

Women's Gender and Development Constitutional Reform Agenda

By Elena O Masilungan
PILIPINA-NCR

I. Introduction

Changing the Constitution has been a long-running debate in post-1986 Philippines, with all Presidents after Corazon Aquino making it a part of their policy agenda. On one side of the debate is the realization that constitutional reforms are needed to address widespread dissatisfaction with the country's political and economic systems. On the other side is the fear that amending the charter will undo its more libertarian and nationalist provisions.

Another issue to resolve is the mode by which the charter would be amended. The 1987 Constitution identified three modes for charter change: (1) Congress may convene itself into a Constituent Assembly by a simple majority vote. As a Constituent Assembly, the Senate and the House of Representatives have the power to propose amendments or draft a new Constitution; (2) Congress may call for a Constitutional Convention where delegates are directly elected by the people to frame a new Constitution or revise an existing one; or (3) people's initiative where people directly propose amendments to the Constitution through a petition of at least 12 per cent of all registered voters, provided that every legislative district is represented by at least three per cent of its registered voters.

The timing for amending the Constitution is also a question. Should it be done now even if there is lingering distrust that only the political elite is set to benefit from it? Or can it be done sometime in the future when Filipinos are less polarized and the political situation is more stable?

Whatever direction the debate will take, however, it is essential that Filipino women get engaged in the charter change agenda. The 1987 Constitution explicitly affirms gender equality and women's role in nation building. Women have to ensure that this provision is safeguarded against any amendment. At the same time, since government is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), women must work to influence the charter change process so it can come up with Constitutional provisions that reflect or complement the CEDAW provisions. Despite this Constitutional provision, women have not yet achieved full equality with men. A bill has been filed in Congress, the Magna Carta of Women, to set this right through legislation. A parallel effort must also be carried out should charter change pushes through. As the fundamental law of the land, women must claim their right to be involved in shaping the Constitution and in guaranteeing that it responds to their concerns and protects their rights and interests.

II. Historical Survey of the Women Sector's Constitutional Reform Agenda

Women were invisible in the 1899 Malolos Constitution, the country's first Constitution. In the 1935 Constitution, however, they figured in Article V about suffrage. It said: "The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question."

Before this, members of the National Federation of Women's Clubs, the National League of Filipino Women and the Philippine Association of University Women were attending the public hearings of the Committee on Suffrage of the Constitutional Convention of 1934 and were leading the suffragist movement. To coordinate their activities, they formed the General Council of Women to campaign for the plebiscite that would decide whether to give women the right to vote.

The plebiscite was held on 30 April 1937 where the "yes" votes of 447,725 exceeded the 300,000 votes required by the Constitution. On 17 September 1937, women finally gained universal suffrage when President Manuel Quezon signed the legal basis for it.

Since 1935 the Philippines already had two Constitutions where women participated as members. The first was the 1971 Constitution, the product of the Constitutional Convention composed of 320 delegates directly elected by the people. The second was the 1987 Constitution, the product of a Constitutional Commission composed of 48 members appointed by President Corazon Aquino after the 1986 People Power Revolution. A woman became the Commission's President – former Supreme Court Justice Cecilia Muñoz Palma.

The members of the Commission represented the broad people power constituency that was mobilized in the struggle against the dictatorship. They were lawyers, scholars, activists, street parliamentarians, a priest and a nun, and anti-Marcos politicians. The Constitution they drafted has strong provisions on human rights and civil liberties. It is unique in guaranteeing equality between women and men, a right not found in the United States Constitution and those of many other countries. It enshrines the representation of marginalized sectors, including women, through sectoral representatives and the party-list system. In its Article XIII on Social Justice and Human Rights, it makes addressing the needs of women as one of the State's priorities in adopting an integrated and comprehensive approach to health development. It also calls for the protection of working women "by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

III. Assessment of Current Positions on GMA's Charter Change

Constitutional change was a campaign platform of then presidential candidate Gloria Macapagal-Arroyo during the 2004 national elections. When she won the presidency, this campaign platform became an official policy. In her July 2005 State of the Nation address, the President declared it was time to start the "great debate" on charter change amid a restive political atmosphere stemming from her questionable win of the presidency.

In September she created the Consultative Commission through Executive Order 453. Its mandate was to "conduct consultations and studies and propose amendments and revisions to the 1987 Constitution, principally the shift from the presidential-unitary system to a parliamentary-federal system of government, to refocus economic policies in the Constitution to match the country's vision for global competitiveness, and to review economic policies which tend to hinder the country's global competitiveness and adversely affect the people's welfare." The President appointed 55 members from various sectors to the Commission.

Three months later, in December, the Commission submitted its proposed amendments, highlighted by political and economic reforms.

Political Reforms

Among the political reforms presented by the Commission were (1) the change from the current presidential to a parliamentary system; (2) a gradual transition to federalism; and (3) changing the single member district system in electing legislators to a system based on various combinations of proportional representation where votes are for parties and single member constituencies.

Those who favor a shift from a presidential to a parliamentary system argue that one only has to look at the state of politics and governance in the country today to realize how dysfunctional it is and how badly it needs to be overhauled. For one, efficient and responsive governance is derailed by disagreements between the executive and the legislative, even between both Houses of the legislature. A parliamentary government, by unifying the executive and the legislative, does away with the gridlock between these two branches of government. This will result in more efficient policymaking and legislation as well as better coordination in implementing policies and laws. Stability is also assured during political crises such as when the Prime Minister no longer has the support of parliament. Unlike impeachment, which is the constitutionally-mandated option available at present for the President, an unpopular Prime Minister can be removed from office anytime through a vote of no-confidence. Coup attempts, massive protest actions to oust a sitting chief executive and even extra-constitutional action by the executive branch are thus unlikely to occur. Parliament, because it wields executive power, will be more accountable in governing and will no longer focus its energy in getting favors from Malacañang and championing its interests. A parliamentary system will also bring about

disciplined and strong political parties that will not be dependent on individual politicians.

A shift to a parliamentary form of government is only half of the equation, however. Charter change advocates promote federalism as well to complete the institutional and structural changes that Philippine politics need. It will put an end to the “rule of imperial Manila” on the rest of the country, a remnant of the country’s colonial past. Instead, power will be transferred from the central government in Manila to the regions, bringing government closer to the people through decentralization. Resources will be better distributed among the regions since revenues will be devolved. Federalism, according to charter change advocates, can better address such age-old problems as the inequitable distribution of wealth, the slow pace of development in the countryside, and the peace and order situation, especially in Mindanao. It will also spare ordinary Filipinos from patronage politics and unresponsive governance.

The Commission also recommended that in order to move to a parliamentary system, the scheduled 2007 national elections be scrapped and the terms of national and local officials be extended until 2010. Both Houses of Congress would convene to form an interim Parliament and elect an interim Prime Minister who would govern with the President and the Vice-President until elections are held in 2010.

Economic Reforms

The Commission’s economic proposals seek to increase foreign investment and access to technology to spur economic growth and productivity. Parliament would allow foreign ownership of residential and industrial land. Foreign corporations would also have the right to participate in the exploration of natural resources through co-production, joint venture and production sharing agreements with Filipinos. The ban on foreign ownership of natural resource companies, public utilities, educational institutions and even media would be lifted. Charter change is also in line with government’s commitment to open the economy as a member of the World Trade Organization.

Some critics contended, however, that the proposed deletion of several provisions relating to the national economy and patrimony would not lead to economic progress but to its control by foreign interests. Because foreigners are allowed to own residential and industrial land, it is not unlikely that agricultural land would be converted for residential or industrial use, including farmlands supposed to be redistributed to landless tillers under the comprehensive agrarian reform program. The use of the country’s natural resources by transnational corporations would open ancestral lands to large-scale mining operations, thus threatening the livelihood and land rights of indigenous people and even the survival of their villages and way of life. The same situation is imminent for small fisherfolk and upland forest dwellers if fishing and logging would be opened to foreign investment.

Mode

After the Commission had delivered its package of proposed amendments, two tracks were initiated to carry out the political process. The first track was a people's initiative launched in April 2006 by the *Sigaw ng Bayan*, a multi-sectoral grouping purportedly of civil society organizations, and supported by majority of the members of the 1.7 million-strong Union of Local Authorities of the Philippines made up of governors, mayors and councilors nationwide. It targeted 20 percent of voters to sign up in a petition to amend the Constitution through a plebiscite although according to it, the group was able to get 30 percent of voters' signatures.

The second track was set in motion in December 2006 when the Speaker of the House tried to push for constitutional change by convening the House of Representatives and the Senate into a constituent assembly.

Since January, the House had shelved the Commission's report, preferring to treat it as a reference material instead of as a primary input in Congressional deliberations. It passed a resolution where it articulated its own version of a unicameral parliament whose members would be elected by districts. At the same time, there would no longer be any party-list, sectoral or proportional representation. Term limits were removed and each term of elected officials would be for four years, replacing the current three years.

Instead of speeding up the "cha-cha express," however, both tracks derailed it. In October 2006 the Supreme Court ruled against *Sigaw ng Bayan's* people's initiative on grounds that it failed to comply with the basic requirements of the Constitution for conducting such an exercise. Because signatories were not fully informed of what it was they were signing on, the high court found the effort of collecting signatures "deceptive" and "misleading."

As for the Constituent Assembly, it did not really take off beyond the halls of the Lower House for the simple reason that the Senate was not on board. For one, many senators had presidential ambition and they were not about to abandon it for a parliamentary form of government. For another, by agreeing to set itself up as a Constituent Assembly, the Senate would effectively be abolished, along with the power and privileges of the senators. For the senators who were for constitutional reforms, they preferred to do it through a Constitutional Convention.

But the House of Representatives would not be dissuaded from pushing on with charter change. Because the Senate was blocking it, congressmen and women voted by a margin of 161-25 to amend a key rule that implicitly required Senate approval for constitutional change. This new rule paved the way for the Lower House to form itself into a Constituent Assembly with or without support from the Senate.

It seemed there was no stopping the "cha-cha express." Filipinos from all walks of life, however, had enough of what they saw as a blatant attempt by the pro-administration majority in the Lower House to railroad the process. Widespread opposition was leveled

against it mostly because people saw the danger of allowing Congress to draft the new Constitution. Political observer Antonio Abaya wrote in his *Manila Standard* column that the “biggest flaw (in the process)... is the fact that the constitutional amendments will be drafted by a Constituent Assembly made up of *trapos* and political dynasts who now control the present Congress and who will do everything to retain their positions, power and privileges in the new Parliament.” Eventually, the Speaker of the House retreated and abandoned the Constituent Assembly as a mode for charter change. He then proposed that a simultaneous election of delegates to the Constitutional Convention be held in May 2007 during the midterm national elections. It did not happen.

To date, the Speaker of the House, who won another three-year term and was chosen again to lead the Lower House, vows to continue championing charter change as part of his legislative agenda in the current Congress.

Politics of Survival

All these exercises to change the Constitution were set against a background of spiraling political turmoil in the country. President Arroyo was suffering from a crisis of legitimacy stemming from allegations that she committed electoral fraud to win the 2004 presidential election. Largely as an offshoot of this, the reformists in her Cabinet withdrew their support for her and resigned. An impeachment complaint against her was filed in Congress. Filipinos were being polarized into being pro- or anti-administration. To counter all these, the President had to consolidate her power and mobilize support for her continued stay in Malacañang.

The President’s critics contended that pushing for charter change was a way for her to defuse public scrutiny from the yet unresolved charges of electoral fraud. They saw it also as a ploy to keep herself in office by buying the support of national and local officials who were up for re-election in May 2007. To these officials, it was much easier to opt for charter change in view of the proposed no-election in 2007 and the extension of their term until 2010 as provided for by the new Constitution.

Such politics of survival by the President, according to her critics, made the push toward charter change suspect at this time. In a statement, the Citizens for Constitutional Convention, a group working for meaningful people’s participation in the charter change process, maintained that under the President’s survival mode, “charter change will not result in the best Constitution that would serve the public good.”

IV. Limits and Possibilities: the 1987 Constitution and Women’s Gender and Development Agenda

Section 14 Article II of the 1987 Constitution ensures the fundamental equality before the law of women and men and recognizes women’s role in nation building. This provision presents the legal basis for creating new laws and policies to promote gender equality and amending existing ones that negate it.

This Constitutional provision reinforces government's gender and development policy. An unpublished paper on Gender and Constitutional Reform commissioned by PILIPINA identified gender issues that can be addressed by reviewing and recrafting some Constitutional provisions or pieces of legislation. These issues are under the rubric of "gender equality in all spheres of life, recognition of women's contribution to development and nation building, and women's self-determination and right to bodily autonomy." Below is an abbreviated discussion of the paper's main points:

Gender Equality

In the home gender equality is manifested in joint breadwinning, joint childrearing and domestic work, and joint decisionmaking. Some significant measures are in place that contribute in promoting gender equality in the home:

- The repeal by the Family Code of antiquated provisions on Marriage and Family Relations of the Civil Code, including recognizing the right of women to enter into contracts without the husband's approval, the right to engage in trade and the practice of profession, and equal rights of husband and wife to exercise of parental authority; and
- Enactment of Republic Act 8972 or the Solo Parent's Welfare Act of 2000 that provides a comprehensive program of social development and welfare services to solo parents and their children, especially since women in a broken relationship are the ones usually left with the custody and responsibility to care for the children.

In the matter of joint exercise of parental authority, Filipino culture dictates that the father is still the ultimate decisionmaker in the family so that his decision prevails in case of conflict between the husband and the wife. The wife has to seek Court intervention if she insists on having her decision prevail over that of the husband's. Definitely, this provision needs to be reassessed so wives need not go through the Court process when faced with this situation.

In the workplace gender equality issues include equal pay for work of equal value, equal opportunities in employment, elimination of discrimination in employment of women on the grounds of pregnancy or marital status, and even paternity leave for men. Other forms of legislation related to these issues have to be reviewed to make them more responsive to the situation of women workers. In the case of paternity leave, it must be stressed that the law intends to have the fathers share in the responsibility of caring for the new baby and not just let the mother do it.

In public life conscious effort has been made in passing legislation that gives women a voice and allows them to participate in politics and decisionmaking. Among them are:

- RA 7160 or An Act Providing for a Local Government Code of 1991 that mandates representatives for women in all of the local legislative councils at the provincial, city and municipal levels;

- RA 7941 or An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Thereof that directs the election of party-list representatives, including forming and establishing a political party for women; and
- RA 8425 or An Act Institutionalizing the Social Reform and Poverty Alleviation Program, Creating for the Purpose the National Anti-Poverty Commission, Defining Its Powers and Functions, and For Other Purposes that creates the National Anti-Poverty Commission, with representation from 14 basic sectors, including women, and incorporating gender concerns in selecting members to the 14 sectoral councils.

While the number of women in government and in decision-making and policy-making positions is rising, this is not guaranteed by the legal system. Gender parity of 50 per cent or quota of a minimum of 30 per cent in all decision-making and policy-making bodies in government can go a long way in achieving equality with men in public life and a constitutional provision mandating gender representation would be the best means to guarantee actual representation.

Women's Contribution to Development and Nationbuilding

Another offshoot of Section 14 Article II of the 1987 Constitution is Republic Act 7192 or An Act Promoting the Integration of Women as Full and Equal Partners of Men in Development and Nation Building and For Other Purposes. It allocates a substantial portion of official development assistance from foreign governments and international agencies to support programs and projects for women, directs government agencies to allow their women personnel to participate in implementing development programs and projects and benefit from them, and calls on them to review and revise their regulations, issuances and procedures to remove gender bias.

GAD policy

One of the most significant outcomes of this Constitutional provision was the adoption of gender and development (GAD) as a guiding principle in governance and gender mainstreaming as a national strategy for development. This has enabled government to “think and act” GAD when they plan, implement, budget for, monitor and evaluate development initiatives. Structures and mechanisms such as GAD focal points and GAD councils down to the level of local governments are in place to sustain efforts in gender mainstreaming. Development plans specifically for women and programs and projects that directly target them have been put in place as well as a GAD budget that allocates funds for their implementation.

The GAD policy is strongly supported by women groups and organizations and advocates in and out of government. It has succeeded in coming up with GAD plans and budgets that have been used to address legitimate women's concerns. Still, there are lingering issues that continue to dog its effective implementation. Some of the more persistent ones are the following (NCRFW 2002):

- Weak political and popular support among national and local officials because of their limited knowledge about GAD and lack of appreciation of the relationship between gender and development;
- Limited technical capabilities among planners in formulating gender-responsive plans and budgets;
- Inability of the GAD policy to influence mainstream macropolicies, programs, and budgets because GAD planning and budgeting is seen as an independent process that must be done over and above an agency or a local government's regular planning and budgeting activity. In the process, the direct link between women's conditions and macroeconomic policies are overlooked so that opportunities for influencing these policies are not explored; and
- Lack of mechanisms to track progress and measure impact of GAD plans and budgets.

Globalization

The Philippines today is interlinked with other countries through the global economy. The process of globalization has facilitated the spread of new information and communication technologies and the removal of government controls on trade and investment. In many countries, globalization has resulted in changes in policies that favor more open trade and financial flows, privatization of state-owned enterprises, and lower public spending, particularly on social services.

The gains accompanying globalization have benefited better-off women with higher levels of education and with greater ownership of resources and access to capital. This cannot be said among women from developing and least developed countries, such as the Philippines. Critics of globalization contend that the benefits of the growing global economy have been unevenly distributed, leading to wider economic disparities, the feminization of poverty, increased gender inequality, including through often deteriorating work conditions and unsafe working environment, especially in the informal economy and rural areas. While more women have joined the labor force, certain economic policies adopted to propel globalization have had such a negative impact that increases in women's employment have not been matched by improvements in wages, promotions and working conditions. In many cases, women continue to be employed in low-paid, part-time and contract jobs marked by insecurity and by safety and health hazards. In many countries, women, especially new entrants into the labor market, continue to be among the first to lose jobs and the last to be rehired.

Another phenomenon that resulted from globalization is international migration. This is especially true among Filipino women. As of the latest data, more Filipino women at 51 per cent are migrating than men (NCRFW 2004), either leaving the country on their own or as primary earners in their household. What is disturbing is that "56 per cent of women who went abroad for work (were) laborers and unskilled workers (NCRFW 2004)" whose jobs are often temporary, low-paid, and unprotected.

If women are to benefit from globalization, the process needs to be reshaped so they can intervene and renegotiate its terms in more equitable ways that better serve their interests.

Valuation of women's work

In almost every country, women contribute as much total labor as men. They may even contribute more, especially in rural areas in developing countries like the Philippines. Here, women may stay at home but they also spend long hours of drudgery: they till and weed the fields, tend crops and livestock for their family's consumption or to be sold in the market, fetch water and firewood, even as they take care of the children and manage the household. These activities that women do are considered as unpaid or nonmonetized work and are not given any economic value. And because status in contemporary society is equated with one's ability to earn income, women's economic status is undervalued as well.

The undervaluation of women's work reflects underestimating women's contribution to the economy despite their larger share of the total work burden. There is a distinction between the work that women and men do. Men are perceived to be doing productive work, or paid employment outside the home, whose outputs are fully recognized and remunerated in official statistics. Women, both the housewives who stay at home doing reproductive work and those who do paid work outside the home, are seen as merely sustaining and supporting the productive work that men do. Such a situation reinforces their secondary and subordinate status and their unrecognized contributions to the economy. It has resulted in the lack of support systems and social benefits for women, their limited access to and control over resources, and their relatively minor roles in development. If women's unpaid and reproductive work is properly valued, it is possible they would emerge as the main breadwinner or at least as an equal breadwinner since they work longer hours than men.

Women's contribution to the economy is largely invisible and ignored because the nonmonetized and reproductive work they do does not always become part of national statistics. A more detailed accounting of their inputs is needed to recognize their enormous contribution to economic and social progress. Such recognition is necessary to enable them to secure their proper role in economic transactions, including their property rights and access to bank loans as well as measures to provide them with social security benefits such as minimum wage and insurance coverage even for housewives.

Corresponding policies must also be made to reduce women's burden of unpaid work. More equal sharing of responsibility in the home between women and men and greater involvement by the men in caring for the family must be encouraged so more opportunities can be opened for women to participate in paid employment.

Defining the Family

The 1987 Constitution recognizes the family as the foundation of the nation and marriage as the foundation of the family. As such, it considers it the duty of the State to strengthen

family solidarity and promote its development and to protect marriage. This perceived sanctity of marriage is the reason why the Philippines is one of the few countries in the world where divorce is illegal. This does not prevent couples, however, from separating or having their marriages annulled. Getting an annulment is becoming the popular choice of those who can afford it. Separation is most common. There are instances when children of separated parents suffer from the lack or absence of financial support from their fathers since these payments are not obligatory under a separation agreement. Children need to have their rights protected even if their parents' marriage failed. This is one argument for a divorce law. Making it legal also ends the spiral of domestic violence by giving women a way out of abusive marriages.

While the Constitution does not define what a family is, the Family Code connects it to marriage between a man and a woman in accordance with law. Even if the concept of family has evolved to include same sex unions and to not just be confined to heterosexual relationships, Philippine laws are clear that they do not recognize any other marriage than the union of a man and a woman. Such a position does not grant gays and lesbians the right to formalize their union, even if they are in a loving and supportive relationship.

Right to Self-Determination and Bodily Autonomy

The right to self-determination, or the right to determine the manner in which one can live one's life that is free from interference or coercion, goes hand in hand with the right to bodily autonomy where individuals are granted by law a great degree of freedom to choose what will, and will not, happen to their own bodies, even when their choices are not in their best interests, such as when a patient refuses life-saving treatment. While this is not an absolute right, the law more or less respects it. This right, which is also referred to as the right to physical integrity, is rooted in the right to respect for human dignity, the rights to liberty and security of the person, and the right to privacy.

Nowhere are the principles of self-determination and bodily autonomy more felt by a woman than when she claims her reproductive right. It recognizes "the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of reproductive and sexual health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence as expressed in human rights documents (Cairo Programme of Action, ICPD)."

The 1987 Constitution is silent about the right to self-determination and bodily autonomy, including reproductive right. One of the most personal choices a woman makes is whether to bear a child. Motherhood is a personal choice. Denying a woman the option of terminating or avoiding pregnancy or childbirth, such as when the State favors natural methods of family planning over artificial ones, or even when the State bans abortion, interferes with her right to decide on a matter with tremendous implications on her body and personal liberty. A woman's health must remain paramount and any decision concerning her medical care – including any decision to continue or terminate her pregnancy – must be based solely on her best interests.

Section 6 of the 1987 Constitution upholds the inviolability of the separation between Church and State. Yet, this principle is widely violated by government officials who make policies and decisions based on their religious conviction, especially with regard to women's reproductive right. The President herself has influenced the Department of Health and the Population Commission to promote the use of natural family planning methods over artificial birth control methods in her effort to court the religious right. Bills have been languishing in Congress that aim to advance reproductive health care, repeal the penalty imposed on women who induce abortion and those assisting them as means to decrease maternal mortality and morbidity related to complications from unsafe abortion, improve the implementation of the policy on preventing and managing abortion complications, implement sexuality education in schools for adolescents, eliminate anti-discrimination against sexual orientation, and legalize divorce – all because they are seen as infringing traditional Catholic beliefs and practices.

In its 36th session in August 2006, the CEDAW committee cited in its Concluding Comments that it is the obligation of the Philippine government to “strengthen measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives more widely available and without any restriction; give priority attention to the situation of adolescents and that it provide sex education, targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.” CEDAW urged the Philippines “to consider the problem of unsafe abortion as a matter of high priority. It recommends that government consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women's maternal mortality rates.”

The right to self-determination and bodily autonomy also impacts on the 1987 Constitution's Declaration of Principles and State Policies that upholds equal protection for the life of the mother and the life of the unborn from conception.

This Constitutional provision effectively recognizes the right of the unborn and considers an unborn fetus as a person under the law. But because the life of the fetus cannot be regarded in isolation with the life of a pregnant woman, protecting an unborn's right to life runs interference to a woman's right to reproductive health and autonomy, especially her right to terminate her pregnancy when her life or health is threatened by it. Implied in the Constitutional provision is that the unborn life of a fetus is of a higher value than the life of a pregnant woman.

Such position is contrary to Article 6 of the International Covenant on Civil and Political Rights, of which the Philippines is a signatory together with other member states of the United Nations. This particular provision of the Covenant does not indicate that the right to life applies to an unborn child. On the contrary, the UN's Human Rights Committee has routinely stressed the threat to women's lives posed by illegal and unsafe abortion.

The UN's Committee on the Rights of the Child has reflected a similar approach in interpreting Article 6 of the Convention on the Rights of the Child, which states that "every child has the inherent right to life." It does not include a fetus in defining a child as she or he is referred to in the Convention. It has expressed concern about denials of safe abortion services to adolescent girls seeking to terminate pregnancies. It has also linked unsafe abortion to the high rates of maternal mortality and has expressed concern over the impact of punitive legislation on maternal mortality rates.

Even as the Philippines is a party to both human rights agreements, its 1987 Constitution effectively outlaws abortion and considers it a criminal act. It penalizes the woman who has undergone it and the one who performed it. A pregnancy is only allowed to be terminated when the woman is mentally deranged and the pregnancy is the result of rape and when the mother's life is at risk because of it. Yet approximately 473,000 women had abortions and an estimated 79,000 women were hospitalized for complications due to unsafe abortion (Singh, et al 2000). Clearly, a disconnect exists between the intentions of the Constitution and the reality of women's lives.

Another aspect of the right to self-determination and bodily autonomy is the right to define or control one's sexuality. This right is supported by the right to free expression which is guaranteed in Section 4 Article III of the 1987 Constitution. Unfortunately, this Constitutional provision is not explicit in ruling out discrimination based on one's sexual orientation and gender identity. A bill was pending in the past Congress that banned such forms of discrimination with regard to employment, education, health services, public service, including military service, commercial and medical establishments, including police and military harassment. Nothing happened to the bill since it had no Senate counterpart.

Freedom from All Forms of Violence

Women continue to experience gender-based violence of varying forms and degrees. Laws have been passed to help women achieve a life free from violence. These are:

- RA 7877 – An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes;
- RA 8353 – An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No 3815, as Amended, Otherwise Known as the Revised Penal Code, and Other Purposes;
- RA 9208 – Anti-Trafficking in Persons Act of 2003; and
- RA 9262 – An Act Defining Violence against Women and Their Children and Providing Measures for Victims, Prescribing Penalties Therefor and for Other Purposes

In this current Congress a bill establishing a Magna Carta of Women has been filed that includes a provision calling on the State to ensure that "all women shall be protected from all forms of violence as provided for in existing laws."

V. Proposed Position on Constitutional Reforms

Without a doubt, there is widespread dissatisfaction in politics among Filipinos today. The system is almost bankrupt and the perception is that, rightly or wrongly, politicians are not to be trusted to work for the national interest but for their own vested interests. Everything that is going wrong in this country is almost always blamed on them and on a political system that continuously produces corrupt and incompetent politicians and allows them to thrive in it. If only for this, the push for political reforms is a legitimate response and amending the Constitution is an instrument that can bring about these much needed reforms. To democratize the process, the mode to amend it must be through a Constitutional Convention where delegates will be freely elected to represent the interests of various sectors in drafting the new charter.

Yet, urgent as it seems, now is not the time to do it. Not when the President is engaged in the politics of survival and her intentions for favoring charter change is questionable. And not when the electoral system itself has lost credibility, with the Commission on Elections tainted by allegations of complicity in the electoral fraud of the 2004 presidential election and by incompetence and distrust in the last midterm election. Somehow, the failure by the electoral system to bring closure to these issues may also render the result of the election for delegates suspect as well.

General Recommendations

At the height of the charter change debate in 2005, the National Commission on the Role of Filipino Women (NCRFW) organized a forum of different women groups and nongovernment organizations on how to engage the process so they can better clarify and articulate their position regarding Constitutional reform. Their initial recommendations include:

- Undertake measures to ensure that the proposed provisions in the new Constitution are responsive with the signs of the times such as globalization that has affected women tremendously;
- Strengthen and improve (at the maximum) or protect (at the minimum) the progressive provisions of the Constitution on social justice and national patrimony, among others;
- Compel the State to fulfill its obligations and commitments to international conventions and treaties such as the CEDAW and the Beijing Platform for Action adopted during the Fourth World Conference on Women, to which the country is a signatory of;
- Ensure that gender perspective is mainstreamed in the entire Constitution and not only in women-specific provisions.

Specific Recommendations

Declaration of Principles/Bill of Rights

- Institute changes in the Constitution to ensure gender equality in all spheres of life;
- Recognize women's self-determination and right to bodily autonomy;
- Repeal the provision on the right of the unborn from conception;
- Expand the definition of the family to include other loving, stable and supportive relationships and not just limit it to one based on a heterosexual relationship involving marriage between a man and a woman;
- Ensure freedom of women from all forms of violence.

Structure of Government

- Ensure greater local autonomy for local government units to be given greater power, authority, autonomy and resources;
- Increase the representation of marginalized groups, including women, through local councils and other similar structures that are accountable and transparent in wielding power and autonomy;
- Move toward federalism to widen mass participation in governance;
- Strengthen decentralization either through regionalization or federalism for greater autonomy at the local level.

Form of Government

- Need to institute political reforms such as changing the political system from presidential to parliamentary to strengthen the political parties and provide better representation of the people;
- Combine executive and legislative powers in the National Assembly in a parliamentary system with collective authority;
- Create new parliamentary positions and redefine the functions of old presidential positions by adopting a corporate structure for the nation-state with the President as the Chief Executive Officer while the Prime Minister is the Chief Operating Officer;
- Establish 13 Regional Assemblies with administrative structures as constituent parts of the National Assembly.

National Patrimony and Economic Reforms

- Recognize women's contribution in development and nation-building, including the need for valuation of women's work where women's work inside the home is equally important as that in the workplace and obligating the State to provide services for women working as full-time homemakers.

Civil Service/Electoral and Political Party Reforms

- Ensure gender parity and quota, including women representation in government posts and local sectoral representation.

V. Recommendations for Meaningful Constitutional Reform Engagement

The greater challenge for women at the moment is still to be able to articulate a clear national policy on gender equality. This can be done either through an omnibus gender equality law, which is why there is the Magna Carta of Women bill filed in Congress, or through an overriding Constitutional provision. This should be the main concern underlying all efforts to engage in the charter change process.

The debate may be silent at the moment but this does not mean the push for charter change is dead. The Speaker of the House of Representatives, for one, is still seriously pursuing it. Women need to engage in the process for constitutional reform as stakeholders in development and must be ready to put their agenda on the table anytime. It might help if consultation meetings be conducted regularly among GAD advocates on the proposed gender provisions, particularly ensuring that they reflect international conventions on women, such as the CEDAW, and address women's oppression in the midst of globalization and poverty. Now is also the time to build up a constituency that will support the campaign for Constitutional reforms.

As part of its participation in the charter change process, women must push for a Constitutional Convention as the mode to effect it. Once the Convention is in place, GAD advocates must be identified who can champion the gender agenda in its deliberation of constitutional reforms. At the very least, gender considerations must be a factor not just in the process of amending the Constitution but its provisions must be viewed and formulated using gender lens.

References:

Charter Change Primer/FAQ.

www.ipd.ph/chacha/primer/chacha_primer.html. (Visited July 2007).

Constitutions of the Republic of the Philippines.

www.chanrobles.com/philsupremelaw.html. (Visited July 2007).

Gender and Reproductive Rights.

www.who.int/reproductive-health/gender/index.html. (Visited July 2007).

Inside PCIJ – Charter Change.

www.pcij.org/blog/?cat=15. (Visited July 2007).

<http://pinoyrh.blogspot.com>. (Visited August 2007)>

Legal Issues in the Conclusion of Life and the Refusal of Treatment.

www.courdecassation.fr/internationale_br_5/britanno_irlandais_632/publications_635/in_the_8646.html (Visited July 2007).

Abad, Julia Andrea. *Constitutional Reform and the Youth's Development Agenda*. 2007.

Madamba-Nuñez Marie Grace and Hubert Bustos. *Results of the Research on Gender and Constitutional Reform*. Commissioned by PILIPINA-Friedrich Ebert Stiftung, Philippines, 2005.

National Commission on the Role of Filipino Women. *Gender Budgeting: the Philippine Experience*. 2005

National Commission on the Role of Filipino Women. Unpublished synthesis of the Forum on Constitutional Reform: Are Women In?, 11 October 2005.

Singh, S et al. *Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences*. New York: Guttmacher Institute, 2006.