions of the Labor Code.
289. Article 3 of the Labor Code explicitly provides:

Article 3. Declaration of Basic Policy – The State shall afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and

employers. The State shall asssure the rights of workers to self-organizations, collective bargaining, security of tenure, and just and humane conditions of work.

*Article 6. Applicability – All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, **apply alike to all workers**, whether agricultural or non-agricultural. (Emphasis supplied.)*

290. It bears reiterating that under EDCA, all the rights enumerated and guaranteed under the Labor Code for the enjoyment and protection of Filipino workers will be rendered inapplicable because either US laws will govern or labor issues will be merely subject to consultation as any such dispute arising under EDCA shall be resolved “*exclusively through consultation between the Parties.*”
291. Additionally, EDCA provisions on US contractors are contrary to Articles 40, 41 and 42 of the Labor Code which requires that aliens seeking admission into the Philippines for employment purposes and any foreign employer desiring to engage an alien for employment in the Philipines shall obtain an employment permit from the Department of Labor.
292. As under EDCA, contracts are to be solicited, awarded and administered under US laws, our Labor Code provision requiring aliens to be registered with DOLE is rendered inutile.

**EDCA is Contrary to the
 Constitutional Provisions on the
 Protection of the Environment.**

293. The 9th paragraph of the EDCA Preamble states that “US access to and use of facilities and areas will be xxxx **with full respect for the Philippine Constitution and Philippine laws.**”
294. The 1987 Philippine Constitution provides that:

The State shall protect and promote the right to health of the people and instill health consciousness among them. (Article II, Section 15)

The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. (Article II, Section 16)

295. In the landmark case of **Oposa vs. Factoran** (G.R. No. 101083, July 30, 1993, 224 SCRA 792), our Supreme Court held that the right to a balanced and healthful ecology enshrined in our Constitution is self-executing and judicially enforceable. It held, thus:

“While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.

The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. During the debates on this right in one of the plenary sessions of the 1986 Constitutional Commission, the following exchange transpired between Commissioner Wilfrido Villacorta and Commissioner Adolfo Azcuna who sponsored the section in question:

MR. VILLACORTA: Does this section mandate the State to provide sanctions against all forms of pollution — air, water and noise pollution?

MR. AZCUNA: Yes, Madam President. The right to healthful (sic) environment necessarily carries with it the correlative duty of not impairing the same and, therefore, **sanctions may be provided for impairment of environmental balance.**

296. Although EDCA devotes a full article to “Environment, Human Health, and Safety” (Article IX), it does not, however, provide for sanctions for destruction of our environment by the US forces, if indeed the US respects our Constitution. Neither does the agreement offer any mechanism or process by which the Philippines may claim compensation in case US forces intentionally or unintentionally cause damage to our environment.

297. What EDCA contains in Article IX are mere vague provisions and motherhood statements such as:

1. *Xxxx To this end, the parties shall cooperate **to ensure problems that may arise are dealt with immediately** in order to prevent any lasting damage to the environment or endangerment of human health and safety.*

2. *The United States confirms its intent to respect relevant Philippine environmental, health, and safety laws, regulations and standards in the execution of its policies. Xxxx The Parties shall fully cooperate in the **timely exchange** between the competent representatives of the Parties of **all relevant existing information** concerning environmental and health protection at Agreed Locations. The environmental compliance standards applied by United States forces shall reflect, in accordance with its policies, the more protective of United States, Philippine, or applicable international agreement standards. Xxxx*

3. *United States forces shall not intentionally release any hazardous materials or hazardous waste owned by it, and, if a spill occurs, **shall expeditiously take action** in order to contain and address environmental contamination resulting from the spill.*

298. The US is not even made to account for “unintentional” release of hazardous materials or waste, as paragraph 3 above only refers to “intentional” release thereof.

299. Worse, in case of spill of hazardous materials or waste, US forces shall merely “expeditiously take action” – which is too vague – while the Philippines is divested of its right to enforce its citizens’ fundamental right to a balanced and healthful ecology.
300. Clearly, in entering into EDCA, the respondent Philippine representative/s has/have given up these basic rights which in **Oposa case** is said to “predate all governments and constitutions.”

**EDCA is Contrary to
 Constitutional Provisions on
 Local Government and the
 Local Government Code.**

301. Article II, Section 25 of the Constitution provides:

Sec. 25. The State shall ensure the autonomy of local governments.

302. To ensure that such policy is carried out, Article X is dedicated only to local government, the relevant provisions of which are the following:

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

303. Pursuant to these constitutional provisions, the Local Government Code (R.A. 7160) was enacted which echoes the declared policies in the Constitution, thus:

Section 2. Declaration of Policy. –

(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

304. These constitutional provisions give much emphasis to local government autonomy to enable and ensure accountability, self-reliance and ultimately development of local government units.

305. Article III, paragraph 2 of EDCA, however, utterly disregards our policy of ensuring and enabling local government autonomy, as said provision states:

ARTICLE III. AGREED LOCATIONS

2. When requested, the Designated Authority of the Philippines shall assist in facilitating transit or temporary access by United States forces to public land and facilities (including roads, ports, and airfields), including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).

306. Thus, under the EDCA, the transit and temporary access by US forces to land, facilities including roads, ports and airfields, including those owned by local government units is mandatory. Local government units are deprived of any right over such land, roads, ports and airfields even if they are within their jurisdiction or owned by them. They cannot even exercise any authority whatsoever on agreed locations, in the same way that the Philippine government is stripped of authority or access thereto.
307. Not only is this contrary to the constitutional and Local Government Code provisions promoting local governments' genuine and meaningful autonomy, it is likewise contrary to the power of local governments to regulate the use of local roads⁸⁰ and to enjoy full autonomy in the exercise of their proprietary functions⁸¹.
308. Furthermore, the power of local government units to sue and be sued⁸² in the exercise of its powers to promote the general welfare, particularly those upholding the right of the people to a balanced ecology, health and safety,⁸³ is gravely compromised. This is because EDCA impliedly allows US vessels, aircrafts and vehicles to bring in hazardous materials and wastes⁸⁴.
309. In case of a spill caused by the Unites States, it cannot even be punished by a mere slap on the wrist as EDCA merely requires it to "*expeditiously take action*" which is left to the sole whim of the US.
310. EDCA does not even subject the US to any sanction for any liability it may incur relative to any dispute arising under the EDCA. The reason is that such dispute shall not be referred to any national or international court, tribunal or similar body⁸⁵, thus, shame on us, placing it beyond our jurisdiction.

⁸⁰ Section 21, Local Government Code

⁸¹ Section 22 (d) *supra*

⁸² Section 22 (a) (3) *supra*

⁸³ Section 16 *supra*

⁸⁴ Article IX (3), EDCA

⁸⁵ Article XI EDCA

EDCA Violates the National Building Code (R.A. 6541)

311. It is provided under Article III, paragraph 4 of EDCA that:

4. *The Philippines hereby grants to the United States, through bilateral security mechanisms, such as the MDB and SEB, **operational control of Agreed Locations for construction activities and authority to undertake such activities on, and make alterations and improvements to, Agreed Locations.** United States forces shall consult on issues regarding such construction, alterations, and improvements based on the Parties' shared intent that the technical requirements and construction standards of any such projects undertaken by or on behalf of the United States forces should be consistent with the requirements and standards of both Parties. (Emphasis supplied)*

312. The grant of operational control to the United States with respect to construction activities and alterations on and improvements to Agreed Locations under EDCA violates the National Building Code.

The National Building Code provides:

SECTION 1.02.03: Building permits:

*(a) **Any person, firm, or corporation, including any department, office, bureau, agency of instrumentality of the government intending to construct, alter, repair, move, convert or demolish any building or structure, or cause the same to be done, shall obtain a building permit from the Building Official for whichever such work is proposed to be undertaken for the building or structure, before any such work is started.** (Emphasis supplied)*

313. The EDCA provision granting operational control to the United States for construction activities is an utter disregard of the National Building Code requirement of a permit from the Building Official of the city or province concerned, which must be obtained prior to the construction, alteration or repair.

314. While Article III par (4) of EDCA provides that such construction *“should be consistent with the requirements and standards of both Parties,”* the national government or the building official of the local government unit affected is divested of the power to inspect and ensure compliance with the requirements under the National Building Code. In the first place, it/he is not even allowed access to the Agreed Locations. Only the Philippine Designated Authority or its authorized representative⁸⁶, referring to the Department of National Defense, shall have access to the Agreed Locations. Thus, the provision that construction activities to be undertaken *“should be consistent with the requirements and standards of both Parties”* is clearly deceptive.
315. In sum, the EDCA is littered with provisions that violate a number of constitutional provisions and requirements. The grant of rights and privileges to the US forces, personnel and contractors violate a number of Philippine laws and rules and regulations.

Summary of Constitutional Provisions Violated

- 1) Article III, Section 7 for disregarding **national sovereignty, national interest and the requirement of an independent foreign policy:**

Section 7. The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self- determination.

- 2) Article III, Section 3 for surrendering, instead of securing the **sovereignty and integrity of the national territory:**

Section 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

⁸⁶ Article II par. 5 EDCA

- 3) Article I on National Territory for carving out a **part or the whole of the Philippine territory beyond the sovereignty and jurisdiction of the Philippines**. Article I states that:

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around between, the connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

- 4) Article II, Section 2 for allowing **the prepositioning and deployment of troops and war materiel by a foreign country to be used in wars**:

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

- 5) Article III, Section 8 for allowing the **entry of nuclear weapons** and surrendering the authority to monitor and check whether a foreign warship or aircraft carries nuclear weapons.

Section 8. The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

- 6) Article VIII, Section 1 for **carving out from the jurisdiction of the Supreme Court and the entire judicial system the many disputes that may arise** out of acts or any abuse of the US forces in the execution of the agreement:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or

excess of jurisdiction on the part of any branch or instrumentality of the Government.

- 7) Article VI, Section 28 (4) for allowing the **US forces to use public utilities without paying taxes and other fees:**

Sec. 28. No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

- 8) Article XVIII, Section 25 for allowing the **entry of foreign troops, bases and facilities without a treaty** whose effectivity is subject to the (i) role of the Senate to concur in the ratification; and (ii) the role of both Houses of Congress to decide whether or not to call for a national referendum to approve the same:

Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

- 9) Article VII, Section 21 for **refusing to submit the EDCA to the Senate for its concurrence in the ratification:**

Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

EPILOGUE

From the time the Military Bases Agreement was signed in 1947 to President Obama's recent visit to the Philippines, the United States has been promising to help develop and modernize the Philippine's Armed Forces. From one president to another, the United States has been harping about the "special relations" that the Philippines and the United States have. Thus,

“Now we reach a new period--a period in which there will continue to be assistance and cooperation, particularly from the United States of America as a Pacific power , and the economic and other developments that are going forward in this exciting part of the world, and in which there will continue to be, insofar as any intervention by major powers, a military presence as far as the United States is concerned so that these nations can have that independence which they have fought so hard to get....

x x x x

I mean the independence that comes with economic strength, with political stability, and also with the means insofar as any threat internally that may occur in those countries--the ability to handle those internal problems without outside assistance.....”

Speech delivered by U.S. President Richard Nixon during his visit to the Philippines on July 27, 1969 ⁸⁷

“[T]his close military collaboration and planning should be aimed at the maximum effectiveness in formulating and executing United States military assistance programs and in furthering Philippine defensive capability in the light of modern requirements.”

Joint Statement of U.S. President Dwight Eisenhower and Philippine President Carlos Garcia, during the former’s visit to the Philippines on June 16, 1990⁸⁸

The US will “continue to discuss the possibility of shared equipment to build up the strength and the security of the Philippine Armed Forces.”

Speech delivered by U.S. President Bill Clinton during his visit to the Philippines on November 13, 1994⁸⁹

⁸⁷ The American Presidency Project. <http://www.presidency.ucsb.edu/>

⁸⁸ Ibid.

⁸⁹ Ibid.

*“Today, I’m pleased that we’re beginning an important new chapter in the relationship between our countries, and it starts with our security -- with the new defense cooperation agreement that was signed today
We’ll work together to build the Philippines’ defense capabilities and to work with other nations to promote regional stability, such as in the South China Sea.”*

Remarks by US President Barack Obama and President Benigno Aquino III of the Philippines in Joint Press Conference **visit to the Philippines last April 28, 2014.**⁹⁰

But actions speak louder than words. The reality is - despite the “special relations” and the decades long presence of US military bases and troops in the country, the Philippine Armed Forces remain one of the most miserably backward and pitifully antiquated armed forces in the region. And no amount of dressing up can hide the embarrassing reality of premeditated perpetual dependency on the US as a supposed ally, with the umbilical cord of empty promises serving as a yoke on our necks.

The Grim Reality

Land Systems

	Tanks	Armored Fighting Vehicles	Multiple Launch Rocket Systems
Philippines	0	531	0
Malaysia	74	1,318	0
Singapore	215	2,192	18
Vietnam	3,200	2,100	1,300

Air Power

	Total Aircraft	Fighters	Fixed Wing	Transport	Trainers	Helicopters
Philippines	145	0	8	81	25	124
Malaysia	224	46	59	100	57	84
Singapore	244	110	84	63	36	71 Attack Helicopters 17
Vietnam	413	209	209	139	26	141 Attack Helicopters 25

⁹⁰ <http://www.whitehouse.gov/the-press-office/2014/04/28/remarks-president-obama-and-president-benigno-aquino-iii-philippines-joi>

Naval Power

	Frigates	Corvettes	Submarines	Coastal Defense Craft	Mine Warfare
Philippines	3	11	0	38	0
Malaysia	4	4	2	39	4
Singapore	6	12	6	12	4
Vietnam	7	21	1	21	8

	Population	Coastal Area	Land Area
Philippines	105, 720, 644	36, 289 km	300, 000 sq km
Malaysia	29, 628, 392	4,675 km	329, 847 sq km
Singapore	5, 460, 302	193 km	697 sq km
Vietnam	92, 477, 857	3, 444 km	331, 210 sq km

Source: <http://www.globalfirepower.com/countries-listing-asia-pacific.asp>

To repeat what we have said in the beginning.

The fearsome foe is our own embodiment of authority, the constituent of a plethora of powers, our own officialdom from the President to the lowest of his minions, who gifted the US Government with the EDCA and have been all too willing and obliging to embarrass, shame and contradict themselves just to say that the EDCA is a partnership between equals and a memorial of a dignified friendship.

We come before the Honorable Court asking that the EDCA should be struck down because of its constitutional and legal infirmities so that it may serve as a reminder that friendship, real friendship does not mean kowtowing to the wishes of another.

It is time to end this "friendship" once and for all, for we should not allow this tricky relationship with a "frenemy" to continue where we will again end up a hundredfold years a slave.

Application for Temporary Restraining Order and/or Writ of Preliminary Injunction

315. Petitioners replead the foregoing allegations in support of their prayer for the issuance of a temporary restraining order and a writ of preliminary injunction – to enjoin all the respondents from implementing and enforcing the EDCA and to restrain them from continuing the negotiations on the “Agreed Locations” and any and all acts relative thereto.
316. EDCA is unconstitutional and downright invalid because it violates the national sovereignty, territorial integrity and national interest provision of the Constitution, other provisions of the Philippine Constitution and various Philippine laws and principles of international law.
317. At present, respondents continue to implement and enforce the EDCA by identifying the areas that may be listed in the Annex as “Agreed Locations”. According to the statements of the respondents, formal meeting of the US-PH Mutual Defense Board to discuss the “Agreed Locations” will be held in October 2014.
318. Certainly, an Agreement like EDCA that derogates the Constitution and various laws and international law principles should not be countenanced. To deny petitioners the injunctive writ would allow continuous violation of their fundamental rights and the fundamental rights of the Filipino people that would definitely cause grave and irreparable injury.

PRAYER

WHEREFORE, petitioners respectfully pray that after due consideration of the present petition, the Honorable Court declare the Enhanced Defense Cooperation Agreement (EDCA) entered into by the respondents for the Philippine government, with the United States of America, UNCONSTITUTIONAL AND INVALID and to permanently enjoin its implementation.

The petitioners also pray that upon the filing of this petition, the Honorable Court immediately issue a Temporary Restraining Order (TRO) ordering the respondents to cease and desist from implementing EDCA and from performing any and all acts relative thereto.

Other forms of relief just and equitable under the premises are likewise prayed for.

Makati City for Manila City. 19 May 2014

PUBLIC INTEREST LAW CENTER

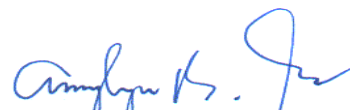
4/F Kaija Bldg. 7836 Makati Ave.
 corner Valdez St., Makati City
 Tel. No. (632) 899-3439; Telfax No. (632) 899-3416
 Email address: publicinterestlawcenter@gmail.com

By:




RACHEL F. PASTORES

IBP No. 951803; 01/06/14; Makati
 PTR No. 4234173; 01/08/14; Makati
 Roll No. 39818
 MCLE Compliance
 Number IV-0019444; 04-30-13



AMYLYN B. SATO

IBP No. 951804; 01/06/14; Q.C.
 PTR No. 9079643; 01/07/14; Q.C.
 Roll No. 50389
 MCLE Compliance
 Number IV-0019952; 05-06-13



FRANCIS ANTHONY P. PRINCIPE

IBP No. 951805; 01/06/14; Q.C.
 PTR No. 9079644; 01/07/14; Q.C.
 Roll No. 50915
 MCLE Compliance
 Number V – 0001654; 02-05-14



SANDRA JILL S. SANTOS

IBP NO. 951806; 01/06/14; RSM
 PTR NO. 2167533; 01/09/14; Mand.
 Roll No. 59809
 MCLE Compliance
 Number IV – 0020709; 06-13-13



CARLOS MONTEMAYOR, JR.

IBP No. 951807; 01/06/14; Q.C
 PTR No. 9079645; 01/07/14; Q.C.
 Roll No. 61085
 MCLE Compliance Number IV – 0017620; 04-22-13

NATIONAL UNION OF PEOPLES' LAWYERS

3/F Erythrina Building
 No. 1 Matatag corner Maaralin Streets
 Central District, Quezon City
 Telefax No. (632) 920-6660
 Email address: nupl2007@gmail.com

By:



MARIA KRISTINA C. CONTI

IBP Lifetime Member No. 012641
 PTR No. 9786846; 5/13/14; QC
 Roll No. 63574
 Admitted to the Bar, 2014
 MCLE not yet required

and



MARIA CRISTINA P. YAMBOT

Bayan Muna Headquarters
 No. 45 K-7th St., Brgy. West Kamias, Quezon City
 Tel. No. (632) 921-3473
 Email: cris.yambot@gmail.com
 IBP No. 961187; 02/04/14; Rizal
 PTR No. 1273804; 01/06/14; Rizal
 Roll No. 59700
 MCLE Compliance Number IV – 0016616; 04-11-13



MANEEKA ASISTOL SARZA

Alliance of Concerned Teachers National Headquarters
 Second floor, Teachers' Building, Mines cor. Dipolog Sts.,
 Brgy. Vasra, Quezon City
 Tel. No. (0947) 893-5116
 IBP Lifetime Member No. 011274
 PTR No. 7621794; 03/17/14; QC
 MCLE Compliance Number IV-0023102; 02/26/14

Copy Furnished:

Hon. Voltaire Gazmin

Secretary
Department of National Defense (DND)
DND Building, Segundo Ave.
Camp General Emilio Aguinaldo Quezon City

Hon. Albert Del Rosario

Secretary
Department of Foreign Affairs (DFA)
DFA Building, 2330 Roxas Boulevard, Pasay City.

Hon. Paquito Ochoa, Jr.

Executive Secretary
New Executive Building Malacañang Palace Compound
J. P. Laurel St., San Miguel, Manila.

General Emmanuel T. Bautista

Chief of Staff
Armed Forces of the Philippines
DND Building, Segundo Ave.
Camp General Emilio Aguinaldo Quezon City

**Defense Undersecretary Pio Lorenzo Batino & DND Asst.
Secretary for Strategic Assessments Raymund Jose Quilop**

DND Building, Segundo Ave. Camp General Emilio
Aguinaldo Quezon City

Ambassador Lourdes Yparraguirre

DFA Building, 2330 Roxas Boulevard, Pasay City

Ambassador J. Eduardo Malaya

DFA Building, 2330 Roxas Boulevard, Pasay City

Justice Undersecretary Francisco Baraan III

Department of Justice
Padre Faura Street Ermita, Manila 1000

OFFICE OF THE SOLICITOR GENERAL

134 Amorsolo St., Legaspi Village
1229 Makati City

EXPLANATION ON SERVICE BY REGISTERED MAIL

Pursuant to the Section 11, Rule 13 of the Rules of Court, the office of the undersigned served copies of this Petition for Certiorari and Prohibition with Prayer for TRO and/or Preliminary Injunction on the other parties through registered mail due to time, distance and manpower constraints.


RACHEL F. PASTORES