

[ADRN Issue Briefing]

Horizontal Accountability Requires More than Legal Checks and Balances System: Ten Asian Country Cases

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Most countries, except closed autocracies, conduct popular elections. However, the quality of global democracy has been deteriorating. One of the most significant illiberal trends is the aggrandizement of executive power led by a popularly elected political leader. Strongmen often bend or simply violate democratic rules by abusing their executive power. The electoral mandate gives them legitimacy, making the efforts to check their executive power difficult. In this context, horizontal accountability based on the checks and balances system and oversight institutions is important to prevent the emergence of strongmen. However, horizontal accountability cannot function effectively unless its legal mechanisms are implemented in practice. Ten Asian country cases, presented in previously published ADRN working papers, demonstrated that horizontal accountability perform better when the legislature is not politically captured by the executive power and the judiciary is independent. Oversight institutions also require both political independence and institutional capacity. The electoral accountability of elected elites to voters helps the legislative branch to fulfill its role of constraining the excessive executive power. Independent media and civil society participation always assist both electoral and horizontal accountability.

Trends of Horizontal Accountability

Upon applying the V-Dem horizontal accountability data from 1960 to 2020, we can divide ten selected Asian countries into two groups for the sake of convenience. One group can be defined as having higher accountability, while the other can be defined as having lower accountability. This division is based on the accountability score of recent years. The five countries that scored more than 0.75 in 2022 include South Korea, Taiwan, Nepal, Mongolia, and Thailand. Following their democratic transitions in the late 1980s, South Korea, Taiwan, and Mongolia exhibited a notable advancement in their horizontal accountability. Nepal, on the other hand, has demonstrated a gradual yet consistent enhancement in its accountability performance, despite occasional fluctuations. Thailand, however, has exhibited an unusually volatile performance largely influenced by the frequent military coups.

Figure 1. Horizontal Accountability of Five Asian Countries Scoring above 0.75 as of 2022

Conversely, the horizontal accountability performance of India, Sri Lanka, Indonesia, the Philippines, and Pakistan has been comparatively lower, with a convergence to a range between 0.5 and 0.75 scores over the past half decade. It is noteworthy that India has experienced a decline during the period of Narendra Modi's rule since 2014. Rodrigo Duterte's tenure from 2014 to 2022 also resulted in a notable decline in the horizontal accountability performance of the Philippines. Indonesia also demonstrates a consistent decline over the past decade. Pakistan is the only country in this group that has experienced an upward trajectory in its accountability performance, while its level remains below that of the other countries. The ascendance of a strong man to power tends to weaken horizontal accountability, with an inclination towards the expansion of executive power and a proclivity for violations of the checks and balances principle.

Figure 2. Horizontal Accountability of Five Asian Countries Scoring between 0.5 and 0.75 as of 2022

One of the essential conditions of horizontal accountability is the constitutional framework that establishes a system of checks and balances between three branches of government: the executive, legislative, and judicial. The Comparative Constitutions Project assesses the power and judicial independence. Ten countries scored as the below. Higher numbers indicate greater power or independence.

Table 1. Constitutional Power Arrangement (Comparative Constitutions Project Indices)

	Executive Power (0-7 points)	Legislative Power (mean of the 32 binary elements)	Judicial Independence (0-6 point)
South Korea	5	0.38	4
Taiwan	2	0.33	4
Mongolia	6	0.33	4
Nepal	3	0.29	6
Thailand	5	0.14	1
Philippine	3	0.33	4
Indonesia	3	0.33	2
India	4	0.19	4
Pakistan	5	0.29	3
Sri Lanka	5	0.19	4

Source: Comparative Constitutions Project 2016

Among the top five countries whose horizontal accountability scores exceeded 0.75 in the recent V-Dem survey, Thailand stands out as an outlier with markedly limited legislative power and judicial independence. This indicates that Thailand's horizontal accountability recovery is particularly vulnerable, given that its constitution does not properly provide for the legislative and judicial oversight of the executive branch. At the same time, disparity in authority between the executive and legislative branches does not fully account for the horizontal performance. Taiwan, which has a relatively weaker executive branch, performs relatively well, as do South Korea and Mongolia which have stronger executive branches. A closer examination of the five countries with lower performance reveals that the legislative branches of India and Sri Lanka appear to lack the capacity to effectively check the executive power. On the other hand, the lower judicial independence of Indonesia appears to be a contributing factor to the country's poor horizontal accountability performance. While legislative power and judicial independence are crucial for checking the increasing aggrandizement of executive power, the constitutional arrangements of these countries do not provide a clear explanation for the observed differences in performance. The presence of a democratic constitution is not in itself a guarantee of democratic practice. Furthermore, horizontal accountability is contingent upon the vertical and diagonal accountability of each country. This ambiguity necessitates a detailed examination of each country's case.

Factors Contributing to Horizontal Accountability Gap

In most countries, the institutional framework for horizontal accountability has been codified into law. First and foremost, the constitutions of ten countries guarantee the checks and balances among the three powers of the executive, parliament, and judiciary. In a presidential system, the legislative body is typically vested with the authority to impeach the president. In addition, institutional mechanisms of ombudsman, anti-corruption, and audit, which are designed to hold public officials accountable, are provided despite differences in the legal limits of their authority. Nevertheless, a senior executive official can effectively circumvent the legislative body's checks and balances with relative ease.

In Indonesia, a presidential republic, the Corruption Eradication Commission plays a pivotal role in ensuring horizontal accountability. While the Commission does not have direct sanctioning capacity to impose penalties on the President or other public officials, it is able to supervise and investigate allegations of corruption among all state actors and refer cases to the court. However, following the legal amendment, the Commission became accountable to the President as the head of the executive. This position makes it challenging for the Commission to investigate any corruption cases involving the President. The Indonesian President's power towards the legislature has been also fortified. The Constitution permits the legislative body to restrict the President's involvement in drafting legislation through the Government Regulation in lieu of Law. However, the President's party can form a coalition with almost all political parties in the parliament. This 'fat (*gemuk*)' trend, which has been in place since 2004, has allowed the elected president to consolidate control of the government and weaken potential opposition from the legislative body. Furthermore, the Indonesian President can exert influence over oversight agencies by maintaining close ties with their top officials. This was demonstrated by the constitutional court's decision to allow the then-incumbent president Jokowi's son to run for vice-presidential election. Devi Darmawan and Sri Nuryanti write that this cartel politics, which prioritizes the interests of a few over those of the masses, has led to the accountability trap and hindered the process of democratization (ADRN 2024a).

Regarding horizontal accountability, India has adopted the system of judicial review, drawing primarily on the experiences of the United States. The Supreme Court has the authority to review the actions of the parliament and state legislatures. In the early years of constitutional governance, Niranjana Sahoo notes that the Supreme Court generally adopted a pro-legislature stance (ADRN 2024b). However, the Supreme Court justices subsequently established a framework for the judiciary to engage in conflict with the executive and legislative branches. In the wake of the national emergency in 1975, the judiciary took a series of proactive measures to expand its powers vis-à-vis the legislative and executive branches through creative interpretation of fundamental rights. Since the early 1980s, judicial activism has expanded to making public interest litigations easier. This change opened spaces for public-spirited citizens, human rights attorneys, and civil society. However, the author asserts that the courts overstepped the executive and legislative spheres on multiple occasions. To further enhance the checks on executive interference, the higher judiciary in India has also replaced the executive's appointment rights with the collegium system where the executive leader is required to consult with the judiciary when appointing judges. Since the arrival of the Modi government, the executive branch has reasserted its authority over the judiciary. In addition to the issue of judicial appointments, the executive branch has been able to get individual judges to support its policies, even when these policies violate constitutional principles. The author assesses that courts have largely

aligned with the executive's position and have not fulfilled their constitutional duty of protecting fundamental rights since 2014. Furthermore, the decline in judicial legitimacy has coincided with a surge in corruption scandals.

Pakistan, a parliamentary system, is equipped with the horizontal accountability institutions including the National Accountability Bureau, Provincial Anti-Corruption Establishments, the Office of the Auditor General of Pakistan, and Federal and Provincial Ombudsmen. However, accountability works selectively and ineffectively due to the comparative strength of the executive power, compared to a relatively weak legislature. Notwithstanding the legal authority vested in them, parliamentary committees at the national and provincial levels have been notably inactive and ineffective in overseeing the executives. In particular, government-led finance bills are frequently passed without sufficient deliberation within the Public Accounts Committee. Interestingly, the judicial branch in Pakistan undermines accountability due to its increasing influence over the legislature and President. Instead of leveraging its authority and public support to fortify democratic institutions, Muhammad Habib writes that the judiciary has employed its influence to scrutinize, critique, and undermine other branches of government at times (ADRN 2024a). It is a common practice in Pakistan for one constitutional institution to interfere in the affairs of other institutions, which has the effect of creating political chaos in the country. One significant challenge for these state institutions is the separation of powers among themselves. Consequently, it is imperative that inter-institutional dialogues be initiated among the state pillars to reform the current accountability structure. This intricate interweaving of constitutional institutions appears to afford the Establishment—the deep state cooperation of the Pakistan Armed Forces, the Pakistani intelligence community, and other pro-military government officials and civilians—a considerable degree of influence in Pakistan. This is achieved by maintaining its veto power over the democratically elected president.

In Sri Lanka, a semi-presidential republic, variety of horizontal accountability mechanisms are in place. The President can appoint a Commission of Inquiry when it appears that an inquiry should be conducted. Three parliamentary committees, the Committee on Public Accounts, the Committee on Public Enterprises, and the Committee on Public Finance, are responsible for monitoring and evaluating the activities of the executive government, public corporations, and companies in which the government has a financial interest. The Commission to Investigate Allegations of Bribery and Corruption (CIABOC) plays a pivotal role in monitoring the conduct of public officials. The Financial Crimes Investigations Division was established later to include the investigation of money laundering and the unlawful enrichment of both the private and public sectors. Furthermore, the Constitution mandates that the Auditor General audit all government departments, key offices, key commissions, local authorities, public corporations, and companies where the government is the majority shareholder. However, these institutions frequently lack the requisite legal authority and resources to fulfill their designated roles. Nishana Weerasooriya and Shannon Elizabeth Talayaratne analyze that the opaque process of appointment, lack of mandates to investigate corruption cases, and shortage of human resources and budgets are forcing these oversight institutions to become less effective (ADRN 2024a).

The Philippines, a presidential system, demonstrates how existing horizontal accountability mechanisms can be easily undermined by a populist authoritarian leader. Following the end of authoritarian rule by Ferdinand Marcos Sr., the 1987 Constitution introduced a set of horizontal accountability mechanisms, particularly strengthening the checks and balances system through the

strengthening of the legislature and the judiciary. To provide institutional limits on executive authority, oversight agencies were also established to conduct financial audits of government spending, check corruption among public officials, and investigate human rights violations by state actors. However, these constitutional safeguards became dysfunctional during the Duterte Presidency. Francisco A. Magno and Martin Josef E. Vivo show that the Elkins data demonstrate the current constitutional system leans more towards the powers of Congress and the independence of the Judiciary over the powers of the Presidency (ADRN 2024b). Nevertheless, the legislative oversight over the executive branch in the implementation of public policies and programs has proven ineffective. The authors posit that Members of Congress are deeply embedded in the patterns of personalism and clientelism towards the incumbent President. Moreover, the Supreme Court is not independent in using judicial power to sanction unlawful decisions by the executive. The oversight agencies including the Office of the Ombudsman, Commission on Audit, and Commission on Human Rights also lack the capacity to hold the executive accountable. The fragmented political parties in the Philippines make it relatively easy for the incumbent President to capture the legislative. Therefore, despite legal arrangements, the horizontal accountability mechanism does not work properly when the authoritarian President titters them together with his allies in the legislature.

Thailand, a constitutional monarchy, stands out as an interesting case. The country has experienced a similar pattern of fluctuations in its V-Dem accountability score. It is evident that the military coups of 1977, 1991, 2006, and 2014 resulted in a sharp decline in horizontal accountability. Once political stability was restored, however, the level of horizontal accountability returned to previous levels, reflecting a general upward trend. This trend indicates that the country's accountability performance is sustainable, provided that the military does not intervene in politics. Thawilwadee Bureekul, Ratchawadee Sangmahamad, and Arithat Bunthueng maintain that robust system of checks and balances, enshrined in the Constitution and other legislation, is a key driver of horizontal accountability (ADRN 2024a). Furthermore, the vibrant civil society and the relatively free press also contributed to Thailand's ability to maintain relatively high levels of accountability during periods of normal politics. However, the authors contend that oversight institutions such as the Administrative Court and the judiciary were unable to effectively address corruption and consequently lost public trust. In particular, following the last military coup, the Senate was weakened in monitoring the government as the military came to control the Senate, giving it the power to vote for the Prime Minister, alongside members of the House of Representatives. This stipulation permits senators to decline to endorse the election of Pita Limjaroenrat during the 2023 Prime Ministerial election, despite a large majority of the House supporting his candidacy. The transitional Senate established under the 2014 Constitution expired on May 10, 2024. The following Senates was reduced to a 200-member body, without the authority to elect a Prime Minister. The new system for electing Senators is more complex and not transparent, which is likely to erode public trust in the legislature.

Mongolia has performed a relatively high level of horizontal accountability. As in other countries, the 1992 Constitution, which was enacted following the country's democratization, established a system of checks and balances. However, Ganbat Damba and Mina Sumaadii explain that there has been a continuous shift in power toward the legislative and the prime minister, which has weakened political parties and the judiciary system (ADRN 2024a). For instance, political nomination of judges has risen, and the National Security Council has the authority to remove judges. Moreover, in the existing political environment, oversight agencies have limited capacity and are not

free from political interference. The two major oversight agencies are the Mongolian National Audit Office and the Independent Authority Against Corruption of Mongolia. The authors argue that in the Mongolian semi-presidential system, where the prime minister has strong power even if a popularly elected President appoints him, the power hierarchy is ambiguous, leading to horizontal accountability chains that are less clear. The Constitution designates the Supreme Court as the highest judicial body. The Judicial General Council is responsible for selecting and nominating judges among the candidates appointed by the President or Parliament. Nevertheless, given the appointment system, it is highly disputed whether the judiciary and the prosecutors can be truly independent in the existing system. Furthermore, the Law on the Legal Status of Judges, enacted in 2019, allows the National Security Council, comprising the President, Prime Minister, and Speaker of Parliament, to remove judges. Furthermore, the 2022 constitutional amendment permitted cabinet members to concurrently hold memberships in parliament, and it also expanded the size of the legislature. The authors argue that this amendment introduces a higher risk of power abuse, as cabinet members who are concurrently members of parliament have access to resources and immunity from prosecution. In the context of Mongolia, where systemic corruption is prevalent, this issue is particularly controversial.

South Korea, a country with a semi-presidential system, maintains a distinctive political structure that preserves a prominent presidential role. Political parties are not strongly institutionalized, which makes them vulnerable to the influence of ambitious politicians. Since its democratic transition in 1987, the constitutional arrangement guaranteeing the checks and balances is robust, and other legal mechanisms for audits and anti-corruption allow for the institutional basis of horizontal accountability. However, Jung Kim posits that South Korea's de facto accountability performance has oscillated between periods of deterioration and restoration (ADRN 2024a). This democratic careening occurs when a liberal president, who prioritizes electoral mandate over constitutional constraints, overreaches toward populist excess, or when a conservative president, who prioritizes constitutional constraints over electoral mandate, overreach toward oligarchical excess. One of the key challenges in horizontal accountability has been the Prosecutive Service. As the nation's highest law enforcement agency, the prosecutors' office, nominally under the Ministry of Justice, has the authority to indict elected politicians for corruption. This indictment power, in conjunction with the authority of the Supreme Court, gives the Service the appearance of a semi-judicial body. The impartiality of the Prosecution Service in investigating political scandals has been called into question due to the potential leaning to the interest of the President. Accordingly, the issue of political independence from the executive power has been identified as a paramount reform issue. To close this loophole, the Corruption Investigation Office for High-Ranking Officials (CIO) was established in 2021. The head of the CIO is appointed by the President among two candidates recommended by the nomination committee. The committee is composed of the Minister of Justice, the Minister of National Court Administration, the President of the Korean Bar Association, and four members - two of whom are recommended by the ruling party and the other by the opposition. As a result of the consensus rule, which has the effect of gridlock, the amended Act now requires the nomination committee to form only five of the seven total possible votes. This effectively removes the veto power of the opposition party. Despite the expectations of those with a higher level of involvement in the process, the understaffed CIO has not been able to avoid the political fallout that has resulted from the harshly divided South Korean politics. Fortunately, the author points out that accountability mechanisms, including those from diagonal sources such as the media and civil society, have so far activated horizontal and vertical ones.

Taiwan also exhibits a lack of horizontal accountability, despite its relatively good performance. Chin-en Wu and Feng-Yu Lee conclude that legislative power is insufficient for holding the executive branch accountable in Taiwan (ADRN 2024a). This is attributed to the uneven distribution of power under the semi-presidential system and the single-member district electoral system. One clear reason for Taiwan's lower legislative power score than that of other robust democracies such as Japan and South Korea is that Taiwan's legislature is subject to dissolution by the president and lacks several crucial powers including investigative authority and the ability to approve ministerial appointments. Still, the practices of filibuster and party caucus negotiation could augment the authority of the legislative branch and serve as potent instrument to ensure the executive branch's accountability. Additionally, the importance of the judiciary in interpreting the constitution and ensuring its compliance has become increasingly salient in recent years. This is evident in the judiciary's inclination to prioritize individual rights over the ruling party's attempt to seek the government's capability for national security. The significance of the judiciary extends beyond the scope of these cases pertaining to the dissemination of fake news. Upon assuming office in 2016, the Democratic Progressive Party (DPP) government intensified its utilization of the Social Order Maintenance Act to target individuals suspected of disseminating fake news. The police were mandated to bring individuals suspected of spreading disruptive rumors before the courts. This action was sometimes based on information provided by pro-government sources or through proactive monitoring of politically oriented online platforms like specific Facebook pages. The number of cases presented to the court by the police has multiplied since 2019, due to the implementation of this act. However, in terms of the confrontation between civil society and the government, the courts tend to prioritize individual freedoms and make rulings that protect private rights instead of aligning with the ruling party's position. The authors point out that this discrepancy between rules and actual practices could pose a trade-off between the principle of checks and balances and the governability of the executives. As a potential solution, the authors propose prioritizing the negotiation process regarding sensitive issues related to national identity, while allowing the ruling party to pursue non-identity issues.

Nepal underwent a unique political transition from an absolute monarchy to a federal parliamentary republic in 2008. The 2015 constitution established a fundamental system of checks and balances. Nevertheless, the transition has been characterized by political instability, including frequent changes in government and a lack of continuity in policymaking. Tirupati Pariyar writes that this instability has also resulted in a dearth of accountability and transparency, with minimal advancement in addressing corruption and ensuring effective service delivery (ADRN 2024b). With regard to horizontal accountability mechanisms, the author posits that the Parliamentary hearings represent a vital democratic process aimed at holding the executive branch accountable and responsible. This process entails the legislative body scrutinizing the competence, effectiveness, and integrity of individuals recommended by the executive for appointment to key public positions. The second is the Public Account Committee (PAC), which is responsible for checking how the government manages its money and resources. The committee was established in 1960. This is part of the government's efforts to ensure that all processes are conducted in a fair and transparent manner. The third mechanism pertains to the promotion of judicial independence and accountability, the enhancement of the work culture of judicial personnel, and the implementation of effective monitoring and supervision of court operations. The fourth mechanism is comprised of 13 constitutional commissions. These commissions have been formed with the objective of empowering

and protecting the rights of marginalized communities, backward communities, and other disadvantaged groups. The executive, judiciary, and legislative branches are equal in terms of functional independence and autonomy to perform checks and balances. However, the 13 commissions, which can work in close collaboration with civil society to democratize society, have yet to reach the people and check the government. They are limited to their jurisdiction with recommendation power and no executive role. The author writes that while the Constitution provides a robust framework for horizontal accountability, its implementation remains challenging due to the deficiencies of the institutional framework, the lack of transparency, and the prevalence of political interference.

Conclusion

A review of ten country cases indicates that executive aggrandizement is closely related to a horizontal accountability gap. This trend cannot be halted by constitutional arrangements for checks and balances of the three branches of state power. A number of factors contribute to the erosion of power balance. First and foremost, the legislature, the fundamental institution of representative democracy in numerous countries, has lost public confidence. This is due to the perception that it is incapable of representing the public interest and delivering public goods effectively. Elected politicians are frequently perceived as detached, self-serving elites. Consequently, voters are increasingly inclined to support an executive leader who is perceived to communicate more directly with them and address their grievances. In a presidential system, the executive leader has the capacity to implement a multitude of distributive policies without the necessity of legislative approval. Moreover, populist executive leaders can utilize social media to form an emotional bond with the public. As evidenced by the cases of the Philippines and Indonesia, numerous minor political parties can be readily co-opted by the dominant political party, thereby neutralizing meaningful legislative opposition.

Secondly, the institutions responsible for monitoring the actions of executive officials are typically government agencies. Therefore, their political independence is susceptible to erosion when engaging with the top political leader and his allies. It is evident that the process of appointing heads of oversight and ombudsman institutions should be designed in a way that prevents the dominance of executive power. These institutions also need to be staffed with enough investigators and adequately funded to fulfill their mission.

Thirdly, the independence of the judiciary is fundamentally important in the enforcement of horizontal accountability. The social intrusion of the courts in Pakistan and India at the expense of legislative or executive power raises the question of how the judicial authority should be demarcated. It is not advisable for courts to become politicized. Concurrently, the resolution of moral and political issues within the legislature is becoming increasingly challenging. In the majority of instances where the executive branch has assumed excessive power, the issue is not the politicization of the judiciary, but rather the lack of judicial independence.

If horizontal accountability is functioning as intended, legal and institutional reforms should be continued in order to close loopholes and introduce stronger mechanisms. Still, it is crucial to acknowledge that political actors, regardless of their position, whether executive officials, legislators, prosecutors, or judges, are influenced by the social and political environment. When such an environment is conducive to accountability and the prevention of abuse of power and corruption, public sector elites will adhere to the principles of accountability. This force limiting excessive power

should originate from civil society and the free independent media. Horizontal accountability is an important mechanism for checking the aggrandizement of executive power, but its effectiveness depends on the active involvement of citizens and the media in monitoring the wrong doings of public elites and raising their democratic voices when facing controversial issues. ■

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