Democratic Backsliding & Shrinking Civic Spaces:

Problematizing the Strengthening of Philippine Democratic Institutions

Working Paper (version 2)

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About the Institute

The **Institute for Leadership, Empowerment, and Democracy, Inc. (iLEAD)** is a non-stock, non-profit think tank consultancy and resource center that focuses on strategic policy work to strengthen democratic institutions, in areas such as fiscal astuteness, meaningful devolution, and empowerment and protection of civic spaces.

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Content Outline

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Executive Summary

This working paper problematizes the challenges to Philippine democracy through the lens of its democratic institutions. The paper argues the existence of *democratic backsliding*, which happens when a nominally democratic government infringes on political and civil rights or restricts political competition or accountability, and is characterized by (a) gradual breakdowns in the structures of freedom of assembly, organization, and speech, or the *shrinking of civic spaces*, and (b) the efforts of the incumbent to strengthen the executive branch at the expense of the judiciary and the legislative (Baker, et.al., 2017). The paper discusses that the experience of the Philippine democracy is consistent with the trends of backsliding of democracy all over the world, as shown by global indices that measure democracy and its key characteristics.

The paper nuances democratic backsliding and shrinking of civic spaces in their facets, which is drawn from literature and key informant interviews. The analysis of the facets are divided into the following: (a) *executive aggrandizement* and how the executive over-asserts itself through hyper-presidentialism, through the political symbiotic relationship between itself and the legislative, through the general incapacity of Constitutional Commissions and bodies to mitigate its powers, and through its complex relationship with the media; (b) *political polarization* as a product of populist politics, and how it affects the weak political parties and a fragmented civil society; and (c) *institutionalized arbitrariness* which emerged through impunity and the lack of checks and balance when the armed state power is put into effect. Each discussion raises the limitations faced by democratic institutions involved such as continued capture of the elite of structures and processes, and the lack of incentives to elevate the institutions to uphold more substantive values and processes of democracy.

Finally, drawing from the thematic observations, the paper ends with questions for civil society and democracy advocates for consideration for a long-term political project of strengthening democratic institutions. The paper argues that while responsiveness and vigilance is necessary to address increasing manifestations of executive aggrandizement in lives lost and compromised exercise of freedoms, strengthening Philippine democracy through its institutions require a more strategic, long-term, inclusive approach from civil society to propel democracy forward.

1   Introduction

A wave of change is happening in the world. Democracies are experiencing backslides as authoritarian tendencies seep into the cracks of the democratic institutions and processes themselves. Democratic spaces for civil society are seen to be shrinking, overtly or covertly through interventions of the State. This trend is most clearly expressed in the Economist Intelligence Unit's *Democracy Index* report in January 2018, as it says, a global "democratic recession" is in place:

> "The [Democracy] index, which comprises 60 indicators across five broad categories—electoral process and pluralism, functioning of government, political participation, democratic political culture and civil liberties—concludes that less than five percent of the world's population currently lives in a "full democracy". Nearly a third live under authoritarian rule, with a large share of those in China. Overall, 89 of the 167 countries assessed in 2017 received lower scores than they had the year before." (The Economist Intelligence Unit, 2018)

This working paper is a stocktaking exercise of democratic backsliding in the Philippines, its manifestations in shrinking civic and political spaces. Drawing from recent literature, global indices, and informant interviews, this analysis aims to deep dive into the facets of the emergent challenges to Philippine democracy through its democratic institutions. This working paper also forwards questions for reflection of civil society and advocates to inform continuing action and identify strategies moving forward.

At this point we find it compelling to contextualize this working paper.

First, the driving force of this analytical project is to re-problematize Philippine democratic institutions, the civic space between government and non-government organizations, and civil society itself. As what the rest of the paper will suggest, democratic backsliding and the shrinking of civic space are happening because we have so far failed to transcend the conditions of being a nominal democracy, a "flawed democracy", a democracy in transition. We are in a "political gray zone (Horner & Puddephatt, 2011, p. 12; Carothers, 2002)" between authoritarianism to democracy, and we might as well argue that we never left the shadow of authoritarianism even with the establishment of our democratic institutions.

This working paper is first of a series of analytical pieces that plays with the idea that given the socio-political and economic conditions and the very culture of Philippine politics, we have reached our *democratic plateau*. What we are experiencing now is as far as our democratic institutions can go, given the pushback variables of elite capture of institutions and continued disenfranchisement of the marginalized. The phenomena of democratic

backsliding in the Philippines rests on the premise that the practice of democracy within and through our formal institutions have not sufficiently reflected the values, principles, relationships and incentives of a substantive, meaningful democracy (Hodder & Puddephatt). However, we assert, with a hopeful note, that the red flags identified in this paper are not necessarily indicative of future directions, because, "**Overall, [around the world], trends in backsliding reflect democracy's slow progress and not its demise.** (Bermeo, 2016, p.6)"

Second, this working paper and the continuing analytical project is not meant to be an attack against a particular administration. **We anchor on the trend of democratic backsliding as a worldwide phenomena as shown in literature and analysis, which allows us to emphasize that the difficulties we experience do not exist in the Philippines alone, and has manifested in pieces and parcels for decades already.** The forces that shape Philippine democracy are situated in and dialogue with global forces, such as globalization, broadening reach to information and communication, and security issues, among others. We intend, in succeeding working papers, to look at how the Philippines fairs against our neighbors in Asia, or even other 'transitioning/gray-zoned' countries farther around the world.

It is inescapable, however, that the examples cited in the paper draws heavily on more recent events, because the facets of democratic backsliding, its manifestations, have been more pronounced and increasingly gaining momentum in the past years, and to the cost of lives and further exhaustion of the capacities of democratic institutions. A subsection in Part 2 of this paper shows this, as the performance of the Philippines against worldwide democracy indicators have dropped for the past year or so. The examples are chosen to to give clarity on the concepts, to enable some anchors for analysis and further reflection, and to characterize red flags as necessary to pursue arguments for strengthening democratic institutions.

We will be explicit in some sections about what data and evidence need to be gathered further to establish trends and historical contexts. These will inform the continuing research project.

And third, we develop this working paper for concerned civil society organizations and movers, and engaged public servants (politicians and bureaucrats alike) to look once again into Philippine democracy and re-conceptualize reform with a long-term perspective. This is, even more, an invitation, to think together, design policy reforms together, and come together. Part 4 of this working paper is dedicated to questions that we may ask to inform our framing of the discourse and our actions moving forward.

As democratic backsliding happens in the Philippines as it does around the world, we find it imperative to return to the Foucauldian notion that government does not only pertain to

political structures or to the management of states, but also designates the way in which the conduct of individuals or of groups might be directed. To govern is to structure the possible field of action of others (1982). Hence the 'art of governing', or governmentality, is not simply at the level of state politics, but the governing of a wide array of objects and persons such as entire populations at the most abstract level and one's own desires and thoughts at a micro level (Routledge, 2016). While governments assert *biopower* -- the policies and procedures that manage the births, deaths, reproduction, health within the larger social body -- Foucault also makes the point that power is not solely wielded by the powers of government and institutions:

> **"'Power is exercised only over free subjects, and only insofar as they are free,'** Foucault explains. Conversely, 'slavery is not a power relationship when man is in chains... Indeed, recalcitrance thus becomes an integral part of the power relationship: 'At the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom' Foucault thus provides us with a powerful model for thinking about how to fight oppression when one sees it: 'the analysis, elaboration, and bringing into question of power relations and the 'agonism' between power relations and the intransitivity of freedom is a permanent political task inherent in all social existence'." (Felluga, 2011; emphasis added)

We hope that the analytical project we begin through this working paper allows us to dialogue with freedom once more, and find how, within the spaces that are shrinking and the institutions that are being co-opted, we can propel the spirit of democracy more genuinely and meaningfully moving forward.

Overview of the Paper

For the working paper at hand, we consider this as a stocktaking exercise. The analysis draws heavily on literature, monitoring of events, and consolidation of statements from key groups and individuals. Initial inputs from 14 informants from various civil society organizations (CSOs) were gathered from November to December 2017[1], and are supplemented by public statements from CSOs and non-government organizations (NGOs). The events, statements, and developments captured in this report encompass only until February 25, 2018.

This paper is divided into four key sections. Following this Introduction, **the second part unpacks the facets of democratic backsliding and shrinking civic spaces**. It is further divided into two subsections. One is the review of conceptual definitions and characterizations of the phenomena showing that many, if not most, of how the trend is

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[1] The interviews were conducted as part of a paper analyzing civic spaces in the Philippines commissioned by CIVICUS Vuka! Coalition. The project was conducted in November to December 2017.

understood is already manifesting in the Philippines; and two, is the overview of all the international democracy-related indices and their observations on the recent decline of Philippine democracy.

The third part of this report breaks down the facets of democratic backsliding and shrinking civic spaces, such as (a) *executive aggrandizement* and how the executive over-asserts itself through hyper-presidentialism, through the political symbiotic relationship between itself and the legislative, through the general incapacity of the Judiciary and the Constitutional Commissions and bodies to mitigate its powers, and through its complex relationship with the media; (b) *political polarization* as a product of populist politics, and how it affects the weak political parties and fragmented civil society; and (c) *institutionalized arbitrariness* which emerged through impunity and the lack of checks and balance when the armed state power is put into effect. Each discussion raises the limitations faced by democratic institutions involved, and the lack of incentives to elevate the institutions to uphold more substantive values and processes of democracy.

The fourth part provides concluding notes from the broad literature review and stocktaking exercise. **Drawing from the thematic observations, this working paper ends with questions for civil society and democracy advocates for consideration for a long-term political project of strengthening democratic institutions.**

Additional Note

This version 2 of the working paper adds a section on the Executive and the Judiciary (Part 3.1.3) which the authors deem important given the intensifying conflicts between the two institutions, particularly on the issue of the removal of Chief Justice Maria Lourdes Sereno.

The revisions also include updates on selected references, received from the authors of the works cited upon distribution of the first version.

2   Unpacking *Democratic Backsliding* and *Shrinking Civic Spaces*

This part of the paper **unpacks the facets of democratic backsliding and shrinking civic spaces**. Subsection 2.1 looks at the conceptual definitions and characterizations of the phenomena, while Subsection 2.2 lays out the backsliding that the Philippines is experiencing from the point of view of global measurements. The definitions, characteristics, and indicators captured in this section informs the framework of analysis for the red flags presented in Part 3.

2.1   Definitions and Frameworks

This subsection discusses how democratic/civic space[2] and its shrinking is explained in recent literature, as well as the assumptions when a democratic space is said to be backsliding.

Horner and Puddephatt in their analysis of **democratic space** in the Asia-Pacific context define and problematize the term as, "**the arena that exists between the state and the individual in which people interact to hold the state accountable, shape public debate, participate in politics and express their needs and opinions.** (p. 5)**"** However, it can only be deemed truly democratic when it is underpinned by values such as individual autonomy, political freedom, representative leadership, accountable governance and respect for human rights.

The lingering challenge, they say, is that democracy in many Asia-Pacific countries consists mainly of **"formal democratic institutions rather than substantive democratic processes, values, and relationships.** (Ibid)" This means that countries may be democratic *nominally*, but the "incentives, processes, and relationships" that allow for democratic principles to be meaningfully upheld beyond the creation of formal institutions are weak or still lacking. The power arrangements (or, *political settlements*), usually negotiated within a class of powerful elites, have kept the poor and marginalized groups from gaining meaningful influence in democratic spaces and from receiving accountability from their leaders. This scenario leaves democratic space lacking in quality and depth, and prone to manipulation or shut down by powerful individuals and groups in their efforts to retain political and economic power.

Thus, these democratic/civic spaces shrink when those with power use it to inhibit or

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[2] Democratic spaces, civic, and political spaces are used interchangeably within this report, as definitions in literature have pointed out to common characteristics, particularly on the 'arena' wherein civil society and citizens can assembly, associate, and speak freely.

restrict citizens' rights to freely organize, associate, politically assemble, or express views. This happens when states enact and/or arbitrarily apply vague provisions in laws and regulations to harass, intimidate and curtail legitimate citizen actions and funding for organizations that are or working with groups that are critical of, or opposed to government positions, policies and actions (Action Aid, 2016). Civic space is characterized by three fundamental freedoms: (a) assembly, (b) association, and, (c) expression (CIVICUS, 2018), and seven fundamental principles (Aho & Grinde, 2017):

1. Right to entry (freedom of association)
2. Right to operate free from unwarranted state interference
3. Right to free expression
4. Right to communication and cooperation
5. Right to freedom of peaceful assembly
6. Right to seek and secure resources
7. State duty to protect

These rights and freedoms are most in peril under conditions of **democratic backsliding, which happens when a nominally democratic government infringes on political and civil rights or restricts political competition or accountability** (Baker, et.al., 2017, p. 31)**.** The backsliding happens gradually through a series of discrete changes in the rules and informal procedures that shape competitive electoral procedures, civic and political liberties, and accountability. Democratic backsliding is a combination of (a) gradual breakdowns in the structures of freedom of assembly, organization and speech, and (b) efforts of the incumbent to strengthen the executive branch at the expense of the judiciary and the legislative (*Ibid)*.

The phenomenon of democratic backsliding is seen to follow the "third wave of democracy", as explained by Horner and Puddephatt:

> "The world has seen an unprecedented expansion in the number of electoral democracies in the world over the past four decades. This is often referred to as the "third wave" of democracy, following two previous periods of democratisation experienced at the global level as identified by Samuel Huntington. According to Huntington's analysis, this third wave began in the 1970s in southern Europe, spreading to Latin America in the 1980s, Asia in the late 1980s and Africa in the 1990s. Previous democratic "waves" have been followed by "reverse waves" in which democracies have been replaced by authoritarian regimes. Analysts agree that the third wave is not yet reversing, although there is rising concern about an apparent global trend of eroding civil liberties and political freedoms. (*Footnote)*
>
> Formal democracy has been expanding in Asia and the Pacific over the past two decades. Some countries in the region have a long history of democracy, with others now having several decades of democracy experience of democratic rule.

Huntington's third "wave" of reached Asia in the late 1980s, with the end of the Marcos regime in the Philippines and democratisation in Thailand, Taiwan and South Korea. Cambodia became a multiparty democracy in 1993 and the Suharto regime fell in Indonesia in 1998. More recently, Bhutan and the Maldives have undergone democratic transition. These political changes represent significant achievement for the region, putting in place some of the formal institutions that are necessary for democratic space to flourish… Whilst formal democratisation has on the whole increased across the Asia-Pacific region since the onset of the "third wave" of democracy, change has not always been unidirectional or positive." (p. 9)

However alarming democratic backsliding is, Bermeo (2016) argues that is brings a handful positive trends, such as the decline of classic coups d'etat, the decline of executive coups (or *autogolpes*, involving a freely elected chief executive suspending the constitution outright in order to amass power in one swift sweep), and the decline of election-day vote fraud. But with these Bermeo also identifies continuing challenges brought by democratic backsliding, such as:

- *Promissory coups* that frame the ouster of an elected government as a defense of democratic legality and make a public promise to hold elections and restore democracy as soon as possible, such as in the cases of Haiti, Honduras, Gambia, Pakistan, and Fiji.
- *Executive aggrandizement* which occurs when elected executives weaken checks on executive power one by one, undertaking a series of institutional changes that hamper the power of opposition forces to challenge executive preferences.
- *Strategic manipulation of elections* which denotes a range of actions aimed at tilting the electoral playing field in favor of incumbents. These include hampering media access, using government funds for incumbent campaigns, keeping opposition candidates off the ballot, hampering voter registration, packing electoral commissions, changing electoral rules to favor incumbents, and harassing opponents—but all done in such a way that the elections themselves do not appear fraudulent.

From these definitions, we can understand that while democracy may be nominally existing in a country such as the Philippines, the variables shaping principles, values, and processes that would have incentivized behavior of State actors and civil society may not be in place to meaningfully support the democratic institutions that make the country 'democratic'. The conceptual explanations have already pinpointed a few of these variables already: persistence of power control by the elite, lack of means to mitigate the *political arrangements* and negotiations of these elite groups, and the continuing disempowerment of the power and marginalized to meaningfully shape governance and hold government into account.

The discourse in the Philippines on the persistence of the elite's control of power does not only belong under the discussions of emergent threats to democracy, but to the very socio-economic structures of wealth distribution. Mendoza has had extensive studies correlating the persistence of "political dynasties" to poverty prevalence in the provinces and regions of the Philippines (Mendoza, Beja, & Venida,2016; Albert, Mendoza, Yap, & Cruz, 2015). Evidence shows that fat political dynasties, which occupy a number of positions in government at the same time, are prevalent in areas with severe poverty. These families have direct effects to public finance as it weakens checks and balances, and to political systems as it weakens competition and may perpetuate monopoly of political power.

While Mendoza's insights are currently mostly cited in discussions of wealth redistribution under the proposed shift to federalism, they are worth noting to characterize that the *political arrangements* among the elite do not just happen among national-level groups/families. The political arrangements of the elite can be vertical (national actors to subnational/local families), and horizontally (among national actors, and among subnational families). This is important in this paper's analysis to note that there are shuffling of political elites -- alignment and realignments -- but, they are all perceived as, and are, elites nonetheless. And in the Philippines, politics is almost always conducted "in the name of the family" (Cruz, 2016).

2.2   Through the numbers: Philippine Democracy Indices

With the characterizations provided through the literature review in the earlier section, this subsection shows how Philippine democracy is seen to be backsliding not just from a qualitative, domestic point of view, but also in its performance against globally-identified indicators used to measure all 'nominally democratic' countries.

This subsection documents the indices that measure democracy and its components, and the specific findings that compelled the performance measurements to lower the Philippines' ratings. Table 1 provides a summary of the specific indicators of democratic backslides and shrinking civic space in the Philippines that the indices cited in their reports.

Table 1. Summary of Reasons/Indicators Cited by Global Indices on Democratic Backslides and Shrinking Civic Spaces in the Philippines
(Authors' consolidation)

Reasons/ Indicators	EIU: Democracy Index	Freedom House: World Freedom Index	CIVICUS: Civic Space Tracking	Reporters Without Borders: World Press Freedom Index
Facets/Characteristics				
Power consolidation	X			
Threats against opposition		X		
Preferential application of rule of law towards elites		X		
Limitations in freedoms of association and assembly		X		
Violence and killings (journalists & activists)			X	X
Legislative limitations on demonstrations and assemblies			X	
Use of media for political programs				X
Specific events/activities cited				
Indefinite Martial Law in Mindanao	X			
Surge of extra-judicial killings		X	X	
Pronouncements against and threats to media			X	

Economist Intelligence Unit: Democracy Index

In the 2017 Democracy Index released by the Economist Intelligence Unit (EIU) in January 2018, the Philippines has fallen under 'flawed democracy' type with a 6.71 rating[3]. The score is .23 short from the 6.94 rating in 2016 and poses to be a downslide from an

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[3] The index adheres to a 0 to 10 scale based on the ratings of sixty (60) indicators categorized into five themes: electoral process and pluralism; the functioning of government; civil liberties; political participation; and political culture. The total index value is then used to place the countries within one of four regime types: full democracies (greater than 8); flawed democracies (greater than 6; less than or equal to 8); hybrid regimes (greater than 4; less than or equal to 6); and authoritarian regimes (less than or equal to 4).

increasing index trend in the past five years, with 6.30 in 2012; 6.41 in 2013; 6.77 in 2014; 6.84 in 2015; and 6.94 in 2016. (The Economist Intelligence Unit, p.15)

Figure 1. 2012-2017 Democracy Index Rating of the Philippines
(Authors' representation of ratings through the years noted)
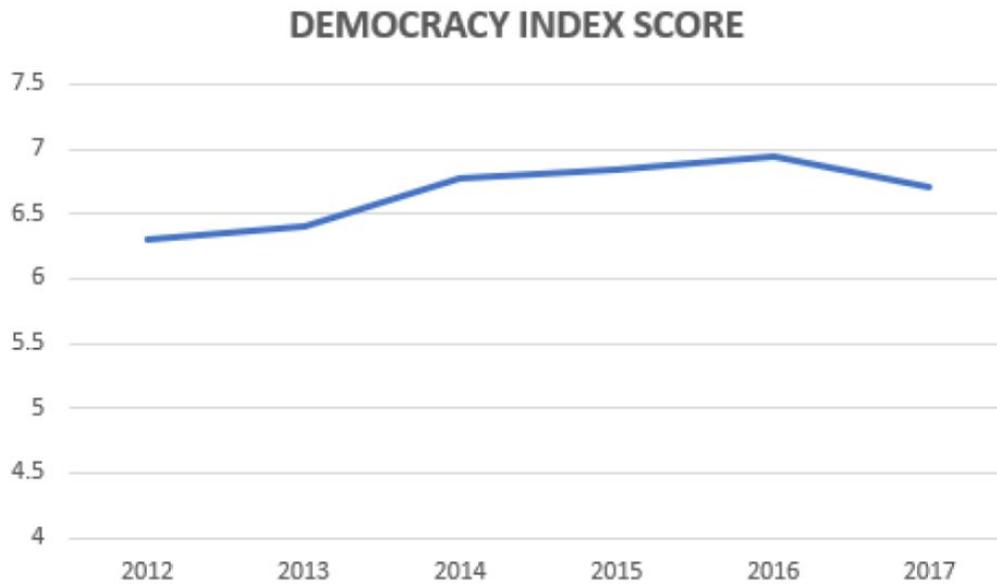
The report specifically cites "consolidation of power" to have adversely affected Philippine democracy, manifested by the indefinite declaration of martial law in Mindanao and the current rule of strongman leader President Duterte. The president is further identified to have "led the way among the many Asian countries that are infringing democratic values" (Ibid, p. 28).

Freedom House: World Freedom Index

The Philippines also tracks a downward trend in its freedom rating, with the 2018 World Freedom Index listing it as 'partly free'. The assessment, which is annually conducted by US-based organization Freedom House, attributes the trend to the surge of extrajudicial killings, and assassinations and threats against civil society activists. While the report notes the country's well developed governing infrastructure, it also highlights the preferential application of the rule of law and justice towards ruling dynastic elites.

Figure 2. 2013-2018 Aggregate Scores of the Philippines in the World Freedom Index (Authors' representation, with trendline)

In the aspect of civil liberties, it also reports limitations in the associational and organizational rights of the citizens characterized by the permits being required for rallies and the use of violence in dispersing anti-government protests. Nonetheless, the Philippines has maintained its 3/7 freedom rating (1 as most free; 7 as least free) for three consecutive years, with 3 points each for political rights and civil liberties assessment areas. The country's aggregate scores, however, show a consecutive decline from 2017 to 2018 with 63 and 62 scores, respectively, after maintaining a stable and increasing trend from 2013 to 2016 (Freedom House, 2018)[4].

CIVICUS: Civic Space Tracking

The live rating of the online 'Tracking Civic Space' monitor of the global civil society alliance CIVICUS shows an *obstructed* civic space in the Philippines (CIVICUS, 2018b). It surfaces the diversity of the civil society sector and the protection of Filipinos' freedoms of association, assembly, and expression being provided by the Constitution. However, the organization tags the country as one of the "deadliest countries in the world for journalists" (Ibid, 2016) with massive killings of journalists from 1992 to 2015. Assemblies, as widely practiced, are guided by the outdated Public Assembly Act of 1985 that requires permits to rally and are commonly met with excessive force by the police (Ibid, 2016b). Moreover, a subset of civil society groups and individuals hold high levels of fear to exercise freedoms with threats of harassment, disappearance and even death. The state-sponsored war against illegal drugs was also cited to have threatened freedom of expression. The organization also notes that the campaign, as suggested by activists, non-government

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[4] Aggregate Category and Subcategory Scores 2003-2018 were sourced from excel file downloadable at Freedom House website.

organizations, and governments, is a "thinly veiled attempt to silence any critics of the government" (Ibid, 2016c).

Reporters Without Borders: World Press Freedom Index

One of the anchors of the CIVICUS live rating is the World Press Freedom Index published by the Reporters without Borders (RSF), which measures the level of freedom available to journalists in the world. The Philippines ranks 127th out of 180 countries in 2017 (Reporters Without Borders, 2017) with a drop in number of media killings. While it is seen as a progress from 138th place in 2016, RSF notes that the country remains to be one of the most dangerous countries for the media, citing violence induced by private militia. The president's pronouncements against media and the practice of an airtime rental system which allows anyone to host political programs are also taken as factors in the ranking. Ultimately, the country's press freedom score has been consistently low in the past five years with an average of 42.75 from 2013 to 2017.

All these international indices affirm a decline in the practice and quality of democracy and civic spaces in the Philippines. These are essential to understand that the trend of democratic backsliding is not a critique made solely out of domestic politics or of opposing groups from civil society. However, despite the backsliding being a global trend, the experience in the Philippines must be understood more deeply with the nuances of how the facets and indicators are being orchestrated locally. This will be the discussion in the succeeding part of this paper.

3 Facets of Democratic Backsliding and Shrinking Civic Spaces in Philippine Democratic Institutions

In the previous part of this analysis, we unpacked the definitions and indicators of democratic backsliding and shrinking civic spaces. **Given the conceptual frames, we, in this third part, begin to problematize the facets of democratic backsliding and shrinking civic spaces in the Philippines.** We organize these facets into three items derived from the literature: (a) **executive aggrandizement** (Bermeo; Baker, et.al.), (b) **political polarization** (Bonura, 2015; Baker, et.al.; Horner and Puddephat), and (c), **institutionalized arbitrariness** (Baker, et.al.).

In discussing these, we shall examine how these facets have emerged, enabled, and/or tolerated vis-a-vis the democratic institutions that are being compromised in the process. We emphasize that this is the beginning of a problematique, as this working paper sets the tone for a continuing analytical project. This means that we do not claim comprehensiveness in the examples and frameworks that are documented in this section. And we recognize the need for and encourage continuing analysis to further understand the implications of these facets of democratic backsliding on future action.

However, the discussions of each section raise the limitations faced by the democratic institutions involved in the facets, and underscore the lack of incentives to elevate the work of the institutions to uphold more substantive values and processes of democracy.

3.1 Executive Aggrandizement

Executive aggrandizement was earlier referred to as one of the key features of democratic backsliding. Bermeo defines this more concretely as follows:

> [Executive aggrandizement]... occurs **when elected executives weaken checks on executive power one by one, undertaking a series of institutional changes that hamper the power of opposition forces to challenge executive preferences.** The disassembling of institutions that might challenge the executive is done through legal channels… [T]he defining feature of executive aggrandizement is that institutional change is either put to some sort of a vote or legally decreed by a freely elected official -- meaning that **the change can be framed as having resulted from a democratic mandate**. (pp. 10-11)

We also refer to Baker, et.al., who characterized executive aggrandizement as: **limiting political rights, harassment of the opposition, disqualification of opposition leaders, intimidation of journalists, and/or take-over of the judicial branch** (p. 31).

These explanations suggest that democracy backslides when the executive willfully asserts itself to undermine checks and balances in two levels:

- ***The institutional separation of powers and checks and balances***, referring to the co-equality of the Executive, Legislative, and Judiciary branches of government; and in the existence of Constitutional Commissions and bodies (such as the Office of the Ombudsman, Commission on Human Rights, Commission on Audit, Civil Service Commission, Commission on Elections), and;
- ***The ideological and political arena,*** referring to opposition forces in the form of political parties, critical journalism, or dissenting voices in general.

Given these characterizations, the succeeding sections break down the challenges in the relationship of the Executive-as-institution vis-a-vis other democratic institutions that could, or should, be able to mitigate forms of executive aggrandizement. We argue that the democratic institutions are severely lacking in capacity and powers to assert their powers to check and balance the executive, due to the variables such as elite capture, weak enforcement capabilities, and impunity.

3.1.1   Hyper-presidentialism

The link between executive aggrandizement and hyper-presidentialism is provided by Relacion and Magalzo (2014) by defining the latter as the **"condition wherein the executive branch becomes the most supreme among the branches of government"** (p. 41). The Philippines, having a presidential form of government, has been widely cited to have adopted a hyper-presidentialism system, following its success to snap back to democracy in 1986 (Rose-Ackerman, Desierto, & Volosin, 2011; Mainwaring & Shugart,1993; Linz, 1985). This is characterized by a powerful executive and the limited control of the electorate on the president and political actors. This critique is supported by claims that the executive asserts unilateral power that challenges the principle of separation of powers and the check and balance system of the country (Rose-Ackerman, et al., 2011). The hyper-presidentialism system veers away from these democratic principles, which undermines the core essence of adopting a presidential form of government in the first place. This happens when the president, corresponding to the role as "chief executive" subvert constitutional controls specifically designed to limit its power.

In the case of the Philippines, hyper-presidentialism is manifested by the president expanding its control over:

- **Legislature** (i.e. meddling with budget and spending priorities, political patronage, control over the appointments of supposedly independent bodies such as the Commission on Appointment, etc.);
- **Judiciary** (i.e. the constitutional power of the president to appoint judicial members, strong influence of the executive in the judiciary which obstruct the latter's full exercise of judicial review to check the executive); and
- **Subnational governments** (i.e. preferential treatment to selected local government units [LGUs]; delays and controls in the release of LGUs' revenue shares from the national government).

Another perspective presented by van de Loo (2004) claims that the current system makes the Philippines a **"patrimonial oligarchic predatory state".** This is when leaders, especially presidents with their extraordinary powers, nurture power brokers or the oligarchy including members of the elite whose core activity is not business. This is captured by the author citing Wurfel :

> In his book, 'Filipino Politics Development and Decay' Wurfel concluded that "In sum, an executive-dominated constitutional system facilitated intra-elite competition, and ... almost never implemented policies contrary to the interest of men of great wealth." Now, as this thesis has shown, 16 years later his conclusion is unfortunately still valid for the Philippines." (p. 267)

In this sense, hyper-presidentialism is a manifestation of institutional and structural weaknesses of the Philippine government enabled by a failing political system that is driven by financial and political oligarchies. Philippine presidents tend to undermine constitutional processes and structures to exercise full control and power, which is fueled by the backing of power brokers. This has been a practice for the longest time because of the flaws in the design of the institutions that suppose to check the powers of the president and the inability to constrain it due to political patronage and weak opposition (Rose-Ackerman et al, 2011, p. 247).

It can be argued that an effective response for this is the identification of weaknesses in constitutional structures that serve as an opening for abuses and power consolidation (Ibid, pp. 249 & 332). Such efforts, relating to constitutional reforms focused on structural changes, were made in the past: (1) during Ramos' presidency in 1997, a People's Initiative was launched by his national security adviser to shift to a parliamentary system and to allow re-election of presidents; (2) the several Charter Change attempts during Arroyo's term, primarily focused on shifting to federalism and parliamentary system with a unicameral interim parliament; and finally (3) the present proposal of Duterte's political party of a semi-presidential/ parliamentary-president hybrid system (Bagayaua-Mendoza, 2011; Malaya, 2017; Tomacruz, 2018). These, however, have somewhat drawn resistance from the public and for the first two cases, never progressed.

This paper considers this point of view, highlighting the argument that democratic backsliding has long been projected as a result of a flawed system or design enshrined by our own written constitution. Power consolidation of the Executive is possible because power has been largely lodged in the President in the first place. As analysts argue, this problem does not only lie in the "personalities and political allegiances" of the political figures but also in the key institutional frameworks where they operate (Rose-Ackerman, et al, p. 333).

However, as the next subsections will discuss, these principles that could curb hyper-presidentialism in the Philippine system are also subjected to incentives that unfortunately lean towards tolerance and enablement of executive aggrandizement.

3.1.2   Political Symbiosis of the Executive and Legislative

Since post-dictatorship democracy, the Legislative branch of government has never truly been constituted as a body that *substantively represents* the Filipino people to supposedly mitigate possible abuses of the Executive. What clearly characterizes Congress is a **representation of power elites and local clans** that control machinery and resources in the local levels. In its seminal work on profiling members of the House of Representatives (HOR), the Philippine Center for Investigative Journalism (PCIJ) characterized these "rulemakers" as constituting a select and privileged segment of society: richer, older, better educated, better connected than most Filipinos (Coronel, Chua, Rimban, & Cruz, 2004). Such observation causes concern, as these are the persons elected to perform the "power of the purse" balancing function vis-a-vis the Executive plans and proposals for budget allocation.

However, through the years, **we can observe that there exists a political settlement, a not-so-subtle negotiation between the Executive and the Congress (especially the HOR) to strike deals on how both can benefit with the constitutional powers accorded to them.** A clear example of this is the pork barrel system, which, as Araneta-Alana (2014) explains:

> "The existence of the pork barrel reflected the immaturity of Philippine political dynamics. Presidents relied on the pork barrel system to push their policies and political agenda. The President's formal authority, which is required for the release of pork barrel funds, was used in strong-arming legislators into enacting policy changes the [Executive] desired. Here, a blurring of lines may be seen in the separation of powers. Legislative power is constitutionally vested in Congress, but because of the existence of pork barrel, the President possessed the ability to interfere with the law-making process through the use of pork barrel funds." (pp. 427-428)

The pork barrel then, symbiotically used by Executive and Legislative, affects political alliances via an immature political party system, wherein politicians easily "butterfly" their way into the side of the ruling regime. There have been many alignments and re-alignments that have happened among "political parties" since the time of President Corazon Aquino, despite existence of larger parties, so to speak. There are no clear ideological bases for these political parties to begin with, no disciplined way of drawing lines between political stances (Ufen, 2007, p. 13; Rocamora, J., 1998, p. 1; Quimpo, 2007, p. 277). Hence, the easiest way to group is if one is pro- or anti- the ruling administration.

Executive aggrandization in Congress is best characterized when positions are categorized as either a position of funding allocation or an invitation to harassment. We can cite a very recent example in the turn-out of allocations for the 2018 national budget, wherein 24 congressmen belonging to different groups of opposition, i.e., *Magnificent 7*, Makabayan, Liberal Party, were given zero infrastructure budgets for their congressional districts. To this, House Speaker Pantaleon Alvarez confirmed that the zero allocation is due to politics, claimed that this is also the case with previous administrations, and that, "You win some, you lose some. They should understand that you can't have your cake and eat it too". Budget and Management Secretary Ben Diokno noted that there will be adjustments, "[b]ut there will be a distinction between those who are allies of the administration and those who are not...You know, that was the policy even before martial law [implemented by then President Marcos] … 'if you're not with us, you don't get anything". (Yap, 2017)

We can ask, at this point, should there not be other institutions and processes in place to mitigate this relationship between the Executive and Legislative? We can address this, for now, on these levels:

● First, the Supreme Court, in Belgica v Ochoa Jr, November 2013, has ruled against the Priority Development Assistance Fund (PDAF) which was the pork barrel system under the Arroyo administration. This has significantly set the general disposition against anything that resembles pork barrel. However, this does not mean that the Executive and Legislative cannot be creative with the ways that *discretion* in allocation to the Congressmen can be put into place.

● Second, we can of course say that the electoral process should correct the composition of the Congressmen (or the person of the President, actually), if the Executive-Legislative relationship is deemed unjust or undemocratic. However, there is little evidence to support a principle-based vote as far as Congress choices are concerned. Elections in the Philippines has long been characterized as re-distributive in nature, wherein politicians who neglect their constituents during their term return to the latter, engaging in vote-buying. This is on top of the fact that Congressmen almost always belong to political dynasties or dynasty-allies, because these local elite have mastered the "7Ms of dynasty building" - *money, machine, media/movies, marriage, murder and mayhem, myth, and*

mergers/alliances (Coronel, 2007). These are strategies that are still proven effective in securing local votes for dynasties and elites that have captured the culture of elections, to the unbenefit of democratic values. Political space for civic action and mitigation is limited in this regard.

- And third, it must be also be noted that as a manner of the institutional checks and balances, Congress is also accorded powers such as review and approval of presidential appointments; impeachment; and overriding the Executive's vetoed bills. Congress could use these as leverage to assert its equality with the Executive. However, these have not been substantially exercised to assert the power of Congress in the past years, in a way that sends a strong message of co-equality of power or a pushback against executive aggrandizement. Instead, what we observe in increasing occurrence is how Congress uses its powers to become agents of harassment and disqualification of opposition to the Executive.

Therefore, there is a clear need to reevaluate the relationship of Executive with Congress and mitigate the tools they use to circumvent separation of powers such as the pork barrel system and the weak political party system's effect in the HOR. These require extensive policy reform, and a magnanimous amount of incentives to assert the informal structures (values and principles) against the formal structures (Executive, Legislative). The Freedom of Information advocacy can be considered as a clear entry point into requiring transparency from the Congress. Empowerment of the Judiciary and other Constitutional Commissions and bodies can also be reviewed to enable them to apply preventive and punitive measures against abuses in an efficient and effective manner.

3.1.3 The Executive and Judiciary

The judicial structures of the country have long been deemed weak, subsequently contributing to the emergence of an unchecked and "imperial" presidency (Pimentel, Jr., 2008; Rose-Ackerman et al, 2011, p. 6; Relacion and Magalzo, 2014, p.50). This happens when the executive authority presents strong influence over the court, a supposedly co-equal branch of government. This causes institutional conflicts as the judiciary's primary task is to ensure that powers are constitutionally distributed in the entire government structure (Cruz, 2002, p. 77). Hence, the perceived weakness is largely attributed to the independence and politicization of the Supreme Court.

At its core, the strongest argument of executive supremacy in the judiciary is the constitutional power of the president to appoint its members (Ibid; Relacion and Magalzo, 2014). This presidential power is often contested with questions on the appointments' legitimacy and broadly on the judiciary's independence from executive influence. This is best expressed by Haynie (2000):

> "Appointments to the judiciary have always been politically motivated. Appointments were given as rewards for past political favors or expectations for future ones, and appointments were given to ideologically compatible nominees. and not surprisingly, nominations to the Supreme Court have been increasingly filled by individuals believed to be loyal to the appointing president." (p. 35)

The process, as enshrined by the 1987 Constitution, is mostly driven by the Judicial and Bar Council (JBC) as a recommending body for appointees in the judiciary and the Office of the Ombudsman.[5] The council aims to depoliticize the branch by lessening the power of the President (Official Gazette, 2018) over the appointments. Unfortunately, despite its strict membership and broad composition, it fails to fully bar external influences in the process (Relacion and Magalzo, 2014, p. 52). The line between the powers of the JBC and the president appears to be blurry as the submitted shortlist and rankings of the JBC do not always guarantee the President's approval.

Such case was exemplified when former President Arroyo rejected twice the list of JBC (Rose-Ackerman et al., 2010) and when former President Benigno Aquino appointed Chief Justice Maria Lourdes Sereno who was last on the JBC's list in 2010 (Relacion and Magalzo, 2014). The appointment of Hilario Davide, Jr. as Chief Justice was likewise contested as former President Estrada admitted himself that business tycoon Lucio Tan lobbied for Davide's appointment (Ibid). This supports the critiques on JBC's partiality as it is said to be lobbied by third parties, especially from its members' personal networks (Thompson & Batalla, 2018).

Similarly, strong executive influence can also be perceived in the cases of unseating Chief Justices. It is because of the politicized appointments that the chief justice positions tend to be troubled with contentions mostly centered on loyalty and patronage. President Benigno Aquino was very vocal in questioning the appointment and in initiating a move to dismiss then Chief Justice Renato Corona (Thompson & Batalla, 2018; Avendaño & Ramos, 2011). Corona was tagged as a "midnight appointee" of Arroyo, Aquino's predecessor, just a month before she left office in 2010. The impeachment was successful after he was charged for his failure to disclose his Statement of Assets, Liabilities and Net worth (SALN).

For a more recent example, the ongoing impeachment case of Chief Justice Sereno is said to be also driven by executive influences despite President Duterte's denial to have initiated a move to oust her (Ballaran & Salaverria, 2018), which he later retracted as he called her his "enemy" (Cabico, 2018). According to critics, the removal of Sereno, an Aquino appointee, can be seen as an effort of the Duterte administration to subvert the institution's authority to check his power (Cruz, 2017; Parry, 2018). Duterte also, in a number of statements, called out Sereno and even claimed to file impeachment cases versus both the Chief Justice and the Ombudsman (Macas, 2017; Salaverria, 2017).

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[5] Article VIII, Section 8 of the Philippine Constitution.

Whether or not the presidential prerogatives and interventions in these cases insinuate political patronage remains speculative. What is clear, however, is that the current set-up makes it hard to surface the perception of independence on the part of the court. So long as people sense political interests behind the appointments and attacks, it is hard to argue that the doctrine of separation of powers is observed by these key institutions.

Further, another critical point in the Court's structure and norms is its expanded role as enshrined by the 1987 Constitution. The expansion was envisioned to strengthen the Court after the Marcos regime, when it was highly criticized for paving the way for the dictator to assert "constitutional authorianism" (Haynie, 2000, p. 30). The Constitution mainly introduced two significant revisions on the power of the Court: (a) the function of administering the bar was transferred from the Department of Justice to the Supreme Court itself; and (b) the jurisdiction of the Court was expanded and the avenue of deference to decide was removed (Haynie, p. 33). The latter ultimately prevented the court to avoid deciding on highly politically sensitive cases and limited the court's ability to "avoid evaluating the political machinations of government elites" (Ibid). From this amendment rose a court that has accepted almost all cases brought before it. It inevitably became a "third component of the legislative process" as it constituted an available avenue through which all congressional and executive actions must pass (Ibid).

These manifestations of a politicized Court indeed propel executive aggrandizement. As the court is continually challenged by politics and outside influences, it is vital to reexamine the institutional system that safeguard its independence. Naturally, the Constitution provided its fiscal independence so to delineate it as an independent office. Also embedded in its role is an another measure to run an accountability check in the executive -- the judiciary's exercise of judicial review. And although there have also been questions in its court rulings, the Supreme Court deciding on executive acts constitutes its strongest tool to disallow unlawful and excessive exercise of presidential power.

3.1.4   Horizontal Accountability: Executive vis-a-vis Constitutional Commissions and Bodies

Hyper-presidentialism and the tools of the symbiotic relationship between the Executive and the Legislative and the Judiciary can, in principle, be checked by institutions of public accountability. Public accountability is a formalized relationship of oversight or sanctions of public officials by other actors, and implies not only answerability but also the legal obligation to answer or the institutionalized right of agent of accountability to impose sanctions on public officials (Mainwaring & Welna, 2003). Of many forms of accountability in literature, we at this point focus on horizontal accountability, to discuss Constitutional Commissions and bodies that were created for investigative and/or punitive responses to executive aggrandizement.

Pozon & Tupaz (2012) explains through literature review that horizontal accountability manifests in actions taken by a state agency with the explicit purpose of preventing, cancelling, redressing, or punishing actions (or non-actions) by another state agency that are deemed unlawful, whether on the grounds of encroachment or of corruption. In the Philippines, Constitutional Commissions and bodies, including, but are not limited to, the Office of the Ombudsman and the Commission on Human Rights, were created to perform this horizontal accountability function. However, as the discussion that follows unpacks, these accountability institutions are also limited in the exercise of their mandates largely due to juridical and administrative factors.

We focus on these two institutions for this working paper, due to their significance to the other manifestations and/or results of executive aggrandizement (i.e., corruption, human rights abuses). Continuing analysis can expand the institutional review on the other Constitutional Commissions and bodies.

- ***Office of the Ombudsman***

Acting as a constitutional "watchdog", the Office of the Ombudsman functions as an independent office mandated to investigate and prosecute "any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient" (Sec. 15 [1] R.A. No. 6770). With this line of work, there are constitutional provisions that safeguard its independence; this includes fiscal autonomy, and fixed terms of office and Constitutional Commission ranks (needing no congressional confirmation and with only impeachment as basis for removal from office) for its chair and members (Article XI Secs. 14, 11, 10, & 8 Constitution of the Philippines).

In the course of its existence, however, the institution has been struggling to operate within its constitutional means. This can be discerned by delving into the extent of its powers, mandate and functions, and capacity.

The broad mandate of the Ombudsman that covers all government instrumentalities, personnel, services, and functions ranges its powers to preventive, investigative and prosecutorial in cases of graft and corruption (Asian Development Bank, 2011, p. 110). This seems, however, a contradiction to the overlapping roles and mandates found in several Philippine anti-corruption agencies. The Ombudsman constitutes a large part of this complexity as it has concurrent jurisdiction with other two key anti-corruption bodies, Civil Service Commission (CSC) over administrative penalties for corruption charges and the Department of Justice (DOJ) over corruption complaints involving government entities (Magpantay, 2014 pp. 32-34). This directly affects the overall anti-corruption campaign of the government as it causes delays, redundancy, and wasted government resources (Ibid).

The broadness and multiplicities of its functions do not help the institution to efficiently exercise its powers, which are often met with jurisdictional limitations. The biggest criticism, for example, is the lack of powers in terms of law enforcement, such as wiretapping, examination of bank accounts, freezing assets and making arrests (Araneta-Alana, p. 422). Such limitations hinder the institution to gather evidences to effectively prosecute alleged officials (Ibid).

Post-conviction, the agency still faces challenges as penalties of suspension are not being strictly implemented by concerned heads of agencies (Benitez, n.d., p.25). At the subnational-level, the DILG, which implements suspensions of local government officials, does not fully and effectively execute orders; one reason for this is the fact that most of the executives have private armies (Ibid). This is similarly practiced at national level as in the case of the dismissal of House of Representative member Gwendolyn Garcia on February 12, 2018 (GMA News, 2018). The order to implement the dismissal that carries penalties of perpetual disqualification from holding public office was later countered by Speaker of the House Pantaleon Alvarez citing his limited constitutional capacity to implement the order. The Speaker stated that it was not within the power of the Ombudsman to discipline any member of the House of Representatives and his implementation of the order would be unconstitutional (de Jesus, 2018). The Civil Service Commission tagged the Speaker's decision as an emerging "constitutional crisis" (DZRH News 2018) as the order was definitely within the Ombudsman's jurisdiction. Generally, these cases only put forward the Ombudsman's institutional weaknesses, being aggravated by structural and political contentions, as an independent body.

It can be argued that one result of such weakness can be seen through its low conviction rate. From 2001 to 2006, the rate was only 0.7% (Center for People Empowerment in Governance and Transparency International-Philippines, 2006) with no high-ranking Philippine official ever convicted and jailed. The most notable exception was then President Estrada who was convicted of plunder by the Sandiganbayan, but failed to serve the penalty because of the pardon extended by his successor Arroyo (Magpantay, p. 35). From 2008 to 2016, the authors note an average of 49.9% conviction rate based on the self-computed rates declared by the Office in its annual reports of the said years[6]. The computation follows the formula: "number of convictions divided by the number of decided cases multiply by 100%". It is also important to note that the Office recognizes contentions on their self-posted rates as stated in their 2009 Annual Report then headed by Merceditas Gutierrez:

> "Some people cast doubts as to the accuracy of the OMB's conviction rates because it is different from the conviction rate as computed by the Sandiganbayan. However, it must be stressed that the Sandiganbayan considers in its formula those cases which

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[6] The annual reports from 2001 to 2016 are accessible through
https://www.ombudsman.gov.ph/index.php?home=1&navId=Ng==&subNavId=NDg=

did not undergo trial such as those which were archived or dismissed for lack of jurisdiction (Office of the Ombudsman, 2009, p. 52).

Figure 3. 2008-2016 Office of the Ombudsman's Conviction Rate (Authors' representation of data from the Office of the Ombudsman's annual narrative reports from 2008-2016)

The Office of the Ombudsman Conviction Rate

The sudden trend change coincided with the change of leadership in the Office. This was, in fact, acknowledged in the Millennium Challenge Corporation (MCC)'s final report on the Philippine Threshold Program. The report, which was obtained and cited by the Philippine Center for Investigative Journalism (PCIJ) in its tendentious report in February 2011, recognized "a dramatic increase in the reported conviction rate of the Ombudsman" but pointed as well that "(the) attainment of the defined target for this indicator did not necessarily relate to work on the fundamental reforms and institutionalization of sound practices that is needed in order to really improve the performance of the Office of the Ombudsman" (Mangahas & Ilagan, 2011). This working paper likewise does not discount the problems put forth by the Office itself especially the lack of resources that often results to limited manpower and capacity development programs, and underpayment of prosecutors and investigators (Marcelo, 2013, p. 5)[7]. Conclusively, this all points out to the apparent cracks in the Ombudsman's institutional capacity to successfully fulfill its constitutional mandate.

The challenges being faced by the Ombudsman can be problematized into three critical areas. **First, the Office's weaknesses are largely rooted from its structure, specifically on the clarity of and its capacity to exercise its roles and functions.**

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[7] Atty. Simeon V. Marcelo served as Ombudsman from October 2002 to December 2005.

Second, its key purpose of being an anti-corruption body often disputes with jurisdictional restrictions and its given power. Lastly, political landscape and players remain to play a vital role in determining the Ombudsman's independence or susceptibility to external influences. To confront these challenges, there is a need to revisit institutional barriers to secure the Office of the Ombudsman's disposition of being the citizens' compeer in checking the integrity of the government.

- *Commission on Human Rights*

Rocamora (2009) explains the institutional struggle of the Commission on Human Rights (CHR) eloquently:

> "The CHR was envisioned by the… 1987 Constitution to be, first and foremost, an independent body capable of ensuring that human rights as an inherent part of the right to life guaranteed by the Bill of Rights is protected, pursuant to treaty obligations, in a manner befitting the memory of those who had fallen in their quest to restore democracy to the country. Suffice to say that in its… years of existence, the CHR as an institution has either been a fulfillment of the intentions of the Constitutional framers, or an abject failure in the eyes of those whom it has sought to protect by the very same Constitutional mandate." (p. 676)

Despite being celebrated as a manifestation of the restoration of democracy under the 1987 Constitution, the CHR is only an investigative and recommendatory body and does not file and adjudicate cases. If the CHR finds in its investigations that there are violations of human rights, it makes recommendations to the appropriate government body that has jurisdiction over the case. (Vera Files, 2017)

Which means to say, the CHR, "has bark, but no bite (CMFR, 2017)". Throughout the Philippine administrations, the CHR has performed a "toothless watchdog" role (Rocamora, p. 678). Rocamora's study discusses at great length the challenges that the CHR as an institution faced since 1987, including legal definitions of "human rights", scope and limitations of the Commission's mandate and powers, and its essential conflicts with state response to the "war on terror" through the years. In the end, in Rocamora's 2009 article, he recommends *the granting of prosecutorial functions to the CHR*. This is seven years before the crisis on human rights related to the current drug war even started.

The overview of the challenges of the Office of the Ombudsman and the CHR allows for initial insights into how horizontal accountability mechanisms are existing but not enabled enough to counter incidents if/when the executive aggrandizes and oversteps its bounds (through corruption or human rights violations).

Moreover, because of these limitations, *it becomes easy for Executive to frame the work of the institutions as politically-driven and/or personality-based,* because the reports rarely translate into *resolved cases*. Regardless of the accuracy of such claims, the Filipino people rarely get to know with certainty because the appropriate processes succeeding the work of the Office of the Ombudsman (i.e., trial at the Sandiganbayan or impeachment), and the CHR (through judicial courts) are inefficient, to say the least. The inability of these institutions to perform their constitutional, democratic mandates is tied to the performance (or underperformance) of other institutions. This makes the reform agenda for institutions for horizontal accountability to the Executive more complex and in need of more encompassing policy and administrative changes.

3.1.5 Media and the Executive

In the Philippines, because courts are inefficient, an alternate form of resolution to public issues has become the court of public opinion. Media is not just the fourth estate that serves as government watchdogs, but also a major player in the realm of politics. It can build and destroy political capital, and it can pave the way towards a popular social pulse, such as when Filipinos almost-immediately flocked to the EDSA when the televised impeachment hearings on former president Erap Estrada showed that the senators refused to open an envelope believed to contain significance evidence. The power of the media to bridge people with government has come a long way from its suppression during Marcos' Martial Law.

However, a survey conducted by Tandoc (2017) shows that journalists in the Philippines are, "most concerned about low pay, media violence, information access, and professionalism. Younger journalists tend to identify low pay as the most important problem, while the problem of violence against journalists was most salient for reporters than for editors and managers" (p. 102). So for a country that enjoys the prevalence of mostly non-state-owned media and freedoms in expression, an analysis into the hindrances in the structural and institutional arrangements of media is needed to hammer on how the concerns of journalists in the Philippines have turned out as such, and how the Philippines has become "among the top five most dangerous places for journalists in the world in 2017" (Reuters, 2017) and "most dangerous in Southeast Asia" (Laureyn, 2018).

The clearest point of contention between manifestations of executive aggrandizement and the media is when the latter asserts its capacity to extract accountability from the Executive and his allies, through forms of investigative reporting. The press has functioned not just a check and balance to government, but also as a platform for feedback of the people, leveraging on media's airtime to compel government response. Such function has proven useful in the exercise of democracy, especially when for the longest time, feedback loop platforms, protocols for grievance, and redress on government have been largely missing or inefficiently administered.

However, media is not homogenous, and as a system, there have long existed a considerable influence of corporate and the elites in running traditional media firms. Tandoc describes media system in the Philippines as follows:

> "The People Power revolution that toppled the Marcos dictatorship in 1986 gave rise to a media system that vigorously maximized and protected its newfound freedom. However, Philippine society continues to be ruled by an oligarchy, with its economy—and its media—controlled by a handful of wealthy families (Rosales, 2006) Therefore, "the media have also used their freedoms to outdo rivals in the race to peddle newspapers and television programs," leading to sensationalism and homogeneous reporting (Coronel 2001, 118). "The result is the tabloidization of news and public affairs" (118). The Philippine press is also marked by a heavy focus on politics, crime, and sex. It is also characterized by an obsession with media personalities, with movie stars, and even broadcast journalists successfully crossing over to politics by taking advantage of their mass media status (Tandoc and Skoric 2010)." (Tandoc, p. 105)

Hence as media becomes a platform for elite interests, and/or an entry point into politics or political alliances, media values become diluted through the actions of its practitioners. And as journalists diversify interests, political affiliations, and sources of income, the landscape becomes more complex and deadlier:

> "Many of the journalists killed in the country were local radio journalists. This is partly because "radio is the king of all media in the Philippines, especially in the provinces" (Rosales 2006, 148). Some of these slain radio announcers were aggressive critics of local politicians. Some of them also engaged in investigative journalism to expose corruption and illegal activities. **What aggravates the situation is the weak judicial system, with many cases of violence against journalists still unresolved** (Rosales 2006). An example is the Maguindanao Massacre, where 32 of the 57 people killed were journalists. Seven years after the massacre, no one has been convicted, with the trial marked by delays, killing of key witnesses, and the death of the alleged mastermind in 2015 of heart attack (Whaley 2015). The rising number of cases of violence against journalists is reflected in many international rankings that consider the Philippine press as only "partly free" (e.g. Freedom House 2015), and yet **some argued that the spate of media killings in the country does not constitute state repression** (Aguilar, Mendoza, and Candelaria 2014). Many of these cases were local in context: "**The killing could be a form of repression but not one directed by the central state" (651). However, the same study argued that "broad structural factors" have allowed "an atmosphere of impunity that perpetuates these killings" (673).**" (Tandoc, p. 106; emphasis added)

But when killings do not happen, the gray area of the relationship between media and the state (especially the president) is even grayer. When media calls out executive aggrandizement or takes an anti-corruption stance, or when government calls out media for its reporting, two things are almost easily predictable:

- First, the media will say that it is doing its checks and balance, watchdog function. And cognizant of their rights as free press as enshrined in the Constitution and international standards of democracy and free expression, an Executive countering press reports and/or reporters can be considered media harassment of various degrees.

  This is a concrete area of tension, because the intensity of state response, as orchestrated by the Executive, to the press is turning out to be 'more than the usual' in recent memory. For instance, as of this writing, President Duterte's cabinet members and the Presidential Security Group have issued a ban against a reporter from entering the premises of Malacanang because of her affiliation to an online news agency that is increasingly critical of the president. Such response from Malacanang is unprecedented and raises red flags domestically and abroad. However, it is yet unclear how the issue of restricting the journalist's access can be resolved on the level of other mitigating institutions.

- Second, the Executive, when subjected to criticism, will assert that media (as firms or journalists individually) is acting: (a) to just sensationalize the news; (b) as agents of its political affiliations with the opposition; (c) for their elite/corporate interests, and/or (d) as corrupt journalists would. There is precedent of a sitting President, in the case of former president Cory Aquino in 1987, filing a libel case against a journalist, Luis Beltran, who said she "hid under her bed" during an aborted coup attempt. In the course of apologizing and case filing, Beltran claimed to be a victim of presidential pressure (Richburg, 1987).

  But as democratic backsliding and executive aggrandizement became more pronounced in the recent years, it can be observed that the arguments become more shared by 'strongmen' Executives, as with POTUS Donald Trump and the American press. And with the emergence of the concept of "fake news", the term is loosely being wielded by the Executive in attempts to discredit media as organizations and journalists individually.

Both contentions point us to either the courts to decide, or the unending battle within the realm of public relations and narratives. *However, the institutional implication of this relationship becomes more apparent as there is increasing intensity of state response echoing executive aggrandizement*. **The Executive is increasingly using *legal, democratic processes* to negotiate its relationship with media organizations**, over and above the usual public statements. For example, as of this writing, President Duterte has not yet

signed the renewal of ABS-CBN's licence to operate, while Rappler's registration has been banned by the Securities and Exchange Commission (but is put on hold until the courts have decided). It is difficult dissociate these legal, procedural setbacks to the media firms from executive aggrandizement, especially when Duterte has been consistently vocal about his deep disapproval of these media groups (Corrales, 2016; Reuters, 2017b; Reuters 2017c).

Hence we return to the structural, process level versus the substantive conflict in the exercise of democracy, in this case between the institutions of the Executive and the media. While the press and the government will always, and should always have, a natural antagonism as the former watched the latter, there is a clear need to reassess how democratic values and complementing incentives can be made clearer and more manifest over the letters of the law.

Note on media as platforms: Larger gaps in institutional responses

We must note that this preliminary analysis on the media under democratic backslides did not cover a broader discussion of the *platforms* -- traditional versus social. The conflict between executive aggrandizement and media is magnified when social media is taken into account, because, **in an institutional level of analysis, Philippine laws and policies are so-far insufficient in both form and substance to address the actions of government's use of social media and its engagement with pro- or anti-"netizens".** There are not enough processes and guidance to delineate public officials' identity as 'private persons' creating content, or as 'public' entities duly representing or using the powers of their office to assert their opinion. There are also not enough processes and guidance to address websites creating and distributing paid content in support of political groups, especially when integrity of content is concerned (i.e., the proliferation of "fake news").

At this point, democratic institutions guiding government and civil society online interaction are grappling with where to start and what to do. This is a challenge faced not only in the Philippines but also in most countries wherein social media have high penetration and usage levels. The conversation also is not limited to government and civil society, but has to include private platform providers such as web hosts and social media applications (such as Facebook, Twitter).

3.2   Political Polarization

While the previous section (3.1) discussed democratic backsliding and shrinking civic spaces in the context of executive aggrandizement and the institutions compromised by its exercise (design of Executive powers, the checks and balance and separation of powers supposedly with Legislative, the checks that Constitutional Commissions and bodies, and the complex

relationship with media as the fourth estate), this section shifts the gaze to the political/civic space itself.

In this section, **we talk about political polarization**, which is as discussed in Part 2, a key facet of democratic backsliding and shrinking civic spaces.

> …[E]xtended polarization distorts existing democratic processes and facilitates autocratic rule. **In general, polarized politics results in the consolidation of political oligarchies, the politicization of civil society, and extensive mass mobilizations. It culminates in recurring political crises that typically leave political elites and electorates further divided. Most importantly, polarization results in the creation of new forms of political enmity.** (Bonura, 2015, emphasis added)

Baker, et.al. noted that trends of political polarization have created remarkably strong alliances, wherein political leadership and religious leaders come together. However, the continuous consolidation of elites have turned motivated civil society organizations and advocates to forge new, creative alliances from the bottom-up or coalitions that did not before exist.

Before going any further in our discussion of political polarization and implications to democratic institutions, we must indicate that the discussion on polarization must be situated within the discourse on populism.

Literature has grown about how political polarization emerges from populist politics. This working paper will not delve deeply into the history and characterizations of populism. But we must note that for the vast literature available, there are agreements among scholars and analysts that populism makes possible a divide between 'the people' versus a 'class/group of elites' often painted as corrupt, and a frustration with bureaucracies and institutions under the control of the elite. Moffitt (2016) offers an organization of how scholars have problematized populism:

- As a strategy, populism is used by personalistic leaders as they seek or exercise power based on support from a large base. Populists identify themselves with the very heartland of the imagined political community, as a charismatic embodiment of the voice and desires of the nation as a whole (also Riedel, 2017).
- It demands its own discourse (and language, propaganda) in order to emphasize the divide between 'the people' (a good group) against 'the elite/oligarchy' or a 'bad other' (also Riedel), and may not necessarily exist as ideology but as a tool to pursue something else (i.e., in the case of Hugo Chavez who is populist in strategy and language but socialist in ideology).
- And as a political logic, populism *is* the basis of any political project, because the division against two competing antagonistic groups creates demand.

Scholars also converge around the idea that populism is embedded in democracy, but the populism becomes a threat to democracy when as it excludes rather than includes, and favors one distinct 'pure group' over becoming pluralistic (Riedel; Moffit). "Populist actors make politics more polarizing" (Riedel, p. 294). **Political polarization is strategy, tool, and effect of populism.**

With these fundamentals of the concept in mind, we need to note that populism is not necessarily a new phenomena observed in the Philippines:

- ***Populism and former President Erap Estrada:*** Thompson (2016) frames the rise of populism as 'moral economy of electoralism" wherein a disadvantaged population's community-based, mutualist voting behavior is seen in center stage of national elections. In his comparison of Philippines and Thailand, he looks at Estrada and Thaksin Shinawatra, who were both eventually overthrown despite continued support from less well-off voters. Meanwhile, Garrido (2017) pointed out to populism in the way the urban poor responded to Estrada and re-elected him mayor of Manila City even after he was ousted, imprisoned, and convicted of plunder.

- ***Populism and current President Rodrigo Duterte:*** Alfred McCoy (2017) discusses Duterte's populism through the lens of localized violence, emphasizing the role of performative violence in projecting domestic strength and complementary need for diplomatic success to show international influence. How Duterte rose, how he employs the strategy, language, and performance of populism, and his remarkable public support are analyzed in *A Duterte Reader: Critical Essays on Rodrigo Duterte's Early Presidency*, a collection of analyses edited by Nicole Curato (2017).

This suggests that the some factors that gave rise to a populist vote before has returned, and more strongly at that. Given the literature landscape, **this working paper will focus on the democratic institutions that are subjects of political polarization.** We will problematize political polarization in this section in two levels: (a) through the lens of the **weak political party system** that makes elite alliances only at the transactional level; and (b) through the lens of **civil society** echoing political polarization not only in their alignments with regimes, but also amongst themselves as organizations.

3.2.1   Political Parties

Philippine political parties are often characterized as "parties of elite" with members acting as *followers* or *retainers* of elite individuals (Rocamora, J., p. 1). Another characterisation is the lack of meaningful platforms and ideologies (Ufen, p. 13) and the shifting character of membership and leadership (Rocamora, J., p. 1), where "political turncoatism or

party-switching is an established rule of the game" (Relacion & Magalzo, p. 43). Most of our largest parties are built by short-term coalition where dissolutions and re-emergences are commonly practiced (Ufen, p. 13). They are also mostly personality-oriented while political beliefs and programmes are often disregarded (Quimpo, 2007, p. 277). The result is a convoluted party system that has been numerously lobbied to be reformed by great many democratic advocates in the country.

The weaknesses of the said system can be approached by two interconnected key factors. One is through the social structure in which it operates, that is the predominance of families and clans as "predatory political elite" and the adherence to a patron-client system. This follows the argument of Van de Loo that the controlling forces in Philippine politics are the economic oligarchy rather than the administration and bureaucracy (2004, p. 258). This social structure facilitates elite-based parties used as instruments to gain power and access to the resources of the state (Quimpo, p. 278). Another approach is to look at institutional factors as enablers of these practices. This approach explains the weakness by focusing on the absence of a general party law (the closest is R.A. No. 7941 or the Party-List System Act of 1995) and the weak institutionalization of parties. This is built against the backdrop of the current system lacking institutional safeguards to prevent political patronage, party disloyalty, and oligarchy domination in the existing political parties.

Party-induced polarization has been a debate among thinkers. One argument asserts that polarization is an effect of an institutionalized party system and is necessary for a stable interparty competition (Ufen, p. 3). Another point of view defines it through its extent and nature, especially based on ideologies and effect to society (Kimball, Anthony, & Chance, 2017, p. 1). We argue that political polarization among parties in the Philippines have serious effects to democratic spaces and practices. We contextualize this based on the crucial role of political parties in maintaining the citizens' influence in governance as best captured by Norris (2005):

> "[Political parties] are necessary to build and aggregate support among broad coalitions of citizens' organizations and interest groups; to integrate multiple-conflicting demands into coherent policy programs; to select and train legislative candidates and political leaders; to provide voters with choices among governing teams and policies; and if elected to office, to organize the process of government and stand collectively accountable for their actions in subsequent contests." (p.3)

We shall make sense of this "failing" party system in two-fold: within the government and towards the broad civil society.

- **Within government.** Polarized politics based on political parties results to power consolidation. This is true in the executive branch given the current presidential form of government gives so much power to the president that everyone wants to be

on the same side. The defining reason lies in the president's appointment powers and control over government funds (Rocamora, J., p. 4). This expands to legislative, where it is almost a norm for lawmakers to jump to ruling parties every after national elections. The most recent example of this is when several House members join *Partido Demokratiko Pilipino–Lakas ng Bayan* (PDP-Laban) following the victory of its presidential candidate Duterte in 2016 (Ager, 2016) and the succeeding transfers as Congress progresses (CNN Philippines, 2017). These lawmakers are former members of previously dominant party *Partido Liberal* (LP) which is now tagged as the opposition party. This political turncoatism poses threat to the Congress' performance of duty especially characterized by the "formation of an outsized majority" (Magalzo & Relacion, p. 43) which often inhibits the exercise of a democratic and evidence-informed policy making. Worse, the very same institution is being used as platform for political patronage favoring ruling parties. This is evident when Congress members deliberately use power to define budget allocations based on political affiliation. In the 2018 national budget, as earlier cited, Speaker Alvarez owned up the House's denial of infrastructure funding for twenty-four lawmakers coming mostly from the opposition (Dalangin-Fernandez, 2017).

- **Towards civil society.** The effect of the political system's weaknesses to civil society can be as alarming as it is to bureaucracy. As Kimball, Anthony, & Chance put it: "[p]olarized politics encourages the public to view party competition in zero-sum "us versus them" terms and denigrate their political opponents more than in the past" (p.1). This is evident in the current context particularly with the emergence of labels playing not just around political parties but stemming to the broad public dissenters, as well. This is seen in the general categorization of non-supporters of Duterte as *yellows* or *dilawan* which relates, if not equates, to the Liberal Party or "LP". In these instances, the critics specifically target the party, not for its programs or ideologies, but largely for the personalities they identify it with. These polarizing narratives and labels cause political enmity that often compromise healthy dissent among citizens. Further, it closes the space for advocacy and negotiation between the government and the civil society.

These notions are of course dependent to the party landscape of the country. The political polarization stemming from this landscape is obviously a manifestation of an ill-developed democracy. A backslide, in this sense, is premised against the democratic principle of an effective citizen representation, underscoring the crucial roles of strong and institutionalized political parties to sustain a functioning democracy.

3.2.2 Civil Society

Political polarization actively reshapes civil society. As Bonura explains:

> "... [T]he political space to engage in activities that attempts to imagine political positions beyond opposing establishments become increasingly limited. Moreover, civil society activists and organizations have participated widely in regular mass mobilizations on both sides of each divide. Under such conditions, civil society cannot be understood as a uniform political force persistently in opposition to autocratic rule or liberal in its orientation."

Bonura, in his analysis of political polarization in Thailand and Malaysia, noted that CSOs can be explicitly politicized, become potentially elitist in nature, or gradually co-opted by the state, or simply play a "para-political" role in actively supporting state and political agendas. This is supported by Baker, Boulding, et.al., when they cited studies showing that people can be quite skeptical about NGOs and prefer more informal community organization. They added that although much has been argued about the potential for NGOs to promote democracy, evidence from countries such as China suggests that NGOs can quite readily co-exist with authoritarian rule.

At first glance these rather seem counter intuitive when measured against the political role of civil society vis-a-vis the state, wherein civil society is more than just the space for uncoerced associational life of citizens apart from the family, but is an engaged space for citizens to dialogue and critique the state as deemed necessary. However, literature suggests that **CSOs tend to scatter out and fragmentize in the face of democratic backsliding and shrinking civic spaces, especially when these happen during (or for anticipated to last for) long periods of time.** Why is this so?

The analysis of Horner and Puddephatt on democratic space in Asia-Pacific provides some insight as to why CSOs tend to do so. They argue that, "... **democratic space has been tolerated by the political leadership as a necessary output of formal democratic transition**. Such space can be genuine and meaningful for many people, but can be quickly clamped down upon when it threatens to irrevocably threaten established political settlements [among elites]. (p.14)" They argue that providing a democratic space "lends political legitimacy" to the political leadership, but space that is seemingly democratic can actually be pervaded by the same undemocratic logics that underlie the wider political settlement.

Therefore, we might as well question the quality of the civic space that existed in the first place, if it demonstrates the substantive values and processes of democracy, rather than being created-for-CSOs by the government, or pushing the argument, the elites that have controlled platforms for engagement. **There is a fine line between a space that has been created because of the influence and collective power of a plurality, versus a space that has been served on a 'silver platter' because democratic engagement is necessary to provide legitimacy to a democratic regime.** A good test of an equal, enabled civic space is, if the ruling regime threatens to, or takes away a platform of engagement (e.g. joint councils, media-as-platform), can civil society demand for the

platform's continuation? Or does civil society need to realign themselves to the powers that be? This is a contentious area of discussion among civil society organizations in the Philippines.

We can also draw from the analysis of Baker, et.al. when they say:

> Civil society actors in these backsliding contexts walk a fine line between providing space for effective resistance and becoming a target of repression. Thus they are threatened in several ways: ***being seen as too directly hostile to a regime, as too close to a regime, or as compromised by international support or agendas***. (p. 2)

On this note, from November to December 2017, we conducted interviews with fourteen (14) informants from various civil society organizations, selected to represent different forms of engagement with the Duterte administration, e.g., aligned their priorities with those of the administration's, maintain a perceived independent position vis-a-vis government, and/or assert an antagonistic stance on several issue fronts.[8] The results echo the trends from literature, and point out more deeply on the gaps in the democratic institutions that could enable the independence and actions of civil society when confronted by the backsliding.

A common observation among civil society representatives interviewed is that **civil society -- even those among opposition groups themselves -- have *fractured* relationships** that are made worse by the political environment created by the administration. This 'fractured' relationships are attributed to several factors:

- First, some CSOs see the current differences among CSO leaders and groups as an offshoot of **"a phenomenon of CSO capture of negotiation spaces"**, wherein a few CSOs occupy the negotiation spaces with each administration and exercise turfing. This suggests that those who were "excluded" from the previous administration find their way to occupy the spaces in the next administration.

- **Second, the personalities driving CSOs from many years ago are still mostly the ones leading them today. And with personalities come relationship "baggages" and histories that observably have hindered collaboration and consolidation of efforts and strategies.** "There are problems they associate with each other… Even if there are many trying to bridge the gaps among them, it's too difficult… [It] depends mostly on the *old guards*," said the informant from Simbahang Lingkod ng Bayan (SLB).

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[8] The interviews were conducted as part of developing a paper commissioned by the CIVICUS Vuka! Coalition to author Czarina Medina-Guce for the assessment of civic spaces in the Philippines. The list of organizations represented in the interviews is included in this paper as Annex A.

- **And lastly, civil society institutions themselves are weak.** Some attribute the inter-CSO conflicts to the fact that in the Philippines, perhaps the only civil society institutions that outlast presidencies are the Church (which in itself is "not a solid bloc", as per several informants) and the Universities. **There are no professional political parties, not enough long-standing think-tanks, and very few genuinely constituency-based CSOs that can stand as institutions to administrations that have 'expiration' in term limits**, a point raised by both informants from Ateneo School of Government (ASOG), SLB, and the Philippine Center for Investigative Journalism (PCIJ).

These do not mean that civil society organizations are unsuccessful in their work. As Horner and Puddephatt noted:

> "Civil society may be vibrant, but cannot be expected to be necessarily working to protect and expand democratic space... The emergence of NGOs working in diverse geographical regions to improve service delivery system has become instrumental in the field of development in the region. Nevertheless, their success has been limited to sectoral development at the micro level as opposed to stimulating fundamental transformation in social, economic and political structure to expand and sustain democratic space for the poor and marginalized." (p. 16)

There is an emerging challenge, therefore, for civil society to go beyond their thematic, issue-based interventions and begin problematizing the quality of the civic space as a whole, and the empowerment of civil society that can truly create its own democratic spaces.

Meanwhile, **the fractured relationships among civil society leaders (more than the 'organizations') are worsened against the backdrop of the increasingly polarizing environment.** These are some statements that capture the gravity of the personal dilemma that civil society advocates and workers face:

> "...As long as in our society power takes over which takes precedence or values, the space for dictated democratic space becomes problematic... For example, if you make your position, they will dismiss it and say that you are partisan, you are opposition. So as long as power takes over values, our basis for debate will be problematic... What really are our values now? What principles guide our conversations?" - informant from Simbahang Lingkod ng Bayan

> "It comes to a point where personal commitments and beliefs come to a head. The decision of staying to engage with the government, fight for whatever space there is, and gain ground is becoming harder to stand by. There is an urgency to seek an escape route for loved ones. "I remember at the beginning of this administration, whenever there would be news of extra-judicial killings, I would be flustered and

enraged. Now it happens everyday, and it doesn't make the news. We have become desensitized, and as a mother I wonder, is this the kind of society I want my child to grow up in? State power is felt personally." - informant from Bantay Kita

Because being in civil society under these circumstances strain on a *personal, values-based level,* **civil society advocates and workers are put in a difficult position of having to, (a) choose whether to engage government or not, and, (b) choose who among themselves they will continue to engage with.** Both choices have implications to whether or not they will be branded as pro- or anti- administration, and because association is *personal*, they know that their choices now will carry over for the rest of their life's work and advocacies in the future.

Moreover, as experts in their respective fields, there is expectation that they will shed light to issues -- advocacies, legislation, and overall reading of current events. But because many of them, or their peers, have been attacked and "trolled" in social media, civil society leaders themselves are retreating to their circles of like-minded peers, or retreating altogether from online platforms to share their insights. This has an effect in collaboration and discourse among civil society, because the leaders are guarding their personal spaces from the toxic public space.

What is striking about the observations from the informants are the following:

- That while CSOs criticize personality politics and elite capture of government institutions, civil society as an institution also echo the same trends. The intensity of responses to government (pro- or anti- regardless) depend on the personalities that have led civil society since the overturn of Martial Law. Civil society politics is also personal. There are very few that the informants can point out as *new and/or broader civil society leadership* arising from the challenges of democratic backsliding in the recent years.

- That while CSOs recognize that there is politics in the lobbying and advocacy process wherein they need to 'play with the game' of whichever regime is in power, *CSOs that find wider spaces of influence per administration is directly associated with that administration.* And that, when other political factions win the presidency, the narratives used resonate with CSOs association with the old and new regime. It is as if civil society functions as an extension of the politics of those running for public office. And this hinders CSOs from the Philippines to significantly 'outlast' administrations while maintaining an ideological or advocacy-based stance. While arguably we can identify some CSOs that have lasted 20 years or more, longevity is only one aspect of being an 'institution', while perception and 'narratives of institutional legacy' is another.

As we write this paper, CSOs in the Philippines have gathered into loose coalitions that anchor themselves on issue-specific advocacies and protests, such as opposing the persistence of extra-judicial killings and the impunity surrounding the issue, opposing the moves to change the Constitution, and/or opposing Duterte's administration in general. Organized mass mobilizations are becoming more frequent in differing crowd sizes and intensities. It has yet to be seen if these CSO-led protests will translate into institutional responses and changes in the President's popularity. And it remains to be seen -- and hopefully discussed more intensely -- how civil society will respond to the institutional challenges brought about by democratic backsliding, especially with regard to fragmentation triggered by political polarization.

3.3   Institutionalized Arbitrariness

The last facet of democratic backsliding and shrinking spaces that we will cover in this working paper is "institutionalized arbitrariness", which is anchored on the definitions from Part 2. Tapscott (2017) defines ***institutionalized arbitrariness*** as a theory of governance that:

> ...explain[s] **how the state might appear to be absent (pathologically weak or willfully absent) and present (neo-patrimonial); public (military state) and private (patrimonial), while retaining the meaning of these distinct categories.** While the theory is based on the particulars of northern Uganda, it may have broader applicability, particularly in post-colonial contexts where it has been generally assumed that decolonization resulted in a rupture between sovereign violence and governing authority...

> This arbitrary governance is made possible by four factors...: ***the non-institutionalization of the public/private division; the perception of state control of sovereign violence; the potential presence of the state; and numerous security and governance institutions with unclear hierarchies.*** Together, these four factors produce an environment of the potential for seemingly arbitrary violence that makes the government ever-present in civilian imagination, despite its general material absence in terms of service provision or law enforcement.

In another article (2017b), Tapscott notes:

> The central government prevents meaningful consolidation of sub-national power brokers through three strategies: ***(1) fostering multiple and hybrid security actors that have overlapping and at times contradictory mandates; (2) fragmenting sub-national power bases through systemic reforms like***

redistricting; and (3) reinforcing the perception of an effective and omnipresent government security apparatus. (p. 265)

Tapscott provides these explanations drawing from the experience of the militarized government in Uganda, but as she and Baker, et.al., suggest, these strategies for institutionalized arbitrariness are causes for concern when:

● The backsliding democracy has tendencies of executive aggrandizement extending to the armed components of state power i.e., the military and the police, or even independent, vigilante groups; and,
● When institutionalized arbitrariness becomes a strategy to:

"...overwhelm attempts at [civil society] alliance formation… **This system includes a vast network of informants, paranoia about these informants, random enforcement of small policies and laws, and the overall historical memory among civilians of previous conflicts** (Vokes and Wilkins 2016). Thus, the opportunity for coalition building and oppositional party empowerment is lessened through governance mechanisms installed by the central party." (Baker, et.al., p. 22; emphasis added)

The backsliding of democracy in the Philippines is showing flags of institutionalized arbitrariness, which is tied to the policies and programs that tap into the military and/or the police force:

● *Martial Law:* After the Marcos dictatorship, Martial Law was declared through Proclamation 1959 by President Gloria Arroyo covering the province of Maguindanao, following the Maguindanao/Ampatuan massacre wherein at least 34 journalists were killed. Arroyo's Martial Law lasted from December 4 to December 13, 2009, only a matter of days.

The next declaration of Martial Law is already under the Duterte administration, which began on May 23, 2017 covering all regions in Mindanao, as a response to the *Battle of Marawi*, wherein operatives associated with ISIS captured the town and violence escalated. As of writing, Martial Law has been extended, with no definite indications from the administration on when it will be lifted. The Congress, however, approved a one-year extension on December 13, 2017 upon the request of President Duterte and the recommendation of the Armed Forces of the Philippines (AFP). The recommendation came after the initial statement of AFP Chief-of-Staff General Eduardo Año on the earlier extension proposal in July 2017, saying that five months of Martial Law would be enough (Gita, 2017). After being contested with petitions, the Supreme Court supported and ruled in favor of the extension of Martial Law, citing a sufficient factual bases presented by the AFP and affirming the President's prerogative to exercise military powers (ABS CBN News, 2018).

- *"Tokhang", the war on drugs*: The most controversial policy of the administration is the war on drugs, which has claimed thousands of lives[9]. It must be pointed out that the Tokhang protocols and operations have undergone several 'iterations', with the lead agency shifting from the Philippine National Police (PNP) or the Philippine Drug Enforcement Agency (PDEA) and back to PNP yet again. Tokhang has employed the local government units and citizen volunteers to name known drug users and pushers as "information gathering methods", with drop boxes places in communities where anyone can put in names of whoever they know (Valenzuela, 2017). There is no clear protocol on how these lists are reviewed, vetted, or where the information goes. Case build-up and prosecution of suspected killers are rarely pursued because of the lack of evidence, lack of witnesses (which CSOs report as coming from fear of being further harassed or killed), or simply lamentably the impunity in the Philippine and its justice system.

We do not say that the Martial Law declaration is completely baseless, especially when the conflicts in Mindanao has overlapped with concerns on the global war on terror. We are also not saying that the war on drugs is necessarily wrong if the conversation is as far as the state putting anti-drug proliferation in its agenda. However, we underscore the critical point that, **the democratic institutions that should uphold human rights and assert civic spaces are largely lacking in capacity and powers, allowing for arbitrariness in the enforcement of the policies. There are limited indications on how other domestic democratic institutions can assert themselves to mitigate the policies for clarity and proper accountabilities.**

The Supreme Court has upheld the year-long extension of Martial Law in Mindanao in February 2018, and with the legality affirmed, the vigilance on any possible excesses in its implementation will be under the Commission on Human Rights with the same limitations discussed in an earlier section of this paper. There is also no indication on clarity on the data from the drug war, as there are competing reports on the death toll. The government maintains its #RealNumbersPH data (http://pia.gov.ph/realnumbers), but even such does not make clear which deaths are caused by vigilantes, by the drug syndicates, or by the police force itself. There is also no indication how cases can be pursued when evidence generation is weak, and potential witnesses reportedly afraid to come forward.

Impunity has enabled institutionalized arbitrariness to manifest, and any reflection towards addressing democratic backsliding has to take this critical factor into account.

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[9] Government-provided data through #RealNumbersPH recorded that from July 01, 2016 to February 8, 2018, there have been: 85,068 anti-drug operations conducted, 121,087 drug personalities arrested; and 4,021 drug personalities who died in anti-drug operations. Human Rights Watch, an international NGO, places the numbers of deaths under Tokhang at 12,000 as of early 2018.

4 Moving Forward: Strengthening Democratic Institutions

At this point, we have performed a stocktaking of the facets of democratic backsliding and shrinking civic spaces in the Philippines, and pointed out several areas for continuing analysis for a rejuvenated push to strengthen democratic institutions.

4.1 Situating Democratic Backsliding with other Global Factors

We pointed out early on in this paper that democratic backsliding and shrinking civic spaces is a trend that is happening not just in the Philippines but many democracies all over the world. And as we proceed thinking about new strategies and points of action, we also must note that we have to situate our experience of democratic backsliding with other global factors that continue to shape discourses.

Horner and Puddephatt outlines four of these factors:

- *Globalization,* which is theorizes to causes citizens to feel distant and excluded from decisions of their State because the priorities are increasingly discussed at the level of multilateral institutions. "Policies therefore either tend to be realistic but vague, with little resonance with citizens, or else embody promises that nation states cannot reasonably fulfill and therefore sway towards populism. (p. 20)"
- *Growing power of non-democratic states on the world stage,* which points out to the economic and political successes of countries such as China, Singapore, Taiwan, South Korea, and even Vietnam. The example of these countries counter the argument that democracy is the only viable system of politics and governance, which is an idea largely upheld with the collapse of communism at the end of the Cold War.
- *War on terror*, which aside from affecting policies on citizen surveillance and restrictions on the freedom of expression, has "intertwined with regional and local dynamics of extremism and terror (p. 22)", including what we discussed earlier on the factors surrounding the declaration of Martial Law in Mindanao; and,
- *International communication and mobilization*, which poses a threat to elite groups that benefit from political status quo in partial democracies, thereby prompting efforts to control digital communications.

The relationships of nations are being put to the test, especially when an aggrandizing executive frames policies as a response to 'foreign intervention' into the country's sovereignty. This is a rhetoric that happens more frequently, as Baker, et.al., note how **political autonomy or the perception thereof** is an important aspect that must be

considered in maintaining civic spaces in backsliding regimes. Regardless of effectiveness of aid and partnerships, they summarize the skepticism on foreign intervention on the following levels:

> "[1] Close alliances with international organizations and rights claims, based on international norms, are not effective in contexts where elite opinion is against these groups and/or where nationalism is particularly strong. In fact, such alliances are used to discredit these groups as tools of Western imperialism.
> [2] Foreign interventions are often not well-attuned to the local context.
> [3] Donors' motives and practices are often not well-aligned with the goal of keeping civic space open. (p. 27)"

These are not entirely baseless, when it comes to the Philippine backsliding, as the President and the Department of Justice has, in numerous occasions pointed out to international funders to be supporting local groups (mostly media) that are critical of the administration, including the Central Intelligence Agency and their "NGO fronts". In January 2018, the Philippines officially rejected Euro 6.1 million (Php 382.45 million) in aid from the European Union, because it came with 'strings attached'. On this, the President said, ""Keep your money. Do not meddle with the sovereignty of my country. Do not impose conditions. We are not rich, we are poor. But we do not bargain dignity by accepting money (with) conditionalities that are not really acceptable to us. (CNN, 2018)"

It must be noted, however, that at least in terms of the macro-economic performance (Sunstar, 2018), there are no clear indications of the effect of the governance issues with the Philippine economy as of this time. The dynamics of democratic backsliding with economic performance can be subject for further monitoring and analysis.

4.2   Concluding Notes, and Questions for Civil Society and Democracy Advocates

Emerging from the vast review of literature and stocktaking exercise of this working paper, we can make the following notes:

- Democratic backsliding and shrinking civic spaces have emerged in the Philippines because the institutions that were designed to uphold values and principles of checks and balances and mitigate executive excesses have been largely underdeveloped and unempowered to perform the powers accorded to them from the Constitution. The facets of the backslides have not happened just now under this administration, but have been manifesting already through the decades past, as seen by earlier literature and thematic commonalities on issues posed on different presidents. However, the democratic backsliding and shrinking civic spaces are

increasingly becoming apparent, and there are red flags that need appropriate increased vigilance and response from civil society.

● Given these, we argue that the conditions we are experiencing now are clear manifestations of our democratic plateau. Given the persistence of elite capture of institutions, positions of powers, and resources, and the growing discontent that people have gathered and asserted through populist votes, we found ourselves under the mercy of political settlements among the elite, compromised civic spaces, and political polarization. It is unclear to most, especially the citizens who enable populist politics, how our democratic institutions should truly relate to each other, and how we should relate to our democratic institutions in unrestricted, equal, inclusive democratic spaces.

● What remains lacking is a set of incentive and punitive measures that could move the institutions into practicing the values, principles, and relationships of a meaningful democracy wherein power is real and meaningful to the people.

The democratic institutions, however, will not reform themselves on their own, and there is so many factors that bar the way from strengthening the institutions to be genuinely democratic. And while there is a general lack of push to strengthen, there are growing incentives to the power-wielders to keep status quo and play the game of political settlements than to empower the very institutions and processes that would stop them. Impunity prevails, people are dying, others are harassed, and public relations/propaganda is at an all-time high. Citizens complain in their own circles; and what could be feedback to reform institutions is left in silos of "safe spaces" wherein the concerned preach to the concerned and we all wonder why there is not enough momentum for reform. Meanwhile, Congress is railroading Charter Change with a questionable set of proposed revisions (term extension, no election scenarios), and communities believe evidence-blind promises hurled around in populist performances. Many Filipinos are still wondering if, this time, the popular President will keep his promises, compared to what has been framed as a polarizing 'failure of everyone else before'. Civil society organizations are contemplating about their positions vis-a-vis the government and among themselves, and some are playing the same political settlements in the created-space for them. These are, definitely, cause for great concern.

We are not saying that the strategies and tools being used now to make sense of the phenomena (or to push back, for that matter) are necessarily wrong or lacking. There must be an effective action or appropriate response to the *intensifying manifestations* of executive aggrandizement and political polarization and institutionalized arbitrariness at the time that they are happening -- not after the administration has ended its term. That is what at the very least, a vigilant civil society can do, if the formal institutions are compromised from asserting meaningful democratic values.

But as literature suggests, the manifestations of democratic backsliding require more strategic, purposive response from civil society, because democratic movements tend to be short-lived, dispersing once immediate goals of political change are achieved, as Horner and Puddephatt argues:

> "Such movements may actually be a sign of weak and shallow rather than healthy and vibrant democratic space. More recently, movements have attempted to oust leaders that, albeit corrupt and populist, were democratically elected. Examples include the 2001 "People Power II" movement in the Philippines and the 2006-2010 protests in Thailand. Such uprisings indicate that people are unable to effect political change through the institutions and mechanisms of democracy and democratic space, usually as these have been co-opted and manipulated by powerful elite. They tend to result from broad-based collaboration between political and civil society rather than solely from sustained civil society activity, and are therefore not necessarily indicative of strong civil society... Moreover, once movements have achieved their short term goals or have been suppressed, sustained political collaboration within civil society has been hampered in many countries by internal divisions along ethnic, political or urban/rural divides." (p. 17)

What we are saying, therefore, is that the project of 'saving' democracy from backsliding is not just about an administration or a regime. Propelling democracy forward entails a more holistic problematization of what enabled the current circumstances to happen, as they seem to be bound to happen as they slowly manifested through the years. There are many ways to approaching this issue, such as through the lens of populist strategies and performance, and situating the challenge in perception politics enabled by media. These are all necessary to deepen our understanding of the challenges to democracy. In this paper and for the way forward, we problematize the issue through the lens of the democratic institutions.

Despite the challenges of a grand project of strengthening institutions, we subscribe to the Giddens perspective of the *duality of structures* (Mouzelis, 1995; Sewell, 1992). The notion gives a point for emboldenment, as it asserts that while the structure (systems and institutions) provide for the context of understanding, meaning, and action for the agents (entities capable of action, like persons or groups), the agents have the capacity to shape and affect the structures in return. This allows us to underscore that while democratic backsliding slows democracy down, it does not necessarily kill democracy, as long as some spaces remain and are created, and there are people who will commit to cause of reforming the institutions.

To pry open civic spaces in backsliding democracies, Baker, et.al., offer these five strategies:

● "Alliance and coalition-building with other domestic civil society groups, since larger groups have greater resources and can reach a larger audience.

- Indirect resistance and actions, such as charity provision, artistic expression, and local-level political involvement, since strategies that do not overtly confront the regime are less threatened and can still provide a space for community involvement, expression, and problem-solving.
- Non-violent contentious action, especially protest, which is more likely to be successful and have domestic and international appeal than violent action.
- Creative and careful use of digital technologies, since much of digital communication is beyond the reach of the state.
- Maintaining organizational autonomy from the government and international actors, since co-optation by the regime and affiliation with international actors risk compromising a group's message and goals. (p. 1)"

However, they place the caveat that these strategies are from their own review of literature and case studies, and do not claim that such strategies will work across contexts. We can argue, however, that there are points worthy of picking up from the five strategies, especially when we take the fact that **democratic backsliding and the civic space shrinking did not happen overnight. The democratic institutions that could have guarded against these phenomena were subjected to years of challenges until they are now plateauing and rather exhausted. As the problems have compiled through time, the solutions also need to be framed in a long-term perspective, beyond administrations and regimes.**

How, then, do we take these insights forward and work on strengthening Philippine democratic institutions, and democracy at large?

What we can offer, as a concluding note to this working paper, is to frame some questions that can guide civil society and advocates of democracy in further analyzing and reflecting on the work ahead:

- *Building capacity of democratic institutions to assert substantive democratic values:* What incentives and punitive measures can be introduced into policies and behavioral change interventions to shift the inertia of institutions away from political settlements? How can we introduce change management strategies to streamline and embed mature democratic values into the structures and the people who comprise them?

- *Mitigating elite capture in all democratic institutions and processes:* How can civil society rebalance power away from the elites that have compromised the exercise of democracy? How do we protect democratic processes -- elections, policy-making, national and local alike -- from impunity, institutionalized arbitrariness, and the weakness of rule of law?

- ***Renewing civil society and leveraging from lessons learned:*** How can civil society organizations position themselves based on their strengths and experiences to complement each other in a long-term strategy for reform? How can civil society address citizens' skepticism of the political affiliations of CSOs and NGOs that seek to represent them? How can civil society reclaim the reform narrative from a populism?

- ***Reclaiming and creating new civic spaces***: How can civil society reclaim the existing platforms and mechanisms away from the co-optation of executive aggrandizement? How can civil society create its own democratic spaces without being dependent on support or affirmation of government, but while still protecting democratic institutions?

- ***Shifting the popular sentiment from grievance to unity:*** How can civil society stop the ideology and language of hate and move towards unifying messages that will attract different publics? How can advocates shift the gaze from attacks on certain groups to building on each group's strengths and competitive advantage? How can the platforms and institutions magnify these messages?

Abstract, challenging, or idealistic as these questions may seem, this working paper is the beginning of broader and more intensive analytical projects that can hopefully bring civil society and democracy advocates approaching these questions in various lenses and issues. Keeping our gaze at strengthening democratic institutions allows us a long term political project to share, difficult but worth the time and energy, especially when it is done to protect, cultivate, and empower the exercise of rights and freedoms of the generations of Filipinos to come.

ANNEX A: Informant List and Profiles

	Organization / Coalition	*Basic description*	*Date and modality of interview*
1	Affiliated Network for Social Accountability in East Asia and the Pacific	ANSA-EAP (Philippines) has over the years produced models of social accountability that is replicable in communities all over the country. It has social accountability tools, the Citizen Participatory Audit, and Check My School programs that have been lauded in the Philippines and abroad. It is a member of the Philippine Open Government Partnership committee.	November 20, 2017, in person
2	Simbahang Lingkod ng Bayan	SLB is the socio-political apostolate of the Society of Jesus (Jesuits) in the Philippines. They have the capacity to mobilize religious/clergy, universities and students, and community-based organizations for social justice issues.	November 20, 2017, phone
3	Movement for Good Governance	MGG is a "constituency for change", comprised of Filipino citizens and organizations who aim to promote transparent, participatory, and accountable governance. It releases governance scorecards to assess the performance of Philippine administrations.	November 21, 2017, phone
4	Ateneo School of Government	ASOG was established in 1996 as the public sector arm of the Graduate School of Business until it became an autonomous school unit of the Ateneo de Manila University in 2001. Its main purpose is to provide an institutional vehicle for the development of public servants and a forum for dialogue and partnership among government, private, non-government, and people's organizations.	November 22, 2017, phone
5	Bantay Kita	Bantay Kita is a coalition of civil society organizations advocating for transparency and accountability in the extractive industry.It has played critical roles in environment, indigenous people's rights advocacies, and is a member of the Philippine Open Government Partnership committee, and the Philippine Extractive Industry Transparency Initiative.	November 22, 2017, in person
6	Philippine	PCIJ is an independent non-profit media	November 22,

	Center for Investigative Journalism	organization that has been producing in-depth investigative reports for the past 30 years. It is one of the longest-standing media organizations in the country and whose work has been significant in exposing corruption in government. One such set of reports has been instrumental in the conviction and removal in office of former president Joseph Estrada.	2017, in person
7	Akbayan	Akbayan is a political party born of social movement that believe strongly in vibrant and independent civic space.The work of Akbayan deals with providing a bridge or a voice for civil society to be able to air their grievances in the legislature and in the public generally.	November 22, 2017, phone
8	Aksyong Kabayanihan Para sa Organisadong Pagbabago (ANGKOP)	ANGKOP or Heroic Action for Organized Change is a national political youth movement that aims to develop reform-minded, action-oriented and politically engaged citizens, youth groups, organizations, formations and alliances. The goal of ANGKOP is to get more people to be more politically active.	November 22, 2017, in person
9	Foundation for the Philippine Environment (FPE)	FPE is a non-governmental organization that leads actions in biodiversity conservation and sustainable development in the country. It commits to expand spaces for non-state actors to participate in environmental governance by building constituencies and capacities for the environment; promote responsive policies and actions for biodiversity conservation and sustainable development; and manage the endowment fund.	November 23, 2017, in person
10	La Salle (Jesse Robredo) Institute of Governance	LSIG is a private research and training organization based at De La Salle University that promotes integrity, innovation, and inclusiveness in governance and policy through research, training, and community engagement. The Institute cooperates with government, civil society, private sector, academe, and donors in conducting programs and projects that generate data and knowledge to improve governance and policy outcomes. It manages a Knowledge Development Center as a hub for research collaboration and public dialogue. It is also member of the Philippine Open Government Partnership committee.	November 23, 2017, phone

11	Action for Economic Reforms	Action for Economic Reforms (AER) is a public interest organization that conducts policy analysis and advocacy on key economic issues. AER provides timely and sharp policy positions based on a solid grasp of economic, legal and political tools of analysis especially in the areas of macroeconomic policy with focus on fiscal issues, right to information, among others.	November 23, 2017, in person
12	Asian NGO Coalition	ANGOC is a regional association of national and regional networks of non-government organizations (NGO) in Asia that engages agrarian reform, land reform, indigenous people's rights, participatory governance, and rural development.Its member networks and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs).	November 23, 2017, in person
13	Free Legal Assistance Group	The Free Legal Assistance Group is a nationwide organization of human rights lawyers who provide aid to victims of abuses to human rights and civil liberties.	November 23, 2017, phone
14	KARAPATAN	KARAPATAN is a network of individuals, groups, and organizations advocating for the protection of human rights in the Philippines through education and training, campaign and advocacy, services programs, documentation and research, and network building.	November 24, 2017, in person

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