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Rise of Illiberal Democracy, Weakening of the Rule of Law, & Implementation of Human Rights in the Philippines

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RISE OF ILLIBERAL DEMOCRACY, WEAKENING OF THE RULE OF LAW, & IMPLEMENTATION OF HUMAN RIGHTS IN THE PHILIPPINES

GEMMO BAUTISTA FERNANDEZ*

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I. INTRODUCTION

The results of the Philippine midterm elections saw the government of Mr. Rodrigo Duterte triumph over its opposition. In the race for the twelve available seats of the Philippine Senate, almost all were won by candidates endorsed by Mr. Duterte as well as those who are allied with him.¹ The story was the same for the House of Representatives

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1. Jason Gutierrez, *In Philippines Senate Elections, Duterte Sees Chance to Consolidate Power*, N.Y. TIMES (May 13, 2019), <https://www.nytimes.com/2019/05/12/world/asia/philippines-election-halalan-results.html>; Reuters, *Early Philippines Election Results Show President Rodrigo*

where the overwhelming number of lawmakers who won were in line with the administration.² Meanwhile, only a few of the candidates for other offices who took stances contrary to that of Mr. Duterte succeeded in the elections.³

These victories translate to Mr. Duterte's consolidation of power over the government. It allows him to push for policies previously hampered by the presence of a noticeable minority in the Philippine Senate.⁴ This legislative support, amounting to a super-majority,⁵ permits him to overhaul the country's political system. It allows him

Duterte's Allies Taking Lead, AUSTL. BROAD. CORP. (May 14, 2019), <https://www.abc.net.au/news/2019-05-14/philippines-election-early-results-show-duterte-allies-in-lead/11109850>.

2. See *All the President's Men: Independent or Rubber Stamp?*, CTR. FOR MEDIA FREEDOM & RESP. (June 3, 2019), <https://cmfr-phil.org/media-ethics-responsibility/journalism-review/all-the-presidents-men-independent-or-rubber-stamp> ("Nine out of the 12 are administration allies, including Ramon 'Bong' Revilla Jr. who is facing graft charges, Ronald 'Bato' Dela Rosa, who, as chief of the Philippine National Police, was the first enforcer of President Rodrigo Duterte's brutal drug war, and Imee Marcos whose family history is marred by plunder and fascism."); Richard Javad Heydarian, Opinion, *The Philippines' Duterte: In Pursuit of an Imperial Presidency*, AL JAZEERA (May 16, 2019), <https://www.aljazeera.com/indepth/opinion/philippines-duterte-pursuit-imperial-presidency-190516143812047.html> (noting that President Duterte's allies won a significant part of the 18,000 elected offices).

3. See, e.g., Aries Arugay, *The 2019 Philippine Elections: Consolidating Power in an Eroding Democracy*, HEINRICH BÖLL STIFTUNG (June 21, 2019), <https://th.boell.org/en/2019/06/21/2019-philippine-elections-consolidating-power-eroding-democracy> (noting that the eight opposition candidates and other individual candidates with anti-Duterte stance were not successful); Mikhail Flores & Cliff Venzon, *Duterte Allies Crush Opposition in Philippine Midterm Elections*, NIKKEI ASIAN REV. (May 13, 2019), <https://asia.nikkei.com/Politics/Duterte-allies-crush-opposition-in-Philippine-midterm-elections> (explaining how Duterte's popularity has helped candidates that were friendly to his agenda and how the main opposition candidates lost their seats); Raissa Robles, *Philippine Election: 'Duterte's Magic Routed Opposition'*, S. CHINA MORNING POST (May 14, 2019), <https://www.scmp.com/news/asia/southeast-asia/article/3010147/philippine-election-vote-counting-glitch-rodigo-duterte> (reporting that it was clear that allies of Duterte were winners in 10 of the 12 seats even before the vote count was finalized).

4. See Claire Jiao & Andreo Calonzo, *Death and Taxes Top Duterte's Policy Agenda Midway Through Term*, BLOOMBERG (July 22, 2019), <https://www.bloomberg.com/news/articles/2019-07-20/an-empowered-duterte-sets-his-sights-on-drug-war-death-penalty> (predicting that Duterte will be able to "avoid a lame-duck phase" and push for his policy agenda by leveraging his popularity and Congressional support in his remaining presidency).

5. *Id.*

to rewrite the constitution to scrap term limits, extend his tenure and that of his allies, and change the system of government.⁶ The high level of support also permits him to loosen legislative oversight, thereby lessening the opportunities for congressional investigations and precluding the filing of impeachment complaints.⁷ This, together with a deferential judiciary,⁸ hampers the exercise of checks and balances on executive power giving Mr. Duterte relatively free rein.

The success of Mr. Duterte's government also demonstrates the strength of its support from the electorate. Midterm elections may be considered to be a referendum on the leadership and policies of the incumbent,⁹ thus providing an opportunity to gauge the approval or disapproval of the electorate regarding the policies of the government.¹⁰ If this is the case, the government's landslide victory over its opposition, the latter not winning any senate seats, an occurrence not seen since 1938,¹¹ serves as an overwhelming

6. See Richard Javad Heydarian, *Midterm Massacre Hands Duterte All the Power*, ASIA TIMES (May 15, 2019), <https://www.asiatimes.com/2019/05/article/midterm-massacre-hands-duterte-all-the-power> (anticipating that Duterte will be able to overhaul the nation's politics to a federal system through the introduction of a new constitution); *2019 Midterm Elections Results: Harsher Policies Ahead*, IBON FOUND. (May 26, 2019), <https://www.ibon.org/2019-midterm-elections-results-harsher-policies-ahead/>.

7. See Nestor Corrales, *Palace on Impeach Raps: Duterte has Supermajority in Congress*, INQUIRER (July 19, 2019), <https://newsinfo.inquirer.net/1143591/palace-on-impeach-raps-duterte-has-supermajority-in-congress> (reporting on the Presidential spokesperson's statement that an impeachment complaint against Duterte will not succeed because of the president's allies in Congress); Arianne Merez, *Impeach Duterte? Palace Says 'It's a Numbers Game'*, ABS-CBN NEWS (June 28, 2019), <https://news.abs-cbn.com/news/06/28/19/impeach-duterte-palace-says-its-a-numbers-game>.

8. See Dante Gatmaytan, *Duterte, Judicial Deference, and Democratic Decay in the Philippines*, 28 ZEITSCHRIFT FÜR POLITIKWISSENSCHAFT 553, 562 (2018) ("extreme deference to the Chief Executive virtually erasing all the safeguards [built in the 1987 Constitution].").

9. See Jim Gomez, *Philippine Midterm Elections: A Crucial Referendum on Duterte's Presidency*, DIPLOMAT (May 14, 2019), <https://thedi diplomat.com/2019/05/philippine-midterm-elections-a-crucial-referendum-on-dutertes-presidency>.

10. See *Are the Midterm Elections Really a Referendum on President Duterte?*, BUSINESSWORLD (Jan. 21, 2019), <https://www.bworldonline.com/are-the-midterm-elections-really-a-referendum-on-president-duterte>; Richard Heydarian, *Opinion, Trump, Duterte and the Midterm Elections*, INQUIRER (Nov. 13, 2018), <https://opinion.inquirer.net/117434/trump-duterte-and-the-midterm-elections>.

11. See Lian Buan, *Last Time Opposition Didn't Win Any Legislative Seat was*

confirmation of the popular support enjoyed by Mr. Duterte. Of course, this does not serve to detract from the opposition's failure in its campaign strategy.¹² Nevertheless, as shown by recent surveys,¹³ Mr. Duterte still retains an extremely high approval rating, thereby suggesting that Mr. Duterte's success is more of a product of his popular support rather than of the failure of the opposition.¹⁴

The high regard placed by the populace on Mr. Duterte and his government's policies sounds alarming. The past three years of his regime had been plagued by human rights issues,¹⁵ including, among others, the attacks and threats made against critics¹⁶ and the unabated and uninvestigated killings related to his campaign against illegal

80 Years Ago, RAPPLER (May 14, 2019), <https://www.rappler.com/newsbreak/iq/230612-last-time-opposition-did-not-win-senate-elections-years-ago>.

12. See Diana J. Mendoza, *Why the Opposition Lost in the 2019 Midterm (Senatorial) Elections*, BUSINESSWORLD (June 10, 2019), <https://www.bworldonline.com/why-the-opposition-lost-in-the-2019-midterm-senatorial-elections/> (attributing the defeat in the midterm election to the opposition campaign's strategy that turned the senatorial race into a zero-sum game and failure to micro target voters).

13. See, e.g., *Second Quarter 2019 Social Weather Survey: Pres. Duterte's Net Satisfaction Rating at New Record-High "Very Good" +68*, SOC. WEATHER STATIONS (July 8, 2019), <http://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190708142248> (showing that the net satisfaction rating of the Duterte presidency is at his personal record-high).

14. See Arugay, *supra* note 3 (suggesting "people's expectations on Duterte's ability to improve their plight" and their perception that there is "no viable leadership alternative" as some of the possible explanation for the high approval rate of the Duterte presidency). But see Margaret Simons, *Duterte's Opposition in Disarray Following Philippines Mid-Terms*, LOWY INST.: INTERPRETER (May 21, 2019), <https://www.lowyinstitute.org/the-interpreter/duterte-opposition-disarray-following-philippines-mid-terms> (criticizing the opposition's lack of organization and failure to make any impact on the continued popularity of Duterte).

15. See Irene Hadiprayitno, *Deadlock and Denial: Domestic Challenges and the Institutionalization Human Rights in ASEAN*, 19 GLOB. JURIST 1, 9–10 (2019), <https://www-degruyter-com.proxyau.wrlc.org/view/journals/gj/19/1/article-20180001.xml> (exacerbated by the Duterte administration's propensity toward authoritarianism).

16. See Leila de Lima, Opinion, *President Duterte's War on Drugs is a Pretense*, N.Y. TIMES (July 22, 2019), <https://www.nytimes.com/2019/07/22/opinion/duterte-philippines-delima-drugs.html> (opposition Senator); *Red-Tagging, Intimidation vs. Press: Duterte, State Agents Behind 69 Cases*, PHIL. CTR. INVESTIGATIVE JOURNALISM (Dec. 10, 2019), <https://pcij.org/>.

narcotics.¹⁷ Thus, these election results beg the question of whether the Filipino populace has likewise subscribed to the illiberal mindsets and authoritarian tendencies that Mr. Duterte exhibits.

This article submits that, as predicted during the first years of the Duterte presidency, this may be so.¹⁸ The Philippines continues on its slide towards illiberal democracy and authoritarian legalism hampering its compliance with its human rights obligations.¹⁹ As

17. See, e.g., Gideon Lasco, *Don't Call Philippines' Duterte's Anti-Drug Campaign a 'War on Drugs'*, GLOBEPOST (Dec. 11, 2018), <https://theglobepost.com/2018/12/11/philippines-duterte-drug-war/>; Eloisa Lopez & Martin Perry, *Philippine Drug War Critics Hope U.N. Probe Can Dent Duterte's Deadly Campaign*, REUTERS (July 12, 2019), <https://www.reuters.com/article/us-philippines-drugs-victims/philippine-drug-war-critics-hope-u-n-probe-can-dent-dutertes-deadly-campaign-idUSKCN1U719M>.

18. See generally Nicole Curato, *We Need to Talk About Rody*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 1, 1–2 (Nicole Curato ed., 2017) (noting that President Duterte “enjoyed widespread popularity, with an 83 percent trust rating six months into his presidency” despite his controversial statements and behaviours); RICHARD JAVAD HEYDARIAN, THE RISE OF DUTERTE: A POPULIST REVOLT AGAINST ELITE DEMOCRACY 6 (2018) (citing Roberto Stefan Foa & Tascha Mounk, *The Signs of Deconsolidation*, 28 J. DEMOCRACY 5, 7 (2017)) (the European and World Values Survey shows that 60% of Filipino respondents agreed that “a strong leader who does not have to bother with parliament and elections” is a “good” way to run the country); Raphael Lorenzo A. Pangalangan et al., *Marcosian Atrocities: Historical Revisionism and the Legal Constraints on Forgetting*, 19 ASIA-PAC. J. HUM. RTS. & L. 140, 152 (2018) (noting that Duterte had included in his campaign agenda an amendment to the 1987 Constitution and signed an Executive Order creating a committee to review the Constitution once elected).

19. See Walden Bello, *Duterte's Revolt Against Liberal Democracy*, GLOB. DIALOGUE (May 29, 2017), <http://globaldialogue.isa-sociology.org/dutertes-revolt-against-liberal-democracy> (criticizing that Duterte's war on drugs (1) was “carried out with a fanaticism bordering on the ideological and justified with ideas reminiscent of pseudo-scientific Nazi racial theory” and (2) “stripped a whole sector of society of the rights to life, due process, or membership in society”); Curato, *supra* note 18, at 17 (illustrating that the Duterte administration considers “human rights as particular, not universal” and the criticism from human rights watchdogs as insensitive imposition of liberal Western values); Richard Heydarian, *Opinion, Duterte's March to Illiberal Democracy: Philippine Political Elite Acquiesces in a Rebirth of Populism*, NIKKEI ASIAN REV. (Dec. 5, 2017), <https://asia.nikkei.com/Opinion/Duterte-s-march-to-illiberal-democracy2> (cautioning about an ongoing, systematic campaign against democratic checks and balances in favor of strongman leadership and noting that Duterte skillfully rallied public support); James Massola, *Democracy and Human Rights are in Retreat in South-East Asia. Here's Why*, SYDNEY MORNING HERALD (Apr. 5, 2019), <https://www.smh.com.au/world/asia/democracy-and-human-rights-are-in-retreat->

measures, domestic or foreign, to keep executive power in check have been rendered ineffective, alternative tools have to be considered.²⁰ This article begins by examining the continued tolerance and acceptance of the populace of Mr. Duterte's disregard of liberal democratic ideals and how such acceptance has translated to the weakening of the rule of law and erosion of institutional mechanisms for checks and balances. Next, it considers the effect of this tolerance and acceptance on the state's human rights obligations, particularly that of the unabated extrajudicial killings. Finally, it notes the ineffectiveness of international instruments for compliance and examines the utility of strengthening democratic non-governmental institutions. It thus concludes that focus should be made on ensuring that states have local tools to monitor, scrutinise, and reinforce the government's human rights policies.

II. OPENING FOR ILLIBERAL DEMOCRACY

From the liberal political order focused on good governance under the previous administration,²¹ the Philippines took an illiberal turn with Mr. Duterte.²² This is a move that has since been sustained.²³ He capitalised on the resentments of the electorate on, among others, the stalled attempts in combatting corruption, inefficient institutions, and concerns pertaining to crimes and illegal narcotics.²⁴ With his aggressive campaign, he was able to play to the impatience of

in-south-east-asia-here-s-why-20190405-p51b6b.html (“[In Southeast Asia,] almost every day it seems another example emerges of the erosion of either the political and civil rights of individual citizens, or the diminution of democratic institutions.”).

20. See *infra* Part V.

21. See Mark R. Thompson, *Bloodied Democracy: Duterte and the Death of Liberal Reformism in the Philippines*, 35 J. CURRENT SE. ASIAN AFF. 39, 39 (2016) (finding that the Aquino administration's undermined narrative of “good governance” has made the administration vulnerable to replacement by violent illiberalism).

22. See, e.g., Dante Gatmaytan, *Philippines: The State of Liberal Democracy*, in 2017 GLOBAL REVIEW OF CONSTITUTIONAL LAW 220, 220 (Richard Albert et al. eds., 2017) (“Philippine politics took a violently illiberal turn after Duterte's election in 2016.”).

23. See *id.* at 220 (stating that the Duterte administration continues to undermine the constitutional order).

24. See Thompson, *supra* note 21, at 58–59 (noting that the success of Duterte campaign was driven by middle-class concerns including drugs and crime, crumbling infrastructure, and continued corruptions).

populace and convince them to replace the liberal order that has seen years of growth to one that consists of “a new law-and-order governing script and the quick removal of remaining liberal constraints.”²⁵

Mr. Duterte exploited a “form of grievance politics” that played on the failure of his predecessor, Mr. Benigno Aquino III, to deliver on his promises and the expectations he created.²⁶ To recall, the latter successfully ran on an agenda centred on reform and a drive against corruption.²⁷ However, while Mr. Aquino demonstrated a strong political will in prosecuting high profile cases involving government officials, his administration’s efforts were hampered by outdated and conflicting laws, judicial inefficiency, and deficient organizational systems.²⁸ To make matters worse, the efforts were marked with a pattern of partiality and politicization.²⁹ While some high-level officials were prosecuted, those allied with the Aquino government were relatively unscathed.³⁰ In turn, the institutional difficulties and problematic implementations stalled his good governance program.³¹

It is worth noting that the difficult enforcement of Mr. Aquino’s

25. Gatmaytan, *supra* note 22, at 220.

26. See HEYDARIAN, *supra* note 18, at 32 (2018) (particularly among the burgeoning middle class and the aspirational middle class).

27. See Pangalangan et al., *supra* note 18, at 151 (deploying the “narrative of the ‘Tuwid na Daan’ (the Straight Path) in rallying his supporters”).

28. See generally Eric Vincent C. Batalla, *Treading the Straight and Righteous Path: Curbing Corruption in the Philippines*, 4 ASIAN EDUC. & DEV. STUD. 51, 60 (2015) (attributing the inadequacy of laws and of enforcement to the persistence of endemic political and bureaucratic corruption).

29. See *id.* at 68 (2015) (showing a pattern of partiality and politicization in the prosecutions of high-level corruption).

30. See Joel R. San Juan, *Legal Experts Confirm “Selective Justice” Under Aquino*, BUSINESSMIRROR (June 26, 2015), www.businessmirror.com.ph/legal-experts-confirm-selective-justice-under-aquino (“double standard in [the] investigation and prosecution of corruption”); Thompson, *supra* note 21, at 50 (Prosecutions that were confined to Aquino’s enemies increased “cynicism about his commitment to the rule of law”). See generally Jon S. T. Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?*, 105 CURRENT HIST. 176, 177 (2006) (attributing low wages of civil servants and the cultural emphasis on familiar ties and the cultural value of ‘utang na loob’ (debt of gratitude) to the Philippine’s higher tolerance of corruption).

31. See Amy R. Remo, *Good Governance Seen as Aquino Legacy*, INQUIRER (July 26, 2015), <https://business.inquirer.net/195971/good-governance-seen-as-aquino-legacy> (good governance reforms were seen as one of the Aquino administration’s most crucial achievements, but it was marked with some of the let-downs in the areas such as foreign investment and infrastructure programs).

agenda is symptomatic of the deeper problems in the Philippine political system.³² Its current state may be characterized as that of elite governance “dominated by an oligarchy that was buttressed by patronage.”³³ In this system, “elite patrons furnish much-needed resources to clients in exchange for support.”³⁴ It is this kind of governance that has made the system resistant to changes as the narrow elite organizes it for their “own benefit at the expense of the vast majority of its citizens.”³⁵ With this resistance, the Philippines continues to be plagued with dysfunctionality absent the much-needed reforms to “realize genuine socioeconomic and political transformations.”³⁶

The problems of the Philippine political system are not limited to its elite governance. Despite a façade of democratic political life, the Philippines continues to suffer serious democratic deficits.³⁷ While it holds regular elections and has a democratic constitution, the system is marked with a “limited political space for opposition parties and

32. See Julio C. Teehankee, *Was Duterte's Rise Inevitable?*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 37, 38 (Nicole Curato ed., 2017) (acknowledging the Philippine democracy's significant dysfunctionality, in which political and business elites resisted the much needed reforms).

33. See *id.* at 39. See generally Alfred W. McCoy, *Preface: The Philippine Oligarchy at the Turn of the Twenty-First Century*, in AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES xi, xi–xii (Alfred W. McCoy ed., 2009) (attributing the rise of “rents,” or restrictive state license that allowed monopoly or oligopoly over a particular market, and the Philippine being a problematic postcolonial state to the survival of the Filipino oligarchy from generation to generation); John T. Sidel, *Philippine Politics in Town, District, and Province: Bossism in Cavite & Cebu*, 56 J. ASIAN STUD. 947 (1997) (introducing a theory that attributes the existence of the political and economic elite families to the distinctive institutional structures of the Philippine state, particularly those established under the American colonial rule, rather than clientelism and class domination).

34. See Pangalangan et al., *supra* note 18, at 147 (“Elite governance has been the cornerstone of political rule during various periods of the Philippine history”); see also Julio C. Teehankee, *Clientelism and Party Politics in the Philippines*, in CLIENTELISM AND ELECTORAL COMPETITION IN INDONESIA, THAILAND AND THE PHILIPPINES 186 (Dirk Tomsa & Andreas Ufen eds., 2003) [hereinafter *Party Politics in the Philippines*] (providing the historical background and continued influence of clientelism).

35. See David T. Johnson & Jon Fernquest, *Governing Through Killing: The War on Drugs in the Philippines*, 5 ASIAN J.L. & SOC'Y 359, 377 (2018).

36. Teehankee, *supra* note 32, at 38.

37. See Thompson, *supra* note 21, at 59–60 (“systematic disjunction”).

independent civil society.”³⁸ Thus, there continues to be “poor representation of citizens interests, low levels of political participation beyond voting, frequent abuse of the law by government officials, elections of uncertain legitimacy, very low levels of public confidence in state institutions, and persistently poor institutional performance by the state.”³⁹

The Aquino administration was ineffective in addressing these deep-seated problems. During Mr Aquino’s tenure, there had only been a “few major institutional reforms” with the “problems of the Philippine justice system being a particularly obvious unresolved problem.”⁴⁰ Fiscal policies were also subject to constitutional challenges with hints of large-scale corruption.⁴¹ Finally, Mr. Aquino himself was widely seen to be part of the elite, having come from a prominent and landed family.⁴²

It is not denied however, that the Aquino administration was marked with a robust growth. During his tenure there was strong economic growth and improved credit ratings.⁴³ However, despite these gains, unemployment and poverty rates continued to remain high.⁴⁴ In general, Mr. Aquino’s government failed to provide for an inclusive development as evinced by marginal increases in the quality of education and healthcare, efficient supply of basic goods,

38. Thomas Carothers, *The End of the Transition Paradigm*, 13 J. DEMOCRACY 5, 9–10 (2002).

39. *Id.*

40. Thompson, *supra* note 21, at 49.

41. See Pangalangan et al., *supra* note 18, at 152 (such as the Disbursement Acceleration Program and the Priority Development Assistance Fund); *accord 3 Years of Aquino Only Entrenched Elite Governance*, CTR. PEOPLE EMPOWERMENT GOVERNANCE [CENPEG] (July 23, 2013), https://www.cenpeg.org/2013/gov/jul/3_years_of_Aquino_only_entrenched_elite_governance.html (“Corruption and inept bureaucracy has driven away foreign investments”).

42. See Walden Bello, *Aquino’s Elite Populism: Initial Reflections*, 8 THIRD WORLD Q. 1020, 1022 (1986) (Mr. Aquino is linked to two of the most prominent landlord families in Central Luzon through blood and marriage).

43. See Patricio N. Abinales, *The Philippines Under Aquino III, Year 2: A Ponderous Slog Continues*, 2013 SE. ASIAN AFF. 223, 228 (2013) (“The country’s credit ratings had been upgraded by agencies like Moody’s and Standard and Poor’s to one level below investment grade.”).

44. See HEYDARIAN, *supra* note 18, at 30 (explaining that the underemployment poverty hovered in the “double-digit territory”).

affordable utilities, and modernized public infrastructures.⁴⁵ Thus, the more the Philippines grew, the more obvious the gap in development became.⁴⁶ Without the robust welfare programs and high standards of living seen in democracies that have reached a level of maturity, the populace became all the more dissatisfied with the kind of political order that Mr. Aquino and his predecessors offered.⁴⁷

By tapping into the frustration with the “business-as-usual style” of governance “embedded in the country’s political and social institutions,”⁴⁸ Mr. Duterte was able to package a narrative based on a conflict between two homogenous and antagonistic groups: the people, on the one hand, and the elite, on the other, with him championing the exasperation and fatigue of the former.⁴⁹ He capitalized on his local political background to solidify his status as a political outsider.⁵⁰ His vulgar discursive style enabled him to connect with voters through its informality,⁵¹ and he portrayed himself as a “man of action capable of decisively and quickly solving deep-rooted

45. See *id.* at 28; Ben O. de Vera, *As 69% of Pinoy's Think Duterte 'Better' than Aquino in Building Infra, Economic Team OKs 12 Projects Worth P626.1B*, INQUIRER.NET (Dec. 20, 2019), <https://business.inquirer.net/285846/as-69-of-pinoy's-think-duterte-better-than-aquino-in-building-infra-economic-team-oks-12-projects-worth-p626-1b>.

46. See HEYDARIAN, *supra* note 18, at 28.

47. See *id.* at 4 (“Deepened democracies . . . have robust welfare programs, with individual citizens enjoying a relatively high level of living standards, thanks to universal healthcare and education.”); ADAM PRZEWORSKI ET AL., *DEMOCRACY AND DEVELOPMENT: POLITICAL INSTITUTIONS AND WELL-BEING IN THE WORLD, 1950–1990* 120–21 (2000) (when the average income declines and inequality increases, democracies are more vulnerable than when the average income increases, and inequality is reduced); Carothers, *supra* note 38, at 10–11 (nothing the public’s serious disaffection with politics and the inability of successive governments to address major problems like crime and corruption, health, education, and public welfare).

48. Pangalangan et al., *supra* note 18, at 146; HEYDARIAN, *supra* note 18, at 32.

49. See Nathan Gilbert Quimpo, *Duterte’s “War on Drugs”: The Securitization of Illegal Drugs and the Return of National Boss Rule*, in *A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE’S EARLY PRESIDENCY* 145, 152 (Nicole Curato ed., 2017) (the people being pure in contrast to the corrupt elite).

50. See Thompson, *supra* note 21, at 56.

51. See *id.* at 57. See generally BENJAMIN MOFFITT, *THE GLOBAL RISE OF POPULISM: PERFORMANCE, POLITICAL STYLE, AND REPRESENTATION* 45 (2016) (defining contemporary populism as “a political style that features an appeal to ‘the people’ versus ‘the elite,’ ‘bad manners’ and the performance of crisis, breakdown or threat”).

problems.”⁵² Thus, he was able to distance himself from the nation’s political, business, and intellectual elite and appeal to a dissatisfied populace.⁵³ He also made efficient use of media to reach the electorate through the spread of information and disinformation.⁵⁴ A recent study suggested that in the run-up to the elections, Mr. Duterte’s campaign employed “keyboard armies” to spread propaganda through social media.⁵⁵ These “armies” had the task of orchestrating a unified campaign message which would then be amplified through the mechanisms of social media websites, thus generating a façade of support.⁵⁶

After casting his image, Mr. Duterte tapped into the electorate’s concerns regarding criminality.⁵⁷ In this regard he put forward illegal narcotics as the most significant issue, notwithstanding the fact that the Philippines is a long way from narcotization and that there is no evidence showing that drug traffickers “have become virulent or

52. Quimpo, *supra* note 50, at 152.

53. *See id.*; Duncan McCargo, *Duterte’s Mediated Populism*, 38 CONTEMP. SE. ASIA 185, 186 (2016) (Duterte’s campaign epitomized many of the populist trend around the world such as “the rise of “anti-politician” political candidate; the declining relevance of conventional political parties and campaigning; the centrality of TV-hyped super-sized personalities; the exploitation of voters’ fears and resentments; and the merger of election rallies and protest movements with media “events” and mass spectacles.”).

54. *See* Hunter Holcombe, *A “Dictator’s Playbook” Is Threatening Democracy. This Woman Is Fighting Back*, CBS NEWS (June 27, 2019), <https://www.cbsnews.com/news/maria-ressa-fake-news-real-consequences-fighting-disinformation-duterte-philippines-cbsn-originals/> (calling social media “the dictator’s playbook”).

55. *See* Samantha Bradshaw & Philip Howard, *Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation* 15 (Univ. of Oxford Computational Propaganda Research Project, Working Paper No. 2017.12, 2017) (“Keyboard trolls” were hired to spread pro-Duterte propaganda during his campaign and presidency).

56. *See* Jason Vincent A. Cabañes & Jayeel S. Cornelio, *The Rise of Trolls in the Philippines (and What We Can Do about It)*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE’S EARLY PRESIDENCY 231, 237 (Nicole Curato ed., 2017) (“Trolls and bots have reportedly come together to sow fear and uncertainty by threatening Duterte’s critics.”); *see also* Siva Vaidhyanathan, *Surprised About Mark Zuckerberg’s Secret Meeting with Trump? Don’t Be*, GUARDIAN (Nov. 22, 2019), <https://www.theguardian.com/commentisfree/2019/nov/22/surprised-about-mark-zuckerbergs-secret-meeting-with-trump-dont-be> (reporting that Facebook had a staff in Duterte campaign and how use of Facebook helped Duterte victory).

57. *See* Dante Gatmaytan, *Lost in Transmission: Rule of Law Challenges in the Philippines*, 8 IMPUNITY WATCH L.J. 6, 14 (2017).

widespread at the national level.”⁵⁸ He hyperbolized this issue to demonstrate his “‘tough on crime’ and ‘man-of-action’ persona thereby broadening his popular appeal.”⁵⁹ Thus, he was able to take a manageable issue and transform it into a security matter.⁶⁰ He portrayed the problem to be one of significant importance that threatened the security of the state and convinced the populace not just that he is the perfect person to lead the solving of the issue, but also that exceptional measures were necessary to solve such a problem.⁶¹ Finally, he also invoked a nostalgia for the peace and order, translating it to the political and economic stability allegedly experienced during the tenure of the Philippines’ previous authoritarian leader, Mr. Marcos.⁶²

As mentioned earlier, the disjunction between the expectations from a liberal political order and the state of the Philippines provided a fertile ground for the rise of Mr. Duterte. In this state, the resulting concerns have allowed the populace to be open to trade-offs.⁶³ Thus,

58. See Quimpo, *supra* note 50, at 150.

59. See *id.* at 146–47. See generally Peter Kreuzer, *Private Political Violence and Boss-Rule in the Philippines*, 1 BEHEMOTH 47, 59 (2009) (“Violence and coercion are and always have been part and parcel of the Philippine variant of clientelism.”).

60. See Quimpo, *supra* note 50, at 147 (defining the concept of securitization and deeming a “securitizing move” successful if “it convinces the targeted audience, or at least gain its acceptance, about the existential threat and the need for the exceptional measures to counter it”); cf. RALF EMMERS, NON-TRADITIONAL SECURITY IN THE ASIA PACIFIC: THE DYNAMICS OF SECURITIZATION 12–13 (2014) (on securitization of drug trafficking in Thailand).

61. See Nicole Curato, *Politics of Anxiety, Politics of Hope: Penal Populism and Duterte’s Rise to Power*, 35 J. CURRENT SE. ASIAN AFF. 91, 94 (2016) (applying penal populism to Duterte’s case); Quimpo, *supra* note 50, at 147 (“The securitizing move is deemed successful if it convinces the targeted audience, such as the public, or at least gains its acceptance, about the existential threat and the need for the exceptional measures to counter it.”). See generally JOHN PRATT, PENAL POPULISM 2 (2007) (explaining the general concept of penal populism); Johnson & Fernquest, *supra* note 35, 374–75 (explaining the use of penal populism in the Philippines); Christian Houle & Paul D. Kenny, *The Political and Economic Consequences of Populist Rule in Latin America*, 53 GOV’T & OPPOSITION 256, 280–81 (2018) (explaining that “populism does not enhance turnout among all groups”).

62. See Pangalangan et al., *supra* note 18, at 153.

63. See Philip Alston, *The Populist Challenge to Human Rights*, 9 J. HUM. RTS. PRAC. 1, 4 (2017) (“People are now widely convinced that security can only be achieved through making enormous trade-offs, whether in terms of freedom of movement, privacy, non-discrimination norms, or even personal integrity guarantees.”).

“citizens who once accepted democracy as the only legitimate form of government [become] more open to authoritarian alternatives.”⁶⁴ Simply, the importance of liberal order has been depreciated, the possibility of authoritarian rule has been floated, and anti-liberal ideas have been offered.⁶⁵ Mr. Duterte took advantage of this vulnerability of the Philippine political system and promised results through means contrary to the principles of liberty and checks and balances which liberal constitutionalism espouses.⁶⁶ Accordingly, he has built a “formidable structure for challenging” the liberal order and its values by promoting methods he presents to be necessary to protect the rights and interests of the broader society.⁶⁷

Mr. Duterte’s narrative, amounting to illiberal democracy, continues three years after his election and has survived criticisms from within and outside the Philippines, aided by the state machinery, political defections, and an ineffective opposition.⁶⁸ For one, being the

64. See Gatmaytan, *supra* note 8, at 554; cf. AVERY POOLE, DEMOCRACY, RIGHTS AND RHETORIC IN SOUTHEAST ASIA 14 (2019) (giving examples of Thailand and Indonesia).

65. See Alston, *supra* note 64, at 4 (“The new era of internal threats, which have dramatically increased in recent years, is bringing with it a move to normalize states of emergency.”).

66. See Thompson, *supra* note 21, at 43 (“Duterte’s promise to resort to violence to solve the country’s drug problem . . . proved [to be] . . . effective during his presidential campaign.”); Teehankee, *supra* note 32, at 52 (“Duterte was able to tap into the ‘politics of anger’ fuelled by the general sense of frustration among the voters and the growing desire for a strong leader to restore law and order.”). See generally Amado Mendoza Jr., ‘People Power’ in the Philippines, in CIVIL RESISTANCE AND POWER POLITICS: THE EXPERIENCE OF NON-VIOLENT ACTION FROM GANDHI TO THE PRESENT 179, 181–84 (Adam Roberts & Timothy Garton Ash eds., 2009); Benedict Anderson, *Old Corruption*, 9 LONDON REV. BOOKS 3, 8–9 (1987) (explaining how “there is no real political parties in the Philippines except for the Communist Party” and “any attempt to return to the good, gold days is doomed”); Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFF. 22, 22–27 (1997) (explaining shortcomings of liberal democracy).

67. See Christopher Walker, *Dealing with the Authoritarian Resurgence*, in AUTHORITARIANISM GOES GLOBAL: THE CHALLENGE TO DEMOCRACY 216, 219 (Larry Diamond et al. eds., 2016); POOLE, *supra* note 65, at 3 (“The current government’s tough approach to crime is depicted as necessary to protect the rights of broader society.”). See generally Andreas Schedler, *What is Democratic Consolidation?*, 9 J. DEMOCRACY 91, 99 (1998) (explaining democratic consolidation including challenges of democratic completion).

68. See Jason Castaneda, *Duterte Tightens Grip as the Philippines Falls Apart*, ASIA TIMES (Sept. 24, 2020), <https://asiatimes.com/2020/09/duterte-tightens-grip-as-the-philippines-falls-apart/> (criticizing the extension of a state of national

incumbent, Mr. Duterte has been in the position to maintain a “performative and a perceived substantive commitment to rapidly deliver outcomes.”⁶⁹ He differentiated himself from his predecessor who has often been bogged-down with institutional deficiencies.⁷⁰ More importantly, with the state apparatus at his disposal, Mr. Duterte has the control over state information, and at times, disinformation.⁷¹ Thus, like other authoritarian regimes, he has been able to shape the political narrative to his strategic advantage.⁷² As was done during his campaign, his government continues to employ “keyboard armies” to spread a façade of support towards his policies, while at the same time discrediting or intimidating those who criticize the government.⁷³

With his success and popularity, defections to Mr. Duterte’s side has been rampant.⁷⁴ This increases the consolidation of his power.

calamity for another year amid economic crisis, COVID outbreak, and declining popularity as Duterte’s attempt to tighten his grip on the country before the 2022 presidential election).

69. See Arugay, *supra* note 3.

70. See *id.* (describing the popular impatience among the Filipino people for the democratic process Duterte’s predecessor took part in).

71. See Jodesz Gavilan, *From Marcos to Duterte: How Media Was Attacked, Threatened*, RAPPLER (Jan. 17, 2018), <https://www.rappler.com/newsbreak/iq/193882-threats-attacks-philippines-media-timeline> (recounting the continuous threats and harassment against media outlets).

72. See Ron Deibert, *Cyberspace Under Siege*, in *AUTHORITARIANISM GOES GLOBAL: THE CHALLENGE TO DEMOCRACY* 198, 198 (Larry Diamond et al. eds., 2016) (noting that authoritarian regimes now actively partake in cyber activities to create strategic advantage); see also E. San Juan, Jr., *Marcos and the Media*, 7 INDEX CENSORSHIP 39, 39 (1978) (discussing how former President of the Philippines Ferdinand Marcos took over all the media to control the narrative); David Rosenberg, *Civil Liberties and the Mass Media Under Martial Law in the Philippines*, 47 PAC. AFF. 472, 472 (1974) (describing how the Marcos government changed the once-free Philippine press into one under his strict control).

73. See JONATHAN CORPUS ONG & JASON VINCENT A. CABAÑES, *POLITICS AND PROFIT IN THE FAKE NEWS FACTORY: FOUR WORK MODELS OF POLITICAL TROLLING IN THE PHILIPPINES* 12 (2019) (“The state-sponsored model and its techniques of formal intimidation and digital bullying lead to silencing, self-censorship, and chilling effects among dissenters and the public at large. Journalistic reports about the state-sponsored propaganda model assume intentionally from the President himself to intimidate and harass his critics. His message is taken forward by a so-called “keyboard army,” consisting of hyper-partisan political pundits, social media influencers, and fans who call themselves diehard supporters.”); see also Bradshaw & Howard, *supra* note 56, at 11, 15 (explaining how the Philippines is among the list of governments that have run fake accounts to spread misinformation).

74. See Thompson, *supra* note 21, at 52 (explaining that Duterte’s formerly “micro-party” with one senator and three representatives became a ruling party

True enough, during the last elections, the president has become a “centripetal force for different aspiring candidates in the senatorial and local elections.”⁷⁵ The other effect of this consolidation is a weakened opposition. The defections to the president’s ruling party decimated the opposition and its resources.⁷⁶ The opposition is unable to mount a challenge against Mr. Duterte, let alone his populist governance.⁷⁷ Worsening the matter, the opposition has continued to rely on rhetoric based on a liberal order without engaging Mr. Duterte’s narrative.⁷⁸ Simply put, while it may have been able to portray Mr. Duterte as an authoritarian, it failed in countering the dissatisfaction with the order they present—let alone convince the electorate that the opposition is up to the task of delivering what the populace expects without the collateral damage it abhors.⁷⁹

III. WEAKENED RULE OF LAW

In maintaining the power he has consolidated, Mr. Duterte does not merely rely on the strength of his popular support, political clout, and access to state machinery. He has also relied on the weakening of the mechanisms supposedly in place to keep a check on the power of the president.⁸⁰ This is not to say, of course, that the Philippines has

through a process of defections).

75. See Arugay, *supra* note 3.

76. See *With Midterms Approaching the Opposition is in ‘Dire Straits’ in the Philippines*, WORLD POL. REV. (Apr. 10, 2019), <https://www.worldpoliticsreview.com/trend-lines/27748/with-midterms-approaching-the-opposition-is-in-dire-straits-in-the-philippines>.

77. See Agence France-Presse, *Philippines Voters Back Duterte and His Drug War as He Closes in on Midterms Victory*, GUARDIAN (May 13, 2019), <https://www.theguardian.com/world/2019/may/14/philippines-mid-term-elections-duterte-closes-in-on-victory-senate>.

78. See *Opposition Bets Failed to Counter Duterte Strongman Myth – Analyst*, RAPPLER (May 13, 2019), <https://www.rappler.com/nation/politics/elections/2019/230539-opposition-failed-counter-duterte-strongman-myth> (calling the opposition’s strategy that focused on particular issue ineffective).

79. See Diana Mendoza, *Why the Opposition Lost in the 2019 Midterm (Senatorial) Elections*, BUS. WORLD (June 10, 2019), <https://www.bworldonline.com/why-the-opposition-lost-in-the-2019-midterm-senatorial-elections> (noting that the opposition candidates lacked opportunities to present themselves as better or strong contender because the administration candidates stayed away from public debates).

80. See Javier Corrales, *Autocratic Legalism in Venezuela*, 26 J. DEMOCRACY 37 (2015) (describing how some regimes give the president autocratic powers to

completely transitioned into an authoritarian regime as it still retains its democratic features.⁸¹ Mr. Duterte's ruling party continues to compete in elections, and the three branches of the government, along with their promise of checks and balances, are still in existence.⁸² However, if the last elections are to be considered the standard, there is a marked decline in the competitiveness of its opposition.⁸³ Further, power appears to be concentrated on the executive considering that legislative branch has become all the more subservient while the judiciary remains relatively deferential.⁸⁴

Nevertheless, Mr. Duterte, in advancing his agenda, cannot simply disregard the tenets of the law. After all, there is still some benefit in maintaining a superficial appearance of democracy and legality.⁸⁵ For such benefit, his government continues to defend its actions by

weaken checks and balances during elections).

81. See generally Agence France-Presse, *supra* note 78 (showing the democratic functions of elections in the Philippines).

82. See generally *Three Branches of Government*, PHIL. INFO. AGENCY, <https://pia.gov.ph/branches-of-govt> (last visited Oct. 20, 2020).

83. See Gutierrez, *supra* note 1 (outlining how Duterte's allies swept the Senate elections); see also Arugay, *supra* note 3 (explaining why Duterte had the entire machinery of the Philippine state to out-resource his opponents and promote his own candidates); Heydarian, *supra* note 2 (describing how the opposition struggled with limited resources and leadership in this election season); Flores & Venzon, *supra* note 3 (stating that Duterte's victory in the midterms was a massive blow for the opposition); Andreo Calonzo et al., *Opposition Crushed in Philippines Midterm Vote in Nod to Duterte*, BLOOMBERG (May 14, 2019), <https://www.bloomberg.com/news/articles/2019-05-13/philippines-vote-count-stalls-as-duterte-allies-take-lead> (saying that the only opposition candidate that had stood a chance of winning a seat landed in 14th place).

84. See Carmel Veloso Abao, *Engaging Duterte: That Space in Between Populism and Pluralism*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 301, 309 (Nicole Curato ed., 2017) (stating that Duterte's judicial support is forecasted to grow as he appoints more judges, and further that he has a "super majority" of allies within the legislature); see also Gatmaytan, *supra* note 8, at 562 (describing how the Supreme Court refuses to exercise its ability to check Duterte's power); Lisandro E. Claudio & Patricio N. Abinales, *Dutertismo, Maoismo, Nasyonalismo*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 93, 104 (Nicole Curato ed., 2017) (asserting that Duterte seeks to become like "his idol," Ferdinand Marcos).

85. See, e.g., Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 547 (2018) (by "[using] democratic mandates to launch legal reforms that remove the checks on executive power, limit the challenge to their rules, and undermine the crucial accountability institutions of a democratic state.").

alleging that these are done within the bounds of the law.⁸⁶ However, with popular backing, his government is able to employ constitutional or legal methods to remove checks on power, limit challenges to its rule, and undermine the accountability of institutions while hiding its autocratic designs.⁸⁷

The answer to the question of whether Mr Duterte adheres to the “rule of law” is then a complicated one.⁸⁸ Stripped of its rhetoric, the concept pertains to a “political ideal which a legal system may lack or may possess to a greater or lesser degree.”⁸⁹ Simply put, it is “just one of the virtues which a legal system may possess and by which it is to be judged.”⁹⁰ From this, a non-democratic legal system that allows for the denial of human rights, racism, gender inequalities, and persecution based on beliefs may be considered to conform with the requirements of the rule of law.⁹¹ While it does not conform with the principles of justice and equality, it nevertheless may conform with the rule of law in the sense that the law is consistently applied.⁹²

Without its technicalities, the rule of law simply implies that the

86. See POOLE, *supra* note 65, at 29 (claiming that he is “duty-bound by the Constitution”); Thomas Pepinsky, *Southeast Asia: Voting Against Disorder*, 28 J. DEMOCRACY 120, 122 (2017) (invoking their electoral legitimacy when seeking to bypass legal channels).

87. See Scheppele, *supra* note 86, at 547–48, 570; Susanne Baer, *Rule of—and not by any—Law. On Constitutionalism*, 71 CURRENT LEGAL PROBS. 335, 350–51 (2018) (describing how Duterte and his allies disguise their attacks on the rule of law as legal arguments that are a legitimate part of the lawmaking process); Laurent Pech & Kim Scheppele, *Illiberalism Within: Rule of Law Backsliding in the EU*, 19 CAMBRIDGE Y.B. EUR. LEGAL STUD. 3, 6 (2017) (enumerating the process autocrats go through to attack the rule of law, including taking advantage of disgruntled citizens and using them to justify subsequent violations); Zakaria, *supra* note 67, at 22 (explaining how illiberal democracies are often rooted in democratically elected regimes that ignore constitutional limits and listing the Philippines as one such regime).

88. See Scheppele, *supra* note 86, at 547–48, 570 (describing how autocrats can use a combination of legitimate elements of democracy to form a system in which they end up with all the power, while maintaining the external appearance of a legitimate democracy).

89. JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* 211 (1979).

90. See *id.*; accord Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept (in Florida)?*, 21 L. & PHIL. 137, 140 (2002) (claiming that the term “rule of law” is available for indiscriminate use, and as such can be easily misused).

91. See Waldron, *supra* note 91, at 140.

92. See Scheppele, *supra* note 86, at 547–48.

government's actions are constrained by a fixed set of rules of which the governed has been informed.⁹³ This allows the public to foresee with fair certainty how the government will use its powers and act accordingly based on this knowledge.⁹⁴ Taken broadly, "this means that people should obey the law and be ruled by it."⁹⁵ In the narrower sense, the concept dictates that "the government shall be ruled by the law and subject to it"—a "government by law and not by men."⁹⁶ Hence, the only actions that the law allows are considered actions of the government as government.⁹⁷ Otherwise, these acts would be without legal effect.⁹⁸

As discussed earlier, the idea of the 'rule of law' does not amount to the conception of justice, equality, or democracy.⁹⁹ It "remains distinct from the scheme of justice established by any particular legal

93. See F.A. Hayek, *Preface to the 1976 Edition*, in *THE ROAD TO SERFDOM* 53, 55 (Bruce Caldwell ed., 2007) (stating that experts believe that if Hitler had risen to power in a constitutional manner, one could say that Germany adhered to the rule of law). Compare H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958) (providing an analysis on the distinction between law and morals), with Lon L. Fuller, *Positivism and Fidelity to Law – A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1957) (discussing how the distinction between "law and morals" should be a distinction between "order and good order" instead).

94. See Paul Craig, *Legitimate Expectations: A Conceptual Analysis*, 108 L.Q. REV. 79, 80–81 (1992) (stating that legitimate expectations of the public are an important factor when considering procedural rights); Fuller, *supra* note 94, at 643 (claiming that if people are compelled by law to do the right thing, they will generally act accordingly); see also J. FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 270 (1980) (describing how a legal system exemplifies the rule of law in part by creating prospective rules that are firm enough to guide the public); LON FULLER, *THE MORALITY OF LAW* 107 (1969) (defining the rule of law as "the existence of public order," and stating that as such, all modern societies follow the rule of law including fascist, socialist, and liberal states); P.P. Craig, *Substantive Legitimate Expectations in Domestic and Community Law*, 55 CAMBRIDGE L.J. 289, 290 (1996) (describing how the public's legitimate expectations of, inter alia, natural justice and fairness, come from a public body acting in such a way that the expectation is created).

95. RAZ, *supra* note 90, at 212.

96. *Id.*

97. See *id.*

98. See *id.*; see also Miro Cerar, *The Ideology of the Rule of Law*, 97 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE [ARCHIVE PHILOSOPHY L. & SOC. PHILOSOPHY] 393, 401 (2001) (describing how the autonomous power of law in an authoritarian or totalitarian government is minimal and negligible).

99. See RAZ, *supra* note 90, at 211 ("[The rule of law] is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man.").

regime and is compatible with many rival accounts of social justice.”¹⁰⁰ In a sense, it “does not entail a commitment to any particular vision of the public good or any specific conception of social justice.”¹⁰¹ What it requires is conformity to the rule of law’ in order to “secure whatever purposes the law is designed to achieve.”¹⁰² The rule of law therefore is the “specific excellence of law in the sense that it is the virtue of efficiency.”¹⁰³ Thus, “adherence to the rule of law enables the law to achieve its ends, just as a sharp knife can more readily be used for cutting.”¹⁰⁴

Therefore, on its own, the “rule of law” is meaningless.¹⁰⁵ If anything, it could be demonstrated that it is equally compatible with some forms of authoritarian rule as it is with a liberal democratic order.¹⁰⁶ But the ‘rule of law’ discussed in relation to and sought in the democratic context is one that goes beyond mere legality or that which requires “only formal legal authorisation for governmental acts and decisions.”¹⁰⁷ What is sought is a conception that requires “more substantial requirements” which is that of constitutionalism.¹⁰⁸ As had been aptly put, “sacrificing too many social goals on the altar of the rule of law may make law barren and empty.”¹⁰⁹

At its core, constitutionalism imposes limitations on the state, “particularly in its relations with citizens, based on a clearly defined set of core values.”¹¹⁰ At the same time, it requires the existence of

100. T.R.S. Allan, *The Rule of Law as the Rule of Reason: Consent & Constitutionalism*, 115 L.Q. REV. 221, 224 (1999).

101. *Id.* at 237; see J. Shklar, *Political Theory and Rule of Law*, in *POLITICAL THOUGHT AND POLITICAL THINKERS* 270 (S. Hoffman ed., 1998).

102. See Allan, *supra* note 101, at 227.

103. See *id.*

104. T.R.S. ALLAN, *CONSTITUTIONAL JUSTICE: A LIBERAL THEORY OF THE RULE OF LAW* 54 (2010).

105. See Shannon C. Stimson, *Constitutionalism and the Rule of Law*, in *THE OXFORD HANDBOOK OF POLITICAL THEORY* 317, 317 (John Dryzek et al. eds., 2008).

106. See JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* 219 (1979) (stating that the rule of law is only one of many virtues a legal system should include).

107. See Allan, *supra* note 101, at 223.

108. See *id.*

109. RAZ, *supra* note 107, at 229.

110. See Gatmaytan, *supra* note 58, at 21; see also Yasmin Dawood, *The Antidomination Model and the Judicial Oversight of Democracy*, 96 GEO. L.J. 1411, 1434 (2008) (stating that one of the main goals of the rule of law is similar to

"limitations on the government [that] can be legally enforced."¹¹¹ It is worth noting, however, that in some instances, constitutionalism and democracy may exist in tension as when "what the people want at any given moment is over-ridden by constitutional principles that thwart that desire"¹¹² Nevertheless, democratic constitutionalism resolves this tension between democracy and constitutionalism by "baking into constitutionalism the requirement of a self-sustaining democracy, a system in which the people can continue over time choosing their leaders, holding them to account, and rotating power when leaders disappoint."¹¹³

Similarly, liberal constitutionalism reinforces democracy because it imposes two important constraints on the government. First, it requires the state to "protect and defend the dignity and liberty of individuals so that they may sustain, among other things, the capacities to be democratic citizens."¹¹⁴ Second, it mandates that "all sources of public power be subject to binding legal checks that, among other things, ensure that leaders stay within legal limits and guarantee the orderly rotation of leadership in response to shifting democratic majorities."¹¹⁵

constitutionalism in that they both aim to protect against unchecked dominion by the state); Charles M. Fombad, *Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa*, 55 AM. J. COMP. L. 1, 7 (2007) (describing how modern constitutionalism aims to limit government power and simultaneously ensure the government functions efficiently and effectively within those limits); Walter F. Murphy, *Constitutions, Constitutionalism, and Democracy*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 3, 3 (Douglas Greenberg et al eds., 1993) (explaining that constitutionalism seeks to respect human worth and dignity by placing limits on what the government can do); Vicki C. Jackson, *What's in a Name? Reflections on Timing, Naming, and Constitution-Making*, 49 WM. & MARY L. REV. 1249, 1254 (2008) (outlining the core principles of constitutionalism, including avoiding use of force, preserving human rights, stability of law, and maintenance of an effective government).

111. See Gatmaytan, *supra* note 58, at 21.

112. See Scheppele, *supra* note 86, at 557; see also Samuel Issacharoff, *Constitutionalizing Democracy in Fractured Societies*, 82 TEX. L. REV. 1861, 1861 (2004) (stating that constitutionalism is inherently at odds with majoritarian rule because the laws set to limit the government and protect the people go on to limit the will of the people themselves).

113. Scheppele, *supra* note 86, at 557; see JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 101, 101–4, 116–20 (1980) (highlighting the importance of voting in a democracy as it relates to constitutionalism).

114. See *id.* at 558.

115. See *id.*

Yet, this observance of the rule of law that democratic and liberal constitutionalism both require is what the regime of Mr. Duterte lacks.¹¹⁶ It may definitely be legal but whether it adheres to the principles of democratic and liberal constitutionalism is a different matter.¹¹⁷ Under Mr. Duterte's government, efforts are made to maintain a façade of legitimacy or subscription to "core concepts, ideas, and ideals" while in the process of doing so endeavour to destroy the same.¹¹⁸

It can be said then that the kind of order that Mr. Duterte demonstrates is that of a hybrid one. While his regime participates in the exercise of democracy, as in the case of elections, it nevertheless uses this "purely majoritarian conception of democracy" to effect changes that are contradictory to liberal and democratic constitutional order.¹¹⁹ Accordingly, like other legalistic autocrats, Mr. Duterte uses, abuses, and in some cases disregards laws in order to consolidate political power, legitimize self-serving legal reforms, and silence opposition.¹²⁰

Several instances demonstrate Mr. Duterte's use of law towards authoritarian ends. For one, as a vast majority of the members of Congress have migrated to his ruling party, the legislative branch now

116. See David G. Timberman, *Philippine Politics Under Duterte: A Midterm Assessment*, CARNEGIE ENDOWMENT INT'L PEACE (Jan. 10, 2019), <https://carnegieendowment.org/2019/01/10/Philippine-politics-under-duterte-midterm-assessment-pub-78091> (In 2017, the Philippines withdrew from being considered for a second Millennium Challenge Corporation (MCC) compact, because it no longer met the MCC's minimum requirements in the areas of rule of law and corruption control.).

117. See *id.* (discussing how the Duterte government's actions have led to significant democratic backsliding and human rights violations).

118. See Baer, *supra* note 88, at 351.

119. See Scheppele, *supra* note 86, at 570; see also Corrales, *supra* note 81, at 37 (describing hybrid regimes as "competitive authoritarian" systems, because although there is an election, the powers the president wins fit that of an autocrat, and as such, erode checks and balances).

120. See, e.g., *id.* at 38 (using Venezuela's rule as an example of autocratic legalism, whose three elements are the use, abuse, and non-use of the law to serve the executive branch); Baer, *supra* note 88, at 350–51 (citing Poland as an example of a government that changed internal working rules that weakened the power of the court, reallocated that power to the executive branch, and morphed the rule of law into simply whichever laws get passed rather than a constitutional, rights-based rule of law).

acquiesces to his dictates.¹²¹ Thus, when the Commission on Human Rights began investigating the extra-judicial killings committed within the government's campaign against illegal narcotics, the legislative branch gave the commission a budget of a mere one thousand pesos effectively rendering it useless.¹²² Its budget was only restored after public outrage became "clear and unrelenting."¹²³ Perhaps even more concerning is the agenda of the government in reforming the constitution. Currently, Mr. Duterte has the numbers to convene a 'constitutional assembly' and propose the changes that he wants.¹²⁴ If effected, such a change may perpetuate the incumbents' time in office.¹²⁵

In other instances, Mr. Duterte has resorted to the abuse of law, rather than its use. Abuse in this sense pertains to the "inconsistent and biased implementation of laws and regulations."¹²⁶ In most cases, it has been done to silence the government's opposition.¹²⁷ For instance, when one of Mr. Duterte's critics, Senator Leila M. De Lima, called for an investigation of extra-judicial killings, the government charged the Senator with "counts of drug trafficking with prisoners in the New Bilibid Prison on the outskirts of Manila."¹²⁸ Worth mentioning is the

121. See Gatmaytan, *supra* note 22, at 224.

122. *House Gives CHR ₱1,000 Budget for 2018*, CNN (Sept. 14, 2017), <http://nine.cnnphilippines.com/news/2017/09/12/Commission-on-Human-Rights-CHR-House-budget.html>; Joseph Hincks, *In the Philippines, Human Rights Have a Precise Value: \$20*, TIME (Sept. 13, 2017), <https://time.com/4939044/philippines-human-rights-budget-rodrigo-duterte>.

123. See Gatmaytan, *supra* note 22, at 220; see also Katrina Domingo, *Gascon: CHR Budget Restored Due to Public Outrage*, ABS-CBN NEWS (Sept. 21, 2017), <https://news.abs-cbn.com/news/09/21/17/gascon-chr-budget-restored-due-to-public-outrage> (stating that the Commission on Human Rights chair attributed the budget restoration to the public outcry following the decision to cut it down).

124. See Mara Cepeda, *Duterte Wants Constituent Assembly to Amend Constitution* — Alvarez, RAPPLER (July 28, 2016), <https://www.rappler.com/nation/duterte-constituent-assembly-federalism-alvarez>. See generally CONST. (1987), art. XVII, § 1 (Phil.).

125. See Gatmaytan, *supra* note 22, at 224. See generally Pangalangan et al., *supra* note 18, at 152–53 (discussing Duterte's plans to change the constitution).

126. Corrales, *supra* note 81, at 40.

127. See Editorial Board, *Opinion, Rodrigo Duterte has Accelerated the Philippines' Slide Toward Authoritarianism*, WP (July 28, 2019), <https://www.washingtonpost.com/opinions/global-opinions/rodrigo-duterte-has-accelerated-the-philippines-slide-toward-authoritarianism.html>.

128. See, e.g., Johnson & Fernquest, *supra* note 35, at 366; see also Jayson S. Lamchek, *A Mandate for Mass Killings: Public Support for Duterte's War on Drugs*,

fact that the Senator was charged with no evidence aside from the testimonies of convicted prisoners.¹²⁹ Mr. Duterte also retaliated against the Chief Justice of the Philippine Supreme Court who has been considered to have been part of the “minority in the Court in a series of high-profile cases brought against the current administration.”¹³⁰ The Chief Justice notably “resisted some of Mr Duterte’s policies on the grounds that they flouted human rights and the rule of law.”¹³¹ Subsequently, an impeachment complaint was filed against the Chief Justice before the House of Representatives Committee on Justice composed chiefly of Mr. Duterte’s allies.¹³² She was eventually ousted through a legally questionable petition before the Supreme Court filed by the government’s Office of the Solicitor General.¹³³ Moreover, members of the press have not been spared from attacks.¹³⁴ For instance, numerous charges have been brought against Maria Ressa, a journalist critical of Mr. Duterte. These charges ranged from cyber-libel to violating laws on the foreign ownership of media outlets.¹³⁵ Similarly, he has threatened the closure of a major network

in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE’S EARLY PRESIDENCY 201, 209 (Nicole Curato ed., 2017) (explaining that even the civil society groups such as the one that brought the charges against Senator De Lima have urged Duterte to stop killing innocents).

129. See Johnson & Fernquest, *supra* note 62, at 366.

130. See Gemmo Bautista Fernandez, *The Theory of Judicial Impartiality and the Case of Republic v Chief Justice Sereno*, 19 AUS. J. ASIAN L. 1, 2 (2019); Felipe Villamor, *She Stood Up to Duterte. Now She Faces Impeachment.*, N.Y. TIMES (Mar. 2, 2018), <https://www.nytimes.com/2018/03/02/world/asia/philippines-chief-justice-duterte.html>.

131. Villamor, *supra* note 131.

132. See Jim Gomez, *Philippines’ Chief Justice Expects Impeachment, Taking Leave*, AP (Feb. 28, 2018), <https://apnews.com/18401ab797a94c9aac3d60b291b84bdc/Philippines’-chief-justice-expects-impeachment,-taking-leave>.

133. See Fernandez, *supra* note 131, at 3.

134. See Joanna Fuytes-Knight, *Attacks on the Media Show Duterte’s Philippines is Heading for Despotism*, GUARDIAN (Feb. 15, 2019), <https://www.theguardian.com/commentisfree/2019/feb/15/attacks-media-duterte-philippines-rappler-maria-ressa> (describing cases of several critics from the media that were arrested on bogus charges); see also Rambo Talabong, *Over 100 Attacks VS Journalists Since Duterte Assumed Office – Monitor*, RAPPLER (May 3, 2019), <https://www.rappler.com/nation/229611-over-100-attacks-vs-journalists-duterte-assumed-office> (listing the large amount of attacks on the media by the number of cases and how many cases each medium was involved in).

135. See Alexandra Stevenson, *Maria Ressa, Journalist Critical of Duterte, is Arrested Again in Philippines*, N.Y. TIMES (Mar. 28, 2019),

which has been critical of his policies by instructing Congress not to renew its franchise.¹³⁶

Finally, there is the non-use of law. Notably, the “Philippine Constitution has codified, bureaucratized, and proceduralized human rights so that the law is easily used.”¹³⁷ Yet, it appears to have ended there—a “formalistic conception of human rights.”¹³⁸ For instance, there is the lack of investigations conducted in the extra-judicial killings that have happened since Mr. Duterte came to power.¹³⁹ Instead, the government has resorted to a multitude of tactics ranging from denial, deflection, and recalibration¹⁴⁰ in all cases without substantiating defenses and serious investigation.¹⁴¹ Even more, there had been instances when the non-use of law has been blatant such as when Mr. Duterte threatened to abolish the Commission on Human Rights which is constitutionally mandated to investigate abuses of human rights.¹⁴² Another instance is when Mr. Duterte warned the Ombudsman not to “investigate police or military involvement without seeking his permission first”.¹⁴³ Still, Mr. Duterte has frequently warned courts not to interfere with his policies and that should they do so, he will not respect their authority—a blatant

<https://www.nytimes.com/2019/03/28/business/media/maria-ressa-arrested-philippines-rappler.html>.

136. See *Duterte Threatens to Shut Down Philippine Broadcaster ABS-CBN*, CPJ (Dec. 5, 2019), <https://cpj.org/2019/12/duterte-threatens-to-shut-down-philippine-broadcas.php>; *Duterte to ABS-CBN: Next Year, You're Out*, CNN PHIL. (Dec. 3, 2019), <https://www.cnnphilippines.com/news/2019/12/3/duterte-abs-cbn-franchise-out.html>.

137. See Irene Hadiprayitno, *Deadlock and Denial: Domestic Challenges and the Institutionalization Human Rights in ASEAN*, 19 GLOB. JURIST 1, 10 (2019).

138. See *id.*

139. See Jodesz Gavilan, Lian Buan, & Rambo Talabong, *Duterte Gov't Allows 'Drug War' Deaths to Go Unsolved*, RAPPLER (Jan. 14, 2019), <https://www.rappler.com/newsbreak/in-depth/duterte-government-drug-war-deaths-unsolved> (stating that the police have not investigated the 5,050 deaths that resulted from police operations); see also OHCHR, DRUG-RELATED OFFENCES, CRIMINAL JUSTICE RESPONSES AND THE USE OF THE DEATH PENALTY IN SOUTH-EAST ASIA 29 (2018) (explaining that some sources quote a death toll of over 20,000 people as a result of police-led drug operations, and Special Procedures has released several press statements condemning the lack of investigations).

140. See Lamchek, *supra* note 129, at 204–05.

141. See *id.*

142. See Hadiprayitno, *supra* note 15, at 10.

143. See *id.*

disregard of the principle of separation of powers.¹⁴⁴

The fact that the judiciary has been relatively deferential is also a problem.¹⁴⁵ Despite its broad powers of review, the Supreme Court has been “unwilling to assume its . . . role as a check” on executive powers.¹⁴⁶ During the past few years, Mr. Duterte has won every case that challenged his actions before the Supreme Court.¹⁴⁷ In turn, this contributes to Mr. Duterte’s ability to generate tolerance for his policies.

IV. EFFECT ON THE IMPLEMENTATION OF HUMAN RIGHTS

The previous sections contextualized the problems facing the enforcement of human rights in the Philippines where the rule of law has been reduced to its minimalist form and the populace have been made open to accept an illiberal order. In turn, this openness translates to an open season for the Mr. Duterte’s government to enact its policies without the hindrance of oversight or fear of repercussions related to public perception of there being an erosion of the appreciation for basic liberties, individual autonomy, and dignity.¹⁴⁸

Of course, the problem concerning the enforcement of human rights in the Philippines is not new. For one, the existence of extra-judicial killings in the Philippines is not a new phenomenon.¹⁴⁹ From the time

144. See Villamor, *supra* note 131 (reporting on a Duterte spokesperson’s call for the high court’s Chief Justice to resign); Alexis Romero, *Duterte Pushes 2 Dams for Metro Manila, Warns Courts*, PHIL. STAR (Dec. 31, 2019), <https://www.philstar.com/headlines/2019/12/31/1980949/Duterte-pushes-2-dams-metro-manila-warns-courts> (Duterte warning that an adverse ruling will not be respected by the executive). See generally Jeffrey Damicog, *Guevarra Backs President’s Warning to Courts vs Issuing TROs, Injunctions*, MANILA BULL. (Dec. 31, 2019), <https://news.mb.com.ph/2019/12/31/guevarra-backs-presidents-warning-to-courts-vs-issuing-tros-injunctions/>.

145. See Gatmaytan, *supra* note 8, at 554 (arguing that such deference contributes to democratic decay).

146. See *id.*

147. See *id.* at 554. See generally *Padilla v. Congress of the Philippines*, G.R. No. 231671 (S.C., July 27, 2017) (Phil.); *Lagman v. Medialdea*, G.R. No. 231658 (S.C., July 4, 2017) (Phil.); *Ocampo v. Enriquez*, G.R. No. 225973 (S.C., Nov. 8, 2016) (Phil.).

148. See generally Alston, *supra* note 64, at 3; Zakaria, *supra* note 67, at 22, 26.

149. E.g., Bede Sheppard & A. Lin Neumann, *Scared Silent: Impunity for Extrajudicial Killings in the Philippine*, HUM. RTS. WATCH (June 27, 2007),

of the late dictator, Mr. Ferdinand Marcos, extra-judicial executions have been a “regular feature of Philippine society.”¹⁵⁰ Under Mr. Marcos’ rule, 3,240 people became victims of enforced disappearances.¹⁵¹ This prevalence continued during the time of Mr. Duterte’s predecessors. An estimated 819 people become victims of “extra-judicial, summary, or arbitrary execution” during the first half of Mrs. Gloria Macagapal-Arroyo’s government.¹⁵² Similarly, during the time of Mr. Aquino, at least “300 leftist activists, human rights defenders, and alleged supporters of communist rebels were killed.”¹⁵³ While there was a marked decline in these killings during the time of Mr. Aquino, it is also notable that little was done to find and prosecute their perpetrators.¹⁵⁴ As pointed out, “the lack of successful prosecutions [meant] there’s nothing to prevent an upsurge of abuses in the future.”¹⁵⁵ This appears to be an aptly put observation—the warning would prove to be prophetic.¹⁵⁶

Mr. Duterte made true of his election promise to eliminate those involved in illegal drugs—enough to “fatten the fish” in the Manila Bay.¹⁵⁷ Within a few days of his inauguration, the Philippine National Police and the Philippine Drug Enforcement Agency began implementing his deadly campaign.¹⁵⁸ Names of suspected users and

<https://www.hrw.org/report/2007/06/27/scared-silent/impunity-extrajudicial-killings-philippines> (detailing killings since 2001).

150. See Johnson & Fernquest, *supra* note 35, at 361.

151. See *In re Estate of Marcos Human Rights Litigation*, 910 F. Supp. 1460, 1461 (D. Haw. 1995); *Hilao v. Estate of Marcos*, 103 F.3d 767, 771 (1989); Pangalangan et al, *supra* note 18, at 142.

152. See Florin Terna Hilbay, *The Philippine President as Tortfeasor-in-Chief: Establishing Civil Liability for Constitutional Negligence*, 4 ASIAN J. COMP. L. 1, 1, n.3 (2009).

153. Johnson & Fernquest, *supra* note 35, at 362.

154. See Acor Arceo, *Aquino’s Human Rights Record a ‘Failure’ – Watchdog*, RAPPLER (Jan. 28, 2016), <https://www.rappler.com/nation/human-rights-watch-aquino-failure> (noting state-sponsored killings “almost never” result in prosecutions).

155. *Id.*

156. See Johnson & Fernquest, *supra* note 35, at 362 (characterizing such warnings as “prescient”); see also Arceo, *supra* note 155 (detailing 300 killings).

157. See Jim Gomez, *Duterte ‘Happy to Slaughter’ Drug Suspects; Mentions Hitler*, AP (Sept. 30, 2016), <https://apnews.com/article/1a8bd4625272423e9801bbcd447073e8>.

158. See Memorandum from the Phil. Nat’l Police Comm’n, PNP Anti-Illegal Drugs Campaign Plan – Project: “Double Barrel” §§ 3, 10 (July 1, 2016) (on file with Phil. Nat’l Police Comm’n).

sellers were gathered and those listed were asked to turn themselves in.¹⁵⁹ Those who failed to do so became likely targets for extra-judicial execution.¹⁶⁰ The campaign also included what may be described as “mass interrogations” where “tens or hundreds of men are called out of their homes, lined up, arrested, and questioned.”¹⁶¹ Some of these men would later be also killed.¹⁶² Three years later, the number of deaths arose to around 29,000.¹⁶³ The deaths commonly occurred in police operations and, in other cases, in the hands of alleged vigilantes.

¹⁶⁴

The government has frequently denied claims of extra-judicial killings, asserting that the victims died as “a result of shootouts between the police officers and suspects or violent resistance on the part of the suspects.”¹⁶⁵ However, the unusually high death rate in these operations suggests that the suspects had been “summarily gunned down.”¹⁶⁶ Moreover, the circumstances surrounding the deaths are equally telling. Suspected offenders have received warnings from

159. See Johnson & Fernquest, *supra* note 35, 364.

160. See *id.* at 363–65.

161. See *id.* at 364.

162. See Johnathan Kaiman, *The Philippines’ Drug Addicts, Shunned by Society and Hunted by Assassins, Find They Have Nowhere to Turn*, L.A. TIMES (Sept. 19, 2016), <https://www.latimes.com/world/asia/la-fg-philippines-addicts-snap-story.html> (reporting that more than 3,500 suspected drug dealers have been killed).

163. See, e.g., Emmanuel Tupas, *29,000 Deaths Probed Since Drug War Launched*, PHIL. STAR (Mar. 6, 2019), <https://www.philstar.com/nation/2019/03/06/1898959/29000-deaths-probed-drug-war-launched>.

164. See Kristine Joy Patag, *Philippines to UN Rights Council: Panel to Look into Deaths in Anti-drug Operations*, PHIL. STAR (June 30, 2020), <https://www.philstar.com/headlines/2020/06/30/2024671/philippines-un-rights-council-panel-look-deaths-anti-drug-operations> (describing investigations of law enforcement officers who “overstepped legal bounds” in their operations).

165. See Ateneo Hum. Rts. Ctr. [AHRC], Summary & Extrajudicial Killings in the Philippines: A Submission to the United Nations Human Rights Council for the Universal Periodic Review of the Philippines, ¶ 27, (2017). See generally Gerg Cahiles, *PNP Chief Defends Police in Drug-Related Killings*, CNN PHIL. (July 14, 2016), <https://cnnphilippines.com/news/2016/07/14/bato-defends-police-in-drug-related-killings.html>; Cecille Suerte Felipe, *‘Bato’ to Cops: I will Kill You, Too, if...*, PHIL. STAR (June 20, 2016), <https://www.philstar.com/headlines/2016/06/20/1594766/bato-cops-i-will-kill-you-too-if>; Lamchek, *supra* note 130, at 203, 204.

166. Sheila Coronel, *Murder as Enterprise: Police Profiteering in Duterte’s War on Drugs*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE’S EARLY PRESIDENCY 172 (Nicole Curato ed., 2017).

police and officials that they were on the watchlist.¹⁶⁷ Later, men would come to houses of these suspects to take them and execute them.¹⁶⁸ In some cases, policemen were nearby, “securing the crime scene, [with] special crime investigators arriv[ing] within minutes of the kill.”¹⁶⁹ Notwithstanding these observations, the government maintains its questionable position even though there have been reports that police had “planted” guns, ammunition, and drug packets on victims’ bodies to support the claim of legitimate operations.¹⁷⁰ Furthermore, the government has “frustrated efforts by the media and independent observers to verify the tally of deaths” and has resorted to the manipulation of the “online information landscape” to generate a façade of support for the administration.¹⁷¹

Worse, the government appears to be tolerant of these killings, if not supportive; there is a marked “inaction on the part of the government to investigate” the killings.¹⁷² The only exception came in November of 2018 when three police officers were found criminally responsible for the murder of a minor which remains, until now, the only criminal conviction of authorities in the narcotics campaign.¹⁷³ All other implicated officers in the killings received only minor disciplinary sanctions or escaped justice.¹⁷⁴ Notably, the president himself vowed to pardon any police or military personnel involved in the extrajudicial killings and stated that he “would stand trial on behalf of police officers if they were accused of unlawful killing.”¹⁷⁵

Surprisingly, while the Philippine system of governance has a range of mechanisms for checks and balances, none have been brought to

167. *See id.*

168. *See id.*

169. *Id.* at 173.

170. *See* HRW, WORLD REPORT 2018 430 (2017); AMNESTY INTERNATIONAL, REPORT 2017/18: THE STATE OF THE WORLD’S HUMAN RIGHTS 299 (2018).

171. *See id.* at 429; *Freedom on the Net 2017: Philippines*, FREEDOM HOUSE, <https://freedomhouse.org/country/philippines/freedom-net/2017> (last visited Sept. 29, 2020). *See generally* Quimpo, *supra* note 50, at 145, 152.

172. *See* UNHRC, Report of the Working Group on the Universal Periodic Review on its Thirty-Sixth Session, ¶ 4(b), U.N. Doc. A/HRC/36/12.Add1 (Sept. 19, 2017); AHRC, *supra* note 166, ¶ 30.

173. *People v Oares*, Crim Case No C-102925 7 Regional Trial Court, National Capital Judicial Regional, Branch 125, Caloocan City, 32 (Nov. 29, 2018) (Phil.).

174. Dahlia Simangan, *Is the Philippine “War on Drugs” an Act of Genocide?*, 20 J. GENOCIDE RES. 68, 85 (2018).

175. *See* AHRC, *supra* note 166, ¶¶ 26–27.

bear.¹⁷⁶ The legislative branch, as previously noted, had been subservient to Mr. Duterte.¹⁷⁷ With a near-supermajority in both houses of Congress, the legislative branch acquiesces to Mr. Duterte's command.¹⁷⁸ To be sure, no serious probe has been made to investigate the killings under the government's campaign against illegal narcotics.¹⁷⁹ The last investigation resulted in the government's charging of the chair of the Senate committee conducting the probe with narcotics-related offences leading to her imprisonment.¹⁸⁰ To add insult to the injury, the former police chief who was behind the government's campaign has been elected a senator and would now be part of the committee poised to investigate the killings.¹⁸¹

The effectiveness of the Commission on Human Rights of the Philippines has also been in question.¹⁸² Notably, the Commission has the primary mandate of investigating human rights abuses,¹⁸³ yet it is relatively powerless. While it may investigate, it only has a recommendatory power to call for prosecution.¹⁸⁴ It cannot prosecute by itself.¹⁸⁵ The authority remains with the Department of Justice, an executive department, and the Office of the Ombudsman to prosecute

176. See Gatmaytan, *supra* note 8, at 562 (exploring the courts' refusal to use their power to check the executive).

177. See Gatmaytan, *supra* note 22, at 220 (stating that Duterte has imposed martial law and initiated impeachments against other high-level officials).

178. See *id.*

179. See Eloisa Lopez & Martin Petty, *Philippine Drug War Critics Hope U.N. Probe Can Dent Duterte's Deadly Campaign*, REUTERS (July 12, 2019), <https://www.reuters.com/article/us-philippines-drugs-victims/philippine-drug-war-critics-hope-u-n-probe-can-dent-dutertes-deadly-campaign-idUSKCN1U719M> (detailing the Duterte regime's unwillingness to allow investigations into the killings).

180. See Johnson & Fernquest, *supra* note 35, at 366; Jayson Lamchek, *supra* note 129, at 212.

181. See Aika Rey, *Bato dela Rosa Won't Inhibit from Senate EJK Probe: 'Ako Ba Pumatay?'*, RAPPLER (June 25, 2019), <https://www.rappler.com/nation/233875-bato-de-la-rosa-not-inhibit-from-senate-extrajudicial-killings-investigation> (stating Ronald dela Rosa claimed he would "not be biased" because he is no longer a police officer).

182. See Phil Robertson, *Philippines in Hot Seat at UN Rights Council*, HRW (June 30, 2020), <https://www.hrw.org/news/2020/06/30/philippines-hot-seat-un-rights-council> (describing the panel as "deeply flawed").

183. See CONST. (1987), art. XIII, § 18(1) (Phil.).

184. See *id.*

185. See Senator Leila M. De Lima, Dissenting Report to the Joint Committee Report No. 18, at 19–20 (Dec. 9, 2016) (Phil.).

violations of human rights.¹⁸⁶ Both are free to disregard the recommendations of the Commission.¹⁸⁷ Nevertheless, the Commission has been proactive in communicating the results of its investigations to the public and calling for accountability in the government's illegal narcotics campaign.¹⁸⁸ The problem is, the Commission, like any of the government's critics, is often targeted by Mr. Duterte and his allies.¹⁸⁹ It has frequently been branded as "useless" as it only "defends only the rights of criminals and goes after only the police and government officials."¹⁹⁰ Thus, it has been frequently discredited before the perception of the public which in turn affects the credibility of its findings.¹⁹¹

Finally, despite these rampant human rights violations, the populace appears to remain supportive of Mr. Duterte's policies concerning illegal narcotics.¹⁹² As aforementioned, Mr. Duterte tapped into the anxieties of the populace about criminality in relation to the problem concerning illegal narcotics.¹⁹³ The truth is, while illegal narcotics are

186. *See id.*

187. *See id.*

188. *See, e.g.,* Krissy Aguilar, *CHR Wants Gov't to Intensify Efforts to Deliver Justice for All EJK Victims*, INQUIRER.NET (Nov. 29, 2018), <https://newsinfo.inquirer.net/1058310/chr-wants-govt-to-intensify-efforts-to-deliver-justice-for-all-ejk-victims> (discussing Commission Chair Chito Gascon's public call for the government to "step up their efforts" in helping victims of extrajudicial killings).

189. *See* Tom Smith, *Duterte's Latest Target: The Commission on Human Rights*, DIPLOMAT (Aug. 8, 2017), <https://newsinfo.inquirer.net/1058310/chr-wants-govt-to-intensify-efforts-to-deliver-justice-for-all-ejk-victims> (discussing Duterte's "disparaging pronouncements" to the Commission); *see also* 'Gay or Paedophile?' *Philippines Duterte Attacks Rights Chief Over Drug War Criticism*, GUARDIAN (Sept. 16, 2017), <https://www.theguardian.com/world/2017/sep/17/gay-or-paedophile-philippines-duterte-attacks-rights-chief-over-drug-war-criticism>.

190. *See* Bea Cupin, *Alvarez Wants P1,000 Budget for CHR That 'Doesn't Do Its Job'*, RAPPLER (Sept. 11, 2017), <https://www.rappler.com/nation/181778-speaker-alvarez-budget-cut-commission-human-rights>; *see also* Oliver Holmes, *Philippines MPs Vote to Slash Budget of Agency Investigating Drug War to £15*, GUARDIAN (Sept. 13, 2017), <https://www.theguardian.com/world/2017/sep/13/philippines-budget-agency-investigating-drug-war>.

191. *See id.*

192. *See, e.g.,* Johnson & Fernquest, *supra* note 35, 367–68 (stating that 78% of the populace reported being satisfied with the government crackdown on drugs).

193. *See* Gatmaytan, *supra* note 22, at 221 (stating Duterte channels his supporters' fears and resentments); Alfred W. McCoy, *Philippine Populism: Local Violence and Global Context in the Rise of a Filipino Strongman*, 15 SURVEILLANCE & SOC'Y 514, 516 (2017) (describing Duterte's public killing of drug dealers).

a problem in the Philippines, it is not as severe as Mr. Duterte presented it to be. Statistics have shown that substance abuse has been declining, and crime rates are falling.¹⁹⁴ But Mr. Duterte exaggerated the problem and continues to do so by inflating the numbers.¹⁹⁵ In the process, he was able to dehumanize those involved in drug-use as “beyond redemption” and “worthy of extermination.”¹⁹⁶ Finally, in this crisis he created and portrayed as a threat to the state, he managed to convince the population that exceptional measures, violative of human rights, were required to solve it.¹⁹⁷ The populace, promised solutions, though painful, remain acquiescent, if not eager, to agree.¹⁹⁸

Recent opinion polls on the matter are quite telling.¹⁹⁹ Around 75% of the respondents said that they were satisfied with the campaign against illegal drugs.²⁰⁰ Moreover, the remarkable ratings of the Duterte administration were seen “in all classes and in all the main geographical divisions of the country.”²⁰¹ The public remains ambivalent when it comes to the claims of unlawful killings.²⁰² While 28% of the respondents said that they do not believe the claims of authorities concerning the deaths in the government’s illegal narcotics

194. See Thompson, *supra* note 21, at 50.

195. See Dharel Placido, *Duterte Fires Drugs Board Chief for ‘Contradicting’ Government*, ABS-CBN NEWS (May 25, 2017), <https://news.abs-cbn.com/news/05/25/17/duterte-fires-drugs-board-chief-for-contradicting-government>; Trisha Macas, *Duterte Sacks DDB Chief for Contradicting Gov’t Drug Users Count*, GMA NEWS (May 24, 2017), <https://www.gmanetwork.com/news/news/nation/612021/duterte-sacks-ddb-chief-for-contradicting-gov-t-drug-users-count/story/>.

196. See Gatmaytan, *supra* note 58, at 15; see also Eliza Mackintosh, ‘Toxic’ Political Rhetoric Threatens Human Rights, Amnesty Warns, CNN (Feb. 22, 2017), <https://edition.cnn.com/2017/02/21/world/amnesty-human-rights-report/index.html> (warning against toxic rhetoric that dehumanizes groups of people).

197. See Thompson, *supra* note 21, at 50 (describing this approach as “perform[ing] a crisis”).

198. See Curato, *supra* note 18, at 30 (discussing how Duterte wins over audiences with his rhetoric).

199. See, e.g., *June 27-30, 2018 Social Weather Survey: Satisfaction With National Admin’s Campaign Against Illegal Drugs at net +65*, SOC. WEATHER STATIONS (Sept. 23, 2018), <http://sws.org.ph/swsmain/artclidispagg%20/?artcsyscode=ART-20180923090232>.

200. See *id.*

201. Quimpo, *supra* note 50, at 146.

202. See Johnson & Fernquest, *supra* note 35, 367–68 (suggesting polls on the subject vary depending on the wording of the question).

campaign, the same number said that they trust the authorities, and an additional 44% said that they were undecided.²⁰³

The results may be a symptom of the Philippines' "failed discourse of democracy, where human rights and the rule of law "had become a suffocating straitjacket for a majority of the Filipinos who could not simply relate to it.""²⁰⁴ Worse, it may also be a confirmation of the public's "wilful disregard for the extent to which the police are involved in the killings."²⁰⁵ The latter explains the openness of the populace to Mr. Duterte's illiberal methods. With the public's "loss of confidence in state institutions, particularly the judicial system," coupled with the "frustration with the government's inability to provide basic security," leaders who present themselves to be able to take a decisive action to provide security, no matter the cost, have become widely popular.²⁰⁶

V. STRENGTHENING DOMESTIC NON- GOVERNMENTAL INSTITUTIONS

The illiberal agenda espoused by regimes like that of Mr. Duterte's almost always run in conflict with the principles of international human rights. The rise of these governments, in turn, puts up a challenge to the human rights movement in a way that is fundamentally different from the others it has previously confronted.²⁰⁷ For instance, there has been "an essential antipathy and even hostility" towards the field of human rights such that an increasing number of governments have expressed an intent to disregard the "key pillars" of the field.²⁰⁸ There has also been an observed breakdown in respect for its principles thereby undermining

203. See *Fourth Quarter Social Weather Survey: 28% of Filipinos Do Not Believe Police Claims of "Nanlaban", 28% Believe, and 44% are Undecided*, SOC. WEATHER STATIONS (Feb. 27, 2019), <https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190227175911>.

204. Curato, *supra* note 18, at 25.

205. Johnson & Fernquest, *supra* note 35, at 374; Lamchek, *supra* note 129, at 202, 204.

206. See Curato, *supra* note 18, at 25.

207. See Alston, *supra* note 64, at 204. See generally STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* 1–3 (2013) (discussing other modern human rights violations).

208. See Alston, *supra* note 64, at 3.

the international rule of law.²⁰⁹ Worse, more and more states have threatened to pull out of international institutions highlighting their fragility.²¹⁰ Accordingly, the possibility of effective pushback is now evaporating.²¹¹

The problem is, like any other field of international law, the international human rights enterprise depends on the cooperation of states.²¹² Consequently, the adherence of states to the principles it promotes is of utmost importance.²¹³ To stress the point, one of the underlying presumptions in human rights instruments “is the existence of a supranational body that has the ability to assess the implementation of derogation measures and monitor the limitations on rights made under the instruments.”²¹⁴ Simply put, institutional reinforcement remains important as international law cannot guarantee its efficacy.²¹⁵ However, while many of these human rights bodies have been endowed with powers and procedures for monitoring and reporting, addressing individual and inter-state complaints, and initiating *motu proprio* inquiries, the cooperation of states remains integral.²¹⁶ Thus, without genuine fulfilment of obligations by states and their corresponding cooperation with human rights bodies, the accession of states to human rights instruments becomes a mere lip-service or a façade for legitimacy and credibility to external actors.²¹⁷

209. See *id.* at 6–7 (describing “shocking breakdown” of international rule of law).

210. See *id.* at 7.

211. See *id.* at 3.

212. See Scott Sheeran, *The Relationship of International Human Rights Law and General International Law: Hermeneutic Constraint, or Pushing the Boundaries?*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 79, 95–96 (Scott Sheeran & Nigel Rodley eds., 2013); Ted Piccone, *The Future of the United Nations Special Procedures*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 725, 730 (Scott Sheeran & Nigel Rodley eds., 2013).

213. See *id.* at 96–97.

214. Gemmo Bautista Fernandez, *Within the Margin of Error: Derogations, Limitations, & the Advancement of Human Rights*, 92 PHIL. L.J. 1, 22 (2019).

215. See *id.*

216. See *id.*

217. See POOLE, *supra* note 65, at 68, 70 (2019) (stating that normative pro-democracy statements may boost legitimacy); Emilie M. Hafner-Burton et al., *Emergency and Escape: Explaining Derogations from Human Rights Treaties*, 65 INT’L ORG. 673, 685 (2011) (describing derogations as insincere acts); Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT’L ORG. 217, 217–218 (2000) (noting that most human rights

The scenario then is this: because illiberal regimes receive little or no disincentives in the domestic plane, these regimes have the free rein to disregard their respective human rights obligations.²¹⁸ In turn, this results in a decline in the effectiveness of international human rights mechanisms.²¹⁹ For one, it results in problems such as “securing reliable, complete and contemporaneous information about state compliance” with international human rights instruments and their concomitant procedures.²²⁰ The Philippines, for instance, declared a state of martial law and suspension of the writ of *habeas corpus* in 2017 covering the entire island of Mindanao.²²¹ As the proclamation is a special measure amounting to a derogation within the purview of the International Covenant on Civil and Political Rights, the Philippine government has the obligation to comply with both the procedural and substantive requirements under the treaty.²²² Yet, the government has not lodged any notification, as required by the Covenant, concerning its proclamation of a state of emergency.²²³

Similarly, the national report submitted by the Philippine government to the Human Rights Council during the country's Universal Periodic Review is far from being accurate.²²⁴ Despite

regimes are not enforced by interstate action).

218. See Ronald D. Holmes, *Who Supports Rodrigo Duterte?*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE'S EARLY PRESIDENCY 57, 72 (Nicole Curato ed., 2017) (discussing Duterte's popularity despite his human rights violations); Lamchek, *supra* note 129, at 199, 200 (noting Duterte has been able to distance himself from such crimes); Quimpo, *supra* note 50, at 151–52 (stating the “war on drugs” has withstood criticism from media).

219. See Fernandez, *supra* note 215, at 24 (noting the government's disregard for ICCPR notification requirements).

220. *Id.* at 22–23.

221. *Id.* at 23–24.

222. See International Covenant on Civil and Political Rights art. 4, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171, 174; CCPR General Comment No. 29: Article 4: Derogations During a State of Emergency, ¶ 17, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001) (explaining notification requirement).

223. See Fernandez, *supra* note 215, at 24.

224. See UNHRC, National Report Submitted in Accordance with Paragraph Five of the Annex to Human Rights Council Resolution 16/21, ¶¶ 104, 106 U.N. Doc. A/HRC/WG.6/27/PHL/1 (2017) [hereinafter UNHRC, Resolution 16/21] (reproducing Duterte's claim that there is no State policy that promotes, condones, sanctions or encourages extrajudicial killings); Felipe Villamor, *Duterte, Citing Hitler, Says He Wants to Kill 3 Million Addicts in Philippines*, N.Y. TIMES (Sept. 30, 2016), <https://www.nytimes.com/2016/10/01/world/asia/philippines-rodrigo-duterte-hitler-drugs.html> (noting Duterte's claim that he would “be happy to

evidence to the contrary, the report submits that “all police and military operations be conducted within the bounds of [the] law, and recognizing and respecting the rights and dignity of the accused.”²²⁵ Moreover, it denies the existence of a state policy to kill drug offenders even while it admits that Mr. Duterte has announced the contrary on several occasions.²²⁶ It also argues that “after conducting exhaustive hearings, the Senate Committee on Justice and Human Rights reported that there was no solid evidence to prove the existence of a state-sponsored policy to commit killings to eradicate drugs.”²²⁷ What it forgets to mention is the fact that the committee’s chair, Senator Leila De Lima was imprisoned on trumped-up charges shortly after initiating the inquiries.²²⁸

The situation also contributes to the general inability of human rights bodies to enforce their respective mandates.²²⁹ For instance, states have frequently asserted the inviolability of national sovereignty and the prohibition against intervention and interference in the domestic affairs of states in blocking requests for monitoring, fact-finding, or investigation by human rights bodies.²³⁰ Case and point, the Philippines called the recent resolution of the United Nations Human Rights Council seeking an international investigation on the killings that occurred in the country’s campaign against illegal narcotics an

slaughter” three million drug addicts in the Philippines).

225. See UNHRC, Resolution 16/21, ¶ 104.

226. Compare *id.* (stating that Duterte’s administration does not have a policy of killing drug traffickers, criminals, or dissenters), with Villamor, *supra* note 226 (reporting that Duterte said he would “finish the problem of [the Philippines] and save the next generation from perdition” by killing millions of drug addicts).

227. See UNHRC, Resolution 16/21, *supra* note 225, ¶ 106.

228. See Johnson & Fernquest, *supra* note 35, at 366 (stating that after calling for an investigation into the extrajudicial killings, Senator De Lima was imprisoned on three counts of drug trafficking without evidence of drugs being leveled against her); see also Lamchek, *supra* note 129, at 209 (stating that the Victims Against Crime and Corruption are responsible for the charges brought against Senator De Lima).

229. See Fernandez, *supra* note 215, at 24–25 (discussing the nature of international human rights bodies and their inability to properly enforce non-compliance due to their limited status).

230. See, e.g., Jianming Shen, *National Sovereignty and Human Rights in a Positive Law Context*, 26 BROOK. J. INT’L L. 417, 435 (2000) (comparing the view of former British Prime Minister Tony Blair that sovereignty is not as important as human rights, to the view of some third world countries which tend to place more importance on national sovereignty).

“outrageous interference” on the country’s sovereignty.²³¹ Worse, the government threatened to withdraw from the Council and deny the investigators entry to the country.²³² Of course, the rhetoric employed by governments like that of the Philippines is necessarily flawed.²³³ International human rights obligations, by their nature, are not essentially within the domestic jurisdiction of the state.²³⁴ By ratifying

231. See Jason Gutierrez, *Philippines Hits Back at Call for U.N. Inquiry of Police Killings*, N.Y. TIMES (June 8, 2019), <https://www.nytimes.com/2019/06/08/world/asia/philippines-killings-un.html> (quoting Salvador Panelo, the Philippine presidential spokesman, as having called the UN’s investigation into extra-judicial killings “an outrageous interference” on the country’s sovereignty); accord Hum. Rts. Council, Promotion and Protection of Human Rights in the Philippines, U.N. Doc. A/HRC/41/L.20 (July 5, 2019) (ordering an investigation into human rights violations in the Philippines).

232. See Patricia Lourdes Viray, *Will the Philippines Quit UN Rights Body?*, PHIL. STAR (July 15, 2019), <https://www.philstar.com/headlines/2019/07/15/1934906/will-philippines-quit-un-rights-body> (stating that the Philippines has debated following the United States in leaving the Human Rights Council); see also Panelo: *UN Investigators to Be Refused Entry, Denied Visas*, CNN PHIL. (July 16, 2019), <https://cnnphilippines.com/news/2019/7/16/Sal-Panelo-UN-investigators-refused-entry.html> (stating that U.N. investigators would not be allowed entry into the Philippines).

233. See Gemmo Fernandez, *How the Philippine Government Gets the Concept of ‘Intervention’ Wrong*, DIPLOMAT (Jan. 8, 2020) <https://thediplomat.com/2020/01/how-the-philippine-government-gets-the-concept-of-intervention-wrong/> (discussing the rhetoric used by the Philippines when it comes to “intervention” and “interference” with its national sovereignty by other States, and why it is wrong to interpret those terms in the way that it does).

234. See Abdulrahim P. Vijapur, *The Question of Domestic Jurisdiction and the Evolution of United Nations Law of Human Rights*, 47 INT’L STUD. 247, 249 (2010) (articulating that human rights are not within the domestic jurisdiction of States due to the fact that the UN Charter obligates all member states to comply with the international obligation to respect human rights); see also HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 146–47 (1950) (stating that although there does not appear to be a provision of the Charter which compels human rights protection, and although the agencies tasked by the Charter with human rights implementation do not have binding authority, Member States are still obligated by the Charter to respect and observe fundamental human rights and freedoms); accord Louis Henkin, *Human Rights and Domestic Jurisdiction*, in HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD 21, 22 (Thomas Buergenthal ed., 1977) (stating that it is possible for a matter to diffuse itself from domestic jurisdiction and into international jurisdiction by membership to an international organization such as the U.N., via the necessary compliance with the U.N. Charter); OPPENHEIM’S INTERNATIONAL LAW: VOLUME 1 PEACE 442 (Robert Jennings & Arthur Watts eds., 9th ed. 2008) (representing that there is a substantial body of law that suggests that if a State commits human rights abuses on its own people, there is

human rights instruments, states “have undertaken to observe specific obligations” and opened up its “reserved domain” for scrutiny and observation not just to the bodies tasked with doing so, but to the international community as well.²³⁵ The measures for monitoring and enforcement embodied in those treaties, therefore, could not be considered as intervention or interference.²³⁶

The same strategy was employed by Mr. Duterte’s government with regard to the International Criminal Court.²³⁷ To recall, the Office of the Prosecutor announced that it was opening a Preliminary Examination to determine whether the situation in the Philippines met the legal criteria established by the Rome Statute to warrant an investigation as to whether the killings that occurred under the government’s campaign against illegal narcotics constitute grave

a breaking point where intervention by other States, even in this matter of sovereign jurisdiction, may intervene in the abusing State’s affairs); Bruce S. Kessler, *Politics Among the Airwaves: An Analysis of Soviet and Western Perspectives on International Broadcasting and the Right to Exchange Ideas and Information Regardless of Frontiers*, 7 HOUS. J. INT’L L. 237, 266–67 (1985) (stating ways in which items which might have been domestic jurisdiction originally have become or might become under international jurisdiction).

235. See Vijapur, *supra* note 235, at 249–50 (stating that in ratifying human rights instruments, States have essentially acknowledged the power of other States to intervene in their domestic jurisdiction to prevent or stop violations of human rights); see also Virginia Leary, *When Does the Implementation of International Human Rights Constitute Interference in the Essentially Domestic Affairs of a State? The Interaction of Articles 2 (7), 55 and 56 of the Charter*, in INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 20–21 (James Tuttle ed., 1978) (stating that actions taken by the UN to investigate violations of human rights by a country which has signed onto a treaty outside of the UN charter and general U.N. rights, to protect human rights, would not constitute interference, but that it might be interference to send such a commission without permission in the event where it was merely related to violation of general obligations under the U.N. charter); accord Thomas Buergenthal, *Codification and Implementation of International Human Rights*, in HUMAN DIGNITY: THE INTERNATIONALIZATION OF HUMAN RIGHTS 15, 16–17 (Alice H. Henkin ed., 1979).

236. See Kessler, *supra* note 235, at 267 (stating that due to the nature of certain agreements, the issue of human rights now lays outside of a State’s exclusive domestic jurisdiction, therefore criticism or concern from other States on an international level is not considered intervention or interference).

237. See *Full Text: Duterte’s Statement on Int’l Criminal Court Withdrawal*, RAPPLER (Mar. 14, 2018), <https://rappler.com/nation/full-text-philippines-rodrido-duterte-statement-international-criminal-court-withdrawal> (quoting a statement from Duterte in which he rebuked the International Criminal Court’s attempt to place him under international jurisdiction, prompting him to declare the Philippines’ withdrawal of ratification of the Rome Statute).

infringements of human rights amounting to a crime against humanity.²³⁸ Unsurprisingly, the announcement was received negatively by Mr. Duterte and his allies.²³⁹ The executive branch “belittled the development, expressing confidence that the complaint would not prosper because the narcotics crackdown was a legitimate law enforcement effort.”²⁴⁰ As with other international bodies, the government alleged that the Court’s actions amounted to an interference in the country’s sovereignty.²⁴¹ It thus declared that it “will do everything it can to block the . . . investigators from gathering data and conducting interviews in the Philippines.”²⁴² Mr. Duterte himself maintained that he will not allow himself to be investigated by the Court.²⁴³ A little over a month after the announcement of the Office of the Prosecutor, Mr. Duterte declared that he was withdrawing the Philippines from the Statute.²⁴⁴

238. See Fatou Bensouda, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on Opening Preliminary Examinations into the Situations in the Philippines and in Venezuela*, ICC (Feb. 8, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat> (initiating a preliminary examination into the extra-judicial killing situation in the Philippines).

239. See generally RAPPLER, *supra* note 238 (expressing Duterte’s disposition toward the UN and the ICC after the Prosecutor of the ICC’s opening of a preliminary examination into extrajudicial killings in the Philippines).

240. See Alexis Romero, *Duterte Reiterates Resolve to Fight Drugs*, PHIL. STAR (Feb. 26, 2018), <https://www.philstar.com/headlines/2018/02/26/1791452/duterte-reiterates-resolve-fight-drugs> (stating that the government of the Philippines is confident that the ICC’s complaint about their narcotics crackdown would fail because their operations were legitimate).

241. See Pia Ranada, *ICC Investigators to be Denied Entry, Deported if they Visit PH to Probe Drug War*, RAPPLER (Mar. 18, 2019), <https://rappler.com/nation/icc-investigators-to-be-denied-entry-deported-visit-philippines-probe-drug-war> (quoting Duterte as stating that the ICC was interfering in the sovereignty of the Philippines by trying to subject the country to its jurisdiction).

242. See *id.*

243. See generally *Jail Me, Hang Me: Philippines’ Duterte Says Won’t Answer to ICC*, REUTERS (Dec. 20, 2019), <https://www.reuters.com/article/us-philippines-drugs/jail-me-hang-me-philippines-duterte-says-wont-answer-to-icc-idUSKBN1YO184> (quoting Duterte’s statement that he will be judged only by the Philippines and that he will not cooperate with the international community).

244. See Felipe Villamor, *Philippines Plans to Withdraw from International Criminal Court*, N.Y. TIMES (Mar. 14, 2018), <https://www.nytimes.com/2018/03/14/world/asia/rodrigo-duterte-philippines-icc.html> (stating that Duterte made a statement withdrawing the Philippines from the Rome Statute after claiming the ICC was being utilized as a tool against the Philippines).

Finally, the situation is made worse by the fact that illiberal states, and those that are in the slide towards illiberalism, tend to create what may be considered as an “international shield.”²⁴⁵ These states build what may be considered an “alliance of tolerance” where they would be unwilling to criticise each other, let alone “join any international effort to sanction [them] for domestic wrongdoings.”²⁴⁶ For instance, during the Philippines’ recent Universal Periodic Review, illiberal states like China, refrained from criticising the former’s campaign against illegal narcotics and instead expressed support for it.²⁴⁷ The same happened in the case of a resolution calling for action in response to the unresolved killings in the Philippines.²⁴⁸ In return, the Philippines has supported and defended these states from the criticisms made against them.²⁴⁹

This ‘alliance’ goes beyond diplomacy and may consist of material

245. See, e.g., Corrales, *supra* note 81, at 46 (discussing Venezuela’s creation of the “international shield” by creating an “alliance of tolerance” which would allow them to have allies who would refuse to criticize or sanction them in their actions).

246. See *id.*; see, e.g., Josie Ensor, *Saudi Crown Prince Defends China’s Right to Put Uighur Muslims in Concentration Camps*, TELEGRAPH (Feb. 22, 2019), <https://www.telegraph.co.uk/news/2019/02/22/saudi-crown-prince-defends-chinas-right-put-uighur-muslims-concentration/> (describing China and Saudi Arabia’s formation of what Corrales might describe as an “alliance of tolerance,” promoting human rights violations under the guise of “strengthening international cooperation on de-radicalisation”).

247. See UNHRC, Report of the Working Group on the Universal Periodic Review – Philippines, ¶ 36, U.N. Doc. A/HRC/36/12 (July 18, 2017).

248. See UNHRC, Promotion and Protection of Human Rights in the Philippines, U.N. Doc. A/HRC/41/L.20 (July 5, 2019) (note that China, a member of the Human Rights Council, did not sign on to this Report); Mia M. Gonzales, *Meet PH’s New Friends: U.N.-Member Countries that Voted vs Human Rights Resolution*, RAPPLER (July 12, 2019), <https://rappler.com/newsbreak/iq/countries-voted-against-un-human-rights-resolution-philippines-killings> (stating that China, among other countries which have questionable human rights records, sided with the Philippines in a resolution calling for action against the killings in the Philippines).

249. See, e.g., Abbas Faiz, *China is Building a Global Coalition of Human Rights Violators to Defend its Record in Xinjiang – What is its Endgame?*, CONVERSATION (July 18, 2019), <https://theconversation.com/china-is-building-a-global-coalition-of-human-rights-violators-to-defend-its-record-in-xinjiang-what-is-its-endgame-120546> (stating that the Philippines was one of the countries to sign a joint letter to the UN in support of China’s treatment of Uyghurs in the Xinjiang region); see also Catherine Putz, *Which Countries are For or Against China’s Xinjiang Policies?*, DIPLOMAT (July 15, 2019), <https://thediplomat.com/2019/07/which-countries-are-for-or-against-chinas-xinjiang-policies/> (showing the Philippines’ defense of China’s placing of Uyghurs into “vocation education and training centers”).

aid.²⁵⁰ When more liberal states condition aid or investment based on their liberal principles, illiberal states would tend to look towards ‘friendlier’ states for alternative sources of trade and assistance which can be procured “without the accompanying political conditions.”²⁵¹ Such a scenario has been evident in the Philippines where Mr. Duterte shunned all financial assistance from the countries critical of his policies.²⁵² Of course, Mr. Duterte could afford to do so given that countries like China are willing to grant loans,²⁵³ while others like Russia are open to providing aid²⁵⁴ without the conditions related to the Philippines’ human rights practices.²⁵⁵

Given the foregoing, it appears that relying on international law and diplomacy alone may not provide a solution to the problems of

250. See, e.g., Ellie Aben, *Moscow to Supply State-of-the-Art Weapons to Manila*, ARAB NEWS (Sept. 5, 2019), <https://www.arabnews.com/node/1549891/world> (illustrating Russia’s willingness to contribute weapons to the Philippines’ armed forces to “contribute toward lasting peace and stability in the region”); *China Offers \$14 Million Arms Package to the Philippines: Manila’s Defense Minister*, REUTERS (Dec. 20, 2016), <https://www.reuters.com/article/us-philippines-china-arms-idUSKBN1490HN> (describing China’s gift of military equipment to aid the Philippines’ war on drugs).

251. See Alexander Cooley, *Authoritarianism Goes Global: Countering Democratic Norms*, 26 J. DEMOCRACY 49, 50 (2015) (discussing the way illiberal states can manipulate NGOs, regional organizations, and potential financiers in order to avoid political conditions attached to aid); see also POOLE, *supra* note 65, at 76 (stating that with the lack of international consensus as to what human rights norms might be, ASEAN member states may feel less pressured to comply with Western ideals, especially when considering China’s sphere of influence in the Indo-Pacific region).

252. See, e.g., Ben O. de Vera, *Duterte Order Shuns All Loans, Grants, Aid from 18 Countries Backing Probe of PH Killings*, INQUIRER (Sept. 20, 2019), <https://business.inquirer.net/279344/duterte-order-shuns-all-loans-grants-aid-from-18-countries-in-favor-of-probe-of-ph-killings> (citing examples of Duterte turning down foreign grants with conditions attached from the European Union after the European Union’s criticism of Duterte’s war on drugs).

253. See, e.g., Andreo Calonzon, *Duterte Defends China Loans as Critics Warn of Unfavorable Terms*, BLOOMBERG (Mar. 25, 2019) (stating that China has provided \$273.3 million to the Philippines in loans).

254. See Aben, *supra* note 251 (stating that Russia is providing military equipment to the Philippines’ armed forces); see also REUTERS, *supra* note 251 (stating that China is also supplying military aid to the Philippines in the form of small arms, fast boats, and night vision goggles).

255. See de Vera, *supra* note 253 (Quoting Philippines Finance Secretary Carlos Dominguez III as saying that the Philippines would not deal with a developmental partner who tied human rights to conditions of aid but would deal with countries that did not include such provisions in their agreements).

enforcement of human rights in illiberal states like the Philippines. Neither would a recourse to domestic mechanisms by itself be effective seeing that these have been greatly depreciated.²⁵⁶ Thus, “innovative thinking and creative strategizing that are urgently needed on the part of human rights advocates to be able to find workable methods” in view of the threats that the field now faces.²⁵⁷

One viable option is to turn to and strengthen domestic non-government institutions such as civil society organizations.²⁵⁸ This is promising especially in the Southeast Asian context where human rights groups have been observed to have “engaged in debates about democracy and human rights” and have been “keen observers” and contributors to dialogue with governments.²⁵⁹ Moreover, these groups have continuously lobbied for accountability and transparency and sought to play a role in generating ideas and in influencing norms.²⁶⁰

256. See Alston, *supra* note 64, at 4–8 (stating that turning to domestic mechanisms for enforcement of human rights in illiberal states would not be productive due to the general “disdain for social conventions” on which human rights are built upon which is inherent in such illiberal, populist-authoritarian states).

257. See *id.* at 2 (stating that human rights advocates must engage in “innovative thinking and creative strategizing” in order to “re-evaluate their strategies, and broaden their outreach, while not giving up on the basic principles” in order to build the field up).

258. See U.N. Secretary-General, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, ¶¶ 5, 22 U.N. Doc. A/66/749 (Mar. 16, 2012) [hereinafter *Delivering Justice*] (stating that the UN can help strengthen the rule of law at the international and national levels through civil society organizations, which “make important contributions to strengthening services that ensure the rule of law”).

259. See POOLE, *supra* note 65, at 73 (stating that civil society organizations may be useful in strengthening human rights in Southeast Asian jurisdictions because they have been keen observers of and contributors to the formation of the ASEAN Intergovernmental Convention on Human Rights); see also Kelly Gerard, *Explaining ASEAN’s Engagement of Civil Society in Policy-making: Smoke and Mirrors*, 12 GLOBALIZATIONS 365, 370 (2015) (stating that civil society organizations have risen as a force in challenging the “growth at all costs” agenda pursued by authoritarian states with regard to the consequences of the actions of these states); Maria-Gabriela Manea, *The Claims of the ASEAN to Human Rights and Democracy: What Role for Regional Civil Society?*, 136 ASIEN 73, 75, 91–92 (2015) (discussing the role which regional civil societies have been able to carve out for themselves in ASEAN human rights promotion and protection).

260. See POOLE, *supra* note 65, at 74 (“[I]t is important to note here that certain non-state actors lobby for accountability and transparency in ASEAN, and seek to play a role in generating ideas and in influencing regional norms.”); Mandeep Tiwana, *Response Strategies to Push Back Against the Global Crackdown on Civil*

In other cases, most human rights groups have done the heavy lifting in leading activities aimed towards the information gathering required to disprove official denials of gross human rights violations.²⁶¹ In the Philippines, data from Amnesty International, Human Rights Watch, and the Peace Research Institute has played a major role in providing a picture of the true cost of the drug war especially at a time when the government refuses to be transparent.²⁶² Consequently, ensuring “effective synergies between international and local human rights movements” may be a key in conjunction with focusing on “building or complementing national capacity.”²⁶³

But as much as civil society organizations have been engaging governments, they likewise need to engage with the populace as well.²⁶⁴ Here, civic education has the capacity to teach people to recognize threats to their liberty and well-being.²⁶⁵ While illiberal leaders have devoted efforts in the pursuit of easing the populace to illiberal and often authoritarian ideas, so too must the civil society pursue a commitment to liberal and democratic principles.²⁶⁶ This is especially true in states like the Philippines which have undergone a cycle of liberal and illiberal regimes.²⁶⁷

Society, in RISING TO THE POPULIST CHALLENGE: A NEW PLAYBOOK FOR HUMAN RIGHTS ACTORS 161, 165 (César Rodríguez-Garavito & Krizna Gomez eds., 2018) (explaining how accountability and transparency may be useful to civil societies in their missions to resist authoritarian measures and attacks on democratic ideals).

261. See Lamchek, *supra* note 129, at 204, 206 (stating that Duterte has had to deny reports from the media and human rights organizations which had performed research and information gathering to implicate the government of the Philippines in extra judicial killings related to Duterte’s war on drugs).

262. See *id.* at 206–07 (citing the highlights from 2017 reports from Amnesty International, Human Rights Watch, and the Peace Research Institute to illustrate the information debunk Duterte’s claims that the extra judicial killings are legitimate).

263. See Alston, *supra* note 64, at 8 (discussing the idea that large international NGOs might be more effective by establishing a synergy with the local or national human rights movements).

264. Cf. Scheppele, *supra* note 86, at 583 (stating that democratic publics should be educated about liberal constitutionalism in order to better recognize what the danger signs might be which threaten their governmental system).

265. See *id.* (discussing the importance of civic education for the public).

266. See Walker, *supra* note 68, at 231 (stating that democracies must engage in civic education with the “same vigor” as authoritarians pursue education of authoritarian ideals if liberal democracy is to survive).

267. See Teehankee, *supra* note 32, at 40–41 (analyzing the way the prevailing public opinion and ideology can shape the performance of a President and how the

These organizations have the potential to educate the public about the consequences of subscribing to the policies of authoritarians like Mr. Duterte.²⁶⁸ In some countries, civic organizations managed to inform and engage with their communities to the extent that they have denied politicians the opportunity to “frame the questions or determine the answers.”²⁶⁹ This has allowed the public to reoccupy the “political space that had been captured by party machines and top-down government.”²⁷⁰ This, in turn, resulted in, among others, “a massive re-engagement in politics, particularly among marginalised groups, and dramatic improvements in local life.”²⁷¹

narratives crafted by political agents may influence leadership in a country); *see also* Kenneth E. Foote & Maoz Azaryahu, *Toward a Geography of Memory: Geographical Dimensions of Public Memory and Commemoration*, 35 J. POL. & MIL. SOC’Y 125, 126–27 (2007) (discussing ways in which public memory is produced and influenced, leading to the formation of a “national narrative” and a “collective identity” of who the people of the nation are); *cf.* Cleve Kevin Robert V. Arguelles, *Duterte’s Other War: The Battle for EDSA People Power’s Memory*, in A DUTERTE READER: CRITICAL ESSAYS ON RODRIGO DUTERTE’S EARLY PRESIDENCY 267, 275–78 (Nicole Curato ed., 2017) (discussing how Duterte’s movement of Marcos, a past leader of the Philippines’ body to a place of honor in Manila contributes to the resetting of the national memory to be more conducive to authoritarian rule).

268. *See* Scheppele, *supra* note 86, at 583 (describing the need to educate democratic publics about the dangers of authoritarian policies and what the warning signs might look like, so future generations might avoid the rise of new authoritarian regimes).

269. *See, e.g.*, George Monbiot, *There is an Antidote to Demagoguery – It’s Called Political Rewilding*, GUARDIAN (Dec. 18, 2019), <https://www.theguardian.com/commentisfree/2019/dec/18/demagogues-power-rewilding-party-trust-power-government> (using local programs in Brazil, Spain, and Iceland to show that movements centered around mass participation by the public in government have been able to reoccupy political spaces previously captured by “party machines” before authoritarianism could rear its head).

270. *See id.*; *see, e.g.*, George Monbiot, *Why ‘the Will of the People’ is a Myth in British Democracy*, GUARDIAN (Oct. 24, 2019), <https://www.theguardian.com/commentisfree/2019/oct/24/will-of-the-people-british-democracy> (suggesting deliberative democracy, and citing the Brazilian city of Porto Alegre’s participatory budgeting program and the Icelandic city of Reykjavík’s Better Reykjavík program as successes where the public has occupied a part of the “political space” for the betterment of the cities); Bernardo Gutiérrez, *Madrid as a Democracy Lab*, OPEN DEMOCRACY (July 10, 2017), <https://www.opendemocracy.net/en/democraciaabierta/madrid-as-democracy-lab/> (describing a movement in Madrid, Spain to create space for the public in the governance of the city).

271. *See* Monbiot, *supra* note 270 (noting that the implementation of participatory politics has resulted in “a massive re-engagement in politics, particularly among

In the Philippines, these organizations have helped “clarify the muddled public judgments” about the illiberal policies of governments, the responsibility for the rising number of deaths, and its potential long-term effects.²⁷² They have also articulated how official explanations of the government related to the its human rights violations do not make sense.²⁷³ Of course, it is understood that these groups have long been discredited by people like Mr. Duterte as “out of touch” or to be part of plots conjured by their opposition.²⁷⁴ Nonetheless, despite being branded as such, these organizations have seen some degree of success.²⁷⁵ For example, the civic organizations’ actions in highlighting corruption and demonstrating how the campaign against illegal narcotics “abetted corrupt practices by the police” had some degree of resonance with the public.²⁷⁶ Mr. Duterte was forced to admit that there may be corruption within the agencies charged with enforcing his campaign thus paving the way for its brief suspension in 2016.²⁷⁷

marginalized groups, and dramatic improvements in local life”); *see, e.g.*, Dmytro Khutky, *Participatory Budgeting: An Empowering Democratic Institution*, EUROZINE (Oct. 31, 2017), <https://www.eurozine.com/participatory-budgeting-an-empowering-democratic-institution/> (stating that participatory politics attracts higher levels of participation among marginalized groups than local elections do in New York City, indicating that such participatory programs do in fact promote re-engagement in politics by those who either were not involved or stopped being involved before).

272. *See* Lamchek, *supra* note 129, at 204, 206 (stating that the reports published by Amnesty International, Human Rights Watch, and the Peace Research Institute Frankfurt might help the public come to conclusions about police involvement in extra judicial killings).

273. *See id.* at 206 (stating that the reports by Amnesty International, Human Rights Watch, and the Peace Research Institute Frankfurt provide information to the public which debunks official explanations for the extra judicial killings).

274. *See id.* (stating that Duterte has openly expressed disdain for groups such as Amnesty International, Human Rights Watch, and the Peace Research Institute Frankfurt and claimed that they are out of touch with reality, in attempts to discredit their research and reports).

275. *See, e.g., id.* (citing the fact that few people believe Duterte’s endorsed theory of extrajudicial killings and that people are worried they might be killed next, as evidence that the research reports published by human rights groups in the Philippines have seen some success).

276. *See id.* at 107 (citing the human rights organizations’ efforts to expose police corruption as successful, considering that Duterte even admitted that there was substantial police corruption, going so far as to suspend police operations to “cleanse” the department).

277. *See id.* (stating that the human rights organizations’ efforts even forced

Finally, a more relevant and inclusive dialogue must be employed. In this regard, there are spaces for improvement of the strategies employed by civil society organizations and human rights advocates.

²⁷⁸ Much like how regimes similar to that of Mr. Duterte passed on their message and “found a language in which they could articulate the people’s disappointment,”²⁷⁹ so too must civil society organizations tap on their aspirations. Trying to stop the transition to illiberal democracy with “appeals to constitutionalism does not always work because the restraints of liberalism are not always democratically appealing when there seems to be a crisis of events [and] of confidence” with democratic institutions.²⁸⁰ Thus, rather than announcing liberal democratic and human rights principles “as though they were self-evidently correct and applicable,” more time and effort should be devoted to making the dialogue relatable, relevant, and persuasive.²⁸¹

First, the message has to be relatable. The public, beyond those well-versed with the principles of liberal democracy and human rights, needs to know that adherence to these principles matter.²⁸² Yet, this

Duterte to suspend police activity to fix the corruption exposed within).

278. See *Enhancing Participation and Protecting Civic Space*, OHCHR, <https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/participation.aspx> (last visited Oct. 1, 2020) (citing ways in which OHCHR intends to “protect civic space and those who stand up for human rights, strengthen monitoring of civic space, build public recognition of the role of civic space, and mainstream civic space issues in the UN system.”).

279. E.g., McCargo, *supra* note 86, at 187–88 (citing examples of ways that Duterte passed his message effectively on to voters leading up to his election as President); see Cabanes & Cornelio, *supra* note 57, at 239 (stating that trolls and others who latched onto their messages found an efficient way to communicate “disappointments and aspirations” which may have contributed to populism’s rise, but could also possibly be effectively harnessed to fight populism); see also Walker, *supra* note 68, at 231 (stating that democracies must pursue active communication and education of their ideals in the same way that authoritarianism has in order to stand a chance at avoiding further “erosion of democratic space”).

280. See Scheppele, *supra* note 86, at 570 (discussing how once democracy and constitutionalism are threatened by crisis, it can be difficult for the public to constrain themselves to constitutional norms, which can lead to authoritarianism in the right environment).

281. See Alston, *supra* note 64, at 11 (stating that in communicating democratic and human rights ideals, it is important to be persuasive and convincing, which is what authoritarianism has done, in order to properly combat its rise).

282. See Kenneth Roth, *The Dangerous Rise of Populism: Global Attacks on Human Rights Values*, 70 J. INT’L AFF. 79, 83–84 (2017) (stating that the general

cannot be done when the language for advocacy caters only to those trained to appreciate and understand them.²⁸³ Neither would it be accomplished when the appeals to the public are made based on the mere language and principles of liberal democracy and human rights alone instead of a genuine engagement with their meaning and implications.²⁸⁴ Thus, a better method of communication has to be put in place. As one writer aptly puts, “law is too important to leave only to the lawyer.”²⁸⁵ What is needed is a “citizenry trained to resist the legalistic autocrats” able to recognise their dangers and understand the tools that may be used to resist them.²⁸⁶

Second, the message has to be relevant. Autocrats, like Mr. Duterte, have been successful in making the populace believe that rights are not crafted to protect them from the state but rather undermine the government’s efforts to protect them.²⁸⁷ They have been able to persuade the electorate that those whose rights may be violated are not the members of the general public, but are those who are not worthy of the government’s protection—in the Philippines, drug offenders; in

public at large should be aware that governments founded on human rights will both function and treat them better, and that they have the power to demand “a politics based on truth and the values on which rights-respecting democracies have been built”).

283. See Scheppele, *supra* note 86, at 583 (declaring that if liberal democratic ideals are to resonate with the public, they must stray from being elite and cater to the general public).

284. See Alston, *supra* note 64, at 11 (stating that appeals to liberal democratic human rights might be more effective if explained more sufficiently in order to convince that authoritarianism is not the way forward); see also Roth, *supra* note 284, at 84 (“[A] strong popular reaction, using every means available – civic groups, political parties, traditional and social media – is the best defense of the values that so many still cherish despite the problems they face.”).

285. See Scheppele, *supra* note 86, at 583 (asserting that the citizens should be educated in the law as well as lawyers, in order to resist the rise of legalistic autocracy).

286. See *id.* (stating that if citizens are trained to understand legal principles of democracy, they will be better equipped to handle and resist the rise of autocratic government).

287. See Kenneth Roth, *The Dangerous Rise of Populism: Global Attacks on Human Rights Values*, HRW (Dec. 10, 2018), <https://www.hrw.org/world-report/2017/country-chapters/dangerous-rise-of-populism> (“[T]oday, a growing number of people have come to see rights not as protecting them from the state but as undermining governmental efforts to defend them.”).

the United States and Europe, immigrants.²⁸⁸ In short, the public is convinced to look at “rights as protecting only these “other” people, not themselves, and thus as dispensable.”²⁸⁹ In turn, the government has convinced the public of the myth of the possibility of selective enforcement of rights such that while the rights of those targeted may be compromised, their rights would remain secure.²⁹⁰ What needs to be stressed is that “rights by their nature do not admit an à la carte approach.”²⁹¹ Disregarding the application of rights in one segment of the public would jeopardize its enforcement in general.²⁹² Human rights, after all, are not solely concerned about the protection of minority groups and oppressed individuals.²⁹³ Every member of the public has a stake in the human rights enterprise.²⁹⁴

Third, the message has to be persuasive. While at its core, the notion of human rights concerns the life, liberty, protection, and well-being of an individual or the group of which they are a member, focus should be made in communicating its importance and implications to the populace.²⁹⁵ Greater attention must be paid in stressing that protecting the lives and liberties of the members of the public allows the public, in general, to demand from the state a rational devotion of its efforts to safeguard the general well-being of its citizens “within the

288. *See id.* (stating that when encouraged by populists, the public may be influenced to think that basic human rights which apply to all people, only apply to the perceived threat group of people, and are therefore dispensable, thereby handicapping their own access to the same rights).

289. *Id.*

290. *See id.* (stating that no matter what people believe, selective enforcement of rights is impossible and that people who willingly accept violation of others’ rights also compromise their own).

291. *See id.* (arguing that people cannot pick and choose what rights they would like enforceable for their neighbors without doing the same for themselves, as the violation of some rights will inevitably lead to the erosion of others).

292. *See id.* (“To violate the rights of some is to erode the edifice of rights that inevitably will be needed by members of the presumed majority in whose name current violations occur.”).

293. *See* Roth, *supra* note 288 (indicating that human rights concern all parties, and the majority will erode their own rights by imposing limitations on the rights of minorities).

294. *But see* Alston, *supra* note 64, at 6 (acknowledging that the majority of people feel as if they do not have a “stake in the human rights enterprise”).

295. *See* POOLE, *supra* note 65, at 76 (citing the lack of relevance of ASEAN for many people as limiting on the influence it can have on the region).

maximum of available resources, in the shortest possible time.”²⁹⁶ Simply, the end goal of the enterprise is not merely to safeguard the individual from governmental power, but to demand that governmental power be utilized to uplift the well-being of the public.²⁹⁷ Accordingly, “economic and social rights must be an important and authentic part of the overall agenda” instead of addressing it in a manner that is tokenistic at best.²⁹⁸ In turn, this creates more resonance with the public rather than the often-repeated human rights ideals.

VI. CONCLUSION

The article began by contextualizing the Philippines’ continued transition to an illiberal order. Dissatisfied with years of elite rule, institutional deficits, and lack of inclusive growth, the populace elected a president who was able to tap into this discontent.²⁹⁹ The disjunction between the liberal political order’s promises and reality allowed Mr. Duterte to convince the electorate to be open to trade-offs and to an authoritarian alternative—a narrative that remains intact three years after his election.³⁰⁰

This openness of the populace allowed Mr. Duterte to consolidate his power.³⁰¹ With popular support, political clout, and access to state

296. See BEN SAUL ET AL., *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMMENTARY, CASES, AND MATERIALS* 1, 2 (2014) (discussing how “progressive realization” requires a state to utilize its maximum resources while preserving a minimum core of human rights, which in totality, will move a state in the right direction of safeguarding the rights of its citizens).

297. See *id.* (stating that the end goal of “progressive realization” requires active development of states in terms of preserving a minimum core of rights and utilizing a maximum of the available resources).

298. See Alston, *supra* note 64, at 6, 9 (suggesting that despite economic and social rights not being central to most modern human rights analyses, perhaps they should be, because their elements of recognition, institutionalization, and accountability are no different from the elements of political rights).

299. See HEYDARIAN, *supra* note 18, at 28 (noting the Aquino administration’s struggles which set the stage for the rise of Duterte and authoritarian populism in the Philippines).

300. Cf. Alston, *supra* note 64, at 4 (citing the trade-offs involved in post-9/11 security measures in the United States as an example of a state’s people being willing to accept huge trade-offs in the name of security at the expense of certain rights such as freedom of movement, privacy, and non-discrimination norms).

301. See HEYDARIAN, *supra* note 18, at 28 (noting the troubles of the Aquino administration which lead to the rise of Duterte and the reasons why the public was

machinery, he was able to weaken, if not dismantle, the mechanisms in place to keep check on the power of the government.³⁰² While maintaining a superficial appearance of democracy and legality, his government has employed a variety of methods to remove the checks on its power, limit challenges to its rule, and undermine the accountability of institutions while hiding its autocratic designs.³⁰³ While undoubtedly legal, it nevertheless lacks the observance of the rule of law that democratic and liberal constitutionalism require.³⁰⁴

In turn, the rise of the illiberal order and that of authoritarian legalism severely eroded the country's capacity to enforce its human rights obligations.³⁰⁵ The unabated extra-judicial killings that occur during the government's campaign against illegal narcotics serve as a testament to the erosion of respect for human rights in the country.³⁰⁶

The rise of legalistic authoritarians like Mr. Duterte is not a new phenomenon. Yet with the rise of these kinds of governments, the human rights movement now faces a fundamentally different challenge. This has made international monitoring and enforcement even more difficult than before. Thus, "innovative thinking and creative strategizing (. . .) are urgently needed" on the part of human rights advocates to be able to find workable methods in view of field's shortcomings.³⁰⁷ With both international and domestic mechanisms

so susceptible to believing in him); *cf.* Alston, *supra* note 64, at 4 (stating that security concerns and threats have in recent years, began to normalize states of emergency, which in turn breeds the willingness of the public to sacrifice some of their rights in the name of security, making it no surprise that after the problems introduced in the Aquino administration, the public would turn to Duterte's populism and authoritarianism to solve the problems of the previous administration).

302. *See, e.g.,* Corrales, *supra* note 81, at 37 (discussing the rise of Venezuela's authoritarian government, showing how similar it is to the way Duterte rose up).

303. *Cf.* Scheppele, *supra* note 86, at 547–48, 570 (describing ways in which autocracies are rising to power and the efforts that they are taking to maximize their own power and keep it).

304. *See id.* at 581 (giving examples of the "ground rules" required for a liberal constitutional government to continue to be as such).

305. *See* Curato, *supra* note 18, at 16 (describing the early results of Duterte's war on drugs as "an illiberal fantasy" in which thousands have been killed and human rights obligations have been forsaken).

306. *See, e.g.,* Lasco, *supra* note 17 (giving examples of persons whose human rights were violated via extra-judicial killing to illustrate the degree to which respect for human rights has eroded in the Philippines).

307. *See* Alston, *supra* note 64, at 2 (stating that "innovative thinking and creative strategizing" are urgently needed in order to re-evaluate human rights strategies to

weakened, a viable option is to strengthen civil society organizations which can lobby for transparency and accountability from governments and engage with the populace in a more relevant and inclusive dialogue.

combat waves of bad news which influence the rise of populism and fall of human rights regimes).