

# INTERSECT

## QUICK FACTS

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### CHECKS AND BALANCES IN THE 1987 CONSTITUTION: A SHIELD AGAINST TYRANNY

Some political and legal pundits have credited President Rodrigo Duterte for triggering serious discussion on federalism as a form of government which, it is argued, suits the situation and demands of the Philippines' diverse society. For the PDP-Laban Federalism Institute, "The unprecedented assumption to power of Duterte and his political party, PDP-Laban, has given the country a rare opportunity to introduce systemic change to our country's system of government, among other constitutional reforms" (Malaya 2018, p. 218).

But if the road to hell is paved with good intentions, then the road to achieving "revolutionary change" through federalism could be littered with debris from the tearing down of democratic institutions. This seems to be the case if one is to examine how the shift to a federal system of government is envisioned by the president's allies in the House of Representatives. The principle of separation of powers among branches of government and the system of checks and balances are put at risk.

This issue of the *Intersect Quick Facts* gives an overview of how the 1987 Constitution shields the nation from tyranny by ensuring that no one branch of government becomes overly dominant and unaccountable. It also points out proposed amendments to the current Constitution that could undermine important democratic safeguards.

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## SEPARATION OF POWERS

The 1987 Constitution divides the government into three branches, giving specific and defined powers to each branch. The separation of powers ensures that no branch of government becomes too powerful and unaccountable.



### LEGISLATIVE

**Article VI**, Section 1 of the 1987 Constitution states, "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."

Congress has the sole authority to make enabling laws and to declare the existence of a state of war. It also has the power to approve or reject presidential appointments. It may hold inquiries in aid of legislation.



### EXECUTIVE

**Article VII**, Section 1 states, "The executive power shall be vested in the President of the Philippines." He/she appoints "the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him by the Constitution."

The president oversees departments, bureaus, and offices of the executive branch. He/she serves as the Commander-in-Chief of all armed forces of the Philippines.



### JUDICIARY

**Article VIII**, Section 1 states, "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."



THREATS TO SEPARATION OF POWERS

Two of the proposed amendments to the 1987 Constitution by the House of Representatives Committee on Constitutional Amendments limit the scope of the judiciary's authority and suggest an executive branch with significant control over the courts.

WHAT IS IN THE CONSTITUTION?

**Article VIII. Section 1.** Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

WHAT IS BEING PROPOSED?

Under the proposal, the constitutional clause would only read: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."

WHY IS THIS ALARMING?

By removing the authority from the judiciary to determine whether a government branch or instrumentality committed "grave abuse of discretion", issues such as the declaration of martial law will be regarded as a mere "political question".

WHAT IS IN THE CONSTITUTION?

**Article VIII. Section 8.** A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio members, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector.

...

The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

WHAT IS BEING PROPOSED?

This section was deleted in the proposal of the subcommittee 1 of the Committee on Constitutional Amendments. Instead of a review council supervised by the Supreme Court, the Prime Minister "shall nominate and with the consent of the Commission on Appointments, appoint the Chief Justice and members of the Supreme Court and Constitutional Court, the lower collegiate courts, the Ombudsman and his deputies and the chairmen and members of the constitutional commissions."

WHY IS THIS ALARMING?

Proponents justify this proposal as a means to protect the selection and appointment processes from political influences, a problem they see in the JBC. However, giving one person the complete discretion to appoint justices also does not guarantee an objective decision and non-politicized process, and could in fact foster patronage politics.

WHY DO WE NEED CHECKS AND BALANCES IN GOVERNMENT?

Corollary to the principle of the separation of powers, the system of checks and balances ensures that the three branches of government are not compartmentalized given their distinct powers. This is enshrined in the Constitution to guarantee collaboration between and among the branches of government and at the same time ensure that no branch of government acts beyond the powers assigned to it by the Constitution (Relacion and Magalzo 2014, p. 40).

Critics posit that the system of checks and balances in the Philippines is ill-practiced due to "executive supremacy" or "hyperpresidentialism" (p. 41). However, given that hyperpresidentialism is produced by deeply entrenched political patronage and strong executive power exercised by the president, is it the Constitution which needs to be changed or the political culture that corrupts and undermines the institutions precisely established by the Constitution to guarantee accountability?

LEGISLATIVE

Makes laws and passes the national budget (with its "power of the purse")



- Checks on the Executive Branch
- can override presidential veto
  - confirms executive appointments
  - can impeach and remove the president
  - appropriates money
  - ratifies treaties

President Joseph Estrada, on the grounds of corruption and maladministration, was impeached by the House of Representatives in November 2000, and the articles of impeachment were transmitted to the Senate for trial. However, before the impeachment trial could be concluded, Estrada was forced by a popular uprising to step down in January 2001.



In 2012, former Chief Justice Renato Corona was the first Supreme Court justice to be impeached and removed from office. He was removed for failing to truthfully disclose his wealth in his Statement of Assets, Liabilities, and Net worth (SALN).

- Checks on the Judicial Branch
- Can impeach and remove justices of the Supreme Court
  - Can propose amendments to overrule judicial decisions

JUDICIARY

Reviews and interprets laws, and imposes punishment on law-breakers



- Checks on the Legislative Branch
- can declare acts of Congress unconstitutional

EXECUTIVE

Enforces laws and proposes new ones



- Checks on the Legislative Branch
- Can propose/veto laws
  - Can call special sessions of Congress

- Checks on the Judicial Branch
- appoints judges
  - can grant pardon to offenders

The Supreme Court in July 2014 declared specific "acts and practices" under the Disbursement Acceleration Program (DAP) of the Aquino administration as unconstitutional. These include the transfers of the savings of the executive branch to fund projects of agencies under the other branches. The DAP aimed to speed up government spending.



- Checks on the Executive Branch
- can declare executive actions unconstitutional

OTHER CONSTITUTIONAL BODIES

The 1987 Constitution creates independent constitutional bodies to fortify the system of checks and balances in the government by ensuring the independence of institutions designed to check other institutions. "The constitutional meaning of independence is only that of independent decision-making that is free from partisanship and political pressures" (Carpio 2012, p. 9).



COMMISSION ON HUMAN RIGHTS

Enshrined in the 1987 Constitution and founded on May 5, 1987 through Executive Order No. 163, the CHR investigates violations of civil and political rights, provides legal measures to ensure that all human rights of Filipinos (residing in the country and abroad) are defended, and ensures that the government follows international treaty obligations regarding human rights. The CHR also protects witnesses, who have significant information or evidence relevant to cases that the commission investigates, from possible prosecution.

The CHR has no "jurisdiction or adjudicatory powers over, or the power to try and decide, or hear and determine, certain specific types of cases, like alleged human rights violations involving civil or political rights" (Supreme Court of the Philippines 1991).



OFFICE OF THE OMBUDSMAN

The Office of the Special Prosecutor, headed by the Ombudsman, conducts investigations on complaints filed against public officials to avert and rectify any abuse or impropriety in the performance of their duties. It recommends measures to enhance the efficiency, transparency, and accountability of the government.



COMMISSION ON AUDIT

COA scrutinizes all government accounts whether revenues, funds, expenditures or properties, and presents annual reports regarding these matters. It scrutinizes financial transactions to ensure that they are all conducted in accordance with established rules. It endorses measures to Congress to improve government operations.



COMMISSION ON ELECTIONS

COMELEC, the administrator of the electoral process, supervises the conduct of regular and special elections in the country, and ensures that these are free, fair, and honest. It decides on election-related contestations, and endorses to Congress bills relevant to making the election process efficient.



CIVIL SERVICE COMMISSION

As the central personnel agency of the government, CSC provides measures that will ensure that the government bureaucracy works efficiently, exhibiting transparency and accountability at all times, with officials highly esteemed for their integrity and capabilities. It determines the qualifications for positions, and regulates the behavior of personnel in the conduct of their duties.

## SUBTLE POWER GRAB?

In January 2018, the House Committee on Constitutional Amendments, composed of four sub-committees tasked to review the 1987 Constitution, released a summary of the salient features of the proposed draft Federal Constitution. The full draft Constitution itself is yet to be made public, but annotations and footnotes showed the PDP-Laban Federalism Institute draft proposal and the Resolution of Both Houses No. 8 as among those reviewed. The transitory provisions drafted by sub-committee 1, however, point to threats to checks and balances even before we have a “federal Philippines”.



From the time the new Constitution is adopted up to the first election in 2022, the incumbent president—President Duterte—will have the powers of both the President (as head of state) and the Prime Minister (as head of government).

This would place the entire legislature, supposedly co-equal with and independent from other branches, under the influence and control of the president. With a “super majority” in both the House of Representatives and Senate supporting the president and staying in their positions as members of the interim Parliament until the 2022 election, any law that one powerful person or a group of powerful people wishes to create—including amendments to the would-be enacted Federal Constitution—can be enacted easily without scrutiny.



The proponents in the House of Representatives did not include a provision barring the incumbent president from running for re-election and going beyond his constitutionally-mandated 6-year term limit under the current Constitution. For University of the Philippines Political Science professor Gene Lacza Pilapil (2018), not requiring the incumbent to step down after serving a full term is tantamount to a “swabe (subtle) power grab,” as was done by elected strongmen like Venezuela’s Hugo Chavez, Peru’s Alberto Fujimori, and the Philippines’ Ferdinand Marcos “who tried to skirt term limits of their democracies by coming up with a new Constitution.”

Transitory provisions proposed by the House Committee on Constitutional Amendments (from “Sub-Committee 1: Salient Features of the Proposed Federal Constitution of the Philippines from the Review of Articles VI, VII and X of the 1987 Constitution”)

- The first election under this Constitution shall be held on the second Monday of May 2022.
- Following the adoption of this Constitution, the present Congress shall be dissolved. The Senate and the House of Representatives shall be replaced by an interim Parliament that shall exist immediately and shall continue until the members of the regular Parliament shall have been elected and assumed office.
- The Members of the interim Parliament shall be the incumbent Members of the Senate and the House of Representatives and by appointment of the President, the Members of the Cabinet with portfolio.
- The interim Prime Minister shall be elected by a majority vote of all the Members of Parliament. He shall be a Member of the Cabinet.
- The incumbent President shall exercise all the powers and functions of the head of state and head of government under this Federal Constitution until the election of the next President and Prime Minister in May 2022. He shall appoint the new Cabinet from among the Members of Parliament. He shall have supervision and direction over the interim Prime Minister and Cabinet.
- The first regular elections for the President of the Federal Republic of the Philippines shall be held on the second Monday of May 2022. He shall be elected by direct vote of the people for a term of five (5) years.
- The Vice-President shall continue until 2022 to exercise her powers and prerogatives as Vice-President under the 1987 Constitution.
- The seats allocated to party-list representatives shall be filled by election in accordance with Republic Act No. 7941 or the Party-list System for the May 2022 national elections. Thereafter, Parliament shall enact a law on party-list or sectoral representation under this Constitution.

DEMOCRACY DEPENDS ON AN INFORMED CITIZENRY. BESIDES VOTING, KNOWING AND UNDERSTANDING HOW GOVERNMENT FUNCTIONS AND WHAT AUTHORITY EACH BRANCH HAS IS EVERYONE’S DUTY. IN THE END, THE PEOPLE ARE THE MOST POWERFUL CHECK ON THE GOVERNMENT.

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