CenPEG Issue Analysis
Policy Study, Publication and Advocacy (PSPA)

ISSUE ANALYSIS No. 02
Series of 2014

Against Charter Change: The Need for an Accountable National Industrial Policy

For all the attractive incentives, tax exemptions, onerous privileges, and huge profits reaped by foreign investors, the government's pro-investment and pro-business bias has made growth more exclusive and income inequality more widespread.

By the Policy Study, Publication, and Advocacy
Center for People Empowerment in Governance (CenPEG)
February 25, 2014

The current move to amend the 1987 Constitution by removing its seven economic provisions is driven by at least two myths. Myth 1 is that the amendment seeks to promote the country's national interest. Myth 2 is that foreign investment is the engine of inclusive economic growth, employment generation, and poverty alleviation.

The initiative to remove the constitution's economic provisions particularly the 40% cap on foreign investment in land, public utilities, and other vital industries was defeated in the 15th Congress. In the 16th Congress, House Speaker Feliciano Belmonte, Jr. and Senate President Franklin Drilon endorsed Joint Congressional Resolution No. 1 aimed at amending the constitution through legislative subterfuge. The strategy is not to reword the provisions – since by norm only a constituent assembly or an elected charter convention can do that - but to insert the phrase "as provided by law" thus authorizing Congress to amend the constitution. The move is now being fast-tracked in Congress: Marathon public hearings are being held but these are for show only since in the end, insiders say, the legislative operators will make sure that it will be enacted. Once approved, the legislative act will be ratified in a referendum along with the proposed Bangsamoro juridical entity during the presidential election of May 2016.

Belmonte, Jr. kicked off the constitutional change following an urgent letter on July 13 last year addressed to President Benigno S. Aquino III and Congress leaders by 13 of the country's most influential business organizations such as the American Chamber of Commerce of the Philippines (AmCham), Makati Business Club (MBC), the Philippine Association of Multinational Companies Regional Headquarters, Inc. (PAMURI), and the Employers' Confederation of the Philippines (ECOP). The groups called for the scrapping of foreign ownership restrictions in the constitution "at the soonest possible time." In particular, they also pushed for opening up fully the country's mineral resources.

Next, the House speaker accelerated the investors' urgent letter through the joint resolution for constitutional change. His initiative was backed by several House members just at the time when public outrage compelled the Supreme Court (SC) to declare as illegal the Priority Development Assistance Fund (PDAF) pork barrel and as the chief executive's own multi-billion Disbursement Acceleration Program (DAP) pork was implicated in scams and the Corona impeachment. These left many Congress members in a dilemma on how to recover their discretionary funds either by budget realignment or other means. Pork barrel had been used for enrichment, patronage politics, and campaign funds – and the next election is two years away.

Charter change is now couched in the deceptive language of "national interest" to justify full-scale liberalization of foreign investments and alien ownership over the country's land resources and key industries. However, the lobbying by a small group of influential businessmen and foreign corporations in partnership with key leaders of Congress to do away with the economic provisions of the constitution – a product of people power uprising in 1986 – can barely pass as a representation of national interest or inclusive growth. Small vested interest groups misrepresent themselves as the prophets of growth when they themselves monopolize profits in an unequal economic system that leaves the large

economic system that leaves the large majority – those whose rights represent the real national interest – under permanent conditions of poverty, unemployment, and social and political marginalization.

The question really is, what has the country gained from foreign monopoly investors and their local cohorts – subsidiaries, joint venture partners, big landowners, and traders? For five centuries since the onset of colonialism, the national economy has been subjected to the exploitation and subjugation by foreign monopolies – from mercantilist traders, to raw material users, free traders, capitalist investors, and, under the age of liberalization, foreign exporters. Since the Marcos years, bilateral agreements, presidential decrees, the Omnibus Investments Code, and other laws gifted foreign businessmen sweeping investment incentives, huge profit repatriations, tax holidays, and anti-labor, anti-strike policies that result in human rights violations. These rights were unequal and discriminatory given that small local producers are not given the same protection and privileges.

When corporate lobby groups now want more rights than what they used to enjoy by scrapping the remaining economic nationalist provisions of the constitution which they term "restrictive," what they actually seek is just a formality. RA 8179 or the Foreign Investment Act already provides 100% foreign equity in all areas of investment – except mass media, retail trade, marine resources, small-scale mining, as well as the manufacture of nuclear weapons and ownership of cockpits. Remaining under 40% foreign equity are natural resources like minerals, private lands, public utilities, schools, commercial fishing, and so on. In truth, most of such restrictions are now in paper only what with dummy Filipino owners and companies fronting for foreign companies as in real estate, retail trade, technology such as the election automation, commercial fishing, games and amusement, as well as media. In some provinces, under-reported land acquisitions by foreign investors have resulted in land expropriation and conversions, commercialization, and unsustainable use thus further displacing local producers and threatening food security.

Contrary to the claims of the charter change movers and foreign lobby groups that the constitutional restrictions are driving away foreign investments, it is actually corruption and inefficient government bureaucracy that serve as a deterrent. These, according to the Global Competitiveness for 2010-2011 and the Asian Development Bank (ADB), are the two key problems hindering business growth or further investments in the Philippines.

For all the generous incentives, tax exemptions, onerous privileges, and huge profits reaped by foreign investors, the government's pro-investment and pro-business bias has made growth more exclusive and income inequality more widespread. Despite claims of GDP growth, poverty has in fact deepened and rising unemployment is driving 6,000 Filipinos to leave the country every day in search of overseas job compared to 4,000 a day under Arroyo (2010). The Philippines has the biggest income inequality in Southeast Asia with the earnings of 40 richest Filipinos equivalent to the combined income of 60M Filipinos. Courtesy of mining investments and foreign-funded dam constructions, the country's ecology, watersheds, and food security have all but been degraded making natural calamities to be more catastrophic.

Instead of surrendering the country's economic sovereignty 100% to foreign investments, Congress should look into how national interest can be better served through meaningful economic and social reform bills dealing on genuine land distribution, wealth redistribution, enhancing industrialization and manufacturing, bridging the gap between urban and rural productivity, and increasing the basic minimum wage to bolster labor productivity and consumption.

Likewise, Congress should reexamine why fiscal investment incentives such as income tax exemptions, exemptions from custom duties, and national internal revenue taxes have only brought revenue losses and budget deficits to the government. In fact, findings show that such incentives and privileges have not stimulated enough foreign investments as expected. Instead of blaming the constitution, both Congress and administration should point their fingers at themselves.

The Philippines is probably the only country in the world where lawmakers and economic planners believe blindly that foreign investment is the critical bridge to "inclusive economic growth." Many countries that have liberalized or opened up their economies to foreign investment have retained state regulations and shielded strategic industries such as land, power, telecommunications, utilities, and others from foreign ownership. South Korea, Vietnam, China, India, and other countries have achieved high economic performance by protecting their own key

industries – reason why, for instance, China has not been adversely affected by the global economic recession. In fact, economic nationalism and protectionism has seen an upsurge especially in countries hit by the financial crisis across the globe. To prevent bankruptcy and to recover their losses, U.S., European, and Japanese corporations are investing in countries with lower labor costs using aggressive schemes such as the subversion of sovereign constitutions.

Based on the experience of successful economies in the developing world, what we need is a strategic industrial policy by a government primarily accountable to the people and not to corporate interests and multinational corporations. Such an industrial policy may in fact accommodate appropriate foreign investment in various economic sectors as long as these investments are in line with strategic goals of developing a self-sustaining industrial infrastructure designed to address systemic problems of poverty, unemployment, and injustice. Land, natural resources, and strategic industries should remain under state regulation consistent with the people's interest and the building of a sovereign national and progressive economy.

For reference regarding this issue analysis:

Bobby M. Tuazon
Director for Policy Studies
Center for People Empowerment in Governance
3F CSWCD Bldg., Magsaysay Avenue, University of the Philippines, Diliman 1101, Quezon City
TelFax +9299526; email info@cenpeg.org, cenpeg.info@gmail.com
www.cenpeg.org