

[Working Paper Series: Horizontal Accountability in Asia]

Horizontal Accountability at Risk: Executive Aggrandizement in the Philippines

**Francisco A. Magno
Martin Josef E. Vivo
(La Salle Institute of Governance)**

1. Introduction

Authoritarian rule from 1972 to 1986 was the pinnacle of executive aggrandizement in post-independence politics in the Philippines, as, during this period, the President exercised executive, legislative, and judicial functions. The return of democracy following the 1986 People Power Revolution shaped the 1987 Constitution that promotes horizontal accountability by strengthening the legislative and judicial roles in a democratic system of checks and balances. Oversight agencies that conduct audits, corruption, and human rights investigations on the irregular use of executive authority also set up further institutional limits. However, even with the democratic safeguards offered by the Constitution, horizontal accountability seems to be at risk with the rise of authoritarian populism over the past decade. It is important to assess the capacity of state institutions, including the legislative and judicial branches of government and other oversight agencies, to check the rebirth of executive aggrandizement, albeit under a system of formal democracy.

This research seeks to assess the three major sectors of government to evaluate the current state of horizontal accountability in the Philippines and its associated risks; first, the efficacy of the Congress of the Philippines in exercising legislative oversight over the executive branch in the implementation and governance of public policies and programs; second, the independence of the Supreme Court in using judicial power to sanction unlawful decisions by the executive; third, the capability of the oversight agencies, such as the Office of the Ombudsman, Commission on Audit (COA), Civil Service Commission (CSC), and Commission on Human Rights (CHR), and its responsibility to hold the executive accountable for its actions. This research hopes to draw policy recommendations for strengthening horizontal accountability mechanisms and checking executive aggrandizement in the Philippines from these assessments.

This research utilizes a qualitative research methodology. First, it will examine the relevant literature by doing a desk review of books, journal articles, policy reports, and conference proceedings. Then it will then conduct key informant interviews and focus group discussions with relevant stakeholders, government officials, civil society representatives, and thought leaders to get their perspectives on the issues, problems, and challenges surrounding horizontal accountability in the Philippines.

2. Philippine Executive Aggrandizement Post-1987

Executive aggrandizement is the use of political power by nominally democratically elected incumbents, almost exclusively national executives, to concentrate power and weaken all forms of opposition against them (Bermeo 2016, 10-11; Croissant 2020). Four main objectives define executive aggrandizement: 1) the recompense of political allies; 2) the punishment of political enemies, critics, and dissidents; 3) the curtailment of the independent news media and civil and political liberties; and (4) the degradation of constitutional checks and balances and the rule of law (Croissant 2020). It is usually undertaken through institutional changes achieved through legal and constitutional avenues such as parliaments, referenda, and existing judiciaries, giving these consolidating undertakings a veneer of democratic mandate and legitimacy (Bermeo 2016, 10-11). Deep-seated institutional malfunctions and attacks on institutional capacity could lead to significant executive aggrandizement and, perhaps, even new authoritarianism (Froomkin and Shapiro 2021), with weak party systems a prominent example of such institutional malfunction (Ufen 2022). Further support for executive aggrandizement is popular support, especially from individuals and groups that belong to either social sectors that have greatly benefited from the system or those from predominant social groups (Schafer 2021).

This flies in the face of democracy, particularly in its continued requirement for checks and balances and overall accountability in the government. Horizontal and vertical accountability are both needed to maintain genuine democracy, which is, by design and definition, always polarizing and contentious, be it on traditional issues such as socioeconomic divides and ideological differences or modern concerns and perspectives on the use, misuse, and abuse of the powers of elected officials (Slater and Arugay 2018). Horizontal accountability is defined as the relational network among co-equal sectors of government, usually between the supposed co-equal branches of government, which contrasts with the principal-agent relationship in vertical accountability, such as between the government and the citizenry (Lührmann, Marquardt, and Mechkova 2020; Bovens 2021, 196-200). Horizontal accountability is operationalized through formal rules and institutions through which oversight over government actions can be carried out, especially legislative and judicial oversight (Slater and Arugay 2018, 93). As such, much attention is given to the executive branch since it is the one branch empowered with and responsible for executing laws and agendas (Lührmann, Marquardt and Mechkova 2020, 812; see also O'Donnell 1998 and Bovens 2021). In democracies functioning appropriately, some democratic erosion can occur, but not to the point of breakage if the accountability mechanisms work together to keep incumbents in check and pressure them out of any moves toward further erosion (Laebens and Lührmann 2021).

Arguably, this issue in the Philippines has never considered novel, and the associated risks persist despite the return to democracy in 1987. For example, Slater and Arugay (2018) argued that the EDSA People Power Revolution of 1986 never curbed the control of the national oligarchy, nor did it result in reduced socioeconomic inequality (98). Meanwhile, Lorch (2021) noted that despite the progress made since 1987, civil society in the Philippines remained easily captureable by the political elite, which has similarly happened in Bangladesh and Thailand. The Duterte presidency is the epitome of the recurrent populist and executive-aggrandizing governance in the Philippines since his populist rhetoric, supported by long-standing democratic deficiencies, enabled him to assume the Philippine presidency and enact the erosion of independent institutions and the marginalization of

political critics and opponents. It does not help that, as Dulay et al. (2022) would note, that historical memory of the Martial Law era has been positive, especially to those who lived through it, giving a sense of nostalgia that further justifies the current backsliding in the Philippines. Aside from the Martial Law nostalgia, there has been a concerted apologia and historical revisionism for authoritarian rule, bolstered by the apparent lack of consequences for all the perpetrators involved, ruining the chances not only for full transitional justice but also for further democratization as the lessons from the past experiences have been distorted and subverted (Tugade 2020).

Political party institutionalization remains weak in the Philippines; thus, personalism, clientelism, and idiosyncratic executive policies remain mainstream, just as in Indonesia and Thailand (Ufen 2022). Other governance issues also remain in the country, such as personalistic and patronage politics, political violence, electoral manipulation, and corruption, all of which contribute to the further erosion of the country's democracy and its institutions, so much that the conservative hope for the 2022 General Elections was for the incoming administration to initiate the process of reform to be carried over by the succeeding administrations (Buendia 2022). Teehankee and Calimbahin (2020) summarize these various concerns as the confluence of state, societal and economic institutions and forces conspiring, whether willingly or inadvertently, to further a defective democracy.

Duterte's presidency is considered a watershed moment for Filipino democracy because it has pulled the country further from democracy. Within the first few months of the Duterte presidency, Timberman (2016) noted that despite Duterte's promises to tackle criminality, constitutional change, and poverty, he was worryingly disrespectful of democratic politics and governance. Thompson (2016) also reported on Duterte's determination to launch an all-out violent war on drugs. It is not surprising then that Dressel and Bonoan (2019) were able to chronicle how the first half of the Duterte administration alone was filled with episodes and machinations aimed at dismantling the liberal democratic order in the country, from attacks on the Commission on Human Rights and the ombudsman to attacks aimed at journalists and media networks critical of his administration, and generally to the notion of the rule of law itself. Pernia (2019) further relates Duterte's populism and his indifference towards and violation of human rights as a candid reflection of Filipino "authoritarian culture and illiberal values" (56).

This is not to say that the Philippines has not seen some progress in terms of its democratization, but hindsight indicates that these efforts were insufficient to prevent such a backslide. The Benigno Aquino III Administration leaned toward democratization; however, its failure to fully address the profound and persistent democratic challenges, including poor levels of political participation, institutionalization and governance, and recurrent abuses of power, has led to Duterte utilizing these challenges for his populist rhetoric of grievances (Bautista Fernandez 2021, 186-194). Indeed, there were hopes that the younger Aquino's Administration would usher in an era of true democracy in the Philippines, but even then, the threats posed by oligarchic structures and dysfunctional institutions were already apparent (Dressel 2011). Furthermore, there has been pushback against Duterte and his executive aggrandizement, especially in light of his human rights abuses and silencing of critics. However, Duterte's high opinion ratings, his domination of the Filipino social media landscape, and his allies' sweep of the midterm legislative elections in 2019 gave much legitimacy to the administration, making arguments by the democratic opposition of Duterte appear undemocratic; and therefore marking the opposition as relatively weak, per se (Thompson 2021).

Another thing to consider is the constellation of political institutions within the Philippine political system, supposedly responsible for preventing executive aggrandizement and overreach, though earlier assessments consider these institutions ineffective. Rose-Ackerman, Disierto, and Volosin (2011) highlight the presence of hyper-presidentialism, the argumentation and policy action of national executives to expand their powers and freedom to act through their distortion and subversion of constitutional checks and balances on the executive, in the Philippines, as well as Argentina. Likewise, Medina-Guce and Galindes (2018) point out that executive aggrandizement was the result of undue hyper-presidentialism, the political symbiosis between the presidency and the Philippine Congress, the general inability of the constitutionally mandated institutions to credibly mitigate executive power, and the executive's complicated relationship with traditional and social media.

The constellation of institutions in the Philippines includes Congress, the Supreme Court, the Constitutional Commissions, and the other agencies legally and constitutionally bound to investigate and prosecute abuses of power such as corruption (e.g., COA and the ombudsman) and human rights violations (e.g., CHR). Congress, as noted earlier, is in a close symbiotic relationship with the presidency, making it critically ineffective in curbing executive expansion, perhaps even consenting to it (Medina-Guce and Galindes 2018). Symbiosis and hyper-presidentialism result from a political power structure that positions the president as the key distributor of national patronage and influence for members of Congress (Relacion and Magalzo 2014, Medina-Guce and Galindes 2018; Thompson 2018). The most obvious indicators of this symbiosis are the transience of Filipino political parties and the movement of most members of Congress toward the president's political party, which leads to low levels of accountability (Case 2011; Thompson 2018).

Meanwhile, the Supreme Court could have been a crucial actor in the constraint of executive aggrandizement but is instead “embroiled with and is constrained by the broader political struggle among elites and other social forces,” making the function and efficacy of the Court closely contingent on the levels of democratization and public support to the judiciary (Deinla 2014, 151). A closer examination of the Supreme Court's judicial behavior, however, suggests a more positive picture, noting that despite the general disposition of the Court towards deference to the administration in office and some presence of political allegiances among individual justices, a substantial portion of the votes on politically salient cases has been against the sitting administration (Escresa and Garoupa 2012; Pellegrina, Escresa, and Garoupa 2014). The Supreme Court plays a crucial role in safeguarding democracy through the judicialization of politics, ensuring basic human rights against any arbitrary action from the government, such as extrajudicial killings (Orosa 2012).

As for the oversight bodies, results are described, charitably, as mixed and inconsistent. Batalla (2015 and 2020) noted the poor performance of anti-corruption agencies, such as the ombudsman and COA, due to the legal, regulatory, and operational overlaps and deficiencies in these agencies resulting in inconsistent application of anti-corruption legislation and significant episodes of grand corruption involving the presidency. However, these agencies may still show signs of efficacy, as Magtulis and Poquiz (2016) reported a surprisingly positive correlation between increased government expenditure and better public perception of corruption in the government. As for the CHR, Netipatalachoochote, Colombi Ciacchi, and Holzhacker (2020) found that it has adequate protection capacity and stable mandates but is hampered considerably by Duterte's violative rhetoric on human rights and the resulting limitations in operational support to CHR.

The COVID-19 pandemic became an opportunity for further executive aggrandizement, specifically through its use as an excuse to further expand executive power. Archegas (2021) notes that Duterte had sought every legal and constitutional avenue to concentrate power further, aided by the Constitution and pre-existing legislation on national emergencies and crises. Dulay, Hicken, and Holmes (2022) also noted that Duterte maintained strong support throughout his presidency despite his handling of the pandemic, partly through ethno-populist support from the non-Tagalog majority of the Filipino population. This did not come as a surprise, as Magno and Teehankee (2022) would additionally note that the pandemic opened further opportunities for executive aggrandizement despite the struggles the government faced in responding to the pandemic, such as its woes in the economy as the result of the lockdowns it instituted as its first response and its laggard roll-out of vaccines. Indeed, as Atienza (2020) pointed out, the speedy approval of the Republic Act No. 11469, also known as the *Bayanihan to Heal as One Act of 2020*, gave the President additional emergency powers ostensibly to respond to the pandemic, and the lack of deliberate oversight measures by Congress indicates a further breakdown of the separation of powers and the expansion of executive ones in the face of emergencies (4).

3. Executive Aggrandizement and Democratic Backsliding

Executive aggrandizement is just one of the facets of democratic backsliding in the Philippines. Medina-Guce and Galindes (2018) point out that aside from executive aggrandizement and over-assertion through hyper-presidentialism, these facets include the further weakening of the political party system, the fragmentation of civil society, hyperpolarization, and institutionalized impunity and arbitrariness (6 & 19-43).

Global trends are pointing to an emerging pattern of democratic regression. Bermeo (2016) already noticed that the emerging patterns of de-democratization were trending towards more gradual methods such as executive aggrandizement and strategic electoral manipulation. Chu et al. (2020) observed a more worrying trend, as the “retreat of the third wave of democratization” between 2005 and 2016 was more severe when looking at popular surveys than what expert surveys suggested. Diamond (2020) further supported this stance, where democratic backsliding has been seen more widely across the world, even in the supposed mature democracies among the G20 countries. Albertus and Grossman (2021) found variations of the same patterns of executive aggrandizement and democratic erosion in Argentina, Brazil, Mexico, and even the United States, which coincides with the worldwide rise of populism across the world since 2016, characterized by the purported ideological division between the supposedly pure people of the country and its corrupt elites (Guriev and Papaioannou 2022).

It does not mean, however, that the de-democratization would be unstoppable; as Croissant and Kim (2020) noted, South Korea and Taiwan have variously curtailed attempts towards de-democratization and executive aggrandizement despite the persisting authoritarian tendencies through their struggles for democracy. Such patterns also do not indicate presidentialism as an inherently perilous system to adopt, as Bünte and Thompson (2018) would emphasize in their analysis of Southeast Asian presidential systems, but rather in the challenges to these systems by opportunistic and transgressive politicians trying to maximize pressure.

Arguably, the prognosis and prospects of the current state of horizontal accountability and executive aggrandizement in the Philippines are complicated at best. Teehankee and Calimbahin (2020) already presented two possible scenarios given the Duterte presidency in their writing: Duterte's full-on restoration of Marcosian authoritarianism or the exploitation of the current electoral system to ensure the victory of his proxy candidate (122). The plausibility of these scenarios is not at all surprising given that the 1986 People Power Revolution was more a confluence of actors going against the Marcos dictatorship and not a genuine attempt to create a liberal constitutional order based on widely shared goals and values, resulting into an inherently flawed system that is ripe to be exploited by unrestrained populist aspirations as embodied by Duterte (Davis 2017, 151). But the following questions remain: How are the institutions of horizontal accountability currently faring? Has executive aggrandizement become more entrenched in the Philippine political system? And has the Philippines slipped further away from democracy? The assessments would surely tell. ■

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- **Francisco A. Magno** is a Senior Fellow and Founding Director of La Salle Institute of Governance (LSIG). He is a Professor of Political Science and Development Studies at De La Salle University. He was a civil society representative in the National Steering Committee of the Open Government Partnership-Philippines in 2014-2019. He also served as President of the Philippine Political Science Association in 2015-2017, President of the Local Governance Training and Research Institutes-Philippine Network in 2016-2018, and Member of the National Leadership Council of the Sustainable Development Solutions Network-Philippines in 2015-2018. He finished his PhD in Political Science from the University of Hawaii.
- **Martin Josef E. Vivo** received his Bachelor of Arts (Honors) and Master of Arts (Honors) in Political Science from the University of the Philippines Diliman. He was previously the Project Coordinator for Growth at BuildZoom, a US-based company that helps homeowners build and remodel their homes. He maintains academic research interests in Philippine politics and governance, constitutional politics, contentious politics, electoral politics, and international relations and governance through freelance research assistance.

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For inquiries:

Hansu Park, Research Associate

Tel. 82 2 2277 1683 (ext. 204)

hspark@eai.or.kr

The East Asia Institute

1, Sajik-ro 7-gil, Jongno-gu, Seoul 03028, Republic of Korea

Phone 82 2 2277 1683 Fax 82 2 2277 1684

Email eai@eai.or.kr Website www.eai.or.kr