Asia Democracy Research Network

Horizontal Accountability in Asia: Country Cases (I)

March 2024

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In 2022, Asia Democracy Research Network (ADRN) selected horizontal accountability by the ability of state institutions to hold the executive branch accountable, and vertical accountability through elections, parties and citizens' participation, as the requirements to accomplish robust and sustainable democracy in Asia.

Against this background, ADRN published this report to evaluate the current state of the trends and trajectories of horizontal accountability in the region by studying the phenomenon and its impact within countries in Asia, as well as their key reforms in the near future.

The report investigates contemporary questions such as:

- What are the constitutional and legal institutional mechanisms that hold the executive government accountable?
- To what extent have the constitutional and legal mechanisms of horizontal accountability fulfilled their expected functions to constrain the actions of the executive members?
- What are the determinants of horizontal accountability performance?
- What should be done to improve the state of horizontal accountability performance?

Drawing on a rich array of resources and data, this report offers country-specific analyses, highlights areas of improvement, and suggests policy recommendations to fulfill methods of horizontal accountability in their own countries and the larger Asia region.

"Horizontal Accountability in Asia: Country Cases (I)"
ISBN (electronic) 979-11-6617-719-4 95340

This report is part of the Asia Democracy Research Network (ADRN) products for 2022-2024.
The ADRN's Activities, including production of this report, were made possible by the support of the National Endowment for Democracy.
Each author is solely responsible for the content of this report.

Horizontal Accountability in Asia: Country Cases (I)

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Horizontal Accountability in Indonesia

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1. Introduction

As a new democratic country of the third-wave democratization, it is compelling to observe the performance of Indonesia's government in sustaining horizontal accountability, especially after amending the constitution. In the early reformation era, Indonesia inserted the checks and balances principles into the Constitution in order to generate horizontal accountability between executive, legislative, and judicial power. Therefore, the constitution is also critical to measure the configuration of the horizontal accountability mechanisms by highlighting the constitutional executive, legislative, and judicial powers.

There are a variety of empirical indicators to measure executive, legislative, and judicial powers in order to describe Indonesia's de jure horizontal accountability. First, for executive power or constitutional endowments of executive actions, we utilized the 'executive power index' from Constitute, which ranges from 0 to 7 and captures the presence or absence of seven significant aspects of executive law-making: (1) the power to initiate legislation; (2) the power to issue decrees; (3) the power to initiate constitutional amendments; (4) the power to declare states of emergency; (5) veto power; (6) the power to challenge the constitutionality of legislation; and (7) the power to dissolve the legislature. The index score is the mean of the seven binary elements, with higher numbers indicating more executive power and lower numbers indicating less executive power (Elkins, Ginsburg, and Melton 2023). Based on the data provided by Constitute, Indonesia's executive power index score is 4, which reflects its constitutional provisions of (1) the power to initiate legislation,[3] (2) the power to initiate constitutional amendments[4], (3) the power to declare states of emergency[5]; and (4) veto power.[6]

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[3] Article 5 Paragraph 1: The President shall be entitled to submit bills to the DPR. and Article 20: (1) The DPR shall hold the authority to establish laws. (2) Each bill shall be discussed by the DPR and the President to reach joint approval. (3) If a bill fails to reach joint approval, that bill shall not be reintroduced within the same DPR term of sessions. (4) The President signs a jointly approved bill to become a law. (5) If the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.

[4] Article 37: (1) A proposal to amend the Articles of this Constitution may be included in the agenda of an MPR session if it is submitted by at least 1/3 of the total MPR membership. (2) Any proposal to amend the Articles of this Constitution shall be introduced in writing and must clearly state the articles to be amended and the reasons for the amendment. (3) To amend the Articles of this Constitution, the session of the MPR requires at least 2/3 of the total membership of the MPR to be present. (4) Any decision to amend the Articles of this Constitution shall be made with

Second, for legislative power, the measurement used the data legislative power index provided from a survey developed by M. Steven Fish and Mathew Kroenig in *The Handbook of National Legislatures: A Global Survey* (Cambridge University Press, 2009), which ranges from zero (least powerful) to one (most powerful) to reflects a legislature's aggregate strength. The index score is simply the mean of the following thirty-two binary elements, with four main focuses (influence over executive, institutional autonomy, specified powers, and institutional capacity). Thus, the total accumulation with higher numbers indicating more legislative power and lower numbers indicating less legislative power (Fish and Kroenig 2009). Based on the survey result conducted in 2006-2007, Indonesia's legislatures power score is 0.56, which means legislative power in Indonesian presidential democracy is still influential despite the overpowering presidency.

Third, for judicial power, the data to measure utilized the "judicial power index" from Constitute which ranges from 0 to 6 and captures the presence or absence of features of judicial power. There are six features to construct the score, including (1) whether the constitution provides for judicial review; (2) whether courts have the power to supervise elections; (3) whether any court has the power to declare political parties unconstitutional; (4) whether judges play a role in removing the executive, for example in impeachment; (5) whether any court has any ability to review declarations of emergency; and (6) whether any court has the power to review treaties. Based on Indonesian Constitutions, the score of judicial power rest in 1 point that is the judicial ability to remove the executives mentioning in the feature number (4) whether judges play a role in removing the executive, for example in impeachment.[7] This score of judicial power showed that the judiciary has less power to constraint on executive actions.

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the agreement of at least fifty percent plus one member of the total membership of the MPR. (5) Provisions relating to the form of the unitary state of the Republic of Indonesia may not be amended.

[5] Article 12: The President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law. And Article 22: (1) Should exigencies compel, the President shall have the right to establish government regulations in lieu of laws. (2) Such government regulations must obtain the approval of the DPR during its next session. (3) Should there be no such approval, these government regulations shall be revoked.

[6] Article 20 paragraph 2: Each bill shall be discussed by the DPR and the President to reach joint approval and paragraph 5: if the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated.

[7] Article 7B: (1) Any proposal for the dismissal of the President and/or the Vice-President may be submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court to investigate, bring to trial, and issue a decision on the opinion of the DPR either that the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President. (2) The opinion of the DPR that the President and/or Vice-President has violated the law or no longer meets the qualifications to serve as President and/or Vice-President is undertaken in the course of implementation of the supervision function of the DPR. (3) The submission of the request of the DPR to the Constitutional Court shall only be made with the support of at least 2/3 of the total members of the DPR who are present in a plenary session that is attended by at least 2/3 of the total membership of the DPR. (4) The Constitutional Court has the obligation to investigate, bring to trial, and reach the most just decision on the opinion of the DPR at the latest ninety days after the request of the DPR was received by the Constitutional Court. (5) If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and/or Vice-President, the DPR shall hold a plenary session to submit the proposal to impeach the President and/or Vice-President to the MPR. (6) The MPR shall hold a session to decide on the proposal of the DPR at the latest thirty days after its receipt of the proposal. (7) The decision of the MPR over the proposal to impeach the President and/or Vice-President shall be taken during a plenary session of the MPR which is

Unfortunately, two decades after reformation, the horizontal accountability has slightly decreased. Based on V-Dem datasets on horizontal accountability index,[8] the graphic shows that the horizontal accountability rate rose around the year 2000 in time when the reformation took place and the new phase of democratization started. However, it slightly decreased in recent years.

Figure 1. V-Dem Horizontal Accountability Index: Indonesia 1990-2022

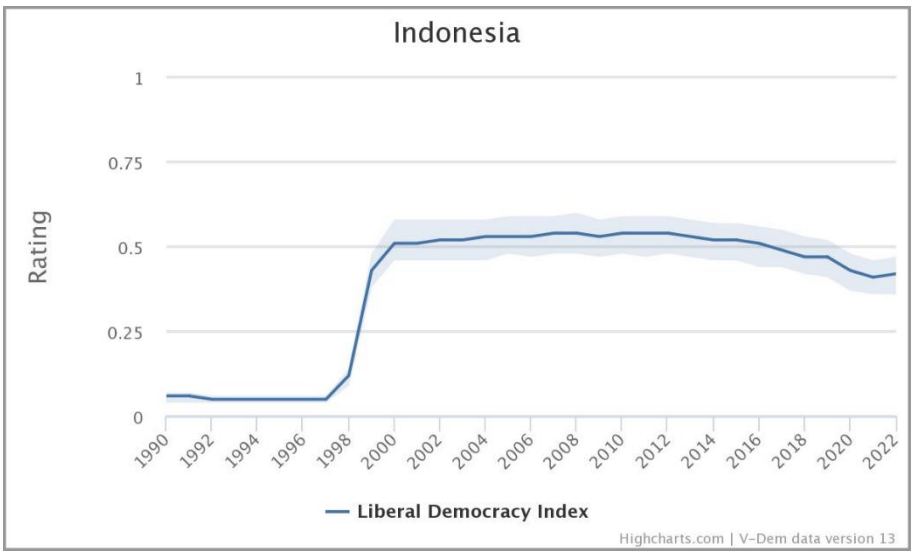
This trend of decreasing horizontal accountability index signaled the problem of implementing horizontal accountability and checks and balances mechanisms to prevent the wrongdoing of public officials. If the trend persists, the decreasing horizontal accountability will be followed by the same decrease in other accountabilities both vertical and diagonal which all simultaneously will cause the democratic decay from within (Sato et al. 2022). It means that election and other public participation toward government will no longer be meaningful to progressing democratization when horizontal accountability is in absence.

The influence of the horizontal accountability deficit in Indonesia could explain the reason why Indonesia experiences democratic decline. This argument is confirmed by the data of the democracy index provided by Freedom House. According to Freedom house, Indonesia has made impressive democratic gains since the fall of an authoritarian regime in 1998. However, the democratic index shows the decreasing progress of Indonesian democracy. Recent update from Freedom House in 2022 states that Indonesia democracy index remains partly free with the score range 59/100 (no longer free). Roylance (2015) argued that once a country achieves the status of Free, it should be solid and reliable to combat backsliding to authoritarian states and advancing progress to implement good governance with accountability. Unfortunately, the case of Indonesia shows an incremental process in sustaining democratization caused by the absence of checks and balances among state branches as democratic institutions. Further, V-Dem stated that Indonesia's score has decreased over the past 10 years substantively and at a statistically significant level as illustrated in the liberal democracy index (LDI) 2022 below.

attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the total of members who are present, after the President and/or Vice-President have been given the opportunity to present his/her explanation to the plenary session of the MPR.

[8] https://www.v-dem.net/data_analysis/CountryGraph/

Figure 2. V-Dem Liberal Democracy Index: Indonesia 1990-2022



Based on the graphic above, the symptom of democratic decline in Indonesia seems to be influenced by the horizontal accountability deficit. Despite being commendable for successfully holding regular elections at both the national and local levels, the progress of democratic transition in Indonesia appears less promising due to the lack of horizontal accountability. The failure to sustain horizontal accountability may lead to democratic setbacks where state institutions could become corrupt and violate democratic principles. Consequently, the absence of horizontal accountability would leave unmeaningful elections as the only remaining institution representing democratic countries. Considering Indonesia's democratic practices, the efforts to apply horizontal accountability and achieve the principle of checks and balances among state branches remain problematic due to the unequal power to hold the president accountable. This condition needs to be critically examined, specifically to assess the ability of the new democratic government to perform its checks and balances amongst state institutions.

The research about the checks and balances to manifest horizontal accountability is particularly relevant nowadays, as Indonesia is experiencing democratic stagnation and the weak function of its checks and balances mechanism. Democratic scholars have argued that the state of democracy should institutionalize the checks and balances principles to push back against backsliding into authoritarian regimes in order to preserve democratic consolidation. Otherwise, democratization could remain stagnant, distinguished by the domination of the elite shadowing the democratic process within Indonesia's political stage. Considering this condition as background, this paper aims to explain about the embodiment of horizontal accountability in Indonesia and the gap between the rules and the practices of sustaining checks and balances toward the president as head of executives.

2. The Discourse of Horizontal Accountability's Conceptualization

The presence of accountability determined the quality of democracy and the effectiveness of the governance. Although consensus about accountability definition is hardly to be sustained among scholars, conceptually, accountability has two key features, that are answerability and responsibility of public officials. Within this conception, there are two kinds of actors who can provide political accountability. First, elected public officials are accountable to voters. Second, many state agencies are formally charged with overseeing and/or

sanctioning public officials and bureaucracies. The first is about vertical accountability, and the latter is about horizontal accountability, or as Mainwaring called it, intrastate accountability. In democratic countries, horizontal accountability tends to be more fragile than its vertical counterpart since authoritarian institutional virtues are more challenging to transform than organizing free and fair elections (De Almeida Lopes Fernandes et al. 2020). Nowadays, embodiment of horizontal accountability in some democratic states remains problematic (O'Donnel 1998).

Horizontal accountability is necessary to prevent corruption and improper state encroachment because conceptually horizontal accountability refers to actions "with the explicit purpose of preventing, cancelling, redressing and/or punishing actions (or eventually non-actions) by another state agency that are deemed unlawful, whether on grounds of encroachment or of corruption" (O'Donnell 2003, p. 35). In the same line, Ziegenhain (2015) explained further about horizontal accountability that refers to the capacity of governmental institutions to check abuses by other public agencies and branches of government. In addition, other independent state agencies, which control and scrutinize government actions, are also often necessary to safeguard horizontal accountability. These institutions working as agencies of restraint, such as independent electoral commissions, auditing agencies, anti-corruption bodies, and ombudsmen, also contribute to horizontal accountability (Ziegenhain 2015). Therefore, the existence of such institutions is a key for establishing accountability.

The relation of accountability in democratic states consists of the checks and balances mechanism that derives from the interaction between the institutions mentioned above. However, the list of institutions that acted as actors of accountability varied between parliamentary democracy and presidential democracy. The actors of accountability are determined by the principal-agent relationship wherein the voters play as principal, and the public official as agent who was elected through legitimate election. The fundamental difference between presidential and parliamentary democracies is that the hierarchical connection between voter-principals and the executive authority is not mediated through the legislative majority in a presidential system as it is in a parliamentary system. That is, whereas parliamentary democracies are based principally on nested hierarchies of vertical accountability, presidential systems are built on the interaction of horizontal exchange and vertical accountability. This fundamental distinction has serious consequences for legislative incentives in presidential systems (Shugart and Haggard 2001), and, in turn, for how well horizontal accountability functions to align the incentives of actors in the various branches with the interests of the ultimate principal, the citizenry.

As a presidential democratic country, the horizontal accountability in Indonesia is exercised only by state actors within the state by different state agencies, if necessary, against the president as the highest powers of the state to prevent any legal transgression. Most scholars argued that the relationship between state institutions and oversight bodies is crucial to the functioning of a system of horizontal accountability. Therefore, the exercise of horizontal accountability specifically rests on the performance of the elected public officials from the executive and the legislative branch since both of them had acquired mandates from the voters to execute their authorities. Thus, the other state actors such as Judicial court, Ombudsman, Corruption Eradication Commission (KPK) will be the oversight agency that hold responsibility to request explanation and sanction the president and member of parliament as elected public officials for their acts and omissions in accordance with the law and constitution.

Unfortunately, horizontal accountability faces a challenge from within state actors by a scourge of "the accountability trap." Slater accused this condition occurs due to exerting cartel politics to secure the power sharing among political parties (Slater 2004). Moreover, cartel politics, perpetrated by the absence of

an opposition party in the government, hampers a dynamic equilibrium between major state actors, which is important for horizontal accountability. Horizontal accountability will never function properly if one actor can dominate the others, indicating that the democratic regime is in danger of becoming unconsolidated and prone to authoritarian rule. Without effective institutions that can provide credible restraints in presidential democracy, particularly on powerful executives, the quality of democracy tends to stagnate or regress.

3. The Constitutional and Legal Institutional Mechanisms of Horizontal Accountability

With reference to the conceptualization of horizontal accountability, the agent of accountability in presidential democracy is not only president, but also member of parliament because both of them are elected officials and hold the mandates from the voters. However, the exercise of horizontal accountability delimits its scope only to the highest authority in presidential democracy, president, as the head of states and governance. Indonesia has institutionalized the horizontal accountability mechanism to hold the president responsible for his/her performance that was written in the constitution and regulated among various acts, to prevent president from legal violations. There are two important dimensions to establish a horizontal accountability mechanism: the answerability and sanctions. Firstly, the accountability of the president is ensured through the oversight of members of parliament (state legislature), as outlined in article 20a of the constitution. Therefore, the state legislature has the right to ask and demand an explanation on a particular case or public policies made by the president to redress the possible wrongdoings. Secondly, there are provisions for sanctions when the president is accused of violating the law. According to the Indonesian Constitution, specifically UUD 1945, sanctions are outlined in cases where the president commits legal transgressions such as corruption and bribery. The sanction ranged from providing explanation and the possibility of removal from the office or impeachment as it mentions in article 7a, 7b, and 7c of UUC 1945. This impeachment process involves the roles of state legislature and Constitutional Court (MK).

As described above, O'Donnell defined horizontal accountability as "the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful." Thus, the list of state actors who can execute relationship of accountability toward president includes not only the state actors that have sanctioning capacity of judicial branch, but also the oversight agencies without necessarily having capacity to impose sanctions but expected to refer possible wrongdoings to actors that can impose sanctions; this indirect sanctioning power suffices to characterize a relationship of accountability, such as ombudsman and commission of eradication corruption (KPK). In this regard, the state actors that can establish accountability relations toward the president include the oversight state agencies and also the highest court from the judiciary branch to monitor the president in performing his/her power. Further, the oversight state agencies comprehend KPK and Ombudsman whereas the judiciary branch comprises MK and MA. All of these listed state actors are regulated by particular national acts to establish accountability relationships to check the president accountable.

3.1. State Legislatures (member of parliaments)

The Constitution of the Republic of Indonesia has established the President as the holder of executive power and the People's Representative Council (DPR) as the holder of legislative power. The president's authority is contained in Article 4 paragraph (1) of the 1945 Constitution while the DPR authority can be found in

Article 20 paragraph (1) of the 1945 Constitution which states clearly that the power to make laws is in the hands of the DPR. In addition, the Article 20 paragraph (2) of the 1945 Constitution shows the relation between DPR and the president in legislation especially in the president involvement in drafting laws and regulations and also in giving joint approval with the DPR on the bill that has been discussed.

In addition to the lawmaking process, relations between the president and the DPR can also be seen in the process of forming Government Regulations in Lieu of Laws (Perpu). Government Regulations in Lieu of Laws (Perpu) are regulations made by the President in "forced matters of urgency", therefore the process of their formulation is different from that of laws. Generally, laws have always been formed by the President with the approval of the House of Representatives or formed by the House of Representatives and jointly approved by the House of Representatives and the President. However, the Government Regulations in Lieu of Laws (Perpu) are formed by the President without the approval of the People's Representative Council because of a "compelling urgency" that requires fast-track of the lawmaking process to overcome the pressing crisis.

If the Government Regulation in Lieu of Law is approved by the DPR in a plenary session, it shall be stipulated to become an Act. On the contrary, if the Government Regulation in Lieu of Law does not obtain the approval of the DPR in a plenary meeting, it must be revoked and declared null and void followed by action from the DPR or the President submitting a Draft Law on Revocation of Government Regulations in lieu of law. Based on these schemes, the relation between president and DPR can be seen within the legislation process. Although both the president and DPR have legitimate delegation from voters as the principals of accountability, their relationship portrayed the checks and balances that constitutes the horizontal accountability in the legislative process. Regardless that the legislature does not have capacity to impose sanctions, the constitution gives the right to DPR to demand answerability from the President in case there is accusation of legal transgressions committed by the President. Moreover, DPR can continue to request the Constitutional Court to conduct an examination toward the President as part of impeachment procedure or ask other state agencies such as Indonesian Republic Attorney General, Commission of Eradication Commission to execute law enforcement and give sanction in case the President is involved in any legal transgression.

3.2. Corruption Eradication Commission (KPK)

The Corruption Eradication Commission (KPK) has been institutionalized since 2002, not long after reformation took place. KPK has the authority to monitor the administration of state government, supervise state agencies authorized to carry out the eradication of criminal acts of corruption. Based on its authority, KPK has not acquired direct sanctioning capacity to impose President or other public officials, but it can supervise and investigate the allegations of corruption and took the rest to the court to proceed the judicial process. In general, KPK can investigate all state actors if they were suspected of corruption. However, in recent years, KPK has been weakened by the government through the revision of its institutional position. Since the law of KPK No. 30/2002 has been revised by emerging the new Law in 19/2019, the KPK has no longer be independent institution, but being responsible to President as the head of executives. Consequently, KPK would hardly be possible to investigate any corruption case that potentially carried out by the president. In the context of sustaining horizontal accountability, the position of KPK has changed from the state actors that can monitor all legal transgressions toward president or member of parliament or any state actors to become the agents of accountability itself. KPK had been chosen by the president and by this means that

president is the principal who can demand the answerability and give sanction to KPK. In other words, KPK can only touch the member of parliament and control the wrongdoing of state legislatures.

3.3. Ombudsman of the Republic of Indonesia

The Indonesian Ombudsman is a state institution that has the authority to supervise the implementation of public services whose funds come from the State Budget (APBN) or Local Government Budget (APBD). Institutionally, the formation of the Indonesian Ombudsman, which was originally established through Presidential Decree (Keppres) Number 44 of 2000 concerning the National Ombudsman Commission, was enhanced with the enactment of Law (UU) Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. The Indonesian Ombudsman has strategic functions, duties and authority, especially in supervising the implementation of public services. In Law Number 37 of 2008, it is determined that the Indonesian Ombudsman functions to supervise the implementation of public services organized by state and government administrators, both at the center and in the regions, including those organized by State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and State-Owned Legal Entities (BHMN), as well as private entities or individuals who are tasked with providing certain public services. The Indonesian Ombudsman also has the task of receiving, examining and reading reports regarding alleged maladministration in the implementation of public services; has the authority to ask for information and make summons, as well as make recommendations regarding the completion of the report (including recommendations for paying compensation and/or rehabilitation to the injured party). The Indonesian Ombudsman currently not only has the authority to approve public reports, but also has the authority to carry out investigations on his own initiative; They can even impose sanctions through recommendations that are final, binding, and must be implemented by the recipient of the recommendation.

In carrying out its duties to prevent maladministration, the Ombudsman is given the authority to provide advice to the President, DPR/DPRD, regional heads or heads of state administrators to improve and perfect the organization in terms of service procedures and laws and regulations in order to prevent maladministration. For reports that are proven to be mal-administrative, the Ombudsman does not provide legal sanctions like the Judicial Institution (magistrate of sanctions) which can impose penalties and fines. As a state institution that has the authority to monitor and take action against violations of public services, the Ombudsman can impose sanctions in the form of administrative sanctions on the reported party and his superiors who do not implement recommendations. Meanwhile, criminal sanctions are imposed on anyone who obstructs the Ombudsman in carrying out an examination imposed by a judicial institution where the examination of the party obstructing is submitted on the basis of a report from the ombudsman. The supervisory capacity to obtain horizontal accountability between fellow state institutions owned by the ombudsman is limited to the right to obtain answers. Although the ombudsman's capacity as "a sanctioned giver" for state institutions that commit maladministration in public services, is limited to administrative sanctions, the ombudsman can still carry out a good supervisory function over state administrators at large. Because in Law no. 28 of 1999 concerning state administrators who are clean and free from corruption, collusion and nepotism (KKN), the definition of state administrators refers to all state officials who carry out executive, legislative, judicial functions and other officials whose main functions and duties are related to state administration.

3.4. Judiciary Branch: Supreme Court (MA) and Constitutional Court (MK)

According to UUD 1945, Indonesia constitution, Judicial power in Indonesia is exercised by the Supreme Court and subordinate judicial bodies as well as the Constitutional Court. As the highest court in the rule of law system, the Supreme Court has authority to supervise and oversee all judicial processes over the high courts and district courts, as it mentioned in the law No. 3/2009 concerning the Supreme Court. It also stated in Article 24A paragraph (1) of the 1945 Constitution that the Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law and has other powers granted by law. Furthermore, according to the 1945 Constitution, the obligations and powers of the Supreme Court include giving consideration to the President concerning granting clemency and rehabilitation. Based on these authorities, it is impossible to list the Supreme Court to have accountability relation with president or other elected officials since it does not have capacity to demand answerability of the president or even the member of parliament. Despite that, the role of the Supreme Court is legitimate as monitoring state institutions to control public officials because of its role to uphold justice and rule of law in Indonesia, specifically when the public officials are committed to an unlawful act in general, corruption, bribery, and other criminal behavior.

Another existing judicial actor is the Constitutional Court (MK) which was constituted based on the mandate of Article 24C of the UUD 1945. Normatively, MK has the authority to make final decisions on law reviews against the Constitution, decide on disputes over the authority of state institutions whose powers are granted by the Constitution and on the dissolution of political parties and also to settle disputes about the results of general elections. In spite of that authorities, MK is the only court which has capacity to impose sanctions toward the president when the president and/or vice president are suspected of violating the law and no longer meet the requirements as president and vice president. Therefore, the accountability relationship between MK and president is strong enough to control the president to remain responsible and accountable. If the accusation of the president's wrongdoings is proven, MK can decide to remove the President from office and establish the impeachment.

3.5. Attorney General's Office

The Attorney General's office is a non-ministerial government institution in which the top leadership of the office is held by the attorney general. The position of the attorney general as a state institution is similar to ministries in the presidential cabinet. In other words, it is placed at ministerial level so the attorney general's office is not responsible hierarchically under any ministry. In this regard, the attorney general leads the attorney general's office which is divided to some extent into legal areas starting from the provincial level (high prosecutor's office) to the district (state prosecutor's office) throughout Indonesia. In other words, the Attorney General is a state official who acts as the leader and the highest person in charge of the attorney general's office and as the controller of the duties and authority of the high prosecutor's and state prosecutor's office in Indonesia. In carrying out the duties of judicial power and as part of government institutions, the prosecutor's office is directly responsible to the president because the Attorney General is appointed and dismissed by and is responsible to the president as stated in Article 19 of Law no. 5/1991 concerning the Prosecutor's Office of the Republic of Indonesia. Considering its role, the attorney general is significantly contributing to monitor and control the legal transgressions from the President or any other public officials. Not only that, the attorney general has the capacity to impose sanctions in the law

enforcement system whenever the president or other state officials violate the existing law. Therefore, these roles directly refer to the horizontal accountability relationship between attorney general's office and state actors, including the incumbent president.

4. The Performance of Horizontal Accountability

The mapping of key institutions in horizontal accountability that comprise the judiciary branch and oversight agencies in Indonesia has been written in the constitution and also in the specific regulation. However, the fact of deficiencies of horizontal accountability portrayed in the data of horizontal accountability index in the figure 1 indicates that the performance of each key institution has a challenge to address.

4.1. The Performance of Constitutional Court

The key institution within the judicial branch to minimize executive aggrandizement is the Constitutional Court, as the Supreme Court and Judicial Attorney's Office primarily focus on law enforcement within the general justice system. Since MK was formed in 2003, the performance of MK has gained public trust toward governance. However, in the late Jokowi's presidency, the public trust toward the Constitutional Court decreased tremendously. The nomination of the president and vice-president candidate to run in the election 2024 has been the political reality to destroy Constitutional Court dignity. In other side, this proves executive aggrandizement, as scholars suspected there was a political scenario to push Gibran Rakabuming Raka, the son of President Joko Widodo, to run for the presidential and vice-presidential election, even though Gibran failed to meet the age requirement to run as a vice-presidential candidate.

4.2. The Performance of Oversight Agencies (Corruption Eradication Commission (KPK) and Ombudsman)

The key institution to establish horizontal accountability toward the president as the head of government is the Corruption Eradication Commission (KPK) because the Ombudsman only deals to control the public officials in providing direct public services to society. However, the attempts to weaken the KPK successfully inhibited this oversight agency from maximizing its roles in monitoring President involvement in corruption. The deterioration of these oversight agencies began with the revocation of KPK's authority and placed the institution under the presidential power. In this scenario, KPK has become the government's agent of accountability that is responsible to the president, not the oversight agencies to monitor any President wrongdoing. This power arrangement of KPK has worsened by the very head of KPK, Firli Bahuri, who has committed bribery and corruption. Consequently, this political reality depicted how KPK is not performing in a positive direction to enhance horizontal accountability.

5. The Gaps between" De Jure and De Facto" of Sustaining Horizontal Accountability

Despite being strongly regulated in the constitution and various acts, the principle of check and balances is hard to implement. The challenge of each institution to perform the checks and balances toward one another is influenced by domestic politics. Indonesia adopts the presidential system combined with a multi-party system. This combination tends to create political deadlock if the president fails to accommodate diverse

political parties' interests. Therefore, the elected president tried to create a strong coalition with the political parties to create effective and solid government and reduce the possible opposition to occur. Thus, the favorable political accommodation chosen by the president determined the coalitional relation with the political parties, including with the state legislature who was also the member of existing political parties. In practice, the state legislature's performance depended on the policy of political parties and their elites. Then the checks and balances model in the Indonesian government is more determined by the relation between the President and the state legislatures, and their affiliate political parties since there were no significant opposition parties to balance and control the president and his supporting coalition.

The president's focus on maintaining relations with both the coalition and the opposition in parliament leads to the marginalization of the roles of other state institutions. According to Lili Romli (2021), this notion ultimately leads other state institutions such as the DPD as a second chamber and judicial institutions such as the Supreme Court and the Constitutional Court to be incapable of performing their control roles both in legislative functions and in law enforcement. This practice eventually undermines the role of the judiciary, which tends to be a tool to support executive power or support DPR policies in performing their functions. The absence of the coalition as the final hope to institutionalize the checks and balances function has also contributed to the degradation for the quality of democratic governance in Indonesia. This condition is exacerbated by the design of a representative institution that places a second chamber with limited functions, solely in matters of legislation. As a result, under this condition it is obvious that the implementation of horizontal accountability is almost non-existent. In addition, there is an imbalance of function and authority between the first and second chambers in the parliament, leading to the absence of internal checks and balances in the parliament. This highlights the paradox of horizontal accountability resulting from unequal power among state actors. Moreover, the continued dominance of the DPR in coalition with the government tends to eventually produce transactional and compromising legal products. Thus, the checks and balances in Indonesia are determined by the President as head of the executive branch and the political parties and their MPs in the legislative branch. Therefore, this section will focus on the relationships between DPR and the president and between the Judiciary and the president at the national level to convey how horizontal accountability works in Indonesian governance.

5.1. The Relation of DPR and President: Coalition Hinders the Horizontal Accountability

The political phenomena that occurred in Indonesia, especially considering the implementation of the direct presidential election, sent a message that coalitions are always built by the incumbent President, both at the beginning of the election and during the administration of a government, to maintain power and political stability. However, the formation of a coalition including almost all political parties in the parliament became known as the fat (gemuk) coalition.

The trend of forming a 'gemuk' coalition manifested after elections in the Reformation era. It was obviously seen after the 2004 elections, as at first, the Presidential Administration of Susilo Bambang Yudhoyono (SBY)-Jusuf Kalla (JK), which was in office from 2004-2009, had a minority coalition in parliament where the vote obtained was only 7.45%, which meant that there were only 56 seats or 10.26% in the DPR (Fitra Arsil 2017: 215). This minority condition in parliament certainly made the SBY-JK Administration feel insecure; therefore, a gemuk was formed in the DPR where almost all parties joined together to form a coalition, except the Indonesian Democratic Party of Struggle (PDI-Perjuangan), which played the role of opposition. The 2009 presidential election resulted in the SBY-Boediono Administration,

which held office from 2009-2014 and again led to a fat coalition forming in the DPR. The coalition that succeeded in securing SBY's government for two terms resulted in the next presidential leadership preserving the culture of fat coalitions as a step towards the success of governance. Jokowi, in his first and second terms following the election of 2014 and 2019, also built a coalition following the fat frame in the government, namely during the Jokowi-JK Administration from 2014-2019. Even for the second 2019-2024 term, the Jokowi-Ma'ruf Advanced Indonesian Cabinet brought in figures who were leaders of the opposition party as ministers.

The explanation of how the President formed the above coalition indicates that there currently exists no opposition strong enough to hold the President responsible for horizontal accountability. The formation of these coalitions is based on cartel politics and has led to the accountability trap. This condition reflects what Slater has mentioned about the accountability trap that hinders democratization in governing the state at the national level. Meanwhile, until almost two decades post-reform, non-party and extra-parliamentary circles performed the role of the opposition, which was sporadic and unusable as a barometer of control over an effective government. As a result, instead of becoming a sphere for a healthy democratic life, Indonesia is currently trapped in an oligarchic practice due to its positioning of the interests of a few above those of the masses. The interests of a group of people close to power often manipulate government policies intended for the people. The interests of a group of people close to power often manipulate government politics meant for the people. Democracy tends to be artificial, thus allowing the government to reap the results without effective opposition. The failure of the institutionalization of the opposition indicates that the president is not being subject to checks and balances by the parliament. The opposition only exists before the election in the context of electoral contestation marked by the union of all ranks of the leaders of the opposition parties to the elected president. The existing opposition is not based on program conflicts, differences in political views, or ideologies, hence indicating no practice of checks and balances to balance the president's executive power.

5.2. The Relation Between President and MK as The Judiciary: Impeachment Barely Possible

Indonesia's judicial institution, the Constitutional Court (MK), has the authority to handle the impeachment process to hold the executives accountable, especially in the case that the president and/or vice-president is suspected of having violated the law or no longer fulfils the requirements for president and/or vice-president. The procedure for impeaching the president and/or vice-president is essentially a series of long processes and requires the involvement of several high state institutions other than the Constitutional Court itself, including the People's Representative Council (DPR) and the People's Consultative Assembly (MPR). In this case, the initiation of the impeachment process can be submitted only by the DPR, which must submit it to the MPR. However, the DPR can only submit a request to the Constitutional Court with the support of at least 2/3 of the total number of DPR members present at a plenary meeting attended by at least 2/3 of the total number of DPR members. This requirement is difficult to fulfil because the majority of DPR members come from the election-winning party and its coalition partners. Consequently, the DPR cannot arbitrarily submit a request for the impeachment of the president and/or vice-president without the support of at least 2/3 of its members. After the submission, if the Constitutional Court decides that the president and/or vice-president has violated the law, the DPR holds a plenary meeting to submit the proposal to dismiss the president and/or vice president to the MPR. The MPR Plenary Session should be attended by at least 3/4 of the members and approved by at least 2/3 of the members present, after which the president and/or vice-president has the

opportunity to present their explanations at the MPR plenary session. Thus, the MPR's decision ultimately determines whether or not impeachment can proceed.

In practice, the impeachment issue has occurred once against President Susilo Bambang Yudhoyono (SBY) that arose related to the investigation into the Century Bank case. The results of the temporary conclusions of the DPR special committee regarding Century Bank show that the government received support from two factions, namely the Democratic Party and the National Awakening Party (PKB). Seven other political parties, PKS, Golkar Party, PDIP, Gerindra, Hanura, PPP and PAN, conversely stated that granting Bank Century bailout funds violated the law. In the beginning, false accusations were aimed only at monetary authorities and assistants to the President. Still, as development progressed, political parties began to emerge, although not in a "vulgar" direction towards the president, as they too were considered partly responsible for how the government was running, especially regarding the bailout process for Century Bank. However, based on the regulation on the impeachment process, it seems that the conditions for impeaching the president are not easy to fulfil; based on the results of the presidential election, the Democratic Party, which supports SBY and Boediono, has received genuine support from more than 60% of its constituents. Therefore, the requirement of support by 2/3 of the number of DPR members is also not easy to achieve because the majority of DPR members come from the Democratic Party with the support of their coalition partner political parties. Of course, the Democratic Party and its coalition will try their best to thwart the impeachment efforts of their political opponents. Measures taken towards impeachment are currently difficult to attain because DPR is mostly part of the fat coalition and is allied with the president.

Finally, the attempt to do presidential impeachment is not easy to accomplish because the mechanism required to enact it is quite long, with conditions that are also not easy to satisfy. The challenge to oversee the president to be accountable leads to the paradox of horizontal accountability, because accountability is almost non-existent since the Constitutional Court should review the president's case based on a parliamentary decision.

6. Conclusion

Before the constitutional amendment, the power-sharing arrangement of the Indonesian government was still unclear because it contained elements of both a parliamentary and a presidential system. In this system, the President was elected and appointed by the MPR as the highest state power holder. Therefore, the President's role is mandated by the MPR, making the President responsible to the MPR. In other words, a parliamentary feature is visible through the MPR roles, but on the other hand there are also characteristics of a presidential system in which the President has double roles as the head of state and the head of government. The changes to the 1945 Constitution therefore clarified the Indonesian government system with the adoption of the Direct Presidential election system to eliminate the superior role of MPR.

Beside the vague condition of the government system, President Soeharto benefited by the centralized power-sharing arrangement in the executive branch. It is written in the constitution wherein based on 37 articles stated in the 1945 constitution, 13 articles of them regulate the authorities of the president (Article 4 to Article 15 and Article 22). In addition, the President also exercises statutory powers, and holds powers related to law enforcement such as the right to give abolition and amnesty. Moreover, almost all legal products were legalized and enacted with the direction of the President or aimed to strengthen the President's power. This condition happened due to the absence of checks and balances that could be carried out by the legislative and judicial branches to balance the role of the president as the executive. Even though in the

Constitution before the amendment, there was a parliamentary character where the President had to consider the MPR and needed the approval of the DPR to form a law, in reality, during the New Order era, no laws were enacted from the initiative of the DPR since all initiatives originated from the executive. In other words, the DPR only had to pass them whether they liked it or not. So that satire often appears against the DPR whose role is to be "stampers as yes man institution."

The experience of amending the 1945 Constitution in the 1999-2002 generated a fundamental change in Indonesia. The change of the constitution was purposely aiming to implement checks and balances between state branches. However, the checks and balances arrangement in Indonesia differs from the general conception of checks and balances mechanism that mainly root into the separation of power between each state branch. In Indonesia, the executive, legislative, and judicial branch works with coordination in performing their authorities, for instance, in the national policy making process, parliament would always work together with the president. Indonesian scholars referred to the system of checks and balances in Indonesia as the adoption of a diffusion of power arrangement in the government. Moreover, another reason for constitutional change in Indonesia is to strengthen the presidential system, as Indonesia has a mixed government system that combines parliamentary and presidentialism. Constitutional amendment thus has implications for changes in the overall government system to induce government accountability. There are at least three points of institutional change regarding the constitutional arrangements.

First, changes to strengthen the presidential government system clarified the division of power between executive, judicial and legislative authority. However, to avoid power centralized more into the President as the head of state and head of government, the new power arrangement was made to reduce the president's authority only in the range of executive division. This new model of power sharing arrangement has been improved compared to the one existing in the previous regime wherein the president once had the extra-power overrun into legislation and to interfere with law enforcement. Second, modifying the MPR's position from the highest state institutions to become a state institution with very limited authority equal with other existing institutions at the national level. This repositioning of the MPR resulted in equality between state institution from all branches so that horizontally they have capacity to control and balance one another. Thus, the function of checks and balances can be implemented. Third, changes to strengthen the role of the DPR in the field of legislation and to oversight executives. The three reasons mentioned as the background of constitutional amendment shows the seriousness of the newly formed post-reform government to implement horizontally checks and balances mechanisms in state institutions. Therefore, the new constitution after the fourth amendment emphasized the adoption of the presidential system and also emphasized the application of the checks and balances' principle between the state branches including executive, judicial and legislative.

However, the performance of each branch of government showed there was a challenge to establish both horizontal accountability and checks and balances mechanisms. The condition occurs due to the weakened position of KPK and the weak opposition in Indonesia political system. These conditions generated the paradox of accountability resulting from the inequality of power and resources between actors. To resolve this paradox, ideally, both parties should form relatively autonomous agencies that do not stand in a relation of formal subordination or superiority to one another. In other words, horizontal accountability presupposes a prior division of powers and a particular internal functional differentiation of the state. In the case of Indonesian politics, the unequal power between the executive, legislative, and judiciary branches is the result of formal and informal institutions. The legislative has unequal authority to check the president's accountability because it has been weakened by cartel politics seen as necessary to form a coalition with the government before and after the election. Meanwhile, the judiciary has a similar dilemma where the

presidential impeachment requires the provision and convention of parliamentarians co-opted by the government coalition. This condition even further leads to an accountability trap.

Consequently, the absence of opposition as the last resort to institutionalize horizontal accountability from the legislative branch toward the president has also contributed to the degradation of the quality of democratic governance in Indonesia. The design of a representative institution that places a second chamber with limited functions solely in terms of legislation has exacerbated this condition. As a result, under this condition, it is obvious that the implementation of horizontal accountability is almost non-existent. In addition, there is an imbalance of function and authority between the first and second chambers of the Parliament, leading to the absence of internal checks and balances within the parliament. This condition evidences the paradox of horizontal accountability by resulting in unequal power between state actors.

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Country Case 2: Mongolia

Horizontal Accountability in Mongolia: The Challenges of (Counter) Balancing

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1. Introduction

The 1992 Constitution is considered the "blueprint of Mongolia democracy" (Sanders 1992). This Constitution has served Mongolia's democracy well, as to date, eight electoral cycles have been held regularly, yielding uncertain outcomes and fostering multiparty competition for the people's votes. In the Varieties of Democracy Project's liberal democracy index, Mongolia started with a score of 0.41 in 1991 and, with slight fluctuations, ended with a score of 0.49 in 2021 (V-Dem Project 2022). At its height, it reached 0.61 in 1999. This reflects that Mongolia's road to democratic development was not smooth and had its ups and downs. Nonetheless, these scores consistently place Mongolia in the "electoral democracy" category. While this is an accomplishment in comparison to other post-communist states in the region, it is still a democracy which has institutional challenges and much room for improvement.

Based on this, this report examines the internal structure of Mongolian democracy from the point of institutional checks and balances that exist under the constitutional setting. Therefore, we present a concept of horizontal accountability, which is part of a series of constraints on government use of political power. In the Mongolian media and political discussions, horizontal accountability is not a commonly used term. As one of the cornerstones of good governance, it measures the extent to which the government is accountable to other branches (Lührmann et al 2017). This is a particularly important issue for Mongolian governance to address, given the scope of reforms that shifted the domestic power balances among the government branches in recent years. Moreover, due to the low level of trust in public institutions and a lack of belief in the impartiality of politicians (Sant Maral Foundation 2023), the public is increasingly turning to protests as a preferred measure to hold the government accountable. Overall, this suggests that citizens no longer have the patience to rely on institutional checks and balances to represent or defend public interests; instead, they are increasingly inclined to take matters into their own hands.

As a result, addressing the related governance issues is becoming an increasingly important task for the quality and durability of Mongolian democracy.

The V-Dem Project traces that the horizontal accountability index (scaled low to high (0-1)) in Mongolia had a score of 0.9 in 1991 and throughout the remainder of the 1990s (V-Dem Project 2022). Yet, it decreased following each constitutional amendment in 1999/2000 and 2019. Eventually, after fluctuations,

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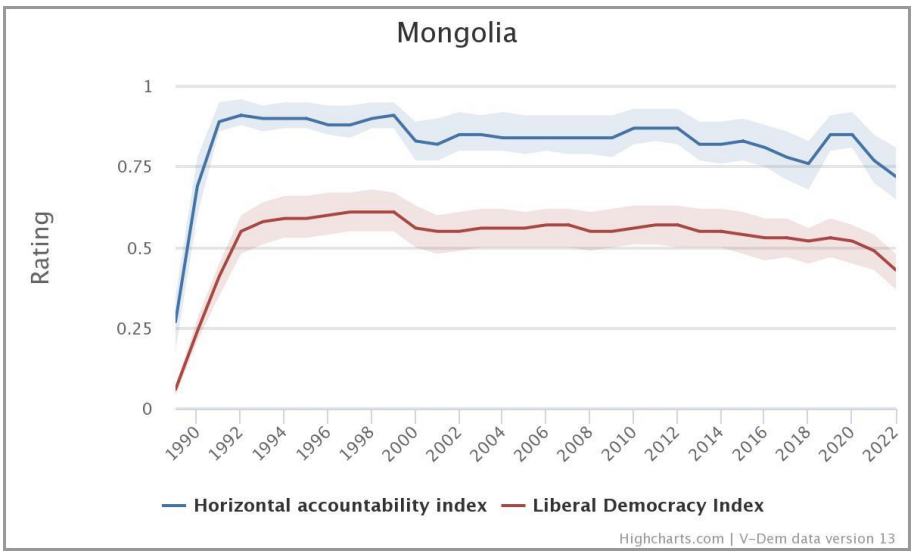
it ended with a score of 0.78 in 2021 (V-Dem Project 2022). While in the broader historical context, the scores in the last three decades are at their highest level since Mongolia transitioned to democracy, the gradual decrease in the horizontal accountability index follows the general trend of declining government accountability.

Figure 1. Horizontal accountability and Liberal Democracy Indices in Mongolia



Source: V-Dem Project

Regionally, Mongolian performance in horizontal accountability can be considered to be relatively high. While it is not at the level of advanced democracies, it performs better than countries within a similar income group. Based on the regional comparison of horizontal accountability, it can be seen that since the introduction of the 1992 Constitution, Mongolia's position and decline are the most similar to India and the Philippines. Among these cases, the most important factor linked to the decline in horizontal accountability is the continuous weakening of judicial independence (See Reports on India and the Philippines). Similarly, Mongolia's judicial branch struggles to maintain its independence following a series of constitutional and legal reforms. Moreover, in the existing political environment, oversight agencies have limited capacity and are not free from political interference. As a result, the constraints on the legislature and executive officials are weak.

Figure 2. Regional Comparison of Horizontal Accountability Index

Source: V-Dem Project

In cross-country research, Sato et al. (2022) found that in the process of autocratization, institutional decay starts with horizontal accountability, followed by declines in diagonal accountability, and ultimately vertical accountability. According to recent developments, some early signs of democratic erosion can already be found in Mongolia. As the balance of power between different branches becomes uneven, we will address some of the issues of concern, potentially pointing out some general prescriptions that can counter the process. Further investigation can also offer an institutional explanation of Mongolia's good democratic performance and ineffective governance.

The main conclusion of the current cross-country research is that if a country has better horizontal accountability, then the quality of its democracy can be improved. At the same time, if there is erosion of horizontal accountability, the quality of democracy will deteriorate. Based on longitudinal observations by the V-Dem project, we can see that the decline in horizontal accountability is correlated with the decline in the quality of Mongolian liberal democracy.

Consequently, to uncover the factors contributing to this trend, the study is organized as follows. We begin with an assessment of Mongolia's *de jure* and *de facto* horizontal accountability from a comparative perspective. It is followed by the introduction of a constitutional checks and balances system in Mongolia. Next, we describe the existing hierarchy of power among the government branches, followed by the description of recent constitutional amendments and their outcomes on political power distribution. Then, we address the legal procedures available to counterbalance the misconduct found in each government branch. After that, we assess the judicial branch's independence in more detail. Finally, we examine oversight agencies and their capabilities and conclude the study.

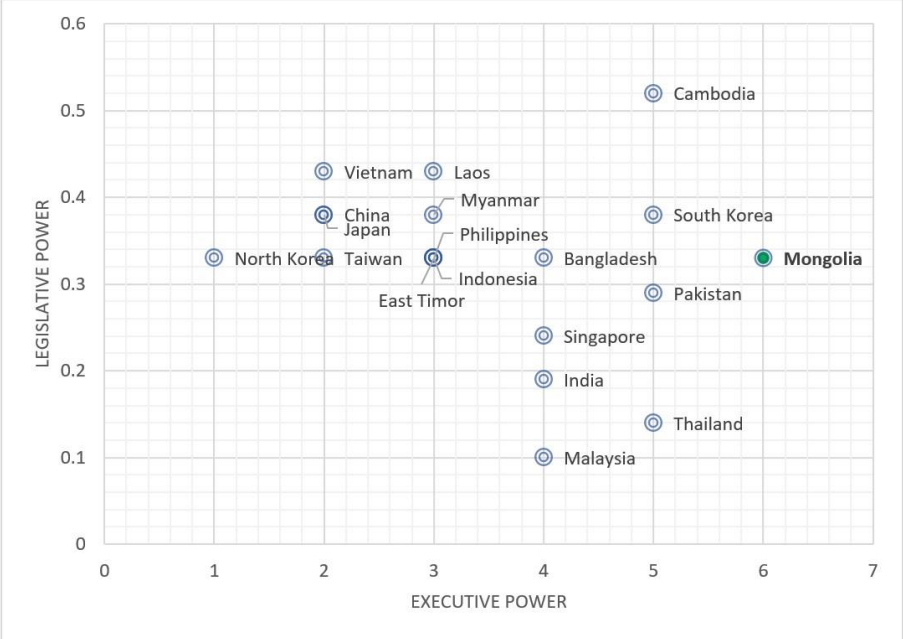
2. Mongolia in the Comparative Context

This study aims to assess the factors related to the recent trends in democratic decline in Mongolia. As evidenced by the data, most changes were gradual and would require an investigation that starts by the introduction of the 1992 Constitution that institutionalized democracy. In addition, there are formal and

informal factors that are involved in the process. Thus, analytically, it is useful to separate *de jure* and *de facto* horizontal accountability.

De jure horizontal accountability describes how much power does the Constitution assign to the executive, legislative and judicial branches. It is going to be based on the Comparative Constitutions Project's executive power indicator, legislative power indicator, and judicial independence indicator (Elkins et al 2022). The indicators based on the 1992 constitution show that the executive power was considerable, scoring 6 on a scale ranging from 0 to 7. The legislative power index was 0.33 on the range of 0 to 1, which indicates less legislative power. Figure 3 shows that regionally, Mongolian executive power is quite considerable, while the legislative power is at an average. It can be seen that the executive power is measured to be more extensive than in Cambodia, South Korea, Pakistan, and Thailand. Moreover, Figure 4 shows that Mongolia scores 4 for judicial independence in the range from 0 to 6, which can be considered average within the region.

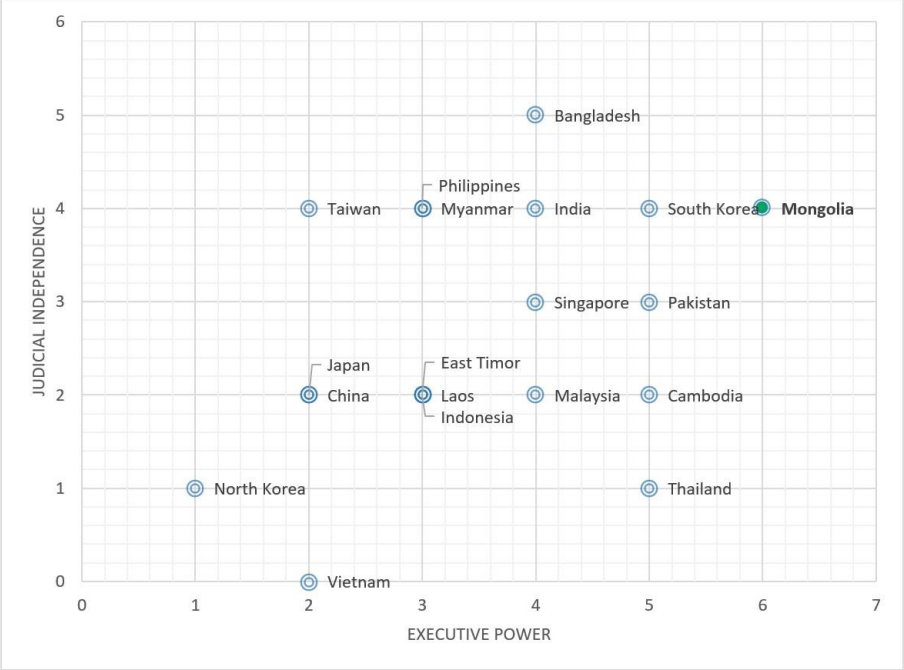
Figure 3. Executive Power vs. Legislative Power



Source: Data from the Comparative Constitutions Project

Initially, the Mongolian Constitution introduced a balance between the executive and legislative branches. Thus, prior to amendments, Mongolian legislative and executive powers were relatively balanced. In contrast, the judicial branch's powers were set to be weaker from the beginning. Further constitutional amendments mainly upset the balance between the executive and legislative powers, leading to the current setting where the legislative branch is dominant, and the other two branches are weak.

Figure 4. Executive Power vs. Judicial Independence



Source: Data from the Comparative Constitutions Project

Given this, it is important to mention that the executive branch in Mongolia is complicated, and in the future analyses, it would be necessary to distinguish the situation before and after the 2019 constitutional amendments. Prior to the amendments, there was an ambiguity about who was the head of the executive branch, as there was a considerable overlap between the president and the prime minister. Specifically, the Constitution explicitly states that the cabinet, led by the prime minister, is "the highest executive organ of the State" (Article 38.1). Yet the president's role in appointments and legislative initiative implies executive power (Article 33.1). Notably, the 2019 amendment ended this ambiguity by expanding the prime minister's powers to fully form the cabinet, clarifying that the prime minister is henceforth the head of the executive branch. Future indices may need to reflect this change.

Nonetheless, as we focus on the general situation and consider the president as the head of the executive, it should be noted that the powers given to the president as the national executive are significantly constrained. For that, we are going to break down the executive index in more depth. The index is additive and is composed of seven aspects that measure presence or absence of certain presidential powers. The first aspect measures the power to initiate legislation and is present (Article 26.1). The second involves the power to issue decrees and is also present. Even if the president has the power to issue decrees, the Constitution specifies that a co-signature of the prime minister is necessary for it to be effective (Article 33.1.3). Despite this, in the Mongolian Constitution, both powers are considerably constrained by the president's lack of budgetary powers. Thus, regardless of the aspirations, it is improbable that any of the presidents' initiatives will be realized unless they receive legislative support.

The third measurement includes the power to initiate amendments, and it is also constrained, as the president can only initiate constitutional amendments together with "the competent organs or officials with the right to legislative initiative", or more specifically, "The President, Members of the State Great Hural (Parliament), and the Government (Cabinet)" (Articles 68.1 and 26.1). The fourth measurement covering the

power to declare states of emergency is present; however, it is also constrained by the legislature's decision to endorse or invalidate it (Article 33.1.12). The fifth measurement on veto power is present in Mongolia, but it is limited by the parliament's ability to override it by two-thirds of its members (Article 31.1.1). The sixth power to challenge the constitutionality of legislation is absent, as this power is reserved to the Constitutional Court (Tsets). The seventh includes the power to dissolve the legislature. This power is also limited as Article 22.2 specifies that the president can only do so in concurrence with the speaker.

Following from this, there are multiple conditions in the Constitution that introduce controls over the presidential power. Particularly, six of the index's seven powers are present, but all of them are constrained either directly by the legislative branch or indirectly through budgeting. As a result, the veto is the most significant power of the presidency due to the president's ability to use it repeatedly and bring public attention. Therefore, we suggest that there are limitations in the index's ability to capture the nuances of the executive power and, as a result, the president's role in the checks-and-balances can be overestimated. Based on the current indices from the Comparative Constitutions Project, it may seem that the Mongolian executive branch is dominant and is an outlier in the region. Especially, as it shows that the Mongolian president is even more powerful than in South Korea, which has a presidential system. However, considering all the constraints included in the Mongolian Constitution and recent amendments, the reality is quite different. Thus, the indices would have to be updated to reflect the new setting.

In the end, the 2019 constitutional amendments have significantly changed the equilibrium established by the 1992 constitution. As a result of the continuous shift of power toward the legislative branch following the 1999/2000 and 2019 amendments, the legislative branch became the most dominant. As a result, the relationship between the three branches became unbalanced with the power predominantly concentrated in the legislature. This imbalance has been further exacerbated by the significant weakening of executive power through the new limits imposed on the presidency.

Specifically, the executive powers of the president have been considerably reduced by an introduction of a single term, higher age, and a reduced role in the judicial appointments. In particular, these changes have decreased the incentives for an active role in inter-branch power relations. In the past, the prospects of re-election made presidents more likely to pursue their own agenda, but since 2019, the shift to a one-term (6 years) presidency has diminished initiatives for political activism. As for the judicial branch, despite the constitutional declaration of its independence, its original design that made higher-level judges and prosecutors political appointees introduced a loophole. Considering a more comprehensive overview of powers, the 1992 constitutional design balanced the executive and legislative powers while leaving the judicial power with an in-built weakness of these political appointments. After the recent amendments though, the balance tilted the following way:

To summarize, in terms of *de jure* horizontal accountability, the 2019 constitutional design in Mongolia lacks balance. While the original 1992 constitution established a good structure for avoiding the concentration of power in one particular branch, the subsequent amendments in 1999/2000 and 2019 changed this balance. After the amendments, the legislative power is dominant, and due to the existing imbalances, it cannot be adequately checked by the executive and judicial branches. Adding to the issue is that major oversight agencies are not free from political interference. This could also explain the decreasing levels of horizontal accountability and the corresponding decreases in the levels of liberal democracy (Figure 1). Altogether, this leads to the conclusion that *de facto* horizontal accountability is even lower than *de jure* accountability. The following sections will focus more on domestic-level power arrangements to further elaborate the case.

3. Checks and Balances

The 1992 Constitution introduced a semi-presidential form of government. This power arrangement resulted in constant power struggles between the president's office, the prime minister and his cabinet, and the parliament. This constitutional arrangement is credited with setting the Mongolian democracy on a long-term structural advantage among democratizing post-communist states overall (Fish 1998). On the positive side, during Mongolia's transition to democracy, no branch could monopolize power, which became a positive institutional arrangement preventing it from drifting to authoritarianism seen in the former Soviet Union states in Asia (Fish 2001). However, on the negative side, this arrangement can lead to power disputes and political deadlocks during cohabitation (the president and the majority parliamentary party from opposing parties) and divided governments.

Historically, the most prominent example occurred when disputes between different government branches paralyzed the parliamentary term from 1996 to 2000, contributing to debates about the political stability or functionality of the democratic system. However, changing this system was never a popular idea based on opinion polls, as most of the population supported democracy as a form of governance (Sant Maral Foundation 2023). Therefore, the introduction of the first constitutional amendments partially addressed constitutional conflicts. Such political deadlocks during cohabitation and later coalition governments align with the general research on semi-presidential systems.

In the first place, the 1992 Constitution's institutional equilibrium introduced an overlap between the president's office, the prime minister, and the parliament. The design was based on the principles of checks and balances among different branches of government that relied on coordination. In practice, the Constitution relied on 'consensus' among the executive and legislative branches; an aspiration too difficult to achieve during periods of divided governments and cohabitation in a new democracy. This consensus or concurrence (depending on the translation) between the president and parliament was explicitly required in many articles in the 1992 Constitution, but later most of them were reversed by amendments in 1999/2000 and 2019. Moreover, the absence or underdevelopment of institutions to ensure the continuity of policies exacerbated the debates about stability and functionality.

Eventually, two major constitutional amendments were introduced to remedy some of these institutional conflicts. As a solution, they shifted the balance of power from the president to the parliament. While the decision is based on an argument that such shifts reduce the possibility of strongman politics associated with an all-powerful president, due to one-party dominance, it still led to a power concentration with an all-powerful parliament and prime minister. As a result, the previous balance of power between different branches of government became uneven, and the institutional equilibrium that has served Mongolian democracy well since 1992 has changed. It is still early to assess whether this is a positive or negative development, as further constitutional amendments and reform are being discussed. Yet, some recent developments such as the constitutional amendment in August 2022, Cyber Security Laws, and Human Rights Laws are causing concerns, with the abrupt introduction of legislation without public discussion or minimal oversight.

In the constitutional design, the separation of power in the legislative and judicial branches is clear. According to Article 20, the unicameral parliament, the State Great Khural, holds the legislative power. Article 47.1 states that courts and the Supreme Court exercise judicial power. However, the executive branch was always more ambivalent due to an overlap between the president and the prime minister. Article 38.1 of the Constitution explicitly states that the cabinet, led by the prime minister, is "the highest executive organ of

the State." Yet, the president's role in appointments and legislative initiatives given by Article 33.1 implies executive power.

4. Hierarchy of Power

Despite legal ambivalence on the exact political hierarchy and significant constitutional limitations, the presidency is considered the top of the political establishment. This is because the presidency symbolizes the apex of political power in Mongolia, backed by a direct national vote and the popular legitimacy it confers, thereby rendering other state positions as somewhat subordinate. It is disputable whether the second highest position is the prime minister or the chairman (speaker) of parliament. Constitutionally, the prime minister is a much more powerful position than the presidency and is more visible to the public. Following the constitutional amendments in 2019, it became clear that the prime minister is the head of the executive and holds most of its powers. For example, in cases where there is no consensus on the structure and composition of the cabinet with the president, the prime minister can form his own cabinet by only presenting it to the parliament and president (2019 amended version Article 39.4). However, according to the Constitution, the prime minister and his cabinet are collectively responsible solely to the parliament (Articles 25.1.6 and 41.2). Also, given the more extensive powers of the legislative branch and, in particular, powers to remove the immunity of parliamentarians (Law on the Parliament 2020, Article 9.1), the speaker of the parliament effectively holds the second highest position. The speaker also replaces the president in case of absence, incapacity, or resignation. Therefore, the prime minister holds the third highest position.

The ideal design of the presidency was to mediate between conflicting parties and factions or be "above politics" (Chimid et al. 2016). Before the 2019 constitutional amendments, presidents could not afford to be non-partisan in the first term if they sought re-election. After these 2019 amendments, which raised the age of presidential candidates from 45 to 50 and limited them to one six-year term, the president's incentives for "activism" during their time in office and role in the separation of power have considerably decreased. Currently, the president's role as a counterbalancing power is minimal, and the most substantial power is veto power, which remains limited by the parliament's ability to override it by two-thirds of its members.

In addition, before the 2019 constitutional amendments, the president played a prominent role in judicial nominations. Especially, the president could appoint all judges upon the proposal of the Judicial General Council (Article 51.2) and could appoint the prosecutor general and his deputies in consensus with the parliament (Article 56.2). After the 2019 amendments, the number of appointed judges is limited to five out of ten, and the rest are selected through open hearings (Article 49.5). Specifically, this amendment affected Article 49.5: Five members of the Judicial General Council (JGC) shall be selected from among the judges and openly nominate the other five members. They shall work once for four years, and a Chairman of the JGC shall be elected from among the members of the JGC. Reports on JGC activities in connection with ensuring the independence of judges shall be presented to the Supreme Court. The organization of the JGC, operational regulation, the requirements for its members, and the rules of appointment shall be determined by law. The Constitution remained ambivalent on who exactly is to make these appointments, leaving it to speculation that it most likely is the parliament. Nonetheless, new laws will presumably detail the nominations and appointments.

Constitutionally, the Supreme Court is the highest judicial body. The JGC is its administrative body. In cases of Supreme Court Justices, the JGC selects and nominates judges for an appointment either by the

president or the parliament. The Constitution grants the Supreme Court authority to examine all lower court decisions and provide official interpretation of all laws except the Constitution. Articles 64.1 and 66 give the Constitutional Court the general power of constitutional interpretation. Nevertheless, given the appointment system, it is highly disputed whether the judiciary and the prosecutors can be truly independent in the existing system. Furthermore, in 2019, the Law on the Legal Status of Judges allowed the National Security Council consisting of the President, Prime Minister, and the Speaker of Parliament to remove judges (Transparency International 2019; Dierkes 2019).

5. Recent Constitutional Reform and Political Outcomes

In 2019, the government led by Mongolian People's Party pushed comprehensive constitutional amendments that shifted the balance of power to the parliament and limited the presidential term. However, these changes did not go far enough in changing the nature of the political system, and it remained semi-presidential. After that, there were two other amendments. The amendment on August 25, 2022, repealed the limitations introduced by the 2019 amendments on the "double deel" issue.[3] The second amendment on May 31, 2023, introduced a mixed electoral system with 78 members of parliament elected by majoritarian and 48 by proportional representation.[4]

The 2022 repeal highlights the enduring importance of the "double deel" issue ("давхар дээл", deel is the traditional Mongolian clothing). It is one of the most politicized legal issues centered on the debate whether cabinet members and members of parliament can hold concurrent posts. The initial Constitutional Court decision was that they could not, but the 1999/2000 amendment reversed it. Nonetheless, the 2019 amendments limited the number of such members of parliament to four, but the 2022 amendment removed this limitation. At the core of this issue is that members of parliament are granted political immunity (Article 29.2); therefore, leading to a higher risk of abuse of power, as cabinet members who are concurrently members of parliament have access to resources and immunity to evade justice. In the context of Mongolia with systemic corruption, this becomes a particularly controversial issue.

The 2023 amendment, though, is more about the enlargement of the legislature from 76 to 126 members. This amendment also introduced a mixed electoral system (78 majoritarian seats and 48 proportional seats) and was followed by corresponding changes in election laws. Since 1992, Mongolia has mostly had a majoritarian electoral system, and only had a mixed system for the 2012 parliamentary election (48 majoritarian seats and 28 proportional seats). The re-introduction of the proportional component also reversed the 2016 Constitutional Court ruling against it. As the process of adoption and the rationale behind this amendment was not open to public challenge or debate, it is likely to have been another instance of behind-the-door elite bargaining with a resulting compromise between politicians who are able to win concrete electoral districts and those who enjoy nationwide popularity and stand better chances on a national list.

The need for enlargement, though, is unlikely to have gained public support, and the official perspective is that it is all part of bringing 'stability' to the political system and 'bringing parliamentarians closer to the people' (Lkhaajav 2023). Earlier, the rationale for enlargement also included geopolitical considerations, such as reducing opportunities for external influence on a larger number of politicians and responding to a growing population (Bayarlkhagva 2022). Nonetheless, it is important to note that these

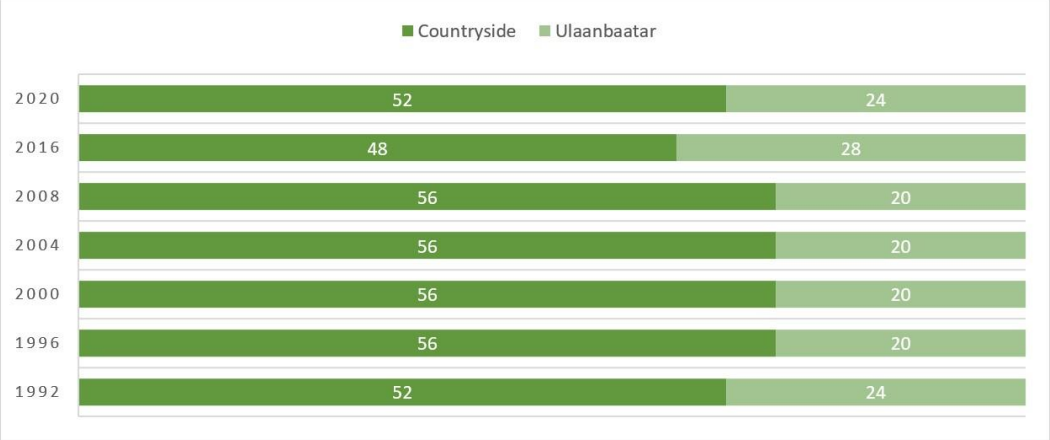
[3] See the document at https://legalinfo.mn/mn/detail?lawId=367&type=2 (in Mongolian).

[4] See the document at https://legalinfo.mn/mn/detail?lawId=16759482929681&showType=1 (in Mongolian).

changes do not address the main issues affecting the stability of the political system, such as low trust in political institutions and a weak party system. Tied to this is a lack of real opposition in the system that further reduces the accountability of the ruling party.

Given this, past research on the effects of electoral reform that compared the performance of electoral systems highlighted the continued importance of the urban/rural cleavage in Mongolia (Maškarinec 2018). It is yet to be seen how exactly the mandates are going to be distributed. However, considering that Ulaanbaatar continued to receive less than half of all the mandates despite having nearly half of the population, it is not certain that the existing population distribution is going to be considered. The main problem is the existing disbalance in mandates assigned for rural and urban representation. The reasons for the disproportion are mainly political as rural constituencies tend to vote for the ruling Mongolian People's Party (MPP), and urban constituents tend to cast the most protest votes. In general, this has cast doubts on representativeness and equality of vote, but it has not been successfully challenged in the given power distribution.

Figure 5. Past Distribution of Mandates between Ulaanbaatar and the Rest of the Country



Source: General Election Commission of Mongolia

*Note: The 2012 election is excluded, as a mixed system was introduced at that time.

In the end, the main problem with the recent reforms is that they have been passed without offering an opportunity to challenge or dispute them. This invokes further concern about the state of accountability that the current political power setting has to offer. In the long term, a complete transition to parliamentarism has been a long-sought political goal by political elites. The prevalent belief is that stability in decision-making would result from a shift of power to parliament and the creation of a powerful prime minister position. Ambitious presidents mostly supported the transition to the presidential system. Nonetheless, one of the significant changes introduced by the 2019 constitutional amendments was a considerable change in the checks and balances system. The institutional equilibrium between the executive, legislative, and judicial branches shifted toward an all-powerful parliament and prime minister. It should not have been an issue; however, it happened in an environment with decreasing mechanisms of control needed to counterbalance or challenge misconduct.

6. Counterbalancing Misconduct

Due to the numerous laws passed in the last thirty years, there is a saying that Mongolian Law lasts three days. As a result, in comparison to the Constitution, the Law on Parliament and Law on Cabinet (1993) were amended dozens of times (at the time of writing, the count is 38+ times each), making it a highly contested area to interpret for lawyers or anyone for that matter. Some areas are ambivalent or untraceable after amendments because various political interests clash, and high-level politics is involved.

Regarding the constitutional procedures for removing prime ministers, a vote of no confidence has removed prime ministers at least three times.[5] Others managed to survive the vote of no confidence. As for presidential impeachments, no president has been removed while in office yet. N. Enkhbayar was arrested following his term in office and is the only former president that returned to party politics. Other former presidents retired from political life.

Nonetheless, the case of Kh. Battulga is also quite notable and shows struggles among the different branches. In particular, the changes from the 2019 constitutional amendment reduced the president's power and granted more authority to the prime minister. One notable aspect was the introduction of a single six-year presidential term limit, sparking debates among politicians and legal experts regarding its immediate application to the current president. Thus, in 2021, following the Constitutional Court's ruling that barred current and former presidents from running for re-election, President Kh. Battulga responded by issuing a decree to dissolve the ruling Mongolian People's Party (MPP). He accused the MPP of influencing the court's decision and of involvement in an NGO associated with retired military personnel, which he deemed inappropriate for political parties. Amidst rumors of political maneuvering such as cancelling meetings of the small chamber and changing one justice of the court by the Parliament, the Constitutional Court ruled against the re-election of current and former presidents.

In contrast, the parliament consists of 76 members, and after eight election cycles, there are many more parliamentarians to investigate. From the beginning, the most challenging obstacle for the prosecution was parliament immunity, guaranteed by the Constitution in Article 29.2 and legalized by Article 9.8 (formerly Article 34.7) in Law on the Parliament (May 07, 2020, version). Nevertheless, Article 9.1 states that the parliament shall decide whether to suspend the powers of a member of parliament. More specifically, in Article 9.1.1, when "the State Prosecutor General has submitted a proposal to the State Assembly to arrest him with evidence in the course of his criminal act or at the scene of the crime, and then to suspend his powers."

Another legal challenge in 2016 to countering misconduct comes from the Law on State and Official Secrets. It is mainly criticized for shielding internal deal-making. While it was modified over the years, the changes were insubstantial, and the main challenges remained as its scope is defined too broadly (see Article 5 "Definitions" where almost anything is a "state secret") and classification periods are long and easily extended (see Article 17 "Duration of information secrecy").

In view of this, the existing checks and balances are such that high-level public officials rarely get prosecuted. The presence of public outrage and demonstrations is one of the deciding factors in bringing up high-profile cases. Among recent issues that received significant public attention was the dismissal of Speaker M. Enkhbold in 2019 after the public outcry over high-profile corruption scandals (Bittner 2019). Regarding the Constitutional Court, a notable high-profile case was the removal of its Chairman D. Odbayar,

[5] The exact number is difficult to trace, due to the absence of open information on the topic.

due to mounting public pressure over his involvement in the sexual harassment of a South Korean flight attendant on a flight from Ulaanbaatar to Incheon (*IKON News Agency* 2019-11-22). Most recently, the 2022 Coal Scandal brought down a number of politicians (including two members of parliament) after triggering a large-scale protest in Ulaanbaatar. There are other cases involving parliament members; however, many happened after their term in office or were eventually overturned. The main reason is that the judiciary can hardly maintain its political neutrality or independence under existing power arrangements.

7. Judicial Branch's Independence

As previously stated, constitutionally, the Supreme Court has the authority to examine all lower court decisions and provide official interpretation of all laws except the Constitution (Article 50). The Constitutional Court holds the general power of constitutional interpretation (Articles 64.1 and 66). There is a debate among scholars and politicians about the need for a separate Constitutional Court when a Supreme Court could take over the duty of constitutional interpretation. After much back and forth in arguments, the most plausible clue to date comes from the composition of the Constitutional Court. While members of the Supreme Court are explicitly required to be professional lawyers (Article 51.3 "A Mongolian citizen who has reached thirty-five years of age with a higher education in law and a professional career of no less than ten years may be appointed as a judge of the Supreme Court"), the members of the Constitutional Court had to have high qualifications in politics and law (Article 65.2 "A member of the Constitutional Court shall be a Mongolian citizen who has reached forty years of age and has high qualifications in politics and law"), and their nominations applied the principle of the distribution of power between different branches. The Constitutional Court has nine members of the following distribution: the parliament, the president, and the Supreme Court respectively nominate three members each (Article 65).

Overall, the existing system of judicial nominations is one of the major barriers to judicial independence. The political nominations of justices and the prosecutor general introduce a high risk of politicization of the judiciary. The next big obstacle is the amendment to the Law on the Legal Status of Judges in 2019 that allows the National Security Council to remove judges (Transparency International 2019; Dierkes 2019). There are plausible arguments that it is necessary due to existing corruption in the legal system. The problem is that high-level corruption is endemic in the whole system, and the removal of judges can also serve political motives. Consequently, the issues with the judiciary's political neutrality and independence undermine the judicial branch's function as a counterbalance to the other branches of government.

From the beginning, the legacy of the socialist legal system impacted the judicial branch longer, as the reform in this branch was more gradual in comparison to the economic and pollical transformations in the 1990s. During the period of communism, the legal system was completely subordinate to the party state. After the establishment of democracy, the concept of division of power and the need to distance from one party rule led the reformers to adopt a constitution based on ideals of checks and balances. Thus, the introduction of an independent judiciary was a stated goal. Nonetheless, the external appointment system of major positions in the judiciary and prosecution politicized the branch. While political appointment of Supreme Court justices is a practice also present in other countries, the challenge in Mongolia is that the whole process of selection criteria is opaque and unchallenged, so appointments are often a behind the door compromise with loyalty as a main requirement.

8. Oversight Agencies and Their Capabilities

Mongolia has a longstanding problem with corruption in the public sector. Still, the main obstacle to legislation is not as much existence of loopholes and inconsistencies, but the issues summarized as the weak rule of law. According to Transparency International's assessments, Mongolia's 2021 corruption ranking stands at 110 out of 180 with a Corruption Perception Index of 35, which places it among countries with a serious corruption problem (Transparency International 2022).

The two major oversight agencies are the Mongolian National Audit Office and the Independent Authority Against Corruption of Mongolia (IAAC). The Mongolian National Audit Office is the country's central audit institution. The Law on State Audit (2020) gives it a broad mandate. It states in Article 5.1. "The main goal of the state audit is to monitor the planning, distribution, use and spending of public finances, budgets and public property in a legal, economical, efficient and effective manner, as well as improving public financial management and supporting sustainable economic development." In practice, though, it is limited in human resources and often runs into issues with overall capacity (ADB 2019). Unsurprisingly, when high-level politics is added, it is rare that a state audit finds any wrongdoings. The Constitution grants the parliament budgetary powers under Article 25.1.7. In response, Article 6.1 of the Law on State Audit gives the Mongolian National Audit Office the mandate to audit all except the parliament. Specifically, in the Law on State Audit, Article 6.5 states that it can audit the parliament "if requested by parliament."

The IAAC is another oversight institution with an overly broad mandate that allows it to investigate corruption cases and educate the public about prevention mechanisms. According to the Law on Anti-Corruption (2006), the IAAC is in charge of income and asset declarations of the president, the prime minister and his cabinet, members of parliament, and officials appointed by them (Article 11.1.1). To date, the most significant obstacles to its capacity to actively investigate corruption cases of high-level public office holders are issues related to either political immunity or amnesty laws. As of July 2021, Mongolia has passed its seventh amnesty law (Baljmaa 2020). The problem is that some of these amnesty laws would apply to a broad range of cases that would also grant protection from prosecution for corruption or lead to the termination of cases under investigation by the IAAC (UNCAC Coalition 2015). Generally, the IAAC faces frequent accusations of operating at random or with significant political bias. In the past, the president could appoint the head of the IAAC, but in January 2021, the parliament made amendments to the Law on Anti-Corruption that shifted this power to the prime minister (Article 21, updated; Baljmaa 2020). This shift can be seen as further empowering the prime minister's position.

These institutional factors contribute to the deterioration of proper checks and balances in the system and explain why so much of the high-level corruption tends to go undetected or under-investigated.

9. Prospects

Following the development of media headlines in recent years, analysts and commentators have started describing Mongolian political developments as a crisis of democracy. While multiple problems contribute to the overall decline in democratic governance, the core issue described in this report is that there are currently no efficient systems of control to form proper checks and balances. The past equilibrium of checks and balances has been broken, but the new system is highly unbalanced. As noted earlier, the shift of power to the legislative branch should not have been a problem, but it happened in the context of a weak party system and a weak judicial system.

Overall, this leads to the conclusion that despite the constitutional design and intent, the principle of separation of power runs into considerable challenges. Moreover, it is increasingly difficult to enforce in the current political setting, as other branches and oversight agencies cannot adequately check legislative power. As a result, this leads to rather grim prospects for horizontal accountability in the short term. As for the medium to long term, it is still too early to judge, as this type of power arrangement is unstable and there are talks about further reforms. Despite the political elite's insistence that the reforms were made in order to ensure political stability, there are more factors to consider. One of the underlying convictions of the political elites is that the fast turnover of the government undermines political stability; as a result, all recent major reforms focused on solidifying the legislative power and the prime minister with his cabinet. In reality, the government turnover should not have been a problem, but the fast turnover of the civil and public servants in the corresponding institutions was a problem for policymaking and implementation.

It was earlier noted that if there is an erosion of horizontal accountability, then the quality of democracy will deteriorate (Sato et al. 2022). Also, for domestic politics, it is important to mention that cross-national research shows that dominant party regimes are found to be more vulnerable to mass protests (Ulfelder 2005). Moreover, the current regional instability is likely to lead to further economic decline, which means even less resources for reform and higher stakes in losing political power. Altogether, leading to more uncertainty and risk externally and domestically.

The big picture is that since Mongolia started its democratization in 1989, its democratic performance has been relatively high among the Third Wave of democracies. Especially, when we consider that Soviet institutional legacy and levels of economic development make it analytically closer to post-Soviet Central Asian states. Yet, if we consider the developments since 1992 (when democracy was institutionalized by the Constitution), by now we still can also observe gradual decline in the quality of its democracy.

However, despite these challenges, the political elite is likely to remain interested in the democratic system. Mongolian geopolitical position makes its democracy vulnerable to institutional spillover effects from China and Russia. Yet, its foreign policy of attracting third neighbors makes the political elites interested in maintaining the democratic system. This foreign policy has been a cornerstone of Mongolian foreign affairs, and fundamentally it tries to balance Mongolia's dependence on China and Russia by finding other partners. Implicitly, it also had a lasting impact on its choice of political system as it supported Mongolia's membership in the community of democracies. Nonetheless, due to the existing problems with systemic corruption, the political elite is not interested in strengthening the judiciary's role and the rule of law, which are crucial for advancing democratic quality in Mongolia. In view of 2024 parliamentary elections that would involve a much larger legislature, it is yet to be seen in the future whether this would indeed ensure political stability and increase efficiency.

10. Solutions

Given the current power arrangements, how do we enhance horizontal accountability?

The World Justice Project's Rule of Law Index, which ranges from 0 to 1, gives Mongolia an overall score of 0.54, which indicates a 'mediocre' performance (World Justice Project 2022). Globally, it is ranked 65 among the 128 countries, and regionally its overall performance is the closest to Indonesia. Among the main factors included in this indicator is that it scores the lowest in terms of the absence of corruption in government. If we delve deeper into subfactors, we can see that it has one of the worst

performances in the use of office for private gain by legislative branch public officials. As of 2020, it was ranked 114 out of 128 countries, which places it among the worst performers globally and regionally.

This report described the current constitutional setting and the imbalance in power arrangements that were introduced by the amendments. One of the main risks in the current political setting is the overconcentration of power in the legislature, which any existing institutional controls cannot adequately counterbalance. Importantly, the shifts of power happened at a time when there was one party dominance, weak counterbalancing institutions, and most importantly, a lack of judicial independence. Altogether this leads to a political environment where public officials in power are barely accountable. The main concern is that it also leads to decreasing transparency of decision-making in the legislature with very little oversight or chance of being challenged by any other institutions.

Thus, the main solution should be focused on strengthening and improving the judicial branch. At the time when most of the counterbalancing institutions are weak, that remains the general approach. That is given the view that the power imbalance among different branches is especially relevant for the judicial branch, as judicial nominations and budgetary constraints put it at a high risk of manipulation by the other branches of the government.

While judicial reform has been on the agenda throughout Mongolia's democratization process, earlier efforts of the top-down or institution-building approach for judicial reform have been unsuccessful (Fenwick 2001; White 2009; Chimid 2017). The problem remains unresolved to date, as at a deeper level, such approaches do not work well in countries with systemic corruption, where the key stakeholders are both reformers and the reformed.

As a persistent problem, it was attributed to the fact that institutions involved in the judicial reforms had ignored the core problems, such as the corruption of the judicial branch (White 2009). In addition, while there is a lot of focus on political independence, the problems are also related to judicial budget, integrity, transparency, and accountability. In the end, this suggests that in the current institutional setting in Mongolia, the mixed approach with bottom-up pressure for reform and implementation is more appropriate.

Other general solutions are that Mongolia needs to continue developing its party system. Currently, the weakness of the party system is contributing to the lack of opposition as a balancing force in the democratic system. In particular, to counter special interests the opposition should play an important role in directing agencies charged with preventing and investigating corruption (O'Donnell 1998). It is highly unlikely that within the existing power concentration, there is the political will to give the preventative agencies or oversight agencies the actual capacity to ensure justice. To date, the overconcentration of power and decreasing accountability only increased the risk that decision-making is not made in the wider interests of society.

Finally, government accountability is a multi-actor and a multi-dimensional process. Therefore, in addition to the improvements in the extent of horizontal accountability, government's accountability to its citizens (vertical accountability) and media and civil society (diagonal accountability) needs to improve. As part of the comprehensive approach leading to improvements and transparency in governance, the bottom-up pressure would involve increased activity on behalf of the media and various civil society organizations that ensure diagonal accountability. As for vertical accountability, the vigilance of public opinion influencers and citizens is increasingly important as well. These two aspects of accountability, though, would be a topic of future research.

We would like to note that the concept of 'checks and balances' is still rather new in Mongolia. Historically there was no precedent, and during communist times the centralizing and all-encompassing

control of the party did not even allow for any balancing forces to exist. Thus, it is an accomplishment of the modern democratic system to introduce the concept and the related condition of 'accountability'. Even so, it remains an obscure concept to the general population and even to some of the older cohort of politicians. The most common Mongolian translation of accountability is 'хариуцлага', which does not properly convey its meaning within a democratic setting. The main issue is that the direct translation of 'хариуцлага' is 'responsibility', which unnecessarily loaded the concept with a paternalistic undertone. Moreover, the principles of separation of power are also not intuitive for those unfamiliar with the framework of democratic governance. Thus, from the beginning, to an average person, it can lead to an incorrect mindset and expectations about the direction and types of accountabilities in power relations.

Nevertheless, the accomplishment of the democratic system is that issues such as the types of accountabilities and their needs are receiving attention. It is thus important for the future development of the Mongolian democracy to continue such discussions and try to resolve them as they emerge. At the end of the day, Mongolian democracy is still relatively young and would require more adjustments and improvements. Most importantly, though, these changes would require all stakeholders to participate openly and transparently, as a stable democracy needs not only active but informed voters.

11. Conclusion

We can conclude that while prospects for increasing horizontal accountability of the government are not good in the short term, the system still has the capacity for improvement. There are several major factors challenging the proper functioning of checks and balances in the system that need to be continuously addressed. Importantly, there is a lack of judicial independence. In the existing system, the key judiciary members are most likely to be political appointees; as a result, their political neutrality and independence are questionable. Relatedly, it becomes a further issue when dealing with cases that involve the high office. The extent of judicial reform in the past was hindered by mostly the top-down approach taken by the donor agencies. In the future, a mixed approach, including bottom-up pressure from the citizens and the community, could be a better approach for ensuring that Mongolian democracy continues to evolve positively and to ensure the rule of law. In addition, more transparency in decision-making is necessary to ensure that the legislation is not just passed but checked. For this, the role of diagonal accountability needs to improve, which, at a minimum, would involve improved media access and coverage.

A further issue of concern pointed out in this report is that the major oversight agencies, such as the National Audit and the IAAC, are not free from political interference. As for other avenues, there is a lack of support and opportunities to involve citizen oversight agencies. Overall, these challenges create considerable gaps in horizontal accountability in the system. While not evident and difficult to assess in the short run, a lot of these institutional challenges have a cumulative impact on the quality of democracy.

It is not an overstatement to suggest that unless the institutional ways of directing public concerns are improved, the instances of mass protest might only increase in the existing political environment. In particular, the long-term institutional advantages of the ruling party and the current weakness of the opposition have also led to a system with one-party dominance, which is prone to protest. While protesting is not necessarily a threat and can be a political outlet in a democracy, the issue is that the government's response to the public protest was mostly superficial and later focused on limiting rather than addressing protesters' concerns. Over time, the risk of taking this approach is that unless the underlying governance issues, particularly institutional ways to defend and represent the public interest are not improved, the

confrontation between the government and the public might become more serious. Nevertheless, in the short term, given all the benefits of the status quo, it is unlikely that the current political elite would push and implement the necessary reforms, leaving citizens' vigilance and participation as the primary tools leading to policy change.

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Country Case 3: Pakistan

State of Horizontal Accountability in Pakistan: Current Challenges and Reforms

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1. Background

Defined as the extent to which state institutions hold the executive branch of the government accountable, horizontal accountability can be achieved when different state institutions implement their functions of checks and balances to prevent the abuse of power by the executives. For example, when the legislature oversees the executive branch or a judicial branch reviews the laws passed by the legislative branch, this is also a form of accountability that runs horizontally 'among equals' (O'Donnell 1998; Lindberg 2013).

The function of oversight that different state institutions perform over one another is also commonly referred to as horizontal accountability. Legislative committees are also included in horizontal accountability and question executive government about their performance and hold them accountable. In Pakistan, the National Assembly and Provincial Assemblies can also exercise accountability through a vote of no confidence. Therefore, the horizontal accountability mechanism emphasizes the separation of powers among state institutions to prevent abuse by allowing other state institutions to demand information, question officials, and possibly punish improper behavior (Rose-Ackerman 1996).

Democratic countries stand on three pillars: the legislature, judiciary, and executives, and their functions are also well-defined. Drafting, the introduction and passage of laws, scrutiny of the executives, and provision of a forum to express public sentiments by elected representatives are the key functions of the legislature. The judiciary settles disputes between the government, groups, and people, and the executive is responsible for administering state affairs and carrying out laws. In Pakistan, the distinction between the legislature and executive is blurred at the top because the prime minister is the chief executive of the country as well as the leader of the majority party in the National Assembly and is, therefore, a part of the two pillars of the state. Generally, each of these three institutions does not interfere in each other's domains; however, the pre-mature dissolution of two Provincial Assemblies of Punjab and Khyber Pakhtunkhwa (KP) on January 14 and January 17, 2023, respectively, raised questions about which institution is the supreme among these state institutions. Inter-institutional interference has become such a serious issue in Pakistan that the former Chief Justice of Pakistan (CJP), Asif Saeed Khosa, proposed a grand dialogue among the state institutions, including the judiciary, the executive, parliament, military, and intelligence agencies, to resolve it (Mehboob 2019).

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Similarly, over the last two decades, 'accountability' has become Pakistan's most famous political slogan (Mehboob, 2022). According to the Corruption Perception Index published by Transparency International, Pakistan received the worst ranking, and this score has been declining since 2019 (TI 2023).

The Control of Corruption Index (CCI) also showed weak performance by Pakistan in horizontal accountability. From 2013 to 2020, Pakistan's score ranked less than 1.0, except in 2014, when its score was 0.83. Horizontal accountability is executed through institutions like the judiciary, legislature, and other oversight agencies, including the National Accountability Bureau (NAB), Provincial Anti-Corruption Establishments (ACEs), the Office of the Auditor General of Pakistan (AGP), Federal and Provincial Ombudsmen.

It is widely believed in Pakistan that the NAB is the major reason for political instability and one of the hurdles to economic prosperity. Apart from its poor performance, there is a perception among the judiciary, politicians, and the media that it has been involved in selective accountability, political engineering, and political victimization since its establishment (Iqbal and Mustafa 2022).

The Parliament of Pakistan performs public sector financial accountability through a committee called the Public Accounts Committee (PAC). Meanwhile, the Standing Committees oversee the policies and performance of an elected government. Other oversight ways include call attention notices, motions, points of public importance, and resolutions raised in the Parliament, and the parliamentarians are asked questions during the proceedings about the workings of the executive government. In parliamentary democracies, the Committees are considered the "eyes, ears, hands and even brain of the Parliament." Another saying about the importance of the Committee is that "Congress in session is Congress in public exhibition, while Congress in its committee room is Congress at work" (Wilson W. 1885). In Pakistan, 'Congress' can be considered the 'Parliament.'

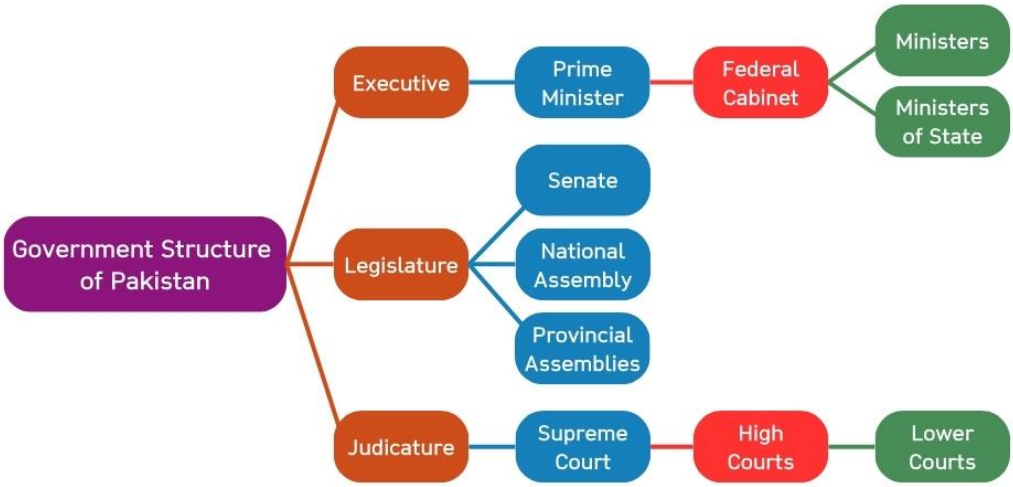
The purpose of this paper is to describe Pakistan's horizontal accountability structure. Moreover, its objective is to evaluate Pakistan's current state of horizontal accountability and to study the strengths and weaknesses of accountability mechanisms, including laws and regulations. The paper also helps to develop a basic understanding of the key challenges of horizontal accountability mechanisms in Pakistan by providing different perspectives on how horizontal accountability can contribute to a working democracy. The reforms required to strengthen the accountability structures for the effective and efficient functioning of the state institutions are also highlighted in the paper. More specifically, the paper addresses the following research questions to highlight issues regarding checks and balances of the executives by the legislative, the judiciary, and other oversight bodies in Pakistan:

- What are the constitutional and legal institutional mechanisms that hold the executive government accountable?
- To what extent have the constitutional and legal mechanisms of horizontal accountability fulfilled their expected functions to constrain the actions of the executive members?
- What are the determinants of horizontal accountability performance?
- What should be done to improve the state of horizontal accountability performance?

2. Horizontal Accountability Mechanisms in Pakistan

Accountability of the executive is a central element of a democratic system. Three primary institutions compose Pakistan's government: the executive government, the parliament, and the judiciary. The executive branch is composed of a cabinet led by the prime minister. The legislative branch includes the Senate, National Assembly, and four Provincial Assemblies. Finally, the judicial branch comprises the Supreme Court, high courts, and lower courts. Many oversight agencies check the abuse of power by the executives, including the National Accountability Bureau (NAB), the Office of the Auditor General of Pakistan (AGP), federal and provincial ombudsman, and anti-corruption establishments at provincial levels.

Figure 1. Government Structure of Pakistan



2.1. The Legislature

The Parliament of Pakistan and provincial assemblies perform three main functions: *legislation, representation, and oversight,* or monitoring the performance of the elected government through plenary and ministry-wise committees. Rules of Procedure and Conduct of Business in the parliament and provincial assemblies require the formation of standing committees for each ministry and department of the federal and provincial government, respectively. These rules empower these standing committees to examine the expenditures, administration, delegated legislations, public petitions, and policies of the ministry concerned, including its associated public bodies, and forward its report of findings and recommendations to the ministry/department, which then submits its reply to the Committee (National Assembly of Pakistan n.d.).

Moreover, members of the parliament and the provincial assemblies can ask different questions of public importance in writing relating to the functions and working of different ministries' divisions. The concerned ministry answers in writing to the parliament, and then the answers are placed before the parliament on a specific day allocated to each ministry.

Rules of business of the National Assembly also define the composition and functions of PAC. Similar rules in the provincial assemblies regulate the working of PACs in those assemblies.

The government presents a budget proposal to the National Assembly for approval. By doing this, the government seeks the legislative body's endorsement for its policies and programs, essentially obtaining permission to implement them. According to Article 171 of the Constitution of the Islamic Republic of Pakistan, the AGP submits annual audit reports to the president, who then presents them before the National Assembly. For a comprehensive examination, these reports are referred to the PAC, which operates under the guidelines established in the Rules of Procedure and Conduct of Business in the National Assembly, 2007 (Cheema 2020).

Performance

There are 36 standing committees in the National Assembly, which convened 1,005 meetings during the 15th National Assembly (August 13, 2018-August 09, 2023). On the other hand, the PAC convened 177 meetings from December 2018 to June 2023 and recovered 1.154 trillion Pakistani rupees (PKR). Similarly, it discussed 12,741 out of 33,562 paragraphs, sent 119 paras to the NAB and 97 to the Federal Investigation Agency (FIA), and settled 721 grants and 3,839 paras during the same period.

Rules of Business of the National Assembly demand the formation of standing committees within 30 days of the election of the PM and their chairpersons within another month. Unfortunately, during the 15th National Assembly, these committees were formed with a delay of approximately six months, on February 05, 2019. Similarly, due to a political confrontation between the Pakistan Tehreek-e-Insaf (PTI) government and the opposition, the election for the PAC chair was also delayed (PILDAT 2023).

The National Assembly can constitute special committees to carry out functions included in the motion. For instance, a special committee on the railway was constituted on April 22, 2008, by the National Assembly through a resolution on the allotment of Pakistan Railways (PR) land to the Royal Palm Golf and Country Club, Lahore, on nominal prices. Originally, 103 acres of land was given to the contractor in a 33-year lease in 2001, but later that year, the land increased to 140 acres, and the lease period increased to 49 years. On August 26, 2010, the committee presented its report, which recommended the termination of the contract, recovery of losses from the contractor, and legal proceedings against the involved officials (National Assembly of Pakistan 2010). The Supreme Court (SC) took up the entirety of the case in 2011 and later, on June 28, 2019, ruled that the agreement was marred by malicious intent and favoritism, granting the project to a predetermined party while ignoring other parties. As a result, it lacked transparency, fairness, and openness. The SC nullified the 2001 lease agreement, giving possession back to Pakistan Railways. It also directed the NAB to continue the case as per law against the executive officials of Pakistan Railways (Sheikh 2019). This example shows how a special committee effectively responded to the unauthorized overstepping of executive officials.

2.2. The Judiciary

The Judicial branch in Pakistan consists of the Supreme Court, high courts at provincial levels, the Islamabad High Court in Islamabad Capital Territory, and lower courts. The judiciary in Pakistan is constitutionally and legally independent in checking and penalizing executive wrongdoings. When a government fails to take prompt and decisive action, resulting in the infringement of people’s basic rights, the Constitution empowers the courts to ensure the protection of fundamental rights. Similarly, the Constitution of the Islamic Republic of Pakistan grants the authority to the SC, commonly known as ‘suo motu’ powers under Article 184(3), to

issue orders when it deems that a matter of public significance concerning the enforcement of fundamental rights is at stake (Mehboob 2020).

Furthermore, the Constitution provides a comprehensive framework for establishing the judicial system in the country, including the procedures for appointing and removing judges of the superior courts and the necessary qualifications. In 2010, the Parliament introduced a significant change in the appointment process of judges by establishing the Judicial Commission of Pakistan (JCP) through the 18th and 19th amendments to the Constitution of Pakistan. As far as the appointment of Supreme Court judges is concerned, according to Articles 175 and 175A of the Constitution of Pakistan, the appointment of judges to the Supreme Court and high courts is carried out by the JCP. The commission consists of the chief justice of Pakistan as its chairman, the four most senior judges of the Supreme Court, a former chief justice or a former judge of the Supreme Court, the Federal Minister for Law and Justice, the Attorney General of Pakistan, and a senior advocate of the Supreme Court.

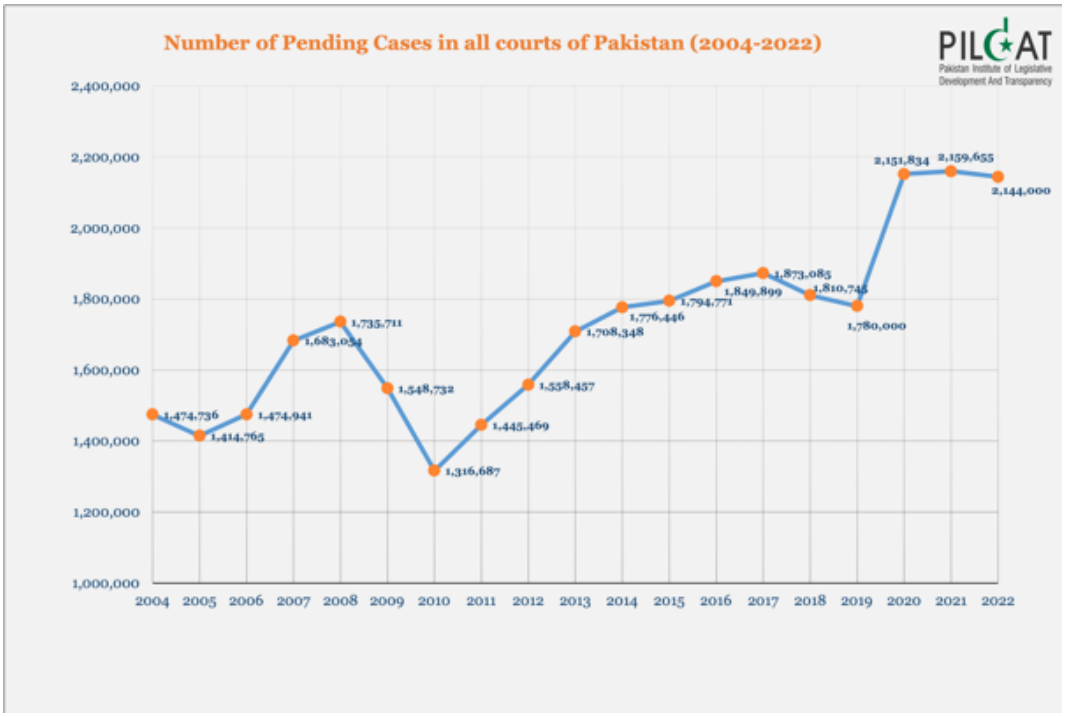
Once the Judicial Commission endorses an individual for a Supreme Court judge position, the nomination proceeds to the Parliamentary Committee, which consists of eight members, evenly divided between the government and the opposition, as well as representatives from the National Assembly and the Senate. The committee has a two-week period to deliberate on the nomination. If it gains approval, the name is sent to the president via the prime minister for formal appointment. If, for any reason that must be documented, the Parliamentary Committee does not confirm the recommendation with a three-fourth majority, the decision is relayed back to the Commission through the prime minister. In this scenario, the Commission is obligated to propose another nominee.

The Constitution also outlines the process for dismissing judges from the superior courts, overseen by the Supreme Judicial Council (SJC). Headed by the Chief Justice of Pakistan as its chairman, the SJC also includes two of the most senior judges, one from the Supreme Court and one from the high courts. The SJC has the authority, either independently or in response to a reference initiated by the president, to propose the removal of a judge based on misconduct or physical or mental incapacity. In this manner, the Constitution safeguards the superior judiciary's liberty, autonomy, and fairness (Senate of Pakistan 2018).

Court proceedings are conducted transparently and are open to the public and the media. According to the Supreme Court Rules of 1980, the composition of benches is determined at the chief justice's discretion. In situations where the judges presiding over a petition or appeal hold differing opinions, the chief justice may, at their discretion, arrange for the case or appeal to be heard and resolved by either another judge or a larger bench appointed by the chief justice. Similarly, under Article 186A of the Constitution of Pakistan, the Supreme Court has the authority, in the interest of justice, to transfer any pending case, appeal, or other legal proceedings from one high court to another high court.

Performance

Figure 2. Number of pending cases in all courts of Pakistan (2004-2022)



The performance of the judiciary in Pakistan is so weak that, on many occasions, the parliamentarians, media, and the public question it. This performance can be gauged by the number of disposal cases. A significant 56,544 cases are pending with the SC as of August 31, 2023 (Supreme Court of Pakistan 2023). Meanwhile, more than 2.1 million cases are pending before all the courts of Pakistan as of December 2022. Moreover, Pakistan was ranked 129th out of 140 nations according to the 2022 Rule of Law Index formulated by the World Justice Project, while in 2021, Pakistan was ranked 130th out of 139 countries (World Justice Project 2022).

Another example of unlawful encroachment of the executive is a 'Toshakhana reference' against former Prime Minister, Mr. Imran Khan, who was indicted by the Islamabad Accountability Court on January 9, 2024, in a freshly filed reference against him on December 19, 2023, for retaining a jewellery set, gifted by the Saudi crown prince, against an undervalued assessment. In a separate case filed by the Election Commission of Pakistan (ECP) against Mr. Khan for not mentioning the details of state gifts in his tax declarations, in August 2023, he was sentenced to three years imprisonment by an Islamabad trial court, which was later suspended by the Islamabad High Court (Bilal 2024). Although the sentence has been suspended, the conviction and the subsequent disqualification to hold public office still stand as the case is contested in the Supreme Court.

2.3. Other Oversight Agencies

2.3.1. National Accountability Bureau

There are many oversight agencies in Pakistan besides the judiciary and the legislative branch to perform checks and balances on the executive branch and prevent the abuse of power by the executives. These include the NAB, AGP, Federal and Provincial Ombudsmen, and Anti-corruption Establishments (ACEs) at the provincial levels. The primary institution dedicated to combating corruption is the NAB. The National Accountability Ordinance (NAO) of 1999 governs its operations. In February 2002, the NAB initiated the National Anti-Corruption Strategy (NACS), a comprehensive initiative encompassing extensive surveys, examination of international anti-corruption agency models, and engagement with local stakeholders (National Accountability Bureau n.d.).

Apart from the role of the Chairman of the Monitoring and Inspection Team, there are also accountability courts to safeguard against potential power abuses. The NAB has also embraced a code of conduct accessible to the public via its website. The NAB refers the cases to accountability courts, which then decide the cases as per law.

Accountability and its various institutional forms have been persistently wielded by both military and elected governments in Pakistan, often to target rivals politically. This misuse of accountability authority and the practice of selective accountability have not only corroded public trust in these institutions but have also hindered the effective operation of government bodies. The Supreme Court has consistently highlighted flaws in accountability laws. Notably, the 15th National Assembly has witnessed multiple alterations to the National Accountability Ordinance (NAO). Regrettably, these amendments have not stemmed from a reform-driven effort within the National Assembly itself, where the elected representatives present public sentiments. Instead, each amendment has been introduced by the incumbent government, with little substantive input from MNAs to reform this contentious law despite two decades of experience (PILDAT 2023).

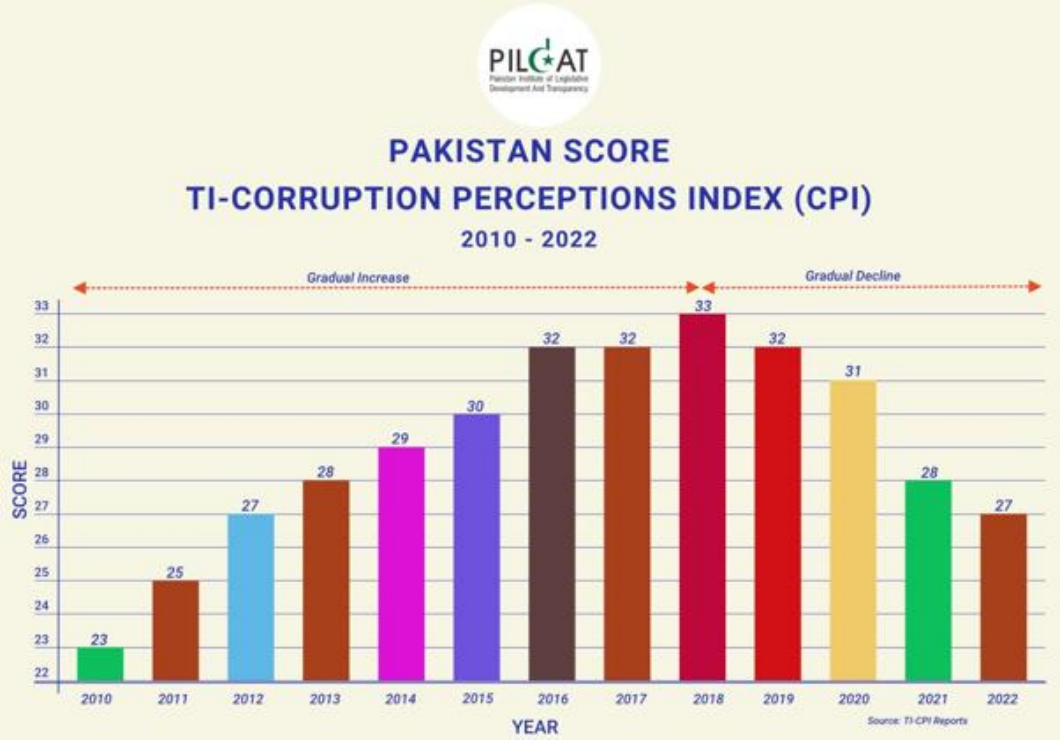
The former PM, Mr. Imran Khan, challenged the amendments made by the coalition government in 2022. In the Supreme Court on June 25, 2022, and after 53 hearings, the SC reserved its judgment on September 5, 2023. The CJP, Justice Umar Ata Bandial, remarked that something short would be soon released. He expressed his disappointment with the NAB and stated that the primary allegation against the institution was its lack of established criteria, often leading to the misuse of authority when pursuing lower-value corruption cases. He again requested the NAB provide a comprehensive report detailing the number of cases returned to the NAB by accountability courts after the passage of these amendments. When the petition called for across-the-board accountability, Justice Syed Mansoor Ali Shah questioned why the corrupt practices of serving army officers had been excluded from the NAB's jurisdiction. When Article 209 of the Constitution addressed the removal of judges, he also questioned how the SJC could issue an order for the recovery of ill-gotten funds in the event of a superior court judge's removal (Iqbal 2023c).

Performance

It is unprecedented in the culture of Pakistan, where people in the higher echelons and power corridors have been made accountable, and various high-profile corruption cases were initiated, investigated, and prosecuted by the NAB, irrespective of their status or political lineage. As per the 2022 annual report, the NAB processed 25,699 complaints, including 21,495 complaints received during 2022, authorized 544

complaint verifications, and conducted 219 inquiries. Moreover, it completed 49 investigations and filed only 30 references in accountability courts in 2021. The NAB has recovered only PKR 11.394 billion of the looted money during the year and registered an 88% decrease in recoveries as it recovered PKR 91.195 billion during 2021 (National Accountability Bureau 2023). The reports from the international institutions in Pakistan also show a gloomy picture. According to annual reports of Transparency International since 2010, Pakistan's score on the Corruption Perception Index (CPI) has continuously declined since 2019.

Figure 3. Corruption Perception Index (CPI) score of Pakistan (2010-2022)



2.3.2. Auditor General of Pakistan

The Office of the Auditor General of Pakistan (AGP) holds a significant constitutional position, and it is regarded as a fundamental component of Pakistan's financial governance and accountability framework to ensure the responsible utilization of public funds. The AGP also leads the Supreme Audit Institution (SAI). The roles, appointments, removal, functions, and powers of the AGP are defined by Articles 168 to 171 of the Constitution. The AGP is appointed under Article 168 of the Constitution. Its reports are presented before the National and Provincial assemblies and are considered part of the PAC of these assemblies. The Constitution and supporting legislation empower the AGP to create impartial and objective assessments of the financial governance process to enhance government operations. The AGP plays a vital role in ensuring transparency and accountability in government operations.

The functions of the AGP include determining the forms, principles, and methods for maintaining accounts at the federal and provincial levels, certifying annual accounts prepared by the Controller General of Accounts or authorized individuals, submitting certified accounts with necessary notes, comments, or recommendations to the president, governors, or designated authorities, and preparing reports on the accounts of the federation and provinces for submission to the respective legislatures. The scope and

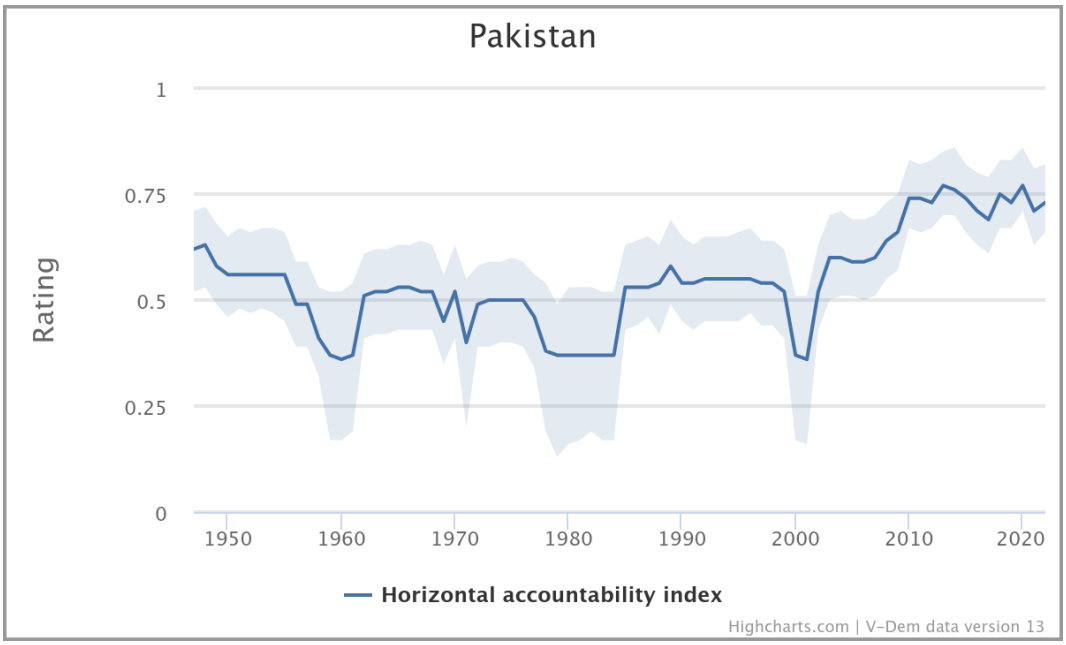
jurisdiction of the Attorney General's office are governed by Article 170(2) of the Constitution of Pakistan (Auditor General of Pakistan n.d.).

Performance

According to the AGP annual report for the year 2020-2021, the Federal Audit Operations (FAO), which operates under the supervision and authority of various audit departments within the AGP, has conducted audits of 6,848 entities within the federal and provincial governments during the audit year 2020-2021. It audited the amount of PKR 19,149.49 billion and recovered an amount of PKR 487.24 billion (Auditor General of Pakistan 2022).

According to a report of a Sweden-based V-Dem (Varieties of Democracy) titled "Democracy Report 2023: Defiance in the Face of Autocratization," Pakistan ranks 106 on the Liberal Democracy Index, while India and Bangladesh rank 97 and 147 on this index, respectively. This V-Dem's Liberal Democracy Index (LDI) captures both electoral and liberal aspects of democracy and goes from the lowest (0) to the highest (1) levels of democracy (V-Dem 2023).

Figure 4. Horizontal Accountability Index of Pakistan (1950-2022)



Similarly, per V-Dem, Pakistan's score on the Horizontal Accountability Index has fluctuated since 1950. In 2020, the score was 0.77. It decreased to 0.71 in 2021 and increased in 2022 to 0.73, which reflects that Pakistan's performance on horizontal accountability varies from time to time due to many factors, including the political situation of the country (V-Dem 2023).

2.4. Inter-Institutional Relations

2.4.1. The Military's Involvement in Political Affairs

A comprehensive analysis of Pakistan's political landscape and democratic system is incomplete without accounting for the involvement and impact of the security establishment in the functioning of democracy.

A widely accepted normative principle is that each state institution of Pakistan should strictly adhere to its designated constitutional responsibilities. However, this principle is often not rigorously upheld in practice. Consequently, multiple power centers emerge on critical policy matters facing the nation. Those possessing unofficial authority wield significant influence and control, while constitutional bodies either conform to the directions of the dominant power center or opt not to assert their constitutional roles. This situation results in ongoing challenges to the effectiveness of democratic governance within the country.

Speaking at the Defence and Martyrs Day ceremony held on November 23, 2022, Former Chief of the Army Staff (COAS), Gen. (Retd.) Qamar Javed Bajwa said that the Pakistan Army had decided, in February 2021, to refrain from interfering in political affairs. He acknowledged that the Pakistan Army had often received criticism, attributing a significant portion of this criticism to its historical interference in politics, which he deemed unconstitutional over the past 70 years (*Dawn* 2022-11-24). Following his appointment as the new COAS, Gen. Syed Asim Munir has also underscored that the Pakistan Army's primary loyalty lies with the state of Pakistan and its dedication to fulfilling its constitutional role (Asad 2023). But unfortunately, the activities show greater involvement of the establishment in the political affairs of the state.

Between September 2 and 3, the COAS met with the businessmen of Lahore and Karachi and assured them of support in the ongoing economic crisis. Also, he is a member of the Apex committee of the Special Investment Facilitation Council (SIFC), constituted by the former PM, Mr. Shehbaz Sharif, on June 20, 2023 to revive the economy of the country and to capitalize on key sectors, including defence production, agricultural/livestock, minerals/mining, IT and energy, through indigenous development as well as investments from friendly countries (Khan 2023). Later, an act of parliament was also passed to firmly set the legal basis of the SIFC and the military's role in it for the future.

2.4.2. Judiciary Interference in Parliamentary Affairs

Complaints regarding the judiciary exceeding its authority and interfering in the domains of parliament are not a new phenomenon in Pakistan. One of the most notable expressions of these concerns came directly from the Supreme Court, specifically from former Chief Justice Asif Saeed Khosa, on January 17, 2019. He emphasized the need for an inter-institutional dialogue in Pakistan to evaluate the mistakes made by all three branches of the government. Justice Khosa envisioned this dialogue to involve parliament, the judiciary, the executive, and military and intelligence agencies. He believed that an examination of past mistakes made by the judiciary, executive, and legislative branches is a must, as well as discussions on alleged instances of the judiciary infringing on the executive's domain by intervening in policy matters such as privatization, fixing the max sale price for some commodities such as sugar. Additionally, Justice Khosa highlighted concerns about the judiciary's extensive use of its constitutional authority in administrative matters and explored ways for the judiciary to return to its traditional but effective role as an adjudicator (*Dawn* 2019-01-17).

A brief overview of recent incidents reveals that the relationship between the Parliament and the judiciary has not improved, but rather, it has become more strained over time. A few critical examples of institutional interference and tussle between the institutions are given below.

2.4.3. Dispute of Punjab Assembly elections

The Supreme Court of Pakistan issued a 3-2 verdict on March 1, 2023, and ordered that elections for the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa should be held within 90 days after the dissolution of both assemblies on January 14 and January 17, 2023, respectively. Subsequently, a 3-member bench of the SC on April 4, 2023, invalidated the Election Commission of Pakistan's (ECP) decision of March 22, 2023, to postpone the Punjab Assembly elections. Also, the court set May 14 as the date for the Punjab Assembly election, but it also made significant alterations to the entire election schedule as originally declared by the ECP.

Additionally, the bench directed the federal government to disburse PKR 21 billion to the ECP by April 10, 2023, to conduct elections of both assemblies and ordered the ECP to submit its report to the Court by April 11, explaining the status of the funds. Following the court order, ECP announced the election scheduled for May 14 on April 5, 2023, but intimated to the court that the federal government was hesitant to release the required funds (Iqbal 2023a). The National Assembly later rejected a government bill on April 13, 2023, titled *I Charged Sums for General Election (Provincial Assemblies of the Punjab and the Khyber Pakhtunkhwa) Bill 2023,* with a majority vote. Earlier, this bill was also rejected by the National Assembly Standing Committees on Finance and Revenue.

The SC reserved its judgment on June 19, 2023, on the ECP's review petition challenging the SC's April 4, 2023, decision that had established May 14, 2023, as the election date for the Punjab Assembly. Ultimately, on August 4, 2023, the Supreme Court issued a comprehensive ruling, asserting that it was the ECP's responsibility to conduct elections within 90 days by Article 224(2) of the Constitution. In a detailed 25-page explanation authored by Justice Munib Akhtar, the Court emphasized that not only the petitioners formally before the Court but also the entire electorate of Punjab and Khyber-Pakhtunkhwa, as well as the citizens residing there, were the aggrieved parties concerning their fundamental rights under Article 17 of the Constitution (The News 2023).

The National Assembly of Pakistan unanimously passed two resolutions on March 28 and April 6, 2023, to urge the SC not to interfere in the political affairs of the federal government and the ECP that caused the political instability in the country. The resolutions also called for the constitution of a full court of the SC to hear cases of constitutional matters. Moreover, the National Assembly bound PM Shehbaz Sharif not to implement the orders of the SC. Majlis-e-Shoora (Parliament), in its joint sitting held on April 10, 2023, passed a resolution to hold simultaneous elections of all Assemblies under Article 218(3), which states the duty of the ECP to organize and conduct fair elections as per law (National Assembly of Pakistan 2023b).

On April 26, 2023, the Speaker of the National Assembly, Raja Pervez Ashraf, through a letter, strongly criticized the Supreme Court's directive to bypass the National Assembly and termed the recent SC orders of releasing funds for polls as an infringement on the legislative authority of Parliament. He urged the SC to refrain from involvement in political and legislative matters, and he emphasized the financial powers vested in the National Assembly and its role in approving expenditures from the Federal Consolidated Fund (FCF). The Speaker also reminded the CJP that while the Court had the authority to interpret the Constitution, it did not have the authority to rewrite the Constitution or undermine parliament's sovereignty (Wasim 2023).

In response to the SC order dated April 14, 2023, a motion was presented in the National Assembly on April 17, 2023, by Senator Muhammad Ishaq Dar, who also served as the Minister for Finance and Revenue. The motion sought approval for an additional allocation of PKR 21 billion to the Federal Government during the ongoing fiscal year for the Election Commission of Pakistan. However, the House did not approve the motion (National Assembly of Pakistan 2023c).

2.4.4. The Supreme Court (Practice and Procedure) Act, 2023

According to the detailed judgment of the SC on the Supreme Court (Practice and Procedure) Act 2023, released on December 27, 2023, the SC declared that the CJP is not the master of the roster and cannot substitute his wisdom with that of the Constitution, nor can his opinion prevail over other judges. The Court upheld the constitutionality of the Supreme Court (Practice and Procedure) Act 2023 enacted by the Parliament because it does not infringe on any fundamental rights and facilitates its enforcement. In this judgment, it was emphasized that the Constitution empowers the Parliament to legislate on the practice and procedure of the Supreme Court under Article 191; however, the appeal provided against a decision under Article 184(3) of the Constitution would not apply to retrospective effect (Iqbal 2023b).

On March 29, 2023, the National Assembly passed the *Supreme Court (Practice and Procedure) Act, 2023 (Act No. XVII of 2023*). The president refused to assent to this bill and sent it back to the Parliament on April 8, 2023, for reconsideration. The joint sitting of the Parliament passed this bill on April 10, 2023. Although the president again refused to assent to this bill on April 19, 2023, the bill was deemed to have become an Act of Parliament on April 21, 2023. as per the Constitution of the Islamic Republic of Pakistan.

Per the Act, a committee consisting of the CJP and the two senior-most judges will constitute each bench, which would then be responsible for hearing and resolving all cases, appeals, or matters before the Supreme Court. Decisions within this committee will be determined using a majority vote system. Similarly, this committee will decide whether to initiate *suo motu* proceedings per Article 184(3) of the Constitution. If convinced that the issue pertains to a matter of significant public importance related to the enforcement of fundamental rights outlined in Chapter I of Part II of the Constitution, the committee will establish a three-member bench to adjudicate on the *suo motu* case.

Furthermore, this same committee, composed of the CJP and the two senior-most judges, is authorized to establish a bench to interpret any constitutional provision before the Supreme Court. Moreover, the Act grants the right to individuals seeking a review of a Supreme Court judgment under Article 188 of the Constitution to appoint their chosen counsel. It also mandates the SC to expedite the hearing within 14 days in cases where an application cites urgency or seeks interim relief in an appeal, case, or matter (National Assembly of Pakistan 2023a).

In a resolution adopted by the National Assembly on April 13, 2023, the House strongly criticized the SC for the seemingly arbitrary scheduling of the hearing date for the petition challenging the Supreme Court (Practice and Procedure) Act, 2023. The resolution voiced serious concerns regarding what was perceived as an effort by the judiciary to encroach upon the Parliament's legislative authority and interfere in its constitutional jurisdiction. It underscored the unwavering commitment to upholding the supremacy of the Parliament as dictated by the Constitution. The resolution also expressed disappointment over the exclusion of two senior judges from the smaller provinces of Balochistan and Khyber Pakhtunkhwa. Furthermore, it

called for the dissolution of the bench, contending that its formation had occurred before the completion of the legislative process (Kiani 2023).

The National Assembly approved a resolution on April 14, 2023, to denounce the decision of the eight-member bench of the SC that barred the government from implementing the Supreme Court (Practice and Procedure) Act, 2023. The resolution also firmly rebuffed what it perceived as an endeavor to undermine the Parliament's authority in legislating and intruding upon its constitutional jurisdiction. The resolution was directed against the Supreme Court's directive instructing the State Bank of Pakistan to release PKR 21 billion to conduct elections in Punjab and KP (Wasim 2023).

2.4.5. The Supreme Court (Review of Judgements and Orders Act, 2023)

The *Supreme Court (Review of Judgements and Orders) Act, 2023 (Act No. XXIII of 2023)* was introduced and passed on April 14, 2023, by the National Assembly, while it was passed by the Senate on May 5, 2023, and enacted on May 26, 2023.

Per the Act, a review petition must be considered by a bench comprising more judges than the one responsible for the initial judgment or order as per Article 184. The law grants the petitioner the privilege of selecting any Supreme Court advocate for the review. Furthermore, it extends the right to submit a review petition to any individual who feels aggrieved by an order issued under Article 184(3). Although the time frame for filing such a review petition is restricted to 60 days from the Act's commencement, it establishes a 60-day limit for filing a review petition after the original order has been passed.

Later on, the SC terminated this act on August 11, 2023. As per the judgment, any attempt by way of ordinary legislation to interfere in the scope of the SC's powers and jurisdiction, including but not limited to its review jurisdiction, would constitute a wrong and erroneous reading and interpretation of the Constitution (Bhatti 2023).

2.4.6. Other key incidents of interference

On March 24, 2021, Chief Justice of the Islamabad High Court (IHC), Justice Athar Minallah, dismissed a petition regarding the election of the Senate chairman held on March 12, 2021, and affirmed that parliamentary proceedings were beyond the jurisdiction of the high court. In this election, Mr. Mohammad Sadiq Sanjrani secured victory over the opposition's candidate, Senator Syed Yousuf Raza Gilani, despite the opposition holding a majority in the house. Notably, seven (7) votes were rejected by the presiding officer, Senator Muzaffar Hussain Shah, that were cast in favor of Mr. Gilani (Khan 2021). Mr. Gilani, through a petition before the IHC, challenged this decision.

Contrary to the IHC decision not to interfere in parliamentary proceedings, on April 08, 2022, the SC reinstated the National Assembly and overturned the deputy speaker's ruling. Furthermore, it directed the former PM, Mr. Imran Khan, to face a vote of no confidence on April 9, 2023. The court also ruled that the advice given by the Prime Minister to dissolve the National Assembly, which led to the president's order, violated the Constitution and had no legal value (Iqbal 2022a).

The SC decision of May 17, 2022, while interpreting Article 63-A of the Constitution, asked through a reference filed by President Dr. Arif Alvi about 26 MPAs of PTI who cast votes against the party directives in the Chief Minister Punjab election held on April 16, 2022, stated that votes cast by lawmakers in violation of their party's directives should not be considered when determining the result of a motion

(Iqbal 2022b). Justice Mazhar Alam Khan Miankhel and Justice Jamal Khan Mandokhail dissented from the decision and termed it "re-writing or reading into the Constitution."

The National Assembly passed a resolution on July 27, 2022, to form a joint special parliamentary committee to institute the required judicial reforms. It also stated that the Parliament is the supreme legislative body, and the passage of laws is its sole prerogative (Wasim 2022).

2.4.7. Disputes between the Judiciary and the Executives

In May 2019, President Dr. Arif Alvi filed a reference, on the advice of the former PM, Mr. Imran Khan, against the sitting Judge of the SC, Justice Qazi Faez Isa, which alleged that he had acquired three (3) properties in London between 2011 and 2015, under the names of his spouse and children but did not disclose this information in his financial declarations. The Supreme Court, in review, rejected the reference on April 26, 2021. The federal government, however, filed a petition for curative review, which did not have any provision in Pakistan's Constitution. The petition was accepted for consideration and remained pending with the CJP, which many interpreted as a pressure tactic against Justice Isa. Later, on March 30, 2023, almost a year after assuming office as Prime Minister, Mr. Muhammad Shehbaz Sharif issued an order for the withdrawal of the petition for Curative Review. He referred to this action as "unfounded and politically motivated." Subsequently, on March 31, 2023, President Alvi approved the withdrawal of both the curative review reference and the Civil Miscellaneous Application (CMA) against Justice Qazi Faez Isa. This decision was made based on the Prime Minister's advice, following Article 48 of the Constitution. Finally, on July 21, 2023, Chief Justice Bandial dismissed the curative review petition (*Dawn* 2023-04-01).

Several days after his defeat in the vote of confidence, former PM Mr. Khan expressed regret regarding his government's choice to initiate a reference against Justice Isa and acknowledged it as a mistake. He further stated that his administration should not have engaged in unnecessary conflicts with the judiciary.

Later on, he distanced himself from the decision by asserting that the reference against Justice Isa, filed during his tenure as prime minister, was executed under the orders of an "authority" that held an even higher position than the then Director-General of Inter-Services Intelligence (DG ISI), Lt. General (Retd.) Faiz Hameed, implying the former COAS Bajwa (Adnan 2023). However, the filing of this reference and its subsequent proceedings appeared to have strained the relationships within the higher judiciary. During the hearings, Justice Isa accused Justice Bandial of breaching the code of conduct by taking on the role of a complainant against him. Similarly, Justice Isa's wife, Mrs. Sarina Isa, urged both Justice Bandial and Justice Muneeb Akhtar to disclose their assets for transparency in the accountability of judges. Justice Isa emphasized the importance of preventing any Supreme Court judge from enduring the hardships that he and his family had gone through.

Several other instances of these infringements include the Supreme Court's decision to open shopping malls in 2020, initially closed by the government due to COVID-19 lockdown measures. Additionally, there was a penalty of US $6 billion imposed by the International Centre for Settlement of Investment Disputes (ICSID) in 2019, partly because the Supreme Court had invalidated the Reko Diq mining contract between the Balochistan government and an international company, Tethyan Copper Company (TCC). Another example is the case of the Turkish Karkey Power Company, which successfully obtained an International Centre for Settlement of Investment Disputes (ICSID) award of US $860 million against the Pakistani government in 2017 because the Supreme Court had ordered the termination of the contract with Karkey.

3. Challenges in Horizontal Accountability Mechanisms

In Pakistan, despite their powers, parliamentary committees at the national and provincial levels have not been very active or effective. Apparently, there are no constitutional, legal, or institutional limits of the legislative branch to check the executive sufficiently; however, there is a dire need to enhance the committees' performance to exercise oversight over the executives. For instance, as per the rules of business of the National Assembly, the bills are referred to the committees for consideration, discussion, and recommendations, but the Finance bill is not referred to any standing committee for discussion. Under Article 73 of the Constitution of the Islamic Republic of Pakistan, the Senate is required to provide its recommendations on the Finance Bill within 14 days after it is referred by the National Assembly of Pakistan containing the Annual Budget Statement. The National Assembly can pass the Finance Bill with or without the recommendations of the Senate.

Similarly, the PAC has limited provisions as it primarily focuses on inputs and compliance audits rather than outputs and performance audits, thus failing to assess how efficiently the expenditures have been managed. Furthermore, a significant backlog of audit reports exists, with the PAC dedicating most of its time to discussing reports from previous years. The PAC primarily engages in retrospective oversight of the executive, lacking the equivalent of a Parliamentary Budget Office to carry out prospective oversight, as in the United Kingdom. Additionally, the PAC's accountability mechanisms are affected by the inherently political nature of its membership. Members from the ruling party's benches within the PAC often exhibit reluctance in subjecting their government to legislative accountability.

Similarly, the judicial branch faces many challenges. The National Judicial Policy (NJP) was created in 2009 to reduce the backlog of cases within the judiciary, safeguard its independence, and eliminate corruption. It, however, was not implemented properly. This policy emerged following the judges' restoration movement (2007-2009) and sought to enhance the performance of the justice sector, ultimately fostering greater public confidence in the administration of justice. Formulated by the National Judicial Policy Making Committee (NJPMC), the NJP introduced short and long-term measures to expedite case resolutions by implementing specific timeframes for different case categories with a strong emphasis on addressing older cases. However, despite these measures, both the superior and the lower judiciary have not been able to deal effectively with the pendency of cases.

Moreover, a brief overview of recent developments reveals that instead of leveraging its authority and public support to fortify democracy and democratic institutions, the judiciary has employed its influence to scrutinize, critique, and undermine other branches of government at times, including the executive and the legislature. Prominent judges have frequently aired their grievances against elected representatives and political parties in the public sphere and, on some occasions, have humiliated the civil bureaucracy. Therefore, the various judgments of the SC are widely criticized by politicians, lawyers, and the media, including the removal of former PM Syed Yousuf Raza Gillani in 2012 and Muhammad Nawaz Sharif in 2017. Similarly, the restoration of the National Assembly in April 2022 was criticized by the then PTI government but was also widely appreciated by the opposition parties. Besides this, there was huge criticism of the judiciary by the parliamentarians in a *suo motu* case of polls in Punjab.

Since its establishment, the NAB also faced various challenges and has many deficiencies. One of them is the frequent court adjournments, which lead to delays in the progress of ongoing cases or investigations by the NAB. The time spent in court proceedings affects the pace of work and results in a

backlog of cases within the NAB, potentially impacting the overall efficiency of the accountability process. Additionally, the need to allocate resources for court-related activities potentially strained the bureau's capacity and, as a result, hindered its ability to handle new cases effectively or to respond promptly to emerging challenges. Additionally, there is a shortage of accountability courts, which has increased the pendency of cases.

Secondly, high-profile cases that involve political figures often receive significant media coverage, which amplifies their reach and impact on public perception. However, the fact is that high-profile cases are few, and cases of 'cheating public at large' are much more in number. Unfortunately, the media's role in reporting high-profile cases shapes a particular public opinion and a negative perception of the NAB's performance.

Thirdly, the accountability process in Pakistan is often criticized for its lengthy duration of inquiries, investigations, filing the formal case before the courts, and court proceedings, with cases taking several years to conclude due to many reasons, including but not limited to legal complexities, administrative inefficiencies, judicial backlog, political interference and delaying tactics by the accused involved.

Fourthly, the credibility of the NAB in Pakistan has been a subject of scrutiny and criticism by the judiciary, politicians, parliament, and the public. It is a common perception in Pakistan that the NAB is compromised and acts as a tool for political victimization at certain times. The reason behind this perception is that some of the NAB's actions and decisions are perceived as influenced by political motivations or biases. This perception has become so strong that even genuine cases sometimes become controversial. Some experts believe that besides the NAB, Pakistan already has many other accountability institutions and laws on accountability, but these institutions lack adequate resources for implementation.

In addition to political victimization, the influence of the establishment is also a significant factor, even during the civilian governments. The previous Chairman of the NAB resigned after serving for just seven months and cited "interference" and "pressure" as reasons for his departure. In December 2022, former PM Mr. Imran Khan accused the former Chief of Army Staff (COAS), General (Retd.) Qamar Javed Bajwa of directing and exerting control over the NAB during his tenure as prime minister. He further alleged that the COAS had provided significant concessions to leaders of major political parties, including the Pakistan Muslim League-Nawaz (PML-N) and the Pakistan Peoples Party Parliamentarians (PPPP) (Malik 2023).

4. Reforms to Improve the State of Horizontal Accountability

It is imperative to provide a truly inclusive, representative, and transparent Parliament to fortify the foundations of parliamentary democracy and foster trust in democratic institutions. This approach will help hold the government accountable and safeguard the interests of ordinary citizens. The parliament could consider the following reforms to enhance horizontal accountability performance.

One of the primary roles of the National Assembly is the annual approval of the federal budget. Regrettably, the parliamentary budget process in Pakistan is currently superficial and provides parliamentarians insufficient time for a thorough examination of budgetary documents. The budget process in India spans 75 days, allowing for meticulous scrutiny of ministry budgets by respective parliamentary committees. Meanwhile, in Pakistan, the National Assembly debates the budget for merely 14 days on average, and the Finance Bill is not referred to committees for scrutiny. Furthermore, the existing legislation permits the government to exceed the approved budget without prior National Assembly endorsement, compromising the essence of parliamentary approval.

Consequently, there is an urgent requirement to reform the parliamentary budget process, including referring the Finance Bill to relevant committees. The attendance of ordinary members, ministers, and parliamentary secretaries during National Assembly sittings is an ongoing challenge. During the 15th National Assembly, only 61% of MNAs, on average, attended the assembly proceedings. The party leadership must set a precedent to foster consistent attendance, particularly among ministers and parliamentary secretaries. The prime minister, in particular, should set an example by utilizing his chamber within Parliament. This practice would encourage ministers and other legislators to participate regularly in parliamentary sessions. It would also ensure their availability to respond to fellow members' inquiries and present their Ministry's accomplishments. Such a shift in approach has the potential to transform the overall parliamentary culture.

Former Prime Minister Imran Khan took an admirable step by pledging to personally engage in routine parliamentary question-and-answer sessions during his inaugural televised address. He initially committed to a weekly session, later revised to a fortnightly Prime Minister's Question Hour. Regrettably, the former prime minister never fulfilled this commitment; throughout his three-year and eight-month tenure, he attended only 11% of sittings. On the other hand, Mr. Shehbaz Sharif attended only 17% of sittings of the National Assembly as PM during his tenure of one year and four months. The parliamentary rules of procedure have not been amended for this purpose; nonetheless, the prime minister can take the initiative without waiting for amendment.

The PAC must expand its scope and discuss the results of budget allocations, the performance of the executive body, and compliance with rules and regulations. Every year, the PAC can also ask the AGP to undertake a certain number of value-for-money studies, as the British PAC does. In this regard, the AGP can work effectively by submitting reports from all audit units to the PAC. Since audit backlog from previous years is a significant factor in the poor performance of the PAC, there is a need to develop a mechanism to eliminate this backlog. Departmental Accounts Committees (DAC) and PAC sub-committees can be effective in this respect.

The role of the secretary and the minister must also be clearly defined. Currently, only the secretary of the relevant department is responsible, while ministers do not receive invitations to PAC meetings. In practice, both the minister and the secretary participate in decision-making. The Principal Accounts Officers (PAOs) must also effectively convene more frequent meetings of Departmental Accounts Committees, confirming PAC orders and ensuring that no duplicate issues are presented to the PAC. Developing the technical and professional capacity of parliamentarians, the PAC secretariat, and the AGP Department is a prerequisite for effective state administration accountability. Capacity-building courses in advanced inspection techniques can help improve the technical and professional knowledge of PAC members.

Last but not least, analogous to industrialized countries, the PAC may consider creating a Parliamentary Budget Office to ensure ex-ante control of the country's financial management process. Unfortunately, historical trends reveal that political parties have not treated the PAC’s operations with due diligence. Instead of utilizing it as a tool to address corruption and state revenue losses arising from inadequate governance and neglect, they have often employed it to shield their shortcomings (Masood 2019).

It is essential to conduct performance evaluations of judges, and those who do not meet the prescribed standards of the judiciary may receive additional training or face removal from office. Timeliness in case disposition is also of utmost importance. The judiciary should prioritize the swift resolution of cases to ensure timely justice for the ordinary citizen. Unfortunately, Pakistan has a significant backlog of pending cases that have been unresolved for many years. A recent instance is the removal of a judge from the Islamabad High

Court in 2018 under Article 209(6) of the Constitution, carried out by the President of Pakistan based on the recommendations of the Supreme Judicial Council. The judge filed a petition against the SJC's recommendation, asserting that his constitutional and legal rights, including protection under Articles 4, 10A, and 25 of Pakistan's Constitution, had been deprived, but this petition remains unresolved. Some experts believe that the pendency of cases can be overcome by establishing local *panchayats* and Ombudsmen at the district, Tehsil, and local levels, which would help reduce the burden on the upper and lower judiciary.

The authority of the chief justice to unilaterally constitute benches, transfer judges, and assign cases should also be reviewed, as there is a need to amend the constitution to limit the chief justice's power in these matters and to establish a dedicated department to handle these tasks in a more organized manner. To address this, the Parliament enacted The Supreme Court (Review of Judgements and Orders) Act 2023, pending the final decision in the SC, and The Supreme Court (Practice and Procedure) Act 2023, nullified by the SC on August 11, 2023. The Alternative Dispute Resolution (ADR) mechanisms and institutions should also be encouraged to reduce pressure on the courts.

In Pakistan, it is a historical fact that despite using different accountability mechanisms, the accountability process is not very effective. The sitting governments always tried to interfere with the accountability process by promulgating ordinances for the sake of their interests. Therefore, there is a dire need for a constitutional, legal, and institutional framework that may enhance the neutrality of the accountability institutions to exercise oversight over the powers of the executives and prevent the abuse of power. Multiple internal and external factors hamper accountability in Pakistan. The number of accountability courts needs to increase to cope with the workload. The prosecution is also under-resourced and short of the number of prosecutors to deal with the delay of the cases.

Also, there is a dire and unavoidable requirement to change the structure of the NAB. All political parties, civil society representatives, and lawyers associations criticize the legal and institutional structure of the NAB and demand the promulgation of a transparent accountability system. Despite having all the legal and constitutional provisions, the overall accountability structures and institutions are not performing well in Pakistan. There is a general perception that accountability institutions are manipulated and influenced by the sitting governments and are 'dictated by partisan considerations.' These are key issues that need to be addressed to enhance the efficiency of accountability institutions.

To enhance the effectiveness and credibility of the NAB, measures including the transparent and merit-based process of inducting employees, similar to the Federal Public Service Commission (FPSC), can be implemented. Establishing a structured framework for promotions and allowances of the NAB officers ensures fairness and reduces the scope for individual discretion. Similarly, to avoid controversies stemming from law enforcement, decision-making within accountability institutions should be collective/participative instead of accumulating powers on the one hand. By doing so, decision-making will be less prone to personal preferences, will be more transparent, and will create greater institutional ownership, which helps mitigate the perceptions of bias and ensures a more accountable and transparent decision-making process.

Furthermore, anti-corruption institutions are required to proactively adopt preventive measures to identify and address potential corruption risks effectively. Creating awareness campaigns and educating the public about the negative consequences of corruption further strengthens the preventive aspect of the NAB's role. It is also important to expedite the justice system and decide corruption cases in minimum time to facilitate people and save their time and resources, and this can be achieved by removing the legal complexities, administrative inefficiencies, judicial backlog, and political interference in the accountability and judicial process.

5. Conclusion

As a democratic country with a parliamentary system, Pakistan tested various accountability mechanisms since 1947 after its independence from the British colony. Unfortunately, all these structures were manipulated either by the civilian governments or military dictators during their regimes. On the other hand, interference of one constitutional institution in the affairs of other institutions is a common practice in Pakistan, which always creates political chaos in the country. Over the last few years, the judiciary overreached into the executive and Parliament's domains, as previously discussed. The recent developments show that politicians also drag the judiciary into political matters and try to make it controversial by filing court cases. Besides this, the pressure of military governments and the influence of political leaders and the powerful sectors of society have derailed the process of horizontal accountability in Pakistan. One major challenge for these state institutions is the separation of powers among themselves. Therefore, there is a need for inter-institutional dialogues among the state pillars to reform the current accountability structure for the betterment of the common man. Otherwise, the situation would become worse.

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Country Case 4: South Korea

Horizontal Accountability and Democratic Careening: The Case of South Korea in Comparative Perspective

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1. Introduction

This study describes *de jure* horizontal accountability mechanisms and examines the *de facto* horizontal accountability performance of South Korea for the last two decades since 2000, putting the country in the comparative context of the third-wave democratizers.

It shows that South Korea optimally designed its inter-branch checks-and-balances mechanisms on parchment by setting legislative and judicial constraints on the executive in an unbiased manner. It also reveals the perilous discrepancies between *de jure* horizontal accountability mechanisms and *de facto* horizontal accountability performance by detecting earlier deterioration of and later reversal of inter-branch accountability outcomes in the country. Finally, it confirms that the oscillation of horizontal accountability between corrosion and restoration correlates with the fluctuation of democracy between erosion and resilience in South Korea. It explains the oscillation of horizontal accountability by introducing the dynamic of democratic careening, which occurs either when a liberal president, prioritizing electoral mandate over constitutional constraints, overreaches toward populist excess, or when a conservative president, prioritizing constitutional constraints over electoral mandate, overreaches toward oligarchical excess.

In the next section, this study introduces a variety of empirical indicators to measure executive, legislative, and judicial powers in order to describe South Korea's *de jure* horizontal accountability mechanisms and compare them with other third-wave democratizers. The third section utilizes several empirical measures to estimate South Korea's *de facto* horizontal accountability performance and the impact on the quality of democracy with finding a significant hiatus between *de jure* accountability and *de facto* accountability and *de facto* accountability performance correlates with the quality of democracy. In the penultimate section, this study claims that the dynamics of democratic careening can account for the gap between *de jure* accountability and *de facto* accountability by analyzing two episodes of presidential impeachment as case studies of democratic careening in the country. The conclusion summarizes the research findings and implications.

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2. *De jure* Horizontal Accountability: South Korea in Comparative Context

In this section, I introduce empirical indicators for the *de jure* horizontal accountability mechanisms of South Korea. As a template to evaluate the parchment configuration of horizontal accountability mechanisms, I use the following data sources to measure the strength of the constitutional inter-branch checks and balances provisions. For executive power or constitutional endowments of executive actions, I employ the 'executive power index' from *Constitute*, which ranges from 0 to 1 and captures the presence or absence of seven significant aspects of executive lawmaking: (1) the power to initiate legislation; (2) the power to issue decrees; (3) the power to initiate constitutional amendments; (4) the power to declare states of emergency; (5) veto power; (6) the power to challenge the constitutionality of legislation; and (7) the power to dissolve the legislature. The index score is the mean of the seven binary elements, with higher numbers indicating more executive power and lower numbers indicating less executive power (Elkins, Ginsburg, and Melton 2023).

South Korea's executive power index score is 0.43, which reflects its constitutional provisions of (1) the power to initiate legislation,[2] (2) the power to issue decrees,[3] (3) the power to initiate constitutional amendments,[4] (4) the power to declare a state of emergency[5] and (5) veto power,[6] but no constitutional provisions of (6) the power to challenge the constitutionality of legislation and (7) the power to dissolve the legislature.

For legislative power or constitutional endowments of legislative constraints on executive actions, I employ the 'legislative power index' from the *Handbook of National Legislature*, which ranges from 0 to 1 and captures the presence or absence of thirty-two important aspects of legislative constraints on the executive actions. The index score is simply the mean of the following thirty-two binary elements, with higher numbers indicating more legislative power and lower numbers indicating less legislative power (Fish and Kroenig 2009):

(a) the legislature's influence over the executive, which includes (1) whether the legislature alone, without the involvement of any other agencies, can impeach the president or replace the prime minister; (2) whether ministers may serve simultaneously as members of the legislature; (3) whether the legislature has powers of summons over executive branch officials and hearings with executive branch officials testifying before the legislature or its committees are regularly held; (4) whether the legislature can conduct independent investigation of the chief executive and the agencies of the executive; (5) whether the legislature has effective powers of oversight over the agencies of coercion; (6) whether the legislature appoints the

[2] Article 52: Bills may be introduced by members of the National Assembly or by the Executive.

[3] Article 75: The President may issue presidential decrees concerning matters delegated to him by law with the scope specifically defined and also matters necessary to enforce laws.

[4] Article 128: A proposal to amend the Constitution shall be introduced either by a majority of the total members of the National Assembly or by the President.

[5] Article 76: (1) In time of internal turmoil, external menace, natural calamity or a grave financial or economic crisis, the President may take in respect to them the minimum necessary financial and economic actions or issue orders having the effect of law, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly; (2) In case of major hostilities affecting national security, the President may issue orders having the effect of law, only when it is required to preserve the integrity of the nation, and it is impossible to convene the National Assembly.

[6] Article 53: (1) Each bill passed by the National Assembly shall be sent to the Executive, and the President shall promulgate it within fifteen days; (2) In case of objection to the bill, the President may, within the period referred to in Paragraph (1), return it to the National Assembly with written explanation of his objection, and request it be reconsidered. The President may do the same during adjournment of the National Assembly.

prime minister; (7) whether the legislature's approval is required to confirm the appointment of ministers or the legislature itself appoints ministers; (8) whether the country lacks a presidency entirely or there is a presidency, but the president is elected by the legislature; (9) whether the legislature can vote no confidence in the government;

(b) the legislature's institutional autonomy, which includes (10) whether the legislature is immune from dissolution by the executive; (11) whether any executive initiative on legislation requires ratification or approval by the legislature before it takes effect; (12) whether laws passed by the legislature are veto-proof or essentially veto-proof; (13) whether the legislature's laws are supreme and not subject to judicial review; (14) whether the legislature has the right to initiate bills in all policy jurisdictions; (15) whether the expenditure of funds appropriated by the legislature is mandatory; (16) whether the legislature controls the resources that finance its internal operation and provide for the perquisites of its members; (17) whether members of the legislature are immune from arrest and/or criminal prosecution; and (18) whether all members of the legislature are elected;

(c) the legislature's specified powers, which include (19) whether the legislature alone, without the involvement of any other agencies, can change the Constitution; (20) whether the legislature's approval is necessary for the declaration of war; (21) whether the legislature's approval is necessary to ratify treaties with foreign countries; (22) whether the legislature has the power to grant amnesty; (23) whether the legislature has the power of pardon; (24) whether the legislature reviews and has the right to reject appointments to the judiciary or the legislature itself appoints members of the judiciary; (25) whether the chairman of the central bank is appointed by the legislature; (26) whether the legislature has a substantial voice in the operation of the state-owned media;

(d) the legislature's institutional capacity, which includes (27) whether the legislature is regularly in session; (28) whether each legislator has a personal secretary; (29) whether each legislator has at least one non-secretarial staff member with policy expertise; (30) whether legislators are eligible for re-election without any restriction; (31) whether a seat in the legislature is an attractive enough position that legislators are generally interested in and seek re-election; and (32) whether the re-election of an incumbent legislator is common enough that at any given time the legislature contains a significant number of highly experienced members.

South Korea's legislative power index score is 0.59, which reflects its constitutional provisions for:

(a) the legislature's influence over the executive about (2) whether ministers may serve simultaneously as members of the legislature,[7] (3) whether the legislature has powers of summons over executive branch officials and hearings with executive branch officials testifying before the legislature or its committees are regularly held,[8] (4) whether the legislature can conduct an independent investigation of the chief executive and the agencies of the executive,[9] and (5) whether the legislature has effective powers of oversight over the agencies of coercion;

[7] Article 43: Members of the National Assembly shall not concurrently hold any other office prescribed by law; National Assembly Act Article 29: (1) No National Assembly member shall concurrently hold office, except the office of Prime Minister or a member of the State Council.

[8] Article 62: (2) When requested by the National Assembly or its committees, the Prime Minister, members of the State Council or government delegates shall attend any meeting of the National Assembly and answer questions.

[9] Article 61: (1) The National Assembly may inspect affairs of state or investigate specific matters of state affairs, and may demand the production of documents directly related thereto, the appearance of a witness in person and the furnishing of testimony or statements of opinion.

(b) the legislature's institutional autonomy about (10) whether the legislature is immune from dissolution by the executive, (11) whether any executive initiative on legislation requires ratification or approval by the legislature before it takes effect,[10] (14) whether the legislature has the right to initiate bills in all policy jurisdictions, (15) whether the expenditure of funds appropriated by the legislature is mandatory, (16) whether the legislature controls the resources that finance its internal operation and provide for the perquisites of its members, and (18) whether all members of the legislature are elected;[11]

(c) the legislature's specified powers about (20) whether the legislature's approval is necessary for the declaration of war,[12] (21) whether the legislature's approval is necessary to ratify treaties with foreign countries,[13] and (24) whether the legislature reviews and has the right to reject appointments to the judiciary or the legislature itself appoints members of the judiciary;[14]

(d) the legislature's institutional capacity about (27) whether the legislature is regularly in session,[15] (28) whether each legislator has a personal secretary, (29) whether each legislator has at least one non-secretarial staff member with policy expertise, (30) whether legislators are eligible for re-election without any restriction; (31) whether a seat in the legislature is an attractive enough position that legislators are generally interested in and seek re-election; and (32) whether the re-election of an incumbent legislator is common enough that at any given time the legislature contains a significant number of highly experienced members.

For judicial power or constitutional endowments of judicial constraints on executive actions, I employ the 'judicial power index' from *Constitute*, which ranges from 0 to 1 and captures the presence or absence of twelve important aspects of judicial constraints on executive actions. The index score is simply the mean of the twelve binary elements, with higher numbers indicating more judicial power and lower numbers indicating less judicial power (Elkins, Ginsburg, and Melton 2023):

(a) the judicial independence, which includes (1) whether the Constitution contains an explicit statement of judicial independence; (2) whether the Constitution provides that judges have lifetime appointments; (3) whether appointments to the highest court involve either a judicial council or two (or more) actors; (4) whether removal is prohibited or limited so that it requires the proposal of a supermajority vote in the legislature, or if only the public or judicial council can propose removal and another political actor is required to approve such a proposal; (5) whether removal is explicitly limited to

[10] Article 76: (3) In case actions are taken or orders are issued under Paragraphs (1) and (2), the President shall promptly notify the National Assembly and obtain its approval.

[11] Article 41: (1) The National Assembly shall be composed of members elected by universal, equal, direct and secret ballot by the citizens.

[12] Article 60: (2) The National Assembly shall also have the right to consent to the declaration of war, the dispatch of armed forces to foreign states, or the stationing of alien forces in the territory of the Republic of Korea.

[13] Article 60: (1) The National Assembly shall have the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade and navigation; treaties pertaining to any restriction in sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters.

[14] Article 104: (1) The Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly; (2) The Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly.

[15] Article 47: (1) A regular session of the National Assembly shall be convened once every year as prescribed by law, and extraordinary sessions of the National Assembly shall be convened upon the request of the President or one fourth or more of the total members.

crimes and other issues of misconduct, treason, or violations of the Constitution; and (6) whether judicial salaries are protected from reduction.

(b) the judicial capacity, which includes (7) whether the Constitution provides for judicial review; (8) whether courts have the power to supervise elections; (9) whether any court has the power to declare political parties unconstitutional; (10) whether judges play a role in removing the executive, for example in impeachment; (11) whether any court has any ability to review declarations of emergency; and (12) whether any court has the power to review treaties.

South Korea's judicial power index score is 0.58, which reflects its constitutional provisions for:

(a) the judicial independence, which includes (1) whether the Constitution contains an explicit statement of judicial independence,[16] (3) whether appointments to the highest court involve either a judicial council or two (or more) actors,[17] (5) whether removal is explicitly limited to crimes and other issues of misconduct, treason, or violations of the Constitution, and (6) whether judicial salaries are protected from reduction.[18]

(b) the judicial capacity, which includes (7) whether the Constitution provides for judicial review,[19] (9) whether any court has the power to declare political parties unconstitutional,[20] (10) whether judges play a role in removing the executive;[21] but no constitutional provisions about (8) whether courts have the power to supervise elections, (11) whether any court has any ability to review declarations of emergency, and, (12) whether any court has the power to review treaties.

To put South Korea's executive, legislative, and judicial power index score in a comparative context, I construct a sample of eighteen fellow third-wave democratizers from (1) East and Southeast Asia: Indonesia (1999), Mongolia (1991), Philippines (1988), South Korea (1988), Taiwan (1996), and Thailand (1998); (2) Central and Eastern Europe: Bulgaria (1991), Czech Republic (1990), Hungary (1990), Poland (1990); Romania (1991), and Slovak Republic (1994); and (3) Central and South America: Argentina (1984), Brazil (1987), Chile (1990), Colombia (1991), Mexico (1996), and Peru (1981).[22]

[16] Article 103: Judges shall rule independently according to their conscience and in conformity with the Constitution and law.

[17] Article 104: (1) The Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly; (2) The Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly.

[18] Article 106: (1) No judge shall be removed from office except by impeachment or a sentence of imprisonment or heavier punishment, nor shall he be suspended from office, have his salary reduced or suffer any other unfavorable treatment except by disciplinary action.

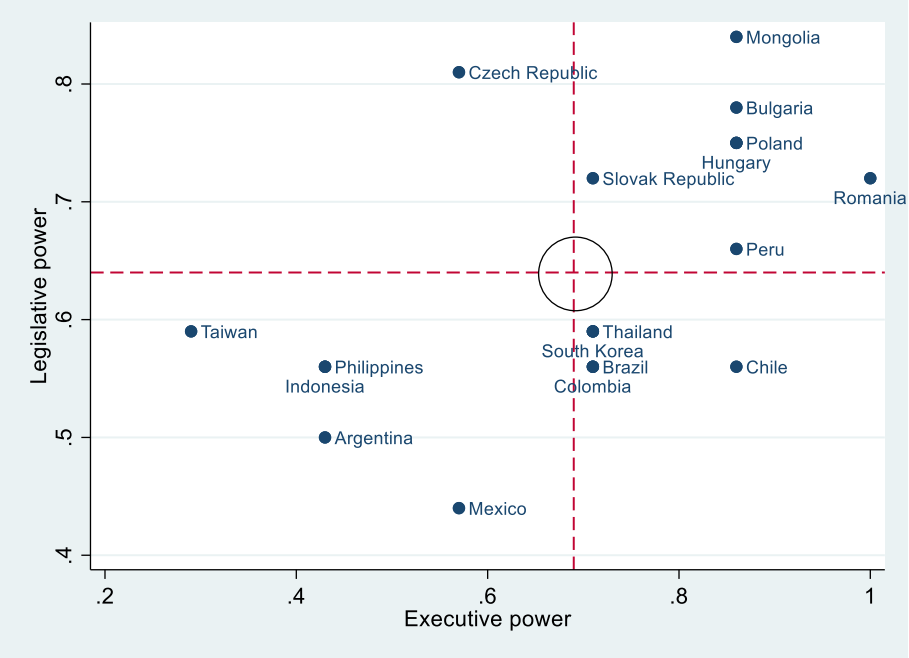
[19] Article 111: (1) The Constitution Court shall adjudicate the following matters: 1. The constitutionality of a law upon the request of the courts.

[20] Article 111: (1) The Constitution Court shall adjudicate the following matters: 3. Dissolution of a political party.

[21] Article 111: (1) The Constitution Court shall adjudicate the following matters: 2. Impeachment.

[22] Parentheses indicate the year in which the country makes the democratic transition from closed or electoral autocracy to electoral or liberal democracy pursuant to Regimes of the World dataset of Varieties of Democracy project (https://v-dem.net/data/). In each region, the six largest third-wave democratizers in terms of population in 1990 were selected.

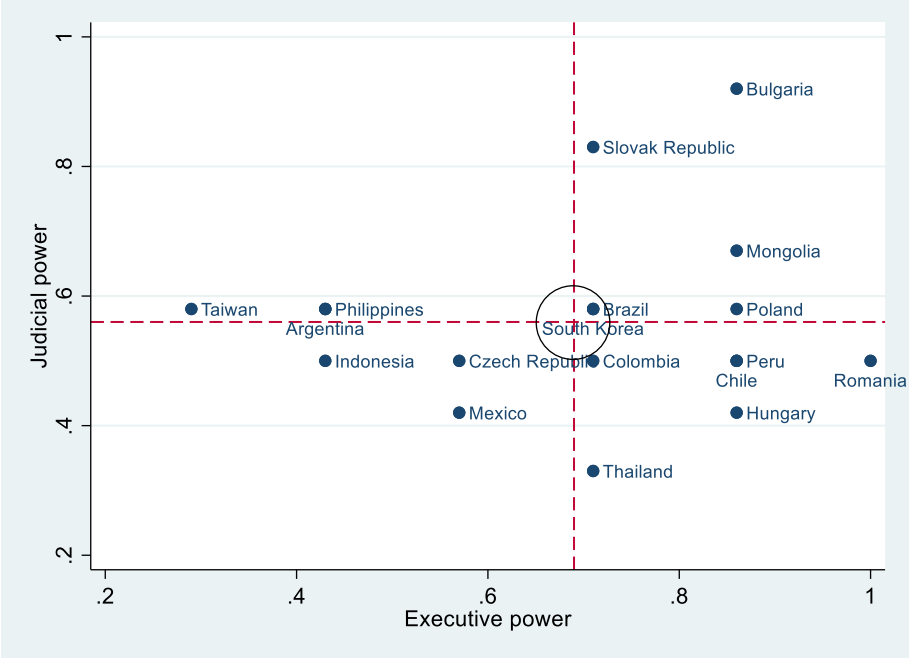
Figure 1. Executive and Legislative Power Index Scores in 18 Third-wave Democratizers



Sources: Elkins, Ginsburg, and Melton 2023; Fish and Kroenig 2009.

Figure 1 illustrates a scatterplot in which the horizontal axis shows the executive power index scores of the eighteen third-wave democratizers, and the vertical axis shows the legislative power index scores of the eighteen third-wave democratizers. Each dotted line indicates the mean value of each power index score. In the upper-right corner, where the imperial president meets the recalcitrant assembly, Mongolia, Bulgaria, Poland, Hungary, and Romania are located. Taiwan, Argentina, and Mexico are in the lower-left corner, where the non-dominant executive meets the subservient legislature. While Chile adopts a constitutional design that combines the imperial president with the subservient legislature, the Czech Republic employs a constitutional design that blends the non-dominant executive with the recalcitrant assembly. Regarding *de jure* accountability, South Korea seems to have one of the most workable executive-legislative inter-branch checks and balances mechanisms among the eighteen third-wave democratizers.

Figure 2. Executive and Judicial Power Index Scores in 18 Third-wave Democratizers



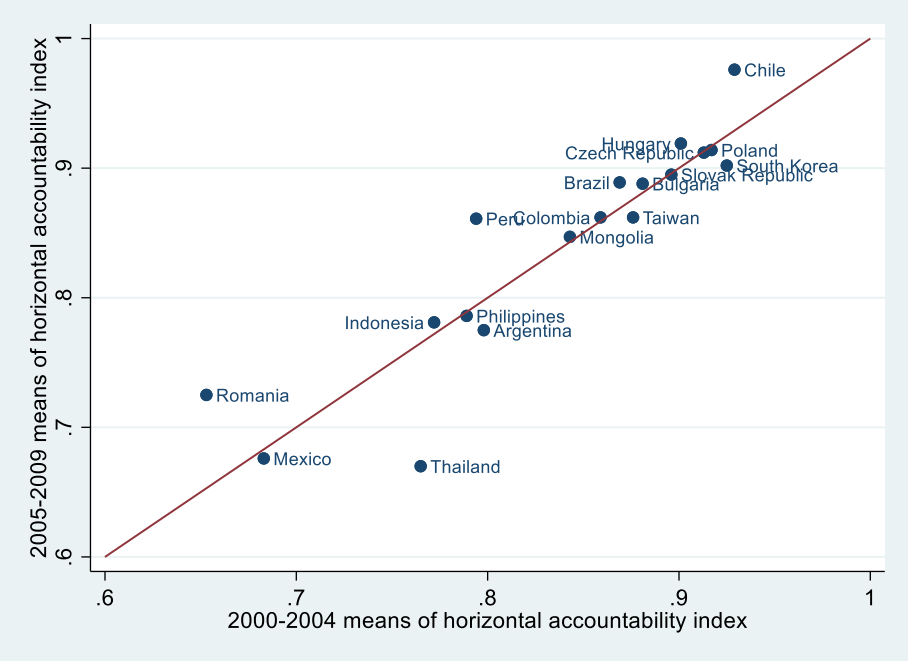
Sources: Elkins, Ginsburg, and Melton 2023.

Figure 2 shows a scatterplot in which the horizontal axis represents the executive power index scores of the eighteen third-wave democratizers and the vertical axis indicates the judicial power index scores of the eighteen third-wave democratizers. Each dotted line indicates the mean value of each power index score. Bulgaria is in the upper-right corner, where the imperial president meets the recalcitrant court. Indonesia and Mexico are in the lower-left corner, where the non-dominant executive meets the subservient tribunal. While Romania, Hungary, and Thailand employ the constitutional design that combines the imperial president with the subservient tribunal, Taiwan adopts a constitutional design that blends the non-dominant executive with the recalcitrant court. Regarding *de jure* accountability, South Korea seems to have one of the most workable executive-judicial inter-branch checks and balances mechanisms among the eighteen third-wave democratizers.

3. *De facto* Horizontal Accountability: South Korea in Comparative Context

In this section, I present empirical indicators for *de facto* horizontal accountability performance and its impact on the quality of democracy in South Korea. As a template to assess the actual outcomes of horizontal accountability mechanisms and the quality of democracy, I use the following data sources for measurement. For *de facto* horizontal accountability performance, I employ the 'horizontal accountability index' from Varieties of Democracy (V-Dem), which ranges from 0 to 1 and captures to what extent the ideal of horizontal government accountability is achieved by aggregating the following indicators: (1) the V-Dem judicial constraints the executive index; (2) the V-Dem legislative constraints on the executive index, and (3) V-Dem other state bodies (comptroller general, general prosecutor, or ombudsman) constraints on the executive index. The higher numbers indicate more *de facto* horizontal accountability and lower numbers denote less *de facto* horizontal accountability (Luhrmann, Marquardt, and Mechkova 2020).

Figure 3. Horizontal Accountability Index Scores of 18 Third-wave Democratizers, 2000-2004 versus 2005-2009



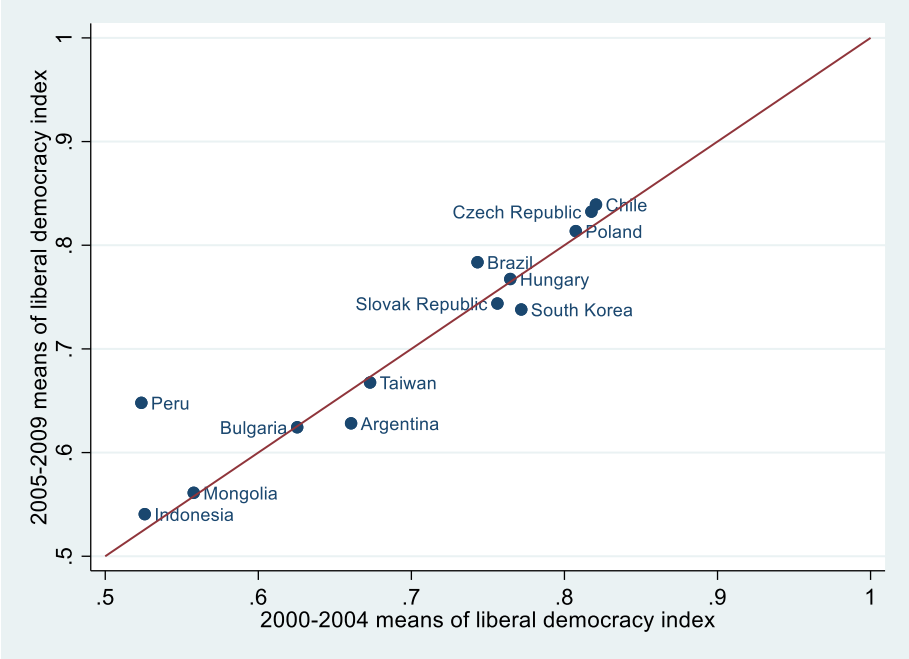
Source: V-Dem https://www.v-dem.net/data/

For the quality of democracy, I employ the 'liberal democracy index' from V-Dem, which ranges from 0 to 1 and captures to what extent the ideal of liberal democracy is achieved. The higher numbers indicate a higher quality of democracy, and lower numbers indicate a lower quality of democracy (Coppedge et al. 2020).

For the convenience of presentation, I calculate the mean values of five-year intervals since 2000 for each index score of the eighteen third-wave democratizers. South Korea's horizontal accountability index scores are as follows: (1) 2000-2004: 0.925; (2) 2005-2009: 0.902; (3) 2010-2014: 0.865; and (4) 2015-2019: 0.933. South Korea's liberal democracy index scores are as follows: (1) 2000-2004: 0.772; (2) 2005-2009: 0.738; (3) 2010-2014: 0.649; and (4) 2015-2019: 0.722.

Figure 3 illustrates a scatterplot in which the horizontal axis shows the 2000-2004 mean values of the horizontal accountability index scores of the eighteen third-wave democratizers, and the vertical axis represents the 2005-2009 mean values of horizontal accountability index scores of the eighteen third-wave democratizers. If a country is on the left side of the 45-degree line, its *de facto* horizontal accountability is improved. If a country is on the right side of the 45-degree line, its *de facto* horizontal accountability deteriorates. Chile, Peru, and Romania represent the former, whereas South Korea, Taiwan, Argentina, and Thailand typify the latter. Regarding *de facto* accountability, South Korea seems to be one of the modest horizontal accountability erosion cases among the eighteen third-wave democratizers during the period.

Figure 4. Liberal Democracy Index Scores of 18 Third-wave Democratizers, 2000-2004 versus 2005-2009

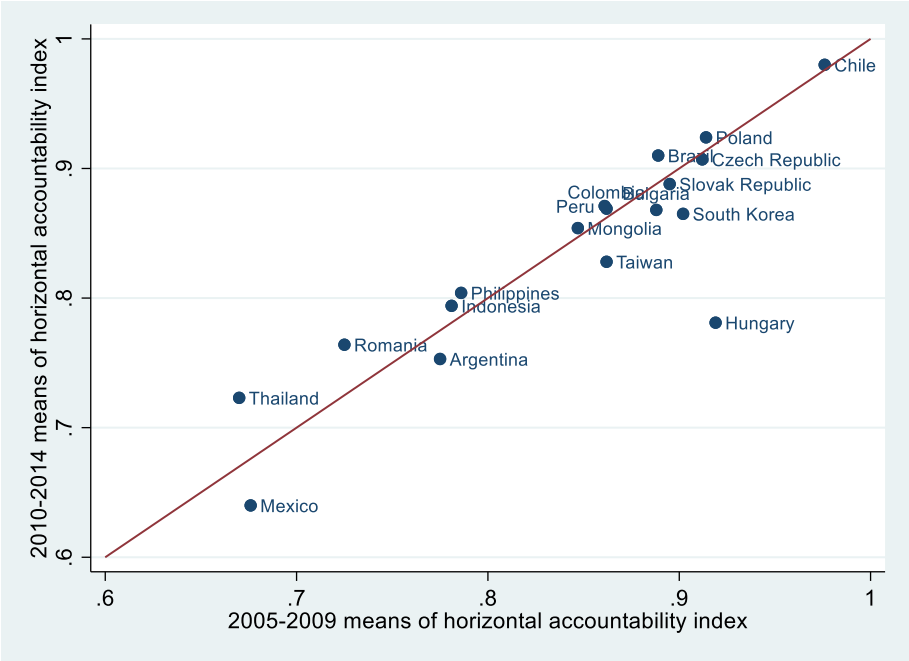


Source: V-Dem https://www.v-dem.net/data/

Note: Colombia, Mexico, Philippines, Romania, and Thailand are excluded due to their lower scores.

Figure 4 shows a scatterplot in which the horizontal axis represents the 2000-2004 mean values of liberal democracy index scores of the eighteen third-wave democratizers, and the vertical axis indicates the 2005-2009 mean values of liberal democracy index scores of the eighteen third-wave democratizers. If a country is on the left side of the 45-degree line, its quality of democracy is improved. If a country is on the right side of the 45-degree line, its quality of democracy deteriorates. Among the higher horizontal accountability performers, Chile and Peru improved their quality of democracy. Among the lower horizontal accountability performers, South Korea and Argentina worsen their quality of democracy. In terms of democracy, South Korea seems to be one of the horizontal-accountability-triggered democratic backsliding cases among the eighteen third-wave democratizers during the period (Sato et al. 2022).

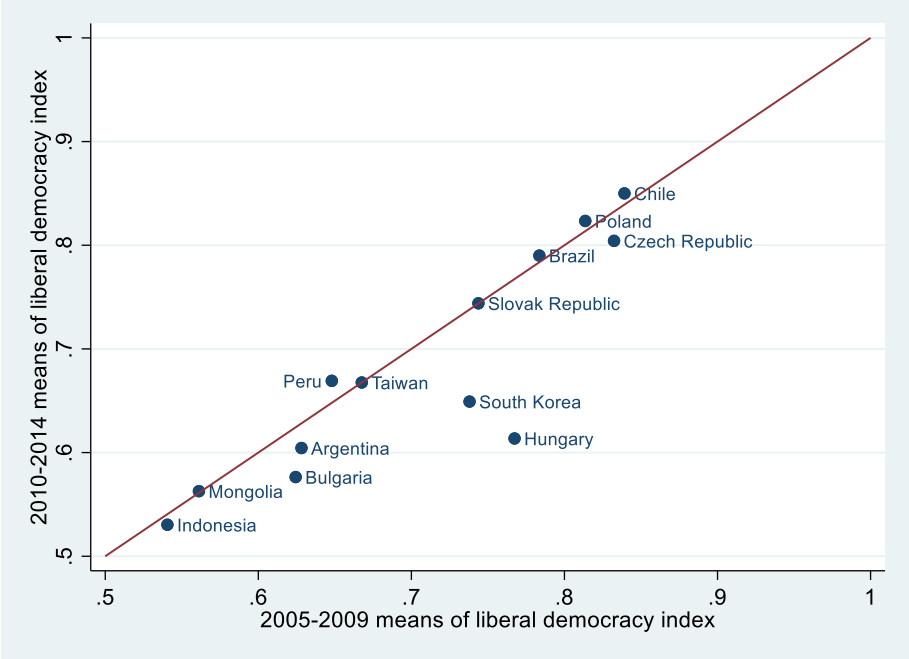
Figure 5. Horizontal Accountability Index Scores of 18 Third-wave Democratizers, 2005-2009 versus 2010-2014



Source: V-Dem https://www.v-dem.net/data/

Figure 5 illustrates a scatterplot in which the horizontal axis shows the 2005-2009 mean values of the horizontal accountability index scores of the eighteen third-wave democratizers, and the vertical axis represents the 2010-2014 mean values of the horizontal accountability index scores of the eighteen third-wave democratizers. If a country is on the left side of the 45-degree line, its *de facto* horizontal accountability is improved. If a country is on the right side of the 45-degree line, its *de facto* horizontal accountability deteriorates. Brazil, Romania, and Thailand represent the former, whereas South Korea, Taiwan, Argentina, Hungary, and Mexico typify the latter. Regarding *de facto* accountability, South Korea seems to be one of the continuous horizontal accountability erosion cases among the eighteen third-wave democratizers during the period.

Figure 6. Liberal Democracy Index Scores of 18 Third-wave Democratizers, 2005-2009 versus 2010-2014

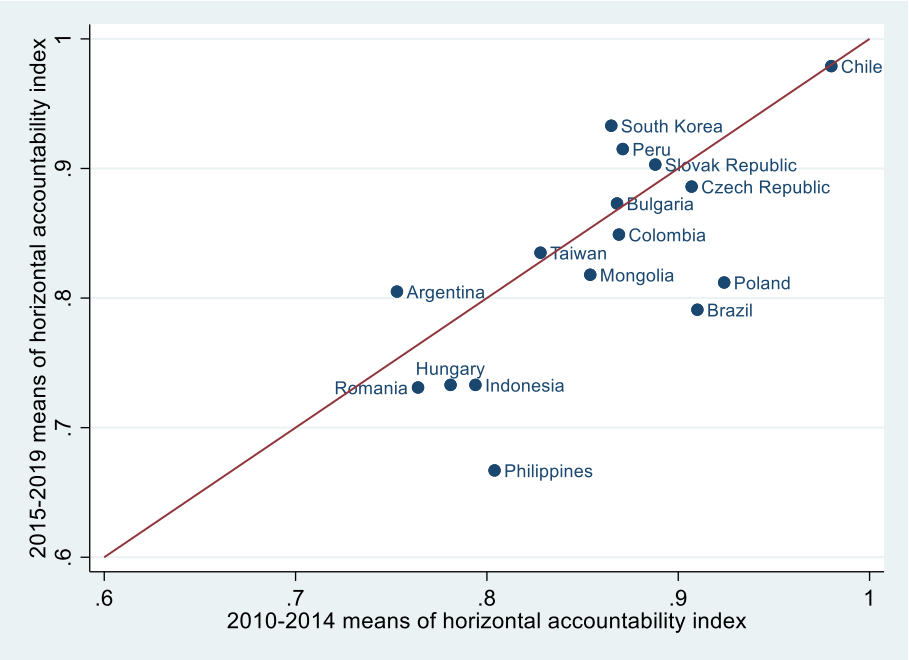


Source: V-Dem https://www.v-dem.net/data/

Note: Colombia, Mexico, Philippines, Romania, and Thailand are excluded due to their lower scores.

Figure 6 shows a scatterplot in which the horizontal axis represents the 2005-2009 mean values of liberal democracy index scores of the eighteen third-wave democratizers, and the vertical axis indicates the 2010-2014 mean values of liberal democracy index scores of the eighteen third-wave democratizers. If a country is on the left side of the 45-degree line, its quality of democracy is improved. If a country is on the right side of the 45-degree line, its quality of democracy deteriorates. Among the lower horizontal accountability performers, South Korea, the Czech Republic, Hungary, Argentina, and Bulgaria worsen their quality of democracy. In terms of democracy, South Korea seems to be one of the horizontal accountability-accelerated democratic backsliding cases among the eighteen third-wave democratizers during the period (Shin 2021).

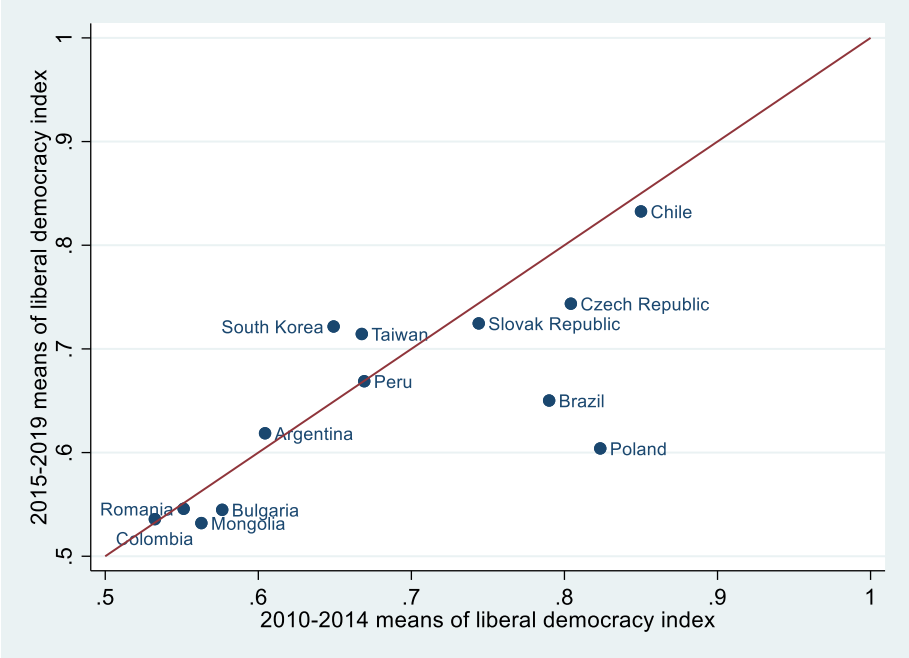
Figure 7. Horizontal Accountability Index Scores of 18 Third-wave Democratizers, 2010-2014 versus 2015-2019



Source: V-Dem https://www.v-dem.net/data/

Figure 7 illustrates a scatterplot in which the horizontal axis shows the 2010-2014 mean values of the horizontal accountability index scores of the eighteen third-wave democratizers, and the vertical axis represents the 2015-2019 mean values of horizontal accountability index scores of the eighteen third-wave democratizers. If a country is on the left side of the 45-degree line, its *de facto* horizontal accountability is improved. If a country is located on the right side of the 45-degree line, its *de facto* horizontal accountability deteriorates. South Korea, Peru, and Argentina represent the former, whereas Poland, Brazil, Indonesia, Hungary, and the Philippines typify the latter. Regarding *de facto* accountability, South Korea seems to be one of the horizontal accountability-erosion-reversal cases among the eighteen third-wave democratizers during the period.

Figure 8. Liberal Democracy Index Scores of 18 Third-wave Democratizers, 2010-2014 versus 2015-2019



Source: V-Dem https://www.v-dem.net/data/

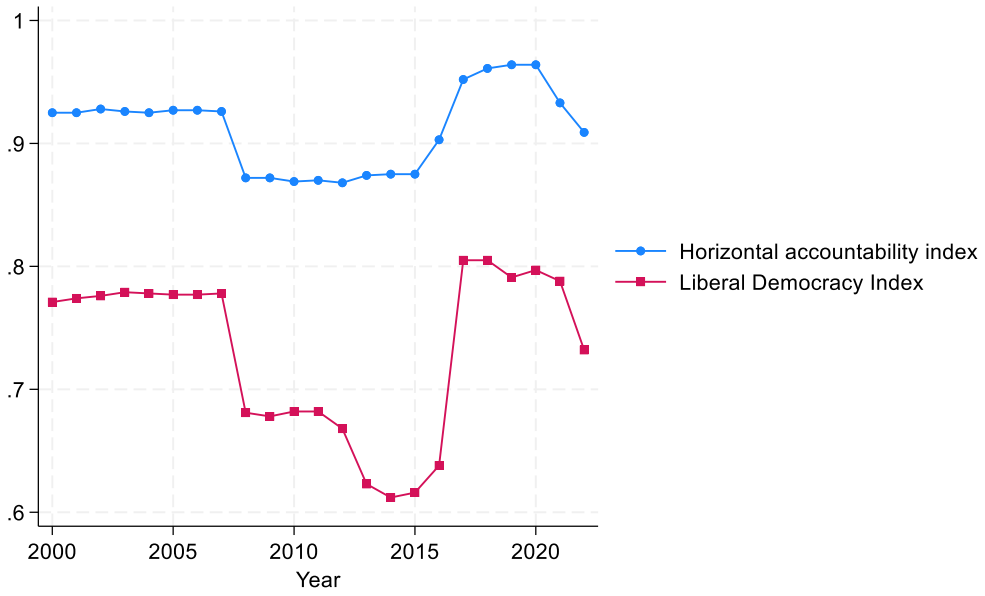
Note: Mexico, the Philippines, and Thailand are excluded due to their lower scores.

Figure 8 shows a scatterplot in which the horizontal axis represents the 2010-2014 mean values of liberal democracy index scores of the eighteen third-wave democratizers, and the vertical axis indicates the 2015-2019 mean values of liberal democracy index scores of the eighteen third-wave democratizers. Countries located on the left side of the 45-degree line indicate an improved quality of democracy, while countries on the right side of the 45-degree line indicate a deteriorated quality of democracy. Among the higher horizontal accountability performers, South Korea has an improved quality of democracy. Among the lower horizontal accountability performers, Poland and Brazil have a decreased quality of democracy. In terms of democracy overall, South Korea seems to be one of the horizontal accountability-recovered democratic resilience cases among the eighteen third-wave democratizers during the period (Laebens and Luhrmann 2021).

4. Democratic Careening and Horizontal Accountability: South Korea as a Case Study

In this section, I present a theoretical explanation of why there is a gap between *de jure* horizontal accountability mechanisms and *de facto* horizontal accountability performance in South Korea.

Figure 9. Horizontal Accountability Index and Liberal Democracy Index Scores of South Korea, 2000-2022



Source: V-Dem https://www.v-dem.net/data/

I argue that the up and down of South Korea's democratic quality of horizontal accountability is explained by the dynamics of democratic careening for the last two decades (Slater 2022). Democratic careening occurs either when a liberal president who prioritizes electoral mandate over constitutional constraints overreaches toward populist excess, or when a conservative president who prioritizes constitutional constraints over electoral mandate overreaches toward oligarchical excess (Slater 2013). In South Korea, one of the main differences between conservatives and liberals has been their priorities in approaching North Korea. Conservatives have largely focused on strengthening ties with the United States and emphasized the need to coerce North Korea into giving up its military power by reaching economic deals in exchange. Liberals, on the other hand, have believed in the potential of a spillover effect in approaching North Korea, meaning they expect to make steps toward unification by providing aid to encourage cooperation across the peninsula (Kim 2022).

South Korea is the only liberal democracy that bounced back from autocratization over the last 20 years (Papada et al. 2023: 28-31). Its unique experience jibes with the concept of 'democratic near misses' in which a polity "1) experiences a deterioration in the quality of initially well-functioning democratic institutions, without fully sliding into authoritarianism, but then, 2) within a timeframe of a few years, at least partially recovers its high-quality democracy (Ginsburg and Huq 2018: 17)." As illustrated in Figure 9, when it completed its two consecutive turnovers of executive office between political parties – the first was from conservative President Kim Young-sam to liberal President Kim Dae-jung in 1997 and the second from liberal President Roh Moo-hyun to conservative President Lee Myung-bak in 2007, the country seemed to

achieve its democratic consolidation with the liberal democratic index score of 0.78 as well as the horizontal accountability score of 0.92 (Hahm 2008).

Since then, however, the country entered a precarious democratic near-miss zone in which the polity cycles between democratic regression and democratic reversal. After the liberal democracy index score plummeted to 0.68 in 2008 and reached its nadir of 0.61 in 2014 when the public at large questioned the democratic responsiveness of conservative President Park Geun-hye for her poor handling of the sinking of the ferry MV *Sewol*, it gradually recovered to its apogee of 0.81 in 2017 when the Constitutional Court upheld the impeachment of Park (Shin and Moon 2017).

During liberal President Moon Jae-in held the executive power, the liberal democracy index score had basically stayed the same, only to decrease suddenly to 0.73 in 2022 when conservative President Yoon Suk-yeol began his tenure. Whether this most recent downturn of the liberal democracy index score indicates the beginning of another episode of autocratization remained to be seen (Shin 2020).

The fact that the horizontal accountability index score generally followed suit shows that the quality of democracy at large coevolves the quality of horizontal accountability in South Korea. As the U-shaped (or possibly W-shaped) concavity characterizes the evolving path of the democratic quality of horizontal accountability for the last two decades, the country has come to serve as an example either of democratic regression (Wunsch and Blanchard 2023; Croissant and Haynes 2021) or of democratic reversal (Boese et al. 2021; Laebens and Lührmann 2021).

There have been two episodes of democratic careening in South Korea. The first episode of democratic careening involved the causal and consequent events of the impeachment of Roh in 2004. It was triggered by Roh's violation of the constitutional provision mandating presidential impartiality, which instigated the political reaction of conservative oppositions to impeach him in March. The impeachment of Roh was perceived as oligarchic excess by the general public who expressed their widespread discontent against conservative oppositions through large-scale candlelight rallies and gave a clear mandate to Roh's governing party with a legislative majority status in the National Assembly election in April. Reflecting the popular verdict over the issue, the Constitutional Court overturned the impeachment, reinstituting him as president in May.

The second episode of democratic careening included the causal and consequent events of the impeachment of Park in 2016 and 2017. Several news media reported that Park was at the center of an unprecedented corruption scandal, which activated large-scale candlelight rallies that demanded the impeachment of her in October 2016. Liberal oppositions were cautious to initiate the impeachment motion because of the political backlash that they had seen in the first episode of democratic careening. However, they finally passed the motion with some dissident legislators from Park's governing party mainly due to the political pressure of a million participants of candlelight rallies who perceived Park's corruption as oligarchic excess in December. The candlelight rallies lasted until March 2017 when the Constitutional Court unanimously upheld the impeachment, ousting her from office. The episode was completed as Moon's opposition party won the snap presidential election in May (Mosler 2017).

In both episodes, what halted democratic careening was the accountability mechanism that started with diagonal accountability – pressure from civil society and media. In the first episode, candlelight rallies nudged vertical accountability – victory of Roh's governing party in the legislative election and in turn horizontal accountability – overturning the impeachment by the Constitutional Court. In the second episode, media revelation and large-scale candlelight rallies jolted horizontal accountability – the impeachment of

Park initiated by the National Assembly and upheld by the Constitutional Court and in turn vertical accountability – victory of the Moon's opposition party in the presidential election.[23]

4.1. Institutional Conditions for Democratic Careening

The longevity of the post-transition 1987 Constitution evinces the robustness of democratic political institutions in South Korea. Since the Constitution was ratified in 1948, the document had been amended seven times before 1987 with an average constitutional endurance of less than six years (Elkins, Ginsburg, and Melton 2023). As the eighth-amended document, the 1987 Constitution has lasted for thirty-five years thus far. Unlike many other democratic backsliding countries that have frequently changed the constitutions in favor of incumbent leaders, thus, politicians and political parties have had to learn and adapt to, rather than repudiate and overturn, the rules of the game that the 1987 Constitution delineate in South Korea. Paradoxically, the constitutional stability is one of the most fundamental institutional sources that underlie the democratic careening of the country (Mosler 2020).

Non-renewable single-term presidency institutionally opens the windows of opportunities for executive excess, be it populist or oligarchic.[24] As a new national leader with a refreshing electoral mandate, every incoming president has a strong motivation to overturn the policy status quo set by the outgoing one, finding the propitious chance to embark on an ambitious program of reform in the earlier period of her term. She sometimes tends to overreach, opening the windows of opportunities for executive excess in which she suspends, ignores, or even violates the requirements of the rule of law. The windows of opportunities for executive excess are disposed to closing in the later period of her term in which presidential hopefuls from both conservative and liberal camps inclined to repudiate the legacies of an unpopular outgoing president in order to acquire a brand-new electoral mandate (Bae and Park 2018).

Whether an incoming president restrains her executive excess or not depends in part on the effectiveness of horizontal accountability. The National Assembly, as legislative constraints on the executive power, and the Supreme Court and the Constitutional Court, as judicial constraints on the executive power, has substantial power to hold the president accountable. What makes the horizontal accountability effective is the institutional independence of the National Assembly, the Supreme Court, and the Constitutional Court. Due to non-concurrent electoral cycles between the president and the National Assembly members, every chief executive must encounter at least a mid-term-like legislative election that enables or constrains her executive excess.[25] When a president inherits a legislative minority situation or faces a divided government situation, the National Assembly acquires institutional independence that reduces the chance of executive excess.

According to the Constitution, 14 Supreme Court justices are appointed by the president, subject to the approval of the National Assembly. Out of 9 Constitutional Court justices, three are appointed by the president, three by the National Assembly, and three by the Chief Justice of the Supreme Court, and all of

[23] For the concept of vertical, horizontal, and diagonal accountability, see Lührmann, Marquardt, and Valeriya Mechkova 2020.

[24] The president is directly elected for a single five-year term by plurality vote.

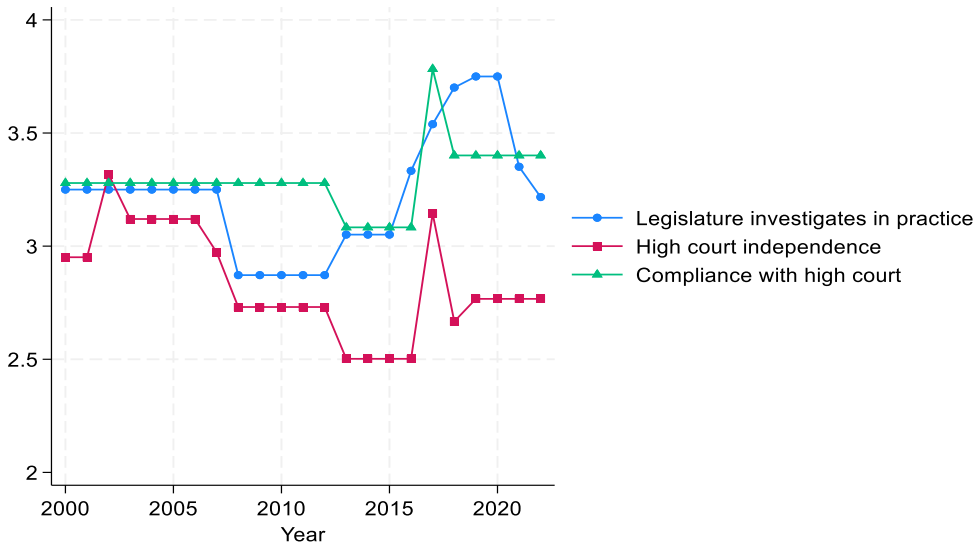
[25] The National Assembly has 300 members elected for a four-year term, 253 in single-seat constituencies and 47 members by proportional representation with a mixed-member majoritarian electoral formula. Each individual party willing to represent its policies in the National Assembly is qualified on the legislative election if the national party-vote reaches over 3% on proportional contest or more than 5 members of the party are elected from each of their first-past-the-post election constituencies.

them must attain the approval of the National Assembly.[26] Because of the co-appointment system in the Supreme Court justices and the Constitutional Court justices between the president and the National Assembly, a divided government situation is likely to increase institutional independence of the judicial branch that restrains executive excess. In other words, it is unlikely to sever the institutional independence of the legislative and judicial branches from the executive one unless a president holds a unified government situation for a substantial time.

Liberal presidents Kim and Roh had had a serial replacement of divided and unified government during their terms, which invigorated checks and balances from the National Assembly controlled by the conservative opposition parties (Brinks et al. 2020). In fact, the legislative constraints were excessively strong that Roh was even impeached by a supermajority in 2004. While a serial replacement of divided and unified government situations during a president's term is often blamed for the recurrent stalemate in the executive-legislative relations, it is also credited with the activation of the checks-and-balances mechanisms engrained in the separation-of-powers constitution (Dostal 2023).

The period that conservative presidents Lee and Park (until 2016) had reigned was exceptional in the sense that experienced no such serial replacement of divided and unified government during their tenures, which was more likely to dampen the working of horizontal accountability mechanisms. It was the 2016 legislative election that ended the eight-year conservative unified government period and started another serial replacement of divided and unified government, triggering a reactive sequence that connected media exposure of Park's corruption, the candlelight rallies, the presidential impeachment initiated by the National Assembly and upheld by the Constitutional Court, to the 2017 snap presidential election that installed Moon as the chief executive. The last year of Park evinced how vertical, horizontal, and diagonal accountability mechanisms can work in a mutually reinforcing way (Laebens and Lührmann 2021).

Figure 10. Horizontal Accountability Index Components Scores of South Korea, 2000-2022



Source: V-Dem https://www.v-dem.net/data/

[26] While the Supreme Court justices and the Constitutional Court justices are appointed for a *de jure* renewable six-year term, no justices have been reappointed since the Kim Dae-jung presidency.

Moon governed the country under divided government situation during the earlier three years and under unified government situation during the last two years. The serial replacement of divided and unified government situations during his term contained his executive excess as an ambitious incoming president who set the agenda to clean up the corruption accumulated by previous conservative governments. As shown in Figure 10, the up and down of legislative and judicial constraints on the executive in large part corresponds to the serial replacement of divided and unified government situation in South Korea.

4.2. Political Conditions for Democratic Careening

Democratization has weakened state agencies specializing in coercion such as the Agency for National Security Planning (intelligence), Defense Security Command (military), and National Security Headquarters (policy), elevating law enforcement agencies to the core of the executive authority pursuant to the norm of the rule of law. Among them, the Prosecution Service, consisting of the Supreme Prosecutors' Office, High Prosecutors' Offices, District Prosecutors' Offices, and Branch Prosecutors' Offices, deserves special attention (Hellmann 2018).

While the Prosecutive Service is run under the Ministry of Justice, it works with the Supreme Court and below so that it acquires the status of a quasi-judicial organization in which political independence from the executive power becomes of paramount importance. As the nation's highest law enforcement agency, only the prosecutors' office has the authority to indict elected politicians for corruption. Because of its infungible power, the political independence of the prosecutors' office has been one of the most controversial political issues since the democratic transition in the country. Most presidents were not good at resisting the weaponization of indictment power against opposition parties and politicians until Roh had stopped employing the prosecutors' office for such political purposes in order to keep the electoral promise of independent Prosecutive Service in 2003. While he allowed the prosecutors' office to maintain political independence by not exercising his appointment power, however, he could not find an effective way of holding it accountable to the popular branch of the government. As a result, the prosecutors' office could exploit the opportunity of political independence to maximize its organizational autonomy and reputation (Lee 2022).

Once Roh turned his executive power over to Lee in 2008, the prosecutor's office, which was under the control of the incoming president who saw the peril of the organization's independence without accountability, indicted the outgoing president for corruption. As humiliated by the prosecutors' office, Roh committed suicide. His suicide came to launch the politics of vengeance for his liberal co-partisans and constituency against the conservative camp and the prosecutors' office. As Moon assumed the office as president, they had their first vengeance in 2017 when Park was imprisoned for malfeasance and the second one in 2018 when Lee was incarcerated for bribery. The incarceration of the two presidents became the seed of the politics of vengeance for their conservative co-partisans and constituency against President Moon and the liberal camp. During Moon's five-year term, elites and voters polarized over the perceived presidential actions: for liberals, they were the enactment of the popular mandate for anti-corruption and prosecutorial reform while for conservatives they were the abuse of power that undermined constitutional constraints and civil liberties. In a nutshell, Moon's politics of vengeance was a democratic action based on a legitimate electoral mandate for liberals while it was a typical populist excess of a liberal president for conservatives (Mosler 2018).

Moon's politics of vengeance was weird in that he weaponized the indictment power of the prosecutors' office that was the main culprit in Roh's suicide. The strange bedfellow coalition turned out to be effective in accomplishing Moon's agenda for cleaning up corruption that the conservative Lee and Park had hoarded, empowering the prosecutors' office and Prosecutor General Yoon, who is now serving as president from the conservative camp, with a mantle of popular legitimacy. Once the anti-corruption campaign was completed, Moon sought to dissolve the strange bedfellow coalition, debilitating the prosecutors' office by devolving a part of the jurisdiction of its investigation authority to the National Policy Agency and establishing the Corruption Investigation Office for High-ranking Officials. Yoon clashed with Moon until his resignation as prosecutor general in 2021, announcing his candidacy for the 2022 presidential election. For the liberal camp, Yoon was the case that hero turns villain while for the conservative camp, he was the case that demon turns angel. As he was inaugurated as president, elites and voters started to polarize over perceived his actions: for conservatives, they were the restoration of constitutional order and civil liberties while for liberals, they were the abuse of power that culminated in impeachment (Mobrand 2021).

4.3. Electoral Conditions for Democratic Careening

Facing Park who showed presidential actions of oligarchical excess, liberal opposition parties and politicians tended to take the position of strategic alarmists. While they spread the perception that the presidential actions were an extraordinary threat to democracy to the general public, they employed ordinary tools of normal politics in dealing with the incumbent government. For them, extraordinary political strategies were too risky to take not least because they had witnessed an electoral backlash against conservative opposition parties and politicians who passed the motion to impeach Roh in the National Assembly in March 2004. Next month, for the first time in the nation's history, Roh's Uri Party secured a legislative majority in the National Assembly election as a liberal party. The popular verdict in favor of the incumbent president nudged the Constitutional Court to overturn the impeachment decision, restoring Roh as president in May.

More than seventy percent of South Koreans opposed the impeachment even though Roh had his job approval rating of less than twenty percent when the motion was passed in the National Assembly. The conservative opposition parties seized the opportunity to remove the chief executive in a radical, if not unconstitutional, way, interpreting the low popularity of the incumbent president as a public endorsement of the impeachment. The strategic miscalculation cost them a historic electoral defeat as the public perceived the impeachment as an example of the abuse of power to the advantage of the conservative camp. The 2004 electoral outcomes contained oligarchic excess of the conservative party and its allies controlling the National Assembly and disciplined the Constitutional Court to follow the popular verdict.

The Roh impeachment and its electoral backlash against opposition parties set a political precedent that electoral mandate trumps constitutional constraints. Because of this political learning, the liberal opposition parties were extremely cautious to take the radical strategy of impeaching Park in October 2016, demanding that she voluntarily step down. It took more than a month for Moon and his liberal party to negotiate with a splinter conservative party to build a two-thirds majority coalition in the National Assembly for presidential impeachment, confirming more than eighty percent of South Koreans supported the motion. The coming presidential election deterred the potential populist excess of the liberal party and its allies controlling the National Assembly (Turner et al. 2018).

The fact that the strategic avoidance of electoral backlash was at the heart of opposition parties' countering strategy to the aggrandizing presidential actions testifies to the importance of a vertical

accountability mechanism to preserve the democratic regime status quo. While, due to the intrinsic tension between the majoritarian vision and counter-majoritarian vision, South Korea's democratic regime may careen either toward populist excess or toward oligarchic excess, the working of electoral accountability has been highly effective in restoring the balance between the two visions of democracy.[27]

In fact, as for the National Assembly election results, Roh's liberal party secured a legislative majority in 2004, Lee's conservative party regained a legislative majority in 2008 and 2012, Park's conservative party lost its legislative majority in 2016, and Moon's liberal party reclaimed a legislative majority in 2020. The insecure majority situation, in which liberal and conservative parties compete for control of the National Assembly at relative parity, underlies the serial replacement of divided and unified government situations. These situations temper presidential actions to prevent executive excess, whether populist or oligarchic, thereby avoiding democratic careening. At the same time, as long as control of the National Assembly remains within reach for both parties, opposition parties have strong incentives to seek perpetual hunt for issues that undercut the incumbent president's democratic reputation amidst democratic careening. Whenever vertical accountability works to resolve oligarchic or populist excesses of opposition parties in the Roh or Park impeachments, electoral competition at relative parity continues to intensify polarization between partisan camps. This is due to the lock-in effect of perpetual campaign strategies to denigrate the democratic quality of incumbent presidents.

4.4. Social Conditions for Democratic Careening

As the autocratic regime mainly relied on repression, rather than redistribution, as a compliance mechanism, South Korea's democracy inherits a lasting structural legacy that the state-society architecture lacks significant mediating institutions that could play an independent role in the political process. Political parties are only weakly institutionalized and easy prey for ambitious politicians, while civic associations struggle with a lack of organizational resources and institutionalized assess to the political decision-making process. The weakness of mediating organizations such as political parties and civic associations hinders the establishment of stable and enduring political representation and interest intermediation between the government and the citizens that in turn sets the upper limits of democratic development (Hellmann 2020).

Because political parties are incapable of translating many social cleavages universal in an advanced industrial society into programmatic platforms, they become electoral and legislative agents of ambitious political leaders rather than the other way around. This dynamic accounts for why political parties frequently reorganize themselves and rebrand their names with each presidential election. At the same time, since civic associations are not entitled to be social partners in the collaborative policy-making process with the government in relevant functional domains, they tend to seek informal political channels instead of being incorporated into the formal political process. This explains why many civic associations resort to militant strategies to grab the attention of the government.

The misalignment between political parties and societal interests leaves a substantial segment of the population who are strongly disaffected by and relatively independent from partisan clashes revolving around narrow issues about the democratic reputation of incumbent presidents. The majoritarian nature of

[27] Slater and Arugay's characterization of polarization in Asian democracies is relevant here: "democratic polarization's deepest and most enduring source is not ideological or sociological but institutional. Even when leading political parties are virtually indistinguishable in ideological or sociological terms, polarization can arise as a predictable byproduct of democracy's definition and design." See Slater and Arugay 2018.

presidential and legislative elections reinforces the misalignment between politicians and citizens. This results in floating voters deciding the fate of ambitious presidents, using their votes to punish the presidents' excessive actions during periods of formal political participation. In times of informal political participation, they have engaged citizens who decide the success of large-scale collective actions to deter the chief executives' populist or oligarchic excesses. The weakness of mediating organizations paradoxically through creating sizable floating voters and/or engaged citizens sets the lower limits of the democratic regression (Choi 2018).

Understanding the paradox of the weak state-society mediating organizations is the last part to complete the reactive sequence that shapes the dynamics of democratic careening in South Korea. In 2004, even though many South Koreans did not appreciate the policy performance of Roh when the conservative opposition party and its allies decided to impeach him, a large number of those who were unfavorable of him did not think that his actions deserved to be punished to that strength. Instead, they considered the impeachment an oligarchic excess of the conservative opposition party and the allies, joining candlelight rallies as engaged citizens to deter more excessive actions and voting for Roh's liberal party as floating voters to punish the conservative camp. As a result, the first democratic careening halted.

In 2016, reflecting the low policy responsiveness of the Park government in dealing with the ferry MV *Sewol* disaster, the National Assembly election resulted in a divided government situation that opened the widows of opportunities to resuscitate inter-branch accountability initiated by Moon's liberal party and its centrist allies. The divided government situation also facilitated a series of media exposures of Park's corrupted behaviors and her excessive actions not only from liberal newspapers and broadcasting media but also conservative ones by alleviating the peril of political reprisal from the presidential office. The bipartisan media collaboration to debunk the oligarchic excess of Park triggered another round of candlelight rallies in which engaged citizens organized large-scale collective actions, demanding that she step down for a month. The scale of candlelight rallies tended to swell as Park's faulty responses repeated to enrage engaged citizens who now demanded her impeachment. While cautiously avoiding the appearance of populist excess in the earlier period, Moon's liberal party, and its allies finally passed the motion of presidential impeachment in the National Assembly and the Constitutional Court upheld it. The second democratic careening ceased (Kang 2019).

For the last two decades, regime instability has been relatively low even though opposition parties tend to exaggerate the actions of incumbent presidents as if they are symptoms of autocratization. Whenever incoming presidents set their reform agendas, they tend to deny the quality of the previous democratic regime and to prioritize the building of a new democratic order. Despite the generative political goal in rhetoric, however, they are inclined to employ normal political strategies to restore the democratic regime *ex ante* in action. The difference lies in the emphasis: the liberal camp tends to highlight the importance of reviving vertical accountability with electoral mandate while the conservative camp inclines to stress the significance of revitalizing horizontal accountability with constitutional constraints.

If opposition parties and politicians take normal strategies to deal with aggrandizing presidential actions, the tension intrinsic in democratic careening can be resolved within the boundaries of the liberal democratic regime. Their escalatory rhetoric to vilify the democratic profiles of incumbent presidents may have long-term negative effects that undermine a part of the liberal democratic regime. This is compounded by presidential politics of vengeance, which effectively pits the liberal camp against the conservative camp, as well as party competition in a relative parity that elevates the political stake of winning elections over governing.

Each episode of democratic careening can be contained by the chains of vertical, horizontal, and diagonal accountability workings as far as opposition parties and politicians play the role of strategic alarmists. Repeated resolutions of democratic careening with strategic alarmists may result in pernicious polarization, depending on the participatory motivation of floating voters and/or engaged citizens (Somer et al. 2022).

4.5. Cumulative Consequences of Democratic Careening

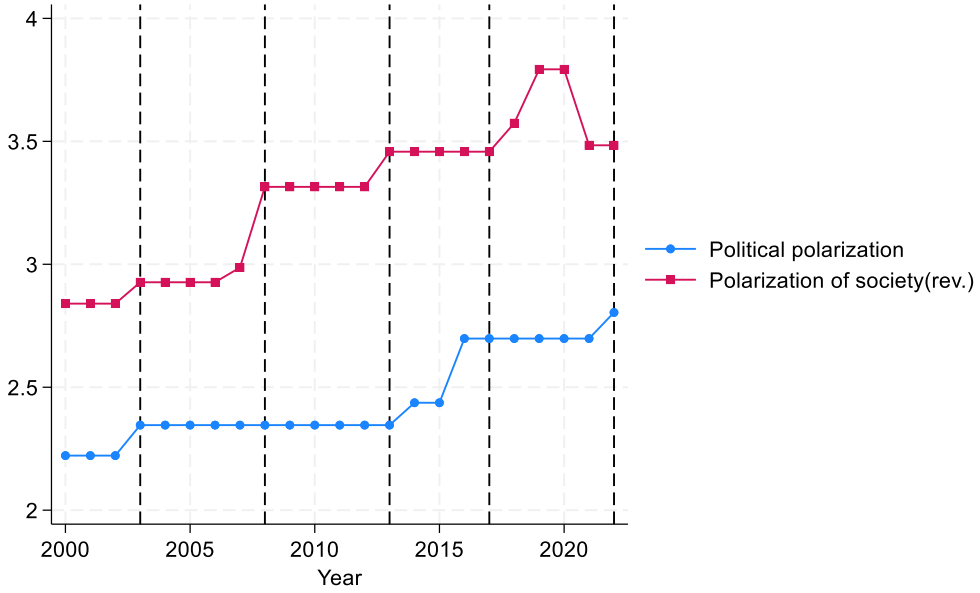
Polarization is a cumulative consequence of democratic careening. Due to the misalignment between political parties and societal interests, ideological or sociological polarization is less likely to take root in electoral politics. Instead, the enduring source of polarization is institutional. Before democratization, it pitted those who supported autocratic regimes against those who supported democratic regimes. After democratization, it pits those who prioritize a majoritarian vision of democracy against those who prioritize a counter-majoritarian vision of democracy. While political actors are polarized between two different institutional regimes in the former, they polarize between two different institutional principles within a democratic regime in the latter (Kim 2020).

In South Korea, the liberals tend to prioritize a majoritarian vision of democracy emphasizing electoral mandate and vertical accountability while the conservatives tend to prioritize a counter-majoritarian vision of democracy emphasizing constitutional constraints and horizontal accountability. Democratic careening can occur either when a liberal president overreaches its democratic vision toward populist excess or when a conservative president overreaches its democratic vision toward oligarchical excess.

In principle, democratic careening should not result in pernicious polarization as far as populist and/or oligarchical excesses can be corrected by the normal workings of vertical, horizontal, and/or diagonal accountability mechanisms. In fact, both the first democratic careening in 2004 and the second democratic careening in 2016 were resolved by building broad bipartisan coalitions of elites and voters to activate accountability mechanisms, which implied depolarization rather than polarization. The aftershocks of each democratic careening resolution – the suicide of Roh after the first resolution and the incarceration of Lee and Park after the second resolution – have long-term effects to increase polarization as by-products of presidential politics of vengeance (Mosler and Chang 2019).

As illustrated in Figure 11, thus, ideological polarization, which is reflected in the political polarization index, has increased but is short of getting pernicious nature in South Korea over the two decades (lower than score of 3). However, affective polarization, which is reflected in the polarization of society index, reached to the point of pernicious polarization of score of 3 after the end of Roh's term and went beyond the score of 3.5 during Moon's tenure.

Figure 11. Polarization in South Korea, 2000-2022



Source: V-Dem https://www.v-dem.net/data/

5. Conclusion

The comparative part of this study shows that workable *de jure* horizontal accountability mechanisms are entrenched in South Korea's constitutional design in which inter-branch checks and balances provisions distribute relatively equal powers among the executive, legislature, and judiciary. On parchment, South Korea's polity appears to escape the institutional trap in which the imperial president meets a recalcitrant assembly that imperils horizontal accountability and democracy.

Concerning *de facto* horizontal accountability, performance seems to betray the institutional optimality of *de jure* horizontal accountability mechanisms in South Korea. As South Korea's *de facto* accountability performance has oscillated between deterioration and restoration, so has the democratic quality of the country. The significant hiatus between *de jure* accountability and *de facto* accountability performance, which correlates with the quality of democracy, calls for further research. It is essential to investigate why there exists a disparity between formal accountability institutions and actual accountability outcomes, and how it affects democracy in South Korea.

The case study part of this research claims that democratic careening can explain the gap. South Korea's democratic experience has been unique in the sense that it is only liberal democracy that "near-misses" over the last 20 years. The regression and reversal of the democratic quality of horizontal accountability is best characterized by the dynamics of democratic careening that happens either when a liberal president who prioritizes electoral mandate over constitutional constraints overreaches toward populist excess or when a conservative president who prioritizes constitutional constraints over electoral mandate overreach toward oligarchical excess.

In the two episodes of democratic careening, what started to halt democratic careening was diagonal accountability – pressure from civil society and the media. In the first episode, engaged citizens voluntarily organized candlelight rallies, nudging vertical accountability. As a result, Roh's governing party secured a

legislative majority for the first time as a liberal party in the nation, which in turn affected horizontal accountability – the Constitutional Court overturned the impeachment, being sensitive to the popular verdict. In the second episode, media revelation and large-scale candlelight rallies jolted horizontal accountability, leading to the National Assembly passing the motion of impeachment and the Constitutional Court dismissing Park as president. This, in turn, affected vertical accountability, resulting in Moon's opposition party winning the presidential election.

In sum, South Korea's democratic near-miss is a byproduct of the recurrent democratic careening that has been contained by the sequence of accountability mechanism from diagonal one to vertical or horizontal one.

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Country Case 5: Sri Lanka

Horizontal Accountability: An Analysis of Sri Lanka's Landscape and CIABOC's Challenges

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1. Introduction

Sri Lanka is going through an economic crisis, and the issue of corruption has been at the forefront of the discussion. The *Aragalaya* (Sinhalese word for 'struggle') in Sri Lanka, which began in March 2022, was a rallying call for systemic change in government. The protest movement demanded a more accountable government, specifically holding corrupt politicians accountable. In this regard, protestors have called for stolen public funds to be returned by public officials and for more public scrutiny of elected representatives (*Economy Next* 2022). The International Monetary Fund (IMF) mission team has also highlighted reducing corruption vulnerabilities as a macro-critical challenge that needs to be addressed for the country (IMF 2022).

In the 2022 Corruption Perceptions Index, Sri Lanka scored 36/100 on a scale of 0 (highly corrupt) to 100 (very clean) (Transparency International 2022).[3] Tackling corruption is critical in protecting and promoting democratic ideals (Transparency International 2019). Democracy in Sri Lanka has a deep history, as it has held regular elections since its independence in 1948 (Parliament of Sri Lanka 2020). Scholars have described a modern political democracy as "a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives" (Schmitter and Karl 1991). In a robust democracy, suitable checks and balances exist within the branches of government to ensure that the executive branch of government is held accountable (Brookings 2018; Schmitter and Karl 1991). Democracy is additionally intricately linked to the accountability of the government (Schmitter and Karl 1991).

Three sub-types of accountability advance good governance in a democracy, and they are vertical, horizontal, and diagonal accountability. Vertical accountability is concerned with the ability of the citizens of a country to hold their government accountable, and diagonal accountability concerns oversight of the government by civil society organizations and the media. Horizontal accountability is the capacity of state institutions to hold the other branches of government accountable (Lührmann, Marquardt, and Mechkova, 2017). As a central theme and bulwark of democratic governance, accountability demands strong anti-

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[3] This index relies on 13 independent data sources from 12 institutes that monitor corruption perceptions to rank 180 countries according to perceived levels of corruption in the public sector by experts and businesspeople.

corruption systems and institutions, and for Sri Lanka's future economic progress, establishing and maintaining these systems remains paramount.

Therefore, this report specifically focuses on the key institution in Sri Lanka mandated to investigate corruption and bribery, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC). It uses CIABOC as a case study to analyze the legal framework of horizontal accountability in Sri Lanka. Given the significance of anti-corruption efforts in Sri Lanka since the political and economic crisis, CIABOC has emerged as a significant institution. Under the IMF Agreement, Sri Lanka has also committed to enact new anti-corruption legislation in line with the United Nations Convention Against Corruption (IMF 2023).

The report is presented in four sections. The first section provides an overview of constitutional horizontal accountability mechanisms and institutions in Sri Lanka, along with key overarching challenges. The second section identifies the gaps in CIABOC's legal framework[4] compared to the key international standards. This section also analyzes critical factors that have contributed to the success of Hong Kong and Singapore's anti-corruption agencies and uses these as a benchmark for comparison with CIABOC. The third section discusses the legal and procedural limitations undermining CIABOC's ability to fulfil its expected functions and discusses recommendations to address these limitations. The final section summarizes the recommendations from the preceding analysis.

2. Horizontal Accountability Mechanisms in Sri Lanka

2.1. Semi-presidential system

Sri Lanka follows a semi-presidential system whereby a president is elected and shares power with the cabinet and prime minister (Shugart 2005). However, the president has significant executive powers under the Constitution (Edirisinha 2020).

2.2. Presidential Commission of Inquiry (CoI)

The President has the power to appoint Commissions of Inquiry (CoI) under the Commissions of Inquiry Act No. 17 of 1948. The President can appoint a CoI when it appears as though an inquiry should be made into (1) the administration of a government department, public authority or institution, or local authority, (2) the conduct of a public service member, or (3) any matter in the interest of public safety or welfare (Commissions of Inquiry Act No. 17 of 1948, Section 2).

For example, on May 29, 2021, the Presidential Commission of Inquiry into Sri Lanka Customs was established. The CoI on Sri Lanka Customs was expected to investigate irregularities in the Customs Department and make recommendations for efficiently discharging the department's duties (Extraordinary Gazette No. 2229/10, 2021).

[4] The Anti-Corruption Act was passed with amendments in Parliament on 19 July 2023. The provisions of the Act have been included and discussed where relevant. Further, Annex 1 below provides an overview of the provisions of the Anti-Corruption Act compared to the relevant international standards discussed in this report.

2.3. Presidential Task Force (PTF)

Presidential Task Forces (PTFs) are appointed to achieve specific objectives. For example, the PTF to build a secure country and lawful society was established in 2020 to take measures to prevent drug abuse and take legal action against illegal and antisocial activities. However, the former president appointed several members of the military to this task force, as opposed to technocrats with expertise in the area, resulting in the militarization of civil matters (International Commission of Jurists, 2020).

2.4. Commission to Investigate Allegations of Bribery and Corruption (CIABOC)

The first limb of CIABOC's mandate is that CIABOC can launch an investigation once a complaint of bribery or corruption is communicated to the Commission if it believes that the complaint is genuine and that the complaint discloses material upon which an investigation should be conducted (CIABOC Act, Section 4). The second limb of the CIABOC's mandate is that once an offence is disclosed to the Commission, it can direct the institution of proceedings against affiliated people (CIABOC Act, Section 3).

Therefore, CIABOC is meant to check the executive branch of government by investigating and prosecuting complaints of corruption or bribery made against public officials and political parties.

2.5. Financial Crimes Investigations Division (FCID)

The Financial Crimes Investigations Division (FCID) was established in 2015 with a mandate to investigate corruption, unauthorized projects, money laundering, unlawful enrichment, and misuse of official powers (Extraordinary Gazette No. 1901/20, 2015). The FCID is expected to check the private and public sectors by investigating complaints against private persons, public officials, and political parties on these matters. However, there is considerable executive influence over the cases investigated by the FCID (ADRN 2018).

2.6. Parliamentary Committees

There are three parliamentary committees tasked with acting as a check on the executive branch of government, public corporations, and companies in which the government has a stake: (1) the Committee on Public Accounts (COPA), (2) the Committee on Public Enterprises (COPE), and (3) the Committee on Public Finance (COPF).

COPA's responsibility is to scrutinize how funds allocated by Parliament are utilized for public expenses (Parliament of Sri Lanka, 2020). COPA checks the executive branch of government by assessing the effective management and financial accountability of the government, its ministries, departments, provincial councils, and local authorities.

COPE's responsibility is to review the financial records of public corporations and all government-owned companies (Parliament of Sri Lanka, 2020). COPE checks the executive branch of government by overseeing financial discipline within public corporations and companies in which the government has a stake.

COPF's responsibility is to examine public finance policy throughout the year and evaluate budgetary matters such as revenue collection, expenditure, public debt servicing, and other areas of public finance. COPF acts as a check on the executive branch of government by providing continuous oversight of the budget throughout the year, unlike COPA and COPE, which supervise post factum (UNICEF, 2019).

However, the members of these committees are drawn from Parliament; therefore, these committees may not be free from the influence of the ruling parties (ADRN 2018).

2.7. Auditor General

Article 154 of the Constitution mandates that the Auditor General audit all government departments, key offices, key Commissions, local authorities, public corporations, and companies where the government is the majority shareholder. The Auditor General is expected to check the executive branch of government by acting as an independent auditor for the public sector and providing oversight of public sector finances (National Audit Office of Sri Lanka, 2016). However, the special reports of the Auditor General, which highlight concerns, are rarely investigated further (*The Sunday Times* 2022).

2.8. Attorney General's Department

The Attorney General (AG) also acts as the Chief Prosecutor in Sri Lanka. The AG can institute criminal proceedings in the Magistrates Courts and High Courts on behalf of the State (Code of Criminal Procedure, section 145, 393). The AG possesses independent and decisive authority in matters concerning the initiation, continuation, and discontinuation of prosecutions (Centre for Policy Alternatives, 2020). This power allows the AG to hold the executive branch of government accountable by prosecuting members of the executive for wrongdoing. However, the dual role of the AG in acting as a legal advisor to the State and prosecuting public officials for corruption has been criticized (Centre for Policy Alternatives 2020).

2.9. The Judiciary

The Constitution guarantees the independence of the judiciary (Constitution of Sri Lanka, Article 107-111C). The judiciary acts as a check on the executive branch of government by enforcing the provisions of the Constitution if and when the executive branch acts in breach of the Constitution (*Daily FT* 2020). However, there have been instances of interference by the executive branch of government with the judiciary, which have undermined the independence of the judiciary (Transparency International 2013, Bar Association of Sri Lanka 2023); for example, the impeachment proceedings brought against Chief Justices Neville Samarakoon and Dr. Shirani Bandaranayake (Centre for Policy Alternatives 2013). Other issues regarding independence include instances where promotions in the judiciary seem to be politically influenced, evidenced by cases where senior judges were overlooked for promotions due to their rulings against the government (Jayawickrama 2016, *The Sunday Times* 2014, *Daily FT* 2014, Verité Research 2021).

3. Comparative Analysis of CIABOC with International Standards for Anti-Corruption Agencies (ACAs)

3.1. Legal Gap Analysis with International Instruments on ACAs

Sri Lanka ratified the UN Convention Against Corruption ("the UNCAC") on March 31, 2004. The Jakarta Principles for Anti-Corruption Agencies ("the Jakarta Principles") provide a benchmark for the independence and effectiveness of anti-corruption agencies (ACAs). The Jakarta Principles are synonymous with an

accreditation system, unlike a convention such as the UNCAC to which member states are bound. Table 1 below identifies the salient provisions of ACAs in the Convention and the Jakarta Principles and provides a legal gap analysis of the existing provisions in Sri Lankan law.

Table 1. Legal gap analysis with international instruments on ACAs

Salient provisions of international instruments	Sri Lankan provision prior to the Anti-Corruption Act	Gap analysis
UN Convention Against Corruption **Article 14 – Measures to prevent money-laundering** 1. (b) States shall: have administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering and ability to cooperate/exchange information at the national and international levels and, shall consider the establishment of a financial intelligence unit to serve as a national center for the collection, analysis and dissemination of information regarding potential money-laundering.	**The Prevention of Money Laundering Act No. 5 of 2006** grants the oversight mandate of money laundering to the Financial Intelligence Unit (FIU). **Section 3(1)** provides that any person involved in transactions with property derived from unlawful activity or its proceeds, knowing or believing its source, shall be guilty of money laundering and subject to fines, imprisonment, and asset forfeiture.	CIABOC's mandate does not include investigating and prosecuting money laundering even where bribery and corruption are the predicate offences. This restriction of CIABOC's mandate is problematic as where a person takes steps to conceal the financial gains of their acts of bribery and corruption, CIABOC is restricted from prosecuting such person for money laundering, as this would instead come under the purview of the FIU (*The Sunday Times* 2016; *News First* 2016; *Daily FT* 2016).

Salient provisions of international instruments	Sri Lankan provision prior to the Anti-Corruption Act	Gap analysis
UN Convention Against Corruption **Article 8** 4. States shall consider... establishing systems to facilitate the reporting by public officials of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.	**Section 6 of the Establishments Code** provides that public officials are prohibited from disclosing information to the mass media. **Section 17 of the CIABOC Act** imposed a duty on every officer appointed to CIABOC to maintain secrecy of any information that he is made aware of in the exercise of his duties and powers.	There is no specific duty to report corruption imposed on public officials. CIABOC's framework for reporting complaints does not include a distinct mechanism for public officials to report instances of bribery and corruption. However public officials hesitate to report corruption because of their confidentiality obligations (UNODC 2018). In February 2000, the Cabinet strictly implemented section 6 of the Establishment Code and actively publicized its enforcement (Jayawardene 2005). This has discouraged public officials from reporting bribery and corruption (UNODC 2018). The duty to maintain secrecy may also hinder public officials in CIABOC from reporting instances of bribery or corruption within the commission.

Salient provisions of international instruments	Sri Lankan provision prior to the Anti-Corruption Act	Gap analysis
Article 8 5. States should establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.	**Section 2(1) of the Declaration of Assets and Liabilities Law of 1975** provides that declarations need to be made by several persons including Members of Parliament, judges, public officers appointed by the President and Cabinet. **Section 4 of the Declarations of Assets and Liabilities Law** provides that asset declarations need to be submitted annually to several different parties ranging from the President, the Speaker of Parliament, the Judicial Service Commission, the Secretaries to Ministries, the Heads of Departments etc. **Section 3(3) of the Declaration of Assets and Liabilities Law** provides that asset declarations only need to be submitted to the appropriate authority annually.	Under the Declaration of Assets and Liabilities Law in Sri Lanka, asset declarations are submitted to various bodies provided for in Section 4. CIABOC is not the designated authority to whom asset declarations must be submitted. CIABOC is vested with the power to institute proceedings once an investigation discloses the commission of an offence under the Declaration of Assets and Liabilities Law. However, CIABOC's primary focus is on conducting investigations once a specific complaint is made rather than proactively monitoring the overall compliance of public officials with asset declaration requirements. CIABOC only has the authority to investigate complaints related to asset declarations. Therefore, while there is an asset declaration system in place, the absence of a formal monitoring or verification system means that the asset declarations system is only partially effective (UNODC 2018).

Salient provisions of international instruments	Sri Lankan provision prior to the Anti-Corruption Act	Gap analysis
Jakarta Statement on Principles for Anti-Corruption Agencies **Principle 4** ACA heads shall be appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence.	**Section 2(2)(b) of the CIABOC Act** provides that the members of the Commission shall be appointed by the President, on the recommendation of the Constitutional Council. **Section 2(2)(a)** provides that the Commission shall consist of two members who are retired Judges of the Supreme Court or of the Court of Appeal and one member who has wide experience in investigating crime and law enforcement. **Section 16(1)** provides that the President may, in consultation with the members of the Commission, appoint a Director General for the Prevention of Bribery and Corruption to assist the Commission in the discharge of its functions.	The process by which the Constitutional Council selects candidates to recommend as Commissioners to the President is not mandated or transparent. The lack of transparency in the process of appointing commissioners means that (a) the scope for influence by the executive branch of government is higher contrary to Principle 4 of the Jakarta Principles (Gloppen 2014); and (b) the fairness of the selection process is dependent on the individuals in the Council (Transparency International 2016; *The Sunday Times* 2023). The power to appoint the Director General being vested solely in the President is also contrary to Principle 4 since an appointment exclusively by the President is not a process that ensures impartiality.
Jakarta Statement on Principles for Anti-Corruption Agencies **Principle 6** ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).	**Section 2(5)** provides that a member of the Commission can be removed by an order of the President supported by a majority of the total number of Members of Parliament on the ground of proved misconduct or incapacity.	The process for the removal of Commissioners is in line with Principle 6 as Commissioners can only be removed by following a similar process used to remove a Supreme Court judge. However, the power to remove the Director General is vested solely in the President.

Salient provisions of international instruments	Sri Lankan provision prior to the Anti-Corruption Act	Gap analysis
Jakarta Statement on Principles for Anti-Corruption Agencies **Principle 11** ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA's operations and fulfilment of the mandate. **Principle 12** ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements.	**Article 148 of the Constitution** Parliament shall have full control over public finance.	Deciding the budget allocation for CIABOC falls under the Treasury's purview and Parliament votes to approve the allocation (Transparency International 2016). In terms of whether CIABOC's budget allocations are sufficient, Transparency International evaluates the sufficiency of an ACA's budget by comparing it to the total national budget and has a prescribed target of 0.2% of the national budget over the past three years (Transparency International, Anti-Corruption Agency Assessment, Sri Lanka, 2016). Table 3 below reveals that considering Sri Lanka's national budget over the last three years, Sri Lanka has not met this target.

3.2. Comparative Analysis with Hong Kong's Independent Commission Against Corruption (ICAC) and Singapore's Corrupt Practices Investigation Bureau (CPIB)

In Asia, Hong Kong's Independent Commission Against Corruption (ICAC) and Singapore's Corrupt Practices Investigation Bureau (CPIB) are both seen as best practices in the region on ACAs. Therefore, this report has used both as points of reference in assessing Sri Lanka's anti-corruption institution.

3.2.1. Hong Kong's ICAC

Hong Kong's ICAC is widely known for its three-pronged approach to battling corruption – deterrence, prevention, and education (Hsieh 2017, p. 5). In Asia, Hong Kong represents one of the most successful models for controlling corruption (Quah 2021). In the 2022 Corruption Perceptions Index, Hong Kong scored 76/100 on a scale of 0 (highly corrupt) to 100 (very clean), falling within the top 7% globally and being one of the only two Asian countries in the top 15 (Transparency International 2022). In setting up the ICAC, there was a clear call for the Commission to be separate from the police, who were notoriously corrupt, and from any other government department (Lam 2004). The ICAC's case-based conviction rate in 2022 was 82% (ICAC 2023). The ICAC's 2022 annual survey found that 90.1% of the 1,761 respondents were of the opinion that the ICAC deserved their support.

3.2.2. Singapore's CPIB

Singapore's CPIB falls within the top five least corrupt countries in the 2022 Corruption Perceptions Index and scored 83/100 on a scale of 0 (highly corrupt) to 100 (very clean) (Transparency International 2022). Similar to Hong Kong's ICAC, the police's inefficiency in tackling corruption resulted in the establishment of a separate CPIB independent of the police force (Transparency International, 2017). The CPIB has a high conviction rate of 99% (CPIB 2023). The CPIB's Public Perception Survey in 2022 found that 96% of respondents were of the opinion that corruption control in Singapore was good, very good, or excellent.

Several factors have enabled the ICAC and the CPIB to succeed as horizontal accountability mechanisms. Compared to Hong Kong's ICAC and Singapore's CPIB, certain shortcomings are observed in CIABOC's framework as an ACA:

1. The CPIB and ICAC were established independently from the police force to prevent public mistrust in the police, extending to the ACAs. In contrast, CIABOC relies on personnel seconded from the police. This connection with the police could contribute to a perception of bias in CIABOC's work if perceptions of the police being corrupt extend to CIABOC's investigators (Verité Research 2019). Additionally, the involvement of the police in CIABOC's investigations presents conflicts of interest in cases involving police bribery and corruption (Verité Research 2019).

2. The CPIB and ICAC's higher conviction rates commanded public trust in their ability to hold the executive branch of government accountable. CIABOC, on the other hand, has very low prosecution and conviction rates. For example, in 2022, only 2.5% of complaints investigated were prosecuted. Additionally, convictions were secured in only 21% of the cases concluded in court in 2022 (CIABOC 2022b). CIABOC's low prosecution and conviction rates, coupled with its failure to investigate complaints, have resulted in low public confidence in CIABOC's effectiveness.

3. The ICAC and the CPIB can delve into instances where individuals attempt to conceal illicit financial gains from acts of bribery and corruption. CIABOC's jurisdiction is narrower, as CIABOC does not have the mandate to investigate and prosecute money laundering. This limitation restricts CIABOC's capacity to combat corruption effectively.

4. The ICAC and the CPIB demonstrate high per capita expenditure and staff-to-population ratios. These financial and personnel resources enable the CPIB and the ICAC to effectively combat corruption and act as a robust check on the executive branch of government. As outlined in Table 1 above, CIABOC falls short of the recommended budgetary allocation of 0.2% of the total national budget. CIABOC's lower budget allocation and personnel requirements restrict its capacity to function on par with the ICAC and the CPIB.

4. Limitations of CIABOC as a Horizontal Accountability Mechanism

The comparative analyses above reveal several limitations undermining CIABOC's ability to succeed as an effective horizontal accountability mechanism. These limitations are categorized under three distinct challenges: i) gaps in the legal framework, ii) the appearance of bias, and iii) low public confidence.

4.1. Gaps in the Legal Framework

4.1.1. Opaque Process of Appointing Commissioners

Under the 21st Amendment to the Constitution, the President appoints commissioners to CIABOC on the recommendation of the Constitutional Council. Issues as to independence arise in the composition of the Constitutional Council itself. Table 2 below summarizes the changes to the composition of the Council through the amendments to the Constitution.

Table 2. Changes to composition of Constitutional/Parliamentary Council

Year	17th Amendment	18th Amendment	19th Amendment	20th Amendment	21st Amendment
Body appointing Commissioners to Independent Commissions	Constitutional Council	Parliamentary Council	Constitutional Council	Parliamentary Council	Constitutional Council
Composition of the Council under Article 41A	Three MPs Seven persons of eminence who have distinguished themselves in public life and [are] not members of any political party	All five members of the Council were MPs	Seven MPs Three persons of eminence and integrity who have distinguished themselves in public or professional life and who are not members of any political party	All five members of the Council were MPs	Seven MPs Three persons who are not affiliated with any political party

The composition of the Council under the 17th Amendment to the Constitution reduced political control over the Council (Usuf 2022), as the Council had only three Members of Parliament (MPs) (17th Amendment to the Constitution, Article 41A). Under the 21st Amendment, the Council consists of seven MPs and only three civil society representatives (21st Amendment to the Constitution, Article 41A). Therefore, the composition under the 21st Amendment "enables the government to control or influence 7 of [the Council's] 10 members" (Centre for Policy Alternatives 2022). The Bar Association of Sri Lanka (BASL) has echoed this concern and highlighted that this composition impacts the overall independence of the Constitutional Council in

appointing members to CIABOC as the majority of the members of the Constitutional Council may be controlled by the government (Bar Association of Sri Lanka, 2022). Therefore, the current composition of the Constitutional Council raises concerns about the independence of the appointment process for commissioners to CIABOC due to potential political influence.

Further, an opaque process of selecting commissioners increases the likelihood of political influence in appointments to the Commission (See Table 1 above). The Maldives appoints commissioners following a weighted assessment against set criteria (Transparency International 2017). If Sri Lanka were to adopt a similar process, it is likely that technocrats with a background in anti-corruption, instead of political appointees, would be appointed. The eligibility criteria can include those possessing "good character, high integrity, high moral reputation, recognized probity, and the ability to do their work fairly and independently" (Schütte 2015).[5] Qualities of character are more challenging to assess than factors like age or professional experience, and it is crucial to allocate resources toward obtaining and evaluating information about a candidate's character (Schütte 2015). Generally, the Constitutional Council calls for nominations from the public to appoint commissioners, and nominees are then subjected to interviews as part of the selection process (Transparency International 2016). In February 2023, the Constitutional Council invited individuals from the public who meet the necessary qualifications to submit their applications for potential appointment as members of independent commissions (*Ada Derana* May/19/2023). The process must be clearly laid out to ensure transparency but can involve calling for nominations from the public and an interview process as the Constitutional Council has done before. Published eligibility criteria would assist in this regard, enabling public scrutiny and allowing for review and necessary amendments. It is crucial that achieving justice is accomplished and seen, and a clear and transparent process of appointing commissioners to CIABOC would promote this principle.

4.1.2. Lack of Impartial Process for the Appointment and Removal of the Director General

The Director General is the Chief Accounting Officer and oversees the administration of CIABOC. The Director General is also responsible for overseeing and managing investigations and prosecutions, operating under the guidance and direction of the Commission (CIABOC Act, Section 11-13, 16). As discussed in Table 1 above, the appointment, removal, and disciplinary procedure being controlled solely by the President is contrary to international standards, which has restricted the ability of successive commissions to be free from undue influence (UNODC 2018).

The legislative and executive branches of the State should share the responsibility of appointing the Director General because when two branches of state share responsibility, they can avoid instances of one branch using ACAs against another (Schütte 2015). In such instances, however, the process generally comprises two or three phases. In these phases, one branch is responsible for creating a shortlist of candidates, while another branch is tasked with making the ultimate selection, as seen in the Maldives and Indonesia (Schütte 2015). The opposition and the ruling party should also make recommendations for appointments to reduce the likelihood of bias towards the ruling party (UNODC 2020). The selection process must be publicized, along with the selection criteria. The Director General must also be given security of tenure with criteria for removal. In Mauritius, removing the Director General of the Independent Commission Against Corruption is only possible when the Director General has demonstrated severe

[5] See Annex 1 below, which provides a comparative analysis of provisions on eligibility criteria in the new Anti-Corruption Act with international standards on anti-corruption agencies.

negligence, irregularity, or misconduct to the extent that removal is warranted. If unable to fulfill their responsibilities due to physical or mental incapacity or any other cause, the removal of the Director General may also be considered. To prevent politically motivated dismissals, as seen in the dismissal of Chief Justice Dr. Shirani Bandaranayake in 2013, the power to remove the Director General must not be vested in Parliament. Based on these criteria, allegations against the Director General should be independently ruled on by a judicial procedure, such as a Supreme Court bench, in order to remove the Director General (UNODC 2020). Removing the President's control over the appointment and removal of the Director General can strengthen the independence and the appearance of independence of the Director General.

4.1.3. Lack of Mandate for CIABOC to Investigate and Prosecute Money Laundering

As noted in Table 1, the Prevention of Money Laundering Act gives jurisdiction over money laundering to the FIU rather than the CIABOC. Established in 2006 as part of the Central Bank of Sri Lanka, the FIU's mandate is to "administer, effectively, the provisions of the Financial Transactions Reporting Act by facilitating the prevention, detection, investigation, and prosecution of the offences related to money laundering and the terrorist financing" (Financial Intelligence Unit, 2023). The FIU executes a supervisory and analytical function relating to money laundering (UNODC, 2018). In 2015, the Financial Crimes Investigation Unit (FCID) was established under the Criminal Investigations Department (CID) of the Sri Lanka Police to investigate money laundering offences.

Notably, the new Anti-Corruption Act passed on 19 July 2023 expands CIABOC's mandate to include investigating complaints of unlawful activity under the Prevention of Money Laundering Act, No. 5 of 2006, where the unlawful activity occurs in the same transaction as an offence under the Anti-Corruption Act (see Annex 1). This expansion in CIABOC's mandate may better equip the Commission to uncover attempts to launder corruptly acquired assets.

With the new Act expanding CIABOC's mandate to include money laundering, the Commission will also require capacity building in this area as they are not accustomed to investigating money laundering (Asia Pacific Group on Money Laundering, 2015). This training should encompass understanding the intricacies of money laundering schemes, identifying suspicious financial transactions, tracing illicit funds, and communicating with relevant financial institutions, such as the FCID, FIU, and international agencies.

4.1.4. Lack of Mandate for CIABOC to Monitor Asset Declarations

Although Sri Lanka has established a system for public authorities to make asset declarations, this system is not completely effective (See Table 1 above, UNODC 2018).

The UNODC, in its 2018 country report on Sri Lanka, highlighted that the absence of a system in Sri Lanka to monitor the submission of asset declarations and verify their contents makes the system less effective (UNODC 2018; *Daily FT* 2020). Furthermore, asset declarations are not public, which means there is no public oversight of asset declarations. It is also an onerous process for the public to access these asset declarations (UNODC 2018; *Daily FT* 2020).

However, under the new Anti-Corruption Act, CIABOC is the designated central authority on asset declarations. The Act requires CIABOC to verify asset declarations and to initiate an investigation upon detecting illicit enrichment, promoting a more focused and streamlined approach to monitoring and verifying declarations. Section 82 of the Act requires public officials to submit 'ad-hoc declarations' additionally if the

value of their assets changes by ten million rupees or more. This provision promotes scrutiny of substantial changes in wealth and allows for prompt investigation and detection of potential illicit enrichment. Further, section 83 provides for the submission of declarations through an electronic system administered by CIABOC and for this electronic system to publish 'redacted versions' of asset declarations on CIABOC's website (Anti-Corruption Act 2023, section 88). Implementing an electronic system for asset declarations to be submitted and published is an important transparency measure that empowers the public to scrutinize and hold public officials accountable for their financial activity, promoting greater accountability and deterring potential misconduct.

4.1.5. Lack of a System and Requirement for Public Officials to Report Instances of Corruption or Bribery

Public officials in Sri Lanka are not specifically required to report instances of bribery or corruption that they observe in their line of work (See Table 1). There are four key recommendations for improving the law and the application of the law on the duty of public officials to report instances of corruption and bribery: (1) a specific law imposing a duty to report corruption/bribery should be passed, (2) the law should set out a clear procedure to make reports through a separate hotline or division of CIABOC, (3) the law should clarify that reports made through the reporting channel established by the law will not constitute a breach of a public official's duty to maintain secrecy or confidentiality obligations under the Establishment Code, and (4) to protect public officials from retaliation for reporting corruption, a strong enforcement mechanism must be established, through, for example, a division of CIABOC that can investigate and prosecute such retaliation.

Requiring public officials to report bribery if offered bribes from the public or witness their colleagues accepting or soliciting bribes can enable CIABOC to curb corruption by ensuring these corrupt practices are brought to light (UNODC 2015). For example, Singapore's Prevention of Corruption Act provides that public officials are required to arrest anyone who offers them a bribe. It is essential, therefore, to impose a duty to report corruption on public officials. A distinct mechanism for public officials to report corruption, which can ensure confidentiality, also needs to be established; for example, a separate hotline or a separate reporting agency, such as the UK's Serious Fraud Office (Group of States Against Corruption 2006).

Section 6 of the Establishment Code has discouraged corruption reporting by public officials due to their confidentiality obligations (UNODC 2018). In France and Spain, however, whistleblowing laws provide that if public officials report corruption through established reporting channels, such reports will not be considered a violation of their confidentiality obligations (Group of States Against Corruption 2006). Therefore, the law imposing the duty to report must specify that compliance with the duty to report will not amount to a breach of confidentiality obligations or the duty to maintain secrecy.

Public officials must be safeguarded from reprisal from their superiors for reporting corruption (UNODC 2009), including less overt types of retaliation, such as discrimination or harm to their professional prospects (Group of States Against Corruption 2006). Further protecting public officials' identity alone might not be sufficient (Group of States Against Corruption 2006). While section 73(6) of the Anti-Corruption Act provides a clause prohibiting retaliation against a whistleblower, the Act does not provide a strong enforcement mechanism that supports the clause against such retaliation. However, sections 18 and 26 of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 10 of 2023 enable a whistleblower who experiences retaliation to lodge a complaint with the Protection Division of the National Authority for the Assistance to and Protection of Victims of Crime and Witnesses for investigation and

inquiry. In terms of this Act, the challenge lies in its implementation. The National Authority for the Protection of Victims of Crime and Witnesses, established under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015, had several administrative and financial challenges and had only a few victims and witnesses placed under its protection (*Daily FT* 2023). Annex 1, section 74(1) of the Anti-Corruption Act provides that a public official who reports an offence under the Act to their superior officer will not face civil or criminal liability. However, this amendment is problematic as there is no avenue for a public official to report an instance of bribery or corruption where his/her superior is involved in the offence.

4.2. Appearance of Bias and Lack of Sufficient Resources

4.2.1. Investigation and Prosecution of Cases by the Police and Attorney General's Department

Because CIABOC's investigators are seconded from the police department and its administrative staff are sourced from the Public Services Commission, the appearance of bias increases as it effectively "brings government regulation through the back door" (Transparency International Sri Lanka 2016). A survey conducted by Verité Research in 2019 revealed that 40% of participants incorrectly believed that CIABOC was a department under the Sri Lankan police, and 47% of the sample did not know whether CIABOC was a department under the police or not (Verité Research 2019). In the same survey, respondents listed the police as the most corrupt sector. This distrust towards the police may extend to CIABOC due to its connection with the police (Verité Research 2019). Further, the involvement of the police in CIABOC's investigations creates a conflict of interest in cases where police officers are under investigation for corruption or bribery (Verité Research 2019).

Although CIABOC has an independent legal division to institute prosecutions, CIABOC depends on the Attorney General's Department to handle prosecutions, and staff from the AG's Department are seconded as consultants (Transparency International Sri Lanka 2016). The Attorney General's Department, in effect, plays a dual role as the chief legal advisor to the State while also prosecuting the State in bribery and corruption cases. In the role of chief legal advisor to the State, the Attorney General represents the State and, therefore, acts in the best interests of the State (OHCHR 2017). This dual role impedes the department's ability to emerge as an independent prosecutor in cases against the State (Centre for Policy Alternatives 2020).

The ability of Singapore and Hong Kong to effectively combat corruption is attributed to their use of independent institutions instead of the police (Transparency International, 2017). To replicate the effectiveness of the ICAC and the CPIB, CIABOC would need to establish a robust investigations unit independent of the police and staffed with well-trained investigators. The ICAC and CPIB also maintain substantial staffing, enabling them to combat corruption effectively. For example, in 2016, the ICAC had only 6% of positions vacant, while CIABOC had 56% vacancies (Transparency International 2017). Therefore, CIABOC must prioritize filling staff vacancies and ensuring a significant allocation of resources. It is also crucial that CIABOC's investigation officers are differentiated from the police, for example, by providing CIABOC's investigative officers with a different coloured uniform (Verité Research 2019). In terms of prosecution, either an independent prosecutors' office should be established that is separate and distinct from the office that defends the State, or CIABOC's legal division should be trained to undertake complex prosecutions independently of the Attorney General's department.

4.2.2. Low Budget Allocated to CIABOC

The information in Table 3 indicates that Sri Lanka has not met Transparency International's best practice of having an ACA's budget be 0.2% of national recurrent expenditure. A higher allocation can be utilized to strengthen CIABOC's legal department so that prosecutions can be undertaken from within CIABOC, which would enable a separation from the Attorney-General's department as outlined in section 4.2.1 and the establishment of a separate division for public officials to report corruption as outlined in section 4.1.5 above.

Table 3 below provides an overview of how Sri Lanka's national recurrent expenditure budget compares against the allocation of recurrent expenditure to CIABOC. Capital expenditure allocations are not considered in line with Transparency International's methodology since these allocations cannot be utilized for activities and programs.

Table 3. Average proportion of CIABOC's recurrent expenditure allocation to total Government recurrent expenditure allocation for the past seven years

Year	Total government recurrent expenditure (LKR)	Allocation to CIABOC (LKR)	CIABOC allocation as a proportion of government budget
2017	1,945,582,109,000	330,908,000	0.0170%
2018	2,108,964,391,000	395,456,000	0.0188%
2019	2,321,622,720,000	453,434,000	0.0195%
2020	2,682,714,220,000	464,147,000	0.0173%
2021	2,757,343,086,000	510,894,000	0.0185%
2022	3,635,953,037,000	575,545,000	0.0158%
2023	4,634,263,362,000	786,300,000	0.0170%
Total	**20,086,442,925,000**	**3,516,684,000**	**0.0175%**

Source: Ministry of Finance, Budget Estimates – 2017-2023.

4.3. Low Public Confidence

The Global Corruption Barometer 2019 for Sri Lanka by Transparency International revealed that 46% of citizens were of the opinion that CIABOC was 'doing very badly or fairly badly' concerning fighting corruption in Sri Lanka (Transparency International Sri Lanka 2019). In a more recent study, 52% of the 1,300 respondents in Sri Lanka were of the opinion that corruption had increased, and 49% were of the opinion that the government was 'doing a bad job' of fighting corruption (Transparency International 2020). The following section provides recommendations for the following problems: (1) low prosecution and conviction rates, (2) inadequate investigation of complaints, and (3) withdrawal of cases due to technicalities.

4.3.1. Low Prosecution and Conviction Rates

In 2019, Verité Research surveyed 2,217 respondents nationwide and found that the most common reason for not reporting corruption was that respondents believed no action would be taken in response (Verité Research 2019). Another study revealed that only 8% of 1,300 respondents nationwide were of the opinion that complaints of corruption were very likely to be investigated (Transparency International 2019).

In the 2019 survey by Verité Research, 62% of participants believed that the most effective way of combatting corruption was prosecution. Table 4 below contains a breakdown of proposals for action forwarded to CIABOC's Legal Division after the investigation of complaints. The information presented in Table 4 reveals that only 2.5% of the complaints investigated in 2022 and 4.1% of the complaints investigated in 2021 were prosecuted. While low prosecution rates may be emblematic of systemic issues in the justice system, such as delays in prosecution, diminished rates of prosecution of corruption/bribery are concerning.

Table 4. Breakdown of proposals forwarded to the Legal Division after investigation in 2021 and 2022

Decision	No. of Files	
	2021	2022
No. of files proposed for filing cases	103	86
No. of files proposed to be closed	1,370	858
For comparison/ legal advice/ amalgamated/ confidential	929	12
Ordered to record statements	62	2,465
Total	**2,464**	**3,421**

Source: CIABOC 2021a; CIABOC 2022b

Regarding conviction rates, 94 cases from January to November 2022 concluded in court. Among those prosecutions, offenders were convicted in 20 cases, resulting in a case-based conviction rate of 21.2% in 2022. In 2021, 69 cases concluded in court, and offenders were convicted in 11 cases. Accordingly, the case-based conviction rate for 2021 was 15.9%. Table 5 below includes a breakdown of cases concluded in the Magistrates and High Courts. The information in Table 5 reveals that in 2022, 48% of the cases prosecuted were withdrawn, which suggests that of the 2.5% of complaints that were prosecuted, almost half of the cases were withdrawn. In 2021, 60% of cases prosecuted were withdrawn, so of the 4.1% of complaints prosecuted, a majority were withdrawn. These figures indicate that there may be some truth in the public's perception that CIABOC would not take sufficient action if complaints were made.

Table 5. Breakdown of cases concluded in court from 2019-2022

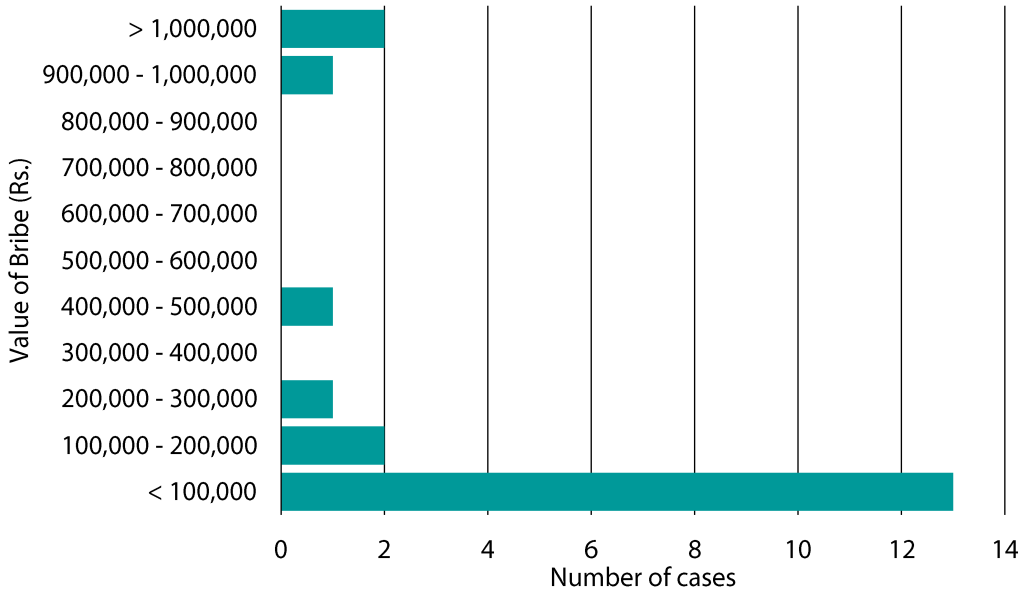
	2019		2020		2021		2022	
	Magistrates Court	High Court	Magistrates Court	High Court	Magistrates Court	High Court	Magistrates Court	High Court
Convictions	5	40	4	21	2	9	3	17
Acquittals	13	32	5	22	1	15	4	25
Other/ Withdrawn	1	3	0	3	23	19	25	21
Total	**19**	**75**	**9**	**46**	**26**	**43**	**32**	**63***

* In a case involving two accused parties, one accused pleaded guilty and the case against the other accused is pending which is why there's a total of 95 cases.

Source: CIABOC 2020; CIABOC 2021b; CIABOC 2022a; CIABOC 2022b

Figure 1 displays the value of bribes accepted/solicited in cases that secured convictions. From 2019 to 2022, only 2 cases in which bribes over Rs. 1 million were accepted/solicited resulted in convictions. However, 13 cases with bribes below Rs. 100,000 resulted in convictions.

Figure 1. Value of corruption cases in which convictions were obtained from 2019 to 2022*



Source: CIABOC 2023

*This chart only reflects the cases disclosed on CIABOC's website which disclosed the value of the bribe paid/solicited and not the total number of cases in which convictions were obtained from 2019 to 2022.

To create further transparency in the progress of cases, CIABOC should be required to disclose the reasons for the withdrawal of cases without compromising the privacy of victims/witnesses. It is also important to disclose the classes of cases that fall within the 'other' category. The new Anti-Corruption Act provides that the Director General may, with the permission of the Commission, disclose information that the Commission considers to be in the public interest to enhance transparency and accountability. The Act should expand on the areas that CIABOC is required to proactively disclose, including the reasons for the withdrawal of cases, the disclosure of information related to ongoing investigations, and the status of corruption cases filed in court. By broadening the scope of proactive disclosure, the Act would promote greater transparency and accountability within CIABOC and allow public awareness and scrutiny of CIABOC's anti-corruption efforts.

4.3.2. Inadequate Investigation of Complaints by CIABOC

In multiple instances, CIABOC has neglected to pursue thorough investigations and prosecute complaints of corruption and bribery. A few of these instances are examined below. In October 2021, CIABOC was called upon to investigate Nirupama Rajapaksa, a former Member of Parliament and the cousin of former President Gotabaya Rajapaksa, and her husband's wealth when the Pandora Papers revealed that they held USD 17 million in undisclosed offshore trusts. Although former President Gotabaya Rajapakse referred the case to CIABOC for investigation, CIABOC delayed handing over the report to the president by seven months.

CIABOC stated that investigations into the matters that fell under the CIABOC Act were being conducted, and matters outside CIABOC's scope of authority, such as money laundering, had been referred to the Criminal Investigations Department for further inquiry (The Morning 2022). In March 2023, two years later, CIABOC reported that its investigations into the complaints against Nirupama Rajapaksa and her husband remained ongoing (*The Morning* 2023).

In another case, in November 2022, Justice Minister Wijeyadasa Rajapakse reported that he had made four complaints to CIABOC in 2019 against the then Minister of Education, Akila Kariyawasam. The Justice Minister stated that he was questioned for hours and asked to give written statements; however, his complaints were not further investigated. The Justice Minister questioned why CIABOC exists if it does not investigate complaints. CIABOC responded by stating that the complaints made by the Justice Minister were made during the rule of the previous Commission when the current Commission only began its work in December 2020. CIABOC stated that all four complaints made were in-process.

Transparency International Sri Lanka (TISL) filed a complaint with CIABOC in June 2018, requesting an investigation into controversial voice recordings that revealed attempts to bribe several MPs to crossover in Parliament. The purpose of the crossover was to enable a majority vote of no confidence in Parliament against the then-prime minister. In December 2018, TISL filed a second complaint with CIABOC requesting an investigation into a statement made by former President Maithripala Sirisena alleging financial inducements as high as LKR 500 million were offered to MPs to cross over so that Mahinda Rajapakse could command a majority in Parliament (*Daily FT* 2018). However, four years later, CIABOC stated that it had discontinued investigations into these two complaints due to insufficient information (*News First* 2022).

The findings of the Transparency International assessment of CIABOC suggest that CIABOC has inadequate accountability mechanisms. Therefore, an external oversight mechanism should be established to examine how effectively CIABOC analyses complaints. CIABOC should also be required by law to disclose the progress of investigations on its website in the form of a 'tracker,' which provides the title of the complaint and its status while retracting the names of the complainant and the accused, which will enable public scrutiny of CIABOC's work and can help prevent complaints being overlooked or slipping through the cracks.

4.3.3. Withdrawal of Cases Due to Technicalities

Technicalities in the law also constrain CIABOC's ability to operate effectively. The Supreme Court case of *Anoma Polwatte v Bribery Commission* held that all three commissioners must direct the institution of proceedings together (Supreme Court of Sri Lanka 2011). Based on a novel interpretation of the CIABOC Act[6], this ruling resulted in the withdrawal of several actions previously instituted by CIABOC due to cases being filed without the signatures of all three commissioners (*News First* 2022a). Members of the legal profession, including Attorneys-at-Law, Nuwan Bopage, and Upul Kumaraperruma, have pointed out that this is one of the most significant institutional-level issues that hinder legal action against people accused of corruption because several cases are withdrawn by CIABOC on this ground (*The Morning* 2022). However,

[6] *Anoma Polwatte v Bribery Commission*: the court recognized section 2(8) of the CIABOC Act, which provides that the members of the Commission may exercise the powers of the Commission sitting together or separately. However, the court held that the institution of proceedings is categorized as a function of the Commission in terms of section 3, as opposed to a power of the Commission under section 5. Therefore, the function of instituting proceedings is required to occur while sitting together.

the ruling in *Anoma Polwatte v Bribery Commission* requires prosecutions to be filed by all three commissioners together, thereby preventing abuse of power.

The ruling in *Anoma Polwatte v Bribery Commission* would require cases previously filed without the signatures of all three commissioners to be refiled. However, cases filed after 2018 should not be affected because of the expectation that cases filed after 2018 would include the signatures of all three commissioners. If all three commissioners fail to sign onto the direction for cases after 2018, this may constitute "a deliberate ploy" to enable perpetrators to escape (*Daily News* 2022). In January 2022, 11 of the cases filed by CIABOC were withdrawn due to the signatures of all three commissioners not being obtained (*News First* 2022a). In June 2022, a case against the former minister, Kumara Welgama, was withdrawn for the same reason (*News First* 2022b). In May 2023, a case filed against the former minister, Johnston Fernando, was withdrawn because none of the commissioners had signed the indictment (*Ada Derana* May/19/2023). Generally, when withdrawn on this ground, CIABOC states that such cases will be refiled; however, there is public distrust regarding whether this transpires (*Daily News* 2022). Therefore, while the rule in *Anoma Polwatte v Bribery Commission* creates a limitation for cases filed by CIABOC before 2018, it should not impede cases filed after 2018 since CIABOC is aware of the requirement for cases to be filed with the signatures of all three commissioners.

In this regard, instead of amending the law set out in *Anoma Polwatte v Bribery Commission*, Sri Lanka should develop a review mechanism to ensure cases withdrawn by CIABOC on this ground are refiled. Inspiration can be drawn from Hong Kong's ICAC, where internal and external review systems are in place to ensure that every investigation is handled professionally (Kwok Man-wai 2017). The ICAC in Hong Kong operates with a unique level of transparency through the oversight of the Operations Review Committee (ORC), which comprises respected individuals from the public, providing public scrutiny of its investigations. Investigations cannot be discontinued without the ORC's approval (Heilbrunn 2003). This system holds the ICAC accountable to rigorous standards for each investigation and ensures that no inquiry is prematurely abandoned without pursuing all reasonable leads (Williams, 2020). Implementing a similar mechanism for CIABOC would create public confidence in CIABOC's anti-corruption efforts, as it can ensure that every investigation carried out by the agency is comprehensive and conducted properly.

5. Conclusion and Recommendations

For CIABOC to improve performance as a horizontal accountability mechanism, there needs to be improvement on several grounds, which can be categorized as follows:

5.1. Amendments to the Legal Framework within which CIABOC Operates:

i) The procedure by which the Constitutional Council selects candidates for appointment to independent commissions must be presented clearly. The criteria for eligibility must also be published. As outlined in Annex 1, the Anti-Corruption Act now outlines criteria for selection, which aligns with principle 4 of the Jakarta Principles by specifying more detailed criteria for the appointments of Commissioners.

A transparent process will likely create public trust in the appointment process, resulting in public support for CIABOC and confidence in its leadership (Schütte 2015).

The Commissioners appointed to CIABOC should both be and appear independent. Therefore, it is crucial to establish an independent vetting process conducted by a Constitutional Council that is free from political interference. As such, the independence of both the Constitutional Council and CIABOC is important for CIABOC to succeed. The allocation of resources is necessary in the selection process to evaluate the character and affiliations of candidates before they are appointed. Seeing as public service and police service are often viewed by the public as institutions prone to corrupt activities (Verité Research 2019), ensuring that candidates appointed to CIABOC are not former civil servants or police officers may also impact "the actual and perceived impartialities, competence, and responsiveness" of CIABOC's leadership (Schütte 2015).

ii) Section 16 of the CIABOC Act should be amended so that the legislature, the executive branch of government, the opposition, and the ruling party share the responsibility for appointing the Director General. As recommended for the appointment of commissioners, the eligibility criteria should be publicized, along with the selection process. The purview of this independent committee should also include disciplinary matters. Granting security of tenure and establishing an independent, objective, and appealable procedure for removal, with judicial oversight at the appeal level, is in line with principles of due process and Principle 6 of the Jakarta Principles, which will strengthen the Director General's independence.

iii) CIABOC's mandate should be expanded to include investigating and prosecuting money laundering. As suggested by the BASL, CIABOC should be able to investigate and prosecute money laundering where bribery and corruption are the predicate offences and where CIABOC uncovers evidence of money laundering. As outlined in Annex 1 below, CIABOC has been provided this mandate under the new Anti-Corruption Act.

iv) CIABOC should be designated as the central authority for asset declarations, with a mandate to verify declarations and investigate instances of illicit enrichment. These improvements to CIABOC's mandate, as seen in the new Anti-Corruption Act, can make the asset declaration system more effective.

v) Public officials should have a duty to report on corruption and should receive protection from whistleblower laws. A distinct mechanism that ensures confidentiality for public officials to report corruption must also be established so that public officials do not risk breaching their obligations under the Establishment Code. This reporting mechanism must be supplemented by firmly investigating and prosecuting retaliation against public officials who have reported corruption.

5.2.Limit the Appearance of Bias and Allocate Sufficient Resources to CIABOC

i) CIABOC's investigations unit and legal division must be strengthened to handle investigations and prosecutions independently of the police and the Attorney-General's department. Creating this separation from the police will ensure that perceptions of mistrust towards the police do not extend to CIABOC. Further, enabling CIABOC to prosecute cases independently of the Attorney General's department will reduce the appearance of bias by excluding the Chief Advisor to the State from prosecuting the state employees for corruption and bribery. CIABOC's prosecutors would need to be

trained in areas such as the rule in *Anoma Polwatte v Bribery Commission* in order to avoid delays and unnecessary withdrawals of cases.

ii) A higher budget should be allocated to the CIABOC, meeting the prescribed target of 0.2% of the national budget and enabling CIABOC to strengthen its Investigative Division and Legal Division as recommended above.

5.3. Improve Public Confidence

i) An external review body comprised of members of the public, similar to Hong Kong's ORC, should be established to ensure the routine and thorough investigation of complaints by the Investigations Division and the handling of cases. This review body will play a significant role in ensuring that cases are not withdrawn unnecessarily and can help prevent complaints from being overlooked or slipping through the cracks.

ii) CIABOC should be required to disclose the progress of investigations into complaints on its website to create public accountability for its work. Table 6 revealed that a large proportion of CIABOC's cases fall into the "other/withdrawn" category. CIABOC should be required to specify what "other" encompasses and disclose reasons for the withdrawal of cases. The Anti-Corruption Act should be further amended to include a provision mandatorily requiring the Commission to proactively disclose the reasons behind the withdrawal of cases to ensure transparency and accountability. Additional proactive disclosure requirements could also include providing the status of ongoing cases and updates on investigations.

Annex 1. Legal gap analysis of international instruments and the new Anti-Corruption Act

International instrument	Provisions of Anti-Corruption Act	Gap analysis
Article 14 UNCAC – **Measures to prevent money-laundering** 1. (b) Each State Party shall: ensure that... authorities dedicated to combating money-laundering… have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. **Principle 1 of the Jakarta Principles** ACAs shall have a clear mandate to tackle corruption through prevention, education, awareness-raising, investigation and prosecution, either through one agency or multiple coordinated agencies.	**Section 41** gives the Commission the mandate to conduct a preliminary inquiry or investigation into allegations, including money laundering offenses committed in the same transaction as an offence under the Anti-Corruption Act, and instruct the Director-General to initiate legal proceedings in the relevant court. **Section 62** allows the Commission to share information for investigation and legal proceedings with local and foreign law enforcement authorities based on international agreements or on a case-by-case basis. **Section 63** allows the Commission to enter written agreements with foreign institutions, organizations, or law enforcement agencies for the exchange of information. **Section 35** gives CIABOC the power to enhance public awareness and disseminate information about the harmful effects of corruption, while encouraging public support in combating corrupt conduct. **Section 16** gives CIABOC the power to prevent corruption by the members of its staff in relation to their office by providing appropriate education or training. **Section 41 and 65** give CIABOC the mandate to investigate and prosecute corruption.	CIABOC has been given a clear mandate to tackle corruption through awareness-raising, education, prevention, investigation and prosecution in line with Principle 1 of the Jakarta Principles. Section 41 is in line with Article 14 UNCAC and Principle 1 of the Jakarta Principles as it provides CIABOC with a suitable mandate to investigate and prosecute cases involving both corruption or bribery and money laundering if they are connected to a single transaction. In line with Article 14 UNCAC, sections 49(1)(f), 62(2) and 63 give CIABOC the ability to cooperate and exchange information with several public authorities (such as the Central Bank and the Inland Revenue Department), local law enforcement and government agencies and foreign anti-corruption agencies and law enforcement agencies.

International instrument	Provisions of Anti-Corruption Act	Gap analysis
Principle 4 of the Jakarta Principles ACA heads shall be appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence.	**Section 4** (1) The Commission shall consist of three members appointed by the President on the recommendation of the Constitutional Council, including one person who has expertise, reached eminence and has at least twenty years of experience in law and two persons who have expertise, reached eminence and have at least twenty years of experience in one or more of the following fields: - (a) law; (b) forensic auditing; (c) forensic accounting; (d) engineering; (e) international relations and diplomatic services; (f) management of public affairs; or (g) public administration. (2) Every member of the Commission shall – (a) be a citizen of Sri Lanka; (b) be not more than sixty-two years of age as at the date of appointment; (c) be physically and mentally fit; (d) be competent, honest, of high moral integrity, and of good repute; (e) have relinquished all other remunerated offices while being a member of the Commission.	Under the new Act, the appointment process for Commissioners remains the same with the Constitutional Council making a recommendation to the President. This process does not ensure the impartiality of the Commission as the Constitutional Council is comprised of mainly Members of Parliament, which may foster political influence from the ruling party. However, the provisions of the new Act align with principle 4 by outlining more detailed criteria for the appointments of Commissioners, including expertise, eminence, and experience in relevant fields.

International instrument	Provisions of Anti-Corruption Act	Gap analysis
	Section 17 (1) The President shall on the recommendation of the Constitutional Council appoint a Director-General. **Section 19** (1) The person appointed as the Director-General shall– (a) be a citizen of Sri Lanka; (b) be physically and mentally fit; (c) be an Attorney-at-Law with at least twenty years' experience in conducting criminal prosecutions; (d) be not more than fifty-five years of age as at the date of appointment; (e) be competent, of high moral integrity, and of good repute; (f) have relinquished all other remunerated offices before assuming office as the Director-General... (g) have declared his assets and liabilities before assuming office as the Director-General...	The appointment of the Director General is no longer entirely vested in the President, as the Constitutional Council must make a recommendation to the President. However, the process outlined in section 17 is not a process that ensures impartiality since the majority of the members of the Constitutional Council are members of Parliament. Therefore, there is political influence over the Council and its appointees. The provision also provides eligibility criteria for the selection of the Director General, which enables an assessment of an appointee's competence.
Principle 6 of the Jakarta Principles ACA heads shall have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).	**Section 21** The President may for reasons assigned and with the approval of the Constitutional Council, remove the Director-General from office after giving the Director-General an opportunity to be heard in person or by a duly appointed representative.	This provision of the Act is not entirely in line with principle 6 as a removal by the President with the approval of the Constitutional Council is not equivalent to the procedure for the removal of an independent authority protected by the law. For example, judges of the Supreme Court can only be removed by the President with approval from the majority of Parliament. A similar removal procedure should be adopted for the removal of the Director-General.

International instrument	Provisions of Anti-Corruption Act	Gap analysis
Article 8 – Codes of conduct for public officials 4. Each State Party shall also consider... establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.	**Section 74** protects whistleblowers, whether they are public officials or employees of private sector entities, from civil or criminal liability when they provide true information about an offense under the Act to their superior officer, believing it to be true and warranting an investigation. **Section 142** provides that upon application by CIABOC, the whole or any part of the proceedings in any court for offences under the Act may be held in camera. **Section 73(6)** provides that an informant shall not be subject to adverse conditions of employment, reprisal, coercion, intimidation, retaliation, harassment, any injury to his person... for providing such information and no disciplinary action shall be taken against him.	Section 74 does not specifically create a duty for public officials to report instances of corruption and bribery. Section 74 attempts to establish a system for public officials to report instances of bribery and corruption to their supervisor. However, the section falls short in terms of a system for public officials to make a report where his/her superior is involved in the offense. Section 142 may serve as an important incentive to public officials to give evidence as their identity can be protected even in court. This provision allows for proceedings to be held "in camera," which means that the court is closed to the public. This is typically done to safeguard the anonymity and privacy of individuals involved in the case. However, as discussed above, maintaining anonymity alone might not be sufficient (Group of States Against Corruption, 2006). Section 73(6) prohibits retaliation against a whistleblower; however, the Act lacks a strong enforcement mechanism in support of the clause against retaliation.

International instrument	Provisions of Anti-Corruption Act	Gap analysis
Article 8 – Codes of conduct for public officials 5. Each State Party shall endeavour... to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.	**Section 33** The Commission shall act as the central authority on declarations of assets and liabilities under Part II of this Act. **Section 82(1)(e)** requires public officials to submit 'ad-hoc declarations' in addition to annual declarations if the value of their assets change by ten million rupees or more. **Section 83** provides for declarations to be submitted through an electronic system administered by CIABOC. **Section 87** (1) There shall be a data base maintained by the Central Authority for the purpose of securing information in electronic form relating to assets and liabilities of every person to whom this Part applies. **Section 88** (1) The centralized electronic system shall automatically generate redacted version of every declaration of assets and liabilities which is accessible to the general public within one month of its submission through the official website of the Commission.	The Act designates CIABOC as the central authority and requires public officials to make asset declarations to CIABOC. The provisions of the Act also introduce systems for monitoring and verification of asset declarations by CIABOC and also provide for an electronic filing system. These systems contribute towards a more streamlined process of implementing asset declaration requirements. However, while the Anti-Corruption Act accommodates asset declarations, it lacks explicit provisions for the disclosure of gifts in accordance with the Gift Rules 2019.[7] Section 163(2)(b) provides that rules and regulations made under the CIABOC Act shall continue to be valid. However, incorporating the provisions of the Gift Rules 2019, which set out a procedure for gift disclosures to be made, into the Anti-Corruption Act would be ideal to address this gap effectively.

[7] Gift Rules 2019, Commission to Investigate Allegations of Bribery or Corruption, at https://www.ciaboc.gov.lk/media/attachments/2019/03/16/2.-gift-rule-eng.pdf [last accessed 19 August 2023].

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Country Case 6: Taiwan

Horizontal Accountability in Taiwan

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1. Three Mechanisms of Accountability

Accountability serves as a fundamental pillar of democracy, ensuring that government entities are held responsible for their actions. Democratic accountability encompasses three primary mechanisms: vertical, horizontal, and diagonal (World Bank 2013). Vertical Accountability involves citizens electing their representatives through democratic elections. This mechanism empowers individuals to choose their leaders and participate in shaping the government's direction. Horizontal Accountability centers on maintaining a system of checks and balances among the executive, legislative, and judicial branches of government. It involves preventing any one branch from amassing excessive power and ensuring that each branch serves as a counterbalance to the others. Horizontal accountability needs different government bodies to oversee each other's actions. This includes the legislature supervising the executive branch and the judiciary holding the executive and legislative branches accountable for any wrongdoing. It also involves independent agencies like ombudsman and audit agencies playing a crucial role.

Diagonal Accountability refers to the oversight exerted by citizens, social groups, and the media on government actions that fall outside the purview of the representative political system (Malena et al. 2004). This mechanism ensures that government actions and decisions are subject to scrutiny by civil society, promoting transparency and preventing the misuse of power. Although scholarly literature has extensively studied vertical accountability, there has been insufficient attention given to horizontal accountability and diagonal accountability (Malena et al. 2004). The three accountability mechanisms are interconnected and jointly promote a robust democratic system. The function of the diagonal accountability mechanism is associated with both the vertical and horizontal accountability mechanisms, so does the role of diagonal accountability in enhancing the other two mechanisms (Lührmann et al. 2020).

This paper focuses on the constitutional and legal institutions of horizontal accountability mechanisms in Taiwan. Since there are of course some discrepancies between the formal rules of horizontal accountability mechanisms and the actual practice, we will also explore some of the discrepancies and their impacts. Some of the discrepancies weaken horizontal accountability, while others such as filibuster in the legislative process actually strengthen it. In addition, despite a close focus on the mechanisms of horizontal

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accountability, this paper will also slightly touch the vertical and diagonal ones when they are related to the function of horizontal accountability.

2. Political Institutions

Taiwan adopted a semi-presidential system in which the president is directly elected and can serve up to two consecutive four-year terms and have the power to nominate and replace the premier. In practice, the president also has the *de facto* power, along with the premier, to decide cabinet members. Moreover, the president wields a more important executive power than the premier by deciding the directions of public policies.

The Legislative Yuan, Taiwan's parliament, has 113 members who are elected every four years. It includes 73 geographical seats, 34 party-list seats, and six aboriginal seats. As of 2024, Taiwan has held eight presidential elections and ten parliamentary elections. Taiwan experienced its third transfer of executive power between political parties in 2016. The previous two transfers took place in 2000 and 2008. The 2016 election also marks the first parliamentary majority for the Democratic Progressive Party (DPP), one of the two main parties in addition to the Kuomintang (KMT).

Under Taiwan's semi-presidential system, Congress can file a no confidence motion against the Prime Minister. The president can dissolve the parliament and appeal to the voters as a countermeasure. Taiwan and France have a similar constitutional provision that the president appoints the premier without the consent of the parliament. In France, however, when the president's party does not enjoy a majority of seats in the parliament, the opposing camp obtains the right to form the cabinet where the president's party is excluded, which denotes that cohabitation between the two main political camps occurs. In contrast, the likelihood of proposing a vote of no confidence in Taiwan's Legislative Yuan is very low. The president has the power to dissolve the parliament only if the latter passes a vote of no confidence. The cost and uncertainty of running for the legislature election are quite high as such elections significantly depend on personal votes which heavily rely on clientelism and constituency services. When a divided government occurs, the opposition party that controls the parliament does not dare to propose a motion of no confidence but instead chooses to block the minority government's legislative agenda, resulting in a legislative deadlock. This situation happened during the two terms of President Chen Shui-bian between 2000 and 2008.

The concurrent election of the president and the legislators after 2008 reduced the likelihood of a divided government. In addition, since 2008, the change in the formula of legislature election from a single non-transferable vote (SNTV) to a single-member district also tends to boost the seats of the president's party. Since 2008, both KMT and DPP governments have enjoyed most of the seats in the parliament. Under these conditions, the president's party can more easily control the executive and legislative branches. The system, in essence, is closer to the presidential system with a unified government.

Since the political system is close to the presidential system, the executive branch cannot directly control the Legislative Yuan. The president does not need to be questioned in the parliament but the premier and the cabinet ministers do. Similar to the practice of many semi-presidential countries, in instances of lower approval rate or policy failures, the president, who is the actual decider behind the main policies, can replace the premier to ameliorate public discontent. Thus, because of the fixed term of the president, citizens are not able to hold the real decision-maker into account between elections.

Under this system, the presidents rely on parties to exert control over the legislative process and the coordination and compromise among parties in the parliament. The political structure, however, does not

guarantee that the presidents can push through their legislative agenda without considerable difficulty. Their legislative power depends on several other factors. The first factor concerns whether the president is also the party chairman. The president tends to have more power presiding over the executive and legislative branches with party chairmanship. Most of the time during the Ma Ying-jeou and Tsai Ing-wen governments, the presidents also served the presidents of their own parties. Therefore, we will focus on the other factors.

The second factor is associated with the degree of party unity. When there are strong factions within the ruling party, the president may be unable to pass all the bills he or she wants. During President Ma's administration, the President and Speaker Wang Jin-pyng were not congruent on many things, hindering the President's ability to control the legislative agenda. The third factor, the most important factor, concerns the law-making rules in the parliament. When the legislative procedures allow the opposition party and civil society organizations (CSOs) to exercise filibuster actions, they are permitted to enjoy *de facto* veto power on some contentious issues. The president often finds it difficult to pass some important bills. This factor denotes the difference between formal rules and actual practices. We will explore them in detail below.

3. Comparative Scores of Institutional Power

To understand the performance of horizontal accountability in Taiwan, we can also compare the relative power of different government branches by examining the constitutional provisions across countries. For this purpose, we use data from the Comparative Constitutions Project which studies constitutions across countries (Elkins and Ginsburg 2022). The analysis of clauses of the constitutions allows scholars to compare the relative power of different government branches: executive, legislative, and judicial.

First, we examine the relative positions of executive and legislative powers. The "executive law-making power" in the Comparative Constitutions Project is a composite indicator, ranging from 0 to 7, encompassing the following indicators: (1) the power to initiate legislation; (2) the power to issue decrees; (3) the power to initiate constitutional amendments; (4) the power to declare states of emergency; (5) veto power; (6) the power to challenge the constitutionality of legislation; and (7) the power to dissolve the legislature (Elkins and Ginsburg 2022). The index score reflects the total number of these powers granted to the national executive branch. The data show that the executive branch in Taiwan can initiate general legislation, use decree power, declare state emergency, and dismiss the legislature. It does not have the power to challenge the constitutionality of legislation and proposed amendments to the constitution.

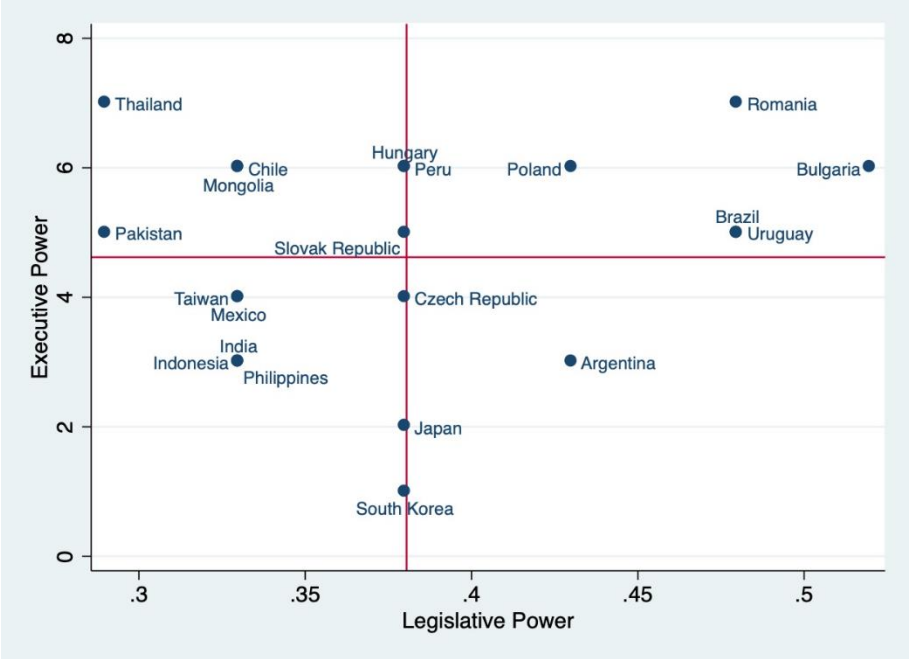
Regarding legislative power, the Comparative Constitutions Project also constructs a composite indicator that involves a set of binary variables measuring different legislative powers. The index score represents the mean of these 32 binary elements, with higher scores indicating more legislative power. Examining these dimensions, the data show that the Legislature Yuan in Taiwan has the power to question the cabinet members, amend or veto bills, impeach executive, summon executive, change constitution, approve the declaration of war, approve treaties, and face no restriction for re-election. The legislators do not have the power to serve as ministers, investigate the executive branch, approve the appointment of ministers, be immune from dissolution by executive, enact laws that are not subject to judicial review, be immune from arrest, and appoint judiciary members.

Overall, the relative powers of executive and legislative branches are shown in Figure 1. As seen from below, Taiwan scores about average in executive power and is at the bottom group in the legislative power among many third-wave democracies. One clear reason Taiwan's legislative power scores lower than that of many robust democracies like Japan and South Korea is because Taiwan's legislature is subject to

dissolution by the president and lacks several crucial powers listed above, such as investigative authority and the ability to approve ministerial appointments.

Equating the mean of the 32 binary elements with the power of the legislature is debatable, as not all elements hold equal significance. Certain elements may carry more importance, and some may be interconnected, jointly exerting influence. In some cases, merely summing them up may not accurately capture the true scenario. Caution is warranted when interpreting and comparing scores across countries.

Figure 1. Executive Power and Legislative Power

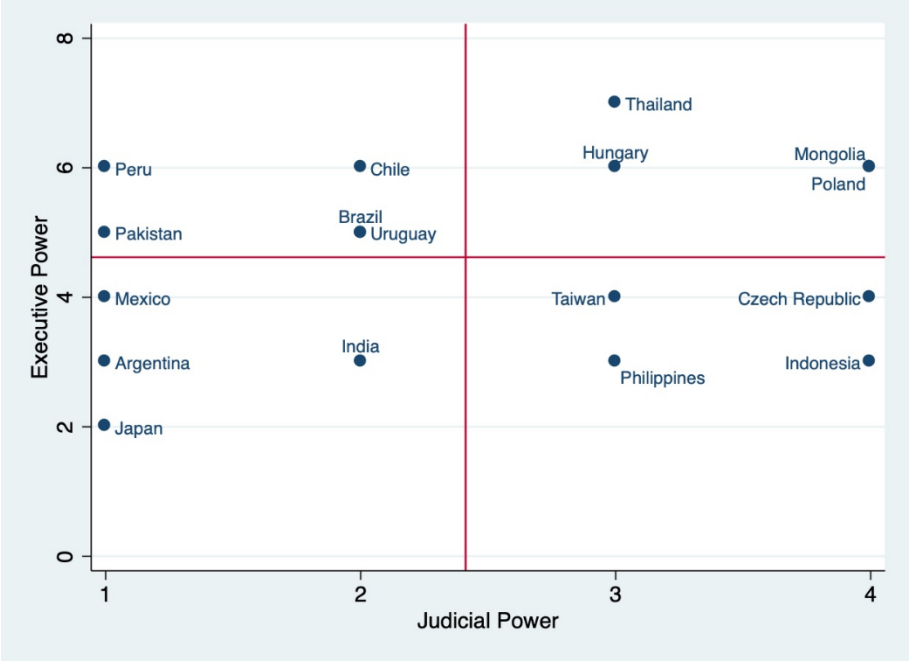


Despite the lower score of legislature power, one might not be able to say that legislature power is really that weak in Taiwan. First, in Taiwan, the investigation power was assigned to the Control Yuan, which exercised the power of impeachment and censure and is sometimes considered to be another chamber of the legislature. Next, legislators do not have the power to serve as ministers, although many Members of Parliament (MPs) do go on to become prime ministers or ministers after holding positions in the Legislative Yuan. Moreover, although the constitution stipulates that the president has the right to dissolve the Legislative Yuan, in practice it never happens. It is a passive power as the president can choose to dissolve the parliament only if the latter passes a motion of no confidence. If the legislature does not do so, the president does not have the right to proactively dissolve the parliament. Finally, the legislative process in Taiwan allows a quite extensive use of filibuster for some highly controversial bills. In some cases, this amounts to the veto power that the opposition party has. This important instrument is not written in the constitution and thereby not in the index of Comparative Constitutions Project. We will turn to this point later.

Moving on, we explore the relationship between executive power and judicial independence. Related to this, the Judicial Power Index constructed by Comparative Constitutions Project includes six features: judicial review provisions, court supervision of elections, power to declare political parties unconstitutional, role of judges in executive removal (e.g., impeachment), courts' review of emergency declarations, and courts' power to review treaties (Elkins and Ginsburg 2022). Judicial system in Taiwan has the power of judicial review but it does not have the power of supervising elections, impeaching government officials,

declaring political parties unconstitutional, and declaring a state of emergency. Figure 2 shows that Taiwan's judiciary authority's power is roughly in the middle place.

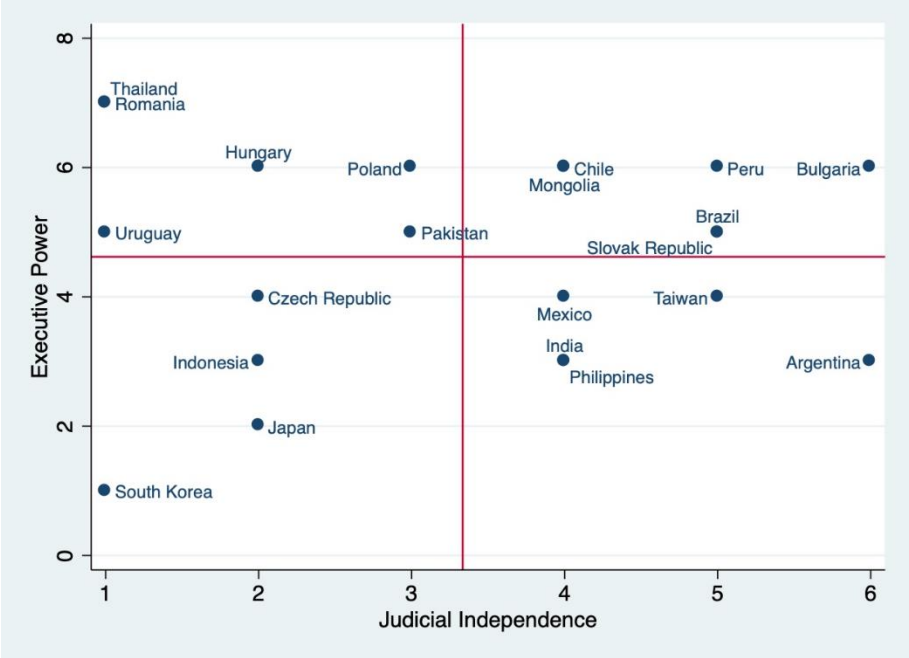
Figure 2. Executive Power and Judicial Power



Another way to examine the role of the judicial system in the accountability mechanism is to examine the degree of judicial independence. Comparative Constitutions Project's Judicial Independence is an additive index ranging from 0 to 6, measuring the six constitutional features that are associated with judicial independence. These features include whether the constitution explicitly states judicial independence, lifetime appointments for judges, involving judicial councils or multiple actors in appointments to the highest court, limiting removal with supermajority legislative votes or through specific processes, explicitly restricting removal to certain issues, and safeguards judicial salaries (Elkins and Ginsburg 2022). Checking this list, the feature of judicial independence in Taiwan has a statement of judicial independence, life term, selection process of judges in the highest court, removal conditions, and salary insulation and it does not have removal process.

As can be seen from Figure 3, compared to many other third-wave democracies, the institutional arrangement of the judicial system in Taiwan enjoys quite high levels of independence. This aligns with the general impression that Taiwan's judiciary has become relatively independent following democratization and is not subject to interference from the executive branch. The high score of judicial independence denotes that the judicial branch is equipped with the power that can prevent the executive branch from abusing its power.

Figure 3. Executive Power and Judicial Independence



4. How the Constitutional and Legal Mechanisms of Horizontal Accountability Fulfilled Their Expected Functions

The preceding discussion of the constitutional arrangements of the legislative and judicial branches may not fully reflect the actual practice of horizontal accountability, except in the case of judicial independence. In Taiwan, with robust rule of law performance, the gap between formal rules and actual practice in the areas of legislative and judicial oversight are generally small. The examination of horizontal and diagonal accountability can be enriched by delving into their practical applications using data sources from the V-Dem dataset. It is based on expert evaluations, considering both formal rules and actual practices. Note that, the items V-Dem examines cover only a portion of the institutional powers mentioned in the last section. It cannot effectively reveal the whole picture of the difference between formal rules and actual practices.

In V-Dem's definition, horizontal accountability refers to the extent to which state institutions possess the authority to oversee the government by necessitating the disclosure of information, interrogating officials, and meting out penalties for inappropriate behavior. These mechanisms of accountability serve to establish checks and balances among various institutions, thus effectively safeguarding against the misuse of authority. The primary actors responsible for upholding horizontal government accountability include the legislature, the judiciary, and other oversight bodies, such as ombudsmen, prosecutors, and comptroller generals.

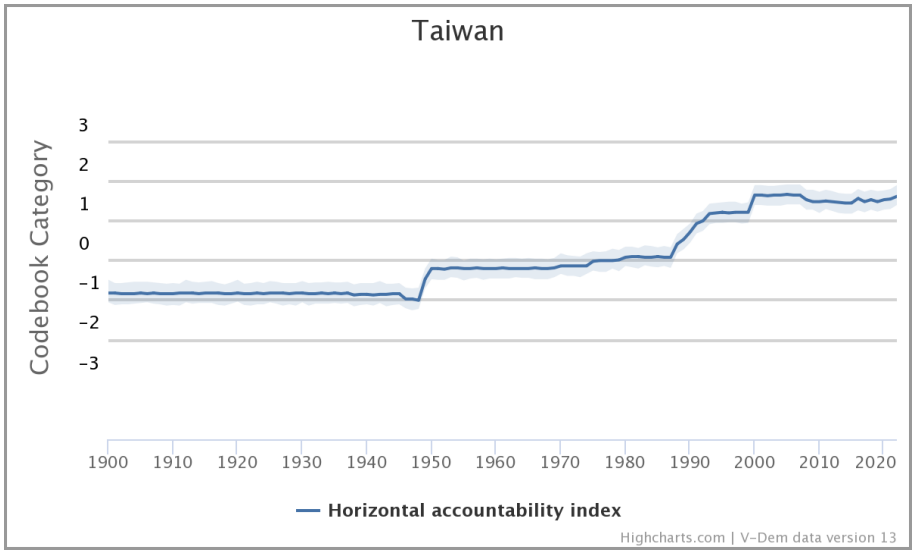
Concerning the legislative aspect of horizontal accountability, its function revolves around scrutinizing potential misconduct of government officials. There are two key dimensions in V-dem's measurement. *Regular interrogation* concerns the ability to systematically question members of the executive, fostering transparency and holding the government accountable for its actions. *Investigative capacity* concerns whether the legislature possesses the capacity to initiate investigations and subsequently arrive at well-founded decisions based on its findings. Moreover, the involvement of other state entities, such as the comptroller general, general prosecutor, or ombudsman, further contributes to the fabric of

accountability. These bodies play a pivotal role in investigating and reporting potential instances of illegal or unethical conduct by the executive branch (Lührmann et al. 2020). Finally, zooming in on the judiciary's role within horizontal accountability, V-Dem data quantifies the extent to which the executive branch improperly encroaches upon the legitimate authority of the judiciary.

As can be seen, the scope of horizontal accountability index in V-dem is narrower than the general definition of horizontal accountability which centers around maintaining robust check and balance among different government branches. The V-dem index of horizontal accountability exerted by the legislative branch focuses on interrogation and investigation but largely leaves the power of bill reviews untouched. Although questioning the government officials is part of the law-making process, it does not cover the whole process. We will turn to the legislative process in the next section.

Figure 4 depicts the change in the overall accountability index in Taiwan. It clearly illustrates a significant upswing in Taiwan's horizontal accountability score from the early 1990s, coinciding with the country's transition to democracy. Notably, this score has exhibited a commendable level of stability since then. Taiwan's remarkable increase in horizontal accountability since its democratic transition in the early 1990s, as depicted in the graph, underscores the country's commitment to democratic principles. The significant roles of the judiciary and legislature within this framework, as well as the involvement of other oversight bodies, collectively bolster the foundation of transparent and responsible governance.

Figure 4. Horizontal Accountability Index in Taiwan, 1900-2020

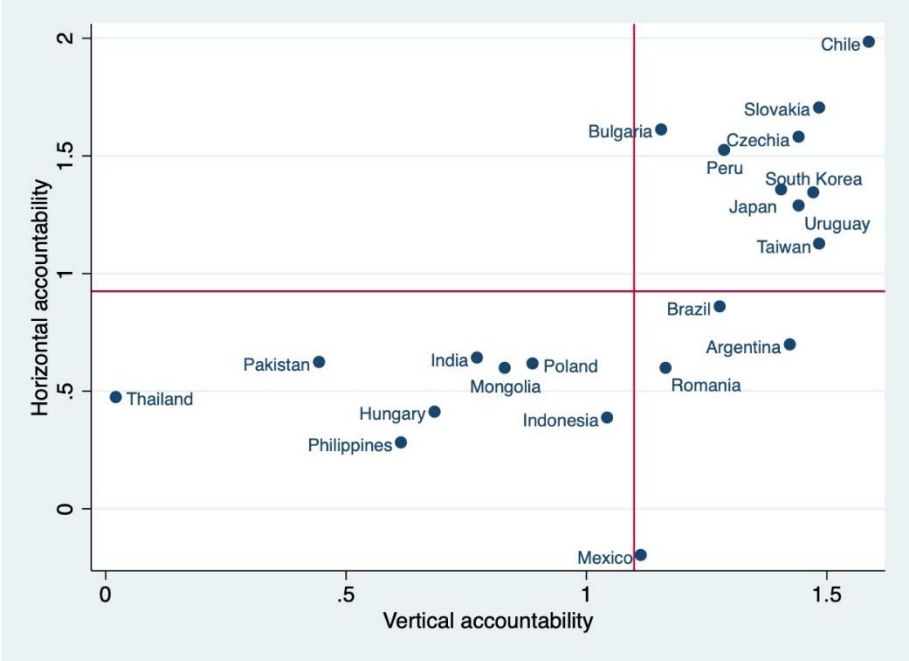


Furthermore, it is pertinent to conduct a comparative analysis of Taiwan's performance in the context of countries currently undergoing the third wave of democratization, as well as in comparison to established East Asian democracies like Japan and India. By comparing Taiwan's performance in these aspects to that of other nations, we can develop a nuanced comprehension of its advancements in democracy. This examination not only underscores Taiwan's strengths and weaknesses but also facilitates a more comprehensive view of the horizontal accountability landscape. We use data from the year 2021 to demonstrate the pattern.

In V-dem, vertical accountability includes three essential components. The initial facet revolves around the quality of elections, which involves an overall evaluation of the integrity, fairness, and transparency of the electoral procedures. The subsequent element pertains to the percentage of the eligible

population participating in the electoral process. This section assesses the inclusiveness of the democratic system by considering the proportion of individuals with voting rights who exercise them. The third aspect involves the method used to select the chief executive, scrutinizing whether this is achieved through a direct or indirect approach. The graph below provides a visual representation of these comparisons, revealing Taiwan's strengths in vertical and horizontal accountability.

Figure 5. Horizontal Accountability and Vertical Accountability



As seen, Taiwan scores very high in vertical accountability, denoting the good performance of election mechanisms and party competition. For horizontal accountability, Taiwan is in the bottom of the leading group, almost all of them are stable and robust democracies. Compared to some East Asian countries, Taiwan also slightly trails Japan and South Korea. In general, Taiwan is performing well in terms of horizontal accountability, but some aspects can be improved further. As indicated, two main aspects of V-dem's horizontal accountability are regular interrogation and investigative capacity. In Taiwan, there are certain institutional arrangements associated with these two measurements that tend to constrain the power of horizontal accountability.

In regular interrogation, due to its semi-presidential system, it is the premiers rather than the presidents who need to appear in parliament to be questioned. Moreover, as indicated above, if the parliament is not satisfied with the performance of the cabinet, the likelihood of proposing a motion of no confidence in Taiwan's Legislative Yuan is quite low because the president can dissolve the parliament and the cost and uncertainty associated with the legislature election are high. This suggests that if there is a unified government, the problem is basically not present since one party controls both the executive and the legislative branch. If there is a divided government, however, the problem is clear. Under this scenario, the

opposition party who control the parliament is not able to hold the government accountable for its actions during the elections.[3] This situation is similar to the situation in the presidential system.

For investigative capacity, the power is not given to the Legislative Yuan but to the Control Yuan. The members of the Control Yuan have the power to individually or jointly investigate government wrongdoing. The members of the Control Yuan serve six-year terms and are nominated by the president, requiring the consent of the Legislative Yuan. The institutional design does not create staggered intervals, where the members of the Control Yuan nominated by different presidents sit in the same court. Instead, one president gets the chance to nominate all members. When there is a unified government, the opposition party has no say in deciding the members. Therefore, the function of the Control Yuan is clearly subject to the influence of the executive branch.

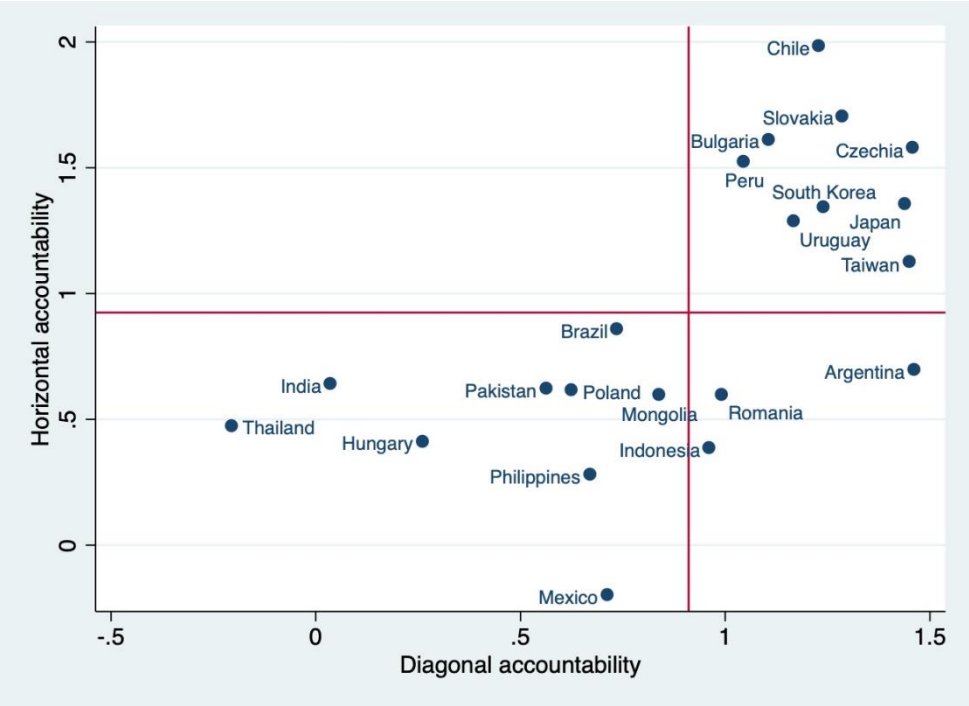
In 2020, one member of the Control Yuan members nominated by President Tsai is not satisfied with the verdict of a judicial case regarding President Ma. He considers the decision unduly favoring the former president. He openly criticizes the judge and seeks to investigate the case and the judge. The action met with extensive backlash from the courts and civil society. Eventually, he backed off. This event signals the potential threats posed by the Control Yuan, which is meant to be part of the horizontal accountability mechanism, as it seeks to interfere with the power of another horizontal accountability mechanism, the judiciary. This can hinder the capacity of the judiciary to hold the members of the executive branch into account for their wrongdoing.

Moreover, the power of auditing is also granted to the Audit department in the Control Yuan. This is unlike the auditing supervision power in the U.S., where this power is assigned to an organization within Congress known as the Government Accountability Office (GAO). GAO is an independent, nonpartisan government agency that executes the auditing task for Congress. The Audit department in Taiwan is also supposed to be non-partisan and independent. However, since the Comptroller General is nominated by the president and requires consent from the Legislative Yuan, the department is still subject to potential influence from the executive branch.

Diagonal accountability encompasses a spectrum of actions and mechanisms that citizens, civil society organizations, and an independent media can employ to ensure governmental accountability. The measurement in V-dem includes four aspects: media freedom, characteristics of civil society, freedom of expression, and the extent of citizen engagement in political affairs. Notably, when examining diagonal and horizontal accountability, Taiwan's performance in diagonal accountability shines even brighter than its horizontal counterpart, as shown in Figure 6. The high performance of diagonal accountability in Taiwan denotes the capacity and active participation of the civil society organizations. This situation can help reduce the deficiency of horizontal accountability. When government officials are corrupt or seek to repress the civil space, mass media and civil society organizations can work together to prevent the government from making wrong decisions.

[3] Note that low horizontal accountability power does not necessarily indicate a deficiency in the political system; it is simply a feature of the semi-presidential system. With weaker horizontal accountability by the legislature, it gains greater political stability.

Figure 6. Horizontal Accountability and Diagonal Accountability



Strong vertical and diagonal accountability mechanisms in Taiwan help mitigate the weaknesses of horizontal accountability. When the executive branch fails to perform adequately or encroaches on civil liberties, these two mechanisms can effectively hold the ruling party accountable, thereby preventing the erosion of the democratic system.

Nonetheless, it is important to acknowledge a potential caveat associated with these indicators. The metrics we have discussed, such as executive and legislative powers, unfortunately do not encompass the intricate factor of filibustering, which can wield substantial influence over the government's capacity to progress with its legislative agenda. The use of filibusters can reduce the possibility of wrongdoing, but it may damage the governability of the ruling party. This is the significant gap between formal rules and actual practices, which we will discuss in the next section.

5. The Trade-off of Strong Horizontal Accountability

While both the Comparative Constitutions Project and the V-Dem Project assess Taiwan's legislative power or horizontal accountability mechanism as lacking strength, the practices of filibuster strengthen the power of the Legislative Yuan and opposition parties in blocking the bills proposed by the executive branch and preventing the abuse of power by the latter. This is the omitted aspect of the Comparative Constitutions Project and V-Dem horizontal accountability indices. It is especially important in the case of a unified government. While strengthening horizontal accountability is important to prevent the abuse of power by the executive branch, excess control of the executive branch also undermines the governability of the democracy. As Galston (2018) points out, gridlock is a significant reason people have lost confidence in representative democracy, as weak governance increases popular discontent with the existing political system. This situation points to two related dilemmas that Taiwan faces.

The first dilemma concerns the potential conflict between checks and balances and the governability of the executive branch. The current system of filibuster prevents the government from abusing its power, but it also reduces the steering capacity of the incumbent government in policy decisions. This is one potential caveat of strong horizontal accountability. The second dilemma concerns the potential conflict between power sharing and governability. On the one hand, a desired system would also need to encourage power-sharing and consensus-building. Taiwanese have two distinct national identities: pro-China and pro-Taiwan. Seeking compromise and building consensus is important especially about policies related to the Taiwan-China relationship, such as trade agreements. On the other hand, however, the political system must ensure majority rule to enhance governability. When checks and balances are pushed to an extreme, they weaken democratic governability. The idea of checks and balances and power sharing are related. Strong check and balance between different government branches essentially encourage political actors to seek compromise and consensus.

Because of the dichotomous nature of national identity issues and the lack of clear rules regarding filibuster in the legislative reviewing process, the opposition party tried hard to block the main legislative agenda of the ruling party. Since the democratization in 1987, Taiwan has witnessed several party turnovers. The smooth transition of executive power has disguised the truth that the majority party is not able to exercise its lawmaking power smoothly. Since the first party turnover in 2000, gridlock in parliament has become frequent. During President Chen's minority government, which did not have majority support in parliament, the coalition of the KMT and the People First Party blocked many major legislative bills introduced by the DPP government. Some of these bills were drafted during the terms of KMT President Lee Teng-hui before 2000.

Although the KMT has held a majority of seats in Parliament since 2008, it was unable to push its own agenda forward in many cases. Issues related to pension reforms, beef imports from the United States, recruitment of college students from Mainland China, and service sector trade agreements across the Strait are some notable examples from President Ma's tenure.

Unlike the filibuster rule in the U.S. Congress, where only ongoing, non-stop speech is allowed and recognized, the methods of filibusters in Taiwan's parliament are quite extensive. Multiple amendments, physical clashes, and blocking of the committee and the chamber are all tolerated in the Legislative Yuan. There are no formal rules to end a filibuster. Unlike other democracies, the committee chair and speaker in Taiwan do not have the power to end a filibuster. In many Western parliaments, there are motions to end the debate on a matter, limit the amount of time that MPs can spend on a particular bill, and timetable a bill's progress by setting out the time allowed for debate at each stage in advance. As a result, despite being a majority party in the parliament, President Ma remained unable to advance their party's policy agenda because of filibustering.

The party caucus negotiation is the central mechanism for ending filibusters and allowing parties to negotiate in the Legislative Yuan in Taiwan. Party whips can ask the speaker to send bills that cannot reach consensus in the committee to the party caucus negotiation mechanism, which comprises all the party whips with a party caucus. With a small number of participants, all with mandates from their respective parties, the meeting can more easily reach a consensus. If all sides agree with the amendment, the bill is sent to the plenary session, and a roll-call vote is held. Almost all such bills approved in the meeting will pass the second and third reading without much difficulty.

Before 2016, given the frequent filibuster actions taken by the opposition parties, this mechanism helped to reach agreements between the ruling party and the opposition parties regarding contentious bills. A

bill is not pushed forward into the plenary session unless a consensus is reached in the negotiation process. In other words, the opposition parties enjoyed veto power regarding the bills they strongly opposed. Two notable cases were the pension schemes reform of civil servants and public-school teachers and the pension schemes reform of laborers. During this period, the mechanism essentially made Taiwan's legislative process close to the consensus model proposed by Lijphart (2012). The government institutions of Taiwan, including the semi-presidential system that is, in essence, close to a presidential system; and the first-past-the-post electoral system that entails a high disproportionality of seats to votes, make it a majoritarian system. However, filibusters and party caucus negotiation mechanisms essentially convert the political system into a consensus model. The ruling party needs to amend the bills to be accepted by the opposition parties, and the opposition party can also block the bills they strongly oppose. The downside of the quasi-consensus model is that the ruling party is unable to push through some of their core agendas.

In some cases, filibusters launched by the opposition party involve a third player—civil society groups—thus increasing the hurdles to passing laws. The Sunflower Movement in March 2014 is a salient example. The issue at stake was the service trade agreement between Taiwan and China. After the DPP blocked this agreement in the committee for a month, the KMT committee chair suspended the review and sent the bill to the floor for a vote, sparking massive student protests that occupied the floor of the Legislative Yuan. One significant reason the student groups acted was that they believed the DPP MPs would back off in the review process.

However, not all bills that failed to reach a consensus in the party caucus negotiation mechanism were dismissed. In a few highly salient but not China-related bills, such as the US beef cases, the Ma government pushed through a roll-call vote, imposed strict party discipline, and passed the bills. If a highly salient bill that aims at building closer economic relationship with China, then the government often finds it very difficult to get it passed.

When the DPP took power in 2016, the opposition party, the KMT, like its predecessor, quickly sought to block several DPP initiatives using various filibuster tactics. The DPP responded swiftly by restricting the debate in the Parliament. More importantly, the DPP changed the rule of the party caucus negotiation mechanism. The ruling party still negotiates with the opposition parties in the party caucus negotiation mechanism; however, if no agreement is reached, a bill is not killed. The retirement of the long-serving KMT speakers who were able to effectively mediate disagreements among parties reduces the mechanism's effectiveness in fostering agreement. In addition, the DPP is more assertive than the KMT in exercising its majority rights. Both factors contribute to the weakening of the party caucus negotiation mechanism. As a result, the party caucus negotiation mechanism ceased to be the gate through which the opposition parties could block the bills they did not prefer. If parties cannot reach an agreement in the negotiation, the whip of the ruling party simply moves the bill to the plenary session and gets it passed with its majority seats (Ting 2021).

In general, bills related to national identity, such as abolishing the Mongolian and Tibetan council and transitional justice, are least likely to reach a consensus in the party caucus negotiation mechanism. But now, the ruling party can bypass the party caucus negotiation mechanism and move on to the second and third readings (Ting 2021). In fact, based on our own calculation, the passing rate of economic-reform related bills, the Tsai government after 2016 is indeed 10 percent higher than that of the Ma government. The positive impact of this new process is that the ruling party is able to pass the bills they want. Fights in Parliament result in immobilism. In a highly competitive international economic structure, delays and immobilism may put Taiwan's development at a more significant disadvantage. Recent changes in the

legislative process may set a precedent for future governments, rendering the country's legislative process closer to a majoritarian model. This change also signals that the congressional check on the executive branch, especially from the opposition party, is weakened. There is always the trade-off between strengthening supervision and being able to pass government bills. It is just now that the balance shifts somewhat toward the end of governability.

Taiwan's civil society, which includes academics, students, NGOs, the civic tech community, grassroots advocates, and the news media, plays an important role in its legislative process, as mentioned above. When the ruling party controls the executive and legislative branches and the party caucus negotiation mechanism is weakened, the opposition parties have no effective tactics to stop legislation. Civil society's response has become the sole force that can block contentious bills. However, the effectiveness of such factors depends on the size of civil society organizations that oppose the bills. In some cases, such as the pension reform of civil servants in 2017, the protesters of the anti-pension reform also sought to break into and occupy the Legislative Yuan but failed because of police interruption. It appears that the police, after the Sunflower Movement, have ramped up their ability to prevent protesters from breaking into the parliament. More importantly, such action did not garner extensive social support to block the bills. The government was eventually able to get the pension reform passed.[4]

6. Judicial Check

Taiwan's judiciary operates independently, as court rules are largely unaffected by political or inappropriate influences. Instances of abusive practices by prosecutors and law enforcement are rare (Freedom House 2023). We have discussed the institutional power of the judiciary and horizontal accountability score in Taiwan above. Here we explore the judicial part of the horizontal accountability in more detail. Specifically, we check the constitutional court and other courts as the two types of court exert different functions.

6.1. The Constitutional Court

The Constitutional Court is responsible for reviewing lower-level court decisions and the constitutionality of laws. It consists of 15 grand justices who serve eight-year terms and are appointed by the president. When vacancies arise in the constitutional court, the incumbent president has the chance to nominate candidates. The candidates are subject to parliament approval. The institutional design of the eight-year term and the change between presidents aims to create staggered intervals, where justices nominated by different presidents sit in the same court. Under this institutional arrangement, the justices nominated by different presidents in the court are supposed to balance each other and provide different views. Since the KMT-controlled parliament blocked some candidates nominated by the DPP President Chen, the succeeding KMT President Ma nominated 11 of all 15 justices and in 2013. As a result, in 2023 all supreme court justices are nominated by the DPP president.

[4] In addition, before 2016, party caucus negotiation meetings were held behind closed-door without discussion records. Consequently, party supporters were unable to track the positions of individual party whips, and the whips were not held accountable for decisions made during these meetings. Since 2016, party caucus negotiations have been videotaped, increasing pressure on individual whips and discouraging concessions. This change has likely contributed to a less compromised model post-2016.

Once there is a concurrent government, the president can easily pick the candidates that are ideologically in line with him or her. The main ideological divide in Taiwan is the national identity and relationship with China. It is not sure what will happen when a newly elected president is ideologically not in line with the grand justices. Will the constitutional court declare a major law enacted by the incumbent government unconstitutional? Under this situation, it becomes a divided government between the executive and judicial branches.

This situation entails check and balance between different branches, especially when the ruling party controls both the executive and legislative branches. The potential downside of this situation is that some main policies initiated by the ruling party may be struck down by the court, which may cause a constitutional controversy. This may also weaken the governability of the ruling party and exacerbate political antagonism between different political camps.

6.2. Executive and Judicial Relationship

The role of the judicial system in checking the power of the executive branch lies not only in the constitutional court but also many of the lower-level courts. The importance of courts can be seen clearer in recent years. Following its defeat in the local elections of 2018, the DPP attributed its loss to the disinformation campaign launched by China and its allies in Taiwan. The disinformation activities, which distorted reality, portrayed political leaders in a negative light, and propagated a skewed perception of the government, were argued to place the DPP at a notable disadvantage. In response, both the DPP government and DPP lawmakers seek to put forth various legislative proposals aimed at curbing the spread of disinformation.

After taking office in 2016, the DPP government ramped up its use of the Social Order Maintenance Act to attack the suspected fake news. The police were mandated to bring individuals suspected of spreading disruptive rumors before the courts. This action was sometimes based on information provided by pro-government sources or through proactive monitoring of politically oriented online platforms like specific Facebook pages. While discontent and criticism existed before President Tsai Ing-wen's election in 2016, the number of cases presented to the court by the police has multiplied since 2019 (Pan 2020). The Act explicitly requires the police to present suspects before the court following questioning, under the threat of allegations of misconduct.

It is noteworthy that close to 80 percent of cases brought before the courts under this law are dismissed, as Taiwan's courts prioritize upholding the right to freedom of expression (Pan 2020). The situation is clearer when it comes to political and election-related cases, about approximately 88 percent are dismissed (Chen 2020). The courts generally interpret criticisms of the government or its leaders as not posing a threat to social stability, thus falling outside the jurisdiction of the Social Order Maintenance Act. Despite the low conviction rate, local police still feel compelled to present cases to court due to potential accusations of negligence by informants. During election campaign periods, the government pressures the police to expedite the processing of information-related cases (Chen 2020).

The conviction rate for cases prosecuted by the prosecutor's office in Taiwan in general is notably high, but the rate for cases involving fake news is considerably low. This discrepancy reflects that courts have independent decision-making authority and do not align themselves with the ruling party's stance regarding the political-related cases. All in all, the enforcement of the Social Order Maintenance Act has a dampening effect on online political expression, underscoring the importance of an independent judiciary.

The significance of the judiciary transcends these fake news-related cases. In various other politically relevant judicial cases, Taiwan's courts generally play an impartial role, displaying minimal bias toward either the KMT or the DPP. After democratization, regardless of which party is in power, the courts tend to maintain a neutral stance. Cases involving political disputes between political parties, such as bribery cases, election disputes, and defamation lawsuits against candidates, usually see the courts avoiding political entanglement to uphold an impartial stance (*United Daily* 2023/12/18).

Moreover, in terms of the confrontation between civil society and the government, the courts tend to prioritize individual freedoms and make rulings that protect private rights instead of aligning with the ruling party's position. The ruling fake news cases aforementioned demonstrate this pattern. This serves as a counterbalance against executive power. All these facets underscore the role of the courts in checking the power of the executive branch. The courts impartially make judgments to safeguard people's rights play a critical role in sustaining democratic politics' stability and preserving freedom of speech. When the ruling party attempts to stifle opposing voices for election interests, the courts' capacity to independently deliver equitable judgments becomes paramount.

Lastly, related to the judiciary, the case of the Digital Intermediary Services Bill introduced in 2022 clearly demonstrates the critical role of civil society in curbing the power of the executive when the ruling party controls both the executive and legislative branches and seeks to curb the space of civil society. The bill aimed to grant government agencies the authority to take legal action against online news articles deemed to violate the law or harm the public interest. This bill proposed that within a 48-hour window, a court would determine whether a specific story should be removed from online platforms. Before the court makes its final decision, the government agency could request a 30-day warning be attached to the post by the platform provider.

In that bill, the terms "violate the law" and "damage the public interest" are quite vague, and it is questionable whether the courts would have the capacity to make these decisions so quickly. It would be particularly controversial if government agencies were to make extensive use of this legislation during an election campaign, as it could have a chilling effect on freedom of expression and influence the outcome of the election. The bill encountered strong opposition from civil society groups, internet users, and internet service providers, leading to its eventual withdrawal (Wu 2023). This discussion highlights the challenge a country faces in balancing national security with freedom of expression.

In this example, the civil society helps block the bills that tend to shrink the civil space. If civil society does not actively voice their concerns and stop the bills, the courts will be inundated with cases. In that case, the ruling of the courts will be critical in defending the rights of people. In sum, we can conclude that in the case of a unified government, the legislature is subordinated to the will of the executive branch. Under this condition, the role of court and civil society organizations stand out. They constitute two lines of defense that prevent the government from breaching the democratic norms and making bad public policies.

7. What Should Be Done to Improve the State of Horizontal Accountability Performance?

Power sharing is crucial in an ethnically divided society. In Taiwan's winner-take-all political system, there is limited room for institutional power sharing in elections and the process of government formation. Under the semi-presidential system, the party that controls the presidency also tends to control the parliament. Moreover, the elections of the presidential and legislature both adopt the single-member-district electoral systems, rendering the election results highly disproportionate. These two institutional features not only render institutional power sharing largely absent; they also make the horizontal accountability mechanism weak.

Under this institutional structure, mechanisms such as divided government, filibustering, and closed-door party caucus negotiation tend to strengthen checks and balances, thereby enhancing horizontal accountability. In addition, they also serve as non-institutional power-sharing mechanisms which prevent drastic changes in important policies. In some sense, this is a good thing for a divided society to maintain social peace. These informal mechanisms, however, have their downsides. For the most part, they harm the ruling party's ability to advance its policy agenda. In addition, the current system fails to encourage the formation of an accepted quorum in the parliament. In each legislative battle, there are fierce fights until one side eventually concedes. Since the Tsai Ing-wen administration began in 2016, the ruling party has been able to force a vote by shortening the debate in committees, employing the police force to prevent social groups from occupying the parliament, and weakening the party caucus negotiation mechanism.

Taiwan is a divided society with different national identities and views of the cross-strait political and economic relationship. It is preferable to encourage deliberation and compromise regarding identity-related issues. It might be better to maintain a party caucus negotiation mechanism regarding identity-related bills and encourage political parties to seek compromise. Maintaining strong horizontal accountability could be a good thing for those types of bills. In contrast, for non-identity issues such as economic reforms, weakening the party caucus negotiation mechanism and allowing the ruling party to advance its policy agenda should be the right direction. When horizontal accountability is taken too far, it can harm governability. Last, for bills that are supposed to shrink civil space, cooperation among all three accountability mechanisms is necessary.

Still, it is sometimes difficult to distinguish between the two cases as they often overlap. For example, Taiwan's exports highly concentrate on China, so any discussion of trade liberalization cannot avoid considering trade relationships across the Taiwan Strait. Other issues relating to emigration and foreign student policy involve the China factor to a different extent. As such, there is no easy solution for this kind of policy.

8. Conclusion

We discuss the state of horizontal accountability, encompassing both formal rules and actual practice in Taiwan. Overall, Taiwan demonstrates proficiency in horizontal accountability, yet certain aspects can be improved further with a narrow gap observed between formal regulations and practical implementation. Discrepancies exist between formal rules and actual practices within specific facets of horizontal accountability mechanisms. While some discrepancies weaken horizontal accountability, others such as filibustering in the legislative process actually strengthen it. The discrepancy also poses a trade-off between strengthening oversight and facilitating the passage of government bills in Taiwan, highlighting the need for a balance between checks and governability.

Moreover, we demonstrate how the three accountability mechanisms—vertical, horizontal, and diagonal—are interconnected and collectively promote a robust accountability system in Taiwan. The diagonal accountability mechanism enhances both vertical and horizontal accountability mechanisms. In instances of unified government and a weak filibuster mechanism, the legislature may be subordinate to the will of the executive branch. Therefore, the roles of the court and civil society organizations become prominent. They act as two lines of defense against potential breaches of democratic norms and flawed public policies by the government.

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Country Case 7: Thailand

Making Horizontal Accountability: A Case Study of Thailand

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1. Introduction

Securing accountability became an issue in politics in the 1970s (Oliver 1991, p. 12). Accountability is defined as "*de facto* constraints on the government's use of political power through requirements for justification of its actions and potential sanctions" and its subtypes which include the extent to which governments are accountable to citizens (vertical accountability), other state institutions (horizontal accountability), and the media and civil society (diagonal accountability) (Luhrmann, Marquardt and Mechkova 2020, p. 811). O'Donnell (1998, p. 112) refers to horizontal accountability as "the existence of state agencies that are legally enabled and empowered to take actions that span from routine oversight to minimal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful." Horizontal accountability consists of formal relationships within the state in which one state actor has the formal authority to demand explanations or impose penalties on another actor. It focuses on internal controls and oversight procedures. For example, executive agencies must explain their decisions to legislatures and can, in some cases, be overruled or sanctioned for procedural violations (Transparency and accountability Initiative 2017).

Thailand transitioned from junta-authoritarian rule to a democratic government in 1997, following the "Black May 1992" event. The 1997 Constitution was considered a democratic constitution based on the principle of constitutionalism. This constitution established the principle of separation of powers, with the general public electing the government and parliament. It also created several important state power inspection organizations, known as constitutional organizations, that are independent from the cabinet. These organizations have undergone numerous changes to their structure and authority over the past 25 years, and their use of power has had a significant impact on people and democracy. However, Thai democracy has since been interrupted twice by military coups d'états in 2006 and then again in 2014.

From the index in V-Dem's Constitutional Project, when we compare the power of the executive, legislative, and judicial branches, especially during the period 2010-2020, we find that executive power is at a very high level, surpassing the median and including the interquartile range.

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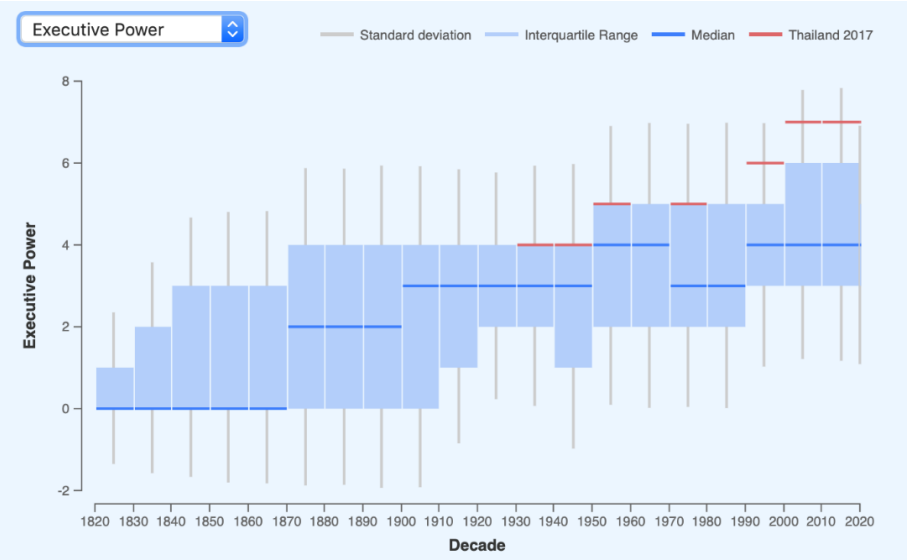
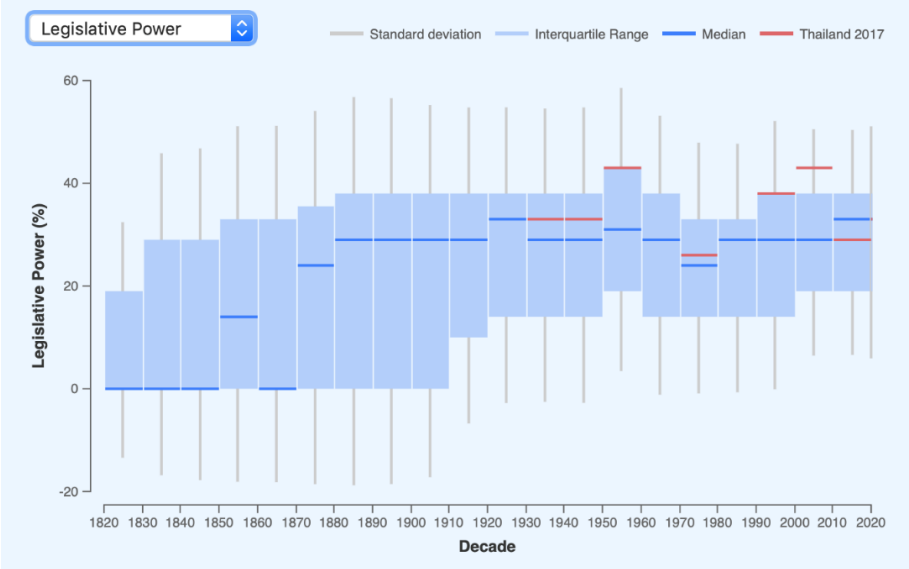
Figure 1. Thai Executive Power 1820-2020



Source: Constitute Project

While the legislative power in Thailand during the period 2010-2020 shows a decreasing trend compared to the period 2000-2010, it remains at a level slightly below the median but still within the range of the interquartile range.

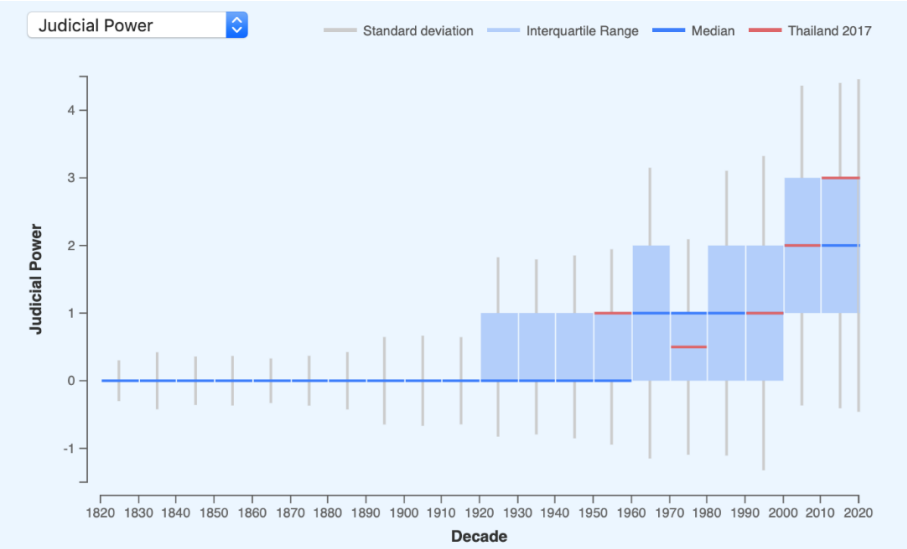
Figure 2. Thai Legislative Power 1820-2020



Source: Constitute Project

In terms of judicial power, the Thai courts during the period 2010-2020 have seen an increase in authority compared to the period 2000-2010. They are at a level higher than the median, appropriately positioned within the interquartile range.

Figure 3. Thai Judicial Power 1820-2020



Source: Constitute Project

When comparing data from all three indices, it is evident that the legislative power in Thailand is at the lowest level compared to other organizations. Simultaneously, it is the only organization with power below the median, while the courts have seen an increase in authority, surpassing the median but remaining within the interquartile range. Executive power, on the other hand, is at the highest level, exceeding both the median and the interquartile range.

Considering the concept of checking and balancing power according to the constitution, the mentioned indices indicate an imbalance of power in Thailand currently. The characteristics suggest that the executive branch holds excessive power, while the legislative branch has relatively low power.

This study examines the overall structure of Thailand's horizontal accountability by analyzing the roles and evolution of these organizations since their inception. The study also investigates the effectiveness of Thailand's current horizontal accountability in developing and strengthening liberal democratic governance. In addition, the study examines the operation of checks and balances by the relevant organizations, success and failures of oversight procedures, and the factors affecting the effectiveness of accountability.

Documentary research by literature review on related issues and the relevant laws drawn from articles, books, journals, and official documents are used. Also explored are case studies from Thailand and other countries. The research questions are: 1) Is the existing checking system by the executive and legislative branches sufficient and effective for democratic governance? 2) Is the judiciary branch independent or politically neutral enough to check and punish executive wrongdoings? and 3) Are oversight bodies performing well?

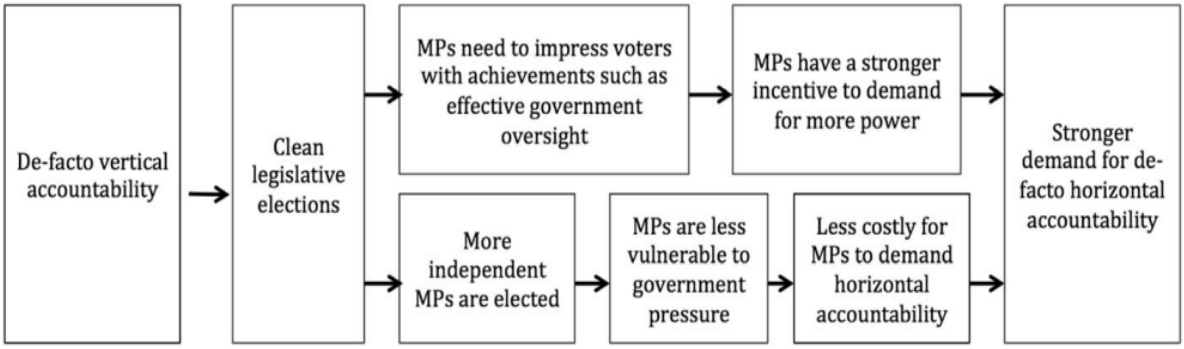
2. Literature Review on the Concept of Horizontal Accountability

Political accountability is an academic discipline that studies the principles of good governance and democracy (e.g., Dahl 1971, 1989; Schmitter and Karl 1991; Laebens and Luhrmann 2021). Democracies empower citizens with tools such as elections, referenda, and protests to ensure accountable governance

(Mejía Acosta, Josdhi and Ramshaw 2010, 5-6). The advantage of democracy over autocracy is evidenced by governments prioritizing public goods to gain majority support. Effective vertical accountability spurs politicians to focus on public goods provision (V-Dem Institute 2022).

The debate on accountability in social sciences involves different perspectives. Dahl (1971) and Wilson (2015) argue that competition among elites should precede wider participation. Mechkova, Luhrmann and Lindberg (2017) suggest that as vertical and diagonal accountability mechanisms grow, demand for horizontal accountability increases. They find that vertical accountability usually develops first, followed by robust horizontal mechanisms like strong parliaments. As vertical accountability strengthens, the need for horizontal checks rises. This relationship is supported by two pathways.

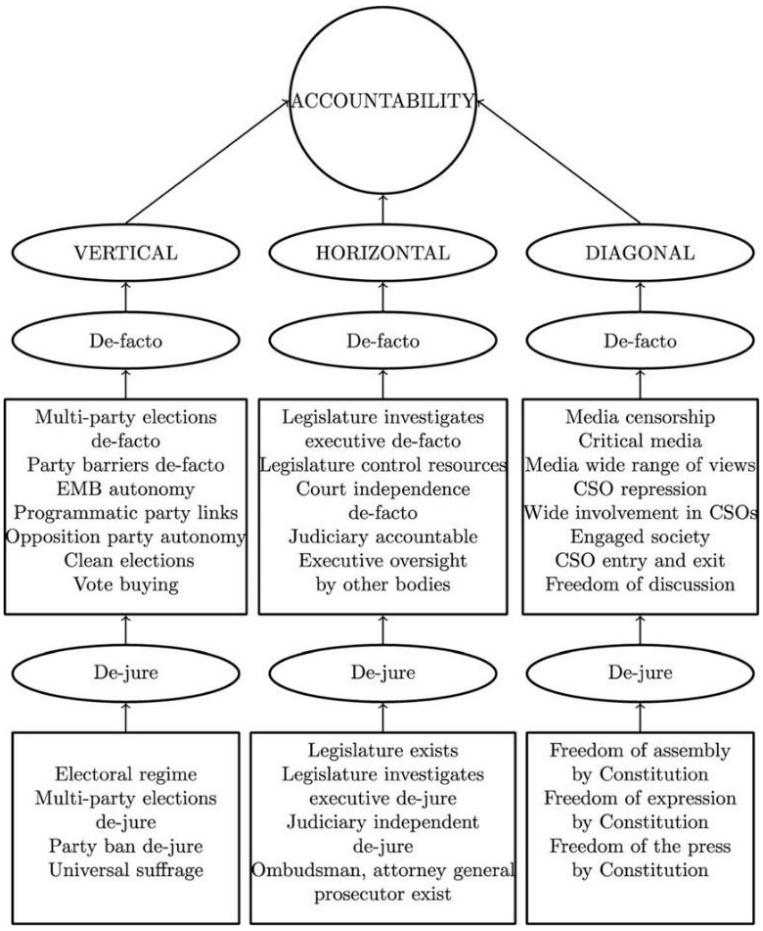
Figure 4. Two pathways illustrating how vertical accountability can enhance the demand for horizontal accountability



Source: Mechkova, Luhrmann and Lindberg 2017, 13.

Mechkova, Luhrmann and Lindberg (2018) also consider the *de jure* existence of institutions enabling accountability separate from the *de facto* practice following accountability and its subtypes, as presented in Figure 2 (50).

Figure 5. Accountability and its sub-types



Source: Mechkova, Luhrmann and Lindberg 2018, 50.

The "third wave" of autocratization is a major threat to global democracies. Luhrmann and Lindberg (2019) studied this trend. Sato et al. (2022) found that during the process of autocratization, institutional decay follows a pattern: starting with horizontal accountability decline, then diagonal accountability, and finally vertical accountability. This pattern involves gradually reducing accountability as democracies transform into autocracies (Sato et al. 2022). The power of horizontal accountability relies on stable vertical and diagonal mechanisms which are vital for the foundation of a democracy.

In this paper, horizontal accountability, following the definition by Lührmann, Marquardt, and Mechkova (2020), refers to the degree to which state institutions hold the executive branch accountable. This accountability relies on entities such as the legislative and judicial branches, along with oversight agencies. These institutions demand information and penalize misconduct, ensuring a system of checks and balances within the government.

This paper examines Thailand's horizontal accountability mechanisms through legal analysis and a comparative study of its constitutions (1997, 2007, 2017). It uses case examples to illustrate practical effectiveness and focuses on the roles of parliamentary, judicial, and constitutional bodies in government oversight.

3. Structure of Horizontal Accountability Mechanisms in Thailand

Horizontal accountability involves checks between institutions such as the legislature, judiciary, and oversight bodies. It ensures balanced governance and prevents rights violations in order to foster accountable government (Mechkova et al. 2018; O'Donnell 1998).

The 1997 Constitution of Thailand is considered to be one of the country' s most democratic constitutions (Aphornsuvan 2001). The constitution established the principles of constitutionalism that have been followed in subsequent constitutions. The structure of horizontal accountability mechanisms in the 1997, 2007, and 2017 Thai Constitutions can be classified into three groups: the legislature, the judiciary, and oversight institutions.

3.1. The Legislature

The parliament is one of the three major political institutions that exercise sovereignty. As the legislative branch, it has important roles in legislation and checks and balances on the administration. Since the change from absolute monarchy to constitutional monarchy in 1932, Thailand has had 20 constitutions (with 13 coup d'états). Although it started with unicameralism, Thailand currently has a bicameral system. The provisions of the 1997, 2007, and 2017 constitutions require Thai lawmakers to adopt a bicameral system, with the House of Representatives as the lower house and the Senate as the upper house. The following is a comparison of the origins of legislation in the 1997, 2007, and 2017 constitutions.

3.1.1. Powers and Functions of the House of Representatives

The composition of the House of Representatives has varied across different Thai Constitutions: in 1997, it consisted of 500 members, with 100 party-list and 400 constituency representatives; in 2007, it had 480 members, with 80 party-list and 400 constituency representatives; and since 2017, it has had 500 members, with 100 party-list and 400 constituency representatives.

The House of Representatives plays a pivotal role in overseeing the government. It reviews bills, evaluates the budget, approves emergency decrees, supervises state affairs, forms committees for investigation, and sanctions the appointments of the Prime Minister, contributing to checks and balances.

3.1.2. Powers and Functions of The Senate

The Senate's composition in Thai Constitutions has evolved from 200 members elected by the people in 1997 to 150 members elected from provinces and appointed members in 2007, and finally to 200 members selected based on expertise in 2017.

However, the present Senate derives from Section 269's Transitory Provisions, comprising 250 unelected members. This includes six officials in positions like the Permanent Secretary of Defense, Supreme Commander of the Army, and others. Among these, 194 were selected by the National Council for Peace and Order (NCPO), while 50 originated from 10 occupational groups.

Additionally, under Transitory Provisions Section 272, senators evaluate Prime Ministerial candidates with House members, requiring over 376 votes for approval. Termed "Robot Council" since 2019, this Senate passed 98 percent of 40 laws in the same direction, especially ruling party bills (*iLaw* 2022).

Although the three constitutions do not give the Senate the authority to propose bills, it can review proposed legislation, authorize emergency decrees, and oversee state administration alongside the House of Representatives. The Senate also has the power to remove the Prime Minister, ministers, and other positions held in the legislative, judicial, and constitutional bodies. It can also interpolate and submit a motion for a general debate without a resolution.

The Senate is tasked with overseeing constitutional organizations by approving their tasks and reviewing annual reports. It further establishes standing committees for overseeing both these organizations and the government.

3.2. The Judiciary

Four judicial institutions in Thailand are responsible for monitoring the work of the government, each with its own jurisdiction in adjudicating disputes: the Constitutional Court, the Administrative Court, the Court of Justice, and the Supreme Court's Criminal Division for Holders of Political Positions.

3.2.1. Powers and Functions of the Constitutional Court

The 1997 Constitution stipulated that the Constitutional Court consist of eleven judges, the 2007 Constitution stipulated eight judges, and the 2017 Constitution stipulated nine judges. All judges are appointed by the King upon the advice of the Senate from a person holding a position or having qualifications as specified by the Constitution. The current Constitutional Court does not have any judges who were elected Senators. One judge was appointed before the 2014 coup (under the 2007 constitutional selection system), and two were appointed by the junta legislature in 2015. The remaining judges were appointed by the Senate, which originated from the National Council for Peace and Order (NCPO) (*iLaw* 2022).

The 1997, 2007, and 2017 Constitutions require the Constitutional Court to review bills and organic law bills to determine whether they contain contents that are contrary to or inconsistent with the Constitution. The Constitutional Court is also responsible for considering issues related to the powers and duties of various organizations under the Constitution. Its decisions on the parliament, cabinet, courts, and other government bodies are final and binding. Additionally, the Constitutional Court has the role of adjudicating matters submitted by other courts, including the Courts of Justice, the Administrative Court, and the Military Court. The Court can do so if it considers that applying the provisions of the law to any case would be contrary to or inconsistent with the Constitution. The Constitution does not affect the Court's final judgment, including its power to consider conflicts of authority between the parliaments, the cabinet, or constitutional bodies except courts, and to determine which emergency decree is an unavoidable emergency.

3.2.2. Powers and Functions of the Administrative Court

The 1997, 2007, and 2017 constitutions mandated that appointing judges to the Supreme Administrative Court necessitates prior approval from the Judicial Commission of the Administrative Courts and the Senate, ultimately requiring royal consent.

The Administrative Court's scope, outlined in the 1997, 2007, and 2017 Constitutions, covers administrative cases tied to legal administrative power or activities, excluding rulings by independent organs through direct constitutional power exercise.

3.2.3. Powers and Functions of the Court of Justice

The Court of Justice in Thailand has been revised several times throughout the country's history. The 1997 Constitution, also known as the People's Constitution, was the first to establish the Court of Justice as the highest judicial body in the country. According to the 1997 Constitution, the Court of Justice had fifteen judges who served nine-year terms after being appointed by the King upon the advice of the Senate.

The 1997 Constitution required the Court of Justice to have the power to adjudicate cases involving civil and criminal matters. Moreover, the court had similar powers to review the constitutionality of laws and regulations, resolve conflicts between different levels of government, oversee the performance of lower courts, issue advisory opinions on legal matters, and discipline judges. The powers and functions of the Court of Justice were expanded in the 2017 Constitution. The Court now has the power to adjudicate disputes between the government and individuals or organizations, disputes between different branches of government, and disputes between the government and international organizations.

3.2.4. Powers and Functions of the Supreme Court's Criminal Division for Holders of Political Positions

The 1997 and 2007 constitutions established the Supreme Court's Criminal Division for Persons Holding Political Positions, comprised of nine judges elected through a secret ballot in a general meeting of the Supreme Court and selected on a case basis. Later, the 2017 constitution prescribed the same but adjusted the number of quorums to not less than 5 but not more than 9.

Contrary to its original status, the 2017 constitution permits appeals from the Supreme Court's Criminal Division for politicians. While previously a final-level court, it now requires a quorum of nine members for appeals.

As per the 1997, 2007, and 2017 Constitutions, when the National Anti-Corruption Commission (NACC) identifies a political figure with unusually increased assets, the NACC president informs the attorney general. The attorney general then prosecutes the case in the Supreme Court's Criminal Division for Politicians to determine state ownership of the assets.

The Supreme Court's Criminal Division for Politicians holds jurisdiction over cases involving political figures and high-ranking officials exhibiting suspicious wealth tied to misconduct. These cases are referred to by the Senate, Anti-Corruption Commission, and the Prosecutor.

3.3. The Institutions According to the Thai Constitution

The Constitution of Thailand refers to institutions that monitor the work of the government as "independent constitutional bodies", including the Election Commission, the National Anti-Corruption Commission, the State Audit Commission, the Ombudsman, and the National Human Rights Commission.

3.3.1. Powers and Functions of the Election Commission

The 1997 and 2007 constitutions established a five-member Election Commission, appointed by the King with advice from the Senate. The 2017 constitution expanded this to seven commissioners, appointed by the King following Senate recommendation.

The 1997 Constitution stipulated that the Election Commission had the power to organize and supervise elections for the House of Representatives, the Senate, and local government, register political parties and candidates, resolve disputes related to elections, and oversee the performance of election officials. These powers were expanded in the 2007 Constitution to include investigating and prosecuting against electoral offenses. Moreover, the powers and functions of the Election Commission were expanded in the 2017 Constitution. The Commission now has the power to promote public awareness of elections and provide information about elections to the public.

3.3.2. Powers and Functions of the National Anti-Corruption Commission

The 1997, 2007, and 2017 constitutions mandate a nine-member National Anti-Corruption Commission, appointed by the King based on Senate advice and chosen by the Selection Committee.

The 1997 Constitution granted the National Anti-Corruption Commission the authority to investigate high-ranking officials for corruption, prosecute in the Supreme Court's Criminal Division for Politicians, and manage asset declarations. The 2007 Constitution expanded its role to monitor state agencies for corruption prevention. In the 2017 Constitution, the Commission's powers grew further, encompassing awareness campaigns and aiding state agencies in corruption prevention.

3.3.3. Powers and Functions of the State Audit Commission

The 1997 constitution established a State Audit Commission with a Chairperson and nine members appointed by the King based on Senate recommendations. The 2007 and 2017 constitutions set a seven-member Commission, appointed by the King with Senate advice.

The 1997 Constitution empowered the State Audit Commission to audit government and state agency accounts, report findings to the Parliament, and offer recommendations for improved financial management.

The 2007 Constitution broadened the State Audit Commission's authority to include investigating financial irregularities related to the government and state agencies. The 2017 Constitution further extended its powers, allowing the Commission to mandate corrective actions and impose fines on the government or state agencies if financial irregularities are found and not addressed.

3.3.4. Powers and Functions of the Ombudsman

The Ombudsman is specified in the 1997, 2007, and 2017 constitutions, with a maximum of three individuals appointed based on Senate advice.

The 1997, 2007, and 2017 Constitutions assign the Ombudsman the task of investigating complaints to uncover facts. If legal violations, overstepping authority, specific actions, or administrative neglect are identified, a report is submitted along with opinions and suggestions to the Parliament. Additionally, the Ombudsman can refer cases to the Constitutional Court or Administrative Court if constitutional or legal issues arise from government officials' actions, rules, regulations, or laws.

3.3.5. Powers and Functions of the National Human Rights Commission

The National Human Rights Commission composition has remained consistent across the 1997, 2007, and 2017 Constitutions; a chairperson and members appointed by the King upon Senate recommendation.

The 1997, 2007, and 2017 Constitutions all stipulate that the National Human Rights Commission has the powers and duties to promote and protect human rights in Thailand, investigate complaints of human rights violations, and make recommendations to the government on how to improve human rights protection. The powers were expanded in the 2007 Constitution to bring cases to the Constitutional Court to challenge laws that violate human rights. Moreover, the powers and functions of the National Human Rights Commission were expanded in the 2017 Constitution. The Commission now has the power to bring cases to the International Criminal Court (ICC), an international court that investigates and prosecutes individuals accused of the most serious crimes of concern to the international community.

The administration also has audit mechanisms that are not constitutional organizations, but rather organizations under its control. These include the Department of Special Investigation (DSI), the Office of the National Anti-Corruption Commission (NACC), and the Public Sector Anti-Corruption Commission (PACC).

3.3.6. Powers and Functions of the Department of Special Investigation

Under the 1997 Constitution, the Director of the Department of Special Investigation was appointed by the King upon the advice of the Prime Minister. Under the 2007 and 2017 Constitutions, the Director was appointed by the King upon the advice of the National Assembly. However, the Senate must select at least three of the nominees submitted by the National Police Commission in the 2017 Constitution.

The 1997, 2007, and 2017 Constitutions stipulate that the Department of Special Investigation has the powers and duties to investigate serious crimes, including corruption, organized crime, and terrorism, conduct asset forfeiture proceedings, and provide technical assistance to other law enforcement agencies. The powers were expanded in the 2007 Constitution to oversee the performance of state agencies in preventing corruption. Moreover, the powers and functions were expanded in the 2017 Constitution. The Department now has the power to conduct awareness campaigns against corruption and provide advice and assistance to state agencies in preventing corruption.

3.3.7. Powers and Functions of the Office of the National Anti-Corruption Commission

Under the 1997 Constitution, members of the Office of the National Anti-Corruption Commission (NACC) were appointed by the King upon the advice of the Senate. Under the 2007 Constitution, members of the NACC were appointed by the King upon the advice of the National Assembly. Under the 2017 Constitution, members of the NACC are appointed by the King upon the advice of the Senate, but the Senate must select at least three of the nominees submitted by the Supreme Court.

The 1997, 2007, and 2017 Constitutions all stipulate that the Office of the NACC has the powers and duties to investigate corruption cases involving high-ranking government officials, such as ministers, members of parliament, and judges, prosecute corruption cases in the Supreme Court's Criminal Division for Politicians, and issue asset declarations for high-ranking government officials. The 2007 Constitution expanded the powers and functions to oversee the performance of state agencies in preventing corruption, conduct awareness campaigns against corruption, and provide advice and assistance to state agencies in

preventing corruption. Moreover, the powers and functions were further expanded in the 2017 Constitution to investigate corruption cases involving state officials who are not high-ranking government officials, conduct asset forfeiture proceedings against corrupt officials, and provide technical assistance to other law enforcement agencies.

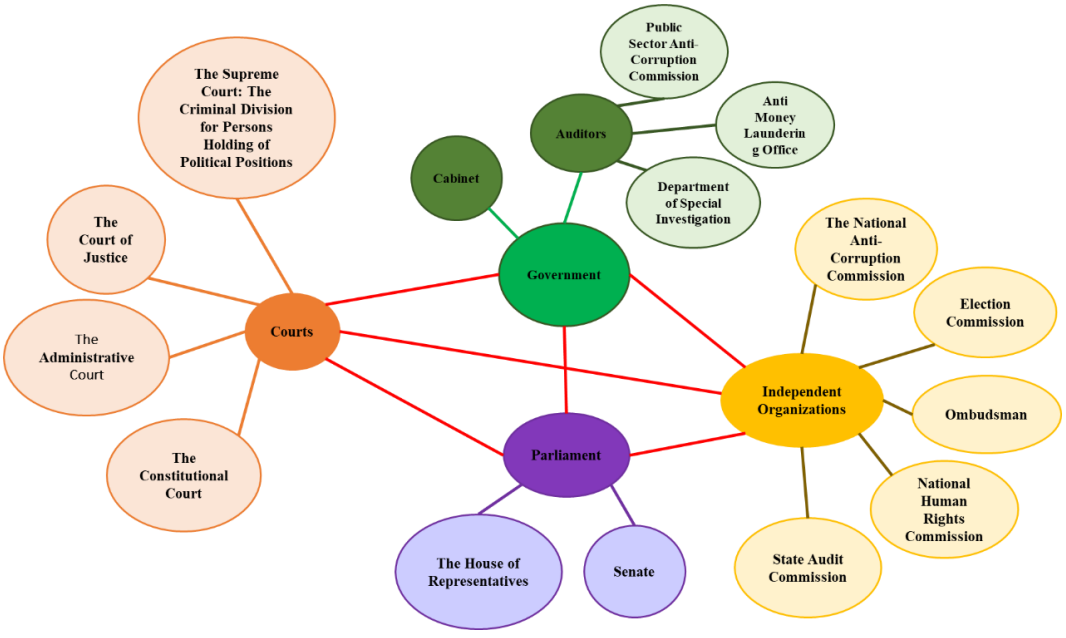
3.3.8. Powers and Functions of the Public Sector Anti-Corruption Commission

The Public Sector Anti-Corruption Commission (PACC) in Thailand investigates and prosecutes corruption within the public sector. Established under the 1997 Constitution, its authority initially covered corruption among public officials. The 2007 Constitution broadened its mandate to include politicians and political parties. The 2017 Constitution further enhanced PACC's authority, allowing investigations and prosecutions of corruption cases involving state enterprises and independent organizations.

PACC is multifaceted, engaged in preventing, suppressing, and investigating public sector corruption. It shapes anti-corruption policies, raises awareness about risks of corruption, seizes unlawfully gained assets, and litigates against corrupt officials. PACC's pivotal role in combating corruption has expanded, yet challenges endure, emphasizing the ongoing necessity for enhanced transparency and accountability in government entities.

3.4. Structure of Horizontal Accountability Mechanisms in Thailand

Figure 6. Structure of horizontal accountability mechanisms in Thailand



Source: Bureekul et al. 2023

The design of horizontal accountability mechanisms in Thailand has gradually matured in terms of the number of organizations and their organizational structure, powers, and duties. This is due to the influence of the principles of checks and balances and constitutionalism, which are essential elements of a liberal democratic state. However, the source of these organizations changed after the 2006 coup when the 2007 Constitution was

drafted. This trend continued after the 2014 coup, when the positioning of horizontal accountability actors shifted in a subtle and complex way. This can be attributed to three interconnected factors.

First, the source of the Senate has changed over time, with its connection to the people gradually decreasing. The 1997 Constitution stipulated that all senators should be elected by the people, but the 2007 Constitution allowed for almost half of the senators to be appointed rather than elected. The 2017 Constitution went even further by requiring that all senators be appointed. This was done in order to ensure that senators are not directly connected to the people.

Second, the change in the source of the Senate has directly affected the role of senators to monitor the government. It has also had a complex impact on the horizontal accountability system. This is because the 1997, 2007, and 2017 Constitutions all require that those entering oversight institutions be approved by the Senate. Additionally, those appointed to the Constitutional Court or the Supreme Administrative Court must also be approved by senators.

Third, according to the interim provisions of the 2017 Constitution, the current senators originate from the National Council for Peace and Order (NCPO). The current government derives from the approval of the House of Representatives and the Senate mentioned above, due to the election to elect the Prime Minister of Thailand in 2019. This batch of 250 senators voted for General Prayut Chan-o-cha as Prime Minister with 249 votes and one abstention. Therefore, the current government and oversight institutions also derive from the senators.

As a result of these factors, it is necessary to design a mechanism to oversee institutions with such origins in order to more effectively monitor government work. Greater independence between the organizations is needed to address the invisible relationships and powers between incumbents.

4. Performance of the Oversight Bodies

This section presents statistics for the performance of the oversight organizations.

4.1. Performance of the Courts

The Constitutional Court: In 2022, 105 cases were completed. Moreover, considering that since 1998, 1,823 cases have been filed with the court, 1,806 cases were completed (800 judged and 1,006 denied), and 17 were still pending (Constitutional Court 2023).

The role of the Thai Constitutional Court, established following the 1997 Constitution, has consistently faced scrutiny regarding its impartiality in carrying out its duties. Concerns were raised about its potential use as a political instrument by the previous unelected military government between 2014 and 2019, especially in terms of appointing judges to the Constitutional Court. These concerns stemmed from the court's composition and provisions in the then-draft version of what became the 2017 Constitution, which was written under the military government. This prompted concerns that it may not promote democratic principles. Additionally, there are issues related to the origin of unelected senators and mechanisms to prevent constitutional amendments aimed at enhancing democracy (*iLaw* 2021; Progressive Movement 2021).

These concerns can be summarized as follows: (1) **Allegations of Political Influence**: Critics argue that powerful political actors, including the military or authoritarian regimes, may influence these courts and compromise their impartiality. (2) **Political Cases**: High-profile cases involving political figures or parties have drawn attention and sometimes controversy, leading to questions about the courts' role in political

disputes. (3) **Perceived Bias**: Some perceive these courts as demonstrating bias in their decisions, favoring certain political factions or interests over others. (4) **Lack of Accountability**: Concerns have been raised about the transparency and accountability of these courts, as well as the mechanisms for oversight and checks and balances.

One significant area of controversy involves the Constitutional Court's authority over the control of political parties as per constitutional provisions that some view as hostile to democratic and progressive political parties. An illustrative example is the dissolution of a political party opposing the authoritarian regime (*BBC News Thai* 2023/08/05; Progressive Movement 2021).

Furthermore, questions have arisen regarding the Court's role in regulating the qualifications or disqualifications of individuals holding positions in constitutional organizations. Moreover, some fear the Constitutional Court may use its authority to remove democratically elected officials while protecting incumbents with conservative or military backgrounds (*BBC News Thai* 2021/05/05; *BBC News Thai* 2023/08/05).

Consequently, there is growing doubt about the true independence of the Constitutional Court in functioning as a court. Public and academic sentiment suggests that it is increasingly perceived as a political entity or a tool of the conservative faction to uphold the power of the authoritarian side rather than preserving the supremacy of the Constitution or supporting democratic principles that emphasize the people's sovereignty.

These issues of partiality in the Constitutional Court's design in which it is perceived as a tool of the authoritarian side in Thai politics can be attributed to three main factors: (1) **Selection Process and Composition**: Concerns about the process and criteria for selecting judges for the Constitutional Court may not ensure their impartiality and independence from political influence (*The Matter*, 2019). (2) **Authority**: The Court's broad authority and involvement in political matters—especially those related to political parties and constitutional amendments—can undermine its judicial independence (The 101.World 2021/04/08; *The Matter* 2019/11/26). (3) **Control and Oversight**: Questions about mechanisms for overseeing and ensuring the court's accountability have also contributed to doubts about its impartiality (*iLaw* 2020; *BBC News Thai* 2020/03/12).

Addressing these concerns requires reforms to the selection process, clarifications of the court's powers and jurisdiction, and enhanced mechanisms for transparency and accountability. These steps could help restore confidence in the Constitutional Court's role as a guardian of constitutional principles and democratic values rather than a political instrument.

The Administrative Court: 204, 517 cases were registered from the day of inauguration in 1999 to July 31, 2023. Of these cases, 177,097 were finished cases or 53.59 percent of the total. Of the 60,702 registered case in the Supreme Administrative Court, 49,872 were finished cases and 10,830 were pending cases. (Administrative Court 2023).

Indeed, the Administrative Court plays a vital role in overseeing and ensuring the legality of administrative actions within a government. While it does not directly inspect the work of the government in a political sense, its primary responsibility lies in examining and adjudicating cases related to the actions taken by the administrative branch. This oversight is based on the fundamental principle that administrative actions must be lawful.

Concerns about the impartiality and independence of the Thai Administrative Court, in addition to other judicial institutions such as the Constitutional Court and the Court of Justice, are significant issues that

the public and media have raised. These concerns are rooted in Thailand's broader political context, which has experienced periods of political turmoil, military coups, and political polarization.

The perception that these courts are potentially influenced by political authorities has led to skepticism and allegations that they may be used as tools of the authoritarian side. The term "Judicial coup" (Tulakarn Piwat) has been used to describe situations where the judiciary is perceived to be intervening in political matters in a way that favors particular political interests (*iLaw* 2020; *The Matter* 2019/11/26; *BBC News Thai* 2023/08/05).

Addressing these concerns is crucial to uphold the rule of law and ensure independence of the judiciary in Thailand. It may require reforms to how judges are selected and appointed, mechanisms to ensure transparency and accountability, and include efforts to build public trust in the judiciary.

In a democratic society, an independent judiciary is essential for safeguarding citizens' rights and liberties and ensuring that the rule of law prevails. Furthermore, public confidence in the impartiality of the courts is vital to uphold the principles of justice and democracy.

Additionally, the Administrative Court faces challenges in effectively enforcing its judgments, especially in matters related to politics. For instance, there have been issues involving the National Anti-Corruption Commission (NACC) refusing to comply with a Supreme Administrative Court order to disclose all details of its investigation into the luxury watch controversy which involved former Deputy Prime Minister Prawit Wongsuwon. Allegations have arisen that the Phalang Pracharath Party(PPRP)'s leader intentionally submitted a false asset list or concealed relevant information (*Bangkok Post* 2023/06/16; *Isranews* 2023/08/10).

These issues underscore doubts about the Administrative Court's ability to ensure that administrative actions adhere to legal principles. The court must address these concerns and work towards enhancing transparency, accountability, and the effective enforcement of its judgments to maintain public confidence in its role as a check on administrative actions.

The Court of Justice: 707,695 cases have been filed with the court between January to March 2023. Of these cases, 402,339 were finished cases and 305,356 were pending cases. (Court of Justice 2023).

The absence of an appeals process within the Supreme Court's Criminal Division for Politicians raises concerns about human rights protection and due process (*Kom Chad Luek Online* 2009/11/07). Nonetheless, this issue has been resolved by the provisions of the current constitution.

Regarding the oversight of government actions, the Supreme Court's Criminal Division for Politicians plays a unique role by scrutinizing the activities of politicians and high-ranking civil servants, particularly in cases involving unusual wealth and corruption. This process is closely related to the responsibilities of the National Anti-Corruption Commission (NACC) in gathering factual information.

However, concerns have arisen about the NACC's impartiality, especially in the investigation of General Prawit's watch, as previously mentioned. In instances where the NACC determines that there is insufficient evidence, it does not refer the case to the court. This has led to questions about potential double standards in the justice system, particularly whether such standards apply selectively, possibly favoring opponents of the military government or conservative parties.

In summary, there are concerns about the impartiality and consistency of the justice process, particularly in cases involving politicians and high-ranking officials, with these concerns encompassing both the Supreme Court's Criminal Division for Politicians and the NACC. The perception of double standards raises doubts about the even-handed application of the law, potentially impacting trust in the justice system.

An example of a prominent legal case in Thailand where the judiciary played a key role in checks-and-balances functions is the case involving Yingluck Shinawatra, the former Thai Prime Minister. In 2011, Yingluck signed an order to replace Thawil Pliensri as the secretary-general of the National Security Council with Wichean Potephosree, who was then the chief of the national police. Subsequently, Yingluck appointed Deputy Police Chief Priewpan Damapong to replace Wichean.

The legal proceedings resulted in a dispute across three courts: the Constitutional Court, the Administrative Court, and the Criminal Division for Holders of Political Positions. The Constitutional Court focused on whether Yingluck's actions, as the Prime Minister, constituted an abuse of power for personal or political gains, leading to her removal from office (*BBC* 2014/05/07; *Financial Times* 2014/05/07).

The Administrative Court ruled against the executive decision to transfer Thawil without reasonable justification. In this case, the court decided to annul the Prime Minister's order and reinstate Thawil to his original position (Prachatai English 2014).

The Criminal Division for Holders of Political Positions dealt with charges against Yingluck regarding her alleged misuse of power when transferring Thawil and her involvement in manipulating positions for personal or political benefits. The court found that the evidence did not sufficiently support the criminal charges of abuse of power or malfeasance (*Bangkok Post* 2023/12/26; Regalado 2023).

The mentioned case could be cited as an example illustrating the role of the court in controlling the exercise of power in an unfavorable direction by the executive branch. Although Thai courts attempt to limit their own powers in scrutinizing the executive's actions, explaining that the court should not excessively intervene in the appropriateness of personnel management to align with government policies, they do retain the authority to examine the exercise of discretion in terms of legality. This includes scrutinizing the use of discretion that aligns with the objectives of the law and within the confines of the law that grant them authority as well (Administrative Court of Thailand 2014).

The use of power by the Constitutional Court and the Administrative Court to counteract executive aggrandizement in this case has garnered support from some quarters, while, at the same time, some scholars view the actions of the courts as exhibiting characteristics of "juristocracy." Juristocracy refers to a scenario where legal processes are utilized with political motives, selectively employing the law to shift the balance of power towards the judiciary. This, in turn, has implications for the theory of the separation of powers (*Matichon Weekly* 2023/12/27).

4.2. Performance of Independent Organizations

The Election Commission: In 2022, 2,171 cases were filed with the Election Commission with complaints about election irregularities, such as voter fraud and vote buying. Of these cases, 1,890 were judged cases and 280 were pending cases (The Election Commission 2023).

The public and media have questioned the Election Commission's actions in several cases, notably its decision to file a complaint in relation to media shares against Pitha Limjaroenrat, the Forward Party leader and prime ministerial candidate. These actions have raised concerns because they appear to violate the Election Commission's regulations and were carried out hastily. This led to doubts about the Election Commission's impartiality (*Prachathai* 2023/07/10).

Another case of concern involves the Prayut Cabinet's request to utilize the national budget to reduce electricity costs, even though it does not qualify as an emergency measure. Instead, it is perceived as a tactic

intended for campaign purposes during elections. This issue further heightened doubts and scrutiny regarding the government's actions and their alignment with democratic principles (*Matichon Online* 2023/05/03).

The issue of the neutrality of the Election Commission includes its selection process which may lead to political interference.

In addition, there was an opinion regarding the power of the Election Commission to issue yellow and red cards, in which this issue should be handled by the court because the court system has clear rules and criteria to make decisions and the power to consider cases of electoral fraud. While this should move to the court, the Election Commission has the duty to investigate and collect information to send to the court for decisions (The 101.World 2021).

The National Anti-Corruption Commission: As of the fiscal year 2022, there were 9,154 cases in total. Of these cases, 8,307 cases (90.65 percent) were completed and 847 cases (9.25 percent) remained (NACC 2022).

The NACC has faced criticism for its perceived leniency in implementing the law, particularly in cases involving individuals with different economic and social backgrounds. Critics argue that more consistency in law enforcement is necessary, leading to doubts within society about the fairness and appropriateness of such enforcement.

Various sectors perceive independent organizations as lacking impartiality and genuine freedom. There are concerns that laws are manipulated to favor specific groups. Sometimes, the outcomes of fact-checking efforts are kept from the public, hindering public participation in oversight. These issues raise doubts about the transparency of government agencies responsible for law enforcement (*Isranews* 2020/07/29).

Some academics have voiced concerns about the NACC's constitutional powers, suggesting they might be overly extensive. This relates to the NACC's authority to determine guilt or innocence in corruption cases. Additionally, individuals—whether victims or the accused—cannot independently lodge complaints with the Supreme Court's Criminal Division for Persons Holding Political Positions, which appears to contradict the principles outlined in the Universal Declaration of Human Rights. This limitation is seen as an excessive exercise of power beyond what is necessary to administer justice (*Kom Chad Luek Online* 2009/11/07).

Furthermore, there is a suggestion that the composition of the current NACC selection committee needs to be reconsidered. Some argue that it should adhere to criteria established in the 1997 Constitution, which mandated the inclusion of committee members chosen from representatives of the people. This would introduce a mechanism to provide checks and balances on the exercise of power by the NACC (The 101.World 2021).

The State Audit Commission: As of 2022, there were 15,353 cases in total. Of these cases, 6,532 items were compliance audits, 135 items were performance audits, and 8,686 items were finance audits (The State Audit Commission 2022).

The State Audit Commission of Thailand primarily concentrates on evaluating the operations of local government organizations. However, there are concerns that its role as a significant component of the centralized government might discourage opposition to the government and hinder the autonomy of local government entities. This perceived interference raises questions about the balance between centralized oversight and the principle of local government autonomy (Bunthueng 2020).

The National Human Rights Commission: As of the fiscal year 2022, there were 1,149 complaints alleging violation of human rights. Of these, 924 cases were accepted for further action and 225 cases were not accepted. All cases that were not accepted were because they were not within the authority of the NHRC. Most issues were complaints about the rights and status of persons, rights in the justice process, and community rights (National Human Right Commission of Thailand 2023).

The impartiality and effectiveness of the NHRC have come under scrutiny. Some have raised concerns about the commission's ability to remain impartial, particularly when addressing human rights violations committed by state officials under an undemocratic government. This raises questions about the commission's courage and willingness to fulfill its duties in challenging situations.

Additionally, the NHRC has faced criticism regarding its efficiency in carrying out its responsibilities. One key issue is that its authority and duties are often not legally binding. This lack of legal enforceability can limit the commission's ability to take meaningful actions and hold those responsible for human rights violations accountable (The 101.World 2021).

The Ombudsman: As of fiscal year 2022, 5,250 complaint cases were filed with the Ombudsman. After a fact-finding investigation, 2,839 cases (54.08 percent) were forwarded to relevant state agencies, which included those concerning revisions and amendments to laws, rules, regulations, orders or operative procedures that caused grievances or were unfair to people. The remaining 2,411 complaints were still under investigation (45.82 percent) (Ombudsman 2023).

Under the current constitution, the role of the Ombudsman has been diminished, while the constitution has expanded the role of the NACC. There are concerns regarding the Ombudsman's legal knowledge and expertise as a mechanism for addressing public grievances. Questions have also been raised about the effectiveness of the Ombudsman to enforce its authority.

Moreover, there have been criticisms regarding the Ombudsman's involvement in tasks that were not initially within its intended scope as established by the constitution. This suggests that the Ombudsman's activities may have deviated from its original constitutional mandate (King Prajadhipok's Institute 2022).

5. Effectiveness of the Horizontal Accountability System in Thailand

This section explores the effectiveness of horizontal accountability, evaluated by international organizations and Thai citizens.

5.1. Effectiveness of Horizontal Accountability Evaluated by International Organizations

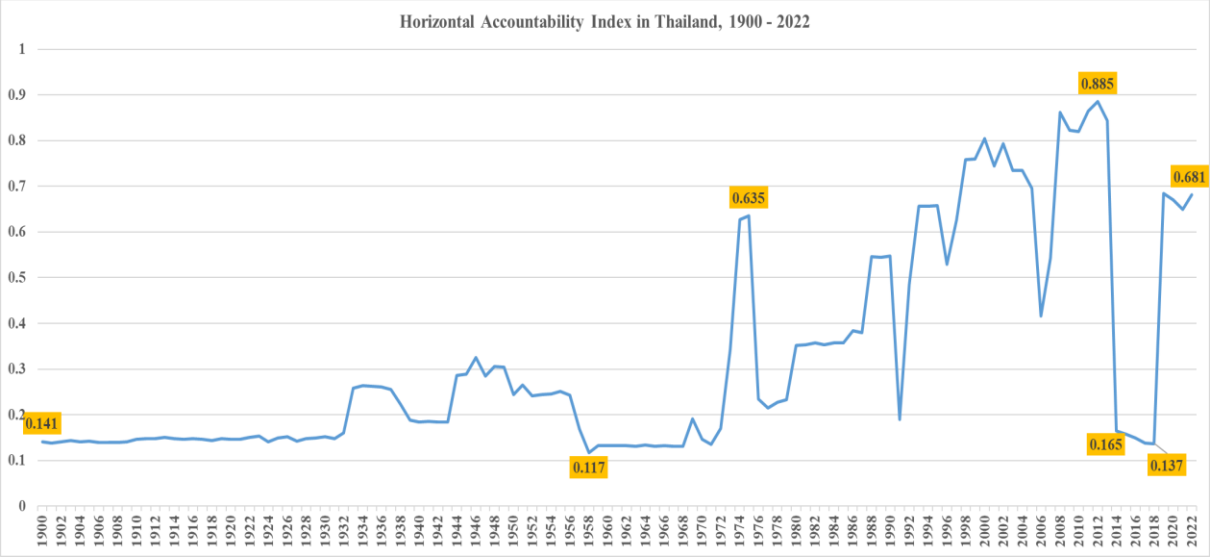
The situation of horizontal accountability in Thailand can be analyzed using data from reputable sources such as V-Dem (Varieties of Democracy), Transparency International, and the Comparative Constitutions Project. These sources provide valuable insights into the state of democratic checks and balances within the country.

5.1.1. Varieties of Democracy (V-Dem)

The V-Dem Horizontal Accountability Index measures the extent to which state institutions are able to hold the executive branch of the government to account. It is a composite index that considers the powers of the legislature, the judiciary, and other oversight bodies, as well as the level of corruption and impunity in the

country. The key agents in horizontal government accountability are the legislature, the judiciary, and specific oversight agencies such as ombudsmen, prosecutors, and comptroller generals. Figure 7 presents Thailand's horizontal accountability index by V-Dem, with a scale between 0 and 1 in which 0 indicates low horizontal accountability point and 1 indicates high horizontal accountability.

Figure 7. The Horizontal Accountability Index of Thailand, 1900 – 2022



Source: V-Dem 2023

From Figure 7, Thailand' s horizontal accountability index has fluctuated over time, but it has generally trended upwards. This suggests that Thailand has made some progress in terms of horizontal accountability. However, there is still room for improvement and the index remains below the global average.

Several factors have contributed to improvements in horizontal accountability in Thailand. These include strengthening the legislature, judiciary, and other oversight bodies, as well as the passage of anti-corruption laws. However, some challenges remain, such as the high level of impunity for corruption and the lack of public trust in the government.

5.1.2. Transparency International

According to the annual reports of Transparency International, the Corruption Perceptions Index ranks countries and territories based on the perceived level of corruption in their public sector. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 to 100, in which 0 indicates highly corrupt and 100 indicates very clean.

Figure 8. The Corruption Perceptions Index of Thailand, 2000 – 2022

Source: Transparency International (2023)

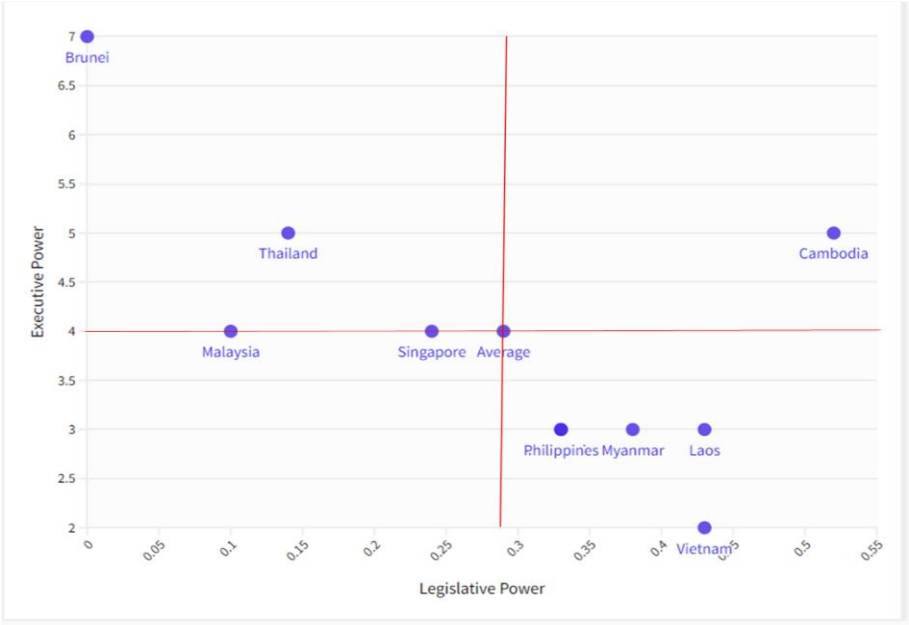
Thailand's CPI score has remained relatively stagnant over the past two decades, hovering around the 34-36 mark. This suggests that there has been little progress in tackling corruption in the country. The worst CPI score that Thailand ever received was 28 in 2001, and the best score was 36. The CPI score is based on a number of factors, including the perceived level of corruption in the public sector, the effectiveness of anti-corruption laws and institutions, and the level of impunity enjoyed by corrupt officials. The fact that Thailand's CPI score has remained relatively flat suggests that the government has not been able to make significant progress in tackling corruption. This is a serious problem, since corruption can negatively impact economic development, investment, and good governance.

5.1.3. The Comparative Constitutions Project

According to the Comparative Constitutions Project, the Executive Power Index Score measures the level of power concentration in the executive branch of a country's government. It assesses the extent to which the executive branch has authority over the legislative and judicial branches, as well as the level of checks and balances in place. The Legislative Power Index Score, on the other hand, measures the level of power and autonomy of the legislative branch in a country's government. It evaluates factors such as the ability of the legislature to pass laws independently, its oversight of the executive, and its capacity to hold the executive accountable.

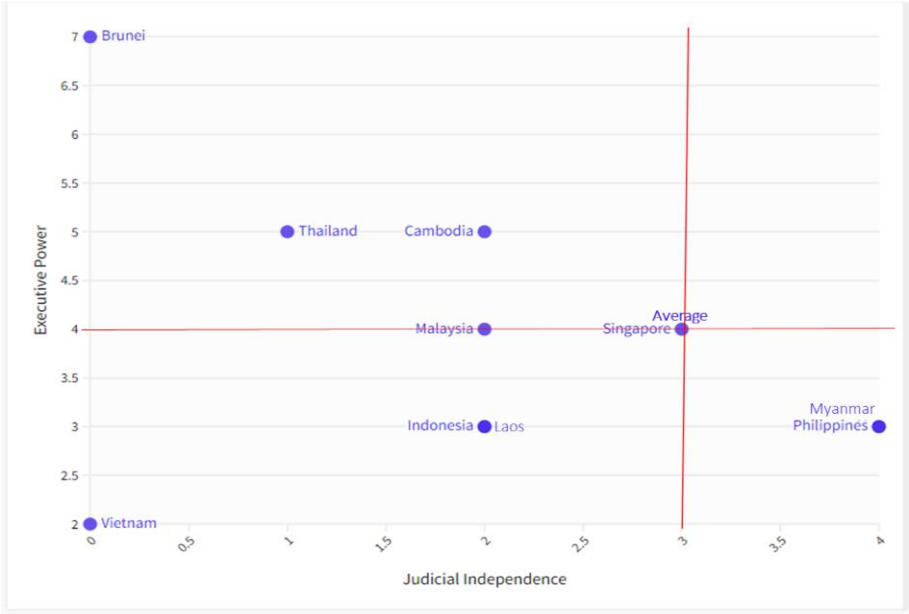
From Figure 9, the authors illustrate a scatterplot of horizontal interbranch relations between Executive power and Legislative power among ASEAN countries. Each line indicates the mean value of each power index. Thailand' s score indicates that the Executive holds veto powers. Meanwhile, the Legislative power is indicated at 0.14. These scores mean that Thailand's executive power is greater than its legislative power. Comparing ASEAN countries, the countries with greater legislative power than executive power are the Philippines, Myanmar, Laos, and Vietnam.

Figure 9. Executive and Legislative Power Index Scores in ASEAN countries



Source: Illustrated by the authors (Comparative Constitutions Project 2023)

Figure 10. Executive power and Judicial independence Index Scores in ASEAN countries



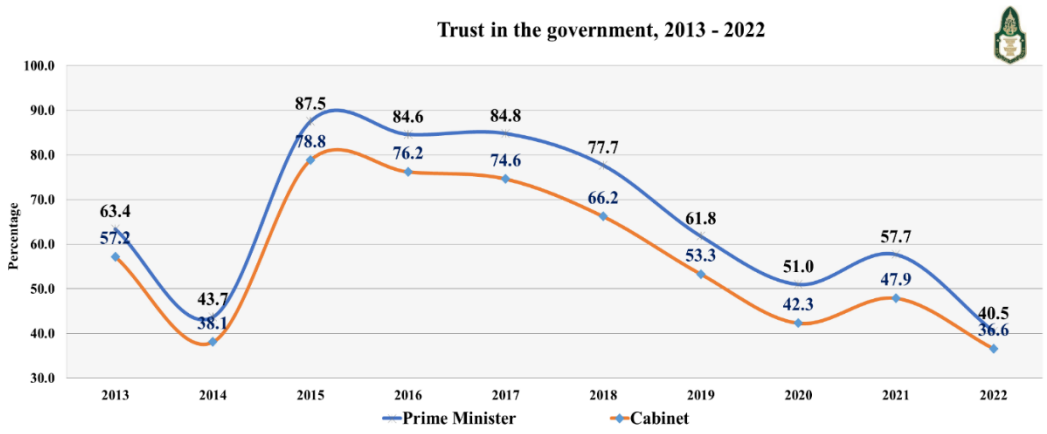
Source: Illustrated by the authors (Comparative Constitutions Project 2023)

Figure 10 shows the index scores of executive power and judicial independence. On a scale of 1 to 6, Thailand scored 1, indicating that the constitution contains an explicit statement of judicial independence. This indicates that Thailand's executive is able to control the judiciary, which is also the case for Cambodia. The countries below the ASEAN average for this metric are Malaysia, Indonesia, Laos, and Vietnam.

5.2. Effectiveness of Horizontal Accountability Evaluated by Thai Citizens

This section explores a study by King Prajadhipok's Institute exploring institutional trust, especially in the government, parliament, courts, and independent constitutional organizations. In the period 2013 to 2022, the overall answers sit between 'somewhat trust' and 'strongly trust'.

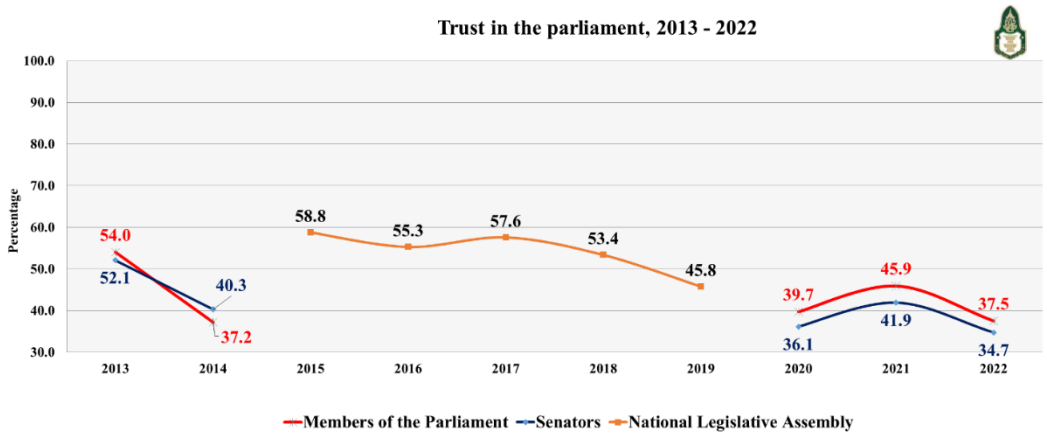
Figure 11. Degree of trust in the government, 2013 – 2022



Source: King Prajadhipok's Institute 2023

According to a public opinion survey investigating trust in the Prime Minister and the government, the overall trend of trust is in the same direction. During the period 2011-2014, there was a similar pattern in which the level of trust fluctuated. In 2014, the level of public trust in the Prime Minister fell to only 43.7 percent. In 2015, after General Prayut Chan-o-cha took office as Prime Minister, the level of trust increased to 87.5 percent. However, public trust has tended to decline in the following period. In 2020, public trust in the Prime Minister was at 51.0 percent before increasing to 57.7 percent in 2021 and then decreasing again to 40.5 percent in 2022. The level of trust in the government also increased and decreased in line with public trust in the Prime Minister, decreasing from 78.8 percent in 2015 to 42.3 percent in 2020, and increasing to 47.9 percent in 2021 before decreasing to 36.6 percent in 2022.

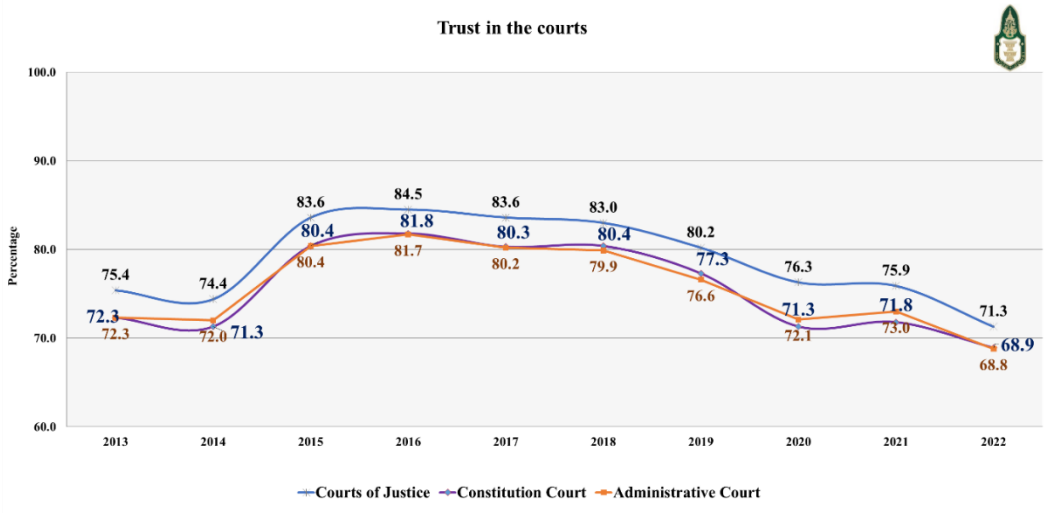
Figure 12. Degree of trust in the parliament, 2013 – 2022



Source: King Prajadhipok's Institute 2023

For the level of trust in Members of Parliament (MPs) and Senators, it was found that during the survey period in 2014 when the National Council for Peace and Order (NCPO) was in power, the level of trust in Senators fell to 40.3 percent and the level of trust in MPs fell to 37.2 percent. However, when surveys of the level of trust in the work of MPs and Senators were conducted in 2020, it was found that the public's level of trust in the work of MPs was at 39.7 percent which increased to 45.9 percent in 2021 and then fell to 37.5 percent in 2022. The level of trust in the work of Senators was at 36.1 percent in 2020, after which it increased to 41.9 percent in 2021 and then fell to 34.7 percent in 2022.

Figure 13. Degree of trust in the courts, 2013 – 2022

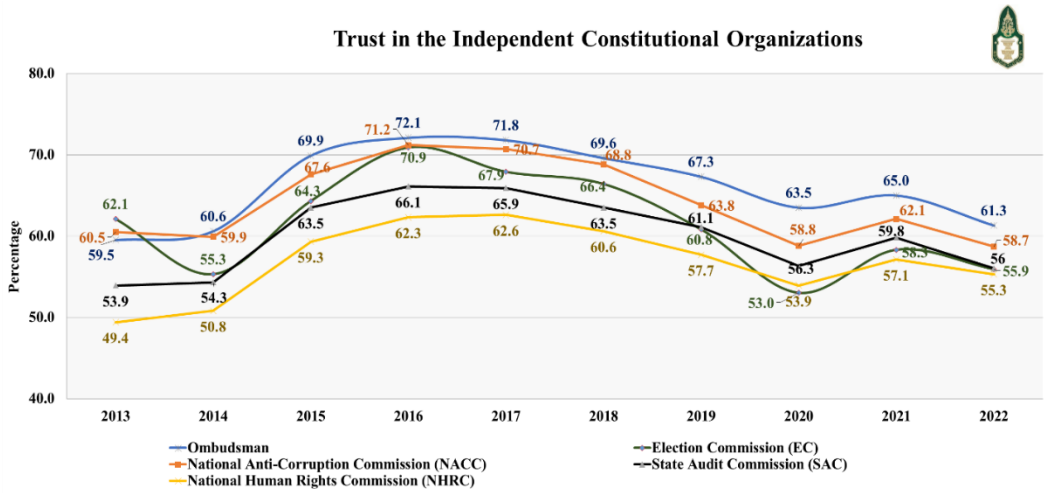


Source: King Prajadhipok's Institute 2023

Since 2013, the Court of Justice has been trusted by the public more than the other courts, while the levels of trust in the Constitutional Court and the Administrative Court have been similar and fluctuated over time. The level of trust fluctuated in subsequent years until 2015, when the public began to have more trust in the courts. Although the level of trust was over 80 percent in the period 2015-2018, the public's trust in the three

courts has gradually declined since then. In 2020, the level of trust improved, but the public had the lowest level of trust in the three courts in 2022.

Figure 14. Degree of trust in the Independent Constitutional Organizations



Source: King Prajadhipok's Institute 2023

Thai people had a moderate level of trust in the work of independent organizations. The Ombudsman had the highest level of trust, followed by the National Human Rights Commission (NHRC). However, trust in all organizations has decreased overall. In general, the level of trust in all organizations has fluctuated since 2013. The level of trust was highest in 2016 and lowest in 2013, except for the National Anti-Corruption Commission which had the lowest level of trust in 2022. In addition, public trust in all oversight agencies decreased in 2022.

In summary, the study found that public trust in these institutions has fluctuated over time, with the lowest levels of trust recorded in the period 2014 and 2022. There was a general trend of declining trust in the government and parliament, with the level of trust in the Prime Minister also declining. The level of trust in the courts has also declined, with it being highest in 2016. Public trust in independent organizations has also declined overall, with the Ombudsman having the highest level of trust and the National Anti-Corruption Commission having the lowest level of trust.

The decline in public trust in these institutions is a serious issue that requires attention. To regain public trust, these institutions must address the concerns raised, including reducing corruption, enhancing effectiveness, increasing transparency, and ensuring freedom from political interference.

6. Success and Failure Factors for the Checks and Balance System in Thailand

According to the aforementioned findings, we found that the performance of some oversight organizations is quite high, while that of others is low. Moreover, the level of trust in these organizations has fluctuated and trends towards decline at present. Therefore, this section summarizes the success and failure factors for the checks and balance system, including the factors affecting public trust (Poom Moolsilpa et al. 2023).

6.1. Success Factors

1) Providing opportunities for the public to participate in politics in the process of reviewing the use of state power.
2) The Thai constitution and other laws establish a strong system of checks and balances to ensure that state power is used in accordance with the law. This is achieved by setting principles of good governance for administrative agencies and state officials, such as the Administrative Court.
3) Thailand has a vibrant civil society and a relatively free press, both of which have played important roles in monitoring the government and holding it accountable.

6.2. Failure Factors

1) Although it provides opportunities for the public to participate in the inspection process, it does not give the public clear inspection powers. In other words, it does not give the public the ultimate decision-making power, which is instead given to the inspection organization.
2) The law gives inspection agencies limited power, which makes it difficult for them to investigate and prosecute cases of wrongdoing. For example, they cannot file lawsuits in court on behalf of victims, and cannot mediate between individuals or organizations. This can make it difficult to enforce the law or to get people to follow the court's orders. However, giving inspection agencies too much power could lead to the violation of the rights and freedoms of candidates or individuals involved in the electoral justice process.
3) The lack of data integration between agencies leads to delays in the inspection process.

7. Major Challenges for the Horizontal Accountability System in Thailand

This section presents the challenges for the horizontal accountability system in Thailand.

1) Good governance of the organizations, including how people attain positions in them and the ways they exercise power.
2) The independent oversight bodies are often seen as being influenced by the government or other powerful interests. This undermines their ability to hold the government accountable.
3) The laws and regulations governing horizontal accountability are often not enforced effectively. This allows the government to get away with wrongdoing.
4) The public trust in these organizations has fluctuated according to their performance and the political situation.
5) Public communications and accountability towards these organizations. Moreover, many people in Thailand are unaware of the importance of horizontal accountability or its functioning, making it challenging to garner public support for these institutions.
6) The utilization of technology and mechanisms for vulnerable groups. Some groups may find it difficult to use technology provided by the organizations, such as applications and websites. In addition, the language used to communicate with officers is extremely limited, so some groups using different languages are unable to access the system.

8. Recommendations

8.1. Policy Recommendations

1) The separation of powers should be strengthened by firmly establishing the rule of law and enforcing the constitution.
2) Those who play a role in balancing the power of parliamentarians should be strengthened and supported through various mechanisms. This should start with educating them about their roles and responsibilities, as well as the performance of parliamentarians. Relevant agencies should also provide information and a public space for people to express their opinions.
3) In terms of anti-corruption, it is important to promote the role of public participation, give people more rights to participate, provide public education about their rights and responsibilities in working with inspection agencies, and develop laws to protect or support public participation.
4) The state or relevant agencies should provide accurate and accessible information to investigate the exercise of state power. They should also create networks of various sectors, including public, private, and local government organizations, to assist in the investigation of complaints and to monitor the resolution based on the results.

8.2. Legal Recommendations

1) Amend the constitutional provisions on entry into a position within a constitutional oversight institution, to ensure the true independence of such organizations by stipulating that elected senators should approve entry into such positions.
2) Establish a law supporting and ending disputes over the different interpretations of the law regarding the power to indict.

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