

**Constitutional Reform and the Urban Poor Sector's Housing and Urban
Development Agenda
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I. Introduction

Discourse on Charter change has been alive in the national landscape for three successive presidential regimes. Each time a president makes the move to amend some provisions in the 1987 Constitution e.g. liberalizing the economic policies, the public so easily responds to calls for protest/prayer rallies. From this quick response to mobilizations intended to protest Cha-cha, it appears as though the public has thoroughly understood the issues being debated, or contested.

Until I read hundreds of pages of materials on charter change and their implications, I did not realize that charter change discourse is really only meaningfully participated in by a few. It is a complex issue that requires serious thought and reflection to discern whether what is being proposed is worth taking because it serves the public good.

In fact, I suppose most of us do not know our constitution – present or past -- or how to read the meanings there. If true, how can we fast-track processes such as those made on the recent People's Initiative? We cannot expect the great masses of people to understand what we are up to in a matter of minutes or hours. We tend to shorten processes so we make them sign a paper on the pretext that it was meant to be an attendance list when in truth it served as the list of people who were supposed to have supported People's Initiative. We cannot cut short the learning process especially on issues such as changing our constitution. If we truly intend to make participation democratic, a sustained program of educating the public, especially the poor, on what is at stake when we change our system of government, when we allow foreigners to own our public utilities, industrial, residential and commercial lands must be thought through. Why is one mode of charter change better than the others, and when is the best time to pursue such change? The public needs to understand this before it is able to make a stand.

My point is that to truly get the pulse of what people want or do not want in proposals to revise or amend the 1987 Constitution, they need time to absorb what it is they are accepting or rejecting and what these mean to them. Educating everyone about charter change, I realize, takes a long, long process. There is a time to ask questions, to toy with ideas before the entire stuff becomes clear to us. I think this is what I experienced and the focus groups experienced when they shared what they know about the parliamentary form of government, of the federal state, etc. They did not fake a stance when all they could do was to ask themselves questions.

II. Historical Survey of the Urban Poor Sector's Constitutional Reform Agenda¹

¹ A table, Annex A, details the provisions on social justice and national economy and patrimony of the nation in five Constitutions (including Con-Com's Draft).

1. Social Justice

The urban poor sector considers the *Social Justice* provisions of the 1987 Constitution as the source of their protection. It is in this Constitution alone where the urban poor sector's concerns are specifically addressed. In all the rest, social justice is addressed to all citizens of the country.

A cursory glance at the Article Titles of the reviewed Constitutions, starting with the earliest (1899) and down to the one currently in force (1987), readily reveals that overtime, there is an improvement in the manner the social justice provisions are stated. In the first, it is simply alluded to and in succeeding ones social justice is either explicitly stated, or detailed or is presented as a separate article. This seems to be an indication that the *valuing of social justice* has been a gradual emergence in the consciousness of the nation. As 1987 Constitution framer Joaquin Bernas (2003) teaches us “a constitution is not written in a vacuum; it is born under prevailing political convictions.” This statement is instructive in interpreting the social justice provisions in light of the historical context in which they were formulated.

The Malolos Constitution

In the 1899 charter, the term social justice is not mentioned at all. But under Title IV: THE FILIPINOS AND THEIR NATIONAL AND INDIVIDUAL RIGHTS, Article 11 states that “No Filipino shall be compelled to change his residence or domicile except by virtue of a final judgment.” Since the urban poor's concerns center on the security of their domicile and the land on which it is built, this small item in Article 11 seems to allude to an act constituting social justice.

The 1935 and 1973 Constitutions

In the next succeeding constitutions social justice is explicitly mentioned, and its provisions are placed under ARTICLE II Declaration of Principles (1935) and ARTICLE II Declaration of Principles and State Policies (1973).

Between the two, the **1973** charter details provisions on social justice and devotes two sections on it, making explicit the State's intent to exercise social justice and how it shall exercise it in the spheres of (a) private property and (b) social services. Social justice, the provision states, is intended to (1) “ensure the dignity, welfare, and security of all the people” so that the State declares to “regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits”; and to (2) “guarantee the enjoyment of the people of a *decent standard of living*” by the promise that the State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security.”

The **1935** charter, on the other hand, simply states that it should be the concern of the State to promote social justice to insure the *well-being* and *economic security* of all the

people. It does not say how this is going to be operationalized or what constitutes economic security.

The 1987 Constitution

An improvement to the social justice provisions is evident in the 1987 Constitution. It is not lumped together with other concerns in the Article of Declaration on Principles but is allocated a particular place in ARTICLE XIII, titled SOCIAL JUSTICE AND HUMAN RIGHTS. Moreover, the provisions pay special attention to Urban Land Reform and Housing, as well as recognize the role and rights of people's organizations, which the sector can make the most of to advance their collective interests and aspirations. More importantly, the provisions indicate the State's commitment to prioritize the *enactment of laws* that (a) protect and enhance the *right* of all the people *to human dignity*, (b) *reduce social, economic and political inequalities*, and (c) *remove cultural inequalities* by equitably diffusing wealth and political power for the common good. Of all the constitutions, it is the 1987 alone that places importance to the *equitable sharing of political power*, a hallmark of democratic governance. Significant too is the statement that the State is committed "to *create economic opportunities* based on freedom of initiative and self-reliance."

Sections 9 & 10: Urban land reform (ULR) and housing. The heart of the sector's concern is their *inclusion* in the development of cities and other urban centers. The ULR provides that the State, "by law and for the common good, shall undertake a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas." Then Section 10 provides that the urban [or rural] poor dwellers shall not be evicted nor their dwelling demolished, *except in accordance with law and in a just and humane manner*.

2. National Economy & Patrimony

Also significant to the urban poor sector are provisions on the *National Economy & Patrimony*. Any radical amendments to these provisions that are favorable to foreign nationals would greatly impinge on their already restricted access to lands.

Three of the reviewed constitutions show the State's stance as rather nationalist or protectionist when it comes to the policies governing economic and natural resources management – as some critics favoring the opening up of the country's economy to global competition would say. There is that fear by the general public that when the economy and the natural resources of the land would be opened to foreign capitalists, we shall have given ourselves to the dogs. Thus it is important to review what the Constitutions say about the country's economy and the patrimony.

1899 Malolos Political Constitution

It does not have any provision on the national economy and patrimony.

The 1935 Constitution and 1973 Constitution

The **1935** charter provision is placed in Section 1 of ARTICLE XIII, titled “Conservation and Utilization of Natural Resources.” It provides that all natural resources² belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations, with at least sixty per cent of the capital owned by such citizens, subject to any existing right, grant, lease, or concession. It is clear here that if non-Filipino citizens participate in the use and development of these natural resources, they have to be in the form of corporations and cannot capitalize the enterprise more than 40 percent of its total capital. The Filipino citizen’s share in the capitalization of the enterprise has to be more i.e. 60 percent.

The **1973** Constitution also contains the same idea as what is stipulated in the 1935 charter regarding ownership of the natural resources. But, it adds the following clause:

With the exception of *agricultural, industrial, or commercial, residential or resettlement land* of the public domain, natural resources shall not be alienated, and no license, concessions, or lease for the exploration, or utilization of any of the natural resources shall be granted for a period of 25 years, except as to water rights... (Article XIV, Section 8).

Four types of land are enumerated above as alienable namely, agricultural, industrial, commercial and residential lands as provided for by the 1973 charter. Interestingly, the Draft Constitution framed by the Consultative Commission in 2005 considers these alienable land types (with the exception of the agricultural lands) i.e. industrial, commercial or residential as transferable to foreign individuals or corporations with foreign ownership. It will be Parliament that shall define the conditions for ownership of allowable lands by foreign individuals and by corporations with foreign ownership (Article XIV, Section 6). The Con-Com Draft Constitution further stipulates that:

Every provision liberalizing extent of foreign ownership of corporations in certain lines of business, and of industrial, commercial and residential lands shall take effect three years after ratification of this Constitution or upon earlier passage of legislation implementing the provision. (Article XX, Section 17 -- Transitory Provisions).

As in the 1935 charter, the 1973 Constitution applies the same rule in the disposition, exploitation, development, or utilization of the natural resources (indicated in Section 9 of Article XIV). However, it further states that “the National Assembly, in the national interest, may allow such citizens, corporations or associations to enter into service

² Refer to the following: agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources.

contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploration, or utilization of any of the natural resources.”

Operation of Utilities. The 1973 Constitution also applies the policy governing the use of natural resources in the operation of utilities. Where foreign investors are engaged, their participation in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital.

1987 Constitution

Section I of Article XII explains that the goals of the national economy are a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people.

It moreover provides that “the President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.”

Section 10 declares the State as responsible in the regulation of and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

As for the operation of utilities, Section 11 states exactly the essence of the 1973 charter policy.³

³ “No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years...The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.”

III. The 1987 Constitution and the Urban Poor Housing and Urban Development Agenda

1. Birthing the Urban Land Reform

The *Urban land reform and housing* component of the social justice provisions is a milestone for the urban poor in their quest for decent housing and basic services. That it has finally been enshrined and advocated in the 1987 Constitution⁴ is reason for great celebration.

The Constitution devotes two sections on it. The essence of the urban land reform and housing provisions conveys two social justice concerns of the State. The first is its commitment to undertake a continuing program of urban land reform and housing, in partnership with the private sector. The program will make available decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas – at affordable cost. Promotion of adequate employment opportunities is also a component of the basic services of the program. The second concern is the prevention of eviction of the urban (or rural) poor and the demolition of their dwelling, except *in accordance with law and in a just and humane manner*.

2. Legislations on Urban Land Reform and Housing

These provisions have been fruitfully legislated into what is now known as the UDHA as well as spurred the repeal of the Anti-Squatting Law⁵, enacted during the Marcos regime. Another significant piece of legislation that the 1987 Constitution has engendered is the Local Government Code. This law is vital to the meeting of the needs of the sector within their localities.

It is not really the constitution, the 1987 Constitution for that matter, that sets the limits or the possibilities of the sector's housing and development agenda since the constitution is not self-executory. The same could also be said of the two landmark legislations that are vital to the sector's work toward the achievement of their housing and urban development agenda. It is likely that the limits and possibilities are defined by the operationalization or implementation of the landmark laws. In the Philippines, laws on specific sectors e.g. land administration are abundant but conflicting, and do not get implemented.

⁴ Article XIII: Social Justice and Human Rights, Sections 9 and 10.

⁵ known as the Anti-Squatting Law **Repeal Act** of 1997 or RA 8368

UDHA. The landmark law on urban land reform is the Urban Development and Housing Act of 1992 (Republic Act 7279). The UDHA embarked on a comprehensive program for urban development, called the Urban Development and Housing Program (UDHP), an important departure from the traditional shelter production and slum upgrading approach of the 70s and 80s.

The UDHA has many components. One deals with the socialized housing program (UDHP) which provides for a scheme within which lands suitable for socialized housing shall be acquired and disposed in favor of qualified beneficiaries under the law. Another deals with the Law on Demolition, stipulating instances when demolition is allowed, and the humane demolition process which must be undertaken in such cases.

But the enactment of the UDHA was just a beginning of a tortuous journey that the urban poor sector continues to trek up to this day. It demands of the sector sufficient determination to go through the convoluted processes of achieving the promise of the law, which requires working with national agencies, the local government, civil society, the business sector and others. The inclusion in the 1987 Constitution of the provision on the role and rights of people's organizations is also vital to the sector as it signals the necessity of organized hard work and the exercise of political power sharing that is expected of the sector in order to make the urban land reform dream come to fruition.

3. Some Important Realities to Understand about the UDHP/UDHA

Some detail on the provisions of the law will help to put context to the issues that will be discussed later.

- The right to become beneficiaries of the government's socialized housing program does not automatically entail ownership of the lands which these beneficiaries occupy. The UDHA designed an Urban Development and Housing Program, which involves a comprehensive approach towards urban land reform. The approach deals with matters including registration of qualified beneficiaries, inventory of lands, identification of socialized housing sites, acquisition and disposition of sites identified for socialized housing.
- The UDHA does not vest ownership or possessory rights to those who occupy lands without consent of its owners and legitimate possessors. In fact Sec. 28 or the so-called Law on Demolition allows the eviction of the underprivileged and homeless citizens in the instances enumerated there. It must be stressed, however that such eviction must be undertaken in a just and humane manner as outlined in Sec. 28.
- Section 27 of the UDHA commands the PNP, the Presidential Commission for the Urban Poor (PCUP), and the urban poor to adopt measures to curtail the illegal activities of professional squatters and squatting syndicates. Any person found to be involved in professional squatting or squatting syndicates will be evicted and disqualified as socialized housing beneficiaries.

- In clear and unequivocal terms, Sec. 28 states that in the execution of eviction and demolition orders involving underprivileged and homeless citizens, the observance of the humane eviction and demolition process shall be mandatory. Similarly, the Bicameral Conference Committee deliberations pertaining to Sec. 28 reveal that the Legislature clearly intended to make the rules on demolition applicable to eviction cases involving occupants of danger and public areas and government infrastructure project sites.

- Sec. 28 of the UDHA provides that adequate relocation should be provided by the local government unit undertaking the demolition and by the NHA. The landowner does not have the duty to provide relocation or financial assistance to underprivileged and homeless citizens prior to or during eviction.

- The UDHA amended or modified the Civil Code provisions on *abatement of nuisance* in cases when the subjects are underprivileged and homeless citizens. The UDHA is a special law concerning eviction and demolition of underprivileged and homeless citizens. It therefore prevails over general laws on eviction, such as the Civil Code provisions on Nuisance.

The Anti-Squatting Law **Repeal Act** of 1997 (RA 8368). RA 8368, an Act repealing PD 772, abolished the legal policy criminalizing squatting. There are current moves in the Lower House, however, to amend RA 8368 to revert back to the old policy of making squatting a criminal act.

4. Discussion of Some of the Issues of the Urban Poor Sector and how these are to be addressed by Local Governments

Directing Urban Poor Advocacy on Housing Reforms at Local Governments and Making them Accountable

In a recently published article by Anna Marie Karaos (2007), a seasoned analyst of the issues confronting the sector, she discusses five issues and frames them as local government accountability and justifies this by invoking the two landmark laws – UDHA and the Local Government Code -- which in a manner of speaking are the available sources of light that can illuminate on the problems currently faced by the sector.

First, she establishes the proposition why local governments are strategic arenas of engagement as far as the protection of housing rights and the delivery of housing services are concerned.

While these two laws have been there a long time, mandating local governments to provide housing and shelter security, it is only recently that the sector has given serious attention to considering what local governments can do to meet their demands for affordable housing and the corresponding basic services. For a long time, urban poor advocacy on housing reforms was directed at national agencies – the National Housing

Authority (NHA) and the Housing and Urban Development Coordinating Council (HUDCC).

But if the accumulated experience were to be reflected upon and analyzed, the policies and programs formulated by these national agencies are inevitably brought down to local areas -- to local governments. When local governments choose to ignore central government mandates, the national government is powerless in compelling LGUs to do their work.

For instance, local governments usually disregard the restrictions and procedures pertaining to the eviction of informal settlers. From January 2006 to March 2007 alone, of the 26 cases of informal settler evictions in Metro Manila monitored by the Urban Poor Associates (UPA), 11 were ordered and implemented by local governments. Drawing from these experiences, local governments are strategic arenas of engagement as far as the protection of housing rights and the delivery of housing services are concerned.

Burgeoning population growth: how local governments should see it

In a separate analysis, Karaos (2007a) wrote about the local governments' attitude toward the growing urban populations and how this needs to be turned around. The essence of the analysis is that when urbanization expands, as is happening in Metro Manila and the other urban centers, the natural course of events is for people from the non-urbanized places to flock to the cities and urban centers because it is there where commerce, industry, finance and services mostly take place, and where work opportunities are abundant. Local governments cannot stop this phenomenon once their cities grow. But it is not uncommon for city officials to wish that people would stop migrating to cities.

Karaos laments, "Because economic growth is presumably one of the more important goals of government policy, it makes little sense for policymakers and urban governments to promote growth and then attempt to stop a logical consequence of this growth which is the movement of people to cities. The wiser course of action would be to adequately plan for the expected growth of the population." Cities should instead have to meet the challenges of urban growth through better fiscal management, urban planning, environmental and social interventions. Karaos ends her paper by presenting a perspective that is positive and the proper attitude for urban governments to embrace, "*A growing population is better seen as a resource than a burden. The only way our cities can bring growth to the country is for them to successfully convert their growing populations into real human capital.*"

Eviction and resettlement

The most pressing issue the urban poor want taken up with local governments, is informal settler eviction and relocation. The urban poor want their elected officials to promise that all informal settler evictions within their area of responsibility would follow

the prescribed procedures of UDHA. This entails a thorough consultation process⁶ to be undertaken prior to any eviction and that adequate relocation will be provided to all affected families.

There are only three conditions that UDHA allows eviction of informal settlers to take place. But, in practice, local governments use violations of the National Building Code as grounds for demolishing informal settler houses. Local governments can use the Building Code as the basis for summarily evicting informal settlers because the shanties put up by the informal settlers do not comply with the Building Code and because their owners do not have building permits. Expectedly, the urban poor want local government to desist from such practice. After all, the UDHA is a special law concerning eviction and demolition of underprivileged and homeless citizens. Therefore, it prevails over general laws on eviction such as the Civil Code provisions on Nuisance.

Incentives to landowners

In order to make more land available for socialized housing, the urban poor propose that local governments come up with incentives and tax breaks to entice private landowners to sell their land or offer them for long-term lease to urban poor families. This proposal makes sense especially to privately owned lands already occupied by informal settlers which the landowners are unable to develop anyway.

Local governments can also offer alternative properties in exchange for privately owned lands occupied by informal settlers (a land swapping arrangement) so that the occupant families need not be resettled.

Land sharing, also mentioned in UDHA, is another means at the disposal of local governments to acquire land for socialized housing. Government or privately-owned lands occupied by informal settlers can be developed for mixed uses e.g. commercial, institutional use and the remaining portion for housing the settler families. Revenues from the development of the commercial portion can be used to subsidize the socialized housing project. Where local governments lack the financial resources to implement housing project for the poor, the land sharing scheme is a workable approach.

Development and disposition of proclaimed socialized housing sites

Since 2001, Pres. Arroyo has issued over ninety government-owned lands which have been declared as socialized housing sites by virtue of presidential proclamations and executive issuances all over the country. In Metro Manila, there are at least thirty-five large properties that were declared as open for disposition to the urban poor occupants

⁶ Consultation as defined by UDHA is a constitutionally-mandated process whereby the public, on their own, or through people's organizations is provided an opportunity to participate in the decision-making process on matters involving the protection and promotion of its legitimate collective interests, which shall include appropriate documentation and feedback mechanisms. This does not give the evicting entity the license to engage in surface or bad faith consultations and other "take-it-or-leave-it" dealings.

through a presidential proclamation.⁷ But the development of these properties and their disposition to the qualified families occupying them are presently stalled. There are different reasons for this, namely: political will of the local government in a few cases; sometimes the local government may have other plans for the development of the property; or no agreement is reached with the occupant families, and sometimes the with the government landowner (NHA or a government-owned corporation) on the site development plan. In other cases, even just the initial step of having the land surveyed⁸ cannot commence because of the lack of funds.

Whatever the reasons why the disposition of the proclaimed sites is held up, it is the local government's responsibility to steer the land development and disposition process, i.e.:

- convene the inter-agency committee that is supposed to plan the development of the site;

- set aside a budget for the conduct of the preparatory activities including the community consultations, household surveys or census, and land survey;

- ensure that the inter-agency committee comes up with a site development and financing plan within a reasonable time frame which can become the basis for community action as well as negotiating with potential investors and funding agencies.

These steps are required to develop the proclaimed sites into decent dwelling places.

Localization of the CMP

With the many demands on local governments to provide infrastructure and basic services, housing is an expense that has to compete with other social needs. Local governments typically do not count housing as a public good and therefore only allocate relatively small amounts in their budgets for it. If local governments are to be expected to respond meaningfully to the fast growing housing need in urban areas, they have to be assisted financially by the national government.

The Community Mortgage Program is one of the better performing housing programs for the urban poor. CMP is a national government-run home financing program which lends money to community associations of poor families for the purchase of land, site development and home improvement. Now administered by the Social Housing Finance Corporation, which undertake loan processing and approvals, the CMP scheme is to be piloted at the local level, the SHFC announced this year. Under the localized scheme, this central agency would be engaged in wholesale lending to local governments, which in turn would be lending to the community associations. Loan processing and approvals would be undertaken by local governments. Local governments are also asked to put up 25 percent of the total project cost. This means that for every peso that the local government is able to allocate for the program, it can access three additional pesos from the national government. This scheme, in effect, enlarges the pool of funds that can be

⁷ Examples are the FTI property in Taguig, a portion of the National Bilibid Prison property in Muntinlupa, Welfareville in Mandaluyong and Baseco in the City of Manila.

⁸ To determine the technical descriptions for technical purposes

mobilized for the CMP because both the national and local governments contribute to the project cost. Crucial to the success of the localized CMP is for local governments to enroll themselves in the program. Hence the Urban Poor Alliance (UP-All) is appealing to the city governments to study the localized CMP and apply for inclusion in the program.

Institutionalization of Local Housing Boards

To oversee the effective planning and implementation of a local housing program and ensure its continuity, the UP-All proposes the establishment of Local Housing Boards in each city or urban municipality. The setting up of such a body is allowed by the Local Government Code and a few LGUs have actually done this already. The passage of an ordinance by the city or municipal council would suffice to create the LHB. Such an act would signify the support of the entire local leadership to a sustained program for housing. To be adequately represented by representatives of urban poor organizations and poor communities, the LHB will craft social housing programs, oversee the implementation of various provisions of UDHA, review the city's land use and investment plans to assess their impact on the poor. In essence, LHB will enable the local government to proactively develop solutions to the problem of homelessness instead of resorting to the undesirable practice of evicting informal settlers as a stopgap and quick fix solution.

IV. The Urban Poor Sector's Legislative Agenda

No to Constitutional Reform on Housing and Urban Development

Constitutional reform on housing and urban development is not a concern among the urban poor representatives whom this researcher engaged in a focus group discussion. The provisions in Article XIII, Sections 8 and 9 are deemed sufficient as they are. What they hanker about is putting a stop to the violations of the UDHA provisions by government agencies such as the MMDA and local chief executives and synchronizing their acts together. They exhibited very strong emotions toward the MMDA, which is perceived as overpowering PCUP and which applies a different law to justify its evictions of informal settlers occupying danger zones. They even expressed consternation at how two government entities (MMDA and PCUP), belonging to the same office i.e. the Office of the President, cannot see eye to eye and one always prevailing over the other. As a result, the urban poor suffer a lot more.

The sector representatives moreover asserted that the Constitution is simply a “mother statement”; implementation is aided by legislation and it is in policies and laws that processes are discussed and described in detail.

Instead of a constitutional reform on housing and development, the sector clamors for

a just and proper implementation of the UDHA especially the so-called Law on Demolition. To ensure this goal is achieved, the sector⁹ crafted a legislative agenda, which is discussed immediately below.

The Urban Poor Sector's Legislative Agenda

▪ *Enact a law that will set up an independent quasi-judicial body with authority to (1) monitor, investigate, and stop demolitions that do not comply with the law, and (2) check the implementation of Resettlement Action Plans (RAP) as well as social service programs for the urban poor.*

This proposal is born out of the frequent experience of the sector of unlawful evictions and demolition, which the regular courts are unable to decide on promptly, and which Executive Order No. 152, which designates the PCUP as sole clearing house for the conduct of demolition and relocation of underprivileged citizens and which ensures strict compliance of just and humane demolition, is rendered ineffective because its work is limited to monitoring non-compliance of other agencies. In practice, PCUP holds no power to stop demolitions that do not comply with Section 28 of Article VII of UDHA. As FGD participants say, it is almost always overridden by MMDA's Bayani Fernando.¹⁰ Other government agencies and LGUs simply ignore E.O. 152 and are not held to account.

▪ *Enact a law that requires all infrastructure projects that will displace informal settlers to have a resettlement action plan (RAP) with a corresponding budget and identified fund sources.*

Most large infrastructure projects in urban areas displace a large number of urban poor settlers. Examples in Metro Manila are the NorthRail Project – 40, 000 families and SouthRail Project – 60, 000 families. When the affected families are relocated, the resettlement sites are often not adequately equipped with the necessary basic services like potable water, electricity, transport, schools, and health facilities.

⁹ This is represented by a loose federation of POs and NGOS mostly coming from the metropolis, calling itself the Urban Poor Alliance or UP-All. It presented a 9-point legislative agenda to a shortlist of senatorial and party list candidates that were vying for seats during the May 14 elections. Five of these senatorial and three party list candidates were endorsed by UP-All after they agreed with and affixed their signatures on the legislative agenda.

¹⁰ FGD participants indicated that Fernando invokes the Civil Code provisions of abatement of nuisance, which often results in his overruling of PCUP's mandate. But Saligan (1996) explains that the Civil Code is a general law and UDHA is a special law concerning eviction and demolition of underprivileged and homeless citizens. As such, it prevails over general laws on eviction such as the Civil Code provisions on Nuisance. Saligan stresses the fact that the Law on Demolition provides for a compassionate and just treatment of those regarded as nuisances per se, not intended to change fundamental concepts of nuisance and abatement of nuisance.

Infra-structure projects with RAPs¹¹ such as the Pasig River Rehabilitation Project fared better in terms of performance in resettlement sites compared to projects without RAPs e.g. NorthRail and SouthRail projects. RAPs will ensure that there is adequate budget for the resettlement of affected families and it will be provided in a timely manner.

- *Enact a law compelling LGUs to formulate land use plans that will provide sufficient land for resettlement purposes and for the housing needs of their informal settler constituents.*

Many urban LGUs fail to provide relocation sites to informal settlers when evicted due to infrastructure projects or due to court orders to clear private lands. Unable to find available land within their cities, they resort to relocating them to off-city resettlement sites. This removes the urban poor from important sources of income and livelihood. Thus, the informal settlers usually return to the city and resort again to illegal occupation of public or private land. Off-city resettlement is thus objectionable; it does not solve the problem yet costs the government a lot of money. While R.A. 7279 already mandated LGUs to identify and set aside lands for socialized housing for the urban poor, this is not reflected in their land use plans and zoning ordinances. LGUs in MM also mostly rely on NHA to relocate their informal settlers.

- *Enact a law disallowing the use of the National Building Code (PD 1096) as a basis for demolishing the houses of informal settlers.*

LGUs use violations of the National Building Code as grounds for demolishing informal settler houses, which do not comply with the Building Code and because their owners do not have building permits. Summarily evicting informal settlers is motivated by the LGUs' indulging landowners who want to clear their properties of urban poor settlers.

- *Oppose legislative efforts to criminalize the poor as embodied in House Bills 4215 & 3532. They nullify the protection granted by Section 2 8 of RA 7279 to occupants of private lands.*

House Bill 4215 seeks to amend the "Anti-squatting Law Repeal Act of 1997" (R.A. 8368) by modifying the definition of professional squatters in RA 7279. It provides that upon failure or refusal to abide by the written demand of the landowner within 90 days, occupants are considered "professional squatters." The bill is ambiguous as to the manner of legal remedy a landowner may resort to when faced with these "professional squatters."

House Bill 3532 also aims to define enforceable juridical relations on occupancy of private lands; draws its mandate from the protection of private property ownership but overlooks the social justice provision in the Constitution, which limits this right. The

¹¹ Only multilateral institutions e.g. the World Bank and Asian Development Bank, because they have well-developed social safeguard policies, require the preparation of RAPs for the infrastructure projects they finance.

proposed legislation renders the mere act of possession or occupancy unlawful, which reverts to the abolished legal policy criminalizing squatting contrary to RA 8386. Also this bill is redundant as under existing laws (e.g. Rule 70 of the revised Rules of Court) there is sufficient legal recourse available to landowners to establish and enforce their property rights.

- *Conduct an inquiry on the status of titling and distribution of proclaimed socialized housing sites*

An inquiry needs to be undertaken in order to explain the status of titling and distribution of proclaimed socialized housing sites, specifically proclaimed sites with ambiguous titles like Lungsod Silangan and the National Government Center. RA 7279, Section 8, paragraph b states that “Government-owned lands which have not been used for the last 10 years from the effectivity of this Act and identified as socialized housing site, shall immediately be transferred to NHA subject to the approval of the President of the Philippines or by the LGU concerned for proper disposition in accordance with this Act.” So far, a total of 91 presidential proclamations had been signed since January 2001. However, after the land has been proclaimed, there have been no advances made in the disposition of the land to the settlers – that is, no community has gained a title, no CMP loan take-out or contract to sell has been negotiated

- *Enactment of a law creating a Special Charter for the Socialized Housing Finance Corporation (SHFC)*

UP-All seeks to institutionalize SHFC by advocating for the passage of a bill that envisions SHFC to be a separate entity from NHMFC, and become the primary institution to provide housing finance to the low income groups. In addition, the bill seeks to increase the needed capitalization of SHFC.

The Socialized Housing Finance Corporation was created by virtue of Executive Order 272, issued in January 2004. EO 272 also authorized the transfer of the CMP, Abot Kaya Pabahay Fund (AKPF) and all other social housing functions of the National Home Mortgage Finance Corporation (NHMFC) to SHFC.

- *Conduct a sunset review and assess the effectiveness of CISFA as well as the performance of its implementing agencies.*

- *Enact a law mandating the creation of Local Housing Boards by LGUs.*

V Assessment of the Current Position of the Urban Poor Sector on GMA’s Cha-cha

Content

Parliamentary Form

The Proposed Revision of the 1987 Constitution (December 2005) drafted by the Consultative Commission provides for a federal republic with a unicameral parliamentary form of government. It is a shift from the traditional unitary presidential system that is currently in force.

One of the strongest positions of critics against the parliamentary form of government is the fact that the parliamentary setup requires strong and mature political parties. Political parties are the lifeblood of a parliamentary form of government.

In the Philippines, political parties remain weak institutions even if they have been in existence for more than half a century. They have never been more powerful than patronage systems. Moreover, political parties barely exist outside elections; debates during the campaign are generally of poor quality and lack relevance to the most pressing social and economic problems of the nation.

According to the International Republican Institute (IRI), what is undermining the country's capacity for sustained development within the context of liberal democracy is its failure to make significant progress to consolidate its party system.

It is highly likely therefore that no discernible improvements can be gained whether we are under the present presidential system or the proposed federal, parliamentary framework without a tectonic shift in our party system. It would simply be naïve to expect our present crop of politicians and political parties to change overnight with a change in the form of government.

What does the FGD participants think of this?

One of the participants indicated that the parliamentary form of government is okay except that representation has to be sectoral; there is a strong concern for the urban poor sector to be represented in parliament to ensure that the sector's interests are protected in any legislation. The adherent of this position does not refer to party list representation.

The party list system is not understood by majority of the urban poor, this representative claimed. He expressed his apprehension that this form of representation might be abolished in the future. Another representative disagreed and asserted that the party list system is no different from the representation in local bodies like the BDC. He emphasized that the objective is to ensure the representation of the sector in policy-making bodies such as the Parliament.

When the facilitator redirected the discussion to the party system in the Philippines, in order to elicit their view on it and draw implications on the quality of governance should the unicameral parliamentary form of government be adopted, someone responded that the law does not prohibit the creation of "party list" groups although he admitted that there is lack of maturity in the way these groups address issues. The facilitator pressed on

by saying that in a parliamentary system, party loyalty is very important, and asked how this statement sounds to the focus group discussions.

Apparently, discussion on the parliamentary form of government is not a topic in which the group is well-versed. They need to understand how this is different from the presidential form where three branches have equal and independent powers. They will need do more learning here.

Yet someone offered the idea that discussions on change of the form of government need to be done now, continuously, but implemented only after Gloria finishes her term in 2010.

In sum, there was no stand made by the group whether they prefer or not a parliamentary form of government, which is the Con-Com Proposal.

Federal system

There is the perception among the focus group that the federal system of government is good for the country. It localizes, devolves and contextualizes powers and functions. Each region or State looks after the welfare of its constituents and pursues its own development agenda. But there is also the realization that it can fortify warlordism in some areas where it is already entrenched such as in Abra, ARMM and the Cordillera. Preparedness of regions/States is therefore critical to the implementation of the federal system. The implementation of the processes and activities leading to federalism should thus be gradual.

But there are those who see that the country, whether the government or the citizens, is not yet ready for federalism even if some forms of local autonomy are already being practiced because both are not yet politically mature to adopt this system. Without the needed education campaign and consultation processes and dialogue with the citizenry, the same practice of voting for popular names will prevail, they claimed. It seems to be a cultural flaw, someone advanced, among the people to tolerate practices such as the proliferation of political dynasties. If left uncorrected, the proponent claims, regardless of the system of government, this will continue to be a very strong force as it is in the current political system. There is a social and cultural problem that is connected with this issue that needs to be addressed, the proponent explains.

Certain questions were posed by the focus group. For example, how will a third class province be capable of becoming financially autonomous under a federal system? On the basis of the researcher's reading of the draft constitution by CMFP, she clarified that provinces will be grouped into regions, thus, comprising one "State" that will operate and collectively generate resources on their own. It is expected that first and second class provinces will compensate for the incapacity of the lower class provinces to function on their own. In addition, the capacity of the provinces and regions are likely to be considered before the government decides which states are to start implementing the financial requirements of a federal state.

Be that as it may, the group recognizes the local governments' experience of devolved powers as useful in the transition from the unitary presidential system to the parliamentary-federal system. But it will not be an easy transition as their experience working even at the barangay level has demonstrated. *Consultation with all stakeholders* is not easy to carry out -- the grassroots are often bypassed. Sometimes, it is the POs themselves who are the problem: they distance themselves from mainstream local governance. Even barangay captains, who ought to be consulted first before any plan is implemented, are also bypassed. On the other hand, there are some barangay officials also who do not allow POs/NGOs membership in the council. It seems that when a PO/NGO representative is zealous in going about its duty in the council, e.g. in the review of budgetary requirements in their barangay, the barangay officials are turned off. The contrary is also possible, of course. PO representatives in the City Development Council (CDC) cannot stand firm on their principles when they are "*palamon [sila] ng Mayor, sinwelduhan*"; hence, it is hard for them, if not impossible, to challenge the personal interest of their local chief executive.

In sum, the participants admit that until people's attitude changes, no real reform/transformation will take place regardless of the form of government will be installed. They did not make a position at all. They were just trying out questions and marshalling their personal experience of working with local governments in the capacity as advocates of the urban poor development.

Economic Provisions

The proposed revision on the economic provisions of the 1987 charter is stated as follows in the Draft Constitution framed by the Consultative Commission in 2005:

- . That industrial, commercial or residential lands are transferable to foreign individuals or corporations with foreign ownership. It will be Parliament that shall define the conditions for ownership of allowable lands by foreign individuals and by corporations with foreign ownership (Article XIV, Section 6).

The Con-Com Draft Constitution further stipulates that:

Every provision liberalizing extent of foreign ownership of corporations in certain lines of business, and of industrial, commercial and residential lands shall take effect three years after ratification of this Constitution or upon earlier passage of legislation implementing the provision. (Article XX, Section 17 -- Transitory Provisions).

Some members indicated anxiety over the provision being dangerous; they foresee that in the absence of a land use plan, urban poor groups can easily be evicted from their homes. This will have repercussions on proclaimed sites for socialized housing. Many sites have been proclaimed but the process of titling is taking at a snail's pace. Not only that, fees are high as well. Someone claimed that the private developers are the ones who usurp land/sites allotted for socialized housing by constructing private subdivisions on them. Current provisions regarding the disposition of alienable lands in the 1987 Constitution

should not be altered. This is the position of the sector – to oppose the economic provisions of the GMA-inspired proposed draft constitution.

Method

Despite the fact that the group did not make a stand on whether to accept change in the political system, they were one voice in choosing the Constitutional Convention – at all costs.

They see that the concept of a peoples' initiative is not fully understood by the people. There have been instances wherein a barangay assembly was called and a paper, disguised as an attendance sheet, was passed around asking the participants to sign not knowing that their agreement to the peoples' initiative has just been solicited. In some cases, there was money involved. But not all participants believed this, saying that perhaps these were isolated cases.

The constituent assembly, on the other hand, is suspected as being prone to foreign intervention, which then gives them a venue to push for their own interests. Citing the IPP issue in Congress as an example, he reiterated that only the interests of the businessmen are served.

Context

One person dared to say that it is necessary to go through a temporary revolutionary government to get rid of the undesirables in government before he changes are to be implemented.

Someone volunteered to say that there is nothing inherently wrong with the current system; it is the people that are the problem. This led to an exchange where another member commented that Marcos had a more macro and comprehensive view of things. He had the foresight to anticipate the spillover of the burgeoning Manila population to the adjacent municipalities and prepared the site in Lungsod Silangan to absorb them. He was singular in possessing that kind of vision, the participant admiringly quipped. After Marcos, he added, what has prevailed is the elitists' rule.

VI. Recommendations for the Urban Poor Sector's Meaningful Constitutional Reform Engagement with the Arroyo Administration and Beyond

Actually the sector has little to comment on the 1987 constitution because they see that their social justice concerns have been enshrined in it. Also, it is the sector's contention that their real arena for reform is in the implementation of existing provisions of the UDHA. Much work needs to be invested there. The arena of engagement is found to be

inside local governments. They will thus engage local officials in cities and other urban centers in order for their issues to be given solutions as well as to pro-actively participate in the local government decision-making. This is the real ground of engagement for the sector.

The sector seems to be occupied with having more pieces of legislation enacted to put a stop to violations of the UDHA provisions.

However, as mentioned in the Introduction of this paper, the education component of constitutional reform for the sector is necessary in order that they can more fruitfully participate in the continuing efforts to make constitutional reform understood.

One area where the sector can engage the present administration or the next if needed is in the lobby to oppose the proposed changes in economic policies.