



ASIA MAIOR

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Asia in 2019: Escalating international tensions and authoritarian involution

**Edited by
Michelguglielmo Torri
Nicola Mocci
Filippo Boni**

viella

A large, faint, light-blue decorative mandala graphic is positioned on the right side of the cover, partially overlapping the text area. It features intricate, repeating geometric and floral patterns.

CENTRO STUDI PER I POPOLI EXTRA-EUROPEI “CESARE BONACOSSA” - UNIVERSITÀ DI PAVIA

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The Journal of the Italian think tank on Asia founded by Giorgio Borsa in 1989

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When this Asia Maior issue was finalized and the Covid-19 pandemic raged throughout the world, Kian Zaccara, Greta Maiorano and Giulio Santi, all children of Asia Maior authors (Luciano Zaccara, Diego Maiorano and Silvia Menegazzi), were born. We (the Asia Maior editors) have seen that as a manifestation of Life, reasserting itself in front of Thanatos. It is for this reason that we dedicate this issue to Kian, Greta and Giulio, with the fond hope that they will live in a better world than the one devastated by the Covid-19 pandemic.

THE PHILIPPINES 2018-2019: AUTHORITARIAN CONSOLIDATION
UNDER DUTERTE

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Philippine democracy has crumbled under President Rodrigo Duterte. This article reviews the main political and economic developments in the country from 2018 to 2019. It argues that a process of authoritarian consolidation occurred during this period. This is not the result of a sudden breakdown or suppression of civil and political institutions for democracy, as would occur in a military takeover; but of democratic erosion and deconsolidation, catalysed by a popular but norm-breaking elected leader. An unprecedented scale of state-sponsored violence, President Duterte's so-called «war on drugs», preconditioned the transition from democratic to authoritarian rule. The Duterte government and his allies then marginalised the opposition and vilified the media, politically captured the judiciary, broke the prevailing norms against martial law normalising emergency rule, as well as withstood pro-democracy influence from institutions like the European Union by aligning economically with China.

1. Introduction

From the day that Duterte took office in 2016 up until the end of 2019, local rights groups estimate that more than 27,000 people have been killed in the President's anti-drug campaign – although the Philippine National Police puts the number at 5,552.¹

The United Nations Human Rights Council (HRC) called attention to the gravity of the situation in a 2019 resolution. Among other recommendations, the HRC asked the Philippine government to take all necessary measures to prevent extrajudicial killings and forced disappearances, and mandated the High Commissioner to report to the council's 44th session in 2020.² Moreover, the International Criminal Court (ICC) continues to conduct a preliminary inquiry into accusations that President Duterte has committed crimes against humanity.³

1. Human Rights Watch, *Philippines: No Letup in «Drug War» Killings*, 14 January 2020.

2. United Nations, Human Rights Council, *41st Session of the Human Rights Council: Resolution on the Promotion and Protection of Human Rights in the Philippines*, Adopted on 11 July 2019.

3. The investigation continues despite the withdrawal of the Philippines from the ICC in March 2019. Jason Gutierrez, 'Philippines Officially Leaves the International Criminal Court', *The New York Times*, 17 March 2019.

The violence in the Philippines under Duterte is unprecedented. In comparison, there were an estimated 2,427 extrajudicial killings under the notoriously violent dictatorship of President Ferdinand Marcos from 1972 to 1986.⁴ No administration in the three decades of democratic rule that followed produced this level of state-sponsored violence.

Is the Philippines now under an authoritarian regime? Walden Bello argues that President Duterte is both the local expression as well as a pioneer of the global rebellion against liberal democracy. He calls Duterte a «fascist original», who, by making use of his distinct political methodology, has deployed great violence with impunity from the outset. This is in stark contrast with the incremental authoritarianism that culminated in the dictatorship of Marcos and declaration of martial law in 1972.⁵

Yet in the face of mass killing with impunity, the institutions of democracy in the Philippines ostensibly continue to function. Philippine democracy has not collapsed suddenly through a *coup d'état*, nor through a declaration of military rule and suspension of the Constitution. Steven Levitsky and Daniel Ziblatt usefully distinguish between democratic collapse and democratic erosion. In the latter case – which, they argue, has occurred in the United States of America under President Donald Trump – there is no single moment in which the regime crosses over the line to authoritarianism. Instead, a gradual sequence of unanticipated events forms an «electoral road» to dismantling democracy at the hands of duly elected leaders who subvert the very processes that elevated them to power.⁶

In the case of the Philippines, democratic erosion occurred in the context of a weak democracy that had struggled to consolidate since 1986. Larry Diamond posits that the legitimacy of democracy and its desirability must pervade the norms and beliefs of elites, political organisations as well as the public in order for democracy to consolidate. This means that while elites compete peacefully for power, there is no group that seeks to overthrow democracy or employ violence or fraud in pursuit of power and there are no anti-democratic movements that enjoy a significant mass following.⁷

In the mid-1990s, Philippine democracy seemed to stabilise and some considered the country to be «off the endangered list».⁸ Indeed, compared to many Asian nations, the Philippines enjoyed a free press, regular

4. Estimate of extrajudicial killings from 1975 to 1985. Richard J. Kessler, *Rebellion and Repression in the Philippines*, New Haven: Yale University Press, 1989.

5. Walden Bello, 'Rodrigo Duterte: A Fascist Original', in Nicole Curato (ed.), *A Duterte Reader: Critical Essays on Rodrigo Duterte's Early Presidency*, Ithaca: Cornell University Press, 2017, pp. 78-79.

6. Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, New York: Crown Publishing, 2018, pp. 3; 75-77.

7. Larry Diamond, *Developing Democracy: Toward Consolidation*, Baltimore: John Hopkins University Press, 1999, p. 69.

8. Mark Thompson, 'Off the Endangered List: Philippine Democratization in Comparative Perspective', *Comparative Politics*, Vol. 28, No. 2, 1996.

elections and a robust civil society. Yet oppression, electoral violence, and corruption caused bouts of political instability.

Furthermore, state-sponsored violence that peaked in the early stages of the Duterte presidency (2016 to 2017) adds an overtly coercive element to the Philippine case. In so doing, Duterte led a process of democratic deconsolidation by explicitly renouncing democracy, skirting constitutional restraints on the presidency, orchestrating violence and committing gross human rights violations.⁹

This analysis explores the notion of authoritarian consolidation in the Philippines under Duterte as the product of both democratic erosion and deconsolidation, catalysed by a norm-breaking elected leader able to expand political power yet evade accountability without technically violating the law. This allows the regime to retain the form of democracy without its substance.

The article is subsequently organised into four sections that explain components underpinning authoritarian consolidation in the mid-term of Duterte's presidency: marginalising the opposition (the Vice President, in particular) and attacking the media; capturing the judiciary by stacking the Supreme Court and ousting the Chief Justice; exploiting security crises to expand executive and military power; and diminishing external pro-democracy pressure of institutions such as the European Union by aligning economically with China and gaining leverage through economic growth.

2. *Marginalising opponents and the media*

One of the key processes of authoritarian consolidation in the Philippines ironically lies with electoral politics and the outcome of the 2019 mid-term elections. An important element of democracy is an extensive provision for political and civil pluralism, thus allowing full expression of contending interests and values.¹⁰ Authoritarian leaders seeking to consolidate their power within the constraints of relatively free elections, instead aim to marginalise their political opponents. Whereas traditional dictators often jailed, exiled or killed their rivals, contemporary autocrats disguise repression behind a veneer of legality.¹¹

In dealing with his opponents, Duterte has stretched those limits and revelled in anti-democratic behaviour by refusing to accept credible electoral results when it suited him, denying the legitimacy of his rivals, encouraging violence and indicating a willingness to curtail the media.¹²

9. On democratic deconsolidation, see Diamond, *Developing Democracy*, p. 74.

10. *Ibid.*, pp. 11-12.

11. Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, pp. 83-85.

12. On indicators of anti-democratic behavior, see *Ibid.*, pp. 23-24.

2.1. Weakening the opposition

The Philippine electorate stamped a seal of approval on Duterte's presidency in the May 2019 mid-term elections. Prior to the May polls, observers had said that the national and local elections would serve as a referendum on Duterte's past three years in office.¹³ The result was nothing less than a ringing endorsement.

The Philippines elects a president every six years while half of the 24-seat Senate and around 300 members of the House of Representatives are elected every three years.¹⁴ The president and senators are elected nationally while the congressional representatives, except party list representatives, are elected by district.

In 2019, eight of the 12 Senate seats went to candidates officially endorsed by Duterte,¹⁵ with two of his close associates, former Police Chief Ronald Dela Rosa and former Special Assistant to the President Christopher Go, among the top five with the highest votes. Duterte's former political adviser Francis Tolentino clinched the ninth spot.¹⁶

The opposition Liberal Party was completely shut out, with their most successful candidate coming in at 14th place, past the cut-off to join the «Magic 12» senators elected. It was the first time in contemporary Philippine political history that the opposition was unable to win a single seat in a Senate election since the 1930s.¹⁷ This has intensified fears of a rubber-stamp Senate, with only four opposition senators, all elected in the 2016 elections, serving their terms.¹⁸ One of them, Duterte's staunch critic Senator Leila de Lima, is in detention (on this, more below) and thus cannot fully participate in proceedings.¹⁹

13. Dominic Faulder, 'A Verdict on Duterte: Looming Midterms Are a Referendum on President', *Nikkei Asian Review*, 27 February, 2019. See also Joshua Jervis, 'The Philippines' Coming «Duterte Referendum»', *The Diplomat*, 16 March 2019.

14. Terms of Office of Senators. See also, House of Representatives, *18th Congress, First Regular Session*, 'The Constitutional Mandate'.

15. Dharel Placido, 'Duterte Formally Endorses 11 Senatorial Bets', *ABS CBN News*, 14 February 2019.

16. 'Senatorial Summary Statement of Votes (by Rank)', *COMELEC*, 23 August 2019.

17. Aries Arugay, 'The 2019 Philippine Elections: Consolidating Power in an Eroding Democracy', *Heinrich Böll Stiftung Southeast Asia*, 21 June 2019.

18. Vanne Elaine Terrazola, 'Bracing for a Super Majority at the Senate in the 18th Congress', *Manila Bulletin*, 14 May 2019.

19. 'Senate P.S. Res. No. 51 Resolution Allowing Senator Leila M. De Lima to Participate in Plenary Sessions through Teleconferencing, Video Conferencing or Other Forms of Remote or Electronic Communications', (Eighteenth Congress of the Republic of the Philippines, First Regular Session).

Moreover, out of 305 seats in the House of Representatives (243 regular and 62 party-list seats), only 28 officially belong to opposition parties.²⁰ Duterte's party, the Partido Demokratiko Pilipino-Lakas ng Bayan or PDP-Laban, became the biggest one in the House, with 84 regular members elected; and another 138 regular seats went to candidates who were Duterte's supporters or belonged to his daughter's party Hugpong ng Pagbabago.²¹

President Duterte's allies dominated local government elections as well. Local candidates who ran under his political umbrella also won the majority of the contested seats in local government. Half of the elected governors in the 81 provinces came from the ruling party PDP-Laban, and 1,156 out of the 1,634 elected mayors are also from political parties allied with the President's, 605 of them from PDP-Laban.²²

2.2. Sidelining the Vice President

During the 2016 presidential campaign, Duterte stated that he would let Ferdinand Marcos Jr., son of the former dictator and vice presidential candidate of the Nacionalista Party, take over the presidency if he (Duterte) failed to curb criminality and corruption within his first three months in office.²³ He was, after all, pandering to a crowd of local politicians in Ilocos Norte, bailiwick of the Marcoses, and the late dictator's son was not even on his ticket. If it was intended as a mere jest, the joke has since become a most serious matter.

Just days after the May 2016 elections, Marcos filed an election protest alleging massive cheating against winner Maria Leonor Robredo in one of the most contentious poll races for the vice presidency the country has ever seen.²⁴ Robredo ran under the Liberal Party and leads the opposition.²⁵

20. Mara Cepeda, '«Expect Tyranny» in House with Only 18 Elected LP Representatives – Kit Belmonte', *Rappler*, 15 May 2019. See also 'House Members,' *House of Representatives 18th Congress, First Regular Session*.

21. Michael Bueza, '18th Congress, by the Numbers', *Rappler*, 2 July 2019.

22. Dasha Marice Uy, 'Duterte's PDP-Laban Bets Dominate Gubernatorial Posts', *ABS CBN News*, 23 May 2019; Philippine Center for Investigative Journalism, *Data Analysis of Votes, Voters, and Winners*, 25 November 2019.

23. Miguel Paolo Reyes, 'The Duterte-Marcos Connection', *ABS CBN News*, 30 September 2019.

24. Cass Buenafe, Kennedy Caacbay, and ABC-CBN Investigative & Research Group, 'Marcos vs Robredo: Understanding the Unfinished Battle for the Vice Presidency', *ABS CBN News*, 1 October 2019.

25. Candidates for the presidency and vice presidency are elected separately so it is possible for the people in the roles to come from different political parties.

The Commission on Elections' final tally showed that Robredo received 14,418,817 votes, just 263,473 more than Marcos.²⁶ Three years on, the Supreme Court, sitting as a Presidential Electoral Tribunal (PET), has yet to decide the case. In October 2019, the High Court stated in a resolution that the manual recount of ballots in test provinces showed that Robredo had further increased her lead over Marcos.²⁷

The PET decision will determine the rightful occupant of the second highest post in the land and, consequently, who will succeed Duterte in the event that he is unable to discharge the duties of his office due to death, disability, or resignation.²⁸ There have been, over the years, concerns about the 74-year-old leader's health, who, by his own admission, is suffering from a myriad of ailments including back pain due to spinal issues, migraines, Buerger's disease and Barrett's oesophagus.²⁹

In the meantime, Duterte sought to undermine Vice President Robredo. Duterte, apparently stung by Robredo's criticism that his signature campaign failed to reduce illegal drug use in the country, had appointed the Vice President to co-chair the Inter-Agency Committee on Anti-Illegal Drugs (ICAD).³⁰ However, after only 19 days, Duterte fired Robredo. Soon after, the Vice President released a report evaluating the government's campaign against illegal drugs, criticising the lack of constrictions on supply as a massive failure. She also recommended that police operations – which, she pointed out, had become «synonymous with drug-related killings» – be abandoned.³¹ The President lashed out at Robredo in response, calling her election a «colossal blunder» and saying, in reference to the contested electoral margin, «[j]ust do away with the 200,000 plus (votes) that she got as a majority over Marcos – it was really a mistake».³²

26. Jovan Cerda, 'Duterte, Robredo Win in Final, Official Tally', *The Philippine Star*, 27 May 2016.

27. Supreme Court Resolution: Ferdinand «Bongbong» R. Marcos, Jr. Vs. Maria Leonor «Leni Daang Matuwid», G. Robredo P.E.T. Case No. 005, 15 October 2019. See also CNN Philippines Staff, 'Robredo Widens Lead over Marcos in Initial Poll Recount – PET', *CNN Philippines*, 18 October 2019.

28. Art. VII, Section 8, 1987 Constitution.

29. 'Duterte Says He Suffers from Back Pains, Migraine', *ABS CBN News* (Reuters), 13 December 2016.

30. CNN Philippines Staff, 'Timeline: VP Robredo's Short Stint as Anti-Drug Body Co-Chair', *CNN Philippines*, 25 November 2019.

31. 'Inter-Agency Committee on Anti-Illegal Drugs: Co-Chairperson's Report 6 to 24 November 2019', *Rappler*, 7 January 2020.

32. Sofia Tomacruz, 'After ICAD Report, Duterte Calls Robredo a «Colossal Blunder»', *Rappler*, 7 January 2020.

2.3. *Attacking the media*

From the beginning of Duterte's presidency, it has been the President versus the press.³³ Duterte has called the media «bullshit», «garbage»,³⁴ and journalists «vultures»,³⁵ «lowlife(s)»,³⁶ warning them that they are not safe from assassination since «freedom of expression cannot help you if you have done something wrong».³⁷ Media watchdogs argue that the President, who has expressed a fervent wish «to kill journalism» in the country, has made it even more dangerous for media workers to practise their profession in what has become one of the world's deadliest places to be a journalist.³⁸

Reporters Without Borders reported three killings in 2019,³⁹ while the Philippine Center for Investigative Journalism has counted a total of 12 since Duterte assumed office.⁴⁰ There has been an increase in the number of attacks, threats, «red tagging» as communists, harassment, and police visits to the offices of media agencies accused of plotting to oust the President.⁴¹

President Duterte, a former public prosecutor, has virtually weaponised legal processes to devastate what he perceives as enemies of his «war on drugs». He has also advocated the use of boycotts and has resorted to economic harassment of three prominent media outlets: the Philippine Daily Inquirer, Rappler and ABS-CBN.

The Prieto family, the major stakeholder of the Philippine Daily Inquirer, one of the most important Philippine newspapers, was forced to sell under Duterte's barrage of public accusations ranging from swindling to tax evasion.⁴² The buyer was one of Duterte's close allies and a financier

33. 'Duterte «Personally Spearheading» Assault vs Media: NUJP', *ABS CBN News*, 4 May 2019.

34. 'Philippine Media Groups Cry Foul over Duterte's Diatribes', *Reuters*, 31 March 2017.

35. 'Duterte Blasts, 'Vultures Pretending to Be Journalists'', *ABS CBN News*, 2 June 2016.

36. Tricia Macas, 'Duterte: I Cannot Protect All Journalists in the Country, Even Honest Ones', *GMA News Online*, 2 June 2016.

37. Robert Sawatzky, 'Duterte Says Killing of Corrupt Philippines Journalists Justified', *CNN Philippines*, 1 June 2016.

38. Rachel Reyes, '(Opinion) Duterte's Wish: «Kill Journalism in This Country»', *The Manila Times*, 16 December 2018.

39. Reporters Without Borders, *Philippines (2019 Data)*.

40. See also Philippine Center for Investigative Journalism, *The State of Philippine Media, under Duterte*, 3 May 2019.

41. *Ibid.* See also CNN Philippines Staff, 'Palace Tags Journalists, Lawyers in Alleged Ouster Plot vs. Duterte; PNP, AFP Deny Destabilization Plan', *CNN Philippines*, 22 April 2019.

42. 'Duterte's Target: The Philippine Daily Inquirer', *Rappler*, 16 August 2017.

of his presidential campaign.⁴³ Rappler, an online news website, found its licence to operate revoked by the Securities and Exchange Commission, while the news website's head, Maria Ressa, was subjected to multiple civil and criminal cases lawsuits, and its reporters barred from covering the President's events.⁴⁴ Duterte also turned his ire on television news channel ABS-CBN from the beginning of his term and has warned that Congress would not renew its media franchise. The country's biggest media conglomerate faces possible closure in March 2020. «Better to sell the network», Duterte told its owners.⁴⁵

Moreover, the media landscape has operated online since the mid-1990s. Accordingly, modern autocrats use novel tactics. Whereas, in the past, the strategy was to restrict information, the current gambit typically is to flood the public with disinformation and propaganda while also attacking legitimate purveyors of the news.⁴⁶ Sheila Coronel argues that the Duterte administration and its supporters «(let) loose an army of trolls, bloggers on the state's payroll, propagandists and paid hacks who ensure the strongman's attacks against the press are amplified in newspaper columns and on the airwaves, on social media and fake news sites».⁴⁷

3. Capturing the judiciary

A second process on the road to authoritarianism is the capturing of the «referees»: sources of horizontal accountability of the executive to other officeholders. Placing constraints on executive power helps protect constitutionalism, legality and the deliberative process.⁴⁸ Conversely, the capture of the judiciary provides would-be autocrats with a powerful weapon to enforce the laws selectively, punish opponents as well as protect regime elites and allies.⁴⁹

43. Nestor Corrales, 'Duterte Admits Ramon Ang Was One of His Campaign Financiers', *Philippine Daily Inquirer*, 21 December 2016.

44. Rosette Adel, 'SEC Revokes News Site Rappler's Registration', *The Philippine Star*, 15 January 2018. See also Amy Gunia, 'Philippines Journalist Maria Ressa Arrested Again', 29 March 2019. See CNN Philippines Staff, 'Rappler Barred from Covering Malacañang Events', *CNN Philippines*, 20 February 2018.

45. Alexis Romero, 'Duterte Tells ABS-CBN Owners to Just Sell the TV Network', *The Philippine Star*, 30 December 2019.

46. Sheila Coronel, 'Opinion: A «Fraught Time» for Press Freedom in the Philippines', *NPR*, 17 January 2018.

47. *Ibid.*

48. Diamond, 'Developing Democracy', *passim*.

49. Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, *passim*.

3.1. *Stacking the courts*

As Duterte allies enjoy supreme authority in both houses of Congress, Duterte appointees have come to dominate the highest court in the land over the past two years.

The Philippine Constitution provides that «The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices».⁵⁰ The members are appointed by the President. Eleven out of the 15 current justices in the high tribunal are Duterte appointees. This happened in part because former President Gloria Macapagal Arroyo had filled the high court with relatively young justices who served out their terms beyond her successor Benigno Aquino III's incumbency. These justices reached retirement age early in Duterte's term.⁵¹ In 2019 alone, Duterte was able to appoint five justices owing to retirements.⁵²

Four more justices will retire before Duterte's term expires in 2022, two of them non-Duterte appointees. This means that by the time he leaves office, Duterte will have handpicked 13 out of 15 members of a co-equal branch of government that will decide the constitutionality of his policies and conduct.⁵³

The Supreme Court, sitting as Presidential Electoral Tribunal, will also decide the 2016 election protest filed by former Senator Ferdinand Marcos Jr. against Vice President Robredo.

3.2. *Ousting the Chief Justice*

When former President Aquino appointed Maria Lourdes Sereno as the head of the judiciary in 2012, it was intended that the country's first female chief justice would remain at her post for 18 years. Sereno, who was named chief justice in 2012 when she was 52 years old, was expected to stay in office until the mandatory retirement age of 70 in the year 2030.⁵⁴ This would effectively have denied the next three chief executives from making their own selections and prevented the sitting magistrates from moving up the ranks.

Soon after assuming the presidency, Duterte named a number of judges and other officials, alleging their involvement in the illegal drug

50. According to Article VIII, Section 4, 1987 of the Philippine Constitution, «[i]t may sit *en banc* or, in its discretion, in divisions of three, five, or seven members».

51. Artemio Panganiban, '(Opinion) Duterte's Appointees Dominate SC', *Philippine Daily Inquirer*, 16 December 2018.

52. Lian Buan, 'Duterte Fills up 2 More SC Vacancies with Bedan, USC Justices', *Rappler*, 3 December 2019.

53. Lian Buan, 'By 2022, Supreme Court Filled with Duterte Appointees', *Rappler*, 30 July 2018.

54. Arianne Merez *et al.*, 'Supreme Court Ousts Chief Justice Sereno', *ABS CBN News*, 11 May 2018.

trade.⁵⁵ Sereno responded in writing, reproaching the President by maintaining that the power to discipline judges belonged to the Supreme Court and not to him.⁵⁶ Thus began the conflict between the President and the Chief Justice, with the two often at loggerheads, trading barbs on various issues including Duterte's 2017 declaration of martial law in Mindanao.⁵⁷

In November 2017, the president's office called for Sereno's resignation, after the Justice Committee of the House of Representatives allegedly found sufficient grounds to impeach the Chief Magistrate. The Justice Committee based its decision on a complaint alleging that Sereno was untruthful in declaring her statement of assets, liabilities, and net worth (SALN), a document required by law of public officials.⁵⁸ The Committee-approved Articles of Impeachment, which detailed the charges against her, opened the path to her trial by the Senate.

Four months later however, the path to the Senate trial was cut short by Solicitor General Jose Calida's decision to file a *quo warranto* petition – namely, in the Philippine system, a legal challenge to an individual's right to or authority over the position he or she holds. Calida's *quo warranto* petition aimed at nullifying Sereno's appointment on the grounds that she was usurping public office by not filing a SALN.⁵⁹

The animosity between the heads of the executive and the judiciary culminated in the President's tirade in April 2018 telling Sereno, «I am now your enemy».⁶⁰ Sereno then demanded that the President prove he had no hand in her imminent ousting. In response, the President said he would ask legislators to fast-track her impeachment because Sereno was «bad for the Philippines».⁶¹

On 11 May 2018, the Supreme Court (voting 8-6) stripped Sereno of her robe as head of the judiciary based on the *quo warranto* filed by the Solicitor General.⁶² Seven of the eight justices who favoured Sereno's removal

55. 'Full Text: Sereno's Letter to President Duterte', *Rappler*, 8 August 2016.

56. Nicole Lorena, 'Timeline: The Many Times Duterte and Sereno Clashed', *Rappler*, 20 May 2018. See also Ali Vicoy, 'What Transpired Leading to the Ouster of Supreme Court Chief Justice Sereno', *Manila Bulletin*, 11 May 2018.

57. Tetch Torres-Tupas, 'Sereno Warns against Abuse of Martial Law Powers', *Philippine Daily Inquirer*, 26 May 2017.

58. CNN Philippines Staff, 'Palace to CJ Sereno: Resign to Save Judiciary from Further Damage', *CNN Philippines*, 6 November 2017. See also 'Press Releases: House Panel Oks Impeachment vs. Sereno', 19 March 2018. See also House of Representatives, 18th Congress, First Regular Session, *What Is a SALN?*, *Official Gazette*.

59. Ina Reformina, 'Primer: The Office of the Solicitor General Quo Warranto Plea', *ABS CBN News*, 11 May 2018.

60. 'Duterte to Sereno: I Am Now Your Enemy', *ABS CBN News*, 9 April 2018.

61. 'Sereno Dares Duterte to Disprove Hand in Ouster Moves', *ABS CBN News*, 9 April 2018.

62. G.R. No. 237428, May 11, 2018 Republic of the Philippines, Represented by Solicitor General Jose C. Calida, Petitioner, vs. Maria Lourdes P. A. Sereno, Respondent.

were Duterte-appointees.⁶³ The whole move, however, rested on dubious constitutional grounds. In fact, article XI, section 2 of the 1987 Constitution states that the members of the Supreme Court – together with the president, the vice president, the members of the Constitutional Commissions, and the Ombudsman – may be removed from office through a process of impeachment, while section 3 of the same article, clearly mandates that «The House of Representatives shall have the exclusive power to initiate all cases of impeachment». Not surprisingly, Sereno's removal from the position of Chief Justice, through a process other than impeachment in Congress, was seen by critics as unconstitutional.⁶⁴

4. *Expanding executive and military power*

A system of checks and balances, particularly constraints on the executive branch, make the essential difference between democratic and authoritarian rule. The reality in the developing world and the post-communist world, however, is that most regimes are in a grey area in which they are not further democratising but nor are they outright dictatorships.⁶⁵ Democracies like the Philippines have long been careening towards authoritarianism but without collapsing.⁶⁶ Until recently, oligarchic forces tended to maintain the post-Marcos status quo.⁶⁷

Duterte is the first Philippine president who neither rendered «even the minimum obeisance to liberal democratic politics» nor reiterated the affirmations of democratic values espoused by other post-Marcos presidents.⁶⁸ In the process of unravelling democracy and rendering its institutions inutile, autocrats like Duterte seek to change the «rules of the game» in order to entrench themselves in power and consolidate their dominance. Levitsky and Ziblatt identify tactics of rules-changing that include reforming the Constitution and other political institutions in ways that disadvantage the

63. 'Look: Who Voted for, against Sereno Ouster', *ABS CBN News*, 11 May 2018.

64. Amita Legaspi, 'Koko Pimentel: Quo Warranto Would Circumvent Rule That Only Senate Can Act as Impeachment Court', *GMA News Online*, 19 April 2018. See also Anna Felicia Bajo, 'NUPL Lawyer: Quo Warranto Petition vs. Sereno Undermines Constitutional Process', *GMA News Online*, 7 March 2018. And Nicole-Ann Lagrimas, 'Law Profs Say Quo Warranto vs. Sereno Unconstitutional', *GMA News Online*, 10 May 2018.

65. Thomas Carothers, 'The End of the Transition Paradigm', *Journal of Democracy*, Vol. 31, No. 1, 2002, p. 18.

66. Dan Slater, 'Democratic Careening', *World Politics*, Vol. 65, No. 4, 2013.

67. Jeffrey Winters, *Oligarchy*, Cambridge: Cambridge University Press, 2011.

68. Lisandro Claudio & Patricio Abinales, 'Dutertismo, Maoismo, Nasyonalismo', in Nicole Curato (ed.), *A Duterte Reader: Critical Essays on Rodrigo Duterte's Early Presidency*, Ithaca: Cornell University Press, 2017, pp. 93-94.

opposition and undercut their rivals.⁶⁹ In this area, a critical element in Duterte's project of authoritarian consolidation has been a tactic of expanding military rule and emergency powers with the assent of Congress.

4.1. *Imposing martial law*

On 21 May 2017, in Marawi City, a provincial capital in Mindanao, state security forces were overwhelmed in an attack by adherents of a group affiliated to the Islamic State (ISIS). Two days later, on 23 May 2017, President Duterte declared martial law in Mindanao.

The President had earlier placed the whole country under a State of National Emergency in September 2016 due to the bombing in the Mindanao region of the Davao City night market – an attack that terrorism expert Sidney Jones attributes to the Maute group.⁷⁰ The Mautes represent a new breed of extremists: young, charismatic, Arabic-speaking and Middle East-educated, social media savvy and with vast international links. The Mautes are also believed to be the chief architects of the attack and siege in Marawi City.⁷¹

Unlike Marcos, Duterte faced more constraints in the use of martial law. The 1987 Constitution enumerates the limitations on the government's power when martial law is declared. Save for the suspension of the writ of habeas corpus (a safeguard from warrantless arrest and illegal detention), the charter does not provide a list of extra powers for the president or the military. Martial law does not suspend the operation of the Constitution, the judiciary and legislative branches nor does it authorise the military to exercise jurisdiction over civilians.⁷² Accordingly, the rights provided in the Bill of Rights remain in force.⁷³

The Constitution requires both houses of Congress to jointly review any declaration of martial law within a 48-hour period, but Congress waived its obligation to do so. Instead, the Senate and the Lower House issued separate resolutions expressing support for the proclamation without convening – therefore, without any discussion over the decision.⁷⁴ Also, the Supreme Court, in reviewing the factual basis for martial law, ruled in the government's favour on 4 July 2017.⁷⁵

Yet constitutional experts argued that the declaration of martial law in Mindanao gave broad, arbitrary and extraordinary powers to the Presi-

69. Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, pp. 94–96.

70. Sidney Jones, '(Opinion) How ISIS Got a Foothold in the Philippines', *The New York Times*, 4 June 2017.

71. Michael Hart, 'A Year after Marawi, What's Left of ISIS in the Philippines?', *The Diplomat*, 25 October 2018.

72. Article VII, Section 18, 1987 Constitution.

73. Article III, 1987 Constitution.

74. Lian Buan, 'Congress Not Duty-Bound to Convene on Martial Law – Calida', *Rappler*, 27 June 2017.

75. 'SC Upholds Duterte's Martial Law in Mindanao', *Rappler*, 4 July 2017.

dent.⁷⁶ In a dissenting opinion on President Duterte's martial law proclamation, Associate Justice Mario Victor Leonen made a pointed remark that arresting illegal drug syndicates and peace spoilers under martial law went beyond the powers of the law, aimed to repress a rebellion. As argued by Leonen: «The factual basis for the declaration of martial law as presented does not cover these illegal acts as rationale for its proclamation. They are not acts falling within "rebellion" and cannot serve as justification for arrests but are made possible because of a vague and overly broad Proclamation».⁷⁷ The justice's admonition spoke to the concern that responding to terrorist attacks in Marawi would be conflated with the President's centrepiece campaign against drug crime.⁷⁸

Designed as a constraint on emergency power, the Constitution provides that the imposition of martial law and suspension of the writ of habeas corpus may not exceed 60 days, giving Congress the power to either revoke or extend the measures. However, Congress chose not to wield its controlling powers on the imposition of martial law and approved the President's requests to extend military rule in Mindanao each time it expired. It did so the first time, for five months until the end of 2017, then for 12 months until the end of 2018, and finally for another year until President Duterte lifted martial law on 31 December 2019.

Overall, the impact of martial law in Mindanao has been mixed. The police and the military say that its imposition helped restore peace and order in the region, allowing the peaceful conduct of the 2019 mid-term polls. Police officials in Central Mindanao said there was a fall in crime in the region because of martial rule.⁷⁹ An international peace-building group, International Alert, claims that incidents of documented violent conflicts in the Bangsamoro region in Mindanao have dropped 30% yearly since the imposition of martial law. They attribute this to the increase of both police visibility and number of military checkpoints which made carrying and using firearms more difficult than before.⁸⁰

However, since the imposition of martial law in Mindanao, local human rights groups have reported 162 extrajudicial killings, 284 illegal arrests and detentions, over a thousand victims of aerial bombardments and forced evacuation of more than half a million people.⁸¹ Others contend that

76. Patricia Lourdes Viray, 'Broad, Arbitrary: Duterte's Powers under Martial Law', *The Philippine Star*, 26 May 2017.

77. 'SC on Martial Law, Justice Leonen's Dissenting Opinion', *Interaksyon*, 6 July 2017.

78. Lian Buan, 'Leonen: Lone Dissenter in SC Martial Law Ruling', *Rappler*, 5 July 2017.

79. Ryan Rosauero, 'Martial Law in Mindanao: What Changed, What Didn't – and at What Cost', *Philippine Daily Inquirer*, 2 January 2020.

80. Liezl Bugtay, Nikki Philline de la Rosa & Judy Gulane (eds.), *War Makes States*, Davao City: International Alert Philippines, 2019.

81. Rosauero, 'Martial Law in Mindanao'.

martial law was used to influence the mid-term election locally, «red tagging» leftist candidates as communist rebels and intimidating voters.⁸² Even with martial law lifted, critics fear that military force will continue to be used to intimidate and restrict the freedom of activists and government critics under the State of National Emergency throughout the country.⁸³

4.2. Normalising emergency rule

Martial law had been a political taboo in the Philippines under Marcos, too intimately associated with dictatorship, the trampling of civil liberties and the egregious use of state violence. However, in the post-Marcos period, former president Arroyo (in office from 2001-2010) increasingly resorted to martial law and emergency powers during a tenure in office fraught with legitimacy challenges.⁸⁴ She imposed a state of rebellion in 2001 for five days and again in 2003 for 15 days. This was followed in 2006 by a State of National Emergency for one week, and, in 2009, a State of Emergency in Maguindanao and two other provinces, as well as martial law in Maguindanao for eight days. Through these measures, Arroyo re-habituated the public to the use of martial law and emergency powers, breaking the post-Marcos norm against them. This trend was strengthened by the decision taken in 2012 by the Supreme Court, which declined to rule on seven suits challenging the constitutionality of Arroyo's 2009 imposition of martial law in Maguindanao province, therefore forfeiting the opportunity to establish a clearer guideline for future presidents.⁸⁵

<i>President</i>	<i>Duration</i>	<i>Geographic Coverage</i>
Ferdinand Marcos	21 September 1972 to 17 January 1981 Note: Marcos retained executive powers as under dictatorship until his ousting on 25 February 1986	Nationwide
Gloria Macapagal Arroyo	5 to 13 December 2009	Province of Maguindanao
Rodrigo Duterte	23 May 2017 to 31 December 2019	Whole of Mindanao (22 provinces and 30 cities)
Source: Authors' compilation		

82. Bulatlat Contributors, '800,000 Rights Abuses Recorded in 2 Years of Martial Law in Mindanao – Rights Group', *Bulatlat*, 25 May 2019.

83. Nick Aspinwall, 'The Interpreter: Martial Law Is Lifted, but «State of Emergency» Persists in Mindanao', *The Lowy Institute*, 7 January 2020.

84. 'States of Rebellion, Emergency under Arroyo Administration', *Philippine Daily Inquirer*, 4 September 2016.

85. Vincent Cabreza, 'Supreme Court Junks Suits vs Arroyo Maguindanao Martial Law; Corona Dissents', *Philippine Daily Inquirer*, 17 April 2012.

President Marcos held the Philippines under military rule for over 13 years (eight years and four months officially, see Table 1). However, martial law under dictatorship is qualitatively different from the use of martial law under democracy. Under dictatorship, martial law is precisely the coercive instrument of control, it is «normal» and the basis of how power is structured in politics and society. Under democracy, the use of instruments such as martial law is meant to be extraordinary, limited in time and geographic coverage, as well as subject to the checks and balances of both judiciary and legislature. Compared to Arroyo's use of martial law, Duterte was willing to maintain it for much longer (953 days compared to a mere eight days) and over a broader geographic scope.

As another measure, the Constitution provides that «whenever it becomes necessary», the president may call upon all the country's armed forces to prevent or suppress lawless violence, invasion or rebellion.⁸⁶ Since September 2016, a State of National Emergency has remained in place and the government has not indicated a timeframe or process for lifting the proclamation. In fact, the President's office noted in a press conference that there is no time limit to this emergency power and that the proclamation does not require the concurrence of Congress.⁸⁷ The proclamation and its implementing guidelines allow military and police personnel to set up checkpoints and impose curfews.

Current guidelines for the implementation of the State of National Emergency provide that warrantless arrests are allowed under circumstances such as the voluntary waiver of the person arrested of their rights against warrantless arrests.⁸⁸ According to the Civil Code, these rights may be waived unless the waiver is *inter alia* contrary to law, public order, public policy, and morals. The waiving of rights might be prone to the abuse of power under emergency rule, if not carefully monitored.

For instance, these emergency powers were targeted at hotbeds of communist armed rebellion. Such areas in the Visayas regions and Bicol were the subject of additional directives.⁸⁹ The military has been involved in operations that – according to rights groups – included summary executions of alleged communist rebels and counter-insurgency violence that «bleeds into local struggles over land and power».⁹⁰

86. Article VII, Section 18, 1987 Constitution.

87. Ratzel San Juan, 'Spot the Difference: Mindanao Martial Law vs State of National Emergency', *The Philippine Star*, 3 January 2020.

88. 'Proclamation No. 55, S. 2016 Declaring a State of National Emergency on Account of Lawless Violence in Mindanao', *Official Gazette*, 4 September 2016. 'Memorandum Order No. 3, S. 2016 Providing Guidelines for the Armed Forces of the Philippines and the Philippine National Police in the Implementations of Measures to Suppress and Prevent Lawless Violence', *Official Gazette*, 7 September 2016.

89. Philippine Human Rights Information Center, *The Killing State: 2019 Philippine Human Rights Situationer*. Quezon City, 2020, pp. 20-21.

90. Nick Aspinwall, 'Argument: Duterte Turns Death Squads on Political Activists', *Foreign Policy*, 10 June 2019.

Duterte has been more motivated and adept at the manipulation of state violence than any of his predecessors after Marcos. He has shown himself to be particularly proficient at normalising the disproportionate use of state violence as a response to alleged threats to society.

5. *Blunting external influence for democracy*

External influence is an element of authoritarian consolidation that is of particular relevance to developing countries. Levitsky and Lucan Way observe that international influence to promote democracy – normally manifested in multilateral conditionality, communications technology and transnational human rights networks – depends on factors of both leverage and linkage. Leverage is conceptualised as the degree to which governments are vulnerable to democratising pressure while linkages are the density of economic, diplomatic and social ties the country has with multilateral institutions and consolidated democracies.⁹¹

Since the mid-2000s however, the world has been in what Diamond terms a «democratic recession». The global experience of democratisation has reached a plateau, a trend that is concomitant with authoritarian resurgence and the decline of democracies, mainly in Europe and the United States.⁹²

Marc Plattner likewise perceives that leading autocratic powers – such as China, Russia, Iran, Venezuela and Saudi Arabia – are more assertive in seeking to influence developments in their own regions and in multilateral fora. While these powers are not united by a common ideology or geopolitical interests, they share a common hostility towards democracy as well as to international norms conducive to human rights protection.⁹³

5.1. *China and the weakening of pro-democracy leverage*

The Duterte government has shown a new and unprecedented openness towards China, notably in the Philippine reversal of the previous government's assertiveness in pursuing its legal claims in the South China/West Philippine Sea,⁹⁴ which had culminated in a successful court case before the

91. Steven Levitsky & Lucan Way, 'Linkage Versus Leverage. Rethinking the International Dimension of Regime Change', *Comparative Politics*, Vol. 38, No. 4, 2006, p. 379, 82-83.

92. Larry Diamond, 'Facing up to the Democratic Recession', *Journal of Democracy*, Vol. 26, No. 1, 2015, p. 144; 51-53.

93. Marc Plattner, 'The End of the Transitions Era?', *Journal of Democracy*, Vol. 25, No. 3, 2014, p.14.

94. Under President Benigno Aquino in 2012, the Philippine government began officially referring to the South China Sea as the West Philippine Sea as part of the dispute over the territory. Agence France-Press in Manila, 'Philippines Renames Coast «West Philippine Sea»', *South China Morning Post*, 12 September 2012.

Permanent Court of Arbitration in the Hague. As Olli Suorsa and Mark Thompson observe, among the benefits of Duterte's pro-China approach have been both the rapid rise of pledged Chinese investments and the utility of a defence against international criticism of his human rights record.⁹⁵

Diplomatic symbols highlight the promotion of Philippine-Sino relations. For instance, Xi Jinping's arrival in Manila on 20 November 2018 was in stark contrast to his first trip to the country in 2015 to attend the Asia-Pacific Economic Cooperation (APEC) Summit. The visit occurred while the Aquino administration's arbitration case against China, launched on 22 January 2013, was ongoing. This resulted in public awkwardness between Aquino and Xi.⁹⁶ In 2018, the Chinese President was instead warmly welcomed by an ally who was not shy about expressing his «love» and «needs» for the Chinese leader.⁹⁷ The visit was an occasion for both countries to cement their partnership, and for the Philippines, to consummate its pivot to China from its erstwhile ally, the USA.

In fact, the visit was part of a broader pattern of increasing closeness between Manila and Beijing, linked to the widening gulf between the Philippines and the «West». Duterte has already visited China five times in just three years of his six-year-presidency and conducted eight bilateral meetings with his Chinese counterpart.⁹⁸ He has yet to visit the USA or any European country.⁹⁹

Duterte's cosyng up to Beijing has consequently borne fruit in terms of investments and trade agreements. Pledges have flowed in from China, a result of the two countries' «aligned infrastructure development agenda» in China's Belt and Road Initiative (BRI) and the Philippines' public infrastructure ambitions.¹⁰⁰ Soon after Duterte took office, the Philippines secured US\$ 24 billion in investment and credit line pledges from China, with US\$ 15 billion worth of projects that included railway and airports as well as US\$ 9 billion financing facilities from China State and the Bank of China.¹⁰¹

95. Olli Suorsa & Mark Thompson, 'Choosing Sides? Illiberalism and Hedging in the Philippines and Thailand', *Panorama*, Vol. 2, 2017, p. 65.

96. Paterno Esmaguél II, 'From Duets to Sea Disputes: When Chinese Presidents Visit Philippines', *Rappler*, 17 November 2018.

97. Amita Legaspi, 'Duterte: I Love Xi Jinping, Need China More Than Anybody Else', *GMA News Online*, 9 April 2018.

98. Darryl John Esguerra, 'Duterte Flies to China for 5th Visit', *Philippine Daily Inquirer*, 28 August 2019.

99. Richard Heydarian, 'How Rodrigo Duterte's Latest Beijing Visit Marks a Crossroads for China, the Philippines and Asia', *South China Morning Post*, 1 September 2019.

100. Katrina Baguisi, 'Philippines and China Sign Six Agreements', *ASEAN Briefing*, 9 December 2019. A comparison of China's investments with other major investors and the role of the Duterte government's «Build, Build, Build» in the economy are discussed further in the following section.

101. Amy Remo, 'Itemized List of PH Projects Covered by China's \$15-B Investment Pledges to Duterte', *Philippine Daily Inquirer*, 23 October 2016.

Net inflows of Chinese foreign direct investment (FDI) have surged to US\$ 305.54 million in 2018 and 2019 as compared to US\$ 570,000 in 2015 before Duterte took office.¹⁰² Just halfway through President Duterte's term, his administration has already exceeded the combined Chinese FDI of the preceding Arroyo and Aquino administrations.¹⁰³ Trade with China in 2018 almost doubled from the previous year, and China became the top trading partner of the Philippines, with volumes amounting to US\$ 30.83 billion or 16.9% of total trade.¹⁰⁴

Yet China remains deeply unpopular in the Philippines. China's trust rating among Filipinos is rated as «bad», according to a poll conducted in September 2019 that showed 54% of Filipinos have «little trust» in China, while 21% said they have «much trust».¹⁰⁵ The Filipino public's low level of confidence in China stems from unhappiness over the disputed territories in the South China/West Philippine Sea. The issue remains a thorn in the side of Philippine-China relations, creating a sore point that President Duterte has so far been unable to salve with his people.

5.2. Gaining leverage with economic growth

External democratising pressure on the Philippines is also likely to be diminished by the relative strength of the domestic economy. According to the World Bank, the country saw an average annual growth of 6.3% in the years 2010 to 2018, accompanied by a decline in poverty, inequality and unemployment rates. Poverty declined from 26.6% in 2006 to 21.6% in 2015 while the Gini coefficient of inequality declined from 42.9 to 40.1 over the same period.¹⁰⁶ By 2018, the poverty rate was 16.6% of the population.¹⁰⁷

The Duterte administration has pursued an aggressive public infrastructure «Build, Build, Build» strategy to drive growth. It entails deficit spending and financing from Official Development Assistance and invest-

102. Bangko Sentral ng Pilipinas, 'Net Foreign Direct Investment Flows (Balance of Payment, 6th Edition)', *Philippine Central Bank Statistics*.

103. Weslene Uy, 'Rise of Chinese Investments in Duterte's Philippines: Some Consequences', *The Philippine Star*, 19 March 2019.

104. Total export receipts from China reached US\$ 8.82 billion while payment for import commodities was US\$ 22.01 billion, consequently posting a deficit of US\$ 13.20 billion. Philippine Statistics Authority, 'Highlights of the 2018 Annual Report on International Merchandise Trade Statistics of the Philippines (Preliminary)', *Foreign Trade*, 2 May 2019. See also Cliff Venzon, 'Duterte Struggles to Sell His China Pivot at Home', *Nikkei Asian Review*, 9 October 2019.

105. Julie Aurelio, 'SWS: Most Filipinos Don't Trust China', *Philippine Daily Inquirer*, 22 November 2019.

106. The World Bank, *The World Bank in the Philippines: Overview*, 25 November 2019.

107. Philippine Statistics Authority, 'Proportion of Poor Filipinos Was Estimated at 16.6 Percent in 2018', *Poverty*, 6 December 2019.

ment from governments like China and Japan.¹⁰⁸ The International Monetary Fund noted that the overall deficit widened in 2018 mainly due to increased expenditure, including on infrastructure. It nonetheless pointed out that public debt in the country was on a gradual downward path and indicators of debt sustainability were within the bounds for emerging market economies.¹⁰⁹

With regard to FDI, investments in special economic zones fell in 2018 to US\$ 6,456 million from US\$ 8,704 million the year before, but remained on an upward trajectory.¹¹⁰ While Japan, the USA and Singapore used to be the main investors in the country, China is now one of the biggest sources of FDI to the Philippines. From the first quarter in 2018 to the second quarter in 2019, total approved foreign investment in the Philippines was topped by Singapore (US\$ 1,202 million), followed closely by China (US\$ 1,030 million), and followed at a distance by Japan (US\$ 660 million) and the USA (US\$ 368 million).¹¹¹

Nevertheless, despite being the fastest growing economy in Asia, the Philippines underperformed in 2018 and 2019. In 2018, Gross Domestic Product (GDP) grew at 6.2%, falling from 6.9% in 2016 and 6.7% in 2017; GDP slowed down further the following year to 5.9%.¹¹² In 2019, moreover, a delay in budget approval caused a contraction in government spending and a stall in public infrastructure projects.¹¹³ Overall, the growth momentum the Philippines had experienced since 2010 thus began to stall under Duterte's leadership.

Tax reform undertaken to finance the government's infrastructure priorities unleashed an inflationary surge by raising taxes on fuel and sugar.¹¹⁴ Inflation spiked at 6.7% in September and October 2018 and averaged at 5.2% that year, more than double the 2.5% in the same period the year before and four times the 1.3% inflation rate at the start of the Duterte presidency in June 2016.¹¹⁵

108. Benjamin Diokno, 'The Fiscal Program in Recent Philippine History: Looking Back and Looking Forward', *The Philippine Review of Economics*, Vol. LIV, No. 2 (2017).

109. International Monetary Fund, 'Philippines: 2019 Article IV Consultation Staff Report', *IMF Country Report No. 20/36*, 6 February 2020.

110. United Nations Conference on Trade and Development, 'Country Fact Sheet: Philippines', *World Investment Report 2019*, 12 June 2019.

111. Philippine Statistics Authority, 'Total Approved Foreign Investments by Country of Investor Q1 2018 - Q2 2019', *Foreign Investments*, 5 September 2019.

112. Asian Development Bank, 'Economic Indicators for the Philippines', *Philippines and ADB*. IBON Media, 'PH Economy Headed Towards 3rd Year of Slow Growth - Ibon,' *Kodao Productions*, 9 November 2019.

113. World Bank, 'Philippines Economic Update October 2019', *Philippines*, 10 October 2019.

114. Richard Heydarian, 'Dutertenomics - Less Than Meets the Eye,' *Nikkei Asian Review*, 27 April 2018.

115. IBON Media, 'PH Economy Duterteriorating', *Ibon Features*, 29 August 2018. See also Asian Development Bank, *Economic Indicators for the Philippines*. See also Czeriza Valencia, 'Philippine Economy Underperforms in 2018', *The Philippine Star*, 25 January 2019.

In addition, low official unemployment rates may have masked a serious problem. Sceptical at reported unemployment rates of 5.3% in 2018 and 5.2% in 2019, analysts have argued that a recently revised definition of unemployment, on which those figures are based, does not count millions of «discouraged workers».¹¹⁶ «Discouraged workers» are those who have dropped out of the labour force because they believe that no jobs are available to them, especially after a long illness or unsuccessful job-seeking. When asked if they are looking for jobs, «discouraged workers» usually answer in the negative. This, however, does not take into account that they would accept jobs, if offered. In fact, an alternative estimate based on the previously used government definition would push up the national unemployment rate to 9.1%.¹¹⁷

This virtually jobless economic boom, critics argue, is a result of the government's prioritisation of domestic law-and-order issues over economic policy.¹¹⁸

5.3. *Eroding linkages with the European Union*

Political conditionalities have been integrated into the EU's trade relations, treaties and general relations with external parties. Consequently, the EU is often characterised as a normative power, particularly in universalising human rights standards and social norms.¹¹⁹ The EU, jointly with member states, is one of the largest grant donors to the Philippines and provides significant support to human rights and justice reform, among other programmes.¹²⁰ Trade and aid have heretofore provided important linkages between the EU and the Philippines, promoting democratic practices in the latter. As such, relations between the EU and the Philippines have been fraught with complications since Duterte took office.

In 2019, Free Trade Agreement (FTA) negotiations between the Philippines and the EU halted due to the Europeans' concern over human rights and President Duterte's lethal campaign against drugs. This was a blow to the Philippine government's aim to expand access to the European

116. Rene Ofreneo, 'Joblessness: Declining or Growing?', *Business Mirror*, 16 May 2019.

117. IBON Media, 'PH Economy Deteriorating'.

118. Panos Mourdoukoutas, 'Duterte's Jobless Economic Boom,' *Business Mirror*, 10 February 2019.

119. Clair Gammage, 'A Critique of the Extraterritorial Obligations of the EU in Relation to Human Rights Clauses and Social Norms in EU Free Trade Agreements', *Europe and the World: A law review*, Vol. 2, No. 1, 2018.

120. European External Action Service, 'EU Annual Report on Human Rights and Democracy in the World 2018: Philippines Country Update', Brussels: EEAS, 2019.

market FTA.¹²¹ While it is in Europe's strategic interest to construct its trading architecture with Japan and ASEAN markets, concern over the violence of the Philippine government's «war on drugs» and the human rights situation overall compelled the EU to re-evaluate the necessity of an FTA with the Philippines.¹²²

Another source of friction between the Philippines and the EU has been over the question of development aid. The Duterte administration rejected € 250 million in new EU grants, € 39 million in sustainable energy projects and € 6.1 million worth of trade-related technical assistance, refusing the imposition of conditionalities relating to human rights and the «war on drugs».¹²³

After a Partnership Cooperation Agreement (PCA) between the Philippines and the EU was ratified in March 2019, the European Commission clarified that aid relations would proceed as normal without any objections from the Philippines' side, contradicting earlier pronouncements on the matter.¹²⁴ However, the 2019 aforementioned UN HRC resolution on the Philippines riled President Duterte, who announced that the government would cease to accept aid from the countries that supported the HRC – which included a number of EU members. This cast the status of EU aid in doubt once more.

5.4. Negotiating for trade over human rights

The deterioration in Philippine-EU relations occurred against a backdrop of earlier diplomatic skirmishes over European Parliament resolutions. «I have read the condemnation of the European Union. I'm telling them, 'F**k you'», President Duterte stated on 21 September 2016, about a week after the European Parliament issued a resolution on the Philippines. Later in his speech to local businessmen in his hometown of Davao City, he repeated the expletive and raised his middle finger for emphasis.¹²⁵

The 2016 EU Parliamentary resolution had objected to President Duterte's statements urging law enforcement agencies and the public to kill suspected drug traffickers, among other matters. Parliament thus called upon the EU to use «all available instruments to assist the Gov-

121. Roy Stephen Canivel, 'Human Rights Concerns Stall PH Free Trade Talks with EU', *Philippine Daily Inquirer*, 8 July 2019.

122. Hanna Deringer & Hosuk Lee-Makiyama, 'Europe and South-East Asia: An Exercise in Diplomatic Patience', *ECIPE Policy Brief No. 5/2018*, Brussels: European Centre for International Political Economy (ECIPE), 2018.

123. Paterno Esmaguel II, 'Philippines Formally Rejects P380 Million in EU Aid', *Rappler*, 24 January 2018.

124. Jenny Lei Ravelo, 'After a Tumultuous Year, EU Aid to Continue in the Philippines', *Devex*, 5 March 2018.

125. Ted Regencia, 'Philippines' Duterte Unleashes More Profanity at the EU', *Al Jazeera*, 21 September 2016.

ernment of the Philippines in respecting its international human rights obligations».¹²⁶

Subsequently, the European Parliament issued a 2017 resolution condemning the high number of extrajudicial killings related to the anti-drug campaign. The European Parliament viewed the summary killings, as well as other matters such as the reinstatement of the death penalty and lowering the minimum age for criminal responsibility, as violations of the country's treaty obligations.

Thus, the resolution asked the European Commission (EC) to use all means to persuade the Philippines to put an end to the violence including procedural steps, with a view to the possible removal of trading privileges under the Special Incentive Arrangement for Sustainable Development and Good Governance of the EU's Generalised Scheme of Preferences (GSP+).¹²⁷

GSP+ status offers preferential access to the EU market, aimed at developing countries unable to fully utilise existing favoured access to Europe and lacking in export diversification and integration into global trade.¹²⁸ GSP is one of the main instruments that the EU uses to link social and human rights issues to trade.

The EU parliamentary resolution also sought the immediate release of Senator Leila de Lima, who had been arrested in 2017 and detained on charges that she accepted money from drug dealers when she was the Secretary of Justice of the previous administration. De Lima is a leading critic of President Duterte, whom she had investigated both in the Senate and the Commission on Human Rights. It is of no small significance that the resolution highlighted de Lima's case in its title.

In light of the possibility that the EU would snatch away trade privileges from the Philippines, the action shifted from President Duterte's immediate ambit to that of technocracy and diplomacy.

On 4 July 2017 in Manila, the European External Action Service (EEAS) and the Philippine Department of Foreign Affairs held the ninth senior officials' meeting, previously held as far back as 2013. Talks included the GSP+ as well as a «candid exchange of views on the human rights situation in the Philippines and the EU».¹²⁹ The GSP+ status of the Philippines was under review and a second biennial report due in early 2018.

126. European Parliament, *European Parliament Resolution of 15 September 2016 on the Philippines*.

127. European Parliament, *European Parliament Resolution of 16 March 2017 on the Philippines - the Case of Senator Leila M. De Lima*.

128. Currently, the Philippines is one of only eight countries with GSP+ status. European Commission, *Mid-Term Evaluation of the EU Generalised Scheme of Preferences: Final Interim Report*, Brussels, 2017, pp. 26-30.

129. Mission of the European Union to ASEAN, *Joint Press Statement on the 9th PH-EU Senior Officials' Meeting*, Manila 2017.

Subsequently, the secretary of the Department of Trade and Industry, Ramon Lopez, and the late Edgardo Angara, who had been appointed special envoy to the EU, were dispatched to Brussels. They made a presentation to the European Parliament and conducted several meetings with EU officials «to ensure continuity of the GSP+ privilege».¹³⁰ Other signs of rapprochement included the appointment of a Philippine ambassador to the EU after a long vacancy, and an unprecedented invitation to European Council President Donald Tusk as a guest of the Chair at the 12th East Asian Summit in Manila.¹³¹

Finally, the EU concluded the review process and affirmed that the Philippines would retain its GSP+ status in January 2018. The biennial report (2016 to 2017) of the EC and the European Council noted that the Philippines had increased its use of GSP+ preferences to 26% of its total exports, with a GSP+ utilisation rate of 71% in 2016. Moreover, Philippine exports have grown 51% since 2012, due in great part to enhanced access to the EU market.¹³² Conversely, the report carried the concerns of the European Parliament over the «war on drugs», systematic rights violations, as well as incitement to violence with impunity.

The European Parliament continued to raise objections. Following the PCA ratification mentioned earlier, the Parliament released a resolution on the Philippines on 19 April 2018 remarking pointedly that the agreement affirmed the joint commitment of the Philippines and the EU to, inter alia, good governance, democracy, the rule of law and human rights.¹³³ Building upon the previous parliamentary resolutions in 2016 and 2017, the 2018 statement furthermore welcomed the ICC investigation on crimes against humanity in the Philippines and advocated the removal of the Philippines from the HRC before its term expired.

Furthermore, in other statements, the EU welcomed the HRC's decision to investigate the Philippines as well as expressed concern over the removal of Chief Justice Sereno and judicial independence.

These issues over human rights and democratic governance are likely to remain significant in future reviews of the EU's trade and aid relations with the Philippines. Nonetheless, as Duterte shifts the country closer to China, international pro-democracy influence will continue to diminish.

130. A.G.A. Mogato, 'PHL Moves to Assure EU on GSP+ Fitness', *Business World*, 28 September 2017.

131. Paterno Esmaguel II, 'Behind the Scenes, PH Scrambles to Mend EU Ties', *Rappler*, 7 December 2017.

132. European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) Assessment of the Philippines Covering the Period 2016 - 2017*, Brussels, 2018.

133. The European Parliament, *European Parliament Resolution of 19 April 2018 on the Philippines*, (2018/2662(RSP)).

6. Conclusion

In 2019, President Duterte passed the midpoint of his six-year term. Promulgated in 1987 in the aftermath of the Marcos dictatorship, the Constitution prohibits an incumbent president from running for re-election. Its framers designed the measure as a guard against future autocrats, one among many measures meant to strengthen democracy and safeguard the country against future attempts at authoritarian rule.

Over three decades later, Philippine democracy has evidently failed to consolidate. Moreover, the level of oppression and state-sponsored violence under President Duterte is unprecedented. Until Duterte's «war on drugs», violent repression in the post-Marcos democratic period would have been considered an aberration to otherwise still meaningful democratic values.¹³⁴

Concepts from the literature on democratic consolidation and erosion have been employed in this essay, including the role of external influence as being pertinent in a developing country such as the Philippines. Thus, several patterns of authoritarian consolidation may be discerned from observations of political events and economic conditions.

First, the Duterte regime has marginalised and weakened political actors that have an important adversarial and balancing responsibility. The 2019 elections may have given President Duterte a fresh democratic mandate on the surface but the unusual shrinkage of the opposition has correspondingly diminished the legislature's countervailing role. The President also eschewed the usual provision of a role in the administration for his Vice President (a norm, not a legal requirement), questioning Vice President Robredo's electoral mandate in particular. The President's attacks on the media have been especially pernicious in a country where it is already dangerous to be a journalist.

Secondly, President Duterte has enjoyed a rare opportunity to appoint a majority of Supreme Court justices early in his term. Moreover, he played a very public role in the ousting of former Chief Justice Sereno. The political capture of the judiciary is a key tactic of authoritarian consolidation in order to selectively enforce the law and use the powers of the institution against opponents.

Thirdly, the deficiency of checks and balances from Congress and the Supreme Court paved the way for President Duterte to impose martial law in Mindanao over a prolonged period of time. Moreover, with the entire country under a state of national emergency, the President has circumvented constitutional checks on executive power and exploited security crises to impose martial rule in all but name.

134. Vincent Boudreau, 'Elections, Repression and Authoritarian Survival in Post-Transition Indonesia and the Philippines', *The Pacific Review*, Vol. 22, No. 2, 2009, p. 248.

Furthermore, President Duterte has cultivated China as an ally and, leveraging on the continued economic growth of the Philippines, has weakened trade and development linkages with international pro-democracy actors such as the European Union. Finally, under a global «democratic recession», external influence to encourage democratic practices and the respect for human rights has been blunted significantly.

The Duterte regime is reconfiguring democratic institutions for the purpose of securing immunity for its excesses, consolidating its dominance, and entrenching itself in power. This analysis has explained the main political and economic developments in the Philippines as a process of authoritarian consolidation under President Duterte. Democratic erosion and deconsolidation have intensified and peaked in the mid-term of Duterte's presidency. Even without unmistakable signs such as a military takeover or dissolution of existing democratic institutions, the process of transition from a democratic to an authoritarian regime is underway.

