

# Legislative oversight under the Philippine Decentralization Policy: Mechanisms, Constraints and Executive Power

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**Abstract.** A recent convergent view among global actors is that strong legislative institutions may contribute to building responsive and accountable institutions of governance, particularly when legislatures impose strong oversight of the executive branch. The main thrust of this paper to analyze the role of institutional factors that define the ability of Philippine sub-national legislatures to perform oversight being increasingly viewed as an important catalyst in ensuring the accountability of government. The paper argues that the formal and informal rules enshrined under the country's decentralization policy have inhibited the leveling of playing field for the legislature limiting its ability to oversee executive branch actions. Moreover, amid a political system with deeply entrenched patron-client relations and tradition of local bossism, the institutionalization of legislative oversight remains a paradox.

**Keywords:** Decentralization Policy, Philippine, Governance, Legislative oversight.

## 1. Introduction

Effective legislative oversight is one of the indicators of a viable democracy. It is lauded for providing a practical expression of “check and balance” in government administration, particularly in ensuring government prudence and probity. The Philippines is one the first developing country in Asia that embarked on a program of decentralization. The passage of the Local Government Code of 1991 (LGC 1991) granted significant responsibilities to local areas with corresponding fiscal powers and resources in order to carry out its mandate. This means that local governments now face enormous tasks to operate efficiently in a more democratized fashion than ever before. However, this requires more than a clear blueprint for local autonomy, but more importantly, the establishment of accountability mechanisms so that government administrators perform its roles accordingly. The legislature is part of the vertical and horizontal accountability mechanisms in local government administration which requires them to serve as a connection between the government and the citizens, as well as hold the executive to account for its actions.

The legislative devolution allocated sub-national legislatures substantial lawmaking and oversight role making it one with the longest history and experience on the devolution of oversight powers among its Asian neighbors. Against this background, the paper investigates whether and how the architecture of Philippine decentralization promotes or hinders legislative oversight. It zeroes in on institutional factors that interplay with legislators' ability, motivations and capacity to oversee executive branch activities. Some scholars argue that the countries with longer history of representative institutions are more likely acclimatized to democratic norms. Given this premise, is it proper to infer that the institutionalization of oversight culture in Philippine sub-national governments is well in place? The paper seeks to address this issue and investigate whether the existing institutional frameworks support the institutionalization of oversight culture by the legislative branch.

## 2. Institutional Factors: A Framework

The purpose of the paper is to analyze the role of institutional factors on legislative oversight premised on the notion that “institutions do matter.” North (1990:3-4) defined institutions as “rules of the game in a society, or more formally, the humanly devised constraints that shape human interaction.” On a similar vein, March and Olsen (2009:5) define institution as “a relatively stable collection of rules and practices, embedded in structures of *resources* that make action possible -- organizational, financial and staff capabilities, and structures of *meaning* that explain and justify behaviour – roles, identities and belongings, common purposes, and causal and normative beliefs.” They go to say that an institution is not confined to a formal structure but may also include the collection of norms, rules, routines or understanding between

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social actors (1989:21-26). Following this definition, we can identify two institutional elements: a) the *formal institutional factors* that include rules, laws, and other statements formulating sanctions and policy incentives; b) *informal institutional factors* that refers to individual habits, routines, customs/traditions, social norms and values that arise from spontaneous interactions and define the conditions for interactions of actors in the policy arena (North, 1990:6-8). The importance of these institutional elements can therefore be found in the contribution they have on the structure and organization of Philippine sub-national legislatures, the definition of incentives and in shaping the dynamics of executive-legislative relations.

Further, the need for institutionalization in political systems is underlined in many of the discussions cited so far because it has an overall effect on the governance of a polity, in terms of regulating political/power dynamics, promoting the rule of law, and ensuring transparency and accountability. Institutionalization also discourages arbitrary, irregularity in the enforcement of standards and partisan decision-making. In the case of legislatures, institutionalization has positive implications on the policy-making process and valuations and provides an identity to its members appropriate to their handling of legislative businesses. Autonomy is one of the important indicators of an institutionalized organization, which means that it is distinguishable from other institutions or social forces. The more institutionalized an organization is, the more chances that it operates based on its own objectives, interests or procedures “that are not simply expressions of the interests of particular social groups” (Huntington, 1968:20).

### 3. Oversight under the LGC 1991

Legislative oversight of the executive branch is an integral part of the system of checks and balances derived from the implied powers of the LGC 1991. According to the Local Legislator’s Toolkit (Espine-Villaluz, 2004:12) legislative oversight is an evaluation process where the *Sanggunian* determines if the ordinances it enacted are implemented and if so, how they are implemented by the executive branch. The purpose of this function is to ensure that policies are carried out in accordance with how the enacting legislature intended it to be and that public funds are not wasted. Legislative oversight is also viewed as any “behaviour by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behaviour” (Ogul, 1976:11). Here, oversight is understood as *ex ante* mechanism—during policy-making or program implementation and *ex post* mechanism - pursued after the implementation of policies.

The LGC 1991 bestows formal oversight authority to Philippine sub-national legislatures. They are responsible for monitoring *activities of the executive branch* the bureaucracy as a whole. Executives are required to present the program of government and propose policies and projects for consideration by the legislature at the opening of its regular session every calendar year and as often as may be deemed necessary. One of the implied powers of the legislature is to request necessary information/data from the executive branch on matters relating to policies as well as to call government officials to testify before legislative committee hearings. Furthermore, the legislature can form a special investigative committee with some judicial authority to refer its findings to the Office of the President against any local government official including the executive and its members.

It is also endowed with *power to monitor government spending*. Under the LGC 1991, the legislature is charged with the responsibility of evaluating the legality of the use of local government funds, overseeing the budget process and the administration. One component of this responsibility is *receiving, evaluating, and approving* the annual audit by the Commission on Audit (COA) (LGC 1991, section 468).

The legislature is also given the *power to confirm executive appointments*. Nevertheless, this confirmatory power is only ministerial in nature since the executive has wide discretion in appointing government officials provided that the appointee has acquired the minimum qualification requirements commensurate to civil service rules and regulations. Thus, legislature may interpret it as only necessary on cases where the executive action is considered *ultra vires*.

## 4. Contexts of Power and Political Antecedents

Philippine sub-national parliaments function within the broader contexts of power and political antecedents of the country’s decentralization policy. These factors have shaped the behaviour and motivation of legislators for conducting oversight activities.

### 4.1. Power: Executive-Legislative Relations

The executive-legislative relations in Philippine local government system operates under the system of “separation of powers”, an overriding principle that encompasses all local authorities to ensure that check and balance is carefully maintained. It serves as an important mechanism for transparency and accountability of both branches and delineates powers and duties. Thus, the chief executive carries out the enforcement and execution of laws and ordinances while the legislature performance legislative functions, which pertain to the enactment of ordinances. Legislative power is vested to the *Sanggunian* at different levels of local government: *Sangguniang Panlawigan* for provinces; *Sangguniang Bayan* for municipalities; *Sangguniang Panlungsod* for cities; and *Sangguniang Barangay* for barangays/villages.

Nevertheless, there are a number of constraints within which formal stipulations regarding the separation of power are weakened. The goal of oversight cannot be overtly expressed where the executive commands much administrative and political power that thwarts that of the legislature and its resources. The LGC 1991 granted the executive the exclusive capacity to introduce legislation affecting budget, taxation, expansion of employment in public service and other administrative matters. Formal powers conferred by the Code and other related laws to executives have made him influential in policy-making and fiscal matters (i.e. veto power, appointing and removing subordinates). This institutional arrangement generated excessive executive discretion and disallows the mechanisms of public accountability to consolidate. Unwarranted control of the legislative agenda is therefore a familiar sight because the legislature may tend to merely rubber-stamp executive-driven policies. Legislatures only have time to address policy proposals that other oversight activities such as monitoring the implementation of programs/projects and financial disbursements are less practiced if not totally neglected.

This trend is accentuated in the budget process which has become the locus of executive control. The executive has the sole mandate to prepare and execute the government budget on annual basis, while the role of the legislative branch is to enact through an ordinance the budget duly prepared by the executive branch. The legislature may nominal power to amend the executive budget but is only confined to making minimal reductions, and significantly, no increases. Also, the legislature cannot create its own funds; legislative budgets undergo the same procedures with other local government agencies, which is subject to executive approval. This compels them to compromise their oversight role because the bargaining nature between the executive and legislative branch typically centers on various forms of particularism. Due to the vast fiscal power, local executives, became a main proponent for “pork” funds that enhance patronage relationships at the local level namely: Local Development Fund (LDF) which constitutes 20% of the total Internal Revenue Allotment (IRA) of local governments; 5% allotment for calamities, and; no less than 2% of IRA is maintained as governor’s discretionary fund (LGC 1991, section 287). As a result, other lower level local governments, NGOs, public and private institutions including legislators lobby to the executive to avail of funds for development projects.

## **4.2. Political Antecedents**

### **4.2.1. Clientelistic Electoral Environment**

The political environment in which legislatures operate could significantly challenge the potential for strong oversight. Apparently, Philippine electoral politics is one of a clientelistic nature. This means that a clientelistic politician will be praised more for being an ultimate “benefactor” addressing private requests from constituents; hence, politicians are highly dependent on patronage for survival. Legislators are therefore hesitant to challenge the executive who has main control over patronage funds. Side l(1999:7) has documented the enduring patronage politics in the country and underscores that elected local and congressional officials in the post-Marcos era acted as “patrons” and “benefactors” and the transactions between the represented and the representatives involve mostly particularistic demands...which elected officials attend to because they are translated into votes and political support.” This patron-client relations that permeate the country’s electoral system is one of the endemic problems of Philippine democracy.

Politicians have been pre-occupied with entertaining constituents who are more interested in soliciting personal favors rather than clamor for policies that would translate into greater good or of long-term value. Legislators tend to prioritize public relations functions such as visiting their constituents since ‘visibility’ is tendered more important than their legislative output. Like other politicians, they have to attend various occasions from public affairs of towns/cities/barangays to private events such as weddings, funerals, baptism, and so on. They are also faced with mounting solicitations like payment for medical bills, tuitions fees, and all other forms of financial solicitations. Seemingly, these huge investments of time, money and energy have

direct electoral payoffs, whereas engaging in oversight does not provide any payoff to politicians. For these reasons, legislators shift their attention from policy-making and oversight and become more focus on fighting for the spoils for political survival. Politicians are also generally ambitious and are more interested in seeking re-election or occupy higher positions. They can ensure their winnable standing by forming alliance with the strong party or in such case the incumbent executive who has well-established political machines. Some executives also provide financial assistance to politicians under their line up that the autonomy of legislators' one elected in office is curtailed.

#### **4.2.2. Lack of Institutionalized Political Parties**

The political party is the major organizing principle of contemporary politics. Not only do they represent people, they also serve as the vanguards of progress and the bastions of tradition. However, Philippine political parties have waned from championing people's voice and policy agenda and have instead become vehicles to seize the reins of government for particularistic interests. Evidently, parties or coalitions only become relevant when the election time approaches. Political "turcoatism" or "party hopping" has been a familiar sight. Valdehuesa(2005:37) argued that "Filipino political parties do not train leaders who promote or uphold the democratic way of life or progressive platforms of government... they field candidates noted for their knack of bastardizing democracy while turning the concept of a party system into a travesty." He added that "Legislators become connivers of executives in trampling over democratic norms and the 'majority rule' is exercised without considering the views of constituents."

When political institutions are weak, this can have a particularly large impact on political outcomes (Hutchcroft, 2008:144). In cases where political parties are not founded on the agenda of heralding policies, a legislator may not treat oversight as powerful tool to demand executive accountability, but as a constraint to his membership with the political machine. When individual legislators perceive their position within the political party as merely a steppingstone for political hierarchy, pleasing party leaders is rendered more important than the laudable goals of oversight. Political parties proved to be more futile at the local level. Former members of opposition parties are quick to jump to the party of whoever is in power. As in most part of the country, political parties were used as appendages for electoral purposes and were far from being a genuine alliance of people who share the same policy agenda or ideology. Dominant parties that are tightly controlled do not tolerate internal debate and can therefore stifle legislative scrutiny. The ruling majority may also seek to curtail the debate given that only the opposition party can gain incentive in criticizing government actions. This lack of institutionalized party system not only deter democratic norms but continue to frustrate efforts to establish autonomous legislative bodies capable of resisting executive preponderance.

#### **4.2.3. Local Bossism: Politics of Fear and Coercion**

Clan politics has also prevented the flowering of genuine democracy in the Philippines. Literature on Philippine politics highlights the plenitude of provincial warlords and political dynasties in the Philippines and its notoriety of elections present the most exigent case of the persistent influence of local strongmen among its neighbors in Southeast Asia. Even after the country gained independence in 1946, the largely feudal system persisted, as landed Filipino families occupied various post in public offices to protect their interests. Scholarly literature has emphasized that the persistence of landowning elite and the predominance of patron-client relations underscores Philippine state as 'weak' emasculated by predatory and oligarchic structures.

Today, political clans are still the main organizations that hold the reins of the electoral playing field of the Philippines, and as such, one cannot fully understand the actual dynamics of oversight by neglecting this context. There are an estimated 250 political families nationwide, with at least one in every province, occupying positions in all levels of the bureaucracy, according to the Center for People Empowerment in Governance, a non-profit group that advocates more grassroots participation in politics(Conde, 2007).Some political clans have also used violence to maintain their dominance. "This 'political warlordism' was instigated by the proliferation of arms and weakening of central authority in the provinces at the end of the 2<sup>nd</sup> World War. As these clans protect their reign, they often resort to violence to frustrate any attempt by rivals to unseat them" (Conde, 2007).The magnitude of political violence and the negative repercussions in challenging these clans has been widely documented, which de-motivated legislatures and other oversight institutions to perform their roles. Basically, the executive is highly feared due to his power derived from an endowment of wealth and private armies that has no recognition for the rule of law.

## **5. Conclusion**

In this paper, I offer explanations on the formal institutional framework that defines legislative oversight authority, as well as the impact of informal institutional factors that intervenes with the exercise of such authority. Given the long history of Philippine sub-national legislatures, is the institutionalization of oversight culture well in place? Clearly, this is not so. The formal and informal rules shaping executive-legislative relations include factors such as: executive's upper hand on policy-making and budgeting that thwarts legislative oversight authority, resources and capacity; modes of bargaining and reliance on executive discretion; and the political context that de-motivated legislators to be vigilant in monitoring the executive branch.

A continuing challenge for Philippine sub-national legislatures is to overcome various political and structural disincentives for strong oversight. Legislative oversight has been undermined by patron-client interactions between the elected and the electorate and between the executive and legislative branches of government, which manifests as counterproductive to the institutionalization of oversight culture. The autonomy of legislature is critical component in the conduct of oversight, however, this is hardly achievable in the broader institutional context that inhibit the leveling of playing field for the legislative branch. An overarching goal would be the institutionalization of a more programmatic politics, and political party system, as these are critical in propagating democratic norms, and in promoting the institutionalization of oversight culture by the legislative branch. Lastly, a counterpart overhauling of deeply entrenched and subversive political structures [i.e. political clans] that have long inundated the consolidation of democratic institutions, and asphyxiate the legislators' motivation and efforts to monitor executive actions should be pursued.

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