

INTERSECT

QUICK FACTS

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WHAT IS GOOD ABOUT THE 1987 CONSTITUTION?

ARTICLE XIII
Social Justice and Human Rights
SECTION 1. The Congress shall give highest priority to enactment of measures that protect and enhance the people to human dignity, reduce social, economic, and cultural inequalities, and remove cultural inequities, and wealth and political power for the common good.
To this end, the State shall regulate the ownership, and disposition of property and natural resources.
SECTION 2. The promotion of social justice and commitment to create a more equitable and self-reliant society shall be an initiative and self-

Even before coming to power, President Rodrigo Roa Duterte had been casting federalism as “our last hope” to set right the excesses of a central government controlled by “Imperial Manila,” the inequitable distribution of public resources, the uneven economic development among regions, and the massive poverty that has bred unrest and rebellion in Mindanao. The shift to a federal system of government necessitates changing the existing Constitution. In December 2017, through Executive Order 10, the president formed a 25-member consultative committee to review the 1987 Constitution and study proposals for its revision. In the House of Representatives, technical working groups have been created to draft a Philippine Federal Constitution. Two proposals—one by the president’s political party, the *Partido Demokratiko Pilipino–Lakas ng Bayan* (PDP-Laban), another by his allies in the House of Representatives—have been put forward.

But before we throw the 1987 Constitution out, prudence requires that we examine what is good about it, among them, the provisions on social justice and human rights. This issue of *Intersect Quick Facts* hopes to help readers better appreciate our current constitution and decide whether we should be discarding it for the extravagant promises of President Duterte’s federalist project. Perhaps, to paraphrase English Catholic journalist and social activist Gilbert Keith Chesterton about Christianity, the real problem with the 1987 Constitution is not that it has been tried and found wanting, but that it has been found difficult and left untried.

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ATTEMPTS AT CHANGING THE CHARTER



CORAZON C. AQUINO
1986-1992

After the overthrow of Ferdinand Marcos in 1986, Aquino created a Constitutional Commission with 48 members to propose a post-dictatorship constitution. Ratified overwhelmingly on February 2, 1987 through a national plebiscite, the new Constitution stressed the importance of human rights and popular participation in governance (IPER 2004, 14). It also incorporated safeguards for freedom and democracy, among them strict requirements for the declaration of Martial Law.



FIDEL V. RAMOS
1992-1998

Ramos, the first president to be elected under the 1987 Constitution, attempted to change the Constitution twice—first in 1995 and second in 1997. Civil society groups perceived the move as a ploy to allow him to seek a second term (IPER 2004, 15).



JOSEPH E. ESTRADA
1998-2001

Estrada created a commission to study the possibility of amending the economic and judiciary provisions of the Constitution. The commission ceased its work after civil society organizations opposed its proposal to allow foreign entities to own prime lands in the country (IPER 2004, 16).



GLORIA M. ARROYO
2001-2010

Allies of Arroyo in Congress proposed a shift to a unitary parliamentary system and other political reforms to be introduced by a Constituent Assembly (Con-Ass). Civil society groups opposed the preferred mode of changing the Constitution because it left the crafting of the new charter to politicians who might build their own interests into its provisions (IPER 2004, 12).



BENIGNO S. AQUINO III
2010-2016

Aquino initially disapproved of constitutional change but eventually became open to it to limit the judiciary’s power in relation to the executive and legislative branches of government, and to continue reforms by allowing the incumbent president to run for a second term (Ubac and Bordadora, 2013; Calonzo 2014; Gutierrez 2014).

The 1987 Constitution aspires to protect human dignity and reduce economic and cultural inequities through the distribution of wealth and power for the common good. Its provisions on social justice—labor, agrarian and natural resources reform, urban land reform and housing, health, women, and people’s organizations—put the poor at the “center of our development” as a nation (Monsod 2017).



LABOR

The 1987 Constitution upholds workers’ rights of all Filipinos, local and overseas, through security of tenure, humane working conditions, and a living wage. It also recognizes workers’ rights to organize themselves and to strike (Art. XIII, Sec. 3).

WHAT HAVE WE GAINED BECAUSE OF IT?

The Department of Labor and Employment released two department orders protecting security of tenure, one in 2011 (DO 18-1 s. 2011) and another in 2017 (DO 174 s. 2017), which prohibit labor-only contracting or contractualization.

In 1995, Congress enacted the **Migrant Workers and Overseas Filipinos Act (Republic Act 8042)** and amended it in 2009 (RA 10022) to protect migrant workers against abuses such as illegal recruitment and trafficking, and to promote their welfare and that of their families. While the regulatory framework and institutions created by our laws to protect overseas Filipino workers (OFWs) are considered a model for many developing countries, the implementation of the framework and performance of the institutions need to be strengthened (Orbeta, Abrigo, and Cabalgin 2009). For example, the government needs more strictly to implement bilateral agreements, as well as penalties for domestic agencies with violations, and to observe selective deployment to countries recognizing and protecting workers’ rights in accordance with the law.

WHAT’S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution does not guarantee the “humane conditions of work and a living wage” enshrined in the 1987 Constitution. Instead it proposes “freedom from discrimination on matters of employment tenure, working conditions, and wage levels.” A footnote says that “sections on labor are better left to Parliament” (PDP-Laban 2017, 59).



AGRARIAN AND NATURAL RESOURCES REFORM

The 1987 Constitution mandates the just distribution of agricultural land through an agrarian reform which recognizes the rights of farmers and small landowners. It also recognizes the rights of indigenous communities to their ancestral lands and the rights of fishers to the preferential use of marine resources (Art. XIII, Sec. 4-8).

WHAT HAVE WE GAINED BECAUSE OF IT?

The **Comprehensive Agrarian Reform Law or CARL (RA 6657)** was enacted in 1988 to distribute public and private agricultural land to landless farmers and farm workers through a 10-year Comprehensive Agrarian Reform Program (CARP). CARP was extended for another 10 years in 1998 by the enactment of the Augmentation Fund for CARP Implementation (RA 8532), and further extended in 2009 by the enactment of CARP Extension with Reform or CARPER (RA 9700). By 2016, 4.8 million hectares of eligible land had been distributed, benefiting 2.81 million agrarian reform beneficiaries (ARBs); the balance to be distributed is 600,504 hectares of private agricultural land (Ballesteros, Ancheto, and Ramos 2017).

The **Indigenous People’s Rights Acts or IPRA (RA 9371)** was enacted in 1997. The law defines the concept of ancestral domain and mandates that indigenous peoples (IPs) be given certificates of ancestral domain title (CADTs). By June 2015, the National Commission on Indigenous Peoples (NCIP) had issued 182 CADTs (TEBTEBBA 2016). Much more needs to be done to speed up the registration of these lands with the Land Registration Authority and the development of Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) to protect the ancestral domains from business interests and public projects that are detrimental to the interests of indigenous communities.

Although policies on aquatic resources had been in place since the 1930s, it was not until 1998, through the **Fisheries Code (RA 8550)**, that poverty among small fishers was explicitly attributed to the depletion of fish stock, degradation of fishing grounds, and conflicting uses of coastal waters. To address these problems, the law designated municipal waters of up to 15 kilometers from the shore for exclusive use by municipal fishers’ organizations and cooperatives. The amended Fisheries Code (RA 10654) further protected small fishers from commercial fishers by setting higher penalties.

WHAT’S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution conspicuously lacks provisions for agrarian reform or support for its beneficiaries. It also lacks provisions for protecting the rights of farmers, fishers, and indigenous peoples, the sectors whose poverty rates are highest in the country. A footnote says that “sections on agrarian reform and natural resources are better left to Parliament” (PDP-Laban 2017, 59).



URBAN LAND REFORM AND HOUSING

The 1987 Constitution mandates the provision of affordable decent housing with basic services for all, and prohibits eviction or demolition except in a just and humane manner (Art. III, Sec. 9-10).

WHAT HAVE WE GAINED BECAUSE OF IT?

The **Urban Development and Housing Act or UDHA (RA 7279)** was passed through lobbying of urban poor groups. UDHA directs the national government to develop a national development and housing framework, and local governments to develop their shelter plans, identify social housing sites, and formulate and implement social housing programs. It also mandates that resettlement sites should be near livelihood and employment opportunities, which some shelter agencies tend to overlook if projects are implemented without people’s participation.

Different shelter agencies, such as the National Housing Authority (NHA) and Social Housing Finance Corporation (SHFC), are providing off-city resettlement, on-site upgrading through the Community Mortgage Program, and off-site in-city housing through the High Density Housing Program. But issues of access to basic and social services and adequate employment opportunities remain the biggest challenges.

WHAT’S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution still recognizes the need for affordable housing, but only for “homeless citizens.” It omits the rights of underprivileged Filipinos to social housing that is decent, not just affordable. It does away with the stipulation that demolition be done in a “just and humane manner.” A footnote says that “sections on urban land reform and housing are better left to the Parliament” (PDP-Laban 2017, 60).

“ I SUBMIT THAT WE HAVE FAILED IN HUMAN DEVELOPMENT, NOT BECAUSE OF THE CONSTITUTION, BUT BECAUSE WE HAVE NOT FULLY IMPLEMENTED IT, ESPECIALLY ITS PROVISIONS ON SOCIAL JUSTICE AND HUMAN RIGHTS AND ON LOCAL AUTONOMY. THE CONSTITUTION IS NOT THE PROBLEM, IT IS PART OF THE SOLUTION.”

Atty Christian S Monsod
Member of the 1986 Constitutional Commission and
Former Chairman of the Commission on Elections



HEALTH

The 1987 Constitution, in its commitment to protect and promote Filipinos' right to health, calls for integrated, comprehensive, responsive, and affordable health services, with priority for the underprivileged, the sick, the elderly, the disabled, women, and children (Art. XIII, Sec. 11-13).

WHAT HAVE WE GAINED BECAUSE OF IT?

The **National Insurance Act of 1995 (RA 7875)** was amended in 2013 by RA 10606 to provide for mandatory inclusion of all Filipinos, whether from the formal or informal economy, and including indigents. It mandates local governments to provide basic health services (also provided for by the Local Government Code).

In 2016, 93.4 million Filipinos (91% of the population) were covered by the **National Health Insurance Program (NHIP)** being implemented by the Philippine Health Insurance Corporation (PhilHealth). The NHIP's Indigent Program covers 14.6 million poor families along with their 28.8 million dependents (PhilHealth 2016).

WHAT'S IN THE PROPOSED REVISIONS?

In the PDP-Laban draft federal constitution, "the federal and regional governments shall adopt an integrated and a universal health care program." It also has good provisions on health, proposing "free medical care to indigents and those living below the poverty line as defined by the law" (PDP-Laban 2017, 60).



WOMEN

The 1987 Constitution affirms the role of women in nation-building and the equality of women and men (Art. II, Sec. 14). Art. XIII recognizes the need for safe and healthful working conditions to enhance women's welfare and enable them to reach their full potential (Art. XIII, Sec. 14).

WHAT HAVE WE GAINED BECAUSE OF IT?

The **Anti-Sexual Harassment Act (RA 7877)**, enacted in 1995, penalizes persons of authority who demand or request sexual favors in work, education, or training-related settings.

The **Anti-Rape Law (RA 8353)**, passed in 1997, reclassified rape from a crime against chastity to a crime against persons, which removed the requirement that victims be chaste to be considered to have been raped. Rape was also reclassified as a public offense, which means that anyone who has a knowledge of the crime can file a case on the victim's behalf.

Enacted in 2004, the **Anti-Violence Against Women and Their Children Act (RA 9262)** classifies violence against women and children (VAWC) as a public crime. By allowing them to seek protection from local authorities, the law protects women and children who are usually disadvantaged in an abusive relationship and are likely subjected to physical, sexual, or psychological violence or to economic abuse.

The **Magna Carta of Women (RA 9710)**, enacted in 2009, is a landmark law articulating women's rights related to freedom from discrimination, health, marriage, education and training, representation, and participation. The law also mandates the mainstreaming of a gender and development (GAD) framework at all levels of government.

WHAT'S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution adopts the same provision for ensuring the improvement in the conditions of women.



PEOPLE'S ORGANIZATIONS

The 1987 Constitution recognizes the need for people's participation and the role of people's organizations at all levels of social, political, and economic decision-making through adequate consultation mechanisms (Art. XIII, Sec. 15- 16).

WHAT HAVE WE GAINED BECAUSE OF IT?

The 1987 Constitution provided for the initial representation in the legislature of basic sectors such as labor, peasants, the urban poor, IPs, women, and youth, through a party-list system with representatives making up 20% of the House of Representatives (Art. VI, Sec. 5). The party-list system intended to democratize the legislature and strengthen a multiparty system by opening opportunities for the representation of smaller parties and by reserving seats for selected marginalized sectors through competitive elections for the first three terms under the system. The system has since become vulnerable to cooptation by traditional political parties and "nonmarginalized" groups (Torres-Pilapil 2015), but remains a space in which marginalized sectors represented by party-list groups have a chance to compete for and gain seats in the legislature.

The **Social Reform and Poverty Alleviation Act of 1997 (RA 8425)** provides for representatives to the National Anti-Poverty Commission (NAPC) from 14 basic sectors: farmers, fishers, urban poor, IPs, formal and informal sector workers, migrant workers, women, youth and students, persons with disabilities, victims of disasters and calamities, senior citizens, children, and civil society organizations (NGOs and cooperatives). NAPC is the government's coordinating and advisory body for the implementation of its social reform and poverty alleviation agenda.

The **Local Government Code of 1991 (RA 7160)** provides for Local Consultative Bodies (LCBs), consultative structures for the participation of civil society organizations (people's organizations and NGOs) at every level of local governance, from the regional down to the barangay level. However, various studies show poor compliance of local government units in establishing and activating LCBs such as the Local Development Councils (LDCs) (Philippine Partnership for the Development of Human Resources in Rural Areas, n.d.).

WHAT'S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution retains without any changes or additions the 1987 Constitution's provisions for people's participation.



The 1987 Constitution...

values the sanctity of human life and dignity of all from conception to natural death.

“The State values the dignity of every human person and guarantees full respect for human rights.”

ART. II, SEC. 11

commits to the equal protection of the right to life of all citizens.

“No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

ART. III, SEC. 1

protects the right to life of law offenders.

“Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.”

ART. III, SEC. 19

WHAT HAVE WE GAINED BECAUSE OF IT?

Because of the 1987 Constitution, the Philippines became the first nation in Asia to abolish the death penalty (Philippine Center for Investigative Journalism 2006). Although RA 7659 made the death penalty mandatory for 21 heinous crimes in 1993, objections from the Roman Catholic Church and human rights groups caused then President Joseph Ejercito Estrada to issue a moratorium on executions. In 2006, RA 9346 reabolished the death penalty.

The Constitution's affirmation of human rights after the dictatorship's abuses is the context for RA 10368, the Human Rights Victims Reparation and Recognition Act of 2013, “providing for reparation and recognition of victims of human rights violations during the Marcos regime, documentation of said violations, appropriating funds therefor and for other purposes”.

In times when government policies do not protect the right to life, human rights advocates can invoke the Constitution for relief from such policies. The violence of the Duterte administration's campaign against illegal drugs has drawn international attention because of the high death toll among drug suspects. In police operations alone, 3,968 drug suspects were killed between the first full day of the administration, July 1, 2016, and December 27, 2017 (Philippine Information Agency 2017). Thousands more have been killed by vigilantes rumored to be police officers or in the pay of police (Mogato and Baldwin 2017). Petitions have been filed in the Supreme Court questioning the constitutionality of the administration's campaign against drugs and asking for a writ of amparo to protect the petitioners (families of victims, residents of an affected community, and members of a religious order documenting the killings) (Lopez 2017).

WHAT'S IN THE PROPOSED REVISIONS?

The PDP-Laban draft federal constitution retains without any changes or additions the 1987 Constitution's provisions for human rights. However, there is a proposal from administration allies to state that the protection of freedom of speech (currently Art. III, Sec. 4) be limited only to its “responsible exercise” (Yap 2017). This raises fears that a new constitution will give the state the power to determine what is the “responsible exercise” of freedom of speech, and thus the potential to censor dissent.

THE HUMAN RIGHTS PROVISIONS OF THE 1987 CONSTITUTION, PARTICULARLY THOSE ON RESPECTING AND PROTECTING THE RIGHTS OF EVERY HUMAN BEING, SERVE AS SAFEGUARDS AGAINST A RETURN TO A SITUATION IN WHICH HUMAN RIGHTS ARE ROUTINELY VIOLATED. THESE PROVISIONS HAVE BEEN THE BASIS FOR QUESTIONING GOVERNMENT POLICIES AND ACTIONS THAT THREATEN HUMAN RIGHTS.

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The present moment is crucial. The work to be done is urgent.

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