



# PUBLIC POLICY

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## Volume 12

Judicialized Governance and Populist Democracy:  
Majoritarian Adjudication in the Philippines  
and Selected Asian Countries

**RAUL C. PANGALANGAN**

Defining the National Territory:  
Security and Foreign Relations Dimensions

**AILEEN S. P. BAVIERA**

Poverty and Globalization: Is a Radical Rethinking Called For?

**RAUL V. FABELLA VIGILE MARIE B. FABELLA**

In Defense of the Philippines: Assessing the Factors  
Affecting the Country's External Defense Environment

**HERMAN JOSEPH S. KRAFT JAY L. BATONGBACAL  
NELSON G. CAINGHOG JAIME B. NAVAL**

## Volume 13

Empowering the Nation's Working Poor

**RENE E. OFRENEO**

Reducing Power Rates in the Philippines

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Building Sustainable and Disaster Resilient  
Informal Settlement Communities

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An Ode to Re-Dimensioning: Philippine Institutions and Governance

**EDNA E. A. CO NELSON G. CAINGHOG RUBEN JEFFREY A. ASUNCION**

Global Politics: Is It an Un-centralizing New World Order?  
(REVIEW ESSAY)

**PRIMER C. PAGUNURAN**

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# PUBLIC POLICY

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## EDITOR'S NOTE

These 12<sup>th</sup> and 13<sup>th</sup> *Public Policy* issues present evidence and critical perspectives on policy dilemmas confronting the Philippines, particularly national security and defense related to the current tensions in dealing with China, energy reform, poverty reduction, development, globalization and governance. Academic experts analyze policy issues in four papers, initially delivered as public lectures for the President Eduardo J. Angara Fellowship and the UP Centennial under the auspices of the UP Center for Integrative and Development Studies (UPCIDS), and in three peer-reviewed research articles. The synthesis paper of three round table discussions organized last year by the UPCIDS shares the insights of diverse stakeholders about the institutions of government and governance. The review essay challenges critical thinking about globalization, its centralizing or un-centralizing world order, which impacts on the internal dynamics of politics, policy and governance, particularly within developing countries and in their external relations at the international level.

Raul V. Pangalangan's paper on "Judicialized Governance and Populist Democracy: Majoritarian Adjudication in the Philippines and Selected Asian Countries" explicates the concepts and empirical evidence of judicial overreach and judicial review, where courts render decisions on policy and political concerns. Pangalangan cites specific cases in the Philippines, Indonesia, Thailand and South Korea that raise questions about the judiciary, as either a majoritarian or counter-majoritarian force in constitutional and democratic processes, by way of its judicial review contrary to executive and legislative acts and popular expressions. Focusing on the Philippines, cases brought to court pertained to saving trees, cleaning up the seas, entry of foreign investors, oil industry deregulation, overthrow of corrupt president, and limits on presidential term. The indications are that the judiciary, since judges are not elected, provide safeguards to populist tendencies that can obscure democracy and constitutionality.

In their paper, "Poverty and Globalization: Is a Radical Rethinking Called for?" Raul Fabella and Vigile Marie Fabella revisit the debates linking globalization, economic growth and poverty reduction in Third World countries. The authors

analyze the contentious issues about “deep determinants” of good *economic outcomes*, particularly economic policy and institutions. They provide ample literature review covering the debates. With new data sets and controls for institutional quality related to outcome variations, the authors account for globalization or openness in terms of trade ratio; various control variables, institutional or governance variables, namely, regulatory quality, voice and accountability; and poverty outcome as poverty incidence and poverty reduction. The authors assert that globalization has “strong positive influence on poverty and poverty reduction,” which does not require a radical departure from the thesis that globalization contributes to poverty reduction.

Two papers tackle the burning issue about the Philippine territory, national security, and defense capability, particularly in light of current tensions between the Philippines and China, and other Southeast Asian countries over jurisdiction in respective areas referred to as the South China Sea and the West Philippine Sea. In “Defining the National Territory: Security and Foreign Relations Dimensions,” Aileen S.P Baviera analyzes the Philippines’ core security and diplomatic interests that are affected by the definition of the country’s national territory, maritime boundaries and jurisdictional areas. Identifying strategic threats and regional factors, policy options are recommended for the country to pursue. This initiative contributed to the formulation by an experts group of a white paper entitled “Towards a Strategic Framework for Management of the West Philippine Sea”, as advocacy for policy stakeholders to take necessary action. The other paper, “In Defense of the Philippines: Assessing the Factors Affecting the Country’s External Defense Environment,” prepared by Herman Kraft, Jay Batongbacal, Nelson Cainghog, and Jaime Naval, calls attention to the factors creating the country’s external security environment relevant to determining defense requirements. The authors argue that to be relevant, the Philippines’ security framework must consider the country’s archipelagic configuration and its historic, socio-cultural and politico-economic inter-connections with countries in Southeast Asia and Asia. The Philippines must recognize the extent of its military capability amidst geopolitics, considering China’s aggressive stance in the West Philippine Sea. Policy directions are offered for government and other stakeholders.

Hoisting a critical policy issue in his paper “Empowering the Nation’s Working Poor,” Rene Ofreneo recommends policy reform to address the worsening condition of the Filipino working poor. Ofreneo examines the differences in the rights availed of by regular workers in the formal sector compared to the informal sector working in the informal economy, and the non-regular workers in the formal sector. The 1987 Constitution does not take exceptions to the duty of the state and the rights of workers for social protection. However, labor laws, policies, and practice do not extend the same rights without formal employer-employee relations. Citing empirical evidence on different types of working poor in the informal economy or informal sector and inadequacies in government responses, the paper advocates for “a coherent and comprehensive policy regime for labor and social protection”.

On energy issues, Rowaldo del Mundo’s “Reducing Power Rates in the Philippines” argues that the high costs of electricity undermines the country’s competitiveness compared to other Asian countries, despite the enactment of the Electric Power Industry Reform Act (EPIRA) in 2001. Among its effects worth emphasizing, poor Filipino households have to pay more for power consumption compared to those in Singapore and Japan. Del Mundo’s paper is an important reading for its analysis of the factors affecting power rates in the Philippines, particularly taxation, subsidies, fuel, purchasing power, and the electricity market. It asserts the need to reduce power rates through a mix of policy options. This calls for action by government policy actors, particularly the Department of Energy and the Energy Regulatory Commission.

Since recent disasters have caused havoc in the Philippines, Mario de los Reyes and Angelica N. Francisco recommend research based policy directions for disaster risk reduction in their paper, “Building Sustainable and Disaster Resilient Informal Settlement Communities,” synthesizing six study components done in Barangay Tumana in Marikina City. Environmental governance is now crucial since the Philippines ranks second in the World Risk Index for exposure to natural hazards. At least in the case of Tumana, the policy directions to build sustainable and disaster resilient informal communities involve the resolution of land tenure issues and slum upgrading, vulnerability reduction by geographic separation of the population from disaster prone areas, and risk resilience by community empowerment and institutional capacity building.



Three round table discussions in 2014 elicited views from the multi-sectoral stakeholders that stimulate rethinking about Philippine institutions and governance. The synopsis highlights the poor performance of the three branches of government—executive, legislative and judicial and underlying factors, including the poor choice of elected officials and uninformed electorate; also the gaps in policies, particularly for social justice; and the challenges for reform.

The final piece, “Global Politics: Is it an Un-centralizing New World Order?” reviews at least five main academic works on the theme of globalization related to development, democracy, governance, politics and public administration. Primer Pagunuran weaves the review essay around the issue of centralizing or un-centralizing arrangements for many systems that have gone global in scale, whether or not hierarchies and pyramids are done away, where “nobody is in charge”, and where government is situated. The review compares varying perspectives on the dilemma of choice or decision, the constraints and challenges involved in global politics and governance, that can affect development and democracy particularly for the Third World.

MARIA LOURDES G. REBULLIDA



# Judicialized Governance and Populist Democracy: Majoritarian Adjudication in the Philippines and Selected Asian Countries

RAUL C. PANGALANGAN

[The current debate on judicial review results in a] chronic fetishism of the constitution, [the] extravagant if not obsessive reverence for the icons, liturgies, and orthodoxies of constitution, to which quasi-natural powers, beyond ordinary human agency, are commonly attributed.”<sup>1</sup>

## **From a Legalistic Toward an Institutional View**

We have long debated the problem of judicial overreach where unelected judges decide matters better left to the elected branches of government, and we ask courts to act on the basis not of fixed rules but of broad policy concerns. However, we debate as if it were purely a philosophical choice over competing theories of judicial review: should we “let justice be done though the heavens fall,”<sup>2</sup> or hearken what Oliver Wendell Holmes calls “the felt necessities of the time”<sup>3</sup>?

We adopt almost entirely the American rhetoric on the “counter-majoritarian difficulty,”<sup>4</sup> the irony that when courts strike down laws in the name of high constitutional principle, judicial review is inherently undemocratic because it overrides the will of the political branches elected by the people.

Even if the immediate result were desirable, the process—the constitutional shortcut, if you may—erodes republican institutions. “The tendency of a common

and easy resort to this great function ... is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. "<sup>5</sup> "[T]he people thus lose the political experience, and the moral education and stimulus that come from fighting the question out in the ordinary way . . . ."<sup>6</sup> In the words of a populist critic of judicial review, it feeds upon a "disdain for the political energy of ordinary people... [and is] politically condescending and repressive, frequently humiliating, even suffocating...."<sup>7</sup>

This paper proposes that, in the Philippines, when we cast the debate in the language of judicial review, we cloak the real issue because what we really want to say has less to do with law and more to do with politics, namely, the flaws of our post-Marcos democracy. Judicial review is the answer to our search for a mode of democratic governance sufficiently insulated from the follies of raw populism.

That mode confronts two factors. One, the norms that we have constitutionalized are still highly contested, unsupported by a genuine national consensus. Two, we constitutionalized them precisely to place them beyond the reach of the political compromise that occurs in electoral democracy.

But this actually brings us back to the countermajoritarian rationale. We would prefer to entrust these norms to unelected judges, theoretically free to do what is right rather than what is popular, rather than elected legislators in thrall of a fickle public opinion. We thus depoliticize decision-making by asking unelected judges to apply the law mechanically as it were, rather than submit to the cheap politics of backslapping, horsetrading politicians. We would rather avoid open-ended ideological debate because we do not trust the Filipino voter.

### **The Pinoy Twist: Countermajoritarian Rhetoric, Majoritarian Politics**

But that is where the countermajoritarian influence ends. In the Philippines today, when courts overreach, they actually purport to be more genuinely democratic than the elected branches of government.

The underlying logic is that people's voice can be heard in many ways in a flawed democracy like the Philippines, and the courts merely hearken the people's true voice, not the distorted sounds we hear during elections. At one level, the

reasoning goes, the Congress is elite-dominated, ideologically opportunistic and mercenary, and when the courts strike down legislative acts, they actually carry out a “General Will” to which judges above anyone else are privy. At another level, the voters are seen as unwise, shallow (“the non-intellective faculties of a passive audience”<sup>8</sup>), easily manipulated, and intellectually barren<sup>9</sup>, who need to be protected against themselves by, you guessed it, the learned, lofty magistrates.

In the Philippines today, when courts overreach, they actually purport to be more genuinely democratic than the elected branches of government.

And, in a final argumentative twist, they actually purport to act in behalf of an amorphous nation by enforcing the Constitution, which begins with the words, “We, the sovereign Filipino people . . .”<sup>10</sup> This was captured in the rhetorical question posed by the Court when it nullified a decision by Congress to impeach the Supreme Court Chief Justice, citing a constitutional time-bar against a second impeachment within a one-year period.

[T]hey call upon this Court to exercise judicial statesmanship [saying] that whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride. . . . *But did not the people also express their will when they instituted th[ose] safeguards in the Constitution?*<sup>11</sup>

Stated plainly, confronted with the majoritarian dilemma, the Court did not flinch. Instead asked: What countermajoritarian difficulty? We are being truly democratic because we are beholden to the true and ultimate sovereign!

Indeed, the Court didn’t stop with channeling the sovereign people. In a case, involving the “right to a clean and healthful ecology,”<sup>12</sup> the Court purported to act in behalf of the human race, the height of either institutional ambition or messianic conceit! “While th[is] right . . . is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less

than self-preservation and self-perpetuation . . . the advancement of which may even be said to predate all governments and constitutions.”

In summary, courts agree that the “democratic will” remains the fount of legitimacy, but merely quibble on what it means to be “majoritarian” in our dysfunctional democracy. Is the “voice of the people” heard through Congress or the President? Or through plebiscites and referenda? Or perhaps through “direct people’s initiatives”? Or through scientific polling by the Social Weather Stations? Or for that matter, in a robust and free press? The courts have not been clear except that when they flex muscle, they purport to channel the democratic will. And voila, the Philippines’ unique contribution to the debate on judicial review, namely, the use of countermajoritarian rhetoric for what is essentially a majoritarian purpose.

### **Misuse of Countermajoritarian Rhetoric**

The irony is that countermajoritarian rhetoric originally served to insulate the Bill of Rights from the contingencies of day-to-day politics.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.<sup>13</sup>

It also installs the principle of legality as a safeguard against the biases and prejudices of political majorities.

The great ideas of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles.<sup>14</sup>

To this extent, Philippine countermajoritarian discourse conflates the rationale for constitutional supremacy with the idea of the rule of law.

Yet the cases discussed below do not aim to vindicate individual rights of individual minorities but rather social claims of a purported nation: saving the trees, cleaning up the seas, constricting the entry of foreign investors, deregulating the oil industry, overthrowing a corrupt president, or stopping a term-limited president from overstaying in power. The irony therefore is that the same rhetoric that was initially developed to protect the rights of political minorities is now deployed to advance the claims of either political majorities or those who purport to speak in their behalf.

### **The Philippine Rhetoric on Judicial Overreach**

The Philippine debate on judicial review is highly legalistic, and tends to fixate on the scope of judicial review and on legal doctrine on “political questions,” *locus standi*, or the “case and controversy” requirement.

This formalistic tendency by Philippine courts was long ago noted by Justice Oliver Wendell Holmes himself during the U.S. colonial era when Philippine decisions were still appealable to the United States Supreme Court. In 1928 Holmes rejected the mechanistic reasoning of the Philippine Supreme Court, which applied strictly the rule that the power to appoint is exclusively executive in character and may not be vested in the Congress. “The great ordinances of the Constitution do not establish ... fields of black and white ... with mathematical precision [nor] divide the branches into watertight compartments.”<sup>15</sup>

I have elsewhere discussed the litany of Philippine examples of judicial overreach, its doctrinal roots in the 1987 Constitution, more specifically, in the expanded definition of judicial power, the codification of economic protectionism and claims to redistributive justice, and the expansion of petitioners’ direct right of action to vindicate their claims. I have also traced the historical origins of these constitutional clauses in the democratic movement that led to the 1986 People Power uprising that ended the dictatorship of President Ferdinand Marcos.<sup>16</sup>

Allow me now to focus on the normative arguments for and against the aggrandizement of judicial power. In the case where the Supreme Court barred a foreign investor from moving his factory to a new site, the dissenters argued that the majority

had “made a sweeping policy determination and ha[d] unwittingly transformed itself into ... a ‘government by the judiciary’, something never intended by the framers of the Constitution ....”<sup>17</sup> The dissenters openly acknowledged the reasons why the Court should have kept out of the fray: they lacked the training, expertise, mandate, or legitimacy to carry out such non-law-based review of business discretion.

In another case where the Court held that the directive clause on a “right to a healthful and balanced ecology” gave rise to an actionable right to cancel timber licenses, a separate opinion—that actually sounded more of a dissent—lamented that, in the absence of any “specific, operable norms and standards” in the constitutional text, the case would “propel courts into the uncharted ocean of social and economic policy making.”<sup>18</sup>

And when the Court struck down the Oil Industry Deregulation Law, it actually defended its countermajoritarianism and proceeded to explain why the law did not satisfy the anti-monopoly clauses of the Constitution. “With this Decision, some circles will chide the Court for interfering with an economic decision of Congress. [However, the Court strikes down the Oil Deregulation Law] *not because it disagrees with deregulation as an economic policy but because as cobbled by Congress in its present form, the law violates the Constitution. [It is] not for this Court to shirk its duty of striking down a law that offends the Constitution....* Lest it is missed, the Constitution is a covenant that ... guarantees both the political and economic rights of the people. The Constitution mandates this Court to be the guardian not only of the people’s political rights but their economic rights as well.”<sup>19</sup>

In contrast, in a highly controversial decision about the sale of the historic Manila Hotel (which the Court, in the absence of an executive determination, first had to declare as “historic”), the Court went out of its way to apply a protectionist (“Filipino First”) clause to allow the losing bidder, a Filipino company, to match *post hoc* the winning bid of a Malaysian company, that is to say, to match the competitor’s secret bid after the secret has been divulged.<sup>20</sup> The Court held that the Constitution’s directive principle to protect the nation’s cultural patrimony was directly enforceable by the courts in the absence of an implementing statute. It appealed to populist sentiments about nationalism but invoked the protectionist clauses in the Constitution. Referring to the policy of privatizing government assets, the Court confronted the countermajoritarian critique: “[T]here is *nothing so*



*sacrosanct in any economic policy as to draw itself beyond judicial review when the Constitution is involved.”*<sup>21</sup>

In another case, the Court acted as if it were part of the executive branch and ordered the clean-up of the waters of Manila Bay “to make them fit for swimming, skin-diving, and other forms of contact recreation.”<sup>22</sup> It was rather ineffective since the bay remains heavily polluted to this day.

This ideological hodgepodge has resulted in doctrinal instability, exemplified by two cases. The first involves a strict reading effectively barring foreign mining firms under the Mining Law,<sup>23</sup> which the Court reversed within the year through a more relaxed reading of the same protectionist clause.<sup>24</sup> The second likewise involves the application of nationality requirements in protected industries, where the Court revised the settled interpretation of how to determine the extent of foreign control over a corporation.<sup>25</sup>

The debate on judicial overreach has also extended to explicitly political decisions. The Court has several times stopped the amendment of the Constitution, involving the exercise of the constituent power, the ultimate political power in a republican legal order: twice in 1997 to stop a direct people’s initiative to lift term limits for the president,<sup>26</sup> and once again in 2006 to stop a people’s initiative to shift from the presidential to a parliamentary government that would effectively lift term limits as well.<sup>27</sup> The Court has likewise validated the ouster of a duly-elected President, Joseph Ejercito Estrada, following widespread urban protests and a “withdrawal of loyalty” by the military.<sup>28</sup>

That is why when the Court asked rhetorically in 2003: “*But did not the people also express their will when they instituted th[ose] safeguards in the Constitution?*”<sup>29</sup>, the Court was merely affirming that role as the “guardian ... of the people’s political [and] economic rights.”<sup>30</sup>

Once again, the Court invokes the paramount democratic norm on which the Constitution rests, namely, its ratification by the people.

An overwhelming majority ... comprising 76.3 percent of the total votes cast approved our Constitution in a national plebiscite held on February 11, 1987. *That approval is the unmistakable voice of the people, the full expression of the people’s sovereign will. That approval included the prescribed modes for amending or revising the Constitution.*<sup>31</sup> (emphasis in the original)

### Selected Asian Cases

This dilemma is not unique to the Philippines. We actually share it with fledgling democracies in Asia just recovering from dictatorships, among them, Indonesia, Thailand, and South Korea. This paper identifies similar cases in these jurisdictions where courts have had to yield to democratic political pressures, and draws lessons relevant for Filipinos.

#### Indonesia: The Retroactive Application of Anti-Terror Amendment<sup>32</sup>

Just like the Philippines, Indonesia went through a period of anti-communist dictatorship. It began rebuilding its democracy after the fall of President Soeharto in May 1998 but did not discard its independence Constitution of 1945. Instead it carried out the post-Soeharto democratization through *inter alia* constitutional amendments: in 1999 to shift power away from the president and toward the parliament; in 2000 to codify human rights protection; once again in 2000 to create a Constitutional Court with the power of judicial review of legislation; and in 2001 to give the people the right to vote directly for the president.

Indonesia's Constitutional Court (Mahkamah Konstitusi, hereinafter MK), one of the institutions created after 1998, has in many ways followed the same model of the Philippine Supreme Court in rather aggressively using its judicial power to carry out the protectionist and human rights clauses in the constitution.

The MK has ruled on highly political issues, e.g., rehabilitating the political rights of former communist cadres; abolishing the anti-subversion law; diluting the punishment of the equivalent of *lese majeste* laws protecting the president from defamation; ordering an electoral recount in gubernatorial elections due to "systematic, structured and massive" cheating; and upholding a law banning "deviant" Muslim groups, citing public order and laws against blasphemy.

The MK has also ruled on highly economic and social issues, e.g., it has confined the privatization of state corporations; affirmed state control over natural resources, including mining and oil extraction; struck down an investment law that gave investors long-term concessions over land; secured tenure for what we in the Philippines recognize as "call center" employees; and protected indigenous peoples'

rights to their “customary forests,” which the MK carved out from the “State Forests” in which private use of resources is prohibited.

One of the most highly charged cases resolved by the MK was on the execution of the 2002 Bali bombers,<sup>33</sup> which pitted its adherence to the principle of legality against the public outcry for justice.

The first anniversary of the September 2001 attack on the World Trade Center in New York was marked by the infamous Bali bombing in October 2002. Three simultaneous explosions hit Bali, Indonesia’s top tourist draw: one inside a popular tourist bar and detonated by a suicide bomber with a backpack-mounted device; the second a car bomb inside a Mitsubishi L300 van parked across the pub; and a third outside the United States consulate. It left 202 people dead, 152 foreign and 28 Indonesian, and 240 people injured. Three members of the Jemaah Islamiyah, a violent Islamist group, were charged and found guilty under an anti-terrorism law.

However, there was a catch: that anti-terrorism law was passed only *after* the bombing had transpired. The MK, by a 5-4 vote, held that the retroactive application of that law violated the Bill of Rights prohibition on the *ex post facto* legislation. The Indonesian Constitution did not create any exceptions, and the prohibition “cannot be limited under any circumstances.” The minority believed that the International Covenant on Civil and Political Rights created an exception “in the prosecution of crimes against humanity.”<sup>34</sup>

The Indonesian government had adopted its anti-terrorism law in April 2002 in response to the September 11 attacks. However, six days after the October 2002 Bali bombing, then President Megawati reinforced the anti-terror law through two *perpu*, executive enactments authorized by the Constitution in emergency situations but subject to subsequent parliamentary enactment into law. The two *perpu* eventually became law, expressly stating that they can be applied retroactively to the Bali bombings.

The MK struck down the laws as *ex post facto* legislation, but it was widely criticized locally and internationally for doing the victims and their families a grave injustice. Soon after, the Justice Minister and MK Chief Justice announced to the press their interpretation of the decision, namely, that the MK decision itself could not operate retroactively and would bind only future prosecutions. In other words, the Bali bombers’ conviction remained valid. Accordingly, at midnight

on November 9, 2008, they were executed by firing squad. The bombers remained unrepentant till the end, affirming their participation in the crimes and their commitment to their cause.

The MK had been created as one of the post-dictatorship institutions to uphold the human rights guarantee enshrined in the Constitution. Yet for it to keep faith with the constitutional text would diminish its legitimacy before a nation that rejected impunity for terrorists and that wanted justice for their victims. To its credit, the MK stood its ground. But the sudden parsing of the decision by its own Chief Justice and the president's Justice Minister, and through mere press statements, merely highlight the historical context within which courts incessantly seek to keep themselves relevant and legitimate.

What would a Philippine court have done in the same situation? Would it have yielded to public pressure just to get the press and the protesters off its back, and then convict, even if to do so would compromise the Constitution? Or would it “damn the torpedoes,” keep faith with the letter of the law, and allow the guilty to go scot-free on a technicality, however serious?

#### Thailand: Counter-Majoritarian Devices to Oust a Populist Leader<sup>35</sup>

Thailand went through a period of military rule, a “tug-of-war between authoritarianism and democratization” starting from the 1930s. The constitutional high water mark was the 1997 Constitution that ended the military dictatorship and secured civilian rule. It was the culmination of student-led protests that began in 1992 when King Bhumipol chastised the military's use of violence against civilian protesters.

It was under the 1997 Constitution that Thaksin Shinawatra became Prime Minister in 2001. He was the first elected prime minister to complete his term and be re-elected into office. He adopted populist measures for the poor, including the 30 baht medical subsidy for all people, low-cost universal access to anti-retroviral HIV medication, the 1 million baht fund for every village, and a moratorium on debt collections from peasants. His Thai Rak Thai (“Thais love Thais”) political party rode on the crest of these populist pro-poor measures.

However, Thaksin soon faced corruption charges after his family sold its entire US\$1.88 billion stake in its telecommunications company to a Singaporean firm,

while enjoying tax benefits after the Thaksin-dominated parliament amended the rule on capital gains taxes.

This triggered massive protests by the urban middle classes, forcing Thaksin to seek a fresh mandate by calling for general parliamentary elections in April 2006. Once again, Thaksin swept the elections, but the King called on the judiciary to step in “to move democracy forward.” Accordingly, in May 2006 the Constitutional Court set-aside the parliamentary elections on technical grounds and suspended the by-elections needed to fill seats that did not meet the required minimum 20 percent of the vote. The new elections, set for October 2006, were overtaken by the bloodless military coup of September 2006 that ousted Thaksin, abolished parliament and the Constitutional Court, and set aside the 1997 Constitution.

The 2006 coup was not the first attempt to oust Thaksin. In 2001, after Thaksin had won a historic majority, his opponents tried to have him disqualified from office for five years for having filed an incomplete statement of assets and liabilities. The Constitutional Court upheld Thaksin’s defense of an honest clerical error. In early 2006 the Administrative Court rejected a petition to impeach Thaksin for conflict of interest and improprieties in the sell-off of the telecommunications company, saying the petitioners had failed to present sufficient grounds.

In May 2007 the Constitutional Court dissolved Thaksin’s political party and banned its officers from politics for five years. In December 2007 new elections were held under the new Constitution, but again it was won by the Thaksin-allied People Power Party. However, by September 2008 the Constitutional Court dismissed Prime Minister Samak Sundaravej for a minor breach of a conflict of interest rule (for hosting two episodes of a cooking show while he was Prime Minister). Three months later the same Court effectively ousted Samak’s party-mate and successor—and Thaksin’s own brother-in-law—Somchai Wongsawat, by disbanding the People Power Party for electoral fraud.

In 2011 Thaksin’s sister, Yingluck Shinawatra, was elected Prime Minister. In 2013 the Thai Constitutional Court rejected the pro-Thaksin party’s proposal to make the Senate fully elective. The 2007 Constitution made half the Senate seats appointive rather than elective, a move to insulate it from the popular vote that invariably favored Thaksin. The pro-Thaksin legislators rightly saw this as undemocratic, but the Court rejected this. In his analysis of this news in the British

Broadcasting Network's website, Jonathan Head said: "In few other countries have a handful of judges played such a decisive role in reshaping politics as those sitting in Thailand's Constitutional Court."<sup>36</sup>

In December 2013, protests by the "democratic" forces forced the Prime Minister to dissolve the lower house of Parliament and hold elections in February 2014. The "democratic forces" rejected the proposed elections, and proposed an unelected "people's council" to take over.

On May 7, 2014, after six months of political unrest, the Constitutional Court removed Prime Minister Yingluck Shinawatra for having "abused" her powers in appointing a police chief. On May 22, 2014 the Thai military staged a coup against the caretaker government appointed by Yingluck and established a junta called the National Council for Peace and Order. They set aside the 2007 Constitution and proceeded to detain political leaders from both camps, but were met with resistance from anti-coup activists.

There are uncanny resemblances between the Thai and Filipino dilemma with political leaders tainted by corruption and abuse of power charges, but who remain popular with the masses, namely, Prime Minister Thaksin Shinawatra in Thailand and former President Joseph Ejercito Estrada in the Philippines. In both cases there is an underlying class element in that the anti-Thaksin and anti-Estrada forces were identified with the urban and educated middle classes, while followers of both leaders belonged to the lower classes. Likewise, there is in both countries the phenomenon of dynastic families, though in Thaksin's case, his sister seemed a reluctant—though eventually effective—substitute for her brother.

On the other hand, the Thai experience is more complicated in that there is an underlying layer of tension between the royalists (embodied in the "yellow" forces opposed to Thaksin) and the Thaksin loyalists (embodied in the "red" forces), with suggestions—safely suppressed by their strict *lese majeste* laws—of an even deeper layer of intrigue among the royalists themselves.

One advantage of the Philippine situation is that the judicial intrusion into patently political matters has not been as frequent nor as blatant. While in the Philippines democracy remains the source of legitimacy, whichever way the democratic will is ascertained, in contrast in Thailand the monarchy remains the ultimate source of legitimacy and, derivatively, the regime of "rule by law."

### South Korea's Constitutional Court: Ending Impunity for Human Rights and Anti-Corruption Offenses<sup>37</sup>

Korea went through an eighteen-year military dictatorship under Park Chung Hee, the general who led a coup d'état in May 1961 and ruled until his assassination by his own Central Intelligence Agency director in 1979 amid widespread pro-democracy protests. A few days after his death, Generals Chun Doo-Hwan, Roh Tae Woo, and their allies staged a coup. Besieged by the democracy movement, Chun proclaimed martial law in May 1980, which triggered off what is now known as the Gwangju massacre of protesting students that resulted in 200 deaths and 850 injuries. Chun became president in September 1980.

The tensions continued, but after the "People's Uprising of June 1987" consisting of nationwide peaceful protests, a new Constitution was adopted providing for direct election of the president. Chun's anointed successor, Roh Tae Woo, was elected president in the first general election for a national leader in sixteen years.

When Roh Tae Woo completed his term in 1993, opposition leader Kim Young-sam was elected president, the first civilian to occupy the office since Park seized power in 1963. It was under Kim's presidency that, reflecting popular demands, former presidents Chun and Roh were charged and convicted of bribery, illegal seizure of government power, and, in the case of Chun, responsibility for the Gwangju massacre. The constitutionality of their prosecution was brought before the Constitutional Court, one of the institutions created under the 1987 constitutional reforms.

The first constitutional challenge was brought by the victims of the 1979 coup. In 1993, they filed criminal complaints against Chun and Roh for treason, mutiny, and other crimes, but the prosecutors dismissed the complaints. The Kim Young-sam government preferred to leave the fate of both men to the judgment of history lest the president be accused of political vendetta. The prosecutors had found sufficient evidence to indict, but acknowledged that this would be politically divisive and cause political strife. The Constitutional Court held that the prosecutors had not abused their discretion in refusing to prosecute, but likewise clarified the application of the statute of limitations on the charges against the two former presidents. The Court held that since the accused enjoyed immunity from prosecution for all offenses "[e]xcept for treason, or for waging a foreign war" while

they were in office, their immunity tolled the running of the statute of limitations for mutiny and other crimes. This effectively lifted the prescriptive bar on the prosecution of the two presidents.

The second constitutional challenge was brought by the victims of the 1980 Gwangju massacre, who filed their criminal complaints in 1994. The prosecutors dismissed their complaints, saying that a successful coup had formed a new constitutional order from which the prosecutor derived its powers. They challenged the dismissal before the Constitutional Court, but withdrew their complaint before final judgment. The Court, in dismissing the case, managed to issue obiter dicta that a successful coup does not establish a new constitutional order. At that time, the people's demand for justice and punishment had grown stronger, and the Kim Young-sam government was poised to sponsor in parliament a law lifting the prescriptive bar on charges of treason.

The third was after the National Assembly actually passed that special law, which suspended the statute of limitations for "crimes destructive of the constitutional order" committed during the 1979 coup and the 1980 Gwangju massacre. The prosecutors reopened their investigation. When they applied before the trial courts for arrest warrants, the trial court referred to the Constitutional Court the special law's validity.

The Court faced two constitutional challenges. The first was the constitutional prohibition on ex post facto legislation. It held that a prosecution under the special law would be valid if, at the time the law was enacted, the offense had not yet been prescribed. It would be unconstitutional only if the period had already expired before the special law purported to revive it. The prevailing justices held that the overwhelming public interest in prosecuting justified an exception to the ban against retroactive legislation. The second was the case-specific nature of the law, or as we in the Philippines would say, that the special law was a bill of attainder directed at specific individuals. Again, the Court held that the public had an overriding interest in settling constitutional accounts, justifying exceptions to the bill of attainder principle.

In 1996 both men were convicted, with Chun sentenced to death, but later commuted to life imprisonment, and Roh to a 22-year jail sentence, which was reduced to 17 years on appeal. Both were released from prison in December 1997, pardoned by President Kim Young-sam under an agreement with the new President-elect Kim Dae-jung.



Compared to the Philippine, Indonesian, and Thai experiences, the Korean example shows the most sophisticated maneuvers in this subtle, almost ballet-like dynamic among the Constitutional Court, the elected politicians in parliament and their Prime Minister, and popular outrage and the claim for justice. It maintained the formal separation of powers, while allowing the court to respond with broad hints or suggestions to the political branches so that the Court, acting properly as a court, can be responsive to the massive outpouring of public outrage. For instance, the Court deferred to prosecutorial discretion to dismiss the charges in the early stages, while laying the basis for future prosecutions by reinterpreting the statute of limitations. But when the statute was lifted retrospectively by parliament, which in turn was responding to popular pressures, the Court felt at liberty to carve out exceptions to the constitutional prohibition against ex post facto legislation.

### **Why the Continuing Appeal of Countermajoritarianism for Filipinos?**

In American legal discourse, countermajoritarianism has been reconciled with democracy by the “process-perfecting” rationale, exemplified in what is often called “the most famous footnote” in U.S. jurisprudence. The U.S. Supreme Court was deferential to the legislative power to regulate commerce, but in this footnote to the case of the *United States v. Carolene Products Co.* (304 U.S. 144) in 1938,<sup>38</sup> would disavow that deference and apply “more exacting judicial scrutiny” when “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation” or “prejudice against discrete and insular minorities may ... tend seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.”

In this framework, “those political processes ordinarily relied upon” are democratic processes, and the plain

assumption is that they usually work. Unelected courts step in only when those democratic processes are “seriously curtailed” by either the law itself which is being

In American legal discourse, countermajoritarianism has been reconciled with democracy by the “process-perfecting” rationale.

reviewed, or by racial or other prejudices. In both cases, it is assumed that the democratic majority has used its numbers to oppress the minority, and the courts position themselves as a check upon that majority.

In contrast, however, Philippine rhetoric positions the courts as the guarantor of the primacy of the democratic will, as the channel of the “voice of the people.” If in U.S. theory the courts were checks upon the tyranny of the majority, in the Philippines, they serve as handmaidens to the majority, or, at best, crutches for weak institutions struggling to reflect the true will of the people.

In all the Philippine and Asian examples discussed above, the holding of free and fair elections was the litmus test of the transition from military dictatorship to democracy. But there is a parallel growth of countermajoritarian bodies like constitutional courts, anti-corruption or audit commissions, and human rights bodies, which are unelected and deliberately insulated from elections and politicians. This paper now asks why, at the critical moment of democratic transition, these struggling democracies have placed their hopes not in popular politics but in unelected courts.

Methodologically, I recognize most of the cited material as “hard cases” subject to Holmes’ critique that “[g]reat cases, like hard cases, make bad law. For great cases are called great, not by reason of their importance... but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment.”<sup>39</sup> But that is precisely the point: why indeed do these fledgling democracies turn to unelected judges to decide the “great cases” of their time, when democratic politics may provide better or more nuanced solutions?

That corrective function is assumed by the courts because the political branches are attuned to “immediate results” when “emotions ride high enough” and “men will ordinarily prefer to act on expediency rather than take the long view.” In contrast, courts have the “capacity to appeal to men’s better nature, to call forth their aspirations, which may have been forgotten in the moment’s hue and cry” and are better suited to “support and maintain enduring general values.”

The language of the law is useful in legitimizing hard social choices, what Holmes called the “logical method and form” that disguise “competing legislative grounds.”<sup>40</sup>

A principled decision ... is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved.<sup>41</sup>

In the clash of naked partisanship, it helps to invoke neutral principles to make the painful verdict acceptable to the loser in the bargain. Thus the search for “neutral principles” upon which to ground substantive causes, lest the “constitution, instead of embodying only relatively fundamental rules of right ... would become the partisan of a particular set of ethical or economical opinions.”<sup>42</sup>

[The Court’s] opinions may ... sometimes be the *voice of the spirit*, reminding us of *our better selves*. [I]t provides a stimulus and quickens moral education [f]or the power of the great constitutional decisions rests upon the accuracy of the Court’s perception of this kind of common will and *upon the court’s ability ... ultimately to command a consensus*.<sup>43</sup> (emphases added)

Finally, the Court cites the systemic role of judicial review in maintaining stability in what appears to be a return to the countermajoritarian rationale, namely, of insulating certain fundamental norms from *ad hoc* changes. In one of the cases to stop a people’s initiative to amend the constitution, the Court said:

To allow such change in the fundamental law is to set adrift the Constitution in unchartered waters, to be tossed and turned by every dominant political group of the day. If this Court allows today a cavalier change in the Constitution outside the constitutionally prescribed modes, tomorrow the new dominant political group that comes will demand its own set of changes in the same cavalier and unconstitutional fashion. A revolving-door constitution does not augur well for the rule of law in this country.<sup>44</sup>

If the classic model of the American court is that they are countermajoritarian, the idealized Asian court is majoritarian.

Transplanted to Southeast Asia, the countermajoritarian rationale has become the intellectual vehicle to strengthen republican institutions against essentially feudal elites who manipulate the democratic framework to perpetuate old, family-based or mafia-type power networks. In its original Western milieu, the role of countermajoritarian institutions was to help minorities assert themselves against majorities. In our Asian milieu, the role is the opposite: to help the true but unorganized political majorities expose the organized elites purporting to speak in their behalf (“political ventriloquism”). The goal is to insulate decision-making from politicians and invoke to a popular power beyond the command of politicians.

This brings to question the true place of democracy as the fount of legitimacy, and the role of the people as the authors of that democracy. In the Philippines today, the people speaking through the voting booth can be outshouted by the people speaking through organized protests. Stated otherwise, it is not a question of who are more but of who is better organized and more articulate.

If elections are not the sole measure of the democratic will, then suddenly the unelected judge is actually on the same footing as the elected president, senator, or congressman in trying to divine the sovereign will. But why stop with the politicians? Why not the unelected generals and colonels as well? Indeed, was not that their self-appointed role during the dictatorship eras in the Philippines, Indonesia, and Korea as the guardians of “the Nation” and “the people”?

This merely brings us back to the preference for the courts as the new guardians. Unlike the old military guardians with a record of human rights abuses, the new guardians are hedged in by constitutional text and tradition, and are truly “the least dangerous branch.”<sup>45</sup>

Countries that have gone through periods of dictatorship are loathe to return to dictatorship and military-dominated government, but having shifted to electoral politics, realize that democracy is no panacea, that voters cannot be relied upon to vote wisely, and that elected rulers may betray the democracy from which they draw their power. Unelected courts are the acceptable middle ground: they are not dictatorial, are sufficiently civilian, and yet somewhat insulated from shifting political alliances and at least nominally draw their legitimacy from a democratic constitution.

Perhaps too it is a longing by our people for that “one brief shining moment” in 1986 when we recaptured our democracy for ourselves, and a resignation that thenceforth democracy will henceforth shrivel through many small and quiet compromises in electoral politics. Thus the preference to anchor democracy upon the foundational moment of constitution making when “We, the sovereign Filipino people” acted our noblest selves, rather than the periodic vote when we succumb and pander to the baser animals in our beings.

## Notes

- 1 R. Parker, *Here the People Rule: A Constitutional Populist Manifesto*, Val. U. L. Rev. 27 (1993): 564.
- 2 From the Latin *fiat justitia ruat caelum*.
- 3 O. W. HOLMES, *The Common Law* (Cambridge, MA: Harvard University Press, 1963): 1.
- 4 A. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Indianapolis, IN: Bobbs-Merrill, 1962): 16-17. P16 re root difficulty is that judicial review is a counter-majoritarian force in our system... When the Supreme Court declares unconstitutional a legislative act or the action of an elected executive, it thwarts the will of representatives of the actual people of the here and now... That, without mystic overtones, is what actually happens... It is the reason the charge can be made that judicial review is undemocratic.”).
- 5 J. B. Thayer, John Marshall, in *James Bradley Thayer, Oliver Wendell Holmes, and Felix Frankfurter on John Marshall* (Chicago, ILL: University of Chicago Press, 1967): 86,
- 6 *Ibid*, at 85.
- 7 R. Parker, *Here the People Rule: A Constitutional Populist Manifesto* Val. U. L. Rev. 27 (1993): 558.
- 8 Supreme Court of the Philippines, National Press Club v. Commission on Elections, G.R. No. 102653, March 5, 1992.
- 9 See R Parker, *Here the People Rule*, (see n. 7); L.D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review*, (New York, NY: Oxford University Press): 239. (“creatures without reason, ever in thrall to irrational emotions”)
- 10 1987 Constitution of the Republic of the Philippines.
- 11 Supreme Court of the Philippines, Francisco v. House of Representatives, G.R. 1602261, November 10, 2003 (The author was a court-designated *amicus curiae* in this case.).
- 12 Supreme Court of the Philippines, Oposa v. Factoran, G.R. No 101083, July 30, 1993.
- 13 Supreme Court of the United States, West Virginia Board of Education v. Barnette, 319 U.S. 624, June 14, 1943).
- 14 B. Cardozo, *The Nature of the Judicial Process* (New Haven, CT: Yale University Press, 1921): 92.:
- 15 Supreme Court of the United States, Springer v. Philippine Islands, 277 U.S. 189, May 14, 1928.
- 16 R. Pangalangan, “Government by Judiciary in the Philippines: Ideological and Doctrinal Framework,” in *Administrative Law and Governance in Asia: Comparative Perspectives*, ed. T. Ginsburg and A. H. Y. Chen (New York, NY: Routledge, 2009): 313-328.
- 17 Supreme Court of the Philippines, Garcia v. Board of Investments, G.R. 92024, November 9, 1990.
- 18 Supreme Court of the Philippines, Oposa v. Factoran, G.R. 101083, July 30, 1993.
- 19 Supreme Court of the Philippines, Tatad v. Secretary of Energy, G.R. No. 124360, December 3, 1997.
- 20 Supreme Court of the Philippines, Manila Prince Hotel v. Government Service Insurance System, G.R. No. 122156, February 3, 1997.
- 21 *Ibid*.
- 22 Supreme Court of the Philippines, *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, February 15, 2011.
- 23 La Bugal-B’laan Tribal Association Inc. v. Victor O. Ramos, G.R. No. 127882, January 27, 2004.
- 24 La Bugal-B’laan Tribal Association, Inc. v. Victor O. Ramos, G.R. No. 127882 (Motion for Reconsideration), December 1, 2004.

- 25 Supreme Court of the Philippines, *Gamboa v. Teves*, G.R. No 176579, June 28, 2011.
- 26 Supreme Court of the Philippines, *People’s Initiative for Reform, Modernization and Action et al. v. COMELEC*, G.R. No. 129754, September 23, 1997; and *Defensor-Santiago v. COMELEC*, G.R. No. 127325, March 19, 1997.
- 27 Supreme Court of the Philippines, *Lambino v. COMELEC*, G.R. No 174153, October 25, 2006.
- 28 Supreme Court of the Philippines, *Estrada v. Desierto*, G.R. No 146710-15, March 2, 2001.
- 29 Supreme Court of the Philippines, *Francisco, Jr. v. House of Representatives*, G.R. 160261, November 10, 2003.
- 30 Supreme Court of the Philippines, *Tatad v. Secretary of Energy*, G.R. 124360, December 3, 1997.
- 31 Supreme Court of the Philippines, *Lambino v. COMELEC*, G.R. No 174153, October 25, 2006.
- 32 T. Lindsey, “Indonesia: Devaluing Asian Values, Rewriting Rule of Law,” in *Asian Discourses of Rule of Law, Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.*, ed. R. PEERENBOOM (NEW YORK, NY: ROUTLEDGE, 2004): 286-323.
- 33 See N. Hosen, “Emergency Powers and the Rule of Law in Indonesia,” in *Emergency Powers in Asia: Exploring the Limits of Legality*, ed. V. Ramraj and A. Thiruvengadam (New York, NY: Cambridge University Press, 2010): 267-293; H. Juwana, “Indonesia’s Anti-Terrorism Law,” in *Global Anti-Terrorism Law and Policy*, ed. V. Ramraj, M. Hor, and K. Roach (New York, NY: Cambridge University Press, 2006): 295-306; and S. Butt and D. Hansell, “The Masykur Abdul Kadir Case: Indonesian Constitutional Court Decision No 013,” *Australian J. of Asian Law* (2004): 176-196.
- 34 Indonesian Constitution, art. 281 (1945 as amended).
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- 38 Cited in J. Mendoza’s concurring opinion in Supreme Court of the Philippines, *Estrada v. Sandiganbayan*, G.R. 148560, November 19, 2001.
- 39 Supreme Court of the United States, *Northern Securities Co. v. United States*, 193 U.S. 197, May 14, 1904.
- 40 O. Holmes, *The Path of the Law*, *Harvard Law Review* 10 (1897): 457.
- 41 H. Wechsler, *Toward Neutral Principles of Constitutional Law*, *Harvard Law Review* 73 (1959): 1.
- 42 Supreme Court of the United States, *Otis v. Parker*, 187 U.S. 505, January 6, 1903.
- 43 A. Cox, *The Role of the Supreme Court in American Government*, cited in V.V. Mendoza, *Judicial Review of Constitutional Questions: Cases and Materials* (Manila: Rex Book Store, 2004): .243-244.
- 44 Supreme Court of the Philippines, *Lambino v. COMELEC*, G.R. No 174153, October 25, 2006.
- 45 A. Bickel, *The Least Dangerous Branch* (see n. 4).

# Defining the National Territory: Security and Foreign Relations Dimensions

AILEEN S. P. BAVIERA

## Introduction

This study, largely completed in 2008, examines the implications of redefining the Philippines' baselines, maritime boundaries, and jurisdictional areas on the country's security interests and on its diplomacy and foreign relations. Its primary goal, in tandem with its partner studies on living and non-living resources and on navigation, is to help develop a strategic and integrative framework for policy formulation, review, and evaluation that policy makers and government bodies may utilize in addressing the country's territorial and maritime jurisdictional concerns.

The Philippines is an archipelagic state<sup>1</sup> entirely surrounded by water that connects the estimated 7,100 islands that comprise the country. The combined coastlines of the islands extend to over 17,460 kilometers; 64 of the 79 provinces and 57 of its 117 cities are located in coastal areas.<sup>2</sup> The archipelago is strategically located, being at the crossroads of international trade and commerce (linking Southeast Asia with Northeast Asia as well as Asia with the Pacific) while in close proximity to international flashpoints threatening regional stability and involving the region's great powers (Korean Peninsula and Taiwan Strait). A Mutual Defense

Treaty has connected the country to the United States since 1951 resulting in the expectation that each side will help the other in meeting mutual security threats.

The Philippine government has increasingly pursued foreign policy coordination on functional, economic, as well as political-security concerns with the countries of the Association of Southeast Asian Nations (ASEAN), of which the Philippines is a founding member. It gives importance to relations with Japan (a long-time major trade, aid, and investment source) and China (the region's rising power and our fastest growing economic partner). The global presence of overseas Filipino workers, while helping the economy through foreign currency remittances, is seen as a vulnerability in its diplomatic relations (where they may be used as a bargaining chip by their host governments) and to its political and security interests (where Filipino nationals may be caught in situations of armed conflict). The country is otherwise actively engaged in the international community through commitments to international conventions and agreements, including the United Nations Convention on the Law of the Sea (UNCLOS), Convention on Safety of Life at Sea (SOLAS), and other International Maritime Organisation (IMO) conventions.

The Philippines can be characterized as a developing country with a fast-growing population, where development has unfortunately been stilted by chronic political instability, erratic and mainly low economic growth, declining environmental conditions, and what many decry as poor governance. Among the many challenges to nation building is the fact that Philippine territory, its boundaries, and corresponding areas of legal jurisdiction are ill-defined.

Some of the country's domestic laws run counter to its international law obligations. Specifically, Article II of the 1987 Constitution describes Philippine national territory as referring to the boundaries defined by international treaty limits (1898 Treaty of Paris, 1900 Treaty of Washington, and the 1930 Convention between the United States and the United Kingdom), Presidential Decree 1596 on the Kalayaan Island Group (KIG), and the Philippine claim to Sabah (Republic Act 5446). The United States has officially denied that the boundaries defined in the treaties (to which it was the original party) were regarded as territorial boundaries. The claims to the Kalayaan Islands are contested to different degrees by China, Taiwan, Vietnam, Malaysia, and Brunei, with all except Brunei having set up military facilities or civilian structures on many of the islands. Meanwhile, the Philippines still faces a dormant dispute with Malaysia over Sabah.



Such unresolved territorial claims and failure to delimit boundaries have in part led to resource-related problems such as Filipinos illegally fishing in foreign waters, foreigners illegally fishing in our waters, and our hesitation in developing offshore oil and gas resources. They have also led to confusion in the enforcement of national laws (such as on navigation and illegal entry) and of defense policies (such as rules of engagement with respect to foreign military presence).

Given the above context, there had long been an effort to re-define the country's baselines as the first requisite to determining its maritime jurisdictions and to negotiating overlaps and conflicts with neighboring states. The Arroyo administration finally enacted a new Philippine Baselines Law in 2009 on which basis it has become possible to claim rights over maritime resources and jurisdiction or responsibility over activities in our surrounding waters.

This study seeks to:

1. Identify the core security and diplomatic interests of the Philippines that are affected by the definition of Philippine national territory and the delimitation of our maritime boundaries and jurisdictional areas;
2. Identify strategic objectives the country might pursue based on the above-mentioned interests;
3. Provide insights into relevant regional and global factors that should be given consideration in addressing issues of Philippine territory; and
4. Explore policy implications, prospects and challenges that may arise from various courses of action pertaining to territory and boundaries.

The paper focuses mainly on strategic interests and objectives rather than operational-level concerns of diplomacy and security. This is intentional as the output, a proposed policy framework, hopes to emphasize the broader contexts and longer time horizons. The definition of interests and objectives which is the subject of this paper is thus only a first step; necessarily it must be followed by translation into medium-term goals and more situationally-defined short- to medium-term action plans for which specified political and legal support, and resources and capabilities will eventually need to be mobilized.

Moreover, the proposed policy framework requires further testing and validation involving a multi-disciplinary pool of experts, in particular, practitioners in the various relevant fields (foreign relations, international law, defense, law enforcement, fisheries, energy, environment, and others).

### **Relevant Concepts**

In the process of defining security and foreign policy interests and objectives, and in examining the implications of defining Philippine baselines and maritime zones, the study makes use of concepts that require elaboration as to their meaning and significance.

*Sovereignty*, which is a key value all states seek to uphold, is an internal attribute of states that refers to the exercise of supreme authority within a territory; while externally it refers to the condition of being politically free from the influence of other states in the exercise of its basic governing prerogatives. Respect for state sovereignty has been an accepted norm in inter-state relations since the 1658 Peace of Westphalia, which renders a state's interference in the prerogatives of other states as illegitimate. However, in principle as well as in practice, sovereignty depends upon the recognition of other states. *Territoriality* remains the principle by which the members of a community are to be defined as belonging to a state; therefore, without a defined territory, there can be no sovereignty. And without recognition by other states of the defined territory, there can be no sovereignty.<sup>3</sup> For purposes of this study, it is external sovereignty that is relevant, and Philippine sovereignty may be understood as a condition whereby member-states of the international community recognize and respect the supreme authority of the Philippine government and its legitimate instruments, over matters that occur within what the Philippines defines and is generally recognized as "Philippine territory."

*Territorial integrity* likewise has internal and external dimensions. Internally this means freedom from secessionist movements, while externally it is a norm also encapsulated in the UN Charter that proscribes any attempts to change the territorial status quo of a state by the threat or use of force.<sup>4</sup> Operationally, territorial integrity of the Philippines means a condition wherein the scope of Philippine territory and

the limits of its boundaries are not being effectively challenged by other states or entities, nor would such a state/entity attempt to change the territorial status quo by using force or by threatening to use force. Neither would another state promote or encourage secession by any part of the Philippine population that will result in breaking up Philippine territory.

In the present context, threats to Philippine territorial integrity may include support by internal or external forces for a separate Muslim state in Mindanao and, potentially, attempts by other countries to address the territorial disputes in the Kalayaan Islands or over Sabah by use or threat of force. Illegal entry, conduct of economic activities such as fishing or oil exploration, and navigation in Philippine waters per se (i.e., without intent of changing the territorial status quo) may not constitute threats to territorial integrity, although the inability to prevent or regulate them may reflect failures in the country's assertion of sovereignty. However, should these activities take place with the strategic intent of undermining sovereignty or fragmenting the archipelago, such as may be undertaken by hostile states or parties, then they may be considered threats to territorial integrity.

Philippine *national security* is defined in an integrative way, containing elements of both state security (defense against external armed threats and internal insurgencies) and human security (freedom from fear and freedom from want of individuals and communities). It emphasizes not only military threats but also challenges to the economy, social cohesion, and environment, among others. The National Security Council defines national security as an environment where “freedom, dignity and prosperity” is attained and the “nation’s core values, way of life and institutions; capacity to create and share wealth; living standards; sovereignty/territorial integrity; and strategic relationships” are protected and enhanced.<sup>5</sup> *Maritime security* is a broad concept that includes law and maintenance of good order at sea, as well as the maritime aspects of food security, resource security, and environmental security. Threats to maritime security include territorial disputes, sea-based acts of terrorism, insurgency, transnational maritime crime (including piracy, smuggling, illegal

Threats to maritime security include territorial disputes, sea-based acts of terrorism, insurgency, transnational maritime crime and harm to the maritime environment.

immigration), and harm to the maritime environment. The traditional roles played by navies, and those of coast guards or maritime police, are considered to be contributing to maritime security.

This study outlines the country's core interests and strategic objectives. In the international arena, *core interests* are values that can be identified and must be agreed as the central, primordial, and vital driving forces of the country's development, security policy, and foreign relations, where failure to defend and promote such interests may have a long-term negative impact on the survival of the state and/or the welfare of the Filipino people. Among our often-cited core interests are the promotion of sovereignty and the protection of territorial integrity, economic growth and development, and the well-being of Filipinos wherever they may be. These are the so-called three pillars of Philippine foreign policy.

*Strategic objectives*, on the other hand, are the articulation of long-term national goals (possibly as long as up to 25 years) for national policy makers that will ensure the protection and promotion of the core interests of the Philippine state/Filipino people. It is ideally formulated in relation to a review of both the domestic situation and the regional/global environment.

The National Security Council under President Fidel V. Ramos identified several strategic objectives which it argued needed to be met before the Philippines can consider itself secure. These are: (1) moral consensus, (2) cultural cohesiveness, (3) ecological balance, (4) economic strength, (5) socio-political stability, (6) territorial integrity, (7) international harmony, (8) global competitiveness, (9) people empowerment, and (10) solid infrastructure.<sup>6</sup>

In the security and foreign relations arenas, one can define more specific indicators of strategic objectives, such as capable defense against armed threats, promotion of regional peace and stability, or other such examples.

### **Philippine Maritime Security**

What are the core interests and strategic objectives of the Philippines in the area of maritime security? How will a redefinition of baselines and maritime jurisdictional areas affect these core interests and strategic objectives?

There are various challenges and potential threats to Philippine maritime security that need to be addressed, and the definition of Philippine baselines and territorial limits is the most crucial element and necessary starting point of managing such threats. According to a Philippine Navy source, “the main vulnerabilities of the Philippines are its vast maritime approaches and (in)ability to monitor activity levels in these areas effectively. The major approaches are across the west and north-west of the South China Sea, on the south by the Celebes Sea, and the north by the Bashi Channel and Straits of Luzon.” In addition, the 1994 entry into force of the UNCLOS significantly expanded the functions and capability requirements of the country for sustainable resource development as well as for the management of the transnational threats posed by piracy, smuggling, poaching, and illegal fishing. Finally, the territorial disputes over the South China Sea/Kalayaan Island Group (KIG) involving six countries pose a continuing—if, by some accounts, low level-risk of embroiling the country in armed conflict.<sup>7</sup>

Even in the face of these diverse challenges to maritime security, public spending and planning for national security have been concentrated mainly on internal security operations, most especially ground force operations of the Philippine Army against the communist and secessionist movements. This has left the Philippine Air Force and the Philippine Navy with only very limited maritime patrol and combat assets and low capability for maritime surveillance and interdiction.

Threats and challenges to Philippine maritime security may be categorized into four types, according to the question of “whose security?” or “threats against whom or what?” These four categories are: threats to State survival; threats to economic resources; threats to the safety of Filipino nationals; and threats to regional peace and stability.

### Threats to State Survival

The most primordial duty of the state is to ensure its own survival, which is anchored on its ability to promote and sustain sovereignty and territorial integrity. In the present era of global interdependence, the danger of invasion and occupation of territory by foreign powers has been significantly reduced, albeit not entirely eliminated.<sup>8</sup> For the Philippines, there appears to be no major threat to state survival arising from external powers since the Japanese invasions leading to war in the Pacific.

The major armed challenges to state security that continue to preoccupy government arise from internal sources such as Muslim secessionism, communist insurgency, kidnap-for-ransom gangs, and international terrorism. Of these internal challenges, only secessionism appears to pose a credible threat to sovereignty and territorial integrity. The secessionist movement in southern Philippines, alongside international terrorist elements operating in the country, is believed to be linked to pan-Islamic organizations in neighboring and even far-off countries drawing some cross-border support. The exact extent to which these linkages constitute serious threats remains unclear, as the strategic intent may not be matched by capabilities, and it is the local actors (both the Government of the Republic of the Philippines and the Moro Islamic Liberation Front) rather than outside forces that wield the initiative whether in suing for peace or waging war.

In the maritime arena, however, risks of limited armed conflict also arise from our territorial disputes with five other countries (China, Taiwan, Vietnam, Malaysia, and Brunei) in the Kalayaan Island Group;<sup>9</sup> with China and Taiwan on Scarborough Shoal, and with Malaysia over the dormant but unresolved claims to Sabah in North Borneo. Should any of these disputes escalate into actual armed conflict, then the threat to territorial integrity of the Philippines becomes real. The standoff between China and the Philippines on Scarborough Shoal from April to June 2012, and how China ultimately wrested control of the shoal from Philippine administration, impacted Philippine territorial integrity.

With respect to ensuring state survival, the *core interests are the protection and promotion of Philippine sovereignty and territorial integrity, as earlier defined*. Consequently, the strategic imperatives or objectives for mitigating or eliminating threats to the state include:

1. To strengthen international recognition of Philippine territory and maritime jurisdictions by:
  - Clearly defining the territorial limits and jurisdictional areas, and ensuring they are in accordance with accepted international norms and laws, including UNCLOS;
  - Demonstrating effective control over jurisdictional areas by preventing intrusions and illegal activities, establishing clear legal regimes and

management mechanisms, and undertaking development activities for areas under its jurisdiction.

2. To strengthen internal political resiliency and national cohesion in order to prevent secessionism from within, and to resist opportunistic external forces who would take advantage of such;
3. To develop credible military capability for deterrence and defense against any hostile foreign power or entity that might challenge sovereignty and territorial integrity.

### Threats to Economic Resources

From a security standpoint, threats to our maritime economic resources should be taken seriously, especially in light of our unimpeded population growth, depletion of resources on the main archipelago, and the worsening competition for resources taking place among the various states.

Fisheries and hydrocarbons are the principal maritime natural resources at stake, and are of interest and relevance to Philippine food security and energy security, respectively. Of the two, hydrocarbons (oil and gas) are considered the more strategic as economic growth and industrialization depend heavily on access to fossil fuels and in light of the geopolitical competition among the major powers over this resource. Fisheries, on the other hand, as well as minerals and other aquatic flora and fauna, are important sources of food in the Filipino diet, livelihood and potential income for both traditional and commercial fishers, and have other scientific and industrial applications, presumably including many that are yet to be discovered.

Moreover, with the Philippines being at the center of the center of marine biodiversity in the world, it carries a huge responsibility for ensuring a sustainable future for the ocean's diverse species and for ensuring a balance between resource exploitation and conservation.

The principal threats to economic resources arise from competition with traditional and commercial fishing operators of other countries for dwindling fish stocks; the conduct of IUU (illegal, unregulated, and unreported) fishing practices both in disputed maritime areas and in Philippine internal waters; accidental oil

spills, dumping of toxic substances, and other activities that are harmful to marine life; and foreign military or law enforcement activities intended to secure access to fisheries and hydrocarbons for foreign nationals while impeding use and development by Filipinos. In addition, the possibility of the contest for oil and gas escalating into armed conflict, whether including or excluding the Philippines, is a cause for concern.

With respect to securing access to and jurisdiction over natural resources, the core interests of the Philippines may be articulated as: ensuring equitable access to and sustainable development of both living and non-living resources for the welfare of Filipino people, based on actual and projected needs; and preventing armed conflict over resources from impeding our effective management of the oceans.

Consequently, the strategic objectives for mitigating or eliminating threats to economic resources include:

1. To prevent and regulate foreign resource exploitation activities in the Philippines' territorial waters, exclusive economic zone, and extended continental shelf, employing measures that are consistent with international laws and norms;
2. To encourage and provide support to our own traditional fishers, commercial fishing industry, and energy sector players to undertake sustainable resource use activities where feasible and profitable; and
3. To move toward de-securitization of the resource disputes in the KIG, Scarborough Shoal, and surrounding areas, and for eventual demilitarization of foreign presence pending final settlement of disputes.

### Threats to Filipino Nationals

Aside from the security of the state and its resources, there are direct challenges to human security that include risks to safety of persons engaged in navigation and economic activities at sea. Such risks may arise from natural hazards (typhoons, running aground on reefs), vessel collisions, piracy, and maritime terrorism. They may also be a consequence of inter-state armed conflict, such as when foreign military forces apprehend, harass, or otherwise obstruct fishing or other economic activities of Filipino nationals.<sup>10</sup> A third type of challenge arises from the natural movements



of people, including illegal migration or human trafficking, where Filipino nationals may suffer misfortunes at sea, not to mention ending up as victims of abuse once they reach their destination.

Some of these situations may be mitigated by setting into place preventive measures, such as typhoon early warning systems, lighthouses, and improved traffic schemes, but others may require drastically enhanced capabilities for vessel monitoring, search and rescue, for quick response to situations of distress, and, under the worst case scenarios, for naval or air force engagement.

Ensuring the safety of Filipino nationals—whether fishers, seafarers, coastal communities, members of the armed forces, migrant workers, or others against both natural hazards and man-made dangers to life and property—is a core interest. As such, among our strategic objectives would be:

1. To have in place an effective system of both preventive and quick response measures with respect to threats to persons that arise from natural hazards;
2. To significantly improve the capabilities of the Coast Guard, Navy, and Air Force for regular patrols as well as rapid reaction search and rescue, hot pursuit, and interdiction; and
3. To develop cooperative regimes with other littoral states for responding to emergencies at sea.

Having a peaceful and stable regional environment is requisite to our ability to concentrate our efforts on the many challenges of nation-building

#### Threats to Regional Peace and Stability

As a developing country faced with problems of internal political stability and lacking in national unity, having a peaceful and stable regional environment is requisite to our ability to concentrate our efforts on the many challenges of nation-building. Moreover, we are constrained to seek cooperation with many other states, particularly major trade and investment partners, sources of official development assistance (ODA), as well as markets for our tourism and labor exports, for as long as the domestic economy remains unable to generate the jobs, capital, and technology to sustain its population.

Successive Philippine administrations have also supported a close security relationship with the United States as a crucial element in our defense against external threats and, under the Arroyo government, in efforts as well to defeat internal insurgencies and so-called terrorist groups, notwithstanding the resulting erosion of Philippine sovereignty.

In this light, any situation that may lead to sustained armed conflict in the surrounding maritime areas, or abrupt changes in the power equation involving major military powers of the region (e.g., United States, China, Japan), may be seen as a potential threat to Philippine security. These could lead to disruption of regular commercial traffic through the region's sea lanes of communication, to a dampened regional investment climate, or worse, to the country becoming drawn into conflicts by supporting one party, e.g., by providing bases, facilities, or services for military campaigns. The greatest risks of armed conflict arise from interstate border, territorial or resource conflicts, and the continuing rivalry among the major powers for strategic influence in East Asia. Possible triggers of the latter type of conflict are present in the Taiwan Straits, the Korean Peninsula, and in the territorial and maritime disputes in the East China Sea and South China Sea.

It is a core interest of the Philippines that conflict in East Asia among the major powers be prevented, that our entanglement in such conflicts be avoided, and that peaceful relations with and among neighboring countries be maintained. The emergence of any single hegemon in the East Asian region may also threaten the sovereignty and independence of small and medium-sized states and may lead to a security dilemma<sup>11</sup> by inciting rival states to coalesce and challenge its power.

On these premises, our strategic objectives include maintaining a balance of influence<sup>12</sup> among the region's major powers and strengthening regional multilateral institutions and mechanisms (e.g., ASEAN, ASEAN Regional Forum, APEC, and more recently ASEAN Defense Ministers Meeting (ADMM), and ADMM Plus) that prioritize the development of cooperative security approaches as a hedge against power politics. Resiliency against regional instability will moreover be enhanced if we take steps to resolve our own territorial and boundary disputes that get in the way of building a strong ASEAN security community, as well as to promote regional cooperation against terrorism.

As one of several claimants to the KIG, the Philippines also bears responsibility and can in fact continue to take initiatives in ensuring that relations among the claimant countries remain peaceful and stable, and that any moves to address the disputes be confined to diplomatic means. A continuing commitment to the principles and norms that we have helped set in place, such as the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea, and further efforts to build trust and reassurance with rival claimants are in our interest and must be pursued in balance with the protection of our security interests and promotion of our sovereign rights over the resources of the Exclusive Economic Zone (EEZ) and the continental shelf.

### **Policy and Legal Environment**

#### **Weak Defense and Law Enforcement Capability**

There are a number of conditions that constrain or even militate against the country pursuing its core interests and attaining the strategic objectives outlined above. Already mentioned are the weak capability of the Navy and Air Force (relative to most of our neighboring states) to deal with external threats, and the lack of financial resources and political commitment dedicated to any serious upgrading of such capability. Aside from the Armed Forces, the Philippine Coast Guard and other civilian institutions with maritime security-related mandates are ill-equipped. The outcome is an inability to effectively monitor foreign presence and regulate foreign civilian or military activities in our waters, failure to prevent or act against territorial incursions, and a lack of readiness to protect and defend our own nationals in various threat situations. Aggravating poor defense and law enforcement capabilities is the lack of national consensus and unity on how to approach our maritime heritage, partly arising from a low level of awareness of the interests at stake. Disagreements abound and are difficult to resolve even between the central and local governments (e.g., Manila and Palawan over jurisdiction over the Malampaya oil and gas exploration site), between branches of government, and even between agencies of the Executive when faced with conflicting institutional mandates (e.g., Department of National Defense and Department of Foreign Affairs.) Poor leadership at the highest levels results in policy stalemates within the Executive branch, while partisan politics in the Legislature often lead to the same outcome.

Unfortunately, weak maritime defense capability has spiraling consequences: diplomacy becomes a necessity rather than an instrument of initiative and choice. Even in pursuing diplomatic negotiations over territory or boundaries, we find out that with a weak military, we have little leverage when dealing with a superior military power. Military weakness forces us to rely on a great power ally such as the United States even when there is reason to doubt the reliability of the ally<sup>13</sup> and even though the asymmetry may mean costs to our aspirations for an independent foreign policy, as well as higher risk of being caught in a security dilemma.

#### Absence of Clear Laws and Implementing Guidelines

On the other hand, even if we had the wherewithal, the absence of clear jurisdictional boundaries to the north, south, and southwest confuses and impedes law enforcement. Implementation of law depends on clear jurisdictions, which assumes uncontested boundaries; clarity of boundaries allows precise determination of the geographic extent of the application of national law. For decades, then, we have had a situation where military and law enforcement units are forced to operate without legally and administratively consistent boundaries. Even the courts, before which violations of law are brought, get caught in legal inconsistencies. For example, there is no guidance in the law for how we should treat Sabah, although we infer from Article II of the Constitution and from Republic Act 5446 Section 2 that we continue to claim it. There is also no guidance in the law available for continental shelf claims, which will be crucial for our offshore oil and gas interests.<sup>14</sup>

Where we do have interim boundary management mechanisms in place, such as border crossing agreements with Indonesia and Malaysia, the proximity of islands, vast areas of water, and easily navigable sea conditions around the borders make it easy for people and goods to pass between them given the lack of law enforcement assets.

#### Regional Strategic Factors

Regional strategic factors also help shape the foreign policy environment that we find ourselves operating in. To name a few: the rise of China and the deepening economic and security engagement between Manila and Beijing, especially under the Arroyo

administration; the reassertion of US primacy following the 9-11 terrorist attacks; and the increasing trend of regionalism and community building, especially among the ASEAN countries. The rise of China and our deepening engagement with Beijing have caused the Arroyo administration to moderate its territorial claims to avoid confrontation with China, with the Joint Marine Seismic Undertaking (JMSU) in the KIG area an early indication of such a shift. The reassertion of US primacy, on the other hand (albeit there are increasing numbers who now theorize or predict a decline in US influence and power), raises for us the imperative of re-examining the purposes and expected benefits of the RP-US Mutual Defense Treaty and other security cooperation frameworks as they may apply to the maritime arena. The trend toward regionalization and regionalism is also significant as it expands the diplomatic options available for the Philippines in dealing with maritime security issues, while at the same time offering a less asymmetrical forum for negotiating or addressing ocean concerns compared with bilateral diplomacy.

The latest factor to weigh in would be the global financial downturn and its effects on the foreign policy priorities of the United States and China. Specifically, the question arises on whether the domestic demands and pressures on the new Obama administration may eventually lead to protectionist economics, trade wars, and increasing tensions between Washington and its major trading partners, including China. Will this lead to diminished interest and attention to Southeast Asia and regional maritime security, including that of the Philippines? Or will a fraying of the economic ties between US and China spill over to tensions in the political-security arena, escalating their rivalry for influence in East and Southeast Asia, and thus threatening regional peace and stability? On the other hand, will the apparent weakening of the Chinese economy also lead to an inward turn by its leaders and less likelihood of foreign military adventurism on the part of China as they focus on internal socio-economic consolidation? Or will domestic as well as external economic pressures provoke a nationalist, and, in particular, irredentist backlash in China that may not bode well for its neighboring states?

#### Options for Re-defining Baselines and Their Implications for Foreign Policy and Security

The status quo with respect to the definition of Philippine territory is one in which the present boundaries (Treaty Limits, PD 1596) and territorial claims

(Kalayaan Islands, Sabah) are not recognized by the international community and are not in full compliance with UNCLOS. That they are not in full compliance weakens our legal basis for the exploitation and management of resources in our EEZ and is a continuing source of disagreement. The fact that even the United States (as the original party to the Treaty of Paris and our closest security partner) denies recognition of our expansive territorial claims, the fact that we are unable and apparently even unwilling to consistently enforce national laws within the present limits renders the status quo no longer tenable and even outrightly counter-productive insofar as securing the country's sovereignty and territorial integrity, protecting the economic resources, and promoting the safety of nationals are concerned.

The option of redefining our areas of jurisdiction by enclosing KIG and Scarborough Shoal together with the main archipelago within new baselines may be considered by many as the preferred option for promoting sovereignty and territorial integrity, if only in the sense that the farther away our boundaries, the more secure we should be from foreign intrusions and interference. Moreover, at least hypothetically, the more land and water we claim, the more ocean resources (especially oil and gas) we may claim for exclusive use.

The downside of enclosing the maximum possible area within baselines will come in terms of the huge requirements for human, technological, and financial resources to ensure the effective implementation of our rights and responsibilities as coastal states. We might also expect that the greater the area, the more it will invite interest by the major powers; and the more difficult it will be for us to negotiate overlaps with neighboring states. Such a claim is certain to be heavily contested and more costly (time and resource-wise) to defend.

A third option, a bill already passed by the bicameral committee of the Senate and House of Representatives, encloses only the main archipelago within archipelagic baselines while treating the Kalayaan Islands and Scarborough Shoal as falling under a "regime of islands" as defined by UNCLOS. Some quarters, including advocates of the maximalist definition of Philippine territory based on Treaty Limits and KIG, skeptics about UNCLOS, local stakeholders in Palawan concerned over possible loss of political jurisdiction and revenue, and other anti-administration critics who oppose Malacanang's advocacy of this option, criticize it as a "sell-out." From the security standpoint, the implications may be as follows:

- A reduced area of the ocean will fall under the jurisdiction of our defense and law enforcement authorities, but not in all aspects, as much of the waters will remain within the 200-nm EEZ over which we should exercise our sovereign rights, subject to agreement with neighbors over overlapping EEZs. The effect of treating waters as EEZ rather than territorial waters may be a de-securitization of the resource conflicts and of the presence of foreign ships close to our main archipelago, as these will no longer constitute intrusion into what we presently consider territorial waters. However, should there be an increase in vessel traffic and fishing presence in the PD 1596 waters, then the islands and waters of the main archipelago also become even more vulnerable to intrusions and illegal activity in the waters that surround and connect the islands. In effect, since there will be less ocean spaces to watch over, we must concentrate border patrols around the most vulnerable coastlines of the main archipelago where the need for them may increase.
- The JMSU may have produced data that can give a clearer picture of the likely location of hydrocarbons. Will pulling back to a “regime of islands” position not result in surrendering our rights over such resources as may lie in the belt between Palawan and the outlying islands of the Spratlys?
- The outlying islands in KIG will become separated from the main archipelago, but will nevertheless require regular military presence and replenishment.

From the diplomatic standpoint, possible implications are:

- “regime of islands” is only of value if it can be established that the features are indeed islands and under our sovereignty. While we may appear to be stepping back from a more hardline to a softer position, thus helping build confidence and paving the way for negotiations if so desired, what exactly will the new baselines mean in terms of the status of PD 1596. If it effectively repeals or amends the law, then what shall be the basis of our sovereignty claim in the first instance?

Thus, even with this option, the imperative remains that the country pursue the following policy directions: building and improving enforcement capability of the Coast Guard, Navy, and Air Force; establishing and implementing sustainable

development programs for the EEZ to secure use by our nationals; and conducting careful and more in-depth studies of our legal position, and preparing an agenda and strategy for negotiations.

### **Epilogue**

Since this paper was written in 2008, a number of significant changes have taken place, rendering parts of the paper outdated. In March 2009 the Philippine President signed into law Republic Act 9522, or the Philippine Baselines Law. The new law amended the previous baselines law (RA 3036 as amended by RA 5446) in order to make the national baselines compliant with international obligations under the UN Convention on the Law of the Sea. It enclosed only the Philippines' main archipelago in baselines, but declared the Kalayaan Island Group as well as Scarborough Shoal under a "regime of islands."

In 2012 China wrested control of Scarborough Shoal from the Philippines after a ten-week standoff. Fishermen from Zambales, Pangasinan, and Bataan who traditionally fished in those seas lost valuable fishing grounds. In response, the Philippines filed a case for arbitration under the International Tribunal of the Law of the Sea against China's nine-dash lines claims enclosing nearly 90 percent of the South China Sea. Tensions over disputed territories and maritime resources mounted not only between the Philippines and China, but between China and Vietnam in both the Paracels and Spratlys, and between China and Japan in the Senkakus, as China expanded administrative jurisdictions. China also started reclamation and construction on certain reefs within the Philippines' Exclusive Economic Zone.

Moreover, research and advocacy work related to this paper was pursued by the author in 2012 when she convened, in her capacity as a member of the Philippine Navy Board of Advisers and with partial funding from the University of the Philippines, an Informal Experts Group on the West Philippine Sea. The author co-chaired the Informal Experts Group with former Senator Leticia Ramos-Shahani. Eight other members, including former senior government officials, participated. They produced a white paper titled "Towards a Strategic Framework for Management of the West Philippine Sea," the public version of which has been published and widely circulated. The Summary and Highlights of the white paper are annexed to this paper.



# ANNEX

## Towards a Strategic Framework for Management of the West Philippine Sea

A WHITE PAPER BY THE WPS INFORMAL EXPERT GROUP<sup>15</sup>

### SUMMARY AND HIGHLIGHTS

#### **Introduction**

Tensions among rival claimant-states to the waters and land features of the South China Sea (SCS)—particularly China, the Philippines and Vietnam—have escalated significantly in the last several years, bringing the Philippines to center stage as a key participant in the future of security and stability in our part of the world. While the surge in confrontational rhetoric and actions directed against the Philippines have added to the urgency of ensuring calibrated and effective responses, the territorial and resource disputes themselves are not new and have been the subject of policy action and deliberation for decades. The challenges arising therefrom are not expected to be resolved easily or soon, but will likely continue to demand the attention of government and the Filipino public for decades to come.

This White Paper seeks to draw the attention of all concerned Filipino stakeholders—particularly those in government—to the urgent need for a strategic framework for the management of our territorial, maritime jurisdiction, and resource disputes in the West Philippine Sea (WPS). The authors are former or current public servants, coming from various areas of specialization, who have long been involved in past initiatives relating to Philippine policy in the WPS.

The paper is not intended to provide answers to all the policy questions, but to suggest a policy agenda, and to underscore the urgent need for a strategic vision, more permanent institutions, as well as for more effective arrangements for policymaking and coordination to address such agenda.

## **Contextualizing the Philippines and the West Philippine Sea Issues**

1. The Philippines is a strategically located, resource-rich archipelago, lying at the maritime crossroads of Northeast and Southeast Asia, and connecting the South China Sea with the Pacific Ocean.

It has been called a quintessential coastal state, an archipelagic and maritime nation with over 7,000 islands, entirely surrounded and interconnected by seas. Not many towns or cities in the country are more than 100 km from shore. 78% of its provinces and 54% of municipalities, almost all major cities, and 62% of the population are coastal. Just as the seas have shaped our history and the formation of the nation, we continue to depend on them for our livelihood and welfare, for communications and transportation, for defense and security, for leisure and the enjoyment of nature's blessings.

2. The Philippines is the 12<sup>th</sup> most populous country in the world. While endowed with considerable mineral wealth, the world's richest marine biodiversity and a strong pool of human resources, we suffer from widespread poverty, frequent natural disasters and vulnerability to climate change hazards. Generations of poor governance and inequitable social structures have also impeded economic progress, especially in comparison with rapidly growing neighboring states in the East Asian region.
3. The Philippines has signed and ratified the United Nations Convention on the Law of the Sea (UNCLOS), which grants coastal states sovereign rights over economic resources, as well as legal jurisdictions over certain types of sea-based activities within the 200 nm EEZ and the continental shelf measured from their baselines. UNCLOS offers the Philippines major advantages in terms of access to resources and some forms of regulatory jurisdiction over two million square kilometers of water and the seabed beneath.

Through UNCLOS, the Philippines and Indonesia introduced and joined forces to gain acceptance of the concept of the archipelagic State. We successfully secured the international community's recognition of our exclusive sovereignty over all waters around, between and connecting the different islands within the Philippine Archipelago, subject to certain limitations on distances between base points. Without the archipelagic State

concept enshrined in Part IV of the UNCLOS, the Philippines would have remained a scattering of islands separated by high seas.

UNCLOS also provides guidance for states with overlapping jurisdictional claims, who may then resort to a range of peaceful dispute settlement mechanisms, among them the International Tribunal on the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and arbitration arrangements. As of June 3, 2011, 163 states had ratified the UNCLOS.

4. The SCS borders the entire western seaboard of the country. Several key provinces including Ilocos Norte, Ilocos Sur, La Union, Pangasinan, Zambales, Bataan, Mindoro, and Palawan face the SCS. The sea is extremely significant from an international navigational, economic, geopolitical and strategic perspective, thus making the Philippines strategically important.

Oil and gas resources have been proven to exist in areas adjacent to and closest to the coastlines of littoral states. Fisheries throughout the area have historically supported the survival of coastal populations and are vital to food security in the region. Coral reef ecosystems in the nearshore and offshore areas nurture and propagate the region's supply of fish. Commercial as well as military navigation have established the SCS as a major waterway and a lifeline for trade and energy supplies connecting countries in the Middle East, Africa, and South, Southeast, and Northeast Asia.

Several countries—the Philippines, Brunei, China, Malaysia, Taiwan and Vietnam—have competing claims to all or part of the SCS, while great powers such as the United States and China are beginning to compete for naval power and influence here, thus making it a potential regional flashpoint.

5. The international and regional environments profoundly affect Philippine interests and its relationships with other states. Global financial woes, turbulence in the Middle East, and competition for energy supplies are but some significant global developments that may directly impact our economy. In the region, the emergence of new powers China and India, the potential for strategic rivalry between the US and China, military flashpoints (such as the Taiwan Straits, Korean peninsula and the SCS itself), a steady arms buildup among various countries, domestic political transitions in key

neighboring states, and trends in ASEAN and East Asian regional integration are all relevant to stability and peace and therefore to the prospects for achieving greater development and security for the Philippines. Conversely, in this interdependent setting, what the Philippines does with respect to the WPS can and will have ripple effects on regional and global scenarios.

6. Rebuilding institutions for good governance, bringing the long-standing Mindanao conflict and the communist insurgency to a resolution, promoting social justice and human rights, improving the peace and order situation especially with respect to crime and terrorism, and consolidating gains in macroeconomic conditions—these are the domestic imperatives of long standing that shall continue to demand the priority attention of government and the Filipino people. Each of these is critical to our national resilience, unity and progress, which in turn are indispensable for our ability to face emergent external challenges.

### **The Fundamental Problem**

The Philippines has long-standing territorial and jurisdictional disputes with several states bordering the SCS, as well as undelimited maritime boundaries in various waters adjacent to the archipelago. These disputes affect the economic, national security, human security and environmental interests of the country, and moreover impact on regional stability and the prospects for successful regional integration in East Asia.

Philippine efforts to assert sovereignty in the WPS and to implement provisions of the UNCLOS in its EEZ in line with national development and security goals are stymied by the claims and actions of other countries. In the last several years, territorial tensions among some countries bordering the sea have escalated, and these have occurred against the backdrop of broader geopolitical shifts, including rivalry for regional influence between great powers. This current geopolitical context may provide both challenges and opportunities for the advancement of Philippine interests and for the peaceful resolution of said disputes.

There is a need for a comprehensive and strategic approach to policymaking on the WPS, taking into consideration the myriad short- to long-term interests of the country at stake, the fluid regional and international environment, and the domestic imperatives that will affect how government prioritizes the allocation of its efforts and resources.

## **Imperatives of Philippine Policy in the WPS**

### **Sustainable Development of the Marine Economy and Resources**

#### **Fisheries**

1. The Philippines is the world's 6<sup>th</sup> largest producer of fish, with fish being a main protein source and fisheries a main source of livelihood for our people. The waters west of Palawan, which flow from the SCS, account for 20-25% of our annual fish catch, while the areas offshore of Zambales are rich spawning grounds, underscoring the economic importance of the SCS to food security and economic welfare.
2. Republic Act 8550 or the Fisheries Code of 1998, declares as a national policy, among others: (1) to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens; and (2) to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment.

RA 8550 further defines the area of its application to "all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile EEZ and continental shelf."

3. In the WPS and other waters adjacent to the archipelago, fisheries are threatened by both reef degradation and overfishing. Foreign fishing fleets are systematically increasing efforts to improve catch, in some cases encouraged by their government as a means of asserting maritime claims. The Philippines, on the other hand, has not substantially increased its marine fishing effort for many years and places priority on resource conservation and protection. Uncontrolled fishing in the area will diminish resources for current and future needs of Filipinos, despite sovereign rights over fisheries and aquatic resources accorded to us under UNCLOS. Moreover, the biodiversity and productivity of the WPS are directly linked to the biodiversity and productivity of the country's inter-island waters. Any diminution in the resources of the WPS may have negative impacts on the viability of our own inter-island fisheries resources.

## Hydrocarbons and Minerals

1. International research data indicate that the Philippines has significant oil and gas as well as other mineral deposits particularly around the Palawan/Reed Bank area. It is now believed that they are of such quantity that they could have transformative potential for a developing country such as ours. Access to these resources is therefore a core Philippine interest in the WPS.
2. Presidential Decree 87, also known as the Oil Exploration and Development Act of 1972, declares it a policy of the State to “hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign, under the arrangements embodied in this Act which are calculated to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government for use in furtherance of national economic development, and to assure just returns to participating private enterprises, particularly those that will provide the necessary services, financing and technology and fully assume all exploration risks.”
3. The country’s energy infrastructure, as well as energy supply and demand projections, will soon urgently require a fresh infusion of indigenous energy sources. Oil industry players have thus been preparing to begin commercial drilling activities. There is an unavoidable need for foreign capital and technology, but the international disputes in the area and recent escalation of tensions over drilling and exploration activities have created a perception of risk and uncertainty that discourages long-term investors.
4. Philippine policies on oil and gas cooperation or joint development in the WPS need to be clarified. The key obstacles to joint development are security concerns and commercial reservations about partnering with oil companies from rival claimant states, as well as fear of potential negative impacts on the country’s legal position.
5. Aside from fisheries and hydrocarbons, there is a need to conduct thorough assessments of other offshore mineral resources, such as rare earths, iron, titanium, vanadium sands, manganese nodules and massive sulfides, as well as of the renewable energy potentials of the ocean.

## Promoting Maritime Security and Defense

1. The Philippine government, in its National Security Policy (2011-2016), outlines as one of its objectives to “capacitate the Philippines to exercise full sovereignty over its territory and to provide protection to its maritime and other strategic interests.” The Philippine defense establishment is in transition from focusing on Internal Security Operations (counter-insurgency, counter-separatism, and counter-terrorism) to Territorial Defense.
2. Most states bordering the SCS have embarked on military upgrades and civilian or paramilitary law enforcement modernization efforts that are partly intended for the protection of their EEZ resources. Recent tensions arising over resource competition underscore the need for the Philippines to do the same. However, regional defense buildup in general raises the risk of confrontation in the area, and in view of the existing territorial and maritime jurisdiction disputes among regional states, may spark an arms race that will clearly not be in the Philippines’ national interest.
3. Of particular concern is the growing power projection of the People’s Republic of China (PRC), with its systematic blue water naval development and the so-called Island Chain Strategy contributing to uncertainty in the regional security environment, particularly in light of its expansive maritime claims and growing nationalism among its people. In addition, the active deployment in the SCS of PRC civilian or paramilitary law enforcement vessels, and provincial government organs taking action on their own have made the security environment in the SCS more complicated.
4. In the WPS, there is a conflation of defense challenges and law enforcement imperatives due to the geographical overlap of Philippine EEZ/continental shelf (areas that are subject to civilian jurisdiction) with the disputed areas including KIG and Bajo de Masinloc which harbor foreign military presence (and are therefore a military concern). In view of the limited capabilities of both our military and civilian law enforcement agencies, and the need to allocate resources for their upgrading, their respective roles and mandates will need to be clarified for the short-term, medium-term and long-term planning horizons.

## Law Enforcement and Contributing to Good Order at Sea

1. Pursuant to UNCLOS, the Philippines as a coastal and archipelagic state has exclusive sovereign rights to explore and exploit the living and non-living resources within its 200 nm EEZ and continental shelf. It exercises full sovereignty over its 12 nm territorial sea measured from its archipelagic baselines, and over all archipelagic waters enclosed within them, subject only to the recognition of innocent and archipelagic sea lane passage rights in favor of foreign ships. There is debate, however, on whether, when, and where to establish archipelagic sea lanes.
2. The most topical dimension of the disputes triggering the tensions is foreign fishing activities in Philippine territory and EEZ. Given the lack of capability and assets of our civilian law enforcement agencies, the Navy has had to be deputized for ‘anti-poaching’ operations. Use of the Navy against fishermen projects a militarist posture and leaves us vulnerable to allegations of threat to use force. Demilitarization of the fisheries disputes had in fact earlier been recommended by various quarters. There must be a proper mix of military action and civilian law enforcement approaches to the disputes, as determined by the nature of the specific threat or challenge.
3. In consideration of the territorial disputes, we need a clearer definition of where the metes and bounds of Philippine law enforcement jurisdiction are, balancing the promotion of vital national interests with the need to prevent armed hostilities. The growing deployment of vessels by PRC to protect Chinese fishermen and to obstruct Philippine enforcement operations in our territory/EEZ creates new challenges to our law enforcement efforts. Fishing and other activities by Filipino nationals will be constrained, while allowing Chinese law enforcement to go uncontested may be interpreted as a negation of Philippine sovereignty.
4. A National Coast Watch System was established through Executive Order 57, as a “central inter-agency mechanism for a coordinated and coherent approach on maritime issues and maritime security operations towards enhancing governance in the country’s maritime domain.” EO 57 also abolished the Commission on Maritime and Ocean Affairs, which since 2007 had functioned as the coordinating mechanism at the strategic level.



### Asserting Sovereignty over Territory and Exercising Sovereign Rights over the Exclusive Economic Zone

1. The EEZ/continental shelf under UNCLOS should not be confused with and regarded as equivalent to land territory over which a coastal State exercises *full sovereignty and control*. Within the EEZ/continental shelf, a coastal State is generally entitled to *exclusive sovereign rights* to explore and exploit the living and non-living natural resources of the superjacent waters (in the case of the EEZ) and the seabed and subsoil (in the case of the continental shelf). These are rights that are less than full sovereignty, and are ancillary to an adjacent territorial sea or land area.
2. While focus has been on the exclusivity of maritime territories and jurisdictions, UNCLOS also requires coastal States to cooperate pending the resolution of disputes, and encourages them to share the resources of the sea through provisional agreements like joint development arrangements. Part IX of UNCLOS also allows cooperation and shared management of semi-enclosed seas like the South China Sea.
3. While international litigation may be helpful, it is not a singular solution to the multiple and complex problems that have arisen, or may arise in the future, in the West Philippine Sea. It will take much time and effort to bring just one case before an international tribunal, and it often takes many years to be resolved; in the meantime, incidents and issues may arise that will require practical, timely, or urgent responses.

### Advancing an Effective and Pro-Filipino Diplomacy and Foreign Relations

1. Art. 2 Sec. 7 of the Constitution states that “The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest and the right to self-determination.” Art. 2, Sec. 2 of the Constitution also states that “the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.”

2. In the field of foreign relations, the WPS disputes have had the most impact on our ties with China, the United States, and with Southeast Asia/ASEAN. The disputes have led to an undesirable sharp deterioration in our relations with China, an increased need to strengthen defense cooperation with the United States, while challenging us to help build a common ASEAN position that would help the Philippines and the region withstand any threat to stability and peace. The United Nations moreover continues to serve as a main pillar framing our approach to the WPS challenges.
3. The Philippines has been actively promoting peaceful settlement of the WPS disputes, through bilateral and multilateral initiatives, since the early 1990s. The Philippines also proposed, initiated, and led in drafting the ASEAN-China Declaration of Conduct (DOC), and has been most insistent in further evolving the DOC into a legally binding Code of Conduct.
4. In the last two years, the Aquino government's strategy in addressing the disputes have focused on pursuing a rules-based approach, reliance on international law, and a preference for multilateral diplomacy. These appear to enjoy considerable domestic as well as international support. On the other hand, its staunchly nationalist and at times seemingly provocative stance against China, as well as open calls for US involvement and support, have caused concern among some neighboring states in ASEAN.

#### Organizing for Future Challenges

1. Law of the Sea concerns in the WPS are cross-cutting issues that impinge on both foreign policy and domestic policy. Domestic archipelagic imperatives (i.e., access to resources, protection of the environment, national security) are the true driving force behind national policy. Only a strong domestic capability (e.g., credible defense and pro-active maritime resource development programs) can be the basis of effective diplomacy and relations with the international community. Archipelagic development and security requires a strategic and whole-of-government approach.
2. Recent challenges facing the country in asserting its sovereignty and sovereign rights in the WPS have helped in uniting the Filipino people. Territorial integrity,

national patrimony, and the principles and norms we choose to live by in our relations with other countries and peoples all help shape our national identity. But there is little informed policy debate among Filipinos on the maritime challenges we face. Carrying this forward to the next generations requires developing a critical mass of experts and enthusiasts, as well as promoting lively debates and discourses about maritime issues and the challenges and opportunities they present. These will involve participation by government, academe, media, NGOs, private industry, and grassroots local communities.

3. Coverage of maritime issues in popular media is also lacking. There is a need for the Filipino people to rediscover our archipelagic heritage and to write our own story as a maritime and seafaring nation. The mass media, social networks on the Internet, the educational system, and government information agencies are all potential instruments for information dissemination, awareness-raising, stimulating lively and analytical debates, and mobilizing public support on the one hand. They are also instruments for gauging public sentiment and soliciting feedback on government policies and actions. Ultimately, the tough decisions government will have to make with regard to the WPS should be for the benefit of the people. Their understanding of the issues and participation in the decision making will be vital to any successful policy.

### **Guiding Principles and Major Recommendations**

The following are proposed guiding principles for Philippine policy on the West Philippine Sea.

1. The West Philippine Sea and its resources are part of the national patrimony. Our national interest in the WPS is defined as that which will serve the greatest good of the greatest number of the Filipino people.
2. Our policies and strategies with respect to resource development, defense, law enforcement, diplomacy, and international law shall be consistent with this definition of the national interest.

3. We affirm commitment to the peaceful settlement of inter-state disputes on the basis of justice, equality, mutual respect, and upholding internationally accepted rules and norms of behavior.
4. We affirm commitment to an independent foreign policy that upholds the dignity of the Filipino people and our tradition of courage and self-reliance;
5. WPS policy should demonstrate the positive contributions that the Philippines and the Filipino people can make to the Asia Pacific region and to the world.

This White Paper recommends the following courses of action.

1. That government take steps to establish, revive, or strengthen permanent, high-level institutions that shall:
  - a. Undertake policy formulation, strategic planning, policy coordination, and periodic assessments of the policy environment;
  - b. Ensure that the implementation of plans and programs will be in accordance with policy guidelines;
  - c. Serve as crisis management mechanisms tasked to provide early warning and quick response to incidents;
  - d. Be supported by adequate resources and staff, including provision of strategic analyses and real-time intelligence; and
  - e. Provide institutional continuity regardless of changes in administration and leadership.
2. That government develop a comprehensive, long-term program for international legal action on issues relating to the disputes, and establish the appropriate institutions and rules for undertaking such a program. Such a program may include but not be limited to the negotiation of boundaries, filing of cases, seeking arbitration and/or advisory opinion on critical issues from competent bodies, while taking into consideration the need to create favorable political, diplomatic and security conditions for conflict resolution.
3. That government develop strategic economic resources development programs for the Philippine EEZ with respect to:

- a. Sustainable and responsible fisheries, with government assistance for artisanal/small-scale fishermen;
  - b. Optimized exploitation of oil and gas resources, balancing economic interests and the sovereignty/security concerns;
  - c. Exploratory surveys of other offshore mineral resources;
  - d. Establishing, where necessary, transitional guidelines and rules for law enforcement in selected EEZ areas under dispute, taking into consideration domestic laws and the relevant UNCLOS provisions; and
  - e. Enabling and capacitating organs for law enforcement and for the protection of Filipinos engaged in the exercise of sovereign rights over the EEZ.
4. That government develop a clear, feasible, and resolute security and defense strategy for the WPS based on:
- a. Sound understanding of shifting regional dynamics and geopolitical rebalancing taking place;
  - b. Factual and accurate threat and risk assessments looking at capabilities, political intentions, and actions of adversaries;
  - c. Correct appreciation of our own security and defense capabilities and weaknesses, including the potential for allied assistance and the influence of remaining internal security challenges,
  - d. Clear definition of the distinct as well as coordinated roles and responsibilities of our civilian and military organizations in ways that build on and build up their core competencies and primary mandates; and
  - e. Anticipation of various scenarios which security forces may encounter, taking into consideration the shift from internal security operations to territorial security operations and the shift from “threat based” to “scenario-based” contingencies.
5. That bilateral and regional diplomacy pertaining to WPS:
- a. Should be strategized in the context of comprehensive foreign policy goals, such as promotion of national security, economic development, and the welfare of nationals;

- b. Should contribute ultimately to strengthening regional and international peace and stability based on international law, norms, and standards;
  - c. Be guided by our long-term aspirations for our relations with ASEAN, China, the United States, neighboring countries in Southeast Asia and Northeast Asia, and other key stakeholders.
6. That programs be undertaken to inculcate archipelagic consciousness and identity of the Philippines and the Filipinos as a maritime nation, including but not limited to:
- a. Preparation and wide dissemination of information (e.g., primers and reference materials) outlining Philippine interests for popular consumption;
  - b. Building grassroots constituencies for advocacy for the marine and coastal environment, safety and freedom of navigation, disaster-preparedness and response, good neighborliness and regional cooperation, among others;
  - c. Introduction of relevant multidisciplinary courses and content into all levels of education and training in government;
  - d. Investment in developing next-generation expertise on the legal, security, international relations, fisheries, geography, geology, marine scientific, and other dimensions relevant to the WPS.

This initiative began months before the most recent tensions with China erupted over Bajo de Masinloc. Intended to draw attention to the strategic questions, the paper does not provide specific recommendations on how to manage the most pressing or immediate concerns. The problems we face in the WPS are not new, as we have been grappling with many of these issues for decades. It is possible that many more years will pass before we achieve our aspirations of a West Philippine Sea that is truly free from conflict, safe from any form of violence or illegal activity, where Filipinos are able to enjoy as well as to share nature's bounty, where countries live in equality and mutual respect, and where strong regional institutions are in place upholding shared principles and norms.

We hope that this White Paper will be an important step in that direction.

10 August 2012, Quezon City

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## Notes

- 1 1987 Philippine Constitution.
- 2 Michael Garcia, "Progress in the Implementation of the Philippine National Marine Policy: Issues and Options" (working paper, United Nations – The Nippon Foundation Fellow, New York, November 2005), 20.
- 3 Stanford Encyclopedia of Philosophy. Accessed 29 January 2009 at <http://plato.stanford.edu/entries/sovereignty/>.
- 4 Marck W. Zacher, "The Territorial Integrity Norms: International Boundaries and the Use of Force," *International Organization* 55(2): 215-250.
- 5 A. Francisco J. Mier, "National Security Concept" (Presentation at the National Defense and Security Review, National Defense College of the Philippines, September 3, 2007), 3.
- 6 Mier, "National Security Concept," 3.
- 7 Col Alfredo Ramirez GSC (PAF), "Maritime Air Surveillance for the Philippines: Protecting the Exclusive Economic Zone and the Kalayaan Island Group," *Air Force Review*, Vol.1, No.1. (circa 2001).
- 8 As the US invasion and occupation of a sovereign state, Iraq, in violation of international norms will attest.
- 9 Claimed by the Philippines; see Presidential Decree 1596.
- 10 For instance, we recall some specific recorded incidents such as the capture by Vietnamese troops of two fishermen from Mangsee island and their detention for over a month on a Vietnamese garrison in KIG (1997), imprisonment of fishermen and confiscation of property by the Malaysian authorities (1988), and deportation by sea of migrants as well as Mindanao war refugees who had entered Sabah illegally.
- 11 Security dilemma is a situation where one state's attempts to increase its security appear threatening to others and unnecessarily provoke a confrontation.
- 12 Evelyn Goh (Meeting the China Challenge, 2005, 39) noted how Southeast Asian elites, particularly the Singapore policy elite, expect the big powers to play a geopolitical balancing game, where political, diplomatic and economic clout (i.e. soft power) will play a bigger role than military confrontation in shaping preferences and outcomes in the region.
- 13 The United States' response to Chinese occupation of Philippine-claimed Mischief Reef was a tepid statement saying that it took no sides in the disputes, were merely concerned that freedom of navigation be respected, and that no party should resort to the use of force to resolve sovereignty claims.
- 14 The closest regulatory measure is the Philippine Mining Act of 1995.
- 15 In this paper, the term 'South China Sea' (SCS) refers to the entire semi-enclosed sea bordered by China, the Philippines, Malaysia, Indonesia, and Vietnam. On the other hand, the term 'West Philippine Sea' (WPS) refers to only the part of the South China Sea that is the subject of Philippine sovereignty and/or jurisdictional claims. WPS is inclusive of the Kalayaan Island Group or KIG, Bajo de Masinloc (a.k.a. Panatag or Scarborough Shoal), and the 200-nautical mile Exclusive Economic Zone (EEZ) and Continental Shelf (CS), accounted from the archipelagic baselines defined in Republic Act 9522 (Philippine Baselines Law).



# Poverty and Globalization: Is a Radical Rethinking Called For?

RAUL V. FABELLA  
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## **Introduction**

The first of the 2000 Millennium Development Goals (MDG) of the United Nations is the reduction by half of the proportion of people living under one US dollar a day by 2015. The other seven goals being aspects of poverty are highly correlated and complementary with the first and with each other so that if the first is achieved, the rest would also be within touching distance. The World Bank (2003) has estimated that the number of people living under one US dollar a day is about 896 million in 2004, down from about 1.054 billion in 2002, a reduction of around 70 million. The obstacles to achieving this first goal are as formidable as ever. The instances of success are more the exception than the rule. China represents a singular success, but may remain a singularity for a while. If global performance on the first of the MDG goals looks encouraging, it is largely because China's performance skews it towards the satisfactory. India's and Vietnam's recent rapid growth still has to get translated into dramatic drops in poverty incidence. The age-old policy question remains. By contrast, there is hardly any gain in Sub-Saharan Africa. Why this stark contrast? How does a country reduce poverty?

The classic debate, couched in terms of the economic pie, has always had two polar counsels: “grow the pie” versus “share the pie.” Both have empirical evidence bearing on their sails: (1) *ceteris paribus*, poverty incidence falls with a rise in average per capita income and (2) *ceteris paribus*, poverty incidence falls with lower income inequality (Asra et al. 2005; World Bank 2003). The harder question is that most policy levers available to governments that may raise average per capita income will also raise income inequality (Kanbur 2001; 2003). The issue of poverty reduction is no longer very straightforward. Are there levers that do both, i.e., raise income growth and lower income inequality?

One may further inquire about how per capita income growth affects income inequality. The current consensus is that it does not for contemporaneous observations (Dollar and Kraay 2002; Kanbur 2003; World Bank 2003). This claim, strongly supported by Kristine Forbes (2000), means that the Kuznets curve may not exist. Instances of a positive relationship in cross-country data cancel instances of a negative relationship. Barro (2007) appears to disagree. He claims that the Kuznetz curve is alive and well in low-income countries where growth at first benefits a minority due to, among others, financial market imperfections and threshold effects in educational investment. But as economic growth is sustained and deepened, the demand for the assets of the poor (largely labor service) rises and growth becomes more encompassing and equitable.

One can also ask the reverse question: Does income inequality hamstring income growth in subsequent periods? The human capital threshold argument is important here. First, endogenous growth models and subsequent tests show the importance of human capital investment. But human capital investment, like a physical capital investment, has some high fixed cost feature: the returns are zero unless the threshold is hurdled. Poorer households anticipating threshold shortfall will not invest; richer households that invest will reap rich returns. The human capital divide widens. Income inequality leads to greater proportion of poorer households. Thus, less human capital overall and less growth result from greater income inequality (Kanbur and Lustig 2000; Banerjee and Duflo 2003). Barro (2007) gives evidence that income inequality hampers economic growth in low-income countries.

The empirical data on the relation between growth and income inequality are at best ambiguous (Kanbur 2004). The evidence speaks with many voices to reflect the many pathways of causation and feedback. This paper will not attempt a resolution of this thorny conundrum. This inquiry is concerned rather with a policy lever that, while in theory affecting both income growth and income inequality, may also display residual effect on poverty outcomes. The interest here is on the classic policy lever “globalization” or “openness” (but not with financial integration) zeroing in on the poverty-openness nexus rather than on the traditional growth-openness nexus.

Since about a decade ago, prompted by the East Asian crisis (1998) and the Seattle/WTO debacle (1999), globalization has hugged the center stage of strident and sometimes violent debates on policy options (Kanbur 2001). At that time, the ascendant Dollar-Kraay syllogism (Dollar and Kraay 2001) may be stated as follows: globalization is good for growth; growth is good for poverty reduction; ergo, globalization is good for poverty reduction. Sen called this the pull-up effect. Panagariya (2004) still swears by this syllogism and makes a compelling case. The naysayers however focus on lopsided gain sharing, unequal trade, and the increasing power of multinational corporations leading to the empowerment of least developed country (LDC) elites and the exploitation of the masses.

Since then we have witnessed the debate on deep determinants of economic growth (Acemoglu, Johnson, and Robinson 2001; Easterly and Levine 2002; Rodrik, Subramanian, and Trebbi 2002), which somewhat downgraded the role of economic policy on economic outcomes. Indeed Easterly, perhaps in a fit of hyperbole, raised the mantra “policy does not matter,” presumably to highlight the favored emerging mantra: “institutions matter.” Institutional quality can no longer be ignored as controls in empirical work.

There is ample evidence that openness stimulates economic growth in LDCs (Dollar and Kraay 2002; Edwards 1998; Frankel and Romer 1999). As is common in economics, there are dissenting opinions, and Rodrik (1999b) saw rapid capital accumulation as the lynchpin. The pathways of causality and feedback are multiple so that theories tend to abound and disagreements are many, which means that only the data can finally point to a resolution.

We will revisit this issue but in a more direct way. Instead of the growth-poverty nexus, we focus on the poverty-openness nexus. Controlling for the effect of initial per capita income and initial income inequality and other control variables, does openness (our measure of globalization being the trade ratio: export plus import over gross domestic product) still display a robust positive effect on poverty outcomes? In particular, in controlling for institutional quality, as in the celebrated aid-effectiveness debate (Burnside and Dollar 2000; Easterly, Levine, and Roodman 2004; Dalgaard, Hansen, and Tarp 2003), it may be the cross effects and concavity that embed the impact of openness. In the process, we will revisit the widely accepted hypotheses of the effects of per capita income and income inequality. We will also inquire into the responsiveness of poverty outcomes to institutional or governance variables of interest to ourselves: regulatory quality, and voice and accountability. Our poverty outcome will be poverty incidence and poverty reduction.

### **The Data**

The basic data set we use here was the same one used by Asra, Estrada, Kim and Quibria (2005) and generously shared with us by one of the authors (G. Estrada). The poverty panel data used by them and us was constructed originally by Hassan, Waheeduzzaman, and Rahman (2003) for 80 countries over the period 1960-1998. Following Asra et al. (2005), we exclude data for developed and transition countries. Naturally, for some countries, many more observations are available than for others. Only one end-of-the-period observation per five-year interval is used. Data availability for other variables dictated that the coverage period is only 1975-1995.

As dependent variables, we use either:

1. "Poverty" which is poverty incidence at end of each five-year period
2. "Poverty reduction" defined as poverty incidence at time (t) minus poverty incidence at time 5 (t-5).

The explanatory variable of concern to this paper is the policy variable "openness" and our control variables are: initial conditions: per capita GDP, population, Gini coefficient, poverty, infant mortality and life expectancy, all at the beginning of the period (t-5); macroeconomic policy: government expenditure and inflation (all

averaged over each five-year interval); institutional variables: voice and accountability, and regulatory quality.

Our empirical specifications are the following:

$$1. \text{Poverty} = \alpha_1 + \alpha_2(\text{Initial Conditions}) + \alpha_3(\text{Macroeconomic Policy Variables}) + \alpha_4(\text{Institutional Variables}) + \alpha_5(\text{Openness}) + \alpha_6(\text{Interactions}) + \epsilon_t$$

The initial conditions here consist of per capita GDP, population, and Gini coefficient.

$$2. \text{Poverty Reduction} = \beta_1 + \beta_2(\text{Initial Conditions}) + \beta_3(\text{Macroeconomic Policy Variables}) + \beta_4(\text{Institutional Variables}) + \beta_5(\text{Openness}) + \beta_6(\text{Interactions}) + \epsilon_t$$

The initial conditions here consist of poverty, population, infant mortality, life expectancy, and Gini coefficient.

Table 1 gives the definitions and sources of variables used (following Asra et al. 2005).

## Empirical Results

### Poverty Incidence

Table 2 gives the regression results for poverty incidence. Our base regression is given in Column 1. It is clear that increased Per Capita GDP reduces poverty incidence while increased Gini Coefficient (income inequality) raises poverty incidence. These results are as the received wisdom would have them. Population has, however, no effect on poverty incidence.

Among the Macroeconomic Variables, Government Expenditure as a percent of GDP is positive and significant for poverty incidence; Inflation is, however, not significant. Both the Governance variables are significant, but exhibit different signs: Regulatory Quality is negative and significant but Voice and Accountability is positive and significant for poverty incidence. The signs exhibited by the Governance variables are in agreement with the literature.

**TABLE 1.** Variable definition

<b>Variable</b>	<b>Definition</b>	<b>Unit</b>	<b>Source</b>
Poverty Reduction	Poverty change: Poverty(t-5)-Poverty(t) Poverty at ending period (t) Poverty at beginning period (t-5)		Hasan et al. (2003)
Poverty	Percentage of the population whose income falls below \$2 measured in purchasing-power parity dollars.	Percent	
Income per capita	Gross domestic product per capita beginning period, log	Real per capita GDP at 1996 US\$ Purchasing Power Parity	Penn World Tables
Population	Population at the beginning of the period, log		
Gini coefficient	A measure of distribution of income or expenditure, beginning period	Gini value	Hasan, Quibria, and Kim (2003)
Infant Mortality Rate	Infant mortality rate per 1,000 live births, beginning period	Number of infant mortality cases	
Life Expectancy	Life expectancy at birth, total	Year	World Bank
Openness to trade	Sum of imports and exports as share of GDP, average of each 5-year period	Percent	Penn World Tables
Government expenditures	Government expenditures as share of GDP, average of each 5-year period	Percent	
Inflation Rate	Percentage growth in consumer price indices (100 in 1996), average of each 5-year period, log	Percent	
<b>Quality of governance</b>			
<i>Regulatory Quality:</i> (2003)	Measures of the incidence of market-unfriendly policies such as price controls or inadequate bank supervision, as well as perceptions of the burdens imposed by excessive regulation in areas such as foreign trade and business development.		Kauffman et al.
<i>Voice and Accountability</i>	Measures accountability rates of public officials, including the presence or absence of public channels to denounce unaccountable behavior of public administrators.		

**TABLE 2.** Poverty-Openness Regressions

<b>Regression</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Initial Conditions</b>						
Per Capita GDP	-35.16214 (-25.53)	-34.48731 (-24.64)	-34.32376 (-23.97)	-34.59381 (-24.86)	-34.48752 (-24.55)	-30.92138 (-19.49)
Population	0.2480351 (0.47)	-0.49568 (-0.78)	-0.5173524 (-0.81)	-0.7686869 (-1.18)	-0.4685172 (-0.68)	0.0493064 (0.08)
Gini Coefficient	0.4382615 (4.16)	0.4172122 (3.99)	0.4273101 (4.02)	0.3495693 (3.13)	0.4179399 (3.97)	0.3350502 (3.25)
<b>Macroeconomic Policy</b>						
Government Expenditure	0.420911 (4.54)	0.4790966 (5.00)	0.4869139 (5.02)	0.4561736 (4.74)	0.4795572 (4.98)	0.5092521 (5.54)
Inflation	0.4437018 (0.76)	0.0384235 (0.06)	0.1096094 (0.18)	0.2275394 (0.37)	0.0477503 (0.08)	-0.0654551 (-0.11)
<b>Quality of Governance</b>						
Regulatory Quality	-10.49419 (-4.81)	-10.17581 (-4.71)	-12.20096 (-2.94)	-10.19683 (-4.75)	-10.21961 (-4.62)	-12.09853 (-3.09)
Voice and Accountability	6.656287 (4.32)	6.428373 (4.22)	6.410761 (4.19)	10.61281 (3.63)	6.449174 (4.18)	6.706742 (4.64)
Openness		-0.0679092 (-2.05)	-0.0734592 (-2.13)	-0.0628755 (-1.91)	-0.0585722 (-0.59)	-0.0879732 (-2.69)
Openness x Regulatory Quality			0.0341853 (0.57)			0.0631859 (1.11)
Openness x Voice & Accountability				-0.0800682 (-1.67)		
Openness <sup>2</sup>					-0.0000575 (-0.10)	
<b>Regional Dummy</b>						
South Saharan Africa						9.369964 (4.11)
Constant	281.9079 (16.86)	293.3781 (16.82)	291.858 (16.50)	301.7725 (16.73)	292.5826 (15.22)	257.9006 (13.83)
Observations	141	141	141	141	141	141
R-squared	0.9142	0.9168	0.9170	0.9186	0.9168	0.9265

In Column 2, we now add Openness as regressor. In subsequent columns we sequentially add interaction terms and region dummies. It is clear that Openness is negative and significant through all these regressions.

It thus appears that even controlling for the powerful explanatory contributions of governance and institutional variables, Openness maintains its importance for lowering poverty incidence.

### Poverty Reduction

Table 3 gives the regression results involving dependent variable Poverty Reduction. The base run is given by Column 1. Poverty, Per Capita GDP, Child Mortality, and Life Expectancy are all significant influences. Poverty Reduction rises with higher initial poverty incidence; rises with higher initial per capita income; rises with higher initial child mortality and shorter life expectancy, all of which are as intuition would have them. Of the Macroeconomic Policy variables, Government Expenditure again figures significantly and negatively. Among the Governance variables, Regulatory Quality is positive and significant while Voice and Accountability is negative and significant. Again the base run seems to validate received priors on the effects of these variables.

Adding Openness among the regressors (Column 2) shows it to be positive but only marginally significant. Column 3 now adds the interaction term Openness x Voice and Accountability, and Openness Squared. Both prove to be positive and significant. But, more interestingly, they also imbue the positiveness of Openness with strong significance! Adding a regional dummy (Sub-Saharan Africa) improves the significance of Openness.

Once more it appears that the positive influence of Openness on poverty reduction cannot be discounted even with the powerful contribution of the governance and institutional variables. It is of interest to note that the effect of Openness becomes very significant only when its interaction with Voice and Accountability and its possible concave feature (positive, but diminishing returns) are recognized in the regression. The positive and significant contribution of the interaction of Openness and Voice and Accountability is a highly interesting surprise.



**TABLE 3. Poverty Reduction-Openness Regressions**

<b>Regressions</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
<b>Initial Conditions</b>								
Poverty	0.5443704 (6.52)	0.5805237 (6.79)	0.5775952 (6.66)	0.5758577 (6.78)	0.586845 (6.86)	0.5851033 (6.95)	0.5886699 (7.16)	0.5931818 (7.23)
Per Capita GDP	16.92422 (5.16)	18.05077 (5.44)	18.01235 (5.40)	18.30486 (5.55)	18.34917 (5.52)	18.95778 (5.78)	18.34831 (5.73)	18.43812 (5.76)
Population	0.6467091 (1.26)	1.224261 (2.01)	1.220973 (2.00)	1.495106 (2.39)	1.584452 (2.31)	2.266874 (3.08)	1.510389 (1.73)	1.979938 (2.73)
Child Mortality	0.0969515 (2.43)	0.1251085 (2.92)	0.1249531 (2.91)	0.1141616 (2.65)	0.1441047 (3.14)	0.1433493 (3.17)	0.1058115 (2.13)	0.092525 (1.94)
Life Expectancy	0.5705564 (2.69)	0.6435006 (3.00)	0.6423423 (2.99)	0.5660485 (2.60)	0.7039808 (3.19)	0.6395357 (2.92)	0.3788573 (1.46)	0.2990197 (1.21)
Gini Coefficient	-0.1765656 (-1.74)	-0.1832809 (-1.82)	-0.1783604 (-1.73)	-0.1269333 (-1.20)	-0.1791423 (-1.78)	-0.0937705 (0.89)	-0.0425699 (-0.41)	-0.0455869 (-0.44)
<b>Macroeconomic Policy</b>								
Government Expenditure	-0.2977924 (-3.18)	-0.3525879 (-3.59)	-0.3484653 (-3.48)	-0.3284105 (-3.33)	-0.3549081 (-3.62)	-0.3215517 (-3.29)	-0.2938078 (-3.04)	-0.3095582 (-3.25)
Inflation	-0.9345758 (-1.78)	-0.6467578 (-1.18)	-0.6258278 (-1.12)	-0.8232346 (-1.49)	-0.5496005 (-0.99)	-0.7289391 (-1.32)	-0.4488819 (-0.81)	-0.5859631 (-1.09)
<b>Quality of Governance</b>								
Voice and Accountability	-4.609332 (-3.26)	-4.523533 (-3.22)	-4.514602 (-3.20)	-8.150596 (-3.17)	-4.271221 (3.01)	-9.351843 (-3.57)	-8.999446 (-3.38)	-9.725896 (-3.80)
Regulatory Quality	7.744901 (3.90)	7.92461 (4.02)	7.187028 (1.92)	-8.150596 (4.08)	7.605279 (3.82)	7.458048 (3.82)	5.441204 (2.48)	6.418294 (3.30)
Openness		0.0562355 (1.73)	0.0539951 (1.59)	0.0498985 (1.54)	0.1608134 (1.65)	0.235194 (2.32)	0.2065619 (1.92)	0.2477839 (2.50)
Openness x Regulatory Quality			0.0121958 (0.23)					
Openness x Voice & Accountability				0.0714594 (1.68)		0.1040713 (2.29)	0.101407 (2.22)	0.1117828 (2.52)
Openness <sup>2</sup>					-0.0006066 (-1.13)	-0.0010916 (1.92)	-0.000998 (-1.72)	-0.0011634 (-2.10)
<b>Regional Dummies</b>								
East Asia and Pacific							2.471439 (0.97)	
South Saharan Africa							-6.088055 (-2.58)	-6.452425 (-2.77)
Constant	-188.7219 (-6.55)	-217.5159 (-6.58)	-217.2312 (-6.54)	-220.8959 (-6.71)	-234.841 (-6.45)	-253.6149 (-6.90)	-219.1611 (-5.82)	-222.5121 (-5.93)
Observations	140	140	140	140	140	140	140	140
R-squared	0.4094	0.4229	0.4232	0.4354	0.4287	0.4516	0.4871	0.4832

Since Voice and Accountability is by itself alone negative and significant, this interaction effect means that Democracy (proxied by Voice and Accountability) needs Openness to positively impact poverty reduction.

## Observations

Despite the rather shrill rhetoric against globalization in the last ten years, and despite the recognition of institutional contribution to economic performance, the evidence, at least from the quantifiable if narrow compass of concerns, still does not demand a radical departure from the received belief that it (globalization) is good for poverty reduction.

The role played here by its interaction with an institutional variable suggests that Openness may deliver its best effect in tandem with other institutional reforms.

## **The Puzzle**

Why do some countries seem to benefit from openness while others do not? Openness is just a window of opportunity. In order to take advantage of its potential, the economy in question must have a modicum of market-enabling institutions (respect for private property, enforcement of contracts, peace and order, political stability) which allow market players to display creativity and reward risk taking. When the economic environment favors predation and rent seeking, only carpetbaggers and fly-by-nighters will proliferate, and the economic outcome will be dismal.

## **Summary**

The debate on the role of globalization on poverty appears to have revolved around the Dollar-Kraay syllogism. The empirical evidence thus concentrated on the effect of openness on per capita income growth and the effect of growth on poverty. In this paper we move directly to determining the effect of openness on poverty incidence and poverty reduction. We show that controlling for relevant and compelling other factors, especially the effects of institution and the

macroenvironment, openness remains a robust positive contributor to good poverty outcomes. For poverty reduction, the interaction between openness, and voice and accountability figures surprisingly prominently (positive and very significant) and indeed improves the significance of openness by itself. One way of interpreting this is that openness makes democracy viable for poverty reduction. Note that voice and accountability by itself is negative and significantly so for poverty reduction. The combination of openness and democracy bodes well for poverty reduction. If so, then India's poverty record will only improve.

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# In Defense of the Philippines: Assessing the Factors Affecting the Country's External Defense Environment

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## **Introduction**

This paper attempts to provide an assessment of the factors that combine to create the external security environment of the Philippines, a response to which requires the involvement of military force. The data presented in this report can be useful in determining the defense requirements of the Philippines. Publicly available documents, particularly the New AFP Modernization law, are examined to determine how the defense environment of the country is appreciated and how this influences decisions for defense planning.

## **Historical Overview**

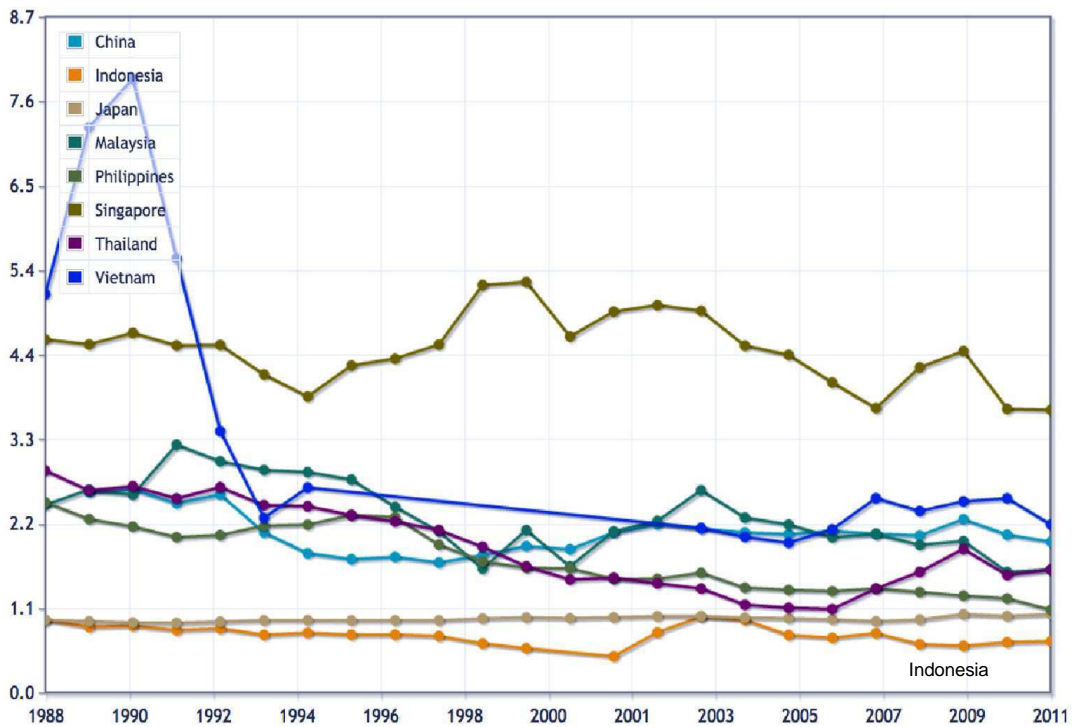
The Philippine geo-strategic environment has both persisted and changed since the country gained political independence in 1946. The end of the Second World War saw the emergence of an international order dominated by the superpower

rivalry of the United States and the Soviet Union. At the same time, political independence did not put an end to the country's defense relationship with the former as it entered into a number of defense arrangements with the United States. This relationship could be seen as influencing the appreciation of the Philippines of its strategic environment with its emphasis on the growing threat of communism.

During the Cold War era, the country's political leaders enlisted the Philippines in anti-communist groupings, such as the PATO (President Diosdado Macapagal's Pacific Alliance Treaty Organization) and the SEATO (Southeast Asia Treaty Organization). Post-colonial relations embroiled the country in competing assertions of sovereignty due to historical factors that had been suppressed by colonial interests. These included a claim to sovereignty over Sabah, made during the Macapagal administration, and the assertive geo-strategic posturing in the 1970s following Tomas Cloma's purported decision to "cede" Freedomland to the Philippine government. These claims, while becoming a part of the strategic calculations of the Philippines, remained secondary considerations in an environment dominated by the concern over global communism and its domestic agents throughout the Cold War era.

The end of the Cold War led to a change in that strategic appreciation as trade and economic concerns figured more prominently than ideology, and triggered the paradoxically cooperative yet competitive "gold war." In 2002 the Arroyo Administration renewed the Philippines' partnership with the United States via the "global war on terror" and the "coalition of the willing." Philippine participation in the US-led consortium spun a mix of complex outcomes, from the US involvement in Philippine anti-terrorist campaigns to the imbroglio arising from the Angelo dela Cruz hostage-taking. It also led to a continuing re-examination of whether aligning with American global interests enhances or undermines Philippine national interests.

Philippine defense capability has declined over the years. The AFP's inability to move personnel and materiel rapidly to the areas affected by Typhoon Yolanda in no small way contributed to the misery experienced by those whose lives were devastated in the typhoon's aftermath. It is enough to make one wonder about what could happen when facing an outright aggressor. The range of military options at the beck and call of the country in conditions where military force is or might be



**Figure 1:** Comparative military expenditures as percent of GDP (select countries), 1988-2011.<sup>1</sup>

Source: *Index Mundi*.

necessary in responding to a challenge is extremely limited. There are a number of reasons given for this current state of affairs.

First is the argument that the country, as a developing nation, has had to concentrate on state formation in the period following independence necessitating a focus on the consolidation of power against internal challenges. Defense had effectively become nothing more than a matter of extended and extensive police action.<sup>2</sup> Rico T. Jose argued that in the aftermath of the Second World War much of the war materiel transferred by the US to the Philippines was suitable mainly for internal security and certainly less powerful than those received by China and Japan.<sup>3</sup> The continuing focus of AFP warfighting capability on anti-insurgency is arguably largely a by-product of this tradition.



Second, it has also been argued that this focus on internal security was buttressed by the security umbrella provided by the United States of America based on the Mutual Defense Treaty of 1951 and anchored on the presence of US military bases. The resulting security dependence made it less urgent to develop an independent external defense capability. And yet it was precisely after US forces left their bases in the Philippines that the external defense capability of the AFP atrophied to the point of near helplessness. In 1995 the country sent six aging fighter jets to Palawan in response to the discovery of Chinese structures on Mischief Reef. This constituted half of the entire intercept capability of the Philippine Air Force at that time. In 2005 the last of these jets were demobilized for lack of spare parts and sheer obsolescence.

A third and more important case can be made for the fact that there has never been any clear assessment of the defense needs of the country principally because of the lack of any *political* consensus on what strategic concerns the country must respond to or how to strategically think out the external defense situation of the country. This is not mutually exclusive with the two factors cited above and may in fact supplement them. The overall effect, however, is that defense decisions (particularly equipment purchases) have been largely reactive and opportunistic in nature, responding principally to perceived immediate threats—not necessarily to the country but certainly to the existing political order—and the availability of relatively inexpensive weapons systems (mostly from the United States). Thus military expenditures have never been a great priority in the country's public spending. The Philippines has consistently allocated one of the smallest share of GDP to defense expenditures among the countries in the region (see figure 1). Even analyses of the corruption associated with attempts at defense modernization also point to the lack of any strategic basis for deciding on the acquisition of weapons systems.<sup>4</sup> The process of defense planning and weapons systems acquisition should consider a fundamental reassessment of what the Armed Forces of the Philippines is supposed to protect.

### **Modernizing the AFP: Doing It Right<sup>5</sup>**

The AFP Modernization Act was passed in 1995. This was four years after the Philippine Senate voted not to ratify an extension of the Military Bases Agreement between the Philippines and the United States. It was also the year when Chinese structures were built on top of Mischief Reef. The guiding policy was the development of an armed forces that would allow it to “effectively and fully perform its constitutional mandate to uphold the sovereignty and preserve the patrimony of the Republic of the Philippines.” Perhaps its most important section dealing with the force structure development of the Armed Forces can be found in Section 5, which is entitled “Development of AFP Capabilities.” In this section, the Philippine Navy and Philippine Air Force are given the primary responsibility for protecting the country from external threats. Thus they are tasked with the development of capabilities that would allow them to patrol and monitor those maritime domains that adjoin Philippine territory and to take action against cases of illegal intrusion and passage. The Modernization Act provided for a fifteen-year program that was supposed to be financed by a separate budget item from those that were regularly appropriated for the operations of the AFP. This was to be sourced, among others, from the sale and lease of military reservations and camps. This was the first multi-year program for national defense that had been put into place since the martial law regime. Yet very little had been accomplished by the time the program was supposed to have been completed in 2010. The program bogged down for a number of reasons, including corruption, the complexity of the procurement system, the weakness of civilian oversight, and the lack of strategic planning. As far as the AFP itself was concerned, its capacity for external defense further declined as equipment and weapons systems aged and were poorly maintained.

In 1998 then-Secretary of National Defense Orlando Mercado asked for an assessment of the defense relationship between the Philippines and the United States. This was accomplished through the Joint Defense Assessment (JDA) conducted by both countries through the Joint Defense Board. A key feature of this assessment was a determination of Philippine defense needs, and a key result was the Philippine Defense Review (PDR), arguably the most comprehensive assessment of the Philippine defense situation. The Department of National Defense put

together an outline for the implementation of reform policies in a *PDR Strategic Road Map* (see Figure 2).

The *PDR Roadmap* outlines the response to the findings of the JDA. A handbook on the PDR noted that the JDA had come to the conclusion in 2003 that

the AFP's capability to execute its missions was rated as generally Minus (-) Partial Mission Capable, a vital indicator of the critical condition of the Philippine military's capability to perform its various mandates. Failure to effectively carry out AFP missions was largely attributed to systemic deficiencies found within the defense and military establishment. Generally, due to systemic gaps in policy planning and development, personnel management and leadership, budgeting and resource management, and defense acquisition, the AFP has found it difficult to sustain efforts that will finally resolve threats to national security. Ad hoc decision making by military leaders failed to maximize scarce resources, and exacerbated the inability to implement complex plans and complicated operations.<sup>6</sup>

The problem is systemic and should be addressed systemically, which is what the PDR is all about. The difficulties associated with this systemic transformation can only be emphasized by the fact that the scheduled completion of the program was 2011. The face off at Scarborough Shoal happened in 2012. Even as the escalation of the situation was rightfully being avoided, a stronger, more capable, and responsive AFP would have given the country more "bark and bite" in that situation.

The PDR has brought out a much-needed appraisal of what needs to be done in terms of the support systems for the upgrade of AFP capability. What needs to follow is a more direct appraisal of the kinds of capabilities that the AFP needs to develop in order to perform its mandated function. A policy to guide operational decisions, including the modernization of the AFP, was needed.

A year from its assumption of office, the Aquino administration released the National Security Policy 2011-2016 (NSP), a landmark document that filled a persistent void in Philippine national security leadership. In his introduction, President Simeon Benigno Aquino III asserted that the NSP is meant "to provide the overarching framework that shall promote the people's welfare and for the

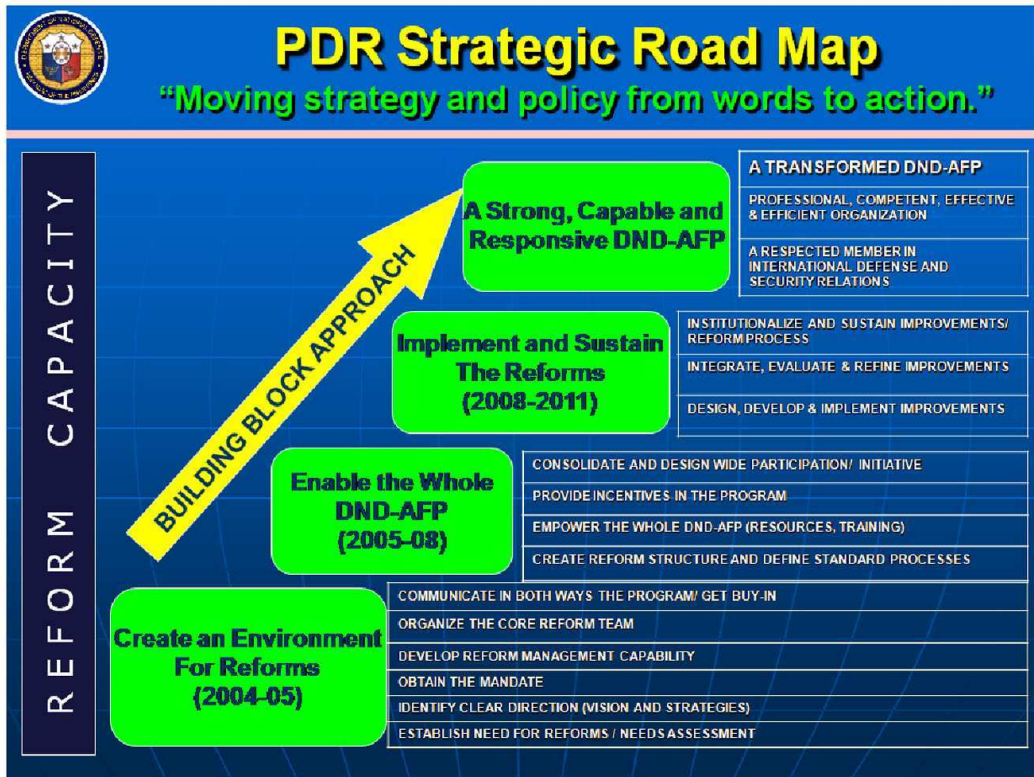


Figure 2: PDR Strategic Road Map

Source: Department of National Defense. The Philippine defense reform program.

posterity of our nation.”<sup>7</sup> Its preambular segment, however, intimates an apparent slip in the NSP itself as it propounded that it is

a statement of principles that should guide national decision-making and determine courses of action to be taken in order to attain the state or condition wherein the national interests, the well-being of our people and institutions, and our sovereignty and territorial integrity are protected and enhanced.<sup>8</sup>

Yet, two paragraphs afterwards, the same document underscores the postulate that the

formulation of the National Security Policy is a task that is reposed in the President. As Head-of-State, Head-of-Government, and Commander-in-Chief of the Armed Forces of the Philippines, the President is primarily responsible for the management of our national security and the decision making attendant thereto.<sup>9</sup>

The disconnect is that the NSP is supposed to be the President's distillation of national security priorities being the principal of the state, and yet it belabors the point that the NSP should guide national decision making on matters relating to national security. Setting aside this tautological or semantic oversight, the NSP remains seminally important. But then, three years since its issuance and more than halfway through the term of the Aquino administration, no successor or supplemental national security guidance has been released.

A national security policy platform announced at the start of a term is no full-proof, all-weather guard to the vicissitudes of the international and domestic environs. An overarching framework, or statement of principles as the NSP maintains, may not necessarily change overnight. However, "the environmental scan ... (which) contains threats and challenges that became the basis of the National Security Policy"<sup>10</sup> requires review and adjustments. It is imperative to continually assess the policy in relation to obtaining conditions. Process-wise, the making and review of the NSP must solicit inputs from the broad spectrum of stakeholders in the polity.

Since the NSP was issued, "new normal" complexities have taken place in the country's political and security environments. At the home front, Chief Justice Renato Corona was unseated; Typhoons Sendong and Pablo pummeled Mindanao and Typhoon Yolanda ravaged the Visayas; affiliates of Nur Misuari attempted to seize Zamboanga City; the Kirams reignited the Sabah issue; a massive quake shattered Bohol; the PDAF and DAP controversies erupted and continue to beleaguer the administration; the Mindanao peace process pressed on with guarded optimism; and questions persist on government competence, corruption, and political will.

Perhaps of greater significance to the defense situation of the country is the unprecedented turbulence that has marked the international environment. Great power dynamics has re-emerged as a defining frame of regional security with the US re-balancing strategy and China further reinforcing its major power status. Further

emphasizing the end of the post-Cold War optimism of an increasingly more peaceful international system were the crises created by and emerging from the Arab Spring; WikiLeaks and Snowden openly yet separately challenging the convention on classified information, while raising privacy concerns; Russia annexing Crimea; Syria plunging into civil war; and ISIS emerging and supplanting al-Qaeda and clearly establishing that the US Global War on Terror did not end with the death of Osama Bin Laden.

In light of these developments—be they continuities, changes, or composites—national security demands a continuing re-assessment of the external and internal threats to the country. The US issues periodic national security and defense reviews (national security guidance, national intelligence estimates, and quadrennial defense reviews). Australia also regularly publishes and updates its national security strategy and defense white paper. Japan has released a succession of national security policy and strategy documents, including its national defense program guidelines. The Philippines should adopt a similar practice.

In much the same way that the AFP Modernization Act was passed in the aftermath of the Mischief Reef situation, an amendment to it was passed on September 19, 2012, following the Scarborough Shoal case. Republic Act 10349 is intended to give a new impetus to the bogged down Modernization Law and allocated new funding, as well as additional guidelines to the modernization of the AFP. The amendment gave the Modernization Program an additional 15 years of life.

In the interim, the DND has adopted a “minimum credible defense posture”<sup>11</sup> as a conceptual guide to the development of the country’s military capability.<sup>12</sup> This was explained by DND spokesman, Dr. Peter Paul Galvez, as the “establishment of an effective force present inside the Philippines and its exclusive economic zone with exhibited competence to defend the country and protect its national interests if the need arises.”<sup>13</sup> Towards this end, the government acquired two reconditioned US Coast Guard-decommissioned Hamilton-class cutters, named BRP Gregorio del Pilar and Ramon Alcaraz, for PHP450 million. It also acquired new attack helicopters and is set to buy 12 FA-50 fighter jets from South Korea.<sup>14</sup> For the Philippine Coast Guard, it expects 10 brand new and multi-role patrol boats from Japan financed by a US\$184 million soft loan from the Japan International Cooperation Agency (JICA).<sup>15</sup>

These acquisitions, however useful they may be in the short term, need to be seen in the context of the country's overall defense needs. Again, this requires an assessment of the strategic situation faced by the Philippines. Doing it right is about going back to basics.

### **The Geographic Context of the Philippines**

The Philippines stands out as one of the major archipelagic states in the world. It is subdivided along major island groups: Luzon, Visayas, and Mindanao. The archipelago consists of an estimated 7,107 islands covering some 300 thousand square kilometers of land area.<sup>17</sup> Eleven of the largest islands cover about 94 percent of the total land area. It is bordered on the north by the Bashi Channel, and on the south by the Celebes Sea. It resembles an elevated block bounded by the South China Sea on the west, and by the Pacific Ocean on the east. The Philippine coastline, spanning about 36,289 kilometers, is reputedly one of the longest in the world.<sup>18</sup> No less than 80 percent of the country's 81 provinces have coastal features. More than half of the municipalities in the country are along the coast. An estimated 60 percent of the population lives in the coastal areas.<sup>19</sup>

The country's insularity translates into limited exposure to land boundary disputes with neighbors. This, however, has not spared the Philippines from disputes arising from historical, legal, or maritime claims. Conversely, the archipelagic nature of the country exposes the Philippines to the complexities of exercising sovereignty and sovereign rights vis-à-vis its neighbors. On one hand, the waters surrounding the country provide a buffer, a safe distance separating it from a potential aggressor. On the other hand, waters north, west, and south of the country comprise vulnerable points against poachers, traffickers, smugglers, illegal aliens, and adventurous neighbors. Once breached, these connect with interisland waters that allow easy access to the interior. Thus the Philippines faces a great challenge in securing the extensive coastline and maritime zones from anyone who might exploit the permeability of the archipelago.

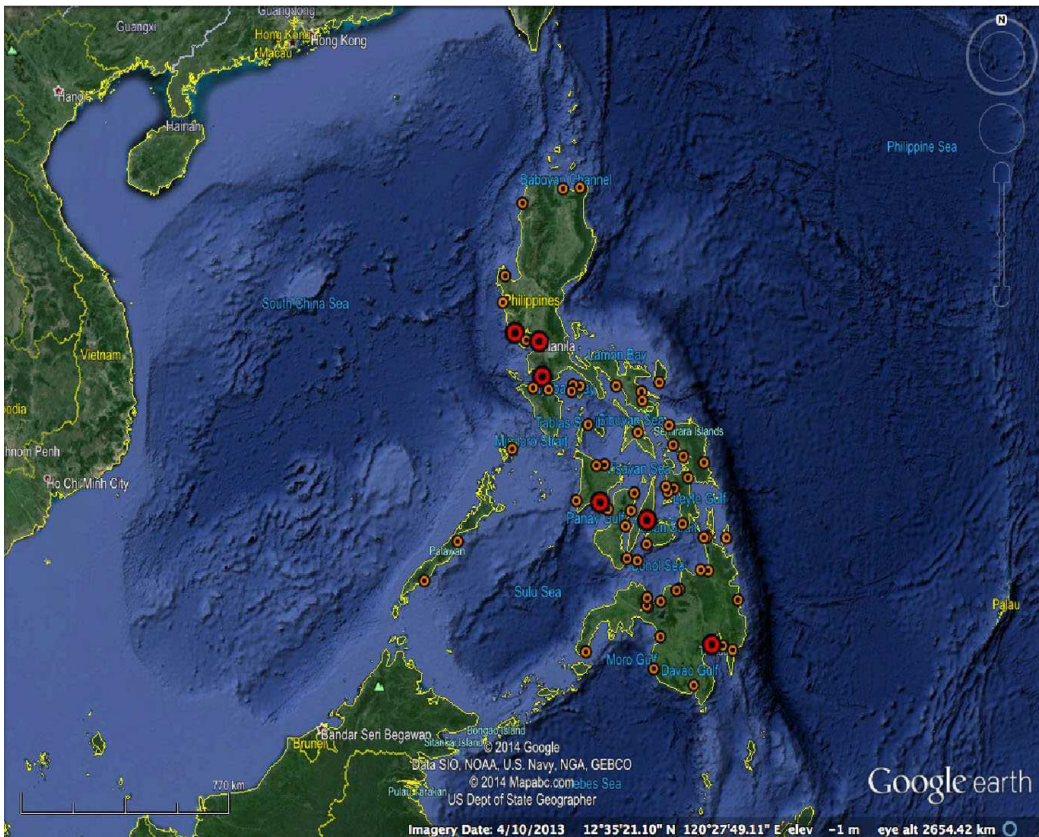
Historically, the security of the country and its vulnerabilities has been a function of these geographic realities. Without making an argument for geographical

determinism and permanency of geographic conditions, it is nonetheless a basic consideration that has to be included in any calculation on how to defend the country from external exigencies. The need to respond to the fact of our country's archipelagic nature can be gleaned from the National Defense Act (No. 1) of then President Manuel L. Quezon who advanced the theory that, due to the insularity of the Philippines, the logical defense system to be stressed was a strong navy. The issue of economic calculations that rationalizes the policy of not putting too much emphasis on external defense was even then a major factor in the defense considerations of the country. Quezon emphasized the fact that a strong navy would be too expensive—that we could not afford it economically. He maintained further what proved to be false hope that foregoing the establishment of a strong navy would convince the country's neighbors that we had no intention to invade them.<sup>20</sup> And yet, as with most archipelagos, the emphasis on maritime security goes hand in hand with the need to respond to exigencies in different parts of the country, and shift forces where needed in a swift and timely fashion. The case of Typhoon Yolanda and other similar natural disasters highlight the fact that the Philippines lacks even this basic requirement.<sup>21</sup> By and large the concerns emanating from the Philippines' geo-strategic context has persisted in a number of ways.

### **The Philippines at the Center of Heavy Traffic: Geography and Economics**

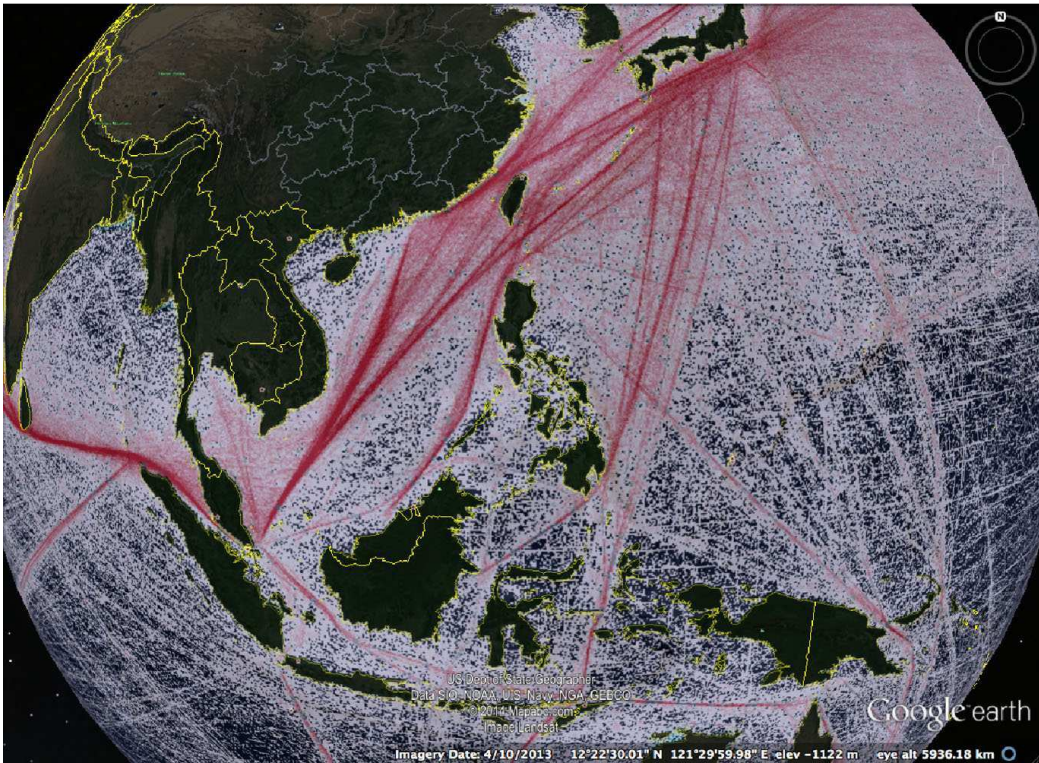
The archipelago is sustained as a single geographic and political unit largely through maritime trade. Domestic trade necessarily requires transport through the inter-island waters. Inter-island trade links the disparate island economies by allowing unfettered access to diverse people, goods, and services. Commerce flows mainly through a network of larger ports in the major metropolitan areas (such as Manila, Cebu, and Davao) connected to smaller city and municipal ports spread out across the country (see figure 3). About 98 percent of domestic trade, comprising 80 million tons of cargo every year, travels through inter-island shipping routes between these ports. On a day to day context, inter-island and international trade activities highlight this issue further.





**Figure 3:** Map of the Philippine port system, with the largest ports of Manila, Subic, Batangas, Iloilo, Cebu, and Davao indicated among the many smaller regional and city ports.

The Philippines relies greatly on international trade as it is located astride strategic waterways traditionally used for international navigation since ancient times. Over 60 percent of the world's maritime trade passes through or along Philippine waters,<sup>23</sup> primarily through East-West routes between the South China Sea and the Pacific Ocean, and North-South routes that connect Northeast Asia to Southeast Asia and Oceania (see figure 4). The routes traversing the South China Sea have long been known to represent vital energy trade flows, carrying petroleum from the Middle East to East Asia and the Americas. Some of these international routes converge or intersect with domestic navigation routes within the archipelago.



**Figure 4:** Maritime traffic around the Philippines and within the surrounding region, with the most frequently used routes in red.

Similarly, air traffic through and around the Philippines is dense, though mainly due to the country's own needs for airways. The major airports in Manila, Cebu, and Davao carry the bulk of the passenger trade, but the opening of smaller international airports as part of tourism promotion has also begun absorbing a higher proportion of domestic air travellers. International routes connecting with destinations on the Asian continent traverse the airspace mainly on the western and northern side of the country (figure 5). The Philippines currently has limited open skies agreements with two ASEAN countries (Vietnam and Thailand) and two non-ASEAN countries (China and the US). The latter two, however, are not reciprocally beneficial: while China and the US have unlimited access to Philippine airports, China restricts Chinese airspace, and the US allows unlimited Philippine access to only five US airports.<sup>23</sup>



**Figure 5:** Air traffic routes connecting the major destinations in the Philippines and surrounding region.

## International Trade

As a member of ASEAN, the Philippines is included in the ASEAN-China free trade area established by agreement in November 2002. This was the culmination of a decade of ASEAN and Chinese economic cooperation begun in 1991, and cemented by China's role in providing a financial anchor to stabilize the Asian Financial Crisis of 1997 by maintaining the value of the renminbi.<sup>25</sup> Trade between China and ASEAN has been steadily increasing since then. (See table 1 and figures 6 and 7). It is notable that the overwhelming bulk of such trade is in manufactured goods; raw materials, such as agricultural products and fuels or minerals, are comparably much lower by value even though they may be considerably larger by volume. ASEAN exports more raw materials to China, and China exports more

manufactured goods to ASEAN. This indicates the development of a relatively symbiotic, even though still unbalanced, trade relationship between them.

**TABLE 1.** The top 5 trading partners of the Philippines and select countries in the region

	Exports				Imports					
	1	2	3	4	5	1	2	3	4	5
Brunei	Japan	Indonesia	S. Korea	Australia	USA	Malaysia	Singapore	Japan	EU	USA
China	EU	USA	HongKong	Japan	S. Korea	EU	Japan	S. Korea	Taiwan	USA
Malaysia	China	Singapore	Japan	EU	USA	China	Singapore	Japan	EU	USA
Philippines	Japan	USA	China	EU	Singapore	Japan	USA	China	Singapore	EU
Taiwan	China	HongKong	USA	EU	Japan	Japan	China	USA	EU	S. Korea
Vietnam	US	EU	China	Japan	S. Korea	China	S. Korea	Japan	Taiwan	EU

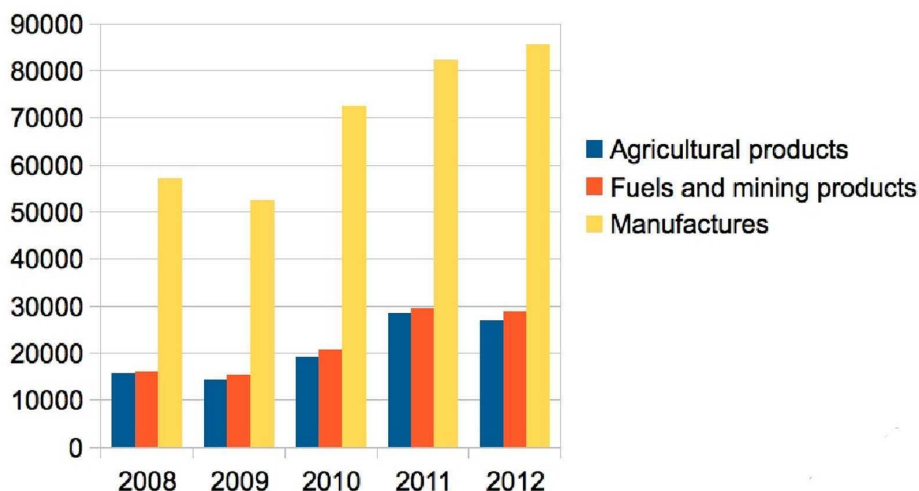
Source: *World Trade Organization*

ASEAN-China economic interdependence finds China being consistently among the top three trading partners of most Southeast Asian states. This is remarkable considering that the groundwork for such economic relations was laid only twenty years ago, and the framework for free trade was established only in the past decade. As seen from Table 1, the Philippines bucks this trend of having China as the top trading partner and instead remains economically tied to Japan and the US.

### Marine Fisheries Production

Fishing activity in the region has been largely concentrated within 50 nm from shore around the South China Sea, particularly off the eastern and southern coast of Vietnam, the Gulf of Tonkin, and the southern coast of China. Philippine fishing, on the other hand, has been concentrated mainly in much closer and smaller confines of the shallow areas in the West Philippine Sea and its archipelagic waters. The absence of available and consistent fisheries statistics make accurate comparison

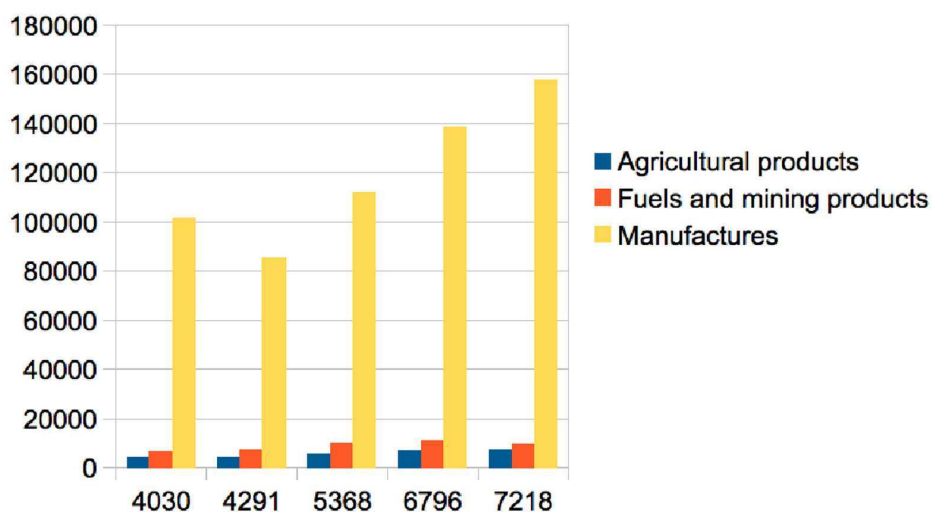
### ASEAN China Trade ASEAN Exports to China in 000 USD



**Figure 6:** Comparison of ASEAN exports to China, 2008-2012

Source: United Nations Conference on Trade and Development

### ASEAN China Trade ASEAN Imports from China in 000 USD



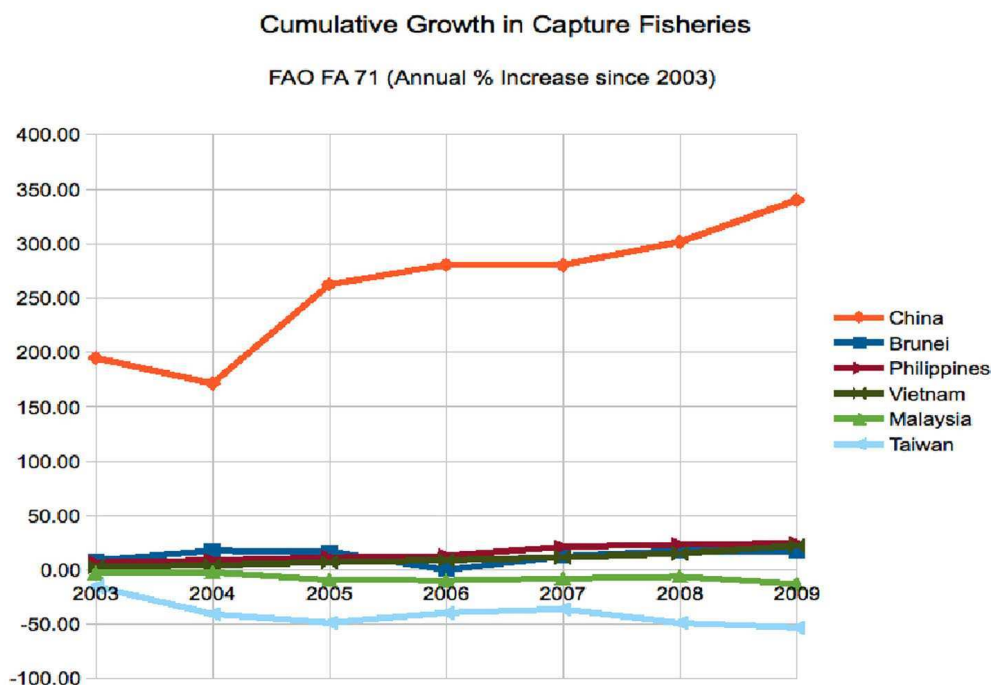
**Figure 7:** Comparison of ASEAN imports from China

Source: United Nations Conference on Trade and Development

and assessment of capture fisheries activities extremely difficult at best, but if FAO statistics on Fishing Area 71 (which encompasses the South China Sea, Sulu Sea, Celebes Sea, etc., though including a large portion of the Pacific Ocean as well) can be considered as an indicative proxy, then it may be seen that both Philippine and Vietnamese capture fisheries have grown only about 3 to 3.5 percent between 2003-2009, while China's fisheries have expanded at a prodigious 48 percent in the same period (see figure 8). It has been asserted that due to various factors such as over-exploitation, stringent law enforcement, and pending maritime claims, China's fisheries sector is deliberately shifting from inshore to offshore and distant-water fishing, thus triggering incidents at sea and raising the profile of maritime disputes.<sup>26</sup>

The concentration of fishing activities in the South China Sea points to two important facts that are not often considered in the appreciation of fisheries issues. First, up until recently, fishing has been a mainly near-coastal activity, and has been comparatively less-frequent in most inner areas of the South China Sea. Even the fishing around the Spratly Islands has been relatively low; it appears to have been more frequent in the Paracel Islands and the Gulf of Tonkin. It is, therefore, understandable why the smaller littoral States on the eastern and southern quadrants of the South China Sea (e.g., Philippines, Malaysia, Brunei, Indonesia) perceive the change in the presence and location of fishing vessels from China and Vietnam as a marked change in the status quo. China's highly visible and public promotion of extensive fishing in the Spratly Islands all the more highlights the practical absence of such levels of fishing activity in previous years.

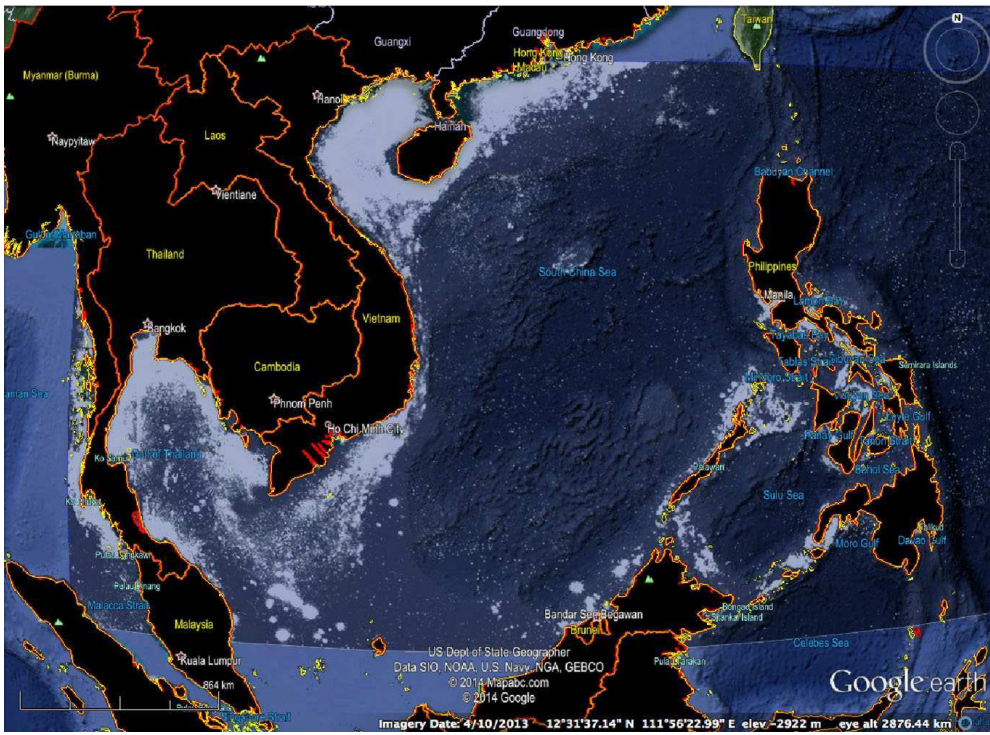
Second, in terms of fisheries management, it is only today that the littoral states are faced with very active and large-scale foreign fishing activities in the areas adjacent to their own coastlines. Prior to the current decade, many foreign fishing activities were small-scale and could arguably be classified as traditional in nature. But now the presence of entire foreign fishing fleets, often accompanied by armed escorts, understandably creates perceptions of an unmitigated grab for fisheries resources.



**Figure 8:** Comparison of fisheries production data from the FAO 71 statistical area  
Source: Food and Agriculture Organization, FAOSTAT.

### Fishing Activities

Fisheries have been the long-standing interest of the Philippines in its archipelagic waters. Total production was estimated at 4.97 million metric tons in 2011, constituting three percent of the total world production.<sup>27</sup> Historically, about half of total fishery production is borne by municipal fishers, or small-scale artisanal fishers using boats of less than three gross tons displacement, which means that much of these fisheries are located in coastal, near-shore, or inter-island waters. Of the other half, about three-quarters is borne by the commercial fisheries sector which uses boats of more than 3 gross tons but also includes distant-water fisheries operating in the high seas and exclusive economic zones of other countries. The remainder represents aquaculture production.<sup>28</sup> Statistics show an overall decline in production after peaking in 2010.<sup>29</sup>



**Figure 9:** Partial capture of areas of the most intensive fishing activities in Philippine waters and the South China Sea, represented by nighttime lights data from satellite imagery. The image also captures fixed lights from offshore petroleum platforms.

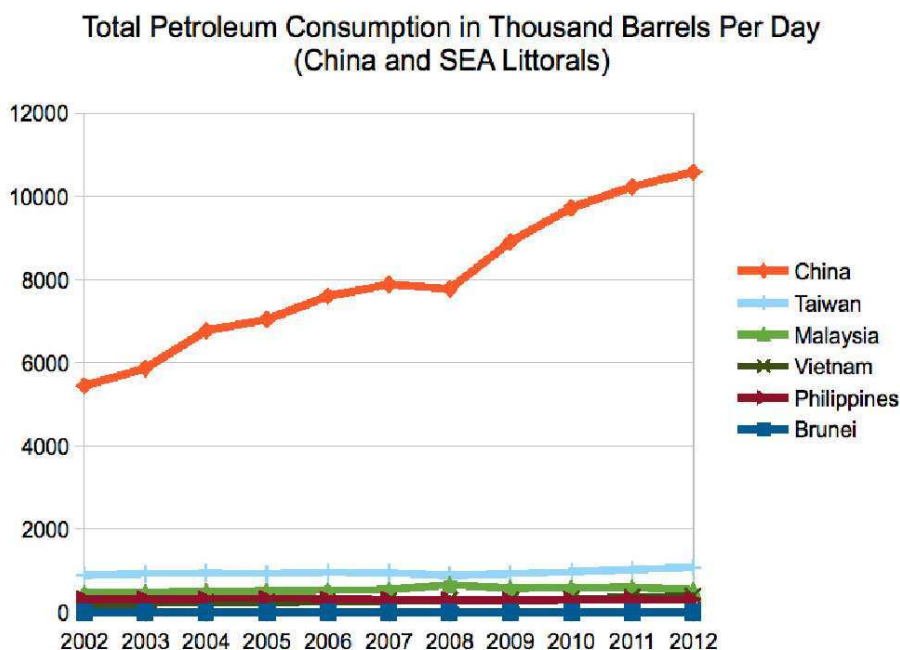
Accurate data on fisheries production by surrounding countries are not readily available and comparable on account of differences in statistical methods, but the Food and Agriculture Organization (FAO) reports that Southeast Asia has exhibited nearly linear growth in marine capture fisheries production for the past four decades. In 2006 total production was already at 15.4 million tons, of which marine capture was 88 percent.<sup>30</sup> While Philippine fishing activities mostly stay close to shore and between islands, fishers of other countries in the Southeast Asian region operate further out at sea, sometimes venturing into other countries' waters (see figure 9).

## Energy Production

As the region progresses economically, energy consumption increases proportionately to keep pace with the demands of economic production. Comparison



of key statistics from the Philippines and major countries in the ASEAN and China since 2002 reveal accelerating and competitive trends.

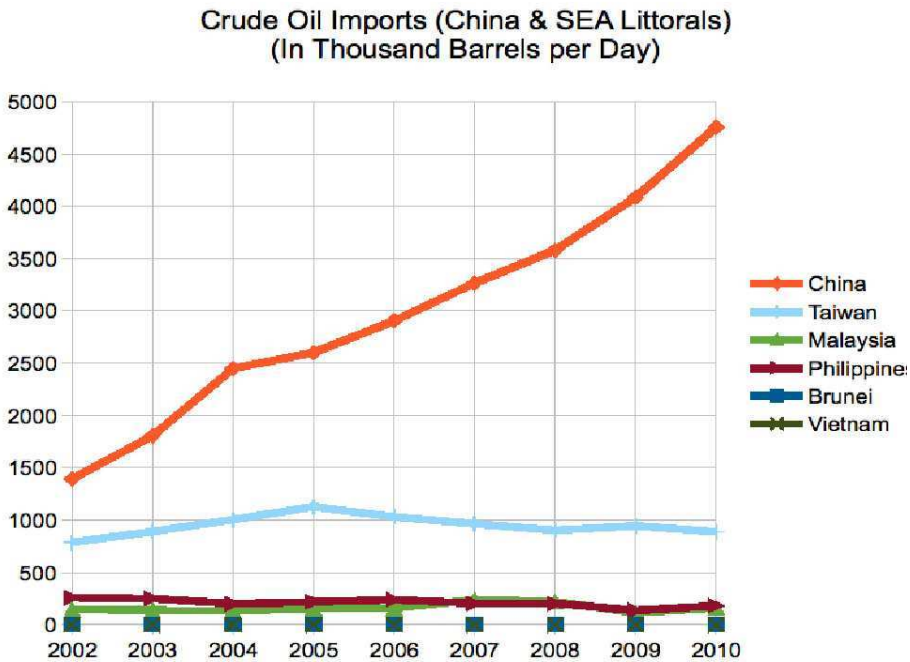


**Figure 10:** Comparison of total energy consumption of the Philippines, China, and select Southeast Asian States.

Source: United States Energy Information Administration. "Countries: International Energy Statistics."

Available data<sup>31</sup> on petroleum consumption (see figure 10) and petroleum importation (see figure 11) show that, in absolute terms, China's energy consumption (and, implicitly, its demands) consistently dwarfs and outstrips those of individual Southeast Asian littoral States. China's annual energy requirements alone are at least twice that of all other Southeast Asian States combined.

While this is not surprising given the differences in their respective sizes, the relative annual rates of increase in energy usage, such as the cumulative growth in petroleum and energy consumption (see figure 12), indicate significant differences that fuel competitive behavior, especially in the maritime arena, where all the concerned countries have interest in energy resource extraction and exploitation.



**Figure 11** : Comparison of crude oil imports, Philippines, China and select Southeast Asian States

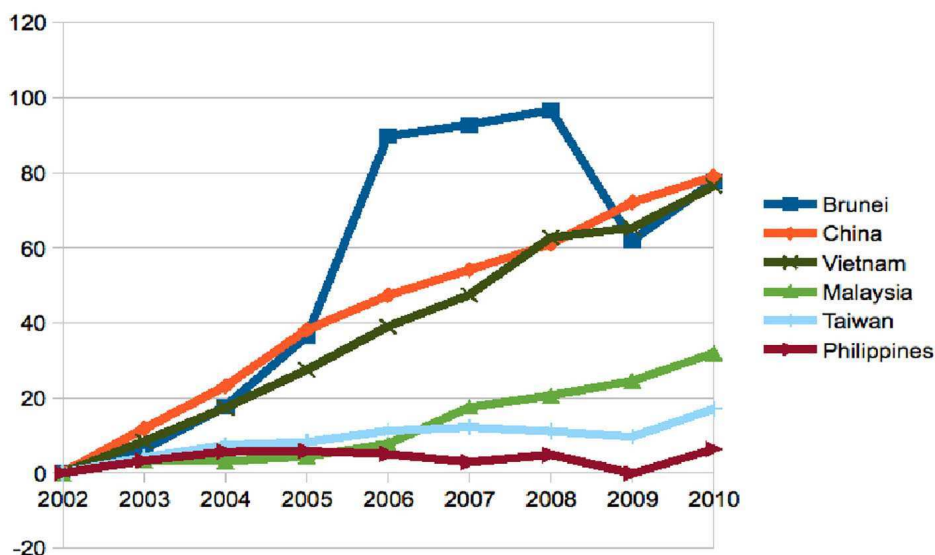
Source: *United States Energy Information Administration. "Countries: International Energy Statistics."*

The data show that China and Vietnam experience very similar rates of energy consumption growth year-on-year, leading the rest of the region. But, unlike China, Vietnam has experienced parallel growth in this area without becoming a petroleum-importing country, and still maintains its energy independence at present.<sup>32</sup> Vietnam has emerged as one of the most important petroleum nations in Southeast Asia, and holds the third largest crude oil reserves in Asia in its continental shelf.<sup>33</sup>

Brunei and Malaysia have exhibited downward-sloping trends across all energy indicators. This may be due to the fact that both countries have maintained significant surpluses in production over consumption, both being net petroleum exporters to date.<sup>34</sup> While both countries have embarked on expanding offshore production, Malaysia has other offshore acreage outside the SCS, while Brunei’s offshore acreage in the South China Sea is relatively small and enclosed by Malaysia’s continental shelf.<sup>35</sup>

In comparison, the Philippines has experienced a generally negative trend in petroleum consumption rates, and, overall, its primary energy production has been

**Total Primary Energy Consumption  
Cumulative Growth since 2002**



**Figure 12:** Comparison of cumulative growth in primary energy consumption of the Philippines and surrounding States

Source: United States Energy Information Administration. "Countries: International Energy Statistics."

relatively stable during the same period. However, two factors in its energy production infrastructure account for this. First, the Malampaya Gas-to-Power Project, its first and thus far only major natural gas production platform, came on-stream only in 2001, and since then has accounted for a very significant and relatively stable proportion of national energy production (roughly 20-30 percent), while at the same time reducing dependence on petroleum. Second, additional energy production has been provided by an increase in coal-fired power plants and indigenous coal production, particularly since 2005.

Malampaya is expected to produce natural gas only until about 2021, and to date there is no indication that this is about to change. This provides a natural incentive for the Philippines to expand offshore exploration and development, and all indications point toward the continental shelf in the West Philippine Sea, particularly in Reed Bank, as its most promising hydrocarbon province. However, petroleum exploration in this area has been stymied by the West Philippine Sea disputes, and, generally,

Philippine energy exploration activities have been excruciatingly slow on account of numerous bureaucratic obstacles. It is highly unlikely that an alternative or supplementary source of natural gas can be found in time to take over from Malampaya's eventual exhaustion in the next seven years, much less can the necessary development and production activities be implemented within that timeframe. This means that the Philippines will begin importing natural gas transported by ship by around 2020.

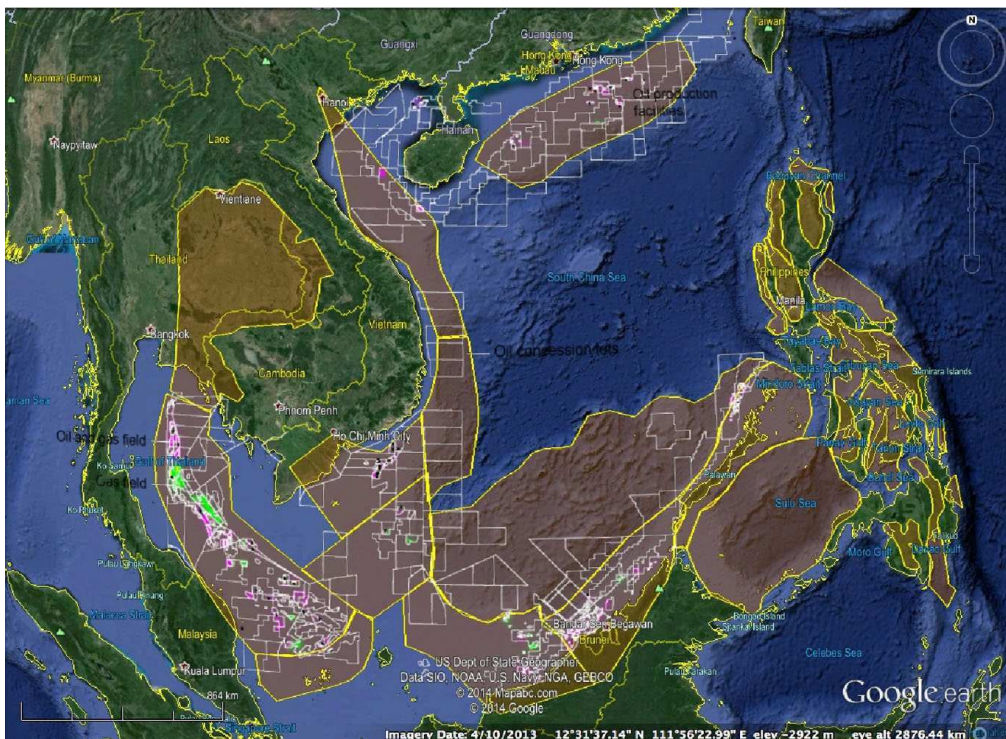
Philippine energy production growth is currently moribund, and current public discourse about the need to grant emergency powers to the Executive in order to solve the looming power crisis is an indication that things are reaching a critical point in the Philippine energy sector. Optimistic forecasts of economic growth in the next five to ten years, supported by higher credit ratings by international financial institutions, can only come into being if the country expands energy exploration and production activities in order to keep indigenous petroleum and coal flowing into its power plants. However, in the absence of new projects at present, the Philippines will have to accept a shift toward heavy import dependence in its energy supplies—whether oil, natural gas, or coal. Such increased dependence on external sources of strategic energy supplies means that, in the near future, Philippine energy security will be greatly dependent on unfettered access to its energy sources through international maritime transportation.

#### Petroleum Exploration and Development

It has been commonly assumed that the South China Sea hosts significant offshore petroleum reserves, which has been thought to be the main motivation for extended jurisdictional claims by the littoral States. These reserves are expected to be awaiting discovery in the extensive continental shelf areas stretching unbroken from the Asian and Southeast Asian landmasses, particularly off the coasts of Southern China, Vietnam, Malaysia, and Indonesia. On the Philippine side of the South China Sea, the continental shelf is most clearly defined in the south where the archipelago meets the island of Borneo; from the region west of Palawan proceeding northward, it generally breaks up until it meets the area of the Manila Trench, a subduction zone representing the boundary between the tectonic plates of the Eurasian landmass and the Philippine Sea plate.

Information from the US Energy Information Administration identifies the sedimentary basins that are of interest to petroleum companies; in the South China Sea, these areas are mostly located in the shallower continental shelf regions of the littoral States.<sup>36</sup> All petroleum concession blocks, whether for exploration or production, have been located within these areas closer to shore, and well within the 200 nautical mile continental shelf established under the UNCLOS (see figure 13).

Relative to the rest of the region, the Philippines lags behind in petroleum exploration activities, but has opened up more areas for petroleum exploration since the early 2000s. There are 29 active petroleum concession areas at present, with more concessions on offer at the 5<sup>th</sup> Philippine Energy Contracting Round launched by the Department of Energy last May 9, 2014 (see figure 14).<sup>37</sup> Included among these contracts is SC 72 covering Reed Bank, which has been the focus of attention on account of Chinese interference with seismic exploration in 2011 in connection with the disputes in the West Philippine Sea.



**Figure 13:** Petroleum interests in the South China Sea region. Sedimentary basins known to be possible petroleum reserve areas are indicated in orange, while petroleum concession blocks as of 2012 are outlined in white.

Sources: US Energy Information Administration, New York Times, and Philippine Department of Energy

Kraft, Batongbacal, Cainghog, & Naval



**Figure 14:** Philippine petroleum service contracts as of 2014, including areas opened for concession bids last May 2014.

Source: Department of Energy. "List of Philippine Service Contracts."

### **The Vicinal Geography of the Philippines: Who are the People in the Neighborhood?**

Outside of the physical parameters of geography, the Philippines is enmeshed in a strategic environment that is largely determined by the policies of great powers, the United States and its allies (especially Japan), and the People's Republic of China. These countries are the biggest economies in the world. The United States, China, and Japan were the three biggest economies in 2013.<sup>38</sup> They also account for a significant share of defense spending in the Asia Pacific. The Stockholm International Peace Research Institute (SIPRI) estimated China's military spending in 2012 at US\$157 billion, while Japan's allocation reached US\$59 billion, both at constant 2011 values.<sup>39</sup> The United States spent US\$668 billion in 2012, about 40 percent of which was in the Asia-Pacific. This translates to around US\$267 billion.<sup>40</sup> Both China and the United States are nuclear powers.

The combination of growing economic interests and growing military capability has made the relationship between the United States and China an increasingly competitive one. Of great significance to the Philippines is the fact that this intensifying rivalry is situated geographically in the disputed waters and airspace of the East and South China Seas. While the inevitability of a great power conflict in the region is still being debated, there are concerns about how an unintended and unanticipated event in the disputed areas could slide and escalate into a great power war.

#### The United States of America

The United States, the largest economy and military spender in the world, has an extensive strategic presence in the Asia-Pacific region. It has collective security agreements with Australia (1951) and New Zealand (1951) in Oceania, the Philippines (1951) and Thailand (1954) in Southeast Asia, and Japan (1960) and South Korea (1953) in Northeast Asia.<sup>41</sup> It also upholds as its policy a resolve "to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan."<sup>42</sup>

On November 17, 2011, President Barack Obama of the United States declared before the Australian parliament: “Let there be no doubt: in the Asia-Pacific in the 21<sup>st</sup> century, the United States of America is all in.”<sup>43</sup> In what became known as the US ‘pivot’ to the Asia-Pacific after years of fighting wars in Iraq and Afghanistan, the United States adjusted its strategic and political calculations and adopted policies the highlights of which include:

1. The deployment of a full US marine task force in Australia by 2016, which will entail the deployment of 2,500 US personnel in Darwin, Northern Territory.
2. The enhancement of Defense Cooperation between the United States of American and Japan, including the deployment of modern weaponry and surveillance systems in Japan.
3. Selling the Trans-Pacific Partnership (TPP) which aims to build strong trade linkages among countries in the Pacific Rim, especially Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.
4. The signing of the Enhanced Defense Cooperation Agreement with the Philippines.

#### The People's Republic of China

China has increasingly asserted its status as a major political and military player in the region. It has an implicit mutual defense treaty<sup>44</sup> with Russia, signed in 2001, and a long-standing one with North Korea that was signed in 1961,<sup>45</sup> and renewed in 1981 and 2001. China is also a member of the Shanghai Cooperation Organization, together with Russia and the Central Asian states of Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan.

Within the Southeast Asian region, China has been conducting a charm offensive through the Conference on Interaction and Confidence Building in Asia (CICA), and its proposal for the establishment of an Asian Infrastructure Investment Bank (AIIB),<sup>46</sup> made in Jakarta during the APEC Summit. Also, during that time, Premier Xi Jinping was given the privilege to speak before the Indonesian Parliament, the first foreign leader



to do so. It also pours investments into member countries of ASEAN, which could be seen as a policy to sustain an influence in ASEAN decision making, especially on issues that concern Chinese interests. Its investment in an oil refinery in Brunei was suspected as a reason for Brunei's non-participation in the workshop for claimants of the South China Sea, held in Manila in 2014, which was attended by Vietnam, the Philippines, and Malaysia. It is also a major investor and provider of military technical assistance to Cambodia. It has dangled loans to the land-locked country of Laos for the construction of a network of rail lines that would connect China with Southeast Asia via Kunming, Vientiane, and Yangon, to Bangkok and Singapore. China is making itself closer to states surrounding the Philippines while being increasingly hostile to the country as shown recently when it labelled the Philippines a "quasi-rogue state."<sup>47</sup> It is aggressively pursuing construction works in the South China Sea, especially in Johnson South Reef, even while the Philippines calls for a moratorium on building activities in the area and the crafting of a binding code of conduct for the South China Sea.

Backing up what has been seen as a more aggressive assertion of its territorial claims to the disputed waters and land features of the South China Sea is a policy of military modernization that has seen the emergence of a strong People's Liberation Army-Navy (PLA-N). China has launched its first aircraft carrier which underwent sea trials near Philippine waters, and developed new classes of nuclear-powered submarines. Many of these are based in Hainan Island and can only move to their patrol stations through the South China Sea.

## Japan

Japan, the United States' main ally in the region, has successfully expanded its notion of self-defense contained in Article 9 of its Constitution to include collective self-defense, and even signed a deal to transfer or share its submarine technology with Australia. It is also modernizing its fleet. For instance, it recently introduced the "destroyer-carrier" *Izumu*<sup>48</sup> into the Maritime Self-Defense Force. It also has access to one of the fifth-generation fighter jets and is considering building its own stealth fighter jet. With respect to the Philippines, Japan will transfer patrol boats to the Philippine Coast Guard starting 2015. Economically, it is also one of the top trading partners of the country.

## India

India under Prime Minister Narendra Modi's government is jumpstarting an *Act East* policy which is described as actually establishing closer relations with East Asia, in contrast to the previous *Look East* policy of the Congress party. India has partnerships with Vietnam in oil exploration, and is increasingly modernizing its military and improving its military technology. Overall relations with the Philippines, especially in terms of trade, are not yet as significant as that between China and the Philippines. Nonetheless, the strong expatriate presence of India in the Philippines sets a strong social base for continued relations.

## ASEAN

The remaining countries in the Asian region that do not have formal agreements with the US or China are signatories of the Treaty of Amity and Cooperation, led by ASEAN countries like the biggest country in Southeast Asia, Indonesia and its neighbor, Malaysia. There have been concerns, however, over the emergence of a nascent arms race. A number of countries in the ASEAN region have made significant investments in defense spending to acquire military capabilities. Indonesia and Singapore have sought to acquire squadrons of F-15s from the United States, Vietnam got deliveries of Kilo-class submarines, and Malaysia also acquired submarines from France.

### **An Increasingly Less Predictable Security Situation in the Region**

The indications of an emphasis on improving military capability around the region are increasingly symptomatic of increasing concern over the potential for conflict in the region brought about by a changing balance of power, and the increasing concern in the United States over the growing strength of China. East Asian states are increasing their capabilities to defend themselves and, more significantly, even undertake offensive operations.<sup>49</sup> Given the importance of securing sea lanes and energy sources in the seas, the Philippines is hard-pressed to defend its interest given limited resources for military upgrade and the decrepit state of its existing arsenal and equipment.

In the past few years, but especially during the term of President Aquino, China has shown increasing assertiveness in occupying maritime space in the South China Sea. What used to be a passive and discreet strategy of salami-slicing became aggressive and confrontational. The stand-off over Scarborough Shoal witnessed China's cabbage strategy that led to its de facto control of the shoal in 2012. The same trend could be noticed in the construction of military outposts in the reefs around the West Philippine Sea. In 1995 they justified their activity in the Mischief Reef as the provision of shelter for fishermen. Initial makeshift arrangements, however, gave way to a more permanent military outpost. Nowadays China, despite the Declaration on the Conduct the Parties in the South China (DOCS), overtly constructs more outposts with military uses, while invoking that they can do whatever they want to do in the South China Sea because of their *undisputed* sovereign rights. It has also unilaterally expanded its air defense identification zones (ADIZs) in the East China Sea. Some provocative acts of China were the use of water cannons against fishermen off Scarborough Shoal, the reclamation of new reefs and possible construction of artificial islands, laws protecting military installations, and preventing a supply vessel from the Philippines from going to the BRP Sierra Madre which is grounded in Ayungin Shoal with its garrison of Philippine Marines.

Beyond assertive actions, China's revisionist interpretation of the extent of control in the exclusive economic zone (EEZ), especially for military and scientific research activities, is worrying as it legitimizes its actions by invoking provisions of international law. While they are clearly in the minority, the United States non-ratification of UNCLOS gives rise to a situation where the country that has the capability to legitimately counter China also does not legally subscribe to the UNCLOS regime.

The geographic constants and conditions which portend a unique set of advantages for the country, paradoxically, are a source themselves of challenges for the country. The Philippines' archipelagic nature begets it a trove of marine and mineral treasures, among others. But it effectuates the need for the Philippines to safeguard its vast maritime area that is a natural attraction to unscrupulous elements—from poachers to pirates to drug traders, and even neighbors who would want to max out their own territorial claims and prey on permeable, ill-defended borders.

Protection of both undisputed and contested territories and attendant maritime entitlements remain an arduous task for the Philippines. Of these, the West Philippine Sea row, especially with China, takes prominence.

#### Discord on the Western Seaboard

For more than a decade now since the Mischief Reef incident, and more so in the past four years, China has ratcheted up its adventurist projections over its claimed maritime regions, the West Philippine Sea being one of them. Despite calls to refrain from further agitating the already tense situation, China, through its new-found economic, military, and diplomatic prowess, drums up its nine-dash line claim which effectively means control, if not ownership, of almost all of the South China Sea.<sup>50</sup> It pursues a combination of strong-arm, deceptive, and extortionate measures even as it feigns a willingness to negotiate, insisting on a bilateral modality.<sup>51</sup>

Given its sweeping maritime claims, China succeeds in complicating the tenuous situation in the East-Southeast Asian region. ASEAN, for its part, has become a collateral victim in the process as its consensus has been undermined by the debate on what position to take. Using its position as Chair of ASEAN for 2012, Cambodia barred any mention of the disputes in the joint statement that was to be released after the annual ministerial meeting.<sup>52</sup> It marked the only time in its 45 years that ASEAN did not release a joint statement, and demonstrated the existing faultline in the association. Given its unenviable defense status amidst China's persistent, agitative, and unreasonable posturing, the Philippines has had to count heavily on its diplomatic and defense relationships. Internationalizing the issue and calling the attention of the world to China's intimidation would be inevitable fixtures in its bid to seek support. While it pays to articulate its position in ASEAN, and even other bilateral forums, the Philippines would have to intensify its own capability to uphold its values and interests.

For the Philippines—that our maritime claims overlap with other claimants which are also ASEAN colleagues, like Vietnam, Malaysia and Brunei, and with Taiwan, which identifies closely with the Mainland's nine-dash line claim, but then upholds a pragmatic demeanor—it is imperative to keep a careful and comprehensive tact, and parlay on its good relations in search of a favorable, *ad interim*, if not final,

resolution. It also needs to more thoughtfully read the signs of the times as it relies on the goodwill of other neighbors. The statements and deeds, for example, of Kuala Lumpur and its functionaries would have to be weighed more carefully.

Malaysian Defense Minister Hishammudin Hussein's recent statements should be most instructive. Speaking to Bloomberg sometime in August 2013, Hishammudin announced that the Chinese navy could conduct patrols off Malaysia's coasts as long as China's "intention is not to go to war," inasmuch as the two countries had "enough level of trust that we will not be moved by day-to-day politics or emotions."<sup>53</sup> On the sidelines of meetings with ASEAN and US counterparts, the Defense Minister stated that "just because you have enemies, doesn't mean your enemies are my enemies."<sup>54</sup>

#### Secession in Muslim Mindanao

Variouly labeled as an armed incursion, a siege, a standoff, or a humanitarian crisis, the protracted violent exchanges in September 2013 between Philippine government forces and the supposed Sulu State Revolutionary Command (led reportedly by commanders supporting the Moro National Liberation Front's Nur Misuari faction) highlight the intractable nature of the quest for peace in Mindanao. Despite the thorny and indirect path toward a peace settlement in Muslim Mindanao, very notable progress can still take place. The January 25, 2014 GRP-MILF (Government of the Republic of the Philippines-Moro Islamic Liberation Front) signing of the remaining annexes to the Framework Agreement on Bangsamoro (FAB) completes the Comprehensive Agreement on the Bangsamoro (CAB), and leaves to Congress the crafting of the Bangsamoro Basic Law (BBL). It would be naive to think that henceforth the trouble in Mindanao is over, especially as there remains holdouts among the secessionist factions and certain partisan elements that could still disrupt the process for certain myopic, partisan interests.

#### The Sabah Claim and the Southern Backdoor

For more than half a century now stands the Philippines' unresolved claim over Sabah.<sup>55</sup> Six Philippine presidents have already passed, and the claim,

figuratively, has either been swept under the carpet or hopped. Skirting the issue of disagreement to further cooperation with Malaysia has been the order of the day. The unfinished business, however, remains unfinished until definitive closure is reached. The claim, though apparently sidestepped or buried, will not die on its own. The Sabah claim can be likened to a tinderbox tucked under and interred, but still retaining its explosive potential. Pending its appropriate decommissioning, it can be consciously or inadvertently detonated as it almost was by the Lahad Datu stand off of February 2013.

Supposedly acting on the order of Jamalul Kiram III, one of the claimants to the throne of the Sultanate of Sulu, a group of armed men claiming to belong to the “Royal Security Forces of the Sultanate of Sulu and North Borneo” arrived by boat in Lahad Datu village. They justified their actions in terms of supposedly returning to their ancestral land which they had “rented out” to Malaysia. A stand-off with the Malaysia security forces eventually ended violently with most of the forces claiming allegiance to the Sultanate of Sulu being killed. Tawi-tawi, from whence Kiram III’s followers came, is closer to Sabah than Western Mindanao distance-wise. Cross-border movement among extended families on either side has been a fact of life, an arrangement condoned by naval enforcers of both the Philippines and Malaysia. Consequently, this laxity in border security and the ensuing porosity of borders in the sub-region is exploited by small arms traders, smugglers, fugitives, secessionists, pirates, and terrorist groups.<sup>56</sup>

The Kiram III campaign, though apparently managed well by the Philippine and Malaysian governments, also emphasized the fact that southern Mindanao—by culture, history, trade, and demographics—is delicately intertwined with eastern Malaysia. The on-and-off campaigns against alleged illegal migrants in Sabah,<sup>57</sup> and the continuing in- and out-flow of people between Sabah and Mindanao will continue to try the mettle of RP-Malaysia relations.

### Intensifying Major Power Rivalry

The twenty-first century witnessed the dawning of Chinese power and influence. China’s sustained rise as the world’s second largest economy underpins both its military and political competencies, domestically and internationally. In what has

been described as a unipolar world, China's rise poses a challenge to the hegemony of the United States.

American and Chinese posturings in the South China Sea provide one contextualization of the cooperation and competition between these big actors. China burnishes itself as a different major power, ironically, but does not appear to be differently predisposed in the region. Premier Xi Jinping's "Chinese dream," juxtaposed with Chinese East and South China Sea assertiveness, and China's punitive measures (e.g., against Norway's awarding of a Nobel prize to a Chinese dissident, and tightened phytosanitary standards on Philippine bananas following strong Philippine protestations on Scarborough) evince the conventional power mold of China "where the strong does what it wants, and the weak must bear what it must."

US security interests in the region, especially in view of its "Pivot to East Asia" strategy, and Chinese power projection and perception of US containment together define reasons for competition. While the US has expressed a neutral position regarding the West Philippine Sea/South China Sea (WPS/SCS) claimants, it considers freedom of navigation a major concern. China officials, and even Track 2 participants, have voiced opposition to US involvement in the WPS/SCS, invoking that the issue should be addressed by the relevant actors within the region.

China conveys the idea that it is not in the same mold of traditional powers, claiming it is not out to be a hegemon seeking to carve out its sphere of influence.<sup>58</sup> Instead it represents itself as a patron of "peaceful development," and cultural, scientific, economic, and humanitarian causes. In its bid to project itself as a different, if not benevolent, power, China has reached out to various countries across the different continents. There is reason, however, to be anxious about China which insists on its own "good neighbor policy," while observing its own version of the "Monroe Doctrine."

Meeting US President Obama in Washington in mid-2013, Chinese President Xi Jinping called for a "new kind of great power relations." He stressed that "when China and the United States work together, we can be an anchor for world stability and the propeller of world peace."<sup>59</sup> Xi stated that the "Chinese dream is about cooperation, development, peace and win-win, and it is connected to the American Dream and the beautiful dreams people in other countries have."<sup>60</sup> Actions and practices, however, are a more solid indicator of intent. China's ADIZ issuance, the

standoff in the East China Sea, its actions in the South China Sea, the USS Cowpens incident,<sup>61</sup> and its stalling tactics in hammering out a Code of Conduct with ASEAN belie its claim of beneficence.

Despite all talks of rivalry and containment, the US and China are very interdependent. The US is China's largest market, with an annual trade of US\$202 billion. China is the largest trading partner of the US after Canada. Their bilateral trade in 2011 totaled US\$400 billion with the US running a trade deficit of US\$295 billion.<sup>62</sup> China is the largest foreign holder of US treasury notes at about US\$1.3 trillion. This makes China the biggest lender to the US outside the Federal Reserve. Codependency and rivalry highlight relations between these two powers.

#### Trends in Global and Regional Defense Spending

As per SIPRI's latest available report, global military spending in 2012 totaled US\$1753 trillion,<sup>63</sup> registering a first-ever decline, though slightly, over the past 14 years. This was due principally to major spending cuts by the USA, Western and Central Europe, Australia, Canada and Japan.<sup>64</sup> Despite the drop, combined global spending remained higher in real terms than the recorded peak near the end of the Cold War. US spending fell by 6 percent in real terms in 2012, albeit it remained 69 percent higher than in 2001.

Military spending in Asia helped offset the decline, with China becoming the second biggest world spender as its expenditure increased by 7.8 percent, or US\$11.8 billion.<sup>65</sup> China's total spending for 2012 was estimated at US\$166 billion. At the same time almost every country in Southeast Asia is set on "huge military expansion," with defense spending up by 13.5 percent to US\$24.5 billion in 2012.<sup>66</sup> Estimates indicate a rise to US\$40 billion by 2016. Singapore has become the fifth largest arms importer world-wide. Five ASEAN members (Vietnam, Indonesia, Thailand, Singapore and the Philippines) all registered substantial increases in their spending. Equipment on demand includes advanced defense systems, such as fighter aircraft, military helicopters, armored vehicles, surveillance equipment, warships, and submarines.<sup>67</sup> While the upward spending pattern parallels the larger Asian region, defense procurements are taking place in the East-Southeast Asian regions with an emphasis on air and naval capability.



### **Creeping Non-Traditionalism in the Job Description of the AFP**

Non-traditional security (NTS) is an area that has increasingly become an important consideration in the capability development of the AFP. While there are varied ways by which NTS is understood, the Centre for Non-traditional Security Studies of the S. Rajaratnam School for International Studies (RSIS) defines its scope to include<sup>68</sup>

*challenges to the survival and well-being of peoples and states that arise from non-military sources, such as climate change, resource scarcity, infectious diseases, natural disasters, irregular migration, food shortages, people smuggling, drug trafficking and transnational crime.*

These dangers are *transnational in scope*, defying unilateral remedies and requiring comprehensive—political, economic and social—responses, as well as the humanitarian use of military force.

The term was introduced to differentiate these issues from what is referred to as traditional security, i.e., those concerns that revolve around the protection of territory and the people that reside within that territory from external aggression and internal subversion, and the defense of sovereignty, or precisely those issues that have been discussed above and which the Armed Forces of the Philippines is mandated to address. The main point of departure is that, while traditional security concerns are normally addressed through self-help mechanisms, and often lead to suspicions and even conflict, the transnational nature of non-traditional security demands cooperative action. While use of military force in the issue of national defense is normally seen as a matter of self-help, military assets and equipment have been an essential part of the response capability to NTS issues. It must be emphasized, however, that even as these issues (as listed in the RSIS website) may utilize military assets, and these assets may in fact be essential in addressing them, these are nonetheless non-military concerns that require non-military responses. As noted in the RSIS definition, military force is expected to be used only for humanitarian use. In this context, the most obvious context within which the AFP might be utilized in NTS in the Philippines is in humanitarian assistance and disaster and relief (HADR) operations.

The Philippines is a country that is not a stranger to disasters, whether these are man-made or natural. Around 20 typhoons hit the country every year and cause

damage that amount to at least 5 billion pesos annually. All in all, the country shoulders around 10 billion pesos in damages to property annually from the different forms of disasters it experiences. This was the amount needed to cover rehabilitation efforts in the wake of just the three strongest typhoons that hit the country in 2006 alone. In the first 15 days of 2007, different forms of disasters already caused 200 million pesos in damage to infrastructure and affected 86,000 families. Since 2009, these annual figures have ballooned with the devastation caused by typhoons, floods, and earthquakes.

As noted earlier in this report, the Yolanda case illustrated a capability gap of the AFP in terms of its ability to respond quickly and effectively in cases where there is a need to move personnel and supplies to and from different parts of the country. Generally speaking, this capability is inherent in the military needs of the AFP, but is definitely something that can come handy in non-military situations. The AFP can be deputized to assist other agencies in their functions that have to do with national security (which may include non-traditional security issues) or peace and order. Such cases of deputization or assistance, however, do not constitute the principal function of the AFP, and should be seen only as incidental to its reason for being. A military force is for war-fighting, i.e., the defense of Philippine core values and interests through coercive action. The use and utility of military assets for any other purpose is only incidental to war-fighting. A military force is a coercive force, and it is intended to be used against perceived threats that must be and can be “coerced.” This does not detract from the possibility of using assets of the military for purposes other than coercion, but neither does it mean that the force structure of the military should be designed to take on tasks that are not within the primary and core competence of the AFP. Even as there is a difference between using the military and using the military’s assets, those assets are primarily for the purpose of performing the tasks the military was established for.

### **Analysis, Conclusions and Recommendations**

Overall, there is a need to rationalize the country’s security policies, programs, and practices. Our geomorphology calls for a national archipelagic security doctrine and strategy which would address domestic and territorial security, taking into

account specifically, the country's long and porous coastlines, dispersed islands, and maritime entitlements. Our relevant security framework must take into primary consideration the country's overarching archipelagic nature and proceed from this guiding reference point.

Along with the country's archipelagic context, the Philippines must recognize and keep faith with its immediate and larger socio-cultural and politico-economic neighborhood. It is instructive to listen to the voice of noted nationalist and then Philippine Ambassador to London, Leon Ma. Guerrero, who pointed out that

[m]any things shape the life of nations, and some of them have tended to separate us from the rest of Asia. Religion is one. Trade is another. A deep affection and trust in America is a third. But more permanent, more powerful than all these is our geographical position, our race, our love for freedom. These things bind us to our fellow Asians forever.<sup>69</sup>

The Philippines is embedded in Asia, specifically, Southeast Asia. And the ASEAN and its member countries stand more than as a buffer to each other. The region and the association are constants in our horizon. ASEAN members comprise a central core of our locale. Though each may have varying interests to secure and prioritize, it is the key interest of each to press on this evolving sense of shared community. The advancing integration of ASEAN affirms certain common superordinate goals. This includes, among others, parlaying on collective resources, abilities, and good will to derive benefits which a member on its own will not be able to attain. This could mean as well being able to advance a collective and unified front vis-à-vis entities which may try to impose their respective interests over and to the detriment of the interests of ASEAN and its members.

Given the foregoing policy directions and guideposts, the Philippine government may well have to:

1. customize the projection of the Philippine claim in a way that will make ASEAN, international rules and norms, and good neighbor concerns as platforms, with the Philippines itself demonstrating faithful, consistent adherence to them;
2. follow through to its conclusion the arbitration case it lodged at the ITLOS, but prepare the plans and measures under each of the possible scenarios ranging from a most favorable to a least favorable ruling;

3. push for the acceptance and implementation of an agreement that would allow fisherfolk on both sides to responsibly and legally exploit marine resources;
4. seek ways of opening and conducting backchannel talks and senior-level informal dialogues to consult and communicate with ASEAN partners on relevant Philippine action with the end in view of securing their support and understanding, promoting solidarity, and precluding instances when certain well-intentioned initiatives may be unduly misunderstood;<sup>70</sup>
5. tap backchannels and other third parties whose good offices may be useful for shuttle diplomacy, proximity talks, and eventual high-level exchanges with China;
6. press for the adoption of an agreement that addresses measures on how to deal with unintended and dangerous events in the area; and
7. press for the adoption of a binding ASEAN-China Code of Conduct which incorporates adherence to UNCLOS and relevant international laws and practices.

This is of even greater importance at a time when the geopolitical dynamics of great power rivalry and competition is rearing its head in the region once more. It must be recognized that even at a time when competing powers may exploit the present weaknesses in defense capability, it is imperative that the country uphold the morally ascendant position. Philippine profession to generally accepted principles of international law, alongside set core principles, must remain firm and be paralleled by practice that is consistent. *At the same time, it must pursue policies aimed at appropriately enhancing its national security system and military capability.*

The issues facing Philippine external defense requires capabilities that would allow the Armed Forces of the Philippines and other border control agencies to survey maritime domains. Priority should be given to the development of a capacity to monitor and quickly respond to incidents in territories claimed by the Philippines. Aside from the static presence indicated by the small Philippine Marine garrisons in the disputed areas, there should be sustained, mobile presence by both the Philippine Navy and the Philippine Coast Guard. To assist in these general recommendations, the following ideas are also being put forward:

1. The Philippines needs to develop a self-reliant defense industrial base or enter into a partnership with a friendly country in the development of one. It need not be one that is dedicated to defense-based concerns alone. If, in the interest of commercial viability, this might mean developing dual-purpose capacities, then that should be the model to be adopted. The important thing is that support for and maintenance of Philippine defense capability should rely less on foreign sources. This would potentially contribute to our economic development, as well as allow us to focus on our own defense needs without being limited by restrictions made by foreign suppliers.
2. While it has been said in so many other papers and discussions, it should be strongly reiterated that the modernization efforts of the AFP should be concentrated in the strengthening of the navy and the air force. This should include:
  - a. the development of a quick response capacity against low-intensity threats in the West Philippine Sea, including:
    - i. fast and long-ranging, missile-capable boats
    - ii. planes with over the horizon (OTH) weapons capability
  - b. the further development of more advanced mine-warfare capability; and
  - c. the exploration of the development of anti-submarine capability.
3. The Coast Watch system needs to be built up to extend capability to cover the Spratlys area and internal waters on a round-the-clock basis. Of particular interest would be:
  - a. the exploration of the acquisition of unmanned aerial vehicle capability; and
  - b. the acquisition of long-range and –loitering surveillance capability.
4. In the acquisition of equipment and weapons systems, dual-capability potential should be an important consideration in order to address increasing concerns over non-traditional security issues. This is different from acquiring equipment primarily for purposes of addressing these NTS concerns. In the overall scheme of things, these are capabilities that should be the responsibility primarily of civilian agencies rather than the military.

## Notes

- 1 Note from SIPRI on expenditure data: “Military expenditures data from SIPRI are derived from the NATO definition, which includes all current and capital expenditures on the armed forces, including peacekeeping forces; defense ministries and other government agencies engaged in defense projects; paramilitary forces, if these are judged to be trained and equipped for military operations; and military space activities. Such expenditures include military and civil personnel, including retirement pensions of military personnel and social services for personnel; operation and maintenance; procurement; military research and development; and military aid (in the military expenditures of the donor country). Excluded are civil defense and current expenditures for previous military activities, such as for veterans’ benefits, demobilization, conversion, and destruction of weapons. This definition cannot be applied for all countries, however, since that would require much more detailed information than is available about what is included in military budgets and off-budget military expenditure items. (For example, military budgets might or might not cover civil defense, reserves and auxiliary forces, police and paramilitary forces, dual-purpose forces such as military and civilian police, military grants in kind, pensions for military personnel, and social security contributions paid by one part of government to another.)”
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- 9 Ibid.
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- 15 Jerry Esplanada, "Patrol boats from Japan to Start Arriving in 2015," March 31, 2014, <http://newsinfo.inquirer.net/590453/patrol-boats-from-japan-to-start-arriving-in-2015>.
- 16 Part IV, Article 46 of the UN Convention on the Law of the Sea defines an archipelagic state as "a State constituted wholly by one or more archipelagos and include other islands. Peters and Polius refer to the Philippines as among the "major archipelagic nations" in the league of Japan, Indonesia, Denmark and New Zealand. See Amos C. Peters and Tracy D. Polius, "Do Archipelagic Countries Have Bigger Governments?" in [http://ccmfuwi.org/files/publications/conference/2009/papers/6\\_1-Peters\\_Polius-p.pdf](http://ccmfuwi.org/files/publications/conference/2009/papers/6_1-Peters_Polius-p.pdf).
- 17 Figure from the Philippines' National Mapping and Resource Information Authority (NAMRIA). See <http://www.namria.gov.ph/philGeo.aspx>.
- 18 See <http://geography.about.com/library/cia/blcphilippines.htm>.
- 19 Figures here are sourced from Rommel Banloi, *Philippine Naval Modernization: Current State and Continuing Challenges* (Quezon City: PIPVTR, 2012), 24.
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- 26 See Zhang Hongzhou, "China's Evolving Fishing Industry: Implications for Regional and Global Maritime Security," Working Paper No. 246, S. Rajaratnam School of International Studies,.

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- 29 Ibid., 22.
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- 42 Taiwan Relations Act Section 2 (2) (6) <http://www.ait.org.tw/en/taiwan-relations-act.html>.
- 43 Office of the Press Secretary, “Remarks by President Obama to the Australian Parliament,” <http://www.whitehouse.gov/the-press-office/2011/11/17/remarks-president-obama-australian-parliament> (accessed October 20, 2014).
- 44 See, for instance, Article 9 of the Treaty of Good-Neighborliness and Friendly Cooperation between the People’s Republic of China and the Russian Federation July 16, 2001, <http://www.voltairenet.org/article173177.html> (accessed October 20, 2014).
- 45 See Treaty of Friendship, Co-operation and Mutual Assistance Between the People’s Republic of China and the Democratic People’s Republic of Korea, [https://www.marxists.org/subject/china/documents/china\\_dprk.htm](https://www.marxists.org/subject/china/documents/china_dprk.htm) (accessed October 20, 2014).



- 46 See <http://www.bloomberg.com/news/2014-05-11/china-s-50-billion-asia-bank-snubs-japan-india-in-power-push.html>, and <http://www.thehindu.com/news/national/china-invites-india-to-join-asian-infrastructure-investment-bank/article6160686.ece>.
- 47 Camille Diola, "China Media: Philippines a 'Quasi-rogue' State," *The Philippine Star* September 17, 2014, <http://www.philstar.com/headlines/2014/09/17/1370088/china-media-philippines-quasi-rogue-state> (accessed October 20, 2014).
- 48 See <http://www.bbc.co.uk/news/world-asia-23594519>.
- 49 The popular press has already reported on this. See, for example, Jack Chang, "Asia arms up to counter growing Chinese might," *Philippine Star*, September 12, 2014, <http://www.philstar.com/world/2014/09/12/1368244/asia-arms-counter-growing-chinese-might> (accessed September 12, 2014). This debate has been discussed quite extensively since the emergence of China as a strong economic power in the region. An excellent early example that discusses the different arguments on this issue is Amitav Acharya, "Will Asia's Past Be Its Future?" *International Security*, 28(3) Winter 2003/04.
- 50 For a discussion on the nine-dashed or -dotted line, please see Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note" *Ocean Development & International Law* (34): 287–95, <http://community.middlebury.edu/~scs/docs/Li%20and%20Li-The%20Dotted%20Line%20on%20the%20Map.pdf>. And the Oxford Business Group's brief in <http://www.oxfordbusinessgroup.com/news/territorial-tribulations-disputes-have-delayed-deep-sea-discoveries>. China persists in its unilateral actions, deploying reputedly fishing fleets and maritime surveillance ships, fortifying its claimed features, announcing a fishing ban in the region. As if an implied warning, in explaining its recent declaration of an air defense identification zone (ADIZ) in the East China Sea, Chinese Defence Ministry spokesman Yang Yujun said, "China will establish other Air Defence Identification Zones at the right moment after necessary preparations are completed". (See Dylan Loh Ming Hui, "China's ADIZ over East China Sea: Implications for ASEAN," *RSIS Commentaries*, No. 232/2013).
- 51 China contravened a pledge it made to the Philippines to withdraw its forces in Panatag Shoal/Scarborough. It sustains and deploys purportedly fishing and maritime surveillance vessels in the area. It continues to fortify its facilities in its occupied features. It declared its controversial ADIZ and insists on requiring fishing vessels to secure permits prior to fishing in its claimed area. Much earlier, in summer of 2012, China impounded Philippine bananas and discouraged Chinese tourists from visiting the Philippines. See, for example, "In Philippines, banana growers feel effect of South China Sea dispute" in [http://www.washingtonpost.com/world/asia\\_pacific/in-philippines-banana-growers-feel-effect-of-south-china-sea-dispute/2012/06/10/gJQA47WVTV\\_story.html](http://www.washingtonpost.com/world/asia_pacific/in-philippines-banana-growers-feel-effect-of-south-china-sea-dispute/2012/06/10/gJQA47WVTV_story.html) (accessed January 30, 2014).
- 52 For a detailed narrative of this case, see Carlyle A. Thayer, "ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?," *The Asia-Pacific Journal*, Vol 10, Issue 34, No. 4, August 20, 2012.
- 53 See "William Choong: Another Crack in ASEAN's Armour," <http://www.iiss.org/en/iiss%20voices/blogsections/iiss-voices-2013-1e35/september-2013-38d4/crack-in-asean-solidarity-6c02> (accessed February 3, 2014).
- 54 Ibid.

- 55 For a chronological understanding of the Philippines' Sabah claim, see Merlin Magallona, An Outline of the Philippine Claim to Sabah in <http://www.up.edu.ph/an-outline-of-the-philippine-claim-to-sabah/>.
- 56 See, for example, Joseph Franco, "The Sabah-Sulu Crisis: Time to Revisit the Sulu Zone?" in *RSIS Commentaries*, No. 044/2013, March 12, 2013.
- 57 Around 800 thousand to 1 million Filipinos are estimated to be living in Sabah.
- 58 Having a sphere of influence denotes exercise of dominant power over another or others. The term as used invokes geopolitical rather than legal claims.
- 59 From "Remarks by President Obama and President Xi Jinping of the People's Republic of China after Bilateral Meeting," *White House Press Release*, 08 June 2013.
- 60 Ibid.
- 61 See <http://thediplomat.com/2013/12/uss-cowpens-incident-reveals-strategic-mistrust-between-u-s-and-china/>.
- 62 James Gorrie, *The China Crisis: How China's Economic Collapse Will Lead to a Global Depression* (New Jersey: Wiley, 2013), 32.
- 63 See "The 15 countries with the highest military expenditure in 2012" in [http://www.sipri.org/googlemaps/milex\\_top\\_15\\_exp\\_map.html](http://www.sipri.org/googlemaps/milex_top_15_exp_map.html).
- 64 See "15 Apr. 2013: World military spending falls, but China, Russia's spending rises, says SIPRI" in [http://www.sipri.org/media/pressreleases/2013/milex\\_launch](http://www.sipri.org/media/pressreleases/2013/milex_launch).
- 65 See "Trends in World Military Expenditure, 2012" in SIPRI Fact Sheet, April 2013, p. 1.
- 66 See "ASEAN Region Experiencing Biggest Military Buildup on the Planet" in [http://www.asiandefense.com/exhibitor\\_marketpotentials.html](http://www.asiandefense.com/exhibitor_marketpotentials.html) accessed 31 January 2014.
- 67 Ibid.
- 68 See RSIS NTS Centre website located at <http://www.rsis.edu.sg/nts/system.asp?sid=130>.
- 69 Quote was lifted from a speech delivered by L. M. Guerrero during the 55th anniversary celebration of the Manila Law College, 05 February 1954. *Manila Daily Bulletin*.
- 70 As when the Philippines filed its case in January 2013 at the International Tribunal for the Law of the Sea (ITLOS) without prior advice to its ASEAN partners, which made them clueless as to the specific motives behind the measure. ASEAN observers note that the Association could have been more able to extend support to the Philippine initiative had they been informed of the matter.



# Empowering the Nation's Working Poor\*

RENE E. OFRENEO

## **Introduction: "Those with Less in Life Should Have More in Law"**

In 1953 the President of the common "*tao*," Ramon Magsaysay, declared in his much-quoted *credo* that those who have less in life should have more in law. It was an electrifying call on legislators and policy makers to craft laws and programs to extend to the poor equal rights, and create for them more opportunities in life so that, like the rest of society, the poor shall have the dignity to stand shoulder to shoulder with their richer Filipino brothers and sisters. As President Magsaysay put it, governance should start at the bottom, "for government exists for the welfare of the masses of the nation."

The 1987 Constitution has enshrined the Magsaysay *credo*. Section 1, Article XIII of the Constitution ("Social Justice and Human Rights") commands Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good."

And yet today, six decades after President Magsaysay wrote those stirring words, and nearly three decades after the adoption of the 1987 Constitution, the numberless who have less in life still have less in law. In an unequal society with an elite-dominated political system, the haves get not only a bigger share of the economic

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\* This article is based on a longer research paper entitled, "Social Protection for the Informals: Transformation Challenges in the Philippines, 2014." The research paper is a contribution to the multi-national study on the situation of informal workers in Southeast Asia, organized by the International Labour Organization office in Jakarta.

pie but also the final say on how the pie shall be divided and distributed. Those who have more in life also have more in law.

This truth is most amply illustrated in the situation of the country's working poor, the workers who derive marginal incomes out of marginal jobs. Under the Constitution all workers are supposed to enjoy all the rights being enjoyed by the better-paid regular workers. The working poor do not because the enabling laws and programs for the enjoyment of such rights by these workers are weak, underdeveloped, or even missing.

This paper outlines the challenges facing policy makers seeking to bridge the gap between what the Constitution says are workers' rights, and what obtains in the real world of work. The paper summarizes the rights enjoyed by the regular workers in the formal sector, and discusses why the working poor are unable to enjoy these rights. The paper then concludes with an analysis of what policy reform measures the government can adopt to correct the policy and legal imbalances that prevent the working poor from enjoying the basic rights that all workers, without exception, are supposed to enjoy, based on the Constitutional mandate.

### **Conflict of Mandates: The Constitution and the Labor Code**

The 1987 Constitution, in Section 3, Article XIII, expounds on the duty of the State to protect all workers as follows:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Note that the charter does not make any exception to the duty of the State to protect workers. The emphasis is on "the rights of all workers," meaning these rights are universal and should be enjoyed by all workers regardless of whether they are organized and unorganized, or working at home or overseas. All workers are

supposed to enjoy full protection through full employment, equality of employment opportunities, and rights to self-organization, collective bargaining, security of tenure, humane conditions of work, and a living wage.

The reality, however, is far different. A clear indicator of this is the tiny number of workers covered by existing collective bargaining agreements (CBAs). A CBA is a contract negotiated by the union with the employer to flesh out the terms and conditions of work that are generally higher than those mandated by law. A quick look at the labor statistics compiled by the Department of Labor and Employment (DOLE) reveals that only 220,000 workers, out of the 40.4 million in the labor force in 2012, were covered by CBAs (Bureau of Labor and Employment Statistics, 2014). This is one half of one percent of the total work force!

Why such a low number of workers covered by CBAs? There are political, historical, and other reasons why the enjoyment of the right to self-organization and collective bargaining is limited

to a few. However, one major reason is the fact that we do not have enabling laws and programs in support of the Constitutional mandate on universal labor rights.

In particular, we have a Labor Code that fails to cover the majority of the labor force. It covers mainly the narrow formal sector of the economy, which consists of enterprises or activities that are formally registered with the government, or licensed by the government to do or conduct business. To be able to operate, a formal sector enterprise must secure a business permit or registration from the *barangay* and municipal or city hall, the Securities and Exchange Commission (if it is a corporation), the Bureau of Internal Revenue, the Social Security System, Philippine Health Insurance, and Home Development Fund (Pag-Ibig). Formal sector workers are workers hired by formal sector enterprises.

As a general backgrounder, the Labor Code has six substantial parts, or “books,” excluding a seventh book on “Transitory Provisions.” Books I and II deal with human resources development or skills upgrading and the rules governing the recruitment of workers. Books III and IV list down the laws on labor standards relating to wages, hours of work, employee benefits, health and safety, and so on,

**We do not have enabling laws and programs in support of the Constitutional mandate on universal labor rights**

while Books V and VI contain provisions governing labor relations concerns, such as unionism, collective bargaining, dispute settlement, and legal requirements on employee termination. To workers seeking protection or the assurance to enjoy the whole range of benefits and rights mandated by law—such as a minimum wage, holiday pay, overtime pay, non-discrimination, union representation, collective bargaining, non-termination without just cause, and so on—the various provisions of Books III up to Book VI of the Labor Code serve as their protective shields. The problem is that these provisions, each of which is considered a law by itself, apply largely to the formal sector workers because the enjoyment of such rights or entitlements requires proof of the existence of formal employer-employee relations.

In fact, most of the labor disputes in employment relations in the formal sector usually require a clarification of the existence of formal employer-employee relations. Employers are able to escape or avoid legal obligations, such as the payment of minimum wages, if they are able to prove that they are not the employers of the complaining workers; on the other hand, unions and workers are able to claim compensation for unpaid benefits and the correction of any abusive arrangement if they are able to prove that the erring employers are indeed their employers. Most of the cases on the non-payment of employee benefits, non-regularization of workers (after the six-month probationary period), and non-enrolment of employees in the Social Security System (SSS)—or the non-remittance by the employer of its share in the employee contribution to the SSS—involve a determination of the existence of formal employer-employee relations. As a result, the Supreme Court has developed the four “tests” on the existence of employer-employee relations, which essentially entail the determination of: 1) who hires the worker, 2) who pays the worker, 3) who disciplines or imposes penalty on the worker for infractions of company rules, and 4) who controls or supervises the worker in the performance of work. For more details and illustrative cases on the four tests, see Azucena (2007).

In short, the Labor Code, particularly Books III to VI, are meaningless to many workers who are either outside the formal sector or who are invisible or who are at the margins of the formal sector (see subsequent section). The Code requires a certain level of formality, such as the formal registration of the enterprise with the various government agencies cited earlier, and the existence of formal employer-

employee relations. A majority of the labor cases submitted to the Department of Labor and Employment (DOLE) and its arbitration body, the National Labor Relations Commission (NLRC), end up with the parties to a dispute contesting the existence or non-existence of formal employer-employee relations.

On paper the law does not forbid the formation of unions of informal workers. But there are no explicit laws encouraging, much less enabling, their formation and registration. A major initiative of DOLE in the 1970s was the registration of rural workers organizations under the Bureau of Rural Workers, which is now merged with the Bureau of Informal Workers. In the 1990s DOLE tried to promote the registration of workers' associations, meaning organizations of workers not for the purpose of collective bargaining. Yet data and statistics on both are limited and are hardly given recognition in the various tripartite meetings convened by DOLE.

As to the formal labor market, many Labor Code provisions are not observed or enforced due to the restrictive jurisprudence that says that there must be proof on the existence of formal employer-employee relations, and proof that the workers seeking union recognition are regular employees of a given principal. The message is that only regular workers can form a union because these regular workers can stay at the work place beyond three-to-five years. This is reinforced by the law governing CBAs, which states that a union can win political recognition up to a maximum of five years, and can negotiate over the terms and conditions of the CBA every three years.

As a result of the foregoing, the non-regular or short-term workers—probationaries, casuals, agency “*endos*” and substitutes—are effectively shut out of union formation and the collective bargaining system. Since the non-regular workers generally outnumber the regulars, union formation and collective bargaining become a privilege for a minority of workers. Given this reality, more and more employers are encouraged to institutionalize the practice of short-term hiring, and contracting the services of outside service contracting companies in order to avoid unionism and maintain some level of flexibility to hire and fire workers, adjust upward or downward certain employee benefits, and avoid the obligation to pay legally-mandated wages. On the other hand, union organizers, once the union is recognized by the government and the employer, try hard to bargain for the inclusion of all the excluded short-term workers in the CBA coverage.



## **The Excluded Working Poor: How Many Are They?**

Who are the working poor? They are a multitude; one cannot miss them. They can be found everywhere in the archipelago, especially in the swelling urban and rural slum colonies in all 17 regions of the country. By working poor, we mean workers with no regular or stable jobs, and have no regular or stable decent wages and conditions of work.

There are two major categories of the working poor: First, the vulnerable workers in the informal sector or informal economy (IS/IE), and second, the precariat or paid workers with non-regular tenures in the formal sector.

### **The “Vulnerable” IS/IE Workers**

The term IE or informal economy is often used interchangeably with the term IS or informal sector. The IE/IS is the catch basin of the labor market for workers who cannot find jobs in the limited and protected organized sector of the economy. IE/IS work is a coping or survival mechanism of informal workers in order to meet the requirements of daily living, no matter how minimal the income is from an informal economic undertaking, such as street hawking, home-based production, unregistered repair services, gold panning, and so on.

In the 1980s and 1990s, the IS was generally understood as including any economic activity not registered formally with the government and, therefore, not liable for taxes (see Ofreneo 1994). However, in 2002 the National Statistical Coordination Board (NSCB) adopted a more nuanced definition of the IS:

The IS [informal sector] consists of ‘units’ engaged in the production of goods and services with the primary objective of generating employment and incomes to the persons concerned in order to earn a living. These units typically operate at a low level of organization with little or no division between labor and capital as factors of production. It consists of household unincorporated enterprises that are market and non-market producers of goods as well as market producer of services. This means these are owned or operated by households engaged in the production of goods and/or services that are not constituted as legal entities independent of the households or household members that own them.

Labor relations, where they exist, are based on casual employment, kinship or personal and social relations rather than formal or contractual arrangements (cited in Labstat 2008, 1-2).

The NSCB classified “household unincorporated enterprises” into two categories: “informal own-account enterprises” and “enterprises of informal employers.” For the Bureau of Labor and Employment Statistics (BLES) of DOLE, this means the IS includes the self-employed or own-account workers without any paid employees, plus the unpaid family workers. In a way, the IS as defined is similar to the International Labor Office (ILO) concept of “vulnerable employment,” which covers the unpaid family workers and non-employer own-account workers.

The ILO’s *Decent Work and the Informal Economy* (2002) adopted the broader term “informal economy” or IE to cover all economic activities by workers and economic units that are, in law or in practice, “not covered or insufficiently covered by formal arrangements” (International Labour Organization 2002, 3). In the proposed House Bill 2295 providing for a “Magna Carta of Workers in Informal Employment,”<sup>1</sup> the bill’s proponents cite both the ILO and NSCB definitions of IS and the IE. HB 2295 has listed the following workers as belonging to the IS/IE:

- Small farmers owning not more than three hectares, and rural and agricultural workers serving as tenants, sharecroppers or laborers;
- Small fisherfolk/operators owning boats of three tons or less, and fisherfolk who have no fishing equipment;
- Fish workers, porters, and *batillos* (fish tub handlers);
- Home-based workers who are independent producers of goods or services;
- Industrial home-workers doing subcontracting work;
- Self-employed engaged by other contractors to do subcontracting work;
- Ambulant vendors or peddlers who ply their trades in search of buyers;
- Street vendors who sell their merchandise on streets and sidewalks;
- Vendors with stalls in public and private markets or with their own stores but with operating capitalization of not more than a million peso (roughly US\$23,000);
- Transport drivers, including “barkers,” fare collectors, dispatchers, and other workers who share income with self-employed or unincorporated operators;

- Transport operators (of jeepneys, pedicabs, tricycles, taxis, etc.) whose capitalization is not more than a million pesos;
- Unregistered and unprotected household domestic workers;
- Non-corporate construction workers, referring to those hired informally or through subcontractors;
- Small-scale miners doing their own processing, including those with capitalization of not more than a million peso,
- Workers of Barangay Micro Business Enterprises;<sup>2</sup>
- Non-corporate cargo handlers and allied workers;
- Waste pickers and recyclers;
- Workers engaged in producing seasonal products;
- Own-account workers doing repair and maintenance of equipment, appliances, etc., including beauticians, barbers, and masseuses;
- “On-call” workers in the entertainment, movie, and media, such as bit players, stuntmen, make-up artists, etc.;
- Volunteer workers in government receiving only allowances or honoraria, such as the *barangay* health workers and volunteers in non-governmental or people’s organizations;
- Unpaid family members, workers receiving allowances, and seasonal workers in micro enterprises and unincorporated household enterprises; and
- “Other similar economic activities that are “not illegal, criminal or life threatening in nature.”

Estimates of the IE/IS sector vary. The BLES-DOLE gives an IS estimate of about 41 percent of the total employed of 36 million for 2010 (see table 1). This is also the figure for the ILO’s “vulnerable employment,” defined as the total of the non-employing self-employed, and the unpaid or contributing family members. However, the estimate of the Employers Confederation of the Philippines (ECOP) is much higher—a whopping 77 percent of the employed, or 25 million out of the 36 million employed in 2006, belong to the informal economy (see table 2)! The higher ECOP estimate is due to the inclusion in the IS/IE total of the

**TABLE 1.** Percent share of total employed

BLES-DOLE count of formal and informal sector in the total employed, 1980-2010

Year	FORMAL SECTOR		INFORMAL SECTOR	
	Wage & Salary Workers	Own Account Workers	Unpaid Family Workers	Total Informal Sector
1980	42.4	36.9	20.7	57.6
1985	43.8	39.7	16.5	56.2
1990	45.5	38.8	15.7	54.5
1995	46.2	39.0	14.8	53.8
2000	50.7	37.1	12.2	49.3
2005	50.4	36.9	12.7	49.6
2010	51.8	29.8	11.7	41.5

Source: Bureau of Labor and Employment Statistics, Department of Labor and Employment.

**TABLE 2.** ECOP's estimation of the Number of IS workers, 2006 (in '000).

Indicator	2006*	
Underemployed	7,467	
<i>Underemployment Rate</i>		22.7%
Own-Account Workers	12,134	
Employer	1,467	
Self-Employed	10,667	
<i>% of employed</i>		32.3%
Unpaid Family Workers	4,038	
<i>% of employed</i>		12.3%
TOTAL		
As % of Employed	25,151	77%

\*Annualized average of labor force surveys.

Source: Sergio Ortiz-Luis, Philippine Employer, May 2008.

“underemployed” who are assumed to be workers in the huge galaxy of micro, small, and medium (MSME) enterprises. As shown in table 3, the micro enterprises (with 1-10 employees) account for 91.3 percent of establishments, based on an NSO survey in 2005, contributing roughly two million in employment. It is also important to note that the data shown in table 3 is limited to registered enterprises only; there are hundreds of thousands of unregistered micro enterprises in the country.

Note that the BLES-DOLE estimation excludes the wage workers in all sectors, and tends to deviate from the broader official definition adopted in 2002 by the NSCB. The BLES-DOLE estimation also excludes the informal “industrial workers,” for example, those sewing garments at home subcontracted by some garment exporters and manufacturers, those producing and packaging confectionaries and native delicacies at home, etc.

Overall, the BLES-DOLE estimate is an underestimation, while the ECOP’s figure appears to be more realistic. However, one problem with the ECOP estimate is that it equates underemployment, generally defined by the NSO as someone employed and yet still looking for additional work, with informality at work. Of course it is not difficult to assume that a majority of the underemployed are looking for additional work precisely because of the marginal nature of work and income in the IS/IE.

Most of the IS/IE workers and families are people living on the margin. A few with special skills, who render unique but unregistered business services to different

**TABLE 3.** List of establishments, 2005.

	Number of employees	Capitalization (in million Php)	Establishments Number	Employment		
				% Share	Number	% Share
Micro	1 – 9	Less than 3	714,675	91.3	2,057,388	37.6
Small	10 – 99	3 – 15	62,811	8.0	1,363,007	24.9
Medium	100 – 199	15 – 100	2,851	0.4	384,295	7.0
Large	200 & above	100 & above	2,643	0.3	1,674,607	30.6
<b>Total</b>			<b>782,980</b>	<b>100.0</b>	<b>5,479,297</b>	<b>100.0</b>

Source: National Statistics Office.

homes, such as electricians and plumbers, are compensated well; however, the overwhelming majority of the informal workers or “informals”—self-employed, unpaid family workers, and non-formal wage workers—are poor. The poorest among them end up as informal settlers, who build makeshift houses (around 2 x 2 m in size) made of light materials on vacant private and government lands and dangerous spaces, such as river embankments, canals, etc. They have even developed communities of the living in public cemeteries. The Climate Change Congress of the Philippines or CCCP (2011) identified the following among the poorest IS/IE households:

- *kariton* households (people living in push carts, which double for informal economic activities such as scavenging),
- seawall households,
- under-the-bridge and footbridge households,
- dumpsite households,
- hillside and mountaintop households,
- cemetery households,
- Luneta households (Luneta is a big national park in Metro Manila), and
- varied street households which move from one alley to another.

In terms of income generation, the CCCP identified the *hagdaw* households to be among the poorest. These are families who come in after a harvest, i.e., they glean or clean up leftovers, such as fallen rice stalks. The poorest also include the alm-seeking households, the slash-and-burn farming households (usually living on hillsides of public lands), charcoal-making households based in remote hills and mountains, and the small-scale mining households—those who do either gold panning in mineralized rivers or “camote” (rootcrop) mining on hilly mining sites.

The CCCP also observed that many of the informal workers are mobile, meaning they move from place to place in search of odd jobs on a seasonal and even day-to-day basis. For example, the landless rural poor, who have no land rights and no fixed or regular jobs, can be seasonal agricultural workers one day (hired during planting and harvesting), coastal/river fisherfolk another day, and construction aides in the cities on still another day. The landless rural poor happen to be the most numerous in the countryside.

Similarly, the urban poor with no regular jobs also keep moving from one job to another, or from one place to another in search of jobs. They are ambulant peddlers one day, construction workers another day, and cargo handlers still another day.

A big group of informal workers are the home-based workers, such as those who produce handicrafts, toys, processed food, household accessories, and numerous other products right at home. During the heyday of the export-oriented garments industry in the 1980s and 1990s, more than half a million workers were estimated to be home-based workers doing subcontracted embroidery work or assembly of garment parts (Ofreneo 2009).

### **The “Precariat” and the “Informalization” of the Formal Labor Market**

The second major group or category of the excluded are the precariat, or the precarious paid workers, in the formal or organized sector of the economy. They are excluded in the sense that their job tenures are generally precarious and they get only a pittance for the work or service that they render for industry or commerce. Arne Kalleberg and Kevin Hewison (2013) define precarious work as work characterized by “*uncertainty, instability, and insecurity of work* in which *employees bear the risks* of work (as opposed to businesses or the government) and *receive limited social benefits and statutory entitlements*.” Simply put, precarity means the informalization or casualization of work in the formal sector through short-term or flexible hiring arrangements and limited compensation or benefits for the workers.

As it is, the formal labor market is not only narrow because of the huge informal economy; it is also “informalizing.” This phenomenon of informalization is aided by the reality of jobless growth in the organized sector due to the weak agro-industrial base of the economy and, yes, the availability of a large reserve army of flexible labor from the informal economy. This informalization is dubbed by trade unions as “contractualization” or “casualization,” which generally means short-term and unprotected temporary hiring arrangements. A popular slang used for a short-term worker is “*endo*,”<sup>3</sup> someone whose employment contract has ended or bound to end in a short time.

Because of the informalization processes in the formal sector, some researchers give a higher estimate of the size of the IS/IE by including the non-regular workers from the formal sector. This is the reason why the study of Rosario Manasan and Aniceto Orbeta (2012) of the Philippine Institute for Development Studies (PIDS) estimated the IE size to be as high as 89 percent of the total employed! They arrived at this figure by using the non-existence of a written employment contract and the non-application of labor regulations in the payment of benefits as the main criteria in measuring informality, especially in relation to wage workers. This approach is closer to the 2002 ILO and NSCB definitions which emphasize insufficient formality in work relations. The data on the absence of employment contracts and the non-application of labor regulations for wage workers were estimates given by the National Statistics Office (NSO) to Manasan and Orbeta. The following are interesting figures based on the study of Manasan and Orbeta:

- About 91.0 percent (9.2 million) of the self-employed (10.07 million) are informal;
- About 68 percent of the employers are informal (2.4 million out of 3.5 million);
- As to wage workers, per survey of the NSO, 40 percent of 17.7 million wage and salary workers in 2008 had only verbal contracts, and an additional 23 percent had no contract at all. Hence, more than 76 percent of wage workers were informal.

The Philippine trade union movement, which is badly divided on many issues, such as the minimum wage, is consistently united in their uniform denunciation of the flexibilization phenomenon that finds expression in various forms of flexible job hiring arrangements, such as the outsourcing or subcontracting of work, deployment of agency-hired (third-party-managed) workers within the company's work premises, and the direct hiring of workers under short-term employment contracts. This is why the labor union at the Philippine Long Distance Telecom Company (PLDT), formerly a big union with a five-digit membership (now four digits),<sup>4</sup> has succeeded in building a broad-based labor coalition called *Kilusan Laban sa Kontraktualisasyon*, or Movement Against Contractualization.



Another big union, the Philippine Airline Employees Association (PALEA), has also managed to get the support of various competing labor groups, as well as the attention of Philippine Congress, on their bitter fight with Philippine Airlines (PAL) management regarding the outsourcing of 2,600 jobs occupied by regular workers, who are also union members. Congress has been conducting public hearings on the PAL-PALEA dispute, and asking both sides to explain what is the appropriate policy on job outsourcing. PAL management argues that outsourcing is a global trend and that the airline company cannot survive if it does not adopt the same global work practice. On the other hand, the PALEA union argues that the workers' basic union, job, and collective bargaining rights are being violated by the outsourcing measure, in violation of the Labor Code provision on security of tenure of regular workers. Both sides raise legal arguments in support of their respective positions—PALEA cites the Labor Code provisions protecting regular jobs, while PAL management cites Supreme Court rulings and Civil Code provisions on management prerogative<sup>5</sup> to outsource jobs as needed or as required by business exigency. The PAL-PALEA dispute on outsourcing, which led to a near paralysis in PAL operations in late 2011 due to the militant labor protest of PALEA, is the most explicit illustration of the fierce debates between unions and employers on the issue of labor flexibility.

Unfortunately for the unions and many workers, the realities in the labor market are not too kind on them. Informalization or “flexibilization” is widespread in the formal side of the services, industry, and agriculture sectors.

Flexibilization also takes varied forms; but the common underlying thrust is to put workers under short-term employment arrangement, with the job contract ranging anywhere from one week to less than three years. The latter (three years) is the usual length or duration of a collective bargaining agreement (CBA), which explains why trade unionists complain that they have less and less workers to organize for collective bargaining purposes. Moreover, under the existing jurisprudence, non-regular workers are usually excluded from the scope of the CBA coverage. The following are the different forms of labor flexibilization based on the different studies conducted by Abrera-Mangahas et al. (1999) and Sibal, Amante and Tolentino (2012):

- *Hiring workers as temporaries or probationaries with no intention of regularizing them.* Are these workers formal or informal, or somewhere in between? The probably correct answer is the latter. Under the Labor Code

of the Philippines (LCP), a company is allowed to subject workers to six-months probation, beyond which he or she is entitled to regularization if the job is “regular and necessary” to the business. A company is also allowed to hire a casual worker; however, a year of accumulated service, even if intermittent, means he or she is also entitled to regularization. But what happens is that some companies and placement and manpower agencies are putting short-term workers on a “5-5 arrangement,”<sup>6</sup> meaning they are hired for only five months without any hope of being regularized. For manpower agencies with a network of partner companies, these workers are simply redeployed in another outfit for another five months; thus, they are able to avoid the legal requirement for companies to regularize workers who have rendered at least six months of continuous service as probationaries.

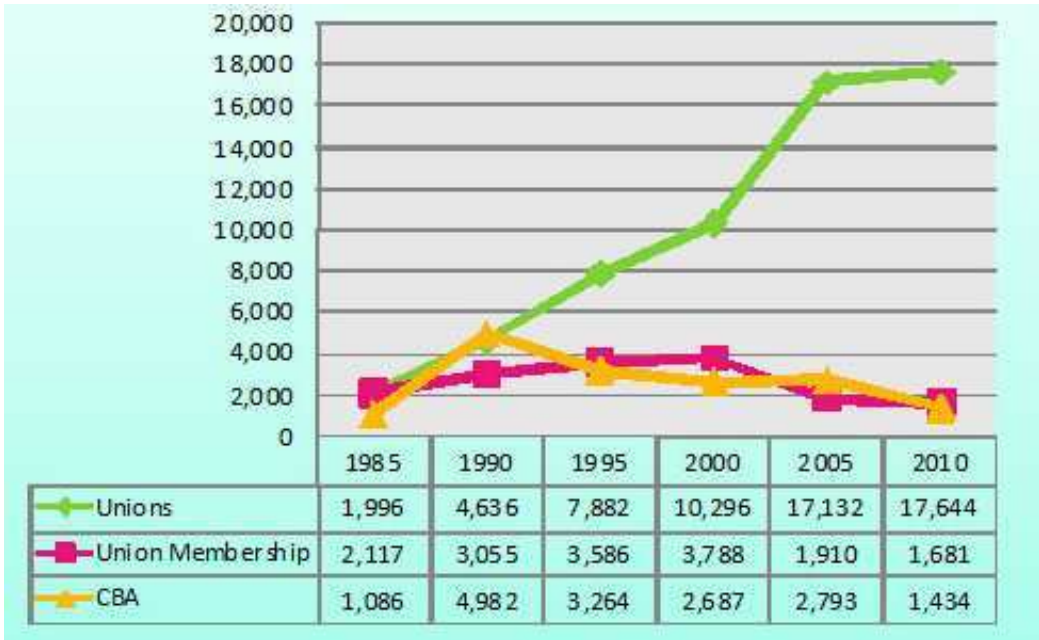
- *Hiring workers as “project employees.”* Under the law, the tenure of project employees is co-terminus with the project they are assigned to, for example, developing a cell site for a telecom company, the completion of which is bound to happen on “a day certain.” This is the usual and well-established system of hiring workers in the construction industry, where work moves from one project to another. The problem is that the concept of project hiring, which can be of longer duration depending on the project (e.g., three years), has been adopted by non-construction companies or industries which simply package different aspects of work, e.g., assembly of one set of goods is treated as a project separate from the succeeding assembly of another set of goods. In the booming CC/BPO sector, most of the jobs are now under project-hiring arrangement. Today, project-based hiring is the norm for short-term hiring.
- *Hiring of trainees.* Under the law, companies can hire trainees for anywhere between six months to two years at compensation rates of 25 percent below the minimum wage. Some companies in the electronics assembly and auto parts industries are big users of this scheme. In one big electronics company with around 20,000 workers, the ratio of the apprentice-trainee is 19:1, meaning 19 apprentice-trainees for every one regular employee (Ofreneo and Hernandez 2010).

There are other flexible work and compensation arrangements (Kapunan and Kapunan 2006). They include the following: work on a commission basis, meaning workers are paid based on a percentage of the sales they make; “boundary” system, which is common in the transport sector (drivers are supposed to turn over a fixed daily amount of their earnings, or “boundary,” to the transport owner (e.g., taxi) and appropriate to himself or herself whatever is the surplus; and piece-rate system, meaning workers are paid on the basis of results (quite common in the heyday of the garments industry). There are also seasonal workers, or those hired during peak demands for business, e.g., production of Christmas decorations for the Christmas season.

The negative impact of flexibilization on unionism is palpable, as indicated by the declining number of CBAs and workers covered. Table 4/Figure 1 shows that the post-martial law period (1985 onward) has been recording continuing growth rate of union formations. However, the overall membership declined sharply in 2001-2005, from 3,849,976 to 1,910,166 in 2005, or a dramatic negative growth rate of 50.38 percent. As to the CBAs and the workers covered by CBAs, the growth rate has been relentlessly going down since 1991, except for 2001-2005. The number of workers covered by CBAs today ranges only between 200,000 to 250,000, which is puny compared to the 36 million employed workers in the country!

Overall, unionism is on the retreat. There has been a steady decline of unionization in both the entire employed sector and among the wage and salary earners from 1990 to the present. As can be deduced from the foregoing discussion, one ineluctable explanation is the increasing flexibility in hiring arrangements, which make it doubly difficult for unions to organize workers.

The “informalization” of work processes in the formal labor market also leads to the exit of casual workers from the formal labor market and their entry into the informal economy. This usually happens to casual workers who reach the vulnerable age of 40 to 60 years old. As Ludy Casana of the Federation of Free Workers put it, the casual workers at this age bracket are “too young to resign and yet too old to be hired.” The most vulnerable among these workers are the casuals doing simple repetitive jobs in the manufacturing sub-sector and in the distribution (retailing/wholesaling) industry. Workers in manufacturing who reach compulsory retirement age (between 60 and 65) have become a rarity these days.



**Table 4/Figure 1:** Unions, union membership and CBAs, 1985-2010

*Source of raw data: Department of Labor and Employment, Bureau of Labor and Employment Statistics.*

The stagnant and even declining performance of Philippine manufacturing under a more open or liberalized economic environment has also pushed large numbers of formal sector workers, both regular and casual, out of the formal labor market. For example, the biggest unions in the Philippines in the 1970s up to the 1990s were in the textile and garment industries, such as Novelty and Aris, which had over 10,000 unionized workers each. With the collapse of the textile industry in the 1990s and the garments industry at the turn of the millennium (Ofreneo 2009), most of the unions had disappeared. In other manufacturing industries, the continuous processes of reengineering and “smart-sizing” (often leading to downsizing and outsourcing) have made most of these industries very lean and even non-unionized.

## **Shrinking Formal Labor Market and the Country's Failed Industrial Transformation**

Some explanation for the shrinking formal labor market, and the consequent informalization of work in both the formal and informal labor markets, is in order.

In 2012, an Asian Development Bank (ADB) study, *Taking the Right Road to Inclusive Growth: Industrial Upgrading and Diversification in the Philippines* (Usui 2012), concluded that the country's industrialization efforts in the last three decades, 1980s to present, were a failure. The ADB study added that Philippine economic growth, buoyed by the huge overseas migrant remittances and the tremendous expansion of the call centre and business process outsourcing (CC/BPO) sector, is simply unsustainable if the industrial sector remains stagnant. The share of manufacturing in employment went down from 11 percent in 1980 to about 9 percent in 2009 (see table 5); in contrast, the percentage in neighboring Asian countries, such as Indonesia and Thailand, went up from single to double digits in the same period. Comparing the industrial performance of Malaysia, the Asian NICs, and China with that of the Philippines is even more embarrassing. Though the CC/BPO sector has become a major growth driver, its total contribution to direct job generation is just a little over one percent of the total labor force.

The above finding of the ADB on stagnant industrialization is not new, especially to progressive civil society organisations in the Philippines. They are also likely to find the ADB study somewhat incomplete in its diagnosis of the weaknesses of the economy. Bello (2004) and the Fair Trade Alliance (2006) pointed out that the *de-industrialization* of the Philippines in the last three decades has been accompanied by *de-agricultural development*, reaffirmed by the above-cited ADB study.

The country, a net agricultural exporting country in the nineteenth and twentieth centuries, has become a net agricultural importing country since 1995, the first year of its membership in the World Trade Organization (WTO). The Philippines has, in fact, become the world's biggest importer of rice. The nation's success in the production and export of banana and pineapple cannot make up for the country's failure in attaining self-sufficiency in staple crops (rice and corn), fishery and meat products, and in stabilizing the market for coconut, sugar, tobacco, vegetables, rubber, and other crops.

**TABLE 5.** Sectoral Composition of Economy, Output, and Employment (in percent, 1980 and 2009)

Sector	1980			2009
<b>Output Share</b>				
Agriculture	25.1			13.1
Industry	38.8			31.7
<b>of which Manufacturing</b>		<b>25.7</b>		<b>21.3</b>
Services	34.3			55.2
<b>Employment Share</b>				
Agriculture	51.8			35.2
Industry	15.4			14.5
<b>of which Manufacturing</b>		<b>10.8</b>		<b>8.9</b>
Services	32.8	50.3		

Source: Extracted from Table 2-1 of Usui 2012.

On industrialization, the country's manufacturing was hailed in the early 1960s by the World Bank as Asia's most dynamic, second only to Japan (Ofreneo 1993). However, as attested by the above three studies, the Philippines' industrial dynamism disappeared during the last three decades beginning from the 1980s. The latter period happens to be the decades of structural adjustment program (SAP) promoted by the economic technocracy in the name of export orientation and national competitiveness. The SAP neo-liberal economic policies were aimed at opening up the economy through programs eliminating tariff and non-tariff protection for local industry, privatizing government corporations and services, and deregulating different economic sectors. The whole SAP idea was to promote economic efficiency by subjecting a liberalized and deregulated Philippine economy to global competition. However, the outcome was the widespread collapse of domestic industries and even the weakening of some export industries, such as the garments industry. The Fair Trade Alliance (2006) explains that this is due to the arbitrary and one-sided way SAP liberalization policies were imposed, sans consultation with industry, labor, and other stakeholders, and without any clear development compass.

The collapse of industry and agriculture explains why the original programme of "temporary manpower export"<sup>7</sup> has become permanent and has grown year by

year. Today the remittances of over ten million OFWs (Overseas Filipino Workers) and Filipino immigrants, equal to 10 percent of the population, provide the critical lifeline to at least a fifth of the population. The remittances, estimated to be over US\$20 billion a year, explain why the economy is described as a “consumption-led” one despite the precipitous decline in domestic manufacturing, agricultural production, and employment.

### **Low Incomes, Job Insecurity and Lack of Social Security**

Now back to the situation of the IS/IE workers and the precariat. They generally face a three-fold problem: low incomes and wages, job insecurity, and lack of social security. The low incomes and wages are associated with the low valuation of the services these workers deliver, whatever the occupational faces they wear. This is reinforced by the reality that the buyers of their services are either informal enterprises themselves, or formal institutions which do so surreptitiously sans official blessing in terms of tax receipts and so on. As to job insecurity, this arises mainly from the nature of their jobs—in the case of the precariat, the lack of tenure means they can be removed and laid off anytime, while in the case of the IS/IE workers, the lack of demand for their services or market for their products means they have to move on to look for another income-generating activity. Under globalization, such insecurities are further intensified by a fast-changing market, for example, home-sewn garments can be wiped out by a flood of cheap imported ready-to-wear garments smuggled by *ukay-ukay* entrepreneurs.

Finally, the majority of the IS/IE workers and precariat do not enjoy any formal social insurance, the lack of which is rooted precisely in the informality and uncertainty of their work. Most of the members of the government-run Social Security System (SSS) are workers with regular jobs with clear employer-employee relations. The SSS is swamped with complaints of non-regular or short-term hires who discover that their employers never bothered to register them with the SSS. Under the SSS law, all enterprises are mandated to enroll their workers in the SSS and to share in the cost of an employee's premium contribution.

Because of the limited number of workers covered by the SSS, the government amended in 1997 the SSS law to allow coverage of self-employed workers, agricultural workers, and household helpers. And yet ten years after, or in 2007, the percentage of active SSS members of self-employed and agricultural workers reached only 20 percent, with the formal wage workers constituting 80 percent of the total. The main complaint of would-be members among the self-employed is the high cost of the premium, which in the case of the formal sector workers is jointly shouldered by the employer and the workers.

As to the government Philippine Health Insurance (Philhealth), which was created in 1995, there has been some progress in membership expansion covering the “vulnerables” and “indigents” because of social and political pressures put on various Administrations. However, the major lament of IS/IE organizations and CSOs is the limited range of services covered by Philhealth. For example, outpatient consultations are not covered, and the participating hospitals and clinics are also limited.

The reality is that IS/IE workers and the precariat face numerous problems at work, at home, and in the community, most of which are rooted in the lack of job security, limited income, and lack of social insurance. Each worker has a story to tell. Box 1 is a summary of complaints by home-based women workers from Barangay Balingasa of Caloocan, who weave rags subcontracted by rag dealers. The list shows that the life of every IS/IE woman worker is strenuous and complicated as she has to bear the multiple burdens of earning an income while raising a family in a community bereft of basic health and other services. The situation of landless rural workers who have no lands and no secure jobs is no less strenuous and complicated. The same is true with street vendors who have to face daily the informal impositions of local police and local government, and the high interest charged by informal creditors, such as the 5-6 lenders. And so with the informal construction workers, the domestic workers, the informal transport workers, and the unregistered providers of varied services ranging from appliance repairs to home service massage.

The point is that, unlike the regular workers in the formal sector, the IS/IE workers and the precariat do not have stable jobs and do not enjoy labor and social protection.



**Box 1. Laments of Home-Based Workers Producing Rags**

**Financial (work- and income-related)**

Limited orders  
Low productivity due to antiquated sewing machines  
Limited work hours because sewing machines are borrowed from others  
High cost of rental for production equipment  
High cost of commodities and raw materials  
Low price of finished products  
Low income (a full day's work nets women sewers only a third of the minimum wage or less—the Metro Manila minimum wage is P500.00 daily versus informal sewers' income of P150 to P200 maximum for a day's work)  
Lack of capital/fund resulting in stoppage of small/micro business  
Inability to buy raw materials in bulk/volume due to lack of capital  
Lack of additional capital to increase production  
"Credit pollution" (many aggressive lenders with aggressive collection tactics)  
Lack of credit assistance with low interest rate  
Lack of access to government financial programs/services (particularly, credit facilities) for small enterprises with low interest rate  
Delayed payment by subcontractors, aggravated by lack of written agreement  
Non-repayment/delayed repayment of customers on credit basis  
Very low payment/wages for home-based work  
Lack of alternative source of income/alternative skills  
Product/price competition

**Financial (family-related)**

Lack of financial resources for everyday consumption of the family and monthly payment of bills, such as water and electricity  
Inability to send children to college (up to free public secondary education only)

**On social protection**

No social protection in place  
Lack of free consultation and treatment for poor and marginalized HBWs in emergency under the Philhealth system  
Problems with SSS/ PHILHEALTH coverage and membership  
Limited education for children (high dropout rates)

**Product-related**

Lack of regular market outlet for products produced  
No job-out from subcontractors due to lack of raw materials/product  
Seasonality of work/products  
Unsold products are stocked; no customers due to oversupply in the market

**Health and safety issues**

Noise pollution in the community (overcrowded place)  
Air pollution (chemicals exuded by neighboring manufacturer of Zonrox)  
Small and crowded work station/place of work  
Crowded space inside the house (where work is done) due to extended family, and limited housing space  
Lack of toilet inside the house for some households  
Clogged drainage  
Lack of water supply

**Other concerns**

Multiple burdens inside the home (too many household chores)  
Over-fatigue due to multiple tasks at home  
Lack of knowledge and skills to run small business

*Source: Focused group discussion with home-based women workers of Balingasa, Caloocan City, May 2014.*

### **Government Initiatives on Social Protection for the Poor**

Through the decades, various administrations have initiated programs to combat mass poverty and improve the welfare of those in the margins of society and economy. However, there is no precise targeting of social protection for the IS/IE workers and the precariat. We even have a bizarre situation where, under RA 8425 creating the National Anti-Poverty Commission (NAPC), “workers in the informal sector” are lumped together with the “disadvantaged sectors” that include women, children, youth and students, senior citizens, persons with disabilities, cooperatives, NGOs, fisherfolk, farmers, urban poor, indigenous people, workers in the formal sector, and victims of disasters and calamities. This is confusing because it is difficult to distinguish each of the so-called NAPC sectors in terms of employment, income, and overall position in the labor market.

During the first term of the administration of Gloria Macapagal-Arroyo (2001-2004), there were four major anti-poverty programs (apart from the overall national macroeconomic development programs aimed at employment generation):

- Credit support for Grameen-style microfinance lending, with the government’s People’s Credit and Finance Corporation providing loanable funds to non-governmental organizations (NGOs) re-lending to the entrepreneurial poor, such as those fattening pigs at home or maintaining a small neighborhood store;
- Credit support for small enterprise development dubbed “*Sulong*” (advance);
- Assistance to the poorest communities and municipalities in building roads, water systems, clinics, and schools; and
- Inclusion of indigents in the coverage of the Philippine Health Insurance (Philhealth), which provides health insurance via affordable insurance premiums.

In her second term (2004-2010), the Arroyo government focused on the conditional cash transfer (CCT) which was introduced in 2008 courtesy of the World Bank and the Asian Development Bank. The CCT provides a poor family with children a monthly cash allowance of P1,400 (US\$30.00) at the maximum, and P800 at the minimum, on the condition that the mother is committed to visit

a maternal health clinic regularly and the family pledges to keep their school-age children in school.

All the foregoing five programs have been continued by the Aquino Administration which chose the CCT program as a flagship anti-poverty program, and immediately doubled the target CCT beneficiaries from one million in 2010 to two million in 2011 (Department of Social Welfare and Development 2011).

Most of these anti-poverty programs overlap or intermesh with other programs created by special laws, such as the Magna Carta for Small Farmers (RA 7607), Magna Carta for Small Enterprises (RA 6977), and Barangay Microbusiness Enterprises Act (RA 9178). Also, there are other related social development programs being carried out by various institutions, such as the skills training program for out-of-school youth by the Technical Education and Skills Development Authority (TESDA), and the small lending programs for livelihood development for the poor and displaced that are managed by DOLE and the Department of Social Work and Development. In 2013 the inter-agency Cabinet Committee on Social Development (SDC), on the recommendation of the Sub-Committee on Informal Sector (SCIS) chaired by DOLE and the Sub-Committee on Social Protection (SCSP) chaired by DSWD, endorsed the expansion of the informal sector coverage of SSS, Philhealth, and Pag-Ibig.

At DOLE, there are efforts to expand the implementing rules of the Labor Code in order to cover certain categories of informal workers. Thus, in the early 1990s, two Department Orders (DOs)—DO No. 5 and DO No. 19—were issued. DO No. 5 entitled, “Employment of Homeworkers,” was formulated to cover home-based workers, specifically the “industrial home workers.” DO No. 5 provides for a DOLE-supervised determination of appropriate wage rates for piece-rate work, the registration of contractor and subcontractor, the contractor’s obligation to remit the employer’s share in the payment of the SSS premium, and the prohibition of child labor. The determination of wage rates can be done through time and motion studies and dialogue among the workers, contractors, and DOLE. DO No. 5 was issued by DOLE on February 4, 1992 in response to the widespread complaint that piece-rate workers working at home were being abused by garments contractors and outsourcing agents.

The problem, however, is that there is no evidence that DO No. 5 was ever used to prosecute contractors which deviated or have been deviating from the rules promulgated by the said DO. PATAMABA<sup>8</sup>, a home-based organization with a large number of garments industrial homeworkers as members, reported that DO No. 5 was hardly used by their members because no cases were filed using DO No. 5 as a defense. Nevertheless, the salutary effect of DO No. 5 is that it helped stabilize wage rates for industrial homeworkers in the 1990s onward for it forced industry to maintain a reasonable standard of compensation for piece-rate work. Today, however, DO No. 5 is fading in the collective memory of industrial homeworkers because very little outsourcing is being done by the export-led garments industry which is also fading because the industry is losing out to the more competitive producers of Asia. As to the local outsourcers, the primary concern of the industrial homeworkers is the lack of effective and sustained demand for their work. Hence, nobody is thinking of how to utilize DO No. 5.

The other DO is DO 19, issued on April 1, 1993. This DO clarifies the distinction between “project” and “non-project” employees in the construction industry. As is well known, work in construction projects, especially those involving huge infrastructures or buildings, is an intricate collection of projects (e.g., steel works, plumbing, electrical, etc.) spread out, sometimes through several phases of construction. What the DO sought to explain was that project employees, many of whom were informal construction workers, must have written project employment contracts with “a day certain” indicated as to when the project would end based on the description of a “project” or “phase” of a construction project. If a worker is terminated before this “day certain,” he or she is entitled to benefits for the unworked days or weeks covered by the contract, on the condition that his or her termination was not justified, usually determined if there is lawful basis for the termination and if due process was observed. Without a written contract, project employees who have accumulated a year of service are entitled to regularization. And with or without written contracts, all project employees are entitled to other statutory benefits due to wage workers, such as the minimum wage and a rest day.

Somehow, the issuance of DO 19 helped mute the issue about the possible regularization of project employees after the six-month period (based on the Labor

Code provision stating that probationary employees should be regularized after six months) and after rendering a one-year service (based on the Labor Code provision stating that casual employees should be regularized after accumulating a one-year service). The tenure of project employees is co-terminus with the project, as specified in a written project employment contract. DO 19 has somehow made it clear to parties in the construction industry that there are basically two types of employees: the project employees, who are mostly informal construction workers, and the non-project regular employees, who are mostly the skilled workers. Construction companies usually maintain in the payroll the skilled regular workers even if there are no ongoing construction projects because it is difficult to train expert workers, such as master carpenters, who are vulnerable to poaching by local and foreign labor recruiters.

However, the classification of employees between project and non-project has been adopted by the proliferating manpower agencies or service contractors which provide companies with short-term hires. In the past, most agencies deployed short-term hires for less than six months to avoid the dispute over the Labor Code provision that workers have to be regularized after a six-month probationary period or, in the case of casual workers, after one year of cumulative service. What is happening in the labor market today is that the rules on project hiring, developed by DOLE to curb abuses related to non-regularization and non-benefit-payment challenges in the construction industry, are now being applied to other industries. But this time the focus is how to use “project hiring” as basis for the deployment of workers in a manufacturing outfit or merchandise store for two or longer years without getting regularized, like in the construction industry. In short, the idea is to do away with the “5-5 labor market” practice which leads to the casualization of workers, in favor of longer project-hiring arrangements up to three years, which enable employers to keep short-term workers for two or more years without the workers getting regularized. Meanwhile, the business of service contractors, manpower agencies which do certain services outsourced by the principal, has been explicitly recognized in DO 18-A, issued in November 2011 by DOLE.

Another major government reform initiative is the passage of RA 10361, otherwise known as the Domestic Workers Act or *Batas Kasambahay*. This law got

the nod of Congress because the Philippines was a prime mover or lead campaigner for the adoption by the ILO of Convention No. 180 (Decent Work for Domestic Workers). The rationale for the campaign was to help curb abuses of Filipina maids by their employers in East Asia, the Middle East and a number of Western countries. The plight and abuses suffered by these migrant Filipina domestics are well-documented and well-publicized.

The *Kasambahay* law is fairly advanced. RA 10361 requires employers to provide their maids with copies of a written employment contract, pay the minimum wage set by the law (P2,500 in Metro Manila), give maids a full 24-hour rest day once a week, enroll the maids in the SSS and cover the full amount of the monthly premium, and comply with the statutory five-day service incentive leave and other applicable Labor Code provisions. However, unions trying to organize the domestics complain that the new law is by and large still not being enforced in most households. For example, only a handful of law-abiding employers in Metropolitan Manila are complying with the requirements of the law on the issuance of employment contracts. On paper, most LGUs in Metro Manila require the registration of domestics, and yet there is hardly any active registration happening.

### **Labor Rights for All: The Need for Coherent and Comprehensive Policy Regime**

The foregoing government initiatives, positive as they are, are not sufficient to address the hunger of the large mass of IS/IE workers and the precariat for comprehensive and meaningful labor and social protection. As it is, social protection for the vulnerables, while accepted by the government, is often reduced to a question of how much funds the government can allocate to the various anti-poverty programs, such as credit assistance for livelihood projects, skills training for out-of-school youth, and CCT for poor mothers with school-age children. Laudable as they are, they have not altered the unequal structure of the labor market that has remained two-thirds informal and the other one-third partly informalizing.

The ideal is to have a society and economy where the majority, if not all, of the workers enjoy secure or regular well-paying jobs that are amply protected by law.

This is the reason why there are ongoing debates in the ILO on how the IS/IE workers, who are the most numerous in many developing countries like the Philippines, can transition from informality to formality. A draft Recommendation, prepared by the ILO Secretariat for the 2014 annual international labor conference, states that the rationale for such transition is “to promote decent work for all” and “to achieve inclusive development.” In the draft Recommendation, the ILO Secretariat pointed out that

the high incidence of the informal economy in all its aspects is a major challenge for the rights of workers, including the fundamental principles and rights at work, for social protection and decent working conditions, inclusive development and the rule of law, and has a negative impact on the development of sustainable enterprises, public revenues and government's scope of action, particularly with regard to economic, social and environmental policies, the soundness of institutions and fair competition in national and international markets (International Labour Organization 2014).

The above ILO proposal has attracted widespread support among the trade unions because informality indeed deprives workers of basic social and labor protection. In the case of the Philippines, the Labor Code's Book III to VI on labor standards and labor relations do not apply to the informals. The problem is that the ILO proposal tends to assume that formalization per se is sufficient to make work decent for all. As discussed in this paper, varied non-regular hiring arrangements in the formal sector have produced a large mass of precarious workers, the precariat, who do not necessarily enjoy all the labor rights fleshed out in the Labor Code and other related labor laws, such as the SSS law.

But the bigger problem is the reality that one cannot change the economy and the labor market overnight—from informal to formal, from two-thirds informal to 90 percent formal or higher. From the time of Magsaysay in the 1950s to the present, the IS/IE simply kept growing year by year through the decades, while the formal labor market has been subjected to increasing informalization in the last three decades or so.

So what can be done policy-wise in a realistic manner? This paper advances several do-ables based on the following realities: one, there are labor rights which

could be guaranteed without the State incurring any financial haemorrhage; two, there are universal labor entitlements which the State must and should provide, costly though they maybe, simply because they are universal rights due to all workers and citizens; and, three, the proposed transitioning program should be part of the bigger task of crafting and pursuing a development program that can help transform the economy to be vibrant, inclusive, and sustainable for all.

### **Labor Rights: Enabling Laws at No Cost**

On the first premise, there are labor rights guaranteed by the Constitution which are not extended to the working poor even if the enjoyment of such rights do not entail any budgetary allocation on the part of the State. Foremost among these rights is the democratic right of workers to form freely an association of their own choosing for the express purpose of advancing their collective interests. Why should the right to form a union be the exclusive right of a few regular workers, and why should the right to bargain be exclusive to the regulars who have succeeded in forming a union? In Japan, part-time workers are able to form unions of their own and conclude CBAs to protect their collective rights. Why should agency workers, project workers, and other non-regular workers not be allowed to form their own unions and bargain for their collective interests accordingly?

As to the informals, the State should likewise guarantee their rights to form associations or unions to advance their collective interests. As it is, various segments of the informals, such as farmers, home-based workers, fisherfolks, jeepney drivers, informal construction workers, and so on have been forming their respective associations. Some have succeeded in popularizing and advancing their sectoral development agenda, such as the landless farmers demanding the speedy and comprehensive implementation of land reform. The point, however, is that there is a need to put in black and white that the right to form unions and associations is an inherent right of all workers, and that there is a need for the government, at both the national and local levels, to provide guarantees that these rights shall be observed everywhere. This is why the provision of the proposed Magna Carta for Informal Workers (HB No. 2295) on the creation in every LGU of an office dubbed as



“Workers in Informal Economy Local Development Office” is most relevant. The role of WIELDO is to give legal recognition to IS/IE organizations, help organize dialogues between the IS/IE organizations and the government and other sectors of the community, and assist in the formulation of development agenda for IS/IE workers through the proposed “Informal Economy Development Council” or IEDC. Finally, the informal workers should have representatives in tripartite and other consultative bodies at the LGU and national levels.

Now can IS/IE organizations also do collective bargaining? Why not? As pointed out, the problem in the Philippines is that the laws and rules on unionism and collective bargaining have become so narrow and restrictive that these rights have become the exclusive rights of the few regular paid workers. In India, IS/IE organizations, such as the Self-Employed Women Association (SEWA), through their organized strength, have succeeded in getting recognition as legitimate unions, and have also successfully negotiated with State governments on welfare issues such as housing, education, and varied social and economic concerns of the IS/IE workers (see Agarwala 2013 and Bhatt 2006). This is citizenship-based collective bargaining, that is, workers bargaining with an entity that cannot run away from them – the local or State government.

### Institutionalizing Universal Social Protection

The State should move towards a regime of universal social protection, which entails State direct assistance for the least capable, and State subsidy to those partly capable. To a certain extent, there are efforts along this line, such as the continuing expansion of the coverage of Philhealth and the CCT.

But more can be done. Per an ILO study in 2008, governments of developing countries can achieve universal social protection if social spending is increased to at least 5-6 percent of the GDP; in developed welfare states, social spending is over 20 percent. In contrast, Philippine spending is still around three percent of GDP (Asian Development Bank 2013).

Also, much remains to be done on the design of the social protection programs. For example, social insurance coverage, as discussed earlier, has remained narrow

and oriented to the formal sector paid workers, mainly the regulars. To enroll more self-employed informals, the government should be prepared to come in as co-payer of the premium, for in the formal sector, employers share the burden of paying the premium. For those totally incapable of paying any premium, the government should cover everything.

As to the CCT, this should not be treated as a stand-alone program to help the poorest of the poor. In the first place, the program tends to miss the “floating population,” the landless rural poor and the jobless urban poor who have been moving from one place to another in search of available jobs. Many of these poor have no school-going children and, therefore, are excluded from the CCT program which requires attendance of children in schools. Secondly, the CCT monthly allocation of P1,400 is not and will not be enough to liberate poor people from the quagmire of poverty. In Brazil, the *Bolsa de Família*, or CCT, was able to lift many out of poverty during the time of President Ignacio Lula because the *Bolsa* was only part of a broader anti-poverty program which included land reform, rural industrialization, and minimum wage increases for workers.

On Philhealth, universalization means not only full coverage of the population but also fuller coverage of a whole range of health and medical services, including out-patient services and spending on basic medicines. The “capitation” program should be improved to increase the focus on preventive health practices through stronger and sustainable community health programs.

Ultimately, a comprehensive social protection program should cover other basic needs of the working population, such as affordable housing, education of children, and yes, jobs. In particular, the CCT should be expanded to give equal weight or importance to cash-for-work arrangements, especially in the development of homes and community infrastructures.

Ultimately, a comprehensive social protection program should cover other basic needs of the working population, such as affordable housing, education of children, and yes, jobs.

## Transition or Transformation?

Finally, the task of the government is to address the root causes of poverty, informality, and exclusion in society and economy. The “transitioning” proposal of ILO seeks a general uplifting of the IS/IE workers through programs “formalizing” informal enterprises and activities, and extending to the informal workers the rights enjoyed by the formal workers.

However, this transitioning proposal will remain a transitioning proposal if the structural causes that bring about a divided and even segmented economy and labor market are not understood and addressed. Hence, the demand of IS/IE advocates for social and labor protection, taken from a rights-based approach (meaning that demanding such protection is an inherent right of informals as citizens), has evolved into a broader demand for development programs that promote a more balanced and equitable economy. There is increased realization that fulfilling the vision of the Constitution of an empowered and protected informal work force requires bold reforms on the economic, social, and political fronts.

Thus, one of the key demands of the IS/IE advocates is policy coherence. For example, social protection for the landless rural poor cannot be met by only providing CCT to the poorest families, the creation of additional jobs through labor-intensive infrastructure projects, the subsidized enrolment of the landless in the SSS and Philhealth, and the recognition of their rights to form organizations. Social protection for the landless also requires the completion of agrarian reform, and of capacity building for the agrarian reform beneficiaries (ARBs) to [form?] agrarian reform communities (ARCs) in order to modernize and industrialize farming so that more rural jobs can be created and more progressive rural communities can be developed.

It is in this context that Homenet Philippines and the UP Center for Labor Justice forged unity with other IE advocates in the drafting in 2010 of the *People's Social Protection Agenda* (PSPA), the contents of which are virtually self-explanatory: Jobs for All, Social security for All, Health care for All, Education and skills for All, Basic services for All, Social assistance to All in need, Justice for All, and Voice for All. The list of rights and entitlements due to each informal worker, as a citizen and as a human being, are itemized in the PSPA. However, what the PSPA emphasizes is that the realization of such rights and entitlements requires a transformation of the

development framework to insure that growth is balanced, sustainable, and inclusive. Hence, while the PSPA calls for urgent job creation through labor-intensive infrastructure development badly needed by the country, it also demands full implementation of asset reforms to help empower the landless, homeless, and asset-less informals. A discussion of these reform programs—agrarian reform, urban reform, coastal reform, ancestral domain reform, and basic services delivery reforms—is in order.

However, what is abundantly clear is that a holistic economic transformation program, not only a transitioning program for the informals, is needed to make economic growth inclusive, job-full, and sustainable. In particular, there is a need to reverse stagnant industrialization and agricultural development by developing programs to rebuild both sectors. As Usui puts it, the country must restore “industrial dynamism” to make the economy sustainable (2012). This ADB proposal, which is classic Industrial Policy, is asking the government to take an outright leadership role in diversifying the economy and pushing the private sector to go up the higher rungs of industrialization. The key is to go higher value-added manufacturing, supported by skills development for the work force and upgrading of the educational system, including the R&D capacity of the country. Incidentally, this approach will strengthen industrial peace because going higher up means moving away from the traditional labour-intensive (but not necessarily job-intensive economy-wide) processes and the practice of short-term hiring, which fuels labour unrest due to the emphasis on wage and union restraint.

Likewise, there should be an all-out program to upgrade and modernize agriculture, supplemented by programs supportive of increased processing or industrialization of agricultural products in situ. The Constitution envisions just, balanced, and industrially-developed rural communities. And yet the country’s experience with the 25-year-old Comprehensive Agrarian Reform Program (CARP) has been dismal. The land transfer is still a work in progress, while joblessness is widespread in the countryside because no agri-based industrialization has taken place. As it is, the country still has to strategize ways by which it can regain self-sufficiency in staple crops, vegetables, and other agricultural products. The obvious solutions are patently non-SAP: hasten the completion of CARP, transform CARP beneficiaries and small farmers into modern agribusiness producers with full support from government, strengthen R&D and extension work in agriculture, and promote rural industrialization.

All of the above require separate papers and broad debates among policy makers, academics, and society's stakeholders, particularly the representatives of IS/IE workers and the precariat, or those who have less in life and yet continue to be marginalized by the absence of enabling laws and programs to even the social and economic field for them. But let the debates on non-traditional and non-SAP policies begin—now.

### Notes

- 1 HB 2295, filed under the sixteenth Congress (2013-2016), was originally filed in the twelfth Congress and re-filed in the succeeding thirteenth, fourteenth, and fifteenth Congresses. This means it has been languishing in Congress for over ten years already, given the three-year cycle of each Congress. However, advocates of the Magna Carta are heartened by the adoption in February 2014 by the House Committee on Labor of the said bill and its supposed submission to the House plenary meeting anytime in 2014-2015. In the February 2014 Committee deliberations, House members proposing a similar Magna Carta agreed to have a consolidated bill based on HB 2295 authored by Congressman Dan Fernandez.
- 2 The BMBE law of 2002 seeks to promote the development of micro enterprises by exempting them from the coverage of the minimum wage law and the application of tax on operations. BMBE stands for Barangay Micro Business Enterprises.
- 3 An indie film maker even produced in 2007 a movie titled *Endo*, showing the employment saga of a contractual employee hopping from one job to another.
- 4 The union membership at PLDT, over 10,000 in the 1980s, has shrunk to only over two thousand due to changes in technology, competition from the wireless telcos, and outsourcing of the different phases of work, such as billing, collection, repairs, etc., to different outside service providers.
- 5 The general meaning of management prerogative is the right of an employer to manage business freely as he or she sees fit. The only definitive limitations are existing laws and legal contracts. See Azucena, *Employment and Outsourcing Under Philippine Law*, 2010.
- 6 The term “5-5 labor market” was coined by Dr. Ofreneo in his report on the labor market situation in the garments situation in 1999. The report was part of the evaluation report by the Independent Monitoring Group on the “Terms of Engagement” of the Levi Strauss Company with its contractor-producers in the Philippines. See Abrera-Mangahas et al., 1999.
- 7 The “temporary manpower export” program was launched by the Marcos administration in the mid-1970s to ease unemployment. It was officially considered an “interim” program while the “labor-intensive export-oriented” (LIEO) industrialization had not yet taken off. In the 1980s, the acronym LIEO was shortened to EOI, or export-oriented industrialization, while the “overseas contract workers” were re-christened as “overseas Filipino workers” or OFWs.
- 8 PATAMABA stands for Pambansang Tagapag-ugnay ng mga Manggagawa sa Bahay, or National Linkaging of Home-Based Workers. It has been renamed as the Pambansang Kalipunan ng mga Manggagawang Inormal sa Pilipinas, or National Association of Informal Workers in the Philippines. The acronym PATAMABA has been retained.

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# Reducing Power Rates in the Philippines

ROWALDO D. DEL MUNDO

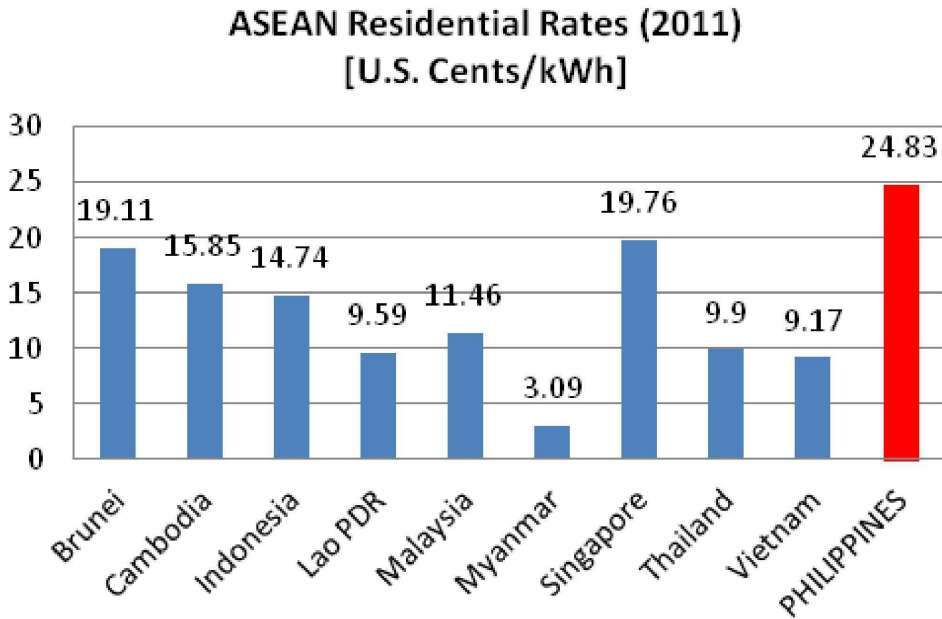
## **Introduction**

The competitiveness of the Philippines is being undermined by the high cost of electricity. Understanding the factors why power rates in the Philippines is so high is the first step to solve this problem. In the context of the restructured electric power industry which unbundled the generation, transmission, distribution, and supply function and business and where a competitive electricity market exists, the power rates in the Philippines can be reduced through a proper power supply procurement process.

## **Power Rates in the ASEAN Region**

### Comparison of Power Rates

The power rate in the Philippines is one of the highest in the world and is second highest in Asia, next only to Japan. In the Association of Southeast Asian Nations (ASEAN) region, the power rate in 2011 for residential consumers in the Philippines is about twice the average price, and is the highest in the region as shown in figure 1.

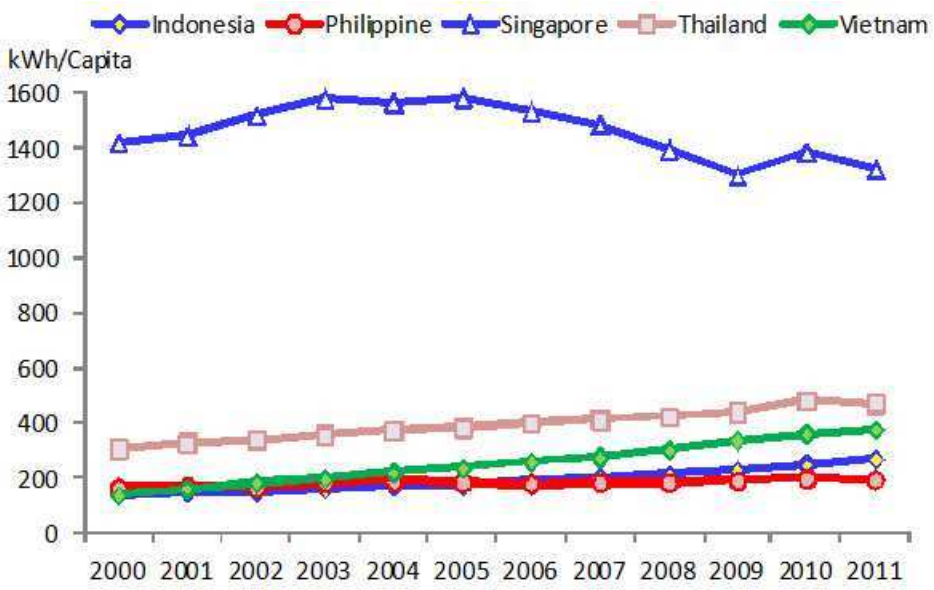


**Figure 1:** Power Rates for Residential Consumers in ASEAN

Source: Data from Japan International Cooperation Agency-Institute of Energy Economics, Japan (2013)

#### Households Electricity Consumption

The per capita power consumption as calculated from electricity consumption in the residential sector and the population from 2000 to 2011 is shown in figure 2. It can be noted that the household electricity consumption intensity in the Philippines, Indonesia, and Vietnam in 2000 was similar, but the Philippines has lagged behind its neighboring countries after 10 years. The Philippines’ per capita household consumption of 197 kWh in 2011 is significantly lower than the 1,323 kWh of Singapore, a country with a high economic standard. Indonesia, with the same economic level as the Philippines, has a much higher household consumption intensity at 272 kWh. In Vietnam, a country on a lower economic level, households consumed 380 kWh per capita. This is twice the intensity in the Philippines, implying more improvements in the quality of life in Vietnam.



**Figure 2:** Residential Power Consumption Per Capita in ASEAN

Source: *Japan International Cooperation Agency-Institute of Energy Economics, Japan(2013)*

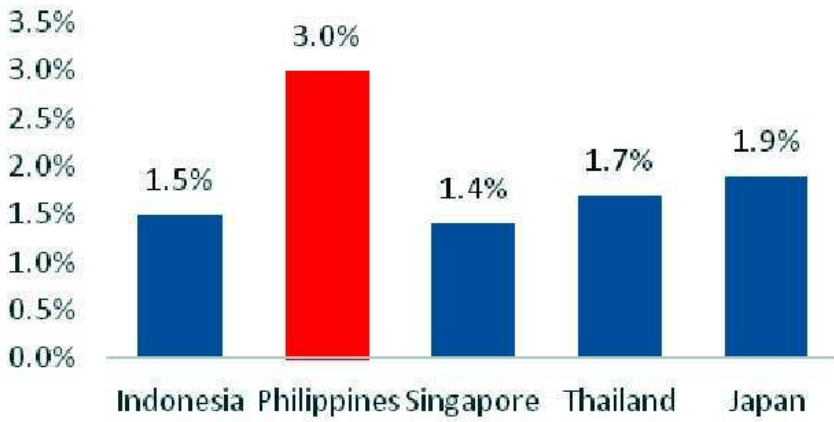
### Households Expenditures for Electricity

On the other hand, Philippine households, which are poorer compared to those in Singapore and Japan, are spending more for power. As shown in figure 3, the ratio of power consumption spending to per capita household expenditures in the Philippines is very high at 3 percent whereas the ratio in Japan is only 1.9 percent. Thus it may be inferred that the very low per capita residential consumption in the Philippines is very much affected by the high cost of electricity.

## Continuing Power Rate Hikes in the Philippines

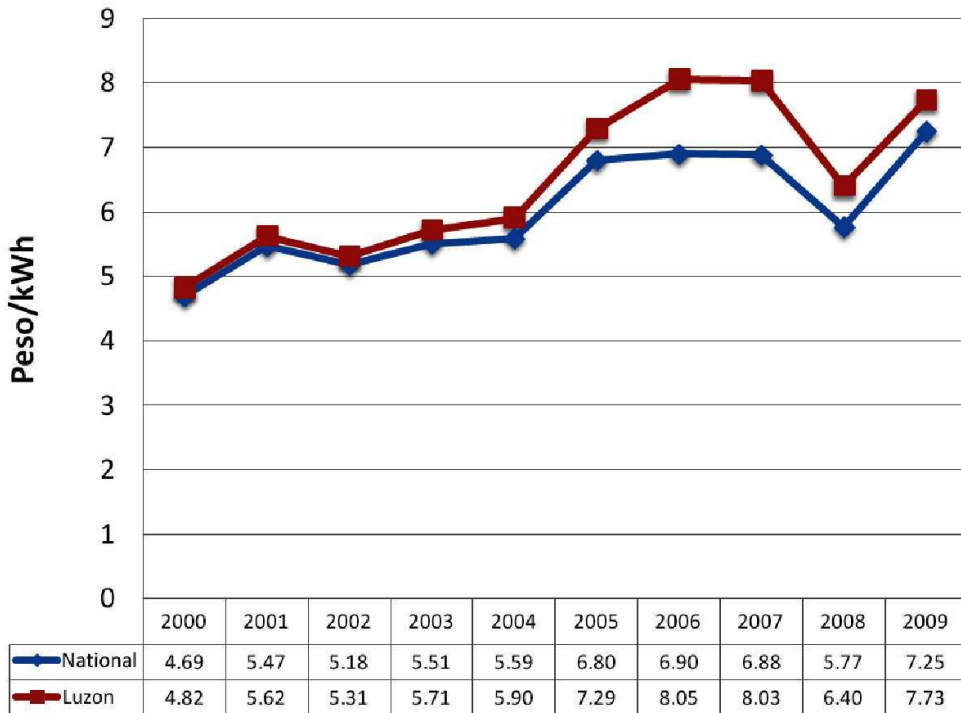
### Power Rates after Power Industry Restructuring

In an attempt to solve the high power cost in the Philippines, Republic Act No. 9136, the Electric Power Industry Reform Act of 2001, was enacted into law by the Philippine Congress. However, the power rates in the Philippines continued to increase at a 6 percent average annual rate from 2000 to 2009, as shown in figure 4.



**Figure 3:** Ratio of Power Consumption Spending to Per Capita Household Expenditure

Source: Japan International Cooperation Agency-Institute of Energy Economics, Japan (2013)



**Figure 4:** Power Rates in the Philippines (2000-2009)

Source: Del Mundo and Espos (2011) [2007 is an estimate]

**TABLE 1.** MERALCO Electricity Tariffs (Pesos/kWh)

Year	Residential	Commercial	LV Industrial	HV Industrial
2004	5.70	6.87	5.83	5.24
2011	10.25	10.81	9.70	8.37
Ave. Annual Change	8.73%	6.69%	7.54%	6.92%

Source: US Agency for International Development (2013)

**TABLE 2.** Average Inflation Rate (2004-2011)

Year	2004	2005	2006	2007	2008	2009	2010	2011	AVE
Inflation Rate	5.70%	7.00%	5.50%	2.80%	6.20%	4.10%	3.70%	3.60%	4.83%

Source: Data from National Statistics Coordination Board [Inflation at Year 2000=100]

### Power Rates in the MERALCO Franchise

The electricity tariffs in 2004 and 2011 in the MERALCO franchise, the largest distribution utility with 63 percent market share in the total electricity sales in the country is shown in table 1. The electricity tariff has increased by 8.73 percent annually for residential customers, while tariffs for commercial and industrial customers increased annually by 7 percent. The power rates increases in the MERALCO franchise area lot higher compared to the core inflation rate of the country, which averaged at 4.83 percent in the same period, as shown in Table 2.

## Factors Affecting Power Rates

### Effect of Taxes

A study by the US Agency for International Development (USAID)(2013) has deduced the effect of taxation, subsidies, and purchasing power in select ASEAN countries to compare their power rates. Table 3 shows the estimate of electricity

tariffs in 2011 for residential customers (typical 200 kWh per month consumption), commercial (3,000 kWh per month), low voltage industrial (50,000 kWh per month), and high voltage industrial (200,000 kWh per month). Taxes in the Philippines have effectively increased the power rates for different types of consumers by 7.61 percent to 9.25 percent. Similarly, taxes in Singapore and Thailand taxes have also increased their power rates by 7 percent.

Malaysia has pegged its taxes at 6 percent for all customer classes. Indonesia taxes its residential customers only 2.4 percent while commercial and industrial customers are taxed at 12.5 percent. Comparing the tariffs without the government-imposed taxes, electricity prices for residential consumers in Indonesia, Malaysia,

**TABLE 3.** Effect of Taxes on Power Rates

Customer Class	PH	SG	IND	MAL	TH
<b>With Tax (USD/kWh)</b>					
Residential	0.2257	0.2207	0.0527	0.0755	0.1106
Commercial	0.2327	0.2207	0.1665	0.1442	0.1342
LV Industrial	0.1861	0.2127	0.1288	0.1268	0.1278
HV Industrial	0.1865	0.1909	0.1094	0.1145	0.1151
<b>Pre-tax (USD/kWh)</b>					
Residential	0.2066	0.2063	0.0514	0.0713	0.1034
Commercial	0.2133	0.2062	0.1480	0.1365	0.1254
LV Industrial	0.1729	0.1988	0.1144	0.1197	0.1195
HV Industrial	0.1714	0.1784	0.0973	0.1080	0.1075
<b>Increase in Electricity Tariffs</b>					
Residential	9.25%	6.98%	2.43%	5.96%	7.00%
Commercial	9.05%	7.00%	12.50%	5.64%	7.00%
LV Industrial	7.61%	7.00%	12.50%	6.00%	7.00%
HV Industrial	8.77%	7.00%	12.50%	6.00%	7.00%
<b>Price of Electricity Relative to Philippines</b>					
Residential	100.00%	99.85%	24.89%	34.50%	50.04%
Commercial	100.00%	96.66%	69.37%	63.98%	58.77%
LV Industrial	100.00%	114.98%	66.18%	69.20%	69.08%
HV Industrial	100.00%	104.09%	56.73%	62.98%	62.73%

Source: Data from US Agency for International Development(2013)

and Thailand are only respectively 25 percent, 35 percent, and 50 percent of their counterpart in the Philippines. This explains why households in the Philippines consume less electricity while share of electricity in their expenditures are much higher. For commercial and industrial customers, the tariffs in the three countries are only 70 percent of the tariff in Philippines. Without taxes, power rates in the Philippines and Singapore are comparable.

#### Effect of Subsidies

The effect of subsidies in power rates is summarized in table 4. Singapore and the Philippines have no subsidy for electricity consumers. On the other hand, the governments of Indonesia, Malaysia, and Thailand provide subsidies to electricity consumers in different forms, including subsidies in fuel and in power system infrastructures. After removing subsidies from the pre-tax tariffs, the prices in Indonesia increased from 124 percent to 168 percent, indicating that the level of subsidies ranges from 24 percent to 68 percent, with residential customers enjoying the highest level of subsidy. Malaysia's subsidies to the different types of consumers range from 7 percent to 13 percent while the Thais enjoy subsidies that range from 31 percent to 37 percent.

After removing taxes and subsidies, electricity tariffs in the Philippines remain higher compared to those of other ASEAN countries. Tariffs in Indonesia are only 42 percent to 86 percent of those in the Philippines. Malaysia's tariffs are only 39 percent to 75 percent, while Thailand's are only 69 percent to 91 percent of the tariffs in the Philippines.

The comparison of electricity tariffs in 2011 in Indonesia and the Philippines is validated by an independent study of Japan International Cooperation Agency-Institute of Energy Economics, Japan (JICA-IEEJ) in 2013, as shown figure 5. The Philippines' rate of 20 US cents per kWh is significantly higher than Indonesia's 14 US cents per kWh after the removal of subsidies.

**TABLE 4.** Effect of Subsidies on Power Rates

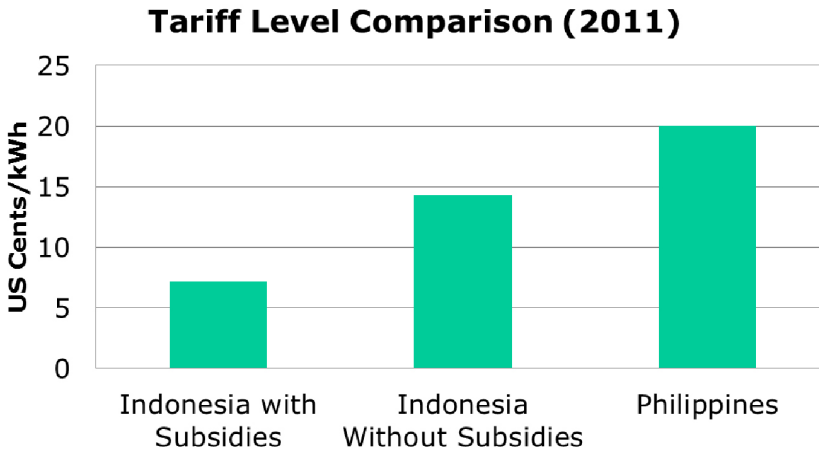
Customer Class	PH	SG	IND	MAL	TH
<b>Pre-tax with Subsidies (USD/kWh)</b>					
Residential	0.2066	0.2063	0.0514	0.0713	0.1034
Commercial	0.2133	0.2062	0.1480	0.1365	0.1254
LV Industrial	0.1729	0.1988	0.1144	0.1197	0.1195
HV Industrial	0.1714	0.1784	0.0973	0.1080	0.1075
<b>Pre-tax after Removing Subsidies (USD/kWh)</b>					
Residential	0.2066	0.2063	0.0866	0.0808	0.1419
Commercial	0.2133	0.2062	0.1832	0.1461	0.1639
LV Industrial	0.1729	0.1988	0.1496	0.1293	0.1580
HV Industrial	0.1714	0.1784	0.1325	0.1176	0.1461
<b>Percent Change in Electricity Tariffs</b>					
Residential	100.00%	100.00%	168.39%	113.40%	137.30%
Commercial	100.00%	100.00%	123.78%	107.04%	130.73%
LV Industrial	100.00%	100.00%	130.75%	108.03%	132.26%
HV Industrial	100.00%	100.00%	136.18%	108.90%	135.83%
<b>Price of Electricity Relative to Philippines</b>					
Residential	100.00%	99.85%	41.90%	39.12%	68.70%
Commercial	100.00%	96.66%	85.87%	68.48%	76.83%
LV Industrial	100.00%	114.98%	86.53%	74.75%	91.36%
HV Industrial	100.00%	104.09%	77.26%	68.59%	85.21%

Source: Data from US Agency for International Development (2013)

### Effect of Fuel

It can be concluded that the power rates in the Philippines are significantly higher than in Indonesia, Malaysia, and Thailand even when taxes and subsidies are removed. Singapore's power rates, which is also high and comparable to the Philippines', can be explained by the type of fuel or energy resources used in power generation, as shown in table 5. Singapore is practically dependent on expensive fossil fuel. Its power generation from natural gas and oil accounts for 96.4 percent of the total. The other





**Figure 5:** Tariff Level in Indonesia with and without Subsidies and the Philippines

*Source: Japan International Cooperation Agency-Institute of Energy Economics, Japan (2013)*

3.6 percent come from waste energy conversion systems. The Philippines, Indonesia, Thailand, and Vietnam, on the other hand, use coal to fuel their power plants (22 percent to 44 percent) and as well as hydro (5 percent to 30 percent) and other renewables which do not require fuel. Fourteen percent of other renewable energy is provided by geothermal resources. Thus the Philippines generates 70 percent of its power from cheaper sources than is done in Indonesia (60 percent), Vietnam (50 percent), and Thailand (30 percent). It is reasonable then to expect to have lower rates in the Philippines after removing taxes and subsidies. The notion that the tariffs in the Philippines are comparable to Singapore, where there are also no subsidies and a competitive electricity market exists, and therefore sustainable is a misconception.

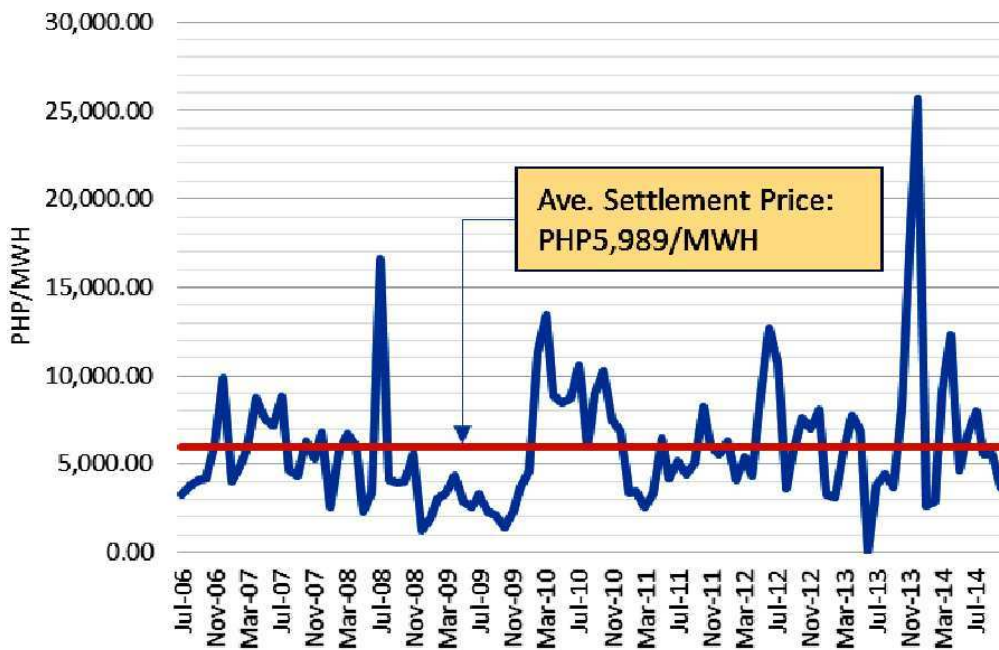
#### Effect of Electricity Market

The Philippines, Singapore, and Vietnam (only recently) restructured their power industry and established competitive electricity markets while Indonesia and Thailand have maintained the Single Buyer model for their electricity markets. In the structured power industry of the Philippines, generation companies (GENCOs) compete for power supply contracts of the distribution utilities (DUs) and in the wholesale electricity spot market (WESM) which trades electricity on an hourly basis.

**TABLE 5.** Power Generation and Fuel Mix (2011)

Fuel Type	PH	IND	SG	TH	VIE
Total GWh	69,176	182,384	45,999	155,986	99,179
Coal	36.6%	44.4%	0.0%	22.3%	21.1%
Nat Gas	29.8%	23.2%	78.0%	68.3%	43.9%
Oil	4.9%	20.3%	18.4%	1.3%	4.8%
Hydro	14.0%	6.8%	0.0%	5.2%	30.1%
Other RE	14.7%	5.2%	3.6%	2.8%	0.1%

Source: Data from Japan International Cooperation Agency-Institute of Energy Economics, Japan (2013)



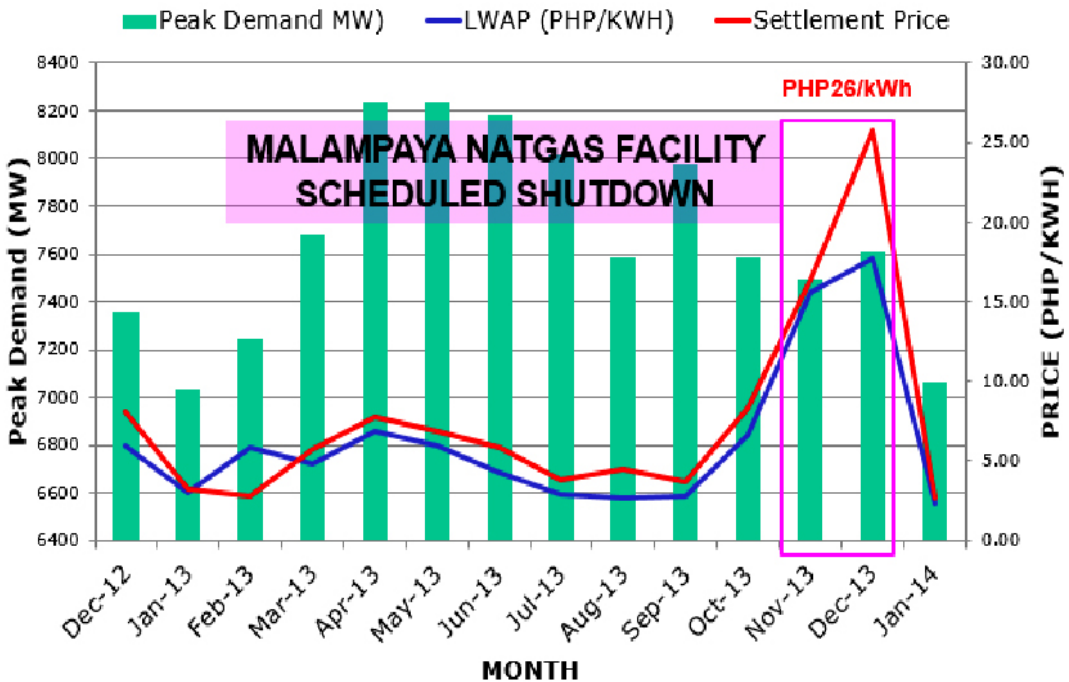
**Figure 6:** Price Settlement in WESM, July 2006 to July 2014 (PHP/MWH)

Source: Data from Department of Energy (2015)

The prices in Philippine WESM since its operation in 2006 is shown in figure 6. The volatile prices in the market for the period fluctuate around PHP6.00 per kWh, which is 250 percent of the National Power Corporation’s (NPC) effective selling price (PHP2.39 per kWh) just before EPIRA was enacted in 2001. In 2005, before the WESM was created, the NPC’s effective selling rates were PHP4.41 per kWh, PHP3.38 per kWh, and PHP2.53 per kWh in the Luzon, Visayas, and Mindanao grids, respectively. The NPC’s average generation rate in 2011 was PHP4.67 per kWh.

Figure 7 shows how the WESM prices behaved before and during the shutdown in 2013 of the Malampaya natural gas facility that supplies about 40 percent of MERALCO’s requirements. The settlement price during the two months of shut down averaged PHP26 per kWh.

While it is clear that the market prices settled in WESM are higher than the NPC’s generation rates allowed by the Energy Regulatory Commission (ERC) to



**Figure 7:** Price Settlement in WESM (PHP/MWH), December 2012 to January 2014

Source: Data from Wholesale Electricity Spot Market

be passed on to Distribution Utilities,<sup>1</sup> it must be noted that the volume traded in WESM is only about 10 percent of the demand. Thus the high electricity cost in the Philippines can be attributed not only to the spot market but also to the bilateral contracts between power generation companies and distribution utilities, which is about 90 percent of total electricity demand.

### **Reducing Power Rates**

#### Reducing Taxes

The USAID study concluded that the power rates in the Philippines are comparable with those in Singapore and recommended to address the power rates issue by reducing taxes. But as pointed out in Section 4.3, the fuel mix (i.e., dependence on fossil fuel) of Singapore dictates that its prices will be naturally and significantly higher. The taxes in the Philippines are only 2 percent to 3 percent higher compared to those of most ASEAN countries. Indonesia's taxes for commercial and industrial customers (12.5 percent) are even higher than the taxes in the Philippines (9 percent). Thus, if taxes in the Philippines are reduced to the level of taxes in other ASEAN countries, only a 2 percent to 3 percent reduction in tariff rates can be achieved.

#### Reducing Prices in the Electricity Market

The most logical area to achieve significant reduction in power rates is the electricity market, i.e., in WESM and in the bilateral power supply contracts of DUs with GENCOs.

The WESM has volatile prices which follow the law of supply and demand. While it is important to reform the Philippine WESM in order to refine and simplify its rules to make it more transparent and competitive, the ultimate solution to stabilize market price in WESM is to ensure adequate power supply. The link between market price and security of supply cannot be decoupled, suggesting that the EPIRA reforms must prioritize the activities that will achieve supply security.

Given the small market in the Philippines, security of supply can be achieved by organizing competitive a procurement process and designing properly the power supply contracts of DUs. DUs must pursue long-term contracts (15 to 20 years) with GENCOs for their uncontracted future demand. These long-term contracts must be appropriately designed for the Philippine market structure but with lenders' perspective in order to assure project financing, hence, assuring new generating capacity in the future with certainty.

Existing power plants must be given only short-term contracts (up to 5 years) for their uncontracted capacity and after the expiration of long-term power contracts. This will compel the GENCOs to remain in competitive mode.

The combination of short-term contracts for existing power plants and long-term contracts to induce investment in new power plants will ensure supply will always be more than enough for the demand in the electricity market to realize competitive results.

#### Mandatory Competitive Public Bidding for Power Supply Contracts

Big opportunities to reduce power rates exist in transparent and competitive public biddings for the power supply contracts of DUs. The Philippine electricity market has a monopsony buyer in Luzon Grid since the largest distribution company's market share is about 75 percent of the total sales in the grid and at least 60 percent of the demand of the country. This company has natural economies-of-scale, having more than 5,000 MW demand that can be used to leverage the reduction of power rates through competitive tender for power supply contracts. The biggest distribution utilities in the Visayas, based in Cebu City, and Mindanao, based in Davao, have also natural economies-of-scale although relatively very much smaller than the DU in Luzon.

Incidentally, the three large DUs in the three grids have cross-ownership with generation companies (i.e., the DUs and/or their owners are also owners of generation companies). RA 9136 allows cross-ownership between generation and distribution companies provided the DUs source only up to 50 percent of their electricity requirements from their affiliates. This provision of the EPIRA law provides a legal

incentive for DUs to procure power from their affiliates through negotiated contracts avoiding competitive public bidding. So far, there is no report of an organized competitive public bidding for these companies' power supply contracts.

The EPIRA law can still achieve its objective of making rates affordable to consumers even with the cross-ownership provision (i.e., without amending the law) if the Department of Energy (DOE) and the ERC will issue and implement policies and regulation requiring (i.e., mandatory) public bidding for the power supply contract of DUs uncontracted demand. Affiliated GENCOs of DUs must join the bidding to prove that they indeed can provide the least-cost power to their DUs.

#### Power Supply Aggregation of Electric Cooperatives

While there exist monopsony DU in Luzon and DUs in the Visayas and Mindanao with relative market power, there are also many small distribution utilities scattered all over the country (120 electric cooperatives) whose power demand are only between 2 MW and 40 MW, with the exception of 3 ECs whose demand is approaching 100 MW. In order to achieve economies-of-scale, the ECs must be organized to aggregate their power demand and subject them to a competitive procurement process for power supply contracting. Incidentally, these electric cooperatives are non-stock, non-profit utilities owned by the consumers themselves. Since they do not have conflict of objectives, unlike the private DUs with affiliated GENCOs, they can demonstrate how to reduce power rates through competitive bidding for power supply contracts.

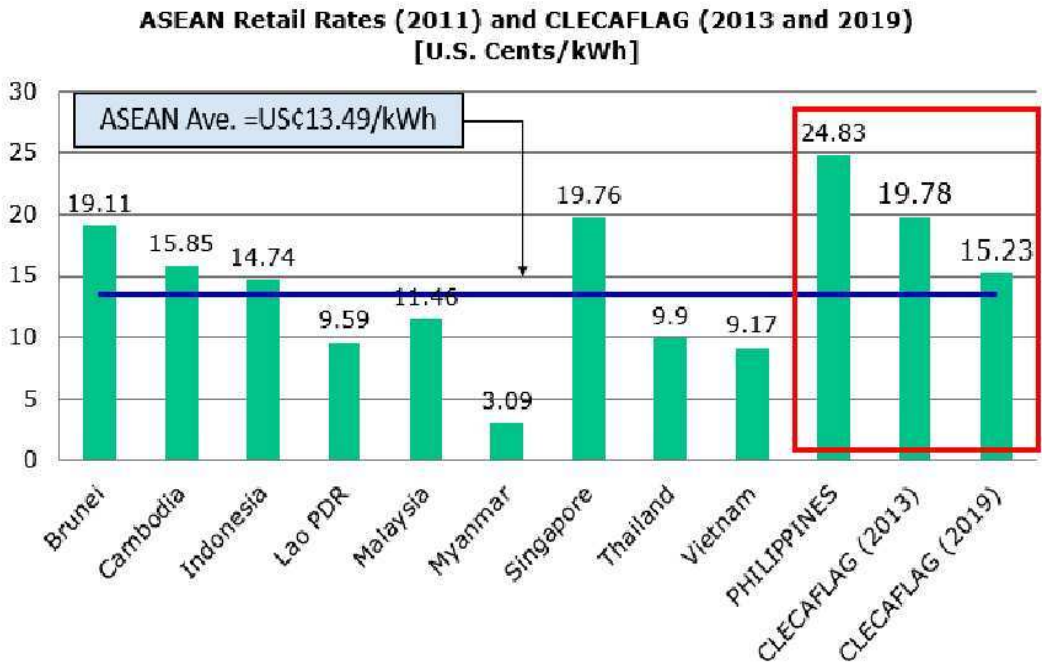
Three groups of electric cooperatives have organized and implemented power supply aggregation and joint procurement processes. The first is the 20 ECs in Mindanao that organized themselves as AMRECO PSAG (Association of Mindanao Rural Electric Cooperatives Power Supply Aggregation Group), tendered 300 MW of aggregated baseload demand out of their 600 MW combined demand, and signed a 20-year power supply agreement in November 2012 for a new capacity to start delivery in 2017. The second group is the 11 ECs in Central Luzon which called themselves CLECAFLAG (Central Luzon Electric Cooperatives Association–First

Luzon Aggregation Group). They also bid out 300 MW baseload power demand and signed power supply agreements in June 2013. The third group of ECs is the R1+CAR Aggregation Group from Northern Luzon (Region 1 and Cordillera Autonomous Region) which bid out an aggregated demand of 106 MW in April 30, 2015.<sup>2</sup>

The Mindanao ECs individually received offers from Mindanao-based GENCOs that ranged from PHP5.50 per kWh to PHP6.30 per kWh on “take it or leave it basis” prior to their aggregation initiatives. The group hired an international transaction advisor which was tasked to announce in other countries the competitive tender for a 300 MW demand in Mindanao to bring in serious foreign bidders that could challenge the apparent monopoly of GENCOs in Mindanao. The transaction ended up with a signed contract at PHP4.12 per kWh, which was lower than the unannounced reference or target price of PHP4.20 per kWh of PSAG based on the least-cost power supply plan prepared by the PSAG Technical Working Group (TWG) under the supervision of this author.

The success of the Mindanao ECs in their power supply aggregation inspired the ECs in Central Luzon to follow the same process (joint least-cost power supply planning and competitive public bidding).<sup>3</sup> With the prevailing generation price in Luzon at more than PHP5.50 per kWh and MERALCO’s announced newly signed contracts at PHP4.67 per kWh (MERALCO 2012), the Central Luzon ECs set PHP3.90 per kWh as the target price for their 300 MW aggregated baseload demand. This is based on the power supply planning for ECs which estimated a best new entrant baseload power plant in Luzon Grid. To meet their target, CLECAFLAG set a price cap for their bidders at PHP4.09 per kWh as indicated in their bidding documents (lower than the PHP4.12 per kWh price obtained by the aggregation group in Mindanao). The Central Luzon ECs signed power supply agreements and risk mitigation agreements in June 2014 at PHP3.70 per kWh at 100 percent load factor. The winning GENCO will put up a 1,200 MW power plant that will start to deliver power in 2019 to the ECs in Central Luzon.

The impact of aggregation and competitive bidding for the Central Luzon ECs is illustrated in figure 8. The actual average rates of residential consumers in the coverage areas of the 11 ECs in Central Luzon (Aurora, Pampanga, Tarlac, Nueva



**Figure 8:** Rate Reduction of ECs in Central Luzon

Ecija, and Zambales) in 2013 was US cents 19.78 per kWh, which is 26 percent lower than the Philippine average in 2011 at US cents 24.83 per kWh. The estimated power rates for residential consumers, assuming a 10 percent blend from WESM, will be reduced to US cents 15.23 per kWh in 2019 when the commercial operation date (COD) of the new power plant will start to generate and deliver power. This rate reduction translates to a 30 percent reduction in generation rates and an effective 20 percent reduction in total power rates for consumers in Central Luzon.

Following the Central Luzon ECs, the Region 1 and CAR ECs launched in September 2014 their Joint Competitive Power Supply Procurement (JCPSP) for their aggregated uncontracted 106 MW baseload demand with 80 percent load factor. The bidding, which was concluded on April 30, 2015, got the lowest bid for R1+CAR ECs long-term power supply contract at PHP 3.75 per kWh, which was only 2 centavos lower than the losing bidder's offer of PHP 3.77 per kWh. The winning bidder will also start supplying the ECs in 2019 for 20 years. The outcome of the bidding will reduce the generation rates of the ECs by 30 percent starting in 2019.



## Ensuring Least-Cost and Security of Supply

The power supply aggregation groups of ECs demonstrate how to achieve least-cost and security of supply. The ECs prepared a least-cost power supply plan which was the basis for the volume and timing of supply to be procured, and the target price for their joint competitive power supply procurement. The competitive selection process was designed after a market assessment to meet the target price. Thus, achieving least-cost supply for ends-users of electricity as mandated by EPIRA is possible by adopting this model of doing business.

To ensure security of supply, the long-term power supply contract is awarded to the winning bidder, who is required to construct a new power plant with a lead time of four to five years. Only bidders with track records showing technical and financial capability to develop, build, operate, and maintain power plants are deemed eligible to join the tender. The transaction requires the bidders to submit in their bid the technical proposal showing proof that (a) the site for the power plant has been secured; (b) long-term fuel supply has been arranged; (c) construction contract is being arranged with an engineering, procurement and construction (EPC) contractor; and (d) investors have committed to the project and lenders have been arranged for financing. Only the bids of GENCOs that show compliance with legal requirements, have the required technical and financial capabilities, and ensure that a power plant will commercially operate on or before the commencement of the power supply contract are deemed compliant. These requirements provide certainty of new power generation capacity being added to the grid on time, thus assuring security of supply not only of the DUs but the grid as a whole.

## Target Power Rate Power Reduction

RA 9136 mandated the Department of Energy (DOE) to supervise the restructuring of the Philippine electric power industry. An independent regulator (ERC) was also created to regulate utilities and oversee the competitive electricity market.

EPIRA's objectives as expressed in its Declaration of State Policy<sup>4</sup> and the Philippines' standing in the ASEAN region on power rates imply that we must reduce our power rates. Reducing power rates must start with the Philippine

government setting the target reduction that should be achieved through policy and regulatory reforms (i.e., from EPIRA implementation). This target, which has yet to be set since the enactment of EPIRA, must be used as benchmark in reviewing the legislated power reforms.

From the point of view of competitiveness, the power rates in ASEAN region, which are lower by 20 percent to 30 percent compared to those in the Philippines after removal of taxes and subsidies, is a starting point. The experiences and results of the electric cooperatives power supply aggregation model also imply that generation rates can be reduced by 30 percent. If all other components of power rates, such as generation, transmission, universal charges, and taxes, are held constant, the reduction of 30 percent in generation charges will translate to about a 20 percent reduction in retail rates.

Moreover, at today's cost of investment, operation and maintenance (O&M), and fuel for power plants, the generation cost at blended rate using coal, natural gas, and diesel power plants as representative of baseload, intermediate, and peaking plants, respectively, to supply the Luzon Grid, produces a blended price estimated between PHP4.00 per kWh and PHP4.50 per kWh. This is 21 percent to 36 percent lower than MERALCO average generation rate in 2014, as shown in table 6.

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**TABLE 6.** MERALCO 2014 Generation Rates

January	5.6673
February	5.5359
March	5.2064
April	5.8995
May	5.9703
June	5.3105
July	5.4072
August	5.6352
September	5.1937
October	5.3523
November	5.1072
December	4.9372
<b>Average</b>	<b>5.4352</b>

Source: *Data from MERALCO (2014)*

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## **Conclusion and Recommendations**

Power rates in the Philippines are the highest in the ASEAN region. In order for the country to be competitive, these must be reduced. Reducing taxes to the level of the region will only achieve a 2 to 3 percent reduction. The electricity market is the major factor for why power rates are high.

The aggregation of small electric cooperatives to achieve economies-of-scale and their requirement of a competitive public bidding for power supply contracts have demonstrated that a 20 percent rate reduction can be achieved through such an initiative. A similar effort in the transmission and distribution sectors may be able to contribute another 10 percent reduction in power rates. The large private DUs that have natural economies-of-scale should be able to accomplish more than what the aggregation of the ECs have achieved through a competitive public bidding for their power supply contracts.

The Philippine government must focus its efforts in reforming the electricity market to achieve a significant reduction in power rates. The issuance of a policy by the DOE and its implementation through regulation by the ERC on mandatory competitive public bidding for power supply contracts of distribution utilities is the first step. Long-term forward contracts that will ensure supply security must be designed in such a way that considers lenders' view for project financing. The existing power plants must be given only short-term contracts.

The Distribution Utilities must submit to the DOE or the ERC their least-cost power supply plan with a procurement schedule (i.e., schedule of bidding for uncontracted demand). If a DU fails to procure according to schedule, the government (either DOE or ERC) must bid the uncontracted demand of the DU.

The ERC must approve the power supply contracts in a timely manner to avoid delays in the construction of generation projects. The ERC's final approval is required by lenders for financial closing of the GENCOs power generation projects. A light-handed regulation can be applied if all of the following elements of competitive power supply procurement of DUs are present:

- a) Least-Cost Power Supply Plan (Quantities & Timing)
- b) Target Price (Best-New Entrant)

- c) Market Assessment
- d) Transaction/Bidding Design
- e) Transparent (Clear evaluation methodology)
- f) Competitive Results (against Target/Benchmark)

If the outcome of the bidding process is higher than the target or benchmark, the ERC may apply cost-based evaluation using efficient costs of similar projects (type, capacity, location) as benchmarks.

If a DU submits to the ERC a negotiated power supply contract, the ERC must subject the DU's power supply agreement (PSA) to a competitive selection process, such as the Swiss challenge used under the Build, Operate, and Transfer (BOT) law. This will ensure that the contract price is the lowest that can be achieved from the market.

### **Acknowledgment**

The author wishes to thank the UP College of Engineering and the sponsors of the Chua Liong & Loreta Dy Chua Professorial Chair for their support of the research and in the writing of this paper.

Recognition is also due to the USAID for its support to the power supply aggregation of the Central Luzon Electric Cooperatives through the Advancing the Philippines Competitiveness (COMPETE) Project which enabled the author to demonstrate the reduction of power rates in the Philippines through aggregation and a carefully designed and implemented competitive procurement process for long-term power supply of small distribution utilities.

## Notes

- 1 NPC's generation rate was regulated by the Energy Regulatory Commission even EPIRA has established a competitive electricity market due to NPC's control of the power supply.
- 2 The author facilitated the organization of the three power supply aggregation groups of ECs and served as lead transaction advisor for the joint competitive procurement process for the power supply of the aggregated demand of the ECs.
- 3 The Joint Competitive Power Supply Procurement process of CLECAFLAG was assisted by USAID Compete Project with the author as Lead Advisor.
- 4 EPIRA's Declaration of State Policy, includes among others, the following:
  - (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
  - (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;[underscore supplied]

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# Building Sustainable and Disaster Resilient Informal Settlement Communities\*

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## Introduction

The Philippines ranked second in the list of the 2014 World Risk Index as one of the countries that have high risks of suffering from disasters. Country risk was evaluated by the level of exposure to natural hazards and the vulnerability of a society.

Situated within the Pacific Ring of Fire, the country is vulnerable to various types of environmental disasters. These situations, plus other human and developmental factors, compound the communities' incapacity to cope with such disasters. Recording an annual average of 18 to 20 typhoons, the country's most frequently occurring hazards are floods and storms.

With its natural topography and landscape, watershed areas, including cities and municipalities within the catchment areas of major river basins and natural drainage systems, are characterized as considerably high in level of exposure to flooding.

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\* Five (5) partner institutions prepared a detailed assessment of their respective topics; the assessments were used as references for the preparation of this policy paper. The institutions from the different colleges and an office from the University of the Philippines Diliman led by the School of Urban and Regional Planning (SURP) are the following: the National College of Public Administration and Governance (NCPAG), College of Social Work and Community Development (CSWCD), College of Social Science and Philosophy-Department of Political Science (CSPS-DPS), and the Office of the Chancellor (OC).

**TABLE 1.** World risk index 2014

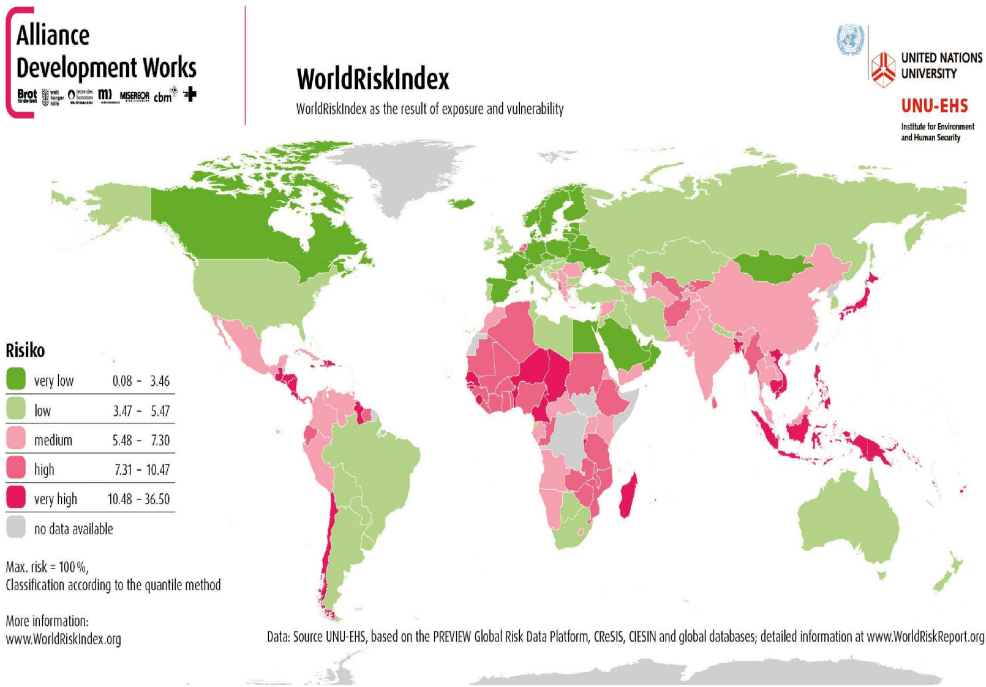
<b>WorldRiskIndex</b>		
<b>Rank</b>	<b>Country</b>	<b>Risk (%)</b>
1.	Vanuatu	36.50
2.	Philippines	28.25
3.	Tonga	28.23
4.	Guatemala	20.68
5.	Bangladesh	19.37
6.	Solomon Islands	19.18
7.	Costa Rica	17.33
8.	El Salvador	17.12
9.	Cambodia	17.12
10.	Papua New Guinea	16.74
11.	Timor-Leste	16.41
12.	Brunei Darussalam	16.23
13.	Nicaragua	14.87
14.	Mauritius	14.78
15.	Guinea-Bissau	13.75

Source: [www.worldriskindex.org](http://www.worldriskindex.org)

Flood-related hazards constitute a major portion of the damages caused by natural disasters in the country. Climate change further aggravates the impacts of these disasters, attributed to anthropogenic (human-induced) factors and unsustainable human practices—such as illegal cutting of trees, water pollution, improper waste disposal, and the like. In most urban growth centers, the encroachment of informal settlements in environmentally critical habitats contributes to increased vulnerability to disaster risks and climate change impacts.

Considering the number of rivers traversing Metro Manila, the cities and towns in the metropolis that serve as national and regional economic growth centers are usually the areas hardest hit by typhoons. Exacerbated by urban congestion and clogged drainage systems, extensive and prolonged floods have caused widespread damage to infrastructure, houses, and schools resulting to the disruption of economic and social activities, and evacuation of many low-income families living in shanty-





**Figure 1:** World risk index showing the ranking of the Philippines in terms of disasters 2014

Source: <http://worldriskreport.entwicklung-hilft.de>

type houses located in low-lying, flood-prone danger zones along the shores of Manila Bay, Laguna Lake, river banks, esteros, creeks, and other waterways.

Urban centers do not just serve as sites for major economic drivers but also provide a rich and diverse places with cultural and tourism potential. Overexploitation of resources and degradation of habitats continue to contribute to the urban environmental decay. While the level of hazard exposure is a significant risk factor, the socio-economic condition and inherent capacity of a community to cope with disasters are also major determinants of vulnerability. The increasing levels of vulnerability, especially in areas affected by land tenure issues, internal disputes, and land use conflicts need to be addressed in order to reduce climate change and disaster risks impacts.

The increasing frequency and intensity of hydro-meteorological hazards have heightened the compelling need for the Philippines to undertake disaster risk reduction and management (DRRM), and climate change adaptation (CCA)

measures and policies. These are cascaded to subnational and local government units through mainstreaming CCA and DRRM in land use and local development planning, thereby formulating localized DRRM measures and CCA options that are applicable and realistic to the needs and current situation of each community.

To examine the hazards and vulnerability to natural disasters, a collaborative research project was undertaken by the University of the Philippines-Center for Integrative and Development Studies (UP-CIDS) led by the School of Urban and Regional Planning (SURP). This paper discusses the results of the study entitled, “Building Sustainable and Disaster Resilient Informal Settlement Communities” under the program on “Environmental Planning and Governance Towards Sustainable and Resilient Communities at Selected Priority Areas in Metro Manila and Laguna De Bay Regions.”

The study aimed to translate the technical and scientific data and community-related initiatives into a policy and plan of action for disaster risk reduction and management. As a research strategy, the study is multi-disciplinary for components that highlight science, technology, and social science. Disaster risk management and community resilience were examined from the perspective of land use planning and environmental governance. Barangay Tumana in Marikina City served as case study sample site.

### **Framework for Sustainable and Resilient Informal Settlements Communities**

Urban resilience is the ability to tolerate and recover from unexpected and unfortunate events associated with natural hazards and impacts of climate change. Building resilience to these disaster risks can be achieved by reducing the vulnerability and increasing the adaptive capacity of institutions and communities, but can be done most effectively through strengthened urban planning and management; considering and responding to these risks are an essential part of active and practical urban management strategies and infrastructure development plans.<sup>1</sup> The Hyogo Framework for Action (HFA) is the key instrument for implementing disaster risk reduction, adopted by the Member States of the United Nations. Its primary goal is to build resilience of nations and communities to disaster risks by achieving



**Figure 2:** Components of building sustainable and resilient settlements

substantive reduction of disaster losses in the lives and in the social, economic, and environmental assets of communities.

The HFA offers five areas of priorities for action, guiding principles, and practical means for achieving disaster resilience for vulnerable and marginalized communities in the context of inclusive growth and sustainable development.<sup>2</sup> In building the resilience of informal settlement communities, this paper has anchored its community-based disaster risk management approach to the HFA.

In examining Barangay Tumana as the pilot site, the study focused on five components, namely: urban planning, environmental governance, capacity development of local government (barangay level) and societal organizations, community development and livelihood program, and financial and economic development.

### **Methodology and Approaches**

Primary data gathering was conducted in December 2013 through a questionnaire survey of 384 households in the selected pilot area. A household survey was conducted to generate empirical data and baseline information on the

socio-economic conditions in the targeted communities. Data collection using a questionnaire survey instrument was done in December 2013. The sample size of 384 out of 8,455 total households in Tumana was surveyed using the Slovin's Formula with 95 percent confidence level and 5 percent margin of error. Various frequency and cross-tabulations were produced. The 22-page survey instrument was divided into three parts: (a) the socio economics; (b) LGU assessment; and (c) characterization of democratic processes.

Survey results were supplemented by the review of related literature and secondary data, documents, reports, and conduct of key informant interviews. National government agencies (NGAs)—including the Housing and Urban Development Coordinating Council (HUDCC), Department of Environment and Natural Resources (DENR)-River Basin Coordination Office (RBCO), Department of the Interior and Local Government (DILG), National Disaster Risk Reduction and Management Council-Office of the Civil Defense were consulted to identify potential relevant sources of literature and other unpublished information. A multi-stakeholder validation was also conducted in order to validate the research findings and analysis of results of each project component.

**The Climate Change (CC) Act or RA 9729 and the  
Disaster Risk Reduction and Management (DRRM) Act  
or RA 10121**

Republic Act (RA) 9729 of 2009 and RA 10121 of 2010 state that the LGUs shall be the frontline agencies in the formulation, planning, and implementation of climate change and disaster risk reduction action plans in their respective areas, consistent with the provisions of the Local Government Code, the CCA and DRRM Frameworks, and the National Climate Change and Disaster Risk Action Plans. Barangays shall be directly involved with municipal and city governments in prioritizing climate change and disaster-related issues, and in identifying and implementing best practices and other solutions. Municipal and city governments shall consider climate change adaptation (CCA) and disaster risk reduction (DRR) as their regular functions. Provincial governments shall provide technical assistance, enforcement, and information management in support of municipal and city climate

change action and disaster risk reduction management plans. Inter-local government unit collaboration shall be maximized in the conduct of climate and disaster-related activities. Non-governmental organizations (NGOs) and people's organizations (POs), as well as representatives from vulnerable sectors, shall also be consulted.

According to these laws, LGUs shall regularly update their respective action plans to reflect changing social, economic, and environmental conditions, and emerging issues. The LGUs shall furnish the CC and DRRM Commissions copies of their action plans and all subsequent amendments, modifications, and revisions thereof within one month of their adoption. The LGUs shall mobilize and allocate necessary personnel, resources, and logistics to effectively implement their respective action plans.

The local chief executive shall appoint the person responsible for the formulation and implementation of the local action plan, preferably with training and knowledge on climate change or disaster risk related subjects. It shall be the responsibility of the national government to extend technical and financial assistance to LGUs for the accomplishment of their Local Climate Change and Disaster Risk Reduction Action Plans. The LGU is authorized to appropriate and use the amount from its internal revenue allotment (IRA) necessary to implement the said local plan effectively, any provision in the Local Government Code to the contrary notwithstanding (RA 9729 and RA 10121). The law seeks to develop resiliency in the face of natural and man-made disasters, and to lessen the vulnerability of the grassroots by establishing a full range of programs in disaster preparedness, including education, training, and organizing. From disaster response and recovery, the law now focuses on disaster risk reduction, preparedness, and mitigation.

### **Informal Settlements in a Disaster Prone Area: The Case of Barangay Tumana, Marikina City**

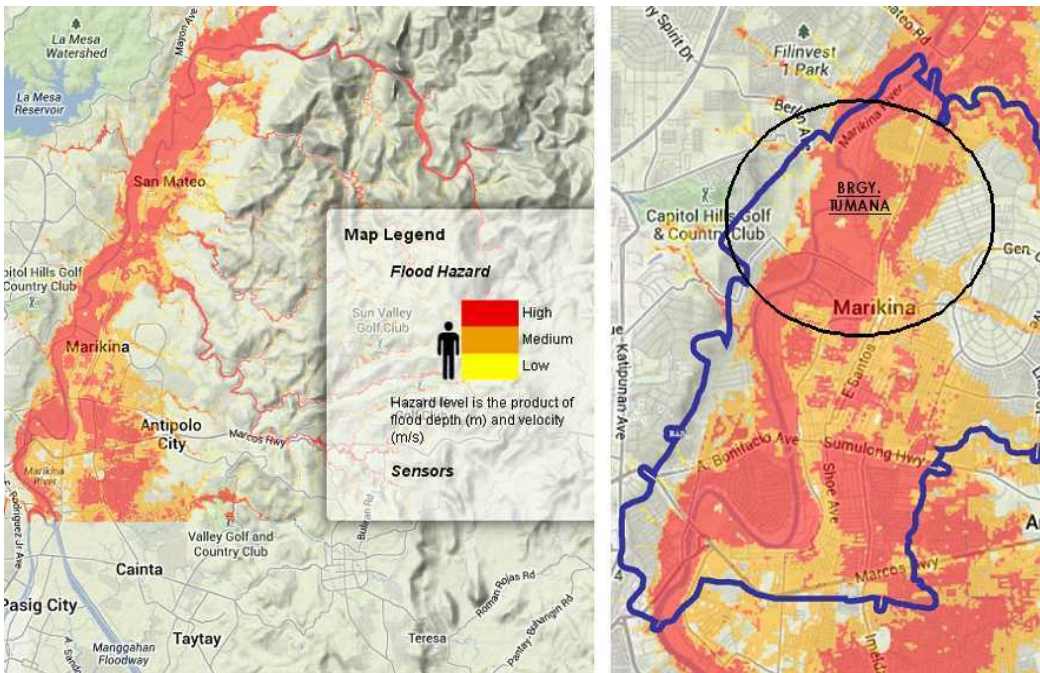
Marikina City, bounded by mountain ranges and sliced by a river, is one of the 17 cities and municipalities comprising the Metro Manila area or the National Capital Region (NCR). The total land area of Marikina is approximately 2,150 hectares or 21.50 km.<sup>2</sup> Marikina City is composed of 16 barangays and represents about 3.42 percent of the total land area of Metro Manila.<sup>3</sup>



**Figure 3:** Vicinity map of Marikina City

The population of Marikina City was recorded at 424,150, representing an increase of 32,980 over its May 2000 level. The increase in the population translates to an average annual population growth rate (PGR) of 0.81 percent. Meanwhile, the City of Marikina contributed 3.58 percent to the total population of the National Capital Region (NCR) of 11,855,975 in 2010.<sup>4</sup>

Marikina City serves as a catch basin of rainwater coming from the municipalities of San Mateo and Montalban, and the cities of Antipolo and Quezon, comprising 543 square km of land draining into the Marikina River. During typhoons and heavy monsoon rains, the Marikina River overflows, inundating low-lying areas near its banks, which had affected 10,000 residents for two weeks at its worst in 1988 before the institution of mitigation programs.



**Figure 4:** Map showing flood risk assessment of Marikina City for Typhoon Ondoy, 2009

Source: Project DOST-NOAH, 2014

In 2009 flashfloods induced by tropical storm Ondoy (international name: Ketsana) inundated 75 percent of Marikina’s land area. It recorded the highest flood level in the city’s history at 22.8 meters. There are seven barangays that are at high susceptibility for flooding. These are Malanday, Industrial Valley Complex (IVC), Tañong, Jesus Dela Peña, Sto. Niño, Nangka and Tumana. The said barangays are mostly on the riverside. Almost 90 percent of Marikina City will be affected in the worst case scenario of flooding.<sup>5</sup> The figure below shows the level and extent of exposure of Tumana to flooding hazard.

Tumana is the fourth largest barangay in terms of land area at 181.87 km.<sup>2</sup> Despite its relatively small land area, Tumana is the second most populous barangay in the city with 41,809 residents as of the 2010 census conducted by the National Statistics Office (NSO). Tumana also recorded the highest number of informal settler families with makeshift houses (328 HHs) in Marikina City for the past years.

Families residing in dwelling units made of light materials and makeshift houses are most vulnerable during typhoon and flash floods. Table 2 below shows the number of households living in makeshift houses in the seven barangays of Marikina City that are previously identified by the local government with highest susceptibility to flooding.

**TABLE 2:** Households with makeshift houses, 2012-2013

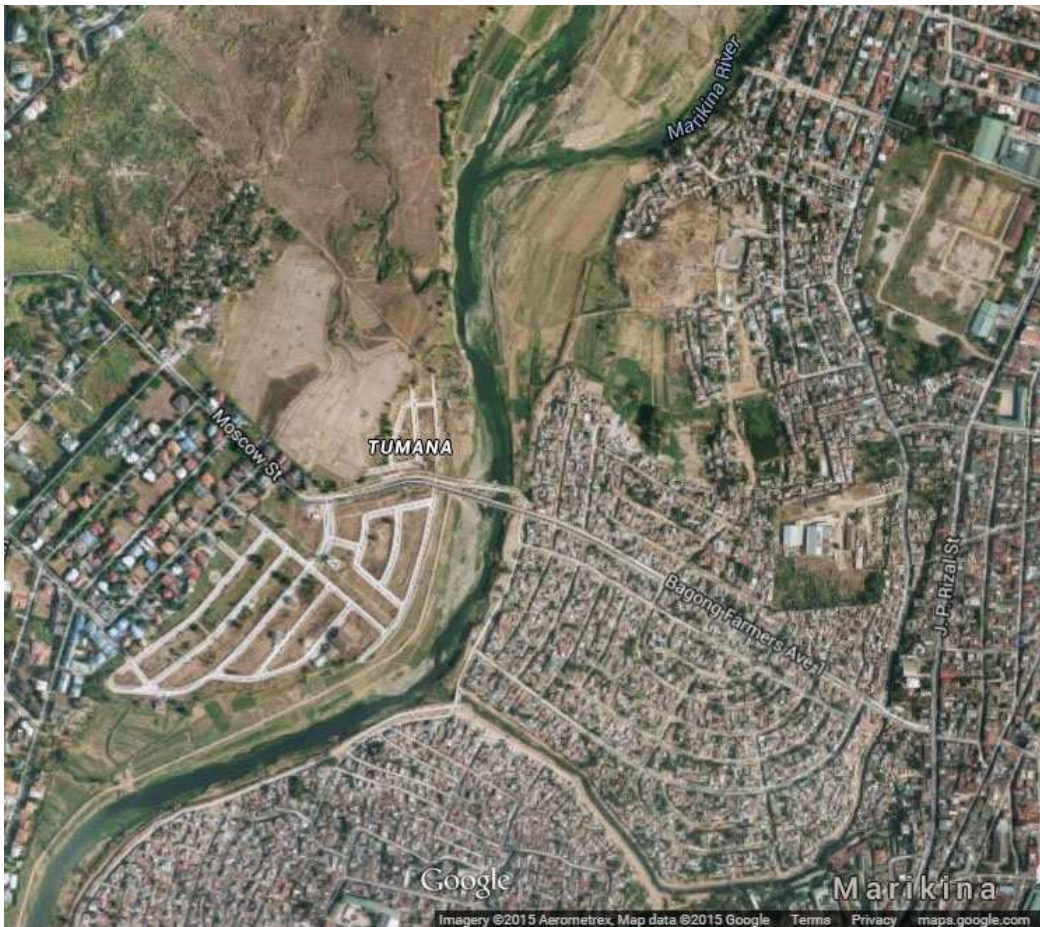
Barangay	Population	HHs with Makeshift Houses
Tumana	36,054	328
Malanday	43,863	157
Nangka	32,299	151
Sto. Niño	21,668	97
Jesus Dela Peña	6,277	46
IVC	11,562	31
Tañong	5,309	15

Source: CBMS Census 2012-2013

Barangay Tumana, formerly a medium density residential area, was converted into a socialized housing zone. *Socialized housing* refers to housing programs and projects covering houses and lots or home lots only undertaken by the government or the private sector for the underprivileged and homeless citizens (informal settlements), which shall include sites and services development, long-term financing, and liberalized terms on interest payments.<sup>6</sup> However, Marikina City is hampered by land tenure issues in Barangay Tumana. Figure 5 shows that Tumana is highly populated by informal settlement families living in makeshift houses.

With its location close to the Marikina River and aggravated by the community's poor socio-economic condition, disaster risks are undoubtedly high in Tumana. Based on survey results, the socio-economic profile of the 384 informal settlements families in Tumana was analyzed according to income level, educational attainment, employment status, and land ownership to analyze the degree to which Tumana can be affected by hazards and natural disasters.



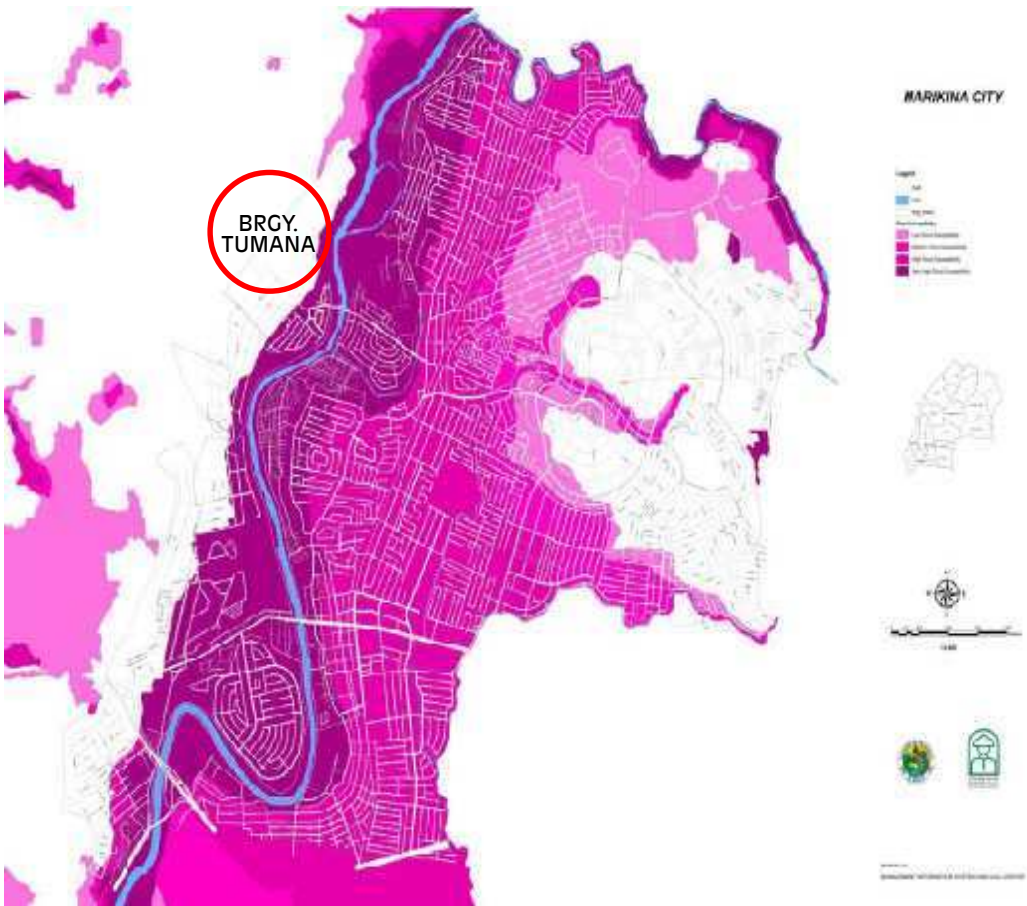


**Figure 5:** Map showing the location of makeshift houses in Marikina City

Source: Google Maps

The flooding map (figure 6) shows that both riverbanks for the whole stretch of the Marikina River traversing the city are flood-prone areas, frequently flooded during heavy rains and typhoons. While the normal depth of the river is 3 m, it can go as high as 18 m during heavy downpours.<sup>7</sup>

The increasing rate of rural-urban migration in the country is expected to continue and will exacerbate this housing problem, particularly in highly urbanizing cities. Considering the rate of urbanization and the level of hazard exposure, there are very limited safe areas left for settlements expansion in the city. Hence increasing



**Figure 6:** Map showing the flood susceptibility of Brgy. Tumana, Marikina City

Source: Marikina City Disaster Risk Reduction and Management Office, "Local Disaster Risk Reduction and Management Plan of Marikina City, 2013-2018."

the resilience and capacity of this marginalized and vulnerable group of urban populations residing in slum areas and squatter settlements is necessary in order to cope with disasters and sustainably adapt to the adverse impacts of climate change. The proliferation of informal settlements in the danger areas of Tumana indicates its high vulnerability to flooding.

## **Sustainability Issues and Urban Development Challenges in Brgy. Tumana, Marikina City**

More Frequent Typhoons and Intense Monsoon Rains,  
Increased Risks to Flooding, and Imminent Threat of Earthquake

Based on the climate projections of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), Metro Manila will be facing an increased level of hazard exposure for the coming years as climate change impacts continue to intensify due to unsustainable human activities that result in environmental degradation. The National Capital Region (NCR) is threatened by the adverse impacts of the steady increase in temperature, changes in seasonal rainfall causing heavy rains or drought, and projected increase in occurrence of extreme weather disturbances.



**Figure 7:** Photo showing rescue teams from several government agencies helping to evacuate residents from their flooded homes in Brgy. Tumana at the height of Typhoon Mario on September 19, 2013.

*Source: GMA News Online, "Marikina Inundated as Tumana River Overflows."*

The City of Marikina is considered the second most flood-prone city in the National Capital Region (NCR). Approximately one-half of Tumana (the eastern portion which is about 100 hectares in size) is intermittently flooded. Flood heights reach a maximum of 40 feet. Marikina is projected to have fewer but stronger typhoons and sporadic monsoon rains (*habagat*). Projections for a hotter summer season—particularly during the months of March, April, and May—and heavier rains during the rainy season—particularly the months of June, July, and August. It is also noted that the socialized settlement zone is situated in an environmentally critical area.

Moreover, the Philippine Institute of Volcanology and Seismology (PHILVOLCS) discovered that an active fault system stretches at least 31 kilometers across Metro Manila. PHILVOLCS has warned the local government that Tumana is facing an imminent threat of a magnitude 7.2 earthquake.

Disaster risks are high when vulnerable communities are not able to withstand the adverse effects of hazards, and their capacities are not sufficient. With this increasing level of hazard exposure in Marikina City, the most vulnerable sector is the marginalized group of urban dwellers residing in slum areas and informal settlements, with Tumana being a case in point.

#### Vulnerable and Marginalized Informal Settlement Families (ISF) Living in High-Risk Disaster Prone Areas

The informal residents of Marikina City, despite their relatively poor condition in the slums, do not want to leave Tumana even in the face of disaster risks and the prospect of frequent evacuations. Most of the informal settlement families, currently occupying the open spaces and environmentally critical areas, express interest in relocation to safer resettlement sites.

Flooding has become the imminent threat in the center of the city, endangering settlements and disrupting basic social services. The informal settlement families (ISF) sprawling in danger zones pose great risks to environmental and living conditions. The City of Marikina's determination to abolish informal settlements is a demanding task; yet it is a curative means to achieve sustainable development through one of its promising Marikina Squatter-Free Programs, which asserts a safe in-city resettlement and the allotment of 24 sqm lot for every ISF beneficiary.



**Figure 8:** Photo showing the residents in Brgy. Tumana as they return to houses damaged by Typhoon Ondoy.

*Source: Philstar.com, "Remembering Ondoy."*

### Insecurity of Tenure in Land Ownership and Housing

Another key contributing factor to the community's vulnerability is the insecurity of tenure in land ownership and the emergent challenge of providing adequate shelter. Only 15 percent of the residents of Tumana own their plots of land, while the rest are either ISFs or renters. Majority of the residents (89.3 percent) are yet to receive housing assistance from any agency or organization. As of 2012, there are 729 informal settlement households in Marikina City. The city's shelter needs assessment showed the need for 515 new dwelling units annually from 2013 to 2020 to erase the housing backlog.

The Marikina Settlements Office (MSO) has been proactive in providing safety nets for those that may be considered ISFs to fortify development plans. The pending legal battle between two claimants to the title of the resettlement site, was cited by some key informants as the reason for the delay in shelter (resettlement) plan implementation for Tumana. It seems that there will be an impending conflict between Tumana barangay officials and the Marikina Settlements Office with regard to implementing a relocation plan until the legal ownership of the resettlement site is settled.

The threat to property and person is very high during the typhoon season that there is a need for relocation. However, there are mixed responses among the respondents with 44.1 percent willing to be relocated outside Marikina and only 12 percent still willing to stay in their current location. Even the participants of the focus group discussions (FGDs) were unanimous in their intention to stay in Tumana because they believed in the Marikina Settlements Office's plan of rebuilding once the tenure issue is resolved. This shows a lack of awareness since only a few know about the status of their tenure. At some point, Tumana residents have become the target of fake real estate agents, in exchange for promising people tenure, either in their present location or in another municipality.

Issues on tenure and land conflicts are significant factors that structure the everyday lives of communities and the way they assess and respond to disaster risk. Land tenure is something that is often not addressed by the government because of its political and contentious character.

#### Instability of Local Economy and Lack of Sustainable Livelihood Alternatives

The challenge in the informal economy is that jobs that result from it are low-paying and unstable, with working conditions that are often dismal and unsafe. Survey results show that 42.51 percent of the respondents source their income from the informal economy, with laborers and skilled workers sharing the distinction of being in the top group. Approximately 50 percent of the survey respondents earn PHP 5,000 to PHP 10,000 monthly. Their lack of stable jobs can also be attributed to their stunted educational attainment. It is noted that approximately 50 percent

are high school graduates, or had reached high school but did not graduate. Given the fact that the informal economy hardly provides stability in employment, gaining a regular source of income is a challenge for them. The FGDs held in Tumana validated these results as the participants identified disaster events, unemployment, and demolition as their top three major concerns.

#### Need to Improve Localization of National Policies and Inter-Agency Coordination towards Implementing DRRM and CCA Measures

The limited knowledge of existing policies and laws in addressing DRRM encumbers good local planning and effective implementation. Local Government Units need to reorient themselves, study the existing policies and laws, and strategically map out feasible interventions. Policies and laws need to be revisited to ensure agreements are still applicable.

Duplication of roles, which impedes the efficiency and effectiveness of a supposedly lead agency, also exists. Moreover, failure to implement laws on DRRM and CCA related sectors, such as watershed governance and the absence of institutional mechanisms, weakens the implementation of DRRM and CCA in the country. Due to the country's need to counteract large-scale disasters, the NDRRMC's overall efforts will require the integration of capacity development needs.

Based on the experiences of lead agencies, such as DILG, OCD, DENR and NHA, command and control is at times complex due to a structure in which authority is shared, responsibility is dispersed, and resources are spread out. This affects operations that are supposed to be executed in an expedient manner. The supportive and collaborative link between the lead agencies and implementing partners, from national to local levels, will need to be aligned with the strategies and operations wherever possible to adopt innovative solutions to disaster-related concerns, whether natural or man-made calamities.

The collaborative governance in the city of Marikina has its strength in implementing DRRM due to its demonstrated resiliency amidst the environmental adversities that have confronted the city over the past few years. Moreover, almost all barangays in Marikina City have their own Barangay Disaster Risk Reduction and Management (DRRM) Plan. Due to climate change,

environmental adaptation is necessary to be integrated in Marikina's Local Shelter Plan for ISFs. Thus, the relocation of over nine thousand informal settlements poses a critical challenge.

### **Analysis and Policy Recommendations**

The study raises three major areas for policy recommendation: slum upgrading, vulnerability reduction, and urban resilience.

#### **Undertake Slum Upgrading/On-Site Development and Adaptation**

On-site development refers to the process of upgrading blighted and slum urban areas with a view of minimizing the displacement of dwellers in said areas, and with provisions for basic services.<sup>8</sup>

#### **Prioritize Resolution of the Land Dispute through Appropriate Legal Measures**

Barangay Tumana has a population of less than nine thousand households, based on the 2010 census data. The resettlement program has been put on hold due to the land rights dispute. In the 1990s, Tumana was regarded as a resettlement site of those identified as in-city ISFs. However, with the current conflicting land claims and legal battle, the residents in the barangay, totaling some 8,000 families, are considered ISFs. The rest are residents in private lands. It is common knowledge in the community that there is uncertainty in identifying the real owner or owners of the lands in Tumana. Various names of claimants surface here and there, so confusion among the residents is high. Even barangay officials have difficulty in determining ownership of land parcels in the area. Residents argue that, before considering resettlement and relocation, the identity of the owners of the lands they are occupying must be established first. This might not be an easy task, but a simple first step is to go to the city assessor's office and secure copies of real estate tax payments for the area based on cadastral maps.



The land ownership issue in the barangay has to be resolved since it affects how people perceive issues related to DRRM. The programs of DRRM especially catering to ISFs living in danger zones should ascertain continuity and sustainability to meet the objectives, and whether the objectives are suited to Marikina's development plan. Due to the pending case on land ownership, the present condition of the ISFs needs to be addressed through multi-stakeholders participation, alliances, and co-management of programs.

### **Undertake Human Settlements Planning and Affordable Shelter Development**

Future population growth and expansion of human settlements will present increasing challenges for conserving species-rich regions and maximizing the benefits humans gain from nature. In addition to its direct impact on the housing market, rising population density creates wider welfare issues and consequences for living standards. To make a more adaptable housing program for ISFs, there is a need to improve affordability through a subsidy program; this will consider the income of ISFs in rationalizing the prescribed amortization rates for housing. There is also the potential of rental housing, which addresses the problem of identifying a relocation site. Developing the rental housing market as a possible solution to increase the access of ISFs to low-cost decent housing is a way to ease the pressure of giving up productive land to develop low-cost housing.

Policies to access and manage land resources for the purpose of affordable housing should be explored. Incentives to unlock land for affordable housing can also be provided.

Several strategies to increase the supply of land for housing can be done such as: (a) direct allocation of land exclusively for socialized or other affordable housing development; (b) constructing or improving access to unutilized and other potential affordable housing sites in Marikina City; and (c) establishment of a stronger guarantee system for the funding of low-cost housing projects.<sup>9</sup>

## Review the Implementation of City Ordinance No. 48 Series of 2014 on the Construction of Houses on Stilts

Marikina City has been implementing Local Ordinance No. 48 series of 2014 allowing the construction of houses on stilts. Considering that relocation is the least desirable option of both the residents and the local government, this ordinance espouses the concept of constructing new houses and renovating existing houses be done in such a way that the first floor becomes vacant and the second floor will be the living quarters. However, this may be considered a temporary coping mechanism since the historical accounts in Tumana show that the lowest indicated flood level is already 2 m. Furthermore, strict sewage policy must also be followed to prevent the community from directing their wastes to the river.

## Transform the Relief Mentality and Dependency

The distribution of goods donated by different humanitarian organizations should be organized and systematic to ensure equity and fairness. The barangay has to take charge of distribution and implement such a system. There is a proposal to coordinate with donors by holding a conference with them in order for the barangay officials to express to them what the residents actually need, such as medicines, food that is ready to eat, etc. A change of perspective is also necessary for the barangay residents. Some of the people of Tumana generally expect that the help from the government and other groups will be sustained even during the post-disaster period. Some barangay officials recognized the need to eradicate the so-called *relief mentality* (i.e., being dependent on donations from government and other groups) on the part of some residents.

## Intensify Campaign for Proper Waste Disposal and Segregation

Some respondents see improper disposal of waste as a major contributing factor to flooding. Hence, enforcing strict policies in waste disposal will reduce flooding. At the national level, policies are already set up with regards to waste disposal, like RA 9003 (Ecological Solid Waste Management) and RA 9275 (Clean Water Act). In addition to this, Marikina City is known for being among the cities with good waste management programs, with at least eight city ordinances pertaining specifically to waste management and disposal. A study must be made to determine the actual

contribution that improper waste disposal has to flooding in Tumana to help the residents in coming up with an informed choice. Documented best practices on solid waste management could be a good source of lessons for LGUs and communities.<sup>10</sup>

### Reduce Vulnerability

This strategy aims to geographically separate, regulate, or control the extent of interaction between the general population and areas that need to be protected (e.g., National Integrated Protected Areas System (NIPAS), Strategic Agricultural and Fisheries Development Zone (SAFDZ), Network of Protected Areas for Agricultural Development (NPAAD), critical watersheds), and areas that are disaster-prone (e.g., fault lines, and areas that are prone to floods, landslides, and liquefaction).

### Prioritize the In-Filling/Densification of Existing Safe Residential Areas

As population increases, the risk of disasters likewise increases because the number of people at risk in the same location increases, and also because the number of locations occupied by people increases. Risks further arise as areas that are inherently prone to earthquakes, floods, or landslides are built up. Thus, the effects of climate change, such as the increase in tropical cyclones resulting to flooding, increase vulnerability.

### Promote Legislative Measures to Protect the Environmentally Critical Areas Including the High-Risk Flood-Prone Areas

Legislative measures need to be enforced to protect areas that have been identified as environmentally critical, which should include the high-risk, flood-prone areas of the barangay. The barangay should take care to maintain the parks, open spaces, and recreation land use designated in Tumana. The easement policy, a distance of 96 m on both sides of the Marikina River centerline and authorizing the relocation of all residents found within the easement to safer ground, should be effectively enforced and monitored (Ordinance 10 of 1994).

### Identify Disaster-Prone and Other Environmentally Critical Areas and Define Appropriate Residential Development Limits and Specifications in Physical Plans to Reduce Safety Risks

Safety cannot be compromised. Thus, danger zones have to be cleared of population and activities that are at risk, or necessary disaster mitigation measures have to be in place. With this, structural and technological interventions that are based on standards for decent housing, and a rights-based approach in safe locations may be employed.

The land use and the activity pattern of the flood prone area are extremely crucial in the effectiveness of the flood mitigation measures. Some of the main measures to be undertaken during land use planning include: (a) prohibition of any industrial and manufacturing activities in the flood plain; and (b) strict enforcement of the zoning policy along the Marikina River and strong regulatory measures to prevent any encroachments. Only recreational activities like parks, gardens, and play areas may be allowed within the buffer zone.

### Promote Urban Risk Resilience through Community Empowerment and Institutional Capacity Building

The capacity of Barangay Tumana and its residents for environmental governance, particularly for disaster risk reduction and management (DRRM), have to be developed. The barangay has to maximize the resources and assistance it receives to improve its capacity to address the community's environmental issues and concerns. Furthermore, increasing adaptive capacity through community empowerment may be achieved by promoting participatory and community-based DRRM methods. Provision of trainings and seminars, not only on DRRM but also on sustainable livelihood programs, will help increase their capacity to cope with disasters. It is also necessary to improve the community's access to safety nets, basic services, and lifeline utilities.

The engagements between the barangay and external groups are largely limited to provision of goods for those affected by an emergency or disaster situation. Very few external organizations have been tapped to undertake activities that would enhance the capacity of the barangay or empower the residents.

The barangay has to come up with a concrete plan regarding the management of evacuation centers. It has to coordinate with school officials and the city government. Resources (both human and material) for capacity development of both barangay and societal organizations have to be either developed or provided. Specifically, there is a need for the barangay to mobilize the community-based organizations in order to disseminate information, advocate awareness on DRRM, in particular, and environmental governance, in general.

### **Establish Social Enterprises**

Initial results show that the two most active groups in the community in terms of participation in community activities are women and the youth. In fact, specific programs are already being implemented for the development and capacity building of these sectors. In developing social enterprises, the involvement of the youth and women will be crucial to sustainability.

### **Strengthen Community Organizations**

Societal associations are perceived as advantageous for DRRM and CCA. Capacity building programs should be undertaken to enhance their skills in livelihood activities and increase their awareness of DRRM and CCA. Livelihood activities can strengthen and make community associations self-reliant. Community organizations should be empowered by allowing them to participate and contribute to the planning and implementation of development programs, as well as DRRM and CCA measures.

### **Institutionalize River Basin Organization (RBO)**

Continuous capacity building, especially on the part of the LGUs and other lead agencies and frontliners, is needed since disasters are inevitably caused by natural and human-made hazards. The establishment of Marikina's River Basin Office, as strongly recommended by the Department of the Environment and Natural Resources (DENR), is envisioned to lessen environmental vulnerabilities that may worsen living conditions. Such a management or governance structure

would also prevent office operations from being hampered should there be a change of administration. As part of the NDRRM goal to manage the consequences of disasters, the Department of the Interior and Local Government (DILG) has already included Barangay Tumana in the 2015 priority LGU areas that will be assisted on resettlement, especially of ISFs.

### **Strengthen Institutional Coordination Mechanisms and Inter-LGU Linkages**

The City of Marikina and Barangay Tumana need to strengthen their collaboration and coordination to identify concrete ways to implement resettlement programs while waiting an agreeable resolution on the pending case of land ownership.

There should be interagency coordination to improve vertical linkages among levels of administration (national, regional, provincial, and city) and inter-local government unit coordination. This can be reinforced by providing real incentives to inter-local cooperation, and harmonizing legal and service management mechanisms among metropolitan LGUs.

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# An Ode to Re-Dimensioning: Philippine Institutions and Governance

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## **Background**

The Aquino administration has come under significant political pressure recently. This has tested the dynamics and the relations of the three branches of government—the executive, the legislative, and the judiciary—the institutions of governance. The administration of the budget, the power to decide over fiscal savings, and discretion over the use of funds tagged as priority by the administration were at the center of the institutional and public discourse. Similarly put to public scrutiny was the platform and mechanism for peace and development designed for the southern part of the country. Questions were raised by some quarters relating to the architecture of governance of the proposed changes and its consistency with the 1987 Philippine Constitution.

These burning issues compelled the Center for Integrative and Development Studies (CIDS) of the University of the Philippines to organize a soul-searching exercise in the manner that the university knows best: a series of no-holds-barred round table discussion among men and women of wisdom, most of whom had served in the public sector and who stand above particular interests. The CIDS

hopes that such an exercise, conducted with sobriety and balance, will contribute to move this country from the apparent impasse it finds itself on these questions. The discussions engaged academics and members of civil society groups, constitutionalists, former legislators, a former ombudsman, former members of the cabinet, former local officials, and civic leaders.

The discussions adopted the Chatham House Rule, which meant that key resource persons were asked to speak as individuals expressing their own opinions and not necessarily speaking for their organizations. No attribution of ideas to the persons who expressed them was allowed. The rule facilitated free discussion, having in mind mainly the resource persons' thoughts and aspirations as Filipinos and as thoughtful citizens.

This modest narrative is the product of such shared thoughts and discernment in a series of discussions held on 4, 11, and 18 September 2014 at the UP Executive House in Diliman, Quezon City. The discussions were on strengthening the country's institutions of governance.

### **A Framework**

Institutions, policy direction, and leadership are three important themes emerging from the three round table discussions. Clarifying the inter-related concepts provides a frame of reference in interpreting the shared thoughts of discussants on re-dimensioning Philippine institutions and governance. "A level playing field!" is the core message of Jose Almonte, former chief of the Philippine National Security Council, in his work *To Keep Our House in Order, We Must Level the Playing Field* (2007), an afterthought of his stint in public service. A nation that has unsteady growth and which cannot even be described as prosperous has also a stubborn and high level of poverty. Poverty is so steep and massive that economic growth has hardly overturned the equation in favor of those below the growth and prosperity bar. The way of the future for the Philippines, according to Almonte, is to level the playing field. Almonte attributes the uneven level of the playing field to persistent elite control—not just because of the existence of an economic elite but also because of the non-inclusiveness of institutions. The dilemma is also attributed to the lack of a national direction that is strategic, and to an apparent non-cognizance of the

developments around the region and the world thereby making the Philippines less mindful of competitiveness and how it wants to play its role across the region and the globe.

Acemoglu and Robinson (2013) recognize the factors that cause diverse countries in Asia, Africa, Latin America, and parts of the Middle East to fail. This failure is due to extractive institutions that “keep poor countries poor and prevent them from embarking on a path to economic growth” (Acemoglu and Robinson 2013, 398). Although there are notable differences among these countries in histories, cultures, social structures, and languages, and although poverty varies in intensity, Acemoglu and Robinson vividly dissect the cases across these continents and ascribe poverty to extractive and failed institutions.

The Almonte and the Acemoglu and Robinson theses pose challenges to a string of related factors that are crucial to move a nation forward: *institutions, policy direction, and leadership*.

In the historical account of modern public administration, *Twenty First Century United States Governance: Statecraft as Reform Craft and the Peculiar Governing Paradox it Perpetuates*, the scholar Richard Stillman II (2003) makes a narrative on state, public institution, institution-seeking behavior, and the demands of modern history in the West. Stillman highlights an American history characterized by an initial abhorrence for state bureaucratic power and centralized authority partly on account that the United States went through traumatic periods of strong state authority stigmatized by massive corruption of institutions in Europe. This was one reason that some of them fled from Europe and established the new land of freedom called the Americas. The trauma from abuse of state power in Europe caused some people to shun their belief in strong state authority and instead turn to individual liberty and civicism. Over time, however, America realized that bureaucracy and government were inevitable elements of putting system and order in society especially under a growing and complicated development in the realm of public service and processes. From there the incremental recognition of state functions and institutions grew into the United States system eventually crafting the American Constitution, albeit still strongly nurturing individual freedoms and civil liberties, values that are occasionally manifested in anti-statist postures.

The Philippines adopts an American philosophy and system, almost behaving like a copycat of its old colonial regime. Additionally, Philippine laws also carry vestiges of Spanish legal doctrine that are outdated or are incompatible with the distinct character, including indigeneity, of Filipino ways, values, and culture which often operate around customary laws and tradition. Having said all these, it is not surprising that Philippine institutions, policies, and leadership mold are caught in bewilderment. Conflicting or incoherent institutional behavior and policies result

**The major themes of the collective views pertain to the weak performance of political institutions and the underlying factors; and, the suggested reforms and expectations for the future.**

in an impasse that contributes to a retardation of institutions and policies. In some cases, the impasse brings about a never-ending discourse with no resolution in sight.

While wisdom identifies the crux of the problems surrounding institutions and governance, the search for solutions is a continuing national endeavor. Consensus building in the search for a

solution is itself a tough challenge to Philippine democracy.

It is wise and imperative that as institutions, policies, and leadership in the Philippines are reviewed, the exercise of re-thinking also revisits the essence of democracy, and particularly of the 1987 Philippine Constitution. Social justice is at the core of the 1987 Constitution. And social justice probably sets apart the Philippine constitution from that of the United States or of other countries. Social justice might as well be the main barometer by which Philippine institutions, including the courts, will have to weigh their decisions and judicial reviews. No one more succinctly articulates the essence of the 1987 Constitution than Christian Monsod does. For Monsod, social justice has a special place in the Philippine Constitution and he wonders why legal scholars, including Supreme Court justices, “shoehorn our concept of social justice into American standards and jurisprudence...” (Monsod 2014). Social justice is not just about equality (or getting closer to equality) in terms of incomes; it is more about adjustment in starting position and equality in opportunities. In the case of the Philippines, the long colonial history and inequality have brought about the wide gap

between rich and poor, and which therefore requires an adjustment in starting position before there could even be competitiveness. Thus, policies should be able to mirror such opportunities, and those who may formulate laws and policies and interpret the same must not miss the spirit of the Constitution namely, social justice.

This synopsis of the discussion series subscribes to a framework that puts premium on inclusive institutions, or what Acemoglu and Robinson describe as non-extractive institutions with goals of inclusiveness, a level playing field, and social justice. While inclusiveness, social justice, and a level playing field are the end goals of society, these are sustained by processes that are cognizant of Filipino culture, the values of which are to be embedded in the institutions making these processes adaptive and responsive to the changing realities and competition of the external environment. In the words of Neon and Cheng (2007), the strategies will require a constant and dynamic process of “thinking again,” “thinking ahead,” and “thinking across.” Thinking again means regular review and discernment, thinking ahead refers to strategic thinking beyond the horizon, and thinking across is the ability to see the challenges of dynamism and competitiveness that surround Philippine society. The round table discussion series by the CIDS is an exercise in thinking again.

### **Shared Thoughts from Three Round Table Discussions**

A number of key points emerged from among the principal informants and key experts during the three round table discussions. The major themes of the collective views pertain to the weak performance of political institutions and the underlying factors; and, the suggested reforms and expectations for the future.

#### **Institutional Performance and Underlying Factors**

1. Philippine institutions suffer an unstable development, often having had more misses than hits. The palliative solutions from administration after administration do not augur well for long-term solutions to governance in general. Quick fixes match with self-serving interests.
2. Institutions have had long years of poor performance and weak coordination such that one cannot say good performance is sustainable and institutions

tend to slide down rather than move upward. For institutions to be effective and reasonably functional, leadership of these institutions is crucial.

3. The poor performance of institutions is attributed to the low quality of elected officials who are on top of the hiring or the appointment of equally incompetent people.
4. The quality of elected officials is a product of the poor electoral choices and an electoral system that thwarts people's choices at varying levels and means. The poor choice of leaders by the electorate cannot be overstated. The country needs an educated electorate as well as a good and competent line up of leaders who have moral ascendancy and integrity.
5. The poor choice of leaders determines the quality of our government. Choosing leaders demand moral virtue, primarily one of courage.
6. Competing powers have effectively fragmented institutions and have not necessarily been exercised for the maintenance of institutional integrity. The ultimate purpose of the separation of powers is not the exercise of autonomous power per se but the insulation of decisions to ensure integrity, professionalism, and space for discernment.
7. The resolve of institutional functioning is the attainment of the collective goals of the nation, and this means that in the end, while there is separation of powers and distinctness in the responsibilities of the three branches of government, the common end of the three branches and of the state is the promotion of the commons—the promotion of public services, of social justice, and of prosperity across the board. In the end, the Filipino way is to reach out, converse, and converge rather than to move independently of each other, to seek consensus and to achieve the collective good.
8. It is a welcome idea to reconsider the architecture of our governance and institutions by starting to ponder on a system so that institutions could work in unity of purpose rather than being fragmented, and for the nation to achieve harmonious institutions that will promote the collective national goals rather than institutions that compete with each other. However, no matter the form or system of governance, the promotion of social justice is necessary in a society such as the Philippines. Blended institutions refer to institutions



that function and operate in supplementary to each other and they harmonize precisely because there are common goals to attain. For the longest time the Philippine institutions have been acting in disarray rather than in unity.

9. If there is harmony between the executive and the legislative to work on economic policies and thereby address poverty, then many of our poor people will benefit from the system.

### Envisioned Reform and Aspirations

1. The journey to the virtues of courage and vision is not quick and may take generations, but courage and vision beyond the horizon are key to governance as a collective responsibility of society. Collaboration enhances performance and gains support of stakeholders. The journey involves not only a change in the landscape of governance but also character formation.
2. Choice of officials ought to be based on merit, competency and integrity—but these have not clearly been the bases of choice of leaders, which explains why decisions are messed up. Institutions tend to compete or overreach their powers over others, such as the executive branch overpowering the legislative or the judiciary overpowering the executive, and so on.
3. Sometimes there are failures or weaknesses of institutions and administrations; however, the weakness of an administration is not the failure of democracy. Democracy is an aspiration in a continuum which Filipinos as a freedom-loving people pursue. In the context of this discourse, democracy is briefly defined as the pursuit of effective functioning of institutions cognizant of and embracing their infirmities, which we all work at to correct or strengthen. If needed, debate and discourse should be encouraged because these are part of democracy, and debate is good for a vibrant democracy. If needed, we may be open to reconsider the architecture of institutions, such as switching to a parliamentary system.
4. In more operative terms, institutions call for defining, formulating, and enforcing key policies relative to the promotion of social justice and growth. These policies include asset reforms (in agriculture, industry, and the

- manufacturing sector, among others, which have been sorely neglected). If only the Philippines looks across the horizon or beyond its parochial and immediate concerns, it will realize that significant policies have to be adopted and pursued with vigor first, to provide opportunities for human development and secondly, to become competitive and to make some headway as a nation.
5. On the policy front, the legislature plays an important role—its commitment and competency are imperative if it is to design policies that are responsive to social justice and growth. There are gaps between the functional goals of the legislature on the one hand and its performance in framing policies.
  6. The American-style separation of powers of the three branches of government has brought us to a gridlock in policy and decision making. If this is unhealthy, we should be open to consider a switch to a system that will bring coherence to the goals of our institutions rather than result to extreme tripartism of our institutions.
  7. Concerns of majoritarianism are raised in a tripartite system where a 14-member Supreme Court can override decisions by publicly elected officials. Such a set up compels a review of the tripartite system in what appears to be a model of the American Constitution that reflects little of the Filipino imprint on our institutions and policies.
  8. The harmony of our institutions may better achieve efficiency and avoid adversarial approaches. The partisanship is highlighted by extreme tripartism rather than the search for the nuances beyond legalism to find reasoned responses and solutions. Non-lawyers' perspectives and inputs will be valuable here.
  9. Domination of the institutions and the system by dynasties, whether political or economic, complicates democracy as domination by a few diminishes the power of shared decision making for better access to services and resources.
  10. Accountability of those in public offices, including but not limited to the legislature, is a mantra that should be observed beyond elections and the choice of leaders. Accountability is the bridge that should open the black box of public office to the public.

11. Designing institutions with milestones and defining benchmarks of performance in governance are necessary features of an operational guide to enforce accountability in institutions.
12. The need for reasonable choices in leaders and the education of the electorate constantly resonated throughout the discussions.

In summary, discussants aspire for a core spirit that defines the character of Philippine institutions and governance. The spirit of institutional change and responsive governance is the promotion of growth that is inclusive of the majority and the poor. This framework converges with the essence of social justice. Moreover, institutional change and governance finds the spirit, or the “*chi*” of reform anchored on integrity, moral character, and decency in service.

Having laid out such a backdrop, importance is given to finding the harmony of institutions, unity in direction and goals as a nation, harmonizing goals with strategies, and defining policies that are in accord with the spirit of social justice for inclusive development of those who lie on the margins.

Long-term strategies call for leaders of institutions who have the competency and integrity, and who inspire the functioning of institutions to achieve a robust and stable growth. The stability of growth rests upon functioning institutions whose drivers are leaders of competency and integrity.

### **Moving Forward and Facing the Challenges**

The way forward calls for some strategic solutions.

Firstly, there is a call to explore the strengthening of institutions by harmonizing their goals rather than by letting them clash, and by looking beyond legalism and technicism to seek reasoned solutions. A mixed group of individuals—competent, patriotic, and with diverse (technical and professional) backgrounds—may come together as a study group to re-examine the architecture of institutional governance and come up with some preliminary proposals that will start a consensual discussion. The country should seriously consider a rethinking on the architecture and form of governance.

Secondly, a massive and continuous education on the selection of leaders, whether at national or local levels; using ongoing scorecards, benchmarks, and criteria for selection of leaders already developed by various groups may be processed, put together, and subjected to further consensus so that these may be shared and cascaded to various sectors, including the grassroots. An electorate education has long been resonated, but in fact a massive and systematic campaign has not been done. In this connection the recommendation earlier raised should include a review of the criteria for the selection of elected as well as appointed leaders and officials in public office. Citizen education is crucial to turn our society around.

Thirdly, competency building among leaders, whether elected or not, is obviously called for. This should be a collective task of the country's professional, academic, and training institutions. The private sector should support such a project as individuals in this sector have excellent skills in management, professionalism, and goal setting by virtue of their wisdom and track record.

Fourthly, policies—especially those in agriculture, manufacturing, and industry—should be prioritized both in the legislature and in the executive branches. These policy areas are strategically important, and if policies are to be inclusive, these have to look at the direction of investment in asset reforms which have been underperforming for a long time.

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# Global Politics: Is It an Un-centralizing New World Order? (REVIEW ESSAY)

PRIMER C. PAGUNURAN

## Introduction

“World politics is changing, too,” so says Dirk Messner (2011, p. 217).

It is doing so in a way that even anchor countries are becoming important players no less. Some even advance to the level of being key actors in world politics, to a point that they are challenging the leadership of the West that has held sway for the past couple of centuries.

Thus, as one contemporary theme in political development discourse, this review essay largely gravitates around at least five main works by scholars of respectable note. It is a humble attempt to map, conceptually and theoretically, whether or not global politics is un-centralizing or otherwise centralizing. It is a concept that seems so fresh from the crib.

The central concept of this review, however loosely-titled, brings into academic exchanges comparable, even sometimes contrasting, views, arguments, and insights on a single unifying theme and its subthemes. Global politics is the main theoretical framework, and the issue sought to be examined is precisely on whether academics or scholars may now speak with authority on how current global arrangements have

set to un-centralize or centralize everything else below or around it. Admittedly, the drivers of global change are much too myriad.

We deem as within our range of understanding this conception of *un-centralizing* and *centralizing*. They have been sufficiently encompassed in the ensuing intellectual exchanges of the five chosen works and their leading lights.

### **Selected Academic Materials**

The works reviewed in this essay to provide the roadmap for discussion are those of:

Cleveland, Harlan (2002). "The Donald C. Stone Lecture: The Future is Uncentralized" in Peter Kobra, *The Political Environment of Public Management*. Addison-Wesley Educational Publishers, Inc.: New York

Evans, Peter (1996). "Government Action, Social Capital and Development: Reviewing the Evidence on Synergy". *World Development* Vol. 24, No. 6. Pp. 1119-1132

Farazmand, Ali (2002). "Globalization and Public Administration" in Peter Kobra, *The Political Environment of Public Management*. Addison-Wesley Educational Publishers Inc.: New York

Kinsella, David, Bruce Russett & Harvey Starr (2013). *World Politics: The Menu for Choice*. Wadsworth Cengage Learning: USA

Newman, Peter & Andy Thornley (2011). *Planning World Cities: Globalization and Urban Politics*. Palgrave Macmillan: England

The twin streams of un-centralizing and centralizing effects that shape the emerging phenomenon of globalization beg for some answers.

The books *World Politics: The Menu for Choice* by David Kinsella, Bruce Russett, and Harvey Starr, and *Planning World Cities: Globalization and Urban Politics* by Peter Newman and Andy Thornley navigate the theme of global politics from the perspectives of policy analysts and urban planners, respectively.

The two articles in Peter Kobra's book, *The Political Environment of Public Management*, are the work of Harlan Cleveland, "The Future is Uncentralized,"

and of Ali Farazmand, “Globalization and Public Administration,” which is fully covered in Part IX of the book *Globalization and the Future of Public Management*. These were chosen to give the more critical discussion of global politics its so-called public administration flavor. Cleveland’s interesting description of the twenty-first century as one on “how to organize without centralizing” introduced the concept of “chaord,” a fusion of chaos and order, in the lingua franca (2002, 399). On the other hand, Farazmand (2002, 408) divined the new world order as a “system of collective world security where states and peoples can live in peace with each other, ideologies aside.” Both specimen articles of Cleveland (Kobrak 2002, p. 397) and Farazmand (Kobrak, p. 406) appeared in the *Public Administrative Review* or in Vol. 60, No. 4 (July/August 2000) pp. 293-297 and Vol. 59, No. 6 (November/December 1999), pp. 509-522, respectively.

The work of Peter Evans, *Government Action, Social Capital and Development: Reviewing the Evidence of Synergy*, essentially examines the synergy based on “ties that cross the public-private divide” (1996, 1119) and the work clearly contributes to the understanding of world development from the perspective of Third World countries (i.e., “East Asian Miracle”).

Thus the criteria for the selection of all the five materials could be said to be that they represent roots from the same tree: while they come from different theoretical frameworks or perspectives, the arguments of Kinsella et al., Newman and Thornely, Cleveland, Farazmand, and Evans have a unifying thread, that of the element of choice. All these consist of a rich enough literature on the topic of global politics, and more so on its un-centralizing or centralizing effect, it is hoped.

In the interest of a fairly smooth flow of discussion, let this review essay take its moorings from the following central themes:

- 1) the role of choice or decision environment
- 2) American hegemonic cycle—fact or myth
- 3) global economy or the new world order
- 4) “nobody-in-charge systems”
- 5) “menu for choice”

It is understood that the essay does not limit the reach of the works by our cited authors or scholars on other sub-themes or secondary topics of interest that future or further researches may require. It is only carefully thought out that somehow relevant connections could already highlight their major views or arguments as regard global politics understood as the intersection between choice, constraints, and challenges in the context of world trends at nearly all dimensions of state, corporate, or industrial engagement.

### **Dialogues, Conversations, and Synthetics**

#### Role of Choice or Decision Environment

Evan's argument for "state-society synergy" reconstructs, to my belief, the role of choice or decision environment. This view invariably underscores the crucial role of "social capital, character of the state apparatus, and the formal political rules or the social structure" (Evans 1996, 1119).

It is important to emphasize that "stocks of social capital accumulated over long periods of time (i.e., hundreds of years) were the crucial ingredients in creating the 'virtuous circle' in which civic engagement nurtured good government and good government in turn fostered civic engagement" (Evans 1996, 1124). That is not to say that the other link, like the state apparatus itself, has become less crucial.

The restaurant menu argument of Kinsella et al. articulates that choices or decisions are made given certain sets of options or policy outcomes where actors are akin to players in a game. In fact, the authors found useful the mathematical implications of discipline-related concepts (i.e., lingua franca) as "prisoner's dilemma," "tragedy of the commons," "free rider," "game theory," and the like in going about decision making.

Newman and Thornley take to the more definitive view that "decision-making processes play an active part in the interplay of local and global forces." While they realize the "context-shaping forces of economic globalization," the authors still throw suspicion on whether or not "these push all cities along the same path of urban development" (2011, p. 9). It is clear that city governments should not be 'passive recipients of external impacts' according to these scholars. Choices in this case, to



use Huntington's line, could be "sterile" or free from external influence. The political economies of South Korea, Japan, and Singapore demonstrate this point at least in so far as these cities in Asia Pacific do in fact grow without these "forces and agencies?" (Newman & Thornley 2001, p. 9).

The particular mention of these Asian countries is not necessarily implicit of any form or degree of so-called isolationist policies especially when some governments in the global arena manifest their own direction and behavior in relation to the more dominant forces of globalization. It is only in explanation of some validated facts that in effect show that governments cut a choice between being a passive recipient of external impacts or otherwise opt to use a "lifeline," as it were, that makes it practical rather than costly to tread certain development objectives. In a customary sense, development simply refers to external aid.

When Cleveland claims the "future is un-centralized," it is actually in answer to the question of just how corporations are going to govern themselves in the future (2002, 397). Justifiably enough, he conveniently gave the case of VISA International with its 22,000 financial institutions boasting \$1.25 trillion in combined credit card sales. Thus, citing Hock, Cleveland has advanced a view on how to organize without centralizing, with his keyword "chaord" as the fusion of chaos and order (Cleveland 2002, 399).

Thus, to excerpt from Cleveland (2002, 400), this much is said,

The real-life management of peace worldwide seems bound to require a Madisonian world of bargains and accommodations among national and functional 'factions', a world in which people are able to agree on what to do next together without feeling the need (or being dragooned by some global government) to agree on religious creeds, economic canons, or political credos.

Indeed this view is still consistent with his original assertion of a "nobody-in-charge" concept. While Cleveland examines the future from a purely organizational lens, by and large the global panorama casts clear lines of engagement, systems, and processes, and precisely such experiment of un-centralized governance comes into play in global politics. It does away with hierarchies and pyramids to "nobody-in-charge systems" or what Charles Lindblom also terms as "mutual adjustment in a generally understood environment" (Cleveland 2002, 402).

Farazmand, on the other hand, subscribes to the view that globalism and globalization are phenomena that were the “products of the dynamic nature of rapid accumulation of surplus at the global level” (2002, 407). He described what globalization is from various perspectives, but the central logic is one of cause and effect. His long discourse on the causes and consequences of globalization are essentially an explanation of the challenges that the discipline of public administration faces, with public administrators as the change agents. Farazmand (2002, 422) calls it the “new stage of human civilization”.

#### American Hegemonic Cycle—Fact or Myth

Farazmand (2002, 418), for one, fully subscribes to the idea of American hegemony and that globalization is the handiwork of the “great capitalist democracies of the West.”

Cleveland, in speaking on very large systems that now have gone global in scale in the twentieth century (i.e., global information systems, currency and commodity markets, epidemic controls, worldwide credit cards, and the like), has only confirmed this hegemony when he said, “It is no accident of history that American leadership and imagination were the priceless ingredient(s) in developing each of these systems” (2002, 402).

On the other hand, Farazmand says, “The forces pushing toward a dark global future can be countered by democratic forces that recognize the need to counterbalance the economic power of capitalism with the political power of democracy” (2002, 406). In other words, political development as much spurs economic development, and vice versa, to the extent that in an otherwise rapacious capitalist system, the capitalist greed is effectively “moderated” by democratic forces and their political countervailing effect.

Again, along the same vein, the complementary view of Cleveland, who says that “America must take the lead in building a club of democratic equals” (2002, 406), actually presents the more optimistic view compared to the very pessimism of Farazmand.

Evans takes a more myopic appreciation, from a rather inward looking perspective, of Third World countries in terms of the synergy of government action, social capital, and development. In his article, it must have been implied that even his concept of “rule-governed environment” (Evans 1996, 1120) somehow presupposes “networks of ties that connect state agencies and private capital” (Evans 1996, 1120 and 1122). Such methodological myopia self-defines its own role in the emerging hegemony.

This reviewer contends that even the little successes of a capitalist order in a Third World country is reflective of a global capitalist order, and no matter how hesitant is Evans to admit it, some inferences could be drawn of the workings of the capitalist system. Hence, institutions like the World Bank, the IMF, and the like are there to explain that supposed-to-be public-private ties are somehow linked globally while they seem to happen locally.

**But each time the rules of the game are changed, certain problems also spring up.**

Newman and Thornley, in trying to trace the historical beginnings of globalization, have applied the so-called world-systems school of analysis (citing Wallerstein and Arrighi). Thus, they readily acknowledge the American “hegemonic cycle” to have “began around 1900 after the decline of the earlier British-led industrially based hegemony” (Newman and Thornley 2011, 18).

Where Kinsella, Russett, and Starr are concerned, they went as far as to define hegemony based on U.S. military and economic dominance. They said that in a hegemonic system, “One state is able and willing to determine and maintain the essential rules by which relations among states are governed.” The “hegemonial state not only can abrogate existing rules or prevent the adoption of rules it opposes but can also play the dominant role in constructing new rules” (Kinsella, Russett, and Starr 2013, 304).

In fact we agree that hegemony is a necessary mechanism for helping a group to achieve collective good, comparative advantage if you will. But each time the rules of the game are changed, certain problems also spring up. In so saying, this reviewer simply purveys the flashing red signals of emerging waves of threats to peace in humankind, if and when they happen. Understandably enough, authors Kinsella,

Russett, and Starr (2013, 305) made interesting reference to Pax Britannica and Pax Americana as the British Peace and American Peace where these two countries were the more renowned system leaders in economic and military supremacy.

#### Global Economy or the New World Order

Integration into the global economy has its benefits and its costs (Kinsella, Russett, and Starr 2013, 318). Kinsella argues that “if states were to adopt liberal international economic policies, they would also need to retain the capacity to intervene in order to cushion the economic and social dislocations their citizens were likely to experience once the national economy was exposed to international market forces” (Kinsella, Russett, and Starr 2013, 319).

For Newman and Thornley (2011, 197), the impact of integration finds its place in the “transformation of cities”. They argue that the “world cities of the region can take many different roles, including capital exporters, sites of global manufacturing production, a dominant entrepot function and even ‘amenity’ cities that use the environment to attract economic activity” (Newman and Thornley 2011, 197). Newman and Thornley correctly observe that global industrial centers like Bangkok, Jakarta, and Shanghai have shown decline in agriculture and a rise of industrial concentrations in the outer rings of the city, including government-sponsored industrial parks.

Evans (1996, 1121) is prepared to explain the state’s contribution to scale up “peasant social capital” in Mexico, to women’s income earning capacity in Ho Chi Minh, and to China’s would-be market economy.

Cleveland’s healthy acceptance of modern institutions led him to coin the concept of “compelled behavior,” which he described as “a disguised form of tyranny” (2002, 398). According to him, the “organization of the future will be the embodiment of community based on shared purpose calling to the higher aspirations of a people” (Cleveland 2002, 398). Apparently, he thought it to be an improbable accident than an un-centralized company (i.e., VISA International), three decades later, would handle the world’s largest block of consumer purchasing power.

As students or scholars of politics, development studies, and modernization, the theme and subject of global politics may be viewed as a rich frontier of interrogation or inquiry given that it does in fact and in effect traverse histories, economies, democracies, and ideologies to a marked degree or other. This reviewer sees this fine thread from their overarching views woven together neatly.

Indeed there are practical ideas of human organization, as Cleveland likewise believes that “there is no safe depository of ultimate powers of society but the people themselves” (2002, 400).

For Farazmand (2002, 405), his focus is more on the “increasing political and economic expansion of first world nations and global corporations and its implications for the developing world.” Thus he identifies certain analytical perspectives on globalization and the “new world order.” Apparently he foresees the merging or forming of partnerships on a global scale, the utilization of unregulated global money, and the capture by the “trilaterals” (referring to the US, Western Europe, and Japan) of such key international donor agencies as the World Bank and International Monetary Fund. In short, Farazmand believes strongly in global hegemony and the dependence of less-developed nations on the trilateral countries (2002, 405).

With the aid of the Internet and other technological innovations, it has become clear that the dominance of a system leader is even made more convenient. Therefore, global developments in the economic scene probably follow the pace of these technologies.

Simply stated, the Internet, or an information technology environment, has become an enormous opportunity to exchange data and has been used very effectively in government, in governance, and in a whole spectrum of activities taking place at all levels. It is what Cleveland (2002, 397) describes as “uncentralized organizational arrangements.” In many ways, information technology innovations become a powerful agent, an enabler of change. In effect, it pretty much simplifies otherwise complex, slow, and probably insecure modes of business, transactions, exchanges, and the like.

## 'Nobody-In-Charge' Systems

Cleveland (2002, 402) makes interesting inferences from the fact that “very large systems, many of them global in scale, based on massive information outputs and widespread feedback, have been developed in the twentieth century, something that is unimaginable before the marriage of computers and telecommunications.” He observes that a great deal of un-centralized discretion is at work. Thus he rightly points out that the international foreign exchange market and the Internet are now the world’s two most pervasive “nobody-in-charge” systems.

Farazmand realizes significant expansion that benefits the first world at the expense of the developing world where the Internet and information technology have become new forms of liberalization (2002, 405). He rightly stated, “Global corporations were also assisted in their quest for new markets, cheap labor, and unrestricted production sites by such mechanisms as marketing simultaneously over the entire globe” (2002, 405).

Evans has said very little about this main thesis of Cleveland, but one can always draw some valid assumptions that private actors are the agents of multinational corporations in nearly all aspects of economic engagement.

Kinsella, Russett, and Starr would acknowledge what enables or otherwise constrains behavior in the case of economies, societies or cities.

Newman and Thornley (2011), for their part saw the “hallowing out of the nation-state” since the “nation-state has lost its power and ability to influence economic activity as transnational corporations now operate without reference to national boundaries in a borderless world” and that “imperialist forces of world markets have become more powerful than the states to which ultimate authority over society and economy is supposed to belong” (citing Ohmae, p. 28).

## Menu for Choice

Of the five academic materials that are the subject of this review essay, the one that has formulated three levels of analysis, as a theoretical framework, must be the work of Kinsella, Russett, and Starr. These scholars make reference to a global society, a domestic society, and individual decision makers in a manner that explains

relationships or arrangements between and amongst them. In the end, world politics has become the menu for choice for developed and developing economies or democratic societies alike.

More importantly, there is, according to Kinsella, Russett, and Starr (2013, p. 29) a value in “using social scientific method when the compass moves to contemporary world politics, international conflict and cooperation, international political economy, and the global future.” Methodologies in the social sciences are taken to mean that certain patterns of behavior occur with a degree of social scientific regularities that provide enough justification to generalize certain observations (i.e., case studies) from a field of like specimens or species.

Newman and Thornley (2011, p. 292), explaining the notion of “world city hypothesis,” opine that there is a larger context in “planning world cities” and that, in fact, “urban politics operates at a number of interconnecting levels.” In short, city leaders may lay claims on a global exemplary role for their world cities.

Evans’ peroration of “complementarity” convinces students of political development, public administration, and institutional economics that there may, in fact, be “two kinds of inputs that together result in greater output than either public or private sectors could deliver on their own” (Evans 1996, 1120). In other words, given certain choices or constraints, a rethinking of the public-private divide only underscores the importance of what Evans actually refers to as the “evidence on synergy” (Evans 1996, 1119).

Cleveland, for his part, theorizes a “bright future for complexity” (Cleveland 2002, 401) when he says, “The sheer complexity of what had to get done—by governments and corporations, but also by their myriad contractors and subcontractors and their nonprofit critics and cheerleaders—required huge numbers of people to exercise independent judgment, think for themselves, and consult with each other, not just do as they are told.” In short, it may well be true that the ultimate powers of society are the people themselves.

Apparently in China, when it permitted people’s free exercise of opinion and initiative, the first casualty was the Communist Party’s central control. Even Mao Tse Tung played with this idea for a while, which he called “many flowers blooming” (Cleveland 2002, 401). Cleveland contrasted this with the “underlying American

bias favoring looser systems—[which] was being reinforced by the dazzling progress of information technology and its impact on everything to the understanding of our universe” (Cleveland 2002, 401).

Farazmand’s view of globalization was that the spread of global capitalism may have made the state irrelevant or even obsolescent. Interestingly, he even thought of an end of work, and of public administration on account of this. Thus Farazmand tended to argue that global capitalism has led to the “generation of supra-state governing agencies that are supplementing if not supplanting the territorial nation-states” (2002, 407).

In sum, Farazmand was the only one who fully described the concept of globalization as follows:

- 1) an *internationalization* (beyond national jurisdictional boundaries)
- 2) a *border openness* (a unified global economy and homogenous global culture)
- 3) a *process* (continuing capital accumulation in modern capitalism)
- 4) an *ideology* (Western capitalist democracy as driving force)
- 5) a *phenomenon* (those that extend across widely dispersed locations simultaneously)
- 6) *both a transcending phenomenon and a process* (global capital accumulation with positive and negative effects everywhere)

Given the many intervening factors that influence decisions of states, in the end it is still the individual nation-state that decides its fate or destiny even in the center of global affairs and the attendant constant state of flux.

### **Conclusion**

However good or bad the new world order would usher societies, economies, and democracies to the future, global politics has always been an exciting topic of interest in administrative studies/sciences, political development, and public administration for scholars and practitioners in these fields.

The selected materials aptly encompassed the three levels of analysis mentioned in the work of Kinsella, Russett, and Starr, namely, global society, domestic society,



and individual decision makers. The same conceptual moorings were adopted by Newman and Thornley in trying to situate the global and regional context of world cities (i.e., New York, London, Tokyo) and the other important cities in America, Europe, and Asia.

Both works of Cleveland and Farazmand intend to open a window on the effect of globalization in the discipline of public administration, specifically on the notion of “un-centralization” and the “nobody-in-charge” system. There are also the scholarly insights of Farazmand on the causes, consequences, and threats of globalization.

The work of Evans and the value of his theoretical myopia, in just trying to infer-globalization from the synergy in the social structure itself, is still useful in defining the role of social capital vis-à-vis development. It is akin to taking global developments from the pure perspective of Third World countries. Evans simply explains politics at close range. Or much simply put, global politics is viewed beginning with one state—that of a country’s own political economy.

### **Insights & Reflections**

The materials selected for this review essay are deemed to have justified their relevant import to the theme of globalization and, more importantly, on the view that choices are, in truth, what Samuel Huntington fondly refers to as ‘consistent with nothing else’ (i.e. the president). Aptly stating, Huntington (1965, p. 413) says thus, “What’s good for the Presidency is good for the country” or put another way, ‘the power of the Presidency is identified with the good of the polity.’”

The new world order is more generally viewed as the imperialist tendencies of the capitalist system at a global scale and the countervailing guard against its greed or excesses would have been the role of democracies in these societies. Democracy as the antidote of capitalism may have to be contended given democracy’s long historical tradition of check and balance.

The Internet and telecommunication technologies made it more convenient for all stakeholders to keep abreast with the times from any corner of the globe. Computers have become the modern-day global radar screen where all places,

peoples, events, and motions take place. They make making choices a far less difficult affair. As Cleveland says, global information systems allowed for “a rapid response time.” And these technologies, unless undone, will be there for the long haul.

Even in the global environment itself, well-meaning institutions and the resolutions forged between and amongst nation-signatories only serve as “soft laws” to which governments are not bound to comply or abide, nor will these governments be meted sanctions by the convenors of these resolutions.

Globalization as a theme automatically situates itself in the historical landscape, and it cannot be belabored with too much of historicism. Globalization, as a field of political epistemology, has become an ‘interdisciplinary study’ since it actually covers the whole range of human undertaking—sovereignty, public, foreign policy, trade and the like.

As a phenomenon, it will soon be asked if it ever really promotes the general good. Obviously it would require a more critical in-depth study of the implications

Globalization as a theme automatically situates itself in the historical landscape, and it cannot be belabored with too much of historicism.

of free trade, protectionism, the flooding of capital, and the like, which are areas that may not have been contemplated by the particular materials selected for this review essay but nonetheless would have been equally interesting, especially for the economists.

Lastly, there are of course increasingly harmful effects of a fully globalized world economy, such as the role of transnational corporations in world development, but perhaps this is by way of adding more pieces to the puzzle—opportunities, risks and all. In good sense, everyone must inevitably sort of welcome the “birth of a new world” (Farazmand 2002, 406).

Suffice to state that there is the free exercise of choice amidst the influence of globalization – its many pressures and consequences, constrains and challenges. Globalization is here and it has become difficult to say that it will not stay forever. We can either benefit from it, or bear its costs.

In the case of future discourse on the theme and subject, this reviewer finds compelled to open little windows to the broader perspectives scoped in this review essay. In addition to the main references that are the subjects of this review, I hasten to touch on, even if only in passing, two more academic materials believed to cast light for students or scholars of public administration on the intersections of politics, development, and globalization.

Thus this reviewer takes the liberty to cite another academic material entitled *Global Leadership in Transition: Making the G20 More Effective and Responsive*. This book, edited by Colin Bradford and Wonhyuk Lim, is a comprehensive coverage of the G20, its role in the global economy, the system of international institutions, the dynamics of institutional innovations for the G20, as well as public attitudes in the G20 countries.

Offhand, it is said that “from a political perspective, the real merit of the G20 is that it can gradually build up global concerns and consensus among the major powers of the world in the long run” (Bradford and Lim 2011, 59).

Bradford and Lim (2011, 60) have aptly said that “global governance is not ‘governance without governments,’ it is bringing states together to work to manage global affairs. What has changed is simply which states and how many states can work together to make important collective decisions for the world.”

What is important to realize is that even in states often working together to make collective decisions on public affairs, they too sometimes succeed and fail, be it by bilateral or multilateral relations, although all told, it is based on “enlightened self-interest” (Bradford and Lim 2011, 60).

The relevance and rationale of this additional reference to the conceptual analytics of the five main works reviewed here are simply for enrichment. It most clearly situates where the path of global politics leads in a way that somehow sees what global governance structures are relevant for local actors, an insight taken from Dirk Messner on his theory of the role of regions in the world economy.

Still, this reviewer will limit to the more important points the role of the G20, largely on the notion of Bradford and Lim’s “optimal scenario.” The question that may have to be raised is whether or not a global policy framework could be built that can maximize the benefits of international collective action and put the

global economy on the path to stronger and more sustainable and balanced growth, which requires both economic and political aspects (Bradford and Lim 2011, 138). Suffice to say that the G20 really has the potential role to rebalance the world economy.

As scholars say, the G20 is the world's premier forum for international economic cooperation and the global economy's steering committee, as it were. Thus in the larger context of world politics, new world order, globalization, or even un-centralization, it cannot be denied that the G20 plays a central role as the world's economic leaders.

Given a largely centralizing global developmental agenda, we probably have to take differing approaches when comparing the G20 with the G8 as each will have a different developmental menu. Be that as it may, the G20 has become an effective mechanism in the global scene, at least in so far as regional dynamics is understood.

Thus, weaving this notion of the regional power of the G20 into the whole conception of an emerging new world order, it is clear that countries, continents, or regions do play a part in global affairs.

If one has to adequately argue the notion of choice as a possibly unifying factor between and amongst nation-states, and that, in fact, a state decides on its own given certain policy options in the face of a shared global political crisis, then one has to borrow from Bradford and Lim (2011, 59-60) who argue that the "G20 summits were born in the turbulent days of the global financial crisis in the era of globalization and that no single state, even the most powerful one, can deal with major global challenges like the financial crisis of 2008 by itself. It also means that the existing global governance bodies, like the UN, the World Bank and the G8, do not have sufficient capacity to do so either."

This presupposes that each leader faces very different domestic constraints and, on this basis, certain decisions are made given available policy choices. The case of China was given as an example—even if leaders share the same concerns on global issues and agree on the causes, the solutions that they propose and therefore the choices that they make are very different. But this does not necessarily imply any shade of isolationist policies. Admittedly, however, enlightened self-interest alone can guide the politico-economic compass to its own true direction.

This review ends with insights from yet another book, *Managing the China Challenge: How to Achieve Corporate Success in the People's Republic* by Kenneth G. Lieberthal. This work only telescopes, if we may call it that, the China market so it is limited as a navigational tool to intersections of political development, public administration, modernization, and globalization.

As reviewers or readers of Lieberthal's work are saying, the book is an authoritative view of China's political economy and decision-making process, questions that are of interest to companies operating in that country. Suffice to state that "companies will need to understand the fundamentals of the Chinese system and make major adaptations to succeed in that environment" (Lieberthal, 2011, 112). This simply means that foreign companies must master "China's political and economic systems and the priorities of local and national leaders to illuminate the strategies' they want to employ for success. The gist of author Lieberthal's book is how to do business with China.

It is hoped that this review essay exhaustively and somehow substantively surveyed the global landscape in terms of the workings of world politics; some points of convergences or divergences in terms of the relations that bind states or regions; the spectre of a global capitalist system as a new world order and the corresponding defenses of ideological democracies; and the whole matter of choices that could come into play vis-à-vis the constraints and challenges that go with globalization of such unprecedented scale.

In no time, there will be newer developments in the field. Today's perspectives will be challenged to give way to emerging worldviews. Certain world problematiques become effective triggers to test new ideological frontiers, and the next tsunami of policy futures are all worth awaiting for.

The two additional materials injected into this review are intended to open more areas for future research that will exemplify the impact of global politics upon governments, and what a particular government may choose to do to manage its own impact globally. They serve to broaden perspectives on the issues (i.e., global politics, choice, un-centralization) that the five main works have placed into the theoretical architecture of global politics or new world order.

Global politics is, therefore, examined theoretically in either mode (i.e., un-centralizing or centralizing). It is to be taken as akin to the notion of “governance is without government.” In this case, un-centralizing, or its antonym (centralizing), is seen as a function of global politics. It is hoped that the reviewed materials cast upon us a hundred points of light on the relatively high degree of un-centralization shaping up in the global stage.

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## VOLUME 12

**”Judicialized Governance and Populist Democracy: Majoritarian Adjudication in the Philippines and Selected Asian Countries**

RAUL C. PANGALANGAN

“In its original Western milieu, the role of countermajoritarian institutions was to help minorities assert themselves against majorities. In our Asian milieu, the countermajoritarian institutions’ role is the opposite: to help the true but unorganized political majorities expose the organized elites purporting to speak in their behalf (“political ventriloquism”).”

**Defining the National Territory: Security and Foreign Relations Dimensions**

AILEEN S. P. BAVIERA

“Philippine national security is defined in an integrative way, containing elements of both state security and human security. It emphasizes not only military threats but also challenges to the economy, social cohesion, and environment, among others.”

**Poverty and Globalization: Is a Radical Rethinking Called For?**

RAUL V. FABELLA and VIGILE MARIE B. FABELLA

“Why do some countries seem to benefit from openness while others do not? Openness is just a window of opportunity. In order to take advantage of its potential, the economy in question must have a modicum of market-enabling institutions which allow market players to display creativity and reward risk taking.”

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NELSON G. CAINGHOG, and JAIME B. NAVAL

“Perhaps of greater significance to the defense situation of the country is the unprecedented turbulence that has marked the international environment. Great power dynamics has re-emerged as a defining frame of regional security with the US re-balancing strategy and China further reinforcing its major power status.”

## VOLUME 13

**Empowering the Nation’s Working Poor**

RENE E. OFRENEO

“The ideal is to have a society and economy where the majority, if not all, of the workers enjoy secure or regular well-paying jobs that are amply protected by law. This is the reason why there are ongoing debates in the ILO on how the IS/IE workers, who are the most numerous in many developing countries like the Philippines, can transition from informality to formality.”

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ROWALDO D. DEL MUNDO

“Philippine power rates are the highest in the Southeast Asian region, consequently undermining the country’s competitiveness and development. The high cost of electricity can best be addressed by reforming the electricity market itself. Public bidding for power supply contracts must be mandatory, and long-term contracts should be designed to ensure power supply security.”

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MARIO R. DELOS REYES and ANGELICA N. FRANCISCO

“While the level of hazard exposure is a significant risk factor, the socio-economic condition and inherent capacity of a community to cope with disasters are also major determinants of vulnerability. The increasing levels of vulnerability, especially in areas affected by land tenure issues, internal disputes, and land use conflicts need to be addressed in order to reduce climate change and disaster risks impacts.”

**An Ode to Re-Dimensioning: Philippine Institutions and Governance**

EDNA E. A. CO, NELSON G. CAINGHOG and RUBEN JEFFREY A. ASUNCION

“While wisdom identifies the crux of the problems surrounding institutions and governance, the search for solutions is a continuing national endeavor. Consensus building in the search for a solution is itself a tough challenge to Philippine democracy.”

**Global Politics: Is It an Un-centralizing New World Order?**

PRIMER C. PAGUNURAN

“These scholars make reference to a global society, a domestic society, and individual decisionmakers in a manner that explains relationships or arrangements between and amongst them. In the end, world politics has become the menu for choice for developed and developing economies or democratic societies alike.”