



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

CORROSIVE CAPITAL: CHALLENGES TO THE PHILIPPINES

Heidi L. Mendoza, CPA, MPA, MNSA





“**CORROSIVE CAPITAL**” refers to foreign investments from authoritarian states that impacts governance or exploits governance gaps in the recipient country. The increasing trend of corrosive capital originating from authoritarian nations has emerged as a threat to democracy and free market due to its detrimental effects on democratic institutions and private enterprise in recipient countries. The largest impact is seen in emerging markets and fragile economies.



CORRUPTION IN PHILIPPINES IS WORSENING, SCORE IN GLOBAL STUDY DROPS TO 34 OUT OF 100

By Coconuts Manila Jan 24, 2020 | 3:38pm Manila time



<https://coconuts.co/manila/news/corruption-in-philippines-is-worsening-score-in-global-study-drops-to-34-out-of-100/>

The Philippines, which was ranked 99 in 2018, fell all the way down to 113th place — with a score of 34 out of 100 — in TI's annual Corruption Perceptions Index, a ranking of the most corrupt and cleanest governments in the world. The country is tied with El Salvador, Kazakhstan, Nepal, Eswatini, and Zambia.

WEAK OR CORRUPT STRUCTURE



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Weak rule of law
- Being ruled by an oppressive authoritarian regime
- Weak government oversight
- Vulnerable community and workers to social and environmental harm



Restrict participation in public affairs, silence dissenting voices and keep decision-making out of public scrutiny.

EXPLOITING GOVERNANCE GAPS



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Gap between power and accountability
- Lack of Rules
- Lack of Enforcement



AVOIDING ACCOUNTABILITY IS EASY



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Utilizing State Power
- Duterte announces that he will use extraordinary powers of the presidency to bring an end to water shortages in Metro Manila, even if the solution may pose environmental damage (*Ranada, 2019*)
- Duterte conducts press briefing to announce that he will “*fight all the way*” to pursue the construction of the Kaliwa Dam” (*Parrocha, 2020*)



Kaliwa Dam is a project that has been on and off in the government's major infrastructure list since the 1970s. It has not taken off the ground primarily because of issues relating to the environment and its socio-cultural implications. Now, adding fuel to the controversies is the involvement of China in the project funding, which has led to a petition before the Supreme Court asking for a declaration of the loan agreement illegal and void. But, Velasco asserts that the NCWS-KDP is a "*done deal*" ("China-funded Kaliwa," 2019) despite the consultations that the MWSS has been portraying in public.

WHEN YOU HAVE CAPTURED STATE ACTORS, HOW DO YOU EXPECT THEM TO OBSERVE COMPLIANCE WITH REGULATORY PROCESSES?



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

STATE ACTORS

Government Appointees Qualification and Experience

Environmental Management Bureau (EMB), through its Director, Engr. Metodio U. Turrella, issued ECC No. ECC-CO-1907-0017 that would pave the way for the implementation of the NCWS-KDP. DENR Assistant Secretary Ricardo Calderon said that the ECC “went through thorough review and consultations” (“DENR says ready,” 2019). But, Yap, Ramos & Gascon (2019), in their report, quoted DENR Undersecretary Benny Antiporda as saying that “the ECC was issued because it was a priority project of the government and the agency had no recourse but to approve it.”

Once issued, an ECC indicates a positive review and signifies that no significant negative impact on the environment is expected. It also means full compliance with the requirement of the Environmental Impact Statement (EIS) System.

REGULATORY PROCESSES

Technical Legal Financial Environmental

“However, Velasco, consistent with his earlier and other statements, has sternly announced that the project will proceed with or without the permission from the local government unit of Infanta, Quezon.”

WHEN YOU HAVE CAPTURED STATE ACTORS, HOW DO YOU EXPECT THEM TO OBJECTIVELY IDENTIFY THE GAPS AND THE ACCOMPANYING IMPLICATIONS



ATENEIO

ATENEIO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Onerous Provision in the Loan Agreement
- What about the loan terms, the confidentiality clause, the waiver of immunity, and the arbitration terms

Project	Funding Country	Total Cost (in Billion Peso)	Interest Rate (p.a.)	Tenor (in years)
Chico River Pump Irrigation Project	China	4.37	2.00	20
Kaliwa Dam	China	18.70	2.00	20
Panguil Bay Bridge	South Korea	7.38	0.14	40
New Cebu International Container Port	South Korea	9.20	0.15	40
Improvement of Sections along Pasig River from Delpan Bridge to Napindan Channel	Japan	1.00	0.18	40
Cavite Industrial Area Flood Risk Management Project	Japan	9.89	0.26	40
Metro Manila Subway-Phase 1	Japan	356.96	0.09	40
North-South Commuter Railway Extension Project	Japan	628.42	0.08	40

Source: Department of Finance; Rivas (2019c)



We need more friends
according to former
NEDA Secretary



“In the event of a default or a dispute in the loan agreement that will be subject to an arbitration process, the patrimonial assets could be expended to satisfy the lender (China)” (Encabo, 2019).

Patrimonial assets are public properties that are not “intended for some public service or the development of the national wealth” as provided in Articles 420 and 421 of the Civil Code of the Philippines. Of particular focus in this discussion of patrimonial assets is the gas-rich Reed Bank (Recto Bank), which, according to retired Supreme Court Senior Associate Justice Antonio Carpio, “could end up being the collateral” (Buan, 2019a).

This provision in the loan agreement serve to fan the flames of controversy in light of the much- publicized debt trap that Sri Lanka, Djibouti, Maldives, and other countries have reportedly found themselves in with China where they had to give up their strategic national assets.

Selection

Risk of Rigged Bidding/Unwarranted Benefits

- Contractor choice

One of the issues about the project is the choice of project contractor—China Energy Engineering Corporation Limited

Matoto (2019), in his analysis, said that “all the ODA funders typically link their loans to the procurement of equipment and services from their respective countries,” such as in the case of CEXIM loans using China equipment and contracted services.



Overall, economic liberalization and globalization policies combined with existing governance gaps and other systemic barriers to justice have produced an environment that is conducive to corporate misconduct and impunity for environmental damage and human rights abuses.

<https://www.mindthegap.ngo/governance-gaps/>



LIKE GLOBALIZATION

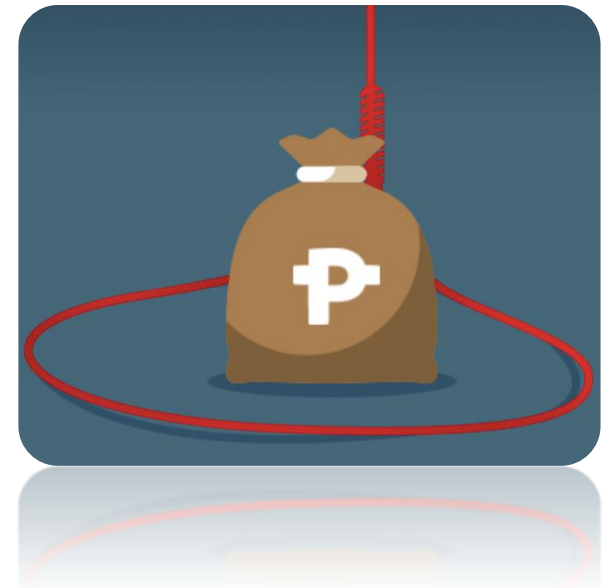


ATENEIO

ATENEIO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Development funded by corrosive capital deprives the Country of the intended benefits
- Danger of a Debt Trap



- United Nations' Conference on Trade and Development's (UNCTAD) Principles on Promoting Responsible Sovereign Lending and Borrowing, as endorsed by the United Nations General Assembly in 2010
- Resolution No. 253, which calls for a Senate-led inquiry in aid of legislation on foreign loans contracted in the last 15 years
- Public debt audit is a State duty in accordance with international law. Adopted in July 2012 by the United Nations (UN) Human Rights Council, the UN Guiding Principles on Foreign Debt and Human Rights urges States to conduct periodic public debt audits in view of transparency and accountability in the management of resources and in deciding future borrowings

AUDIT OF PUBLIC DEBT MAY BE OF FOUR OFFICIAL TYPES:



ATENEIO

ATENEIO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

Legislative audit

(where Congress conducts investigations)

Judicial audit

(through a court case)

Governmental audit

(sanctioned by the Government itself)

Citizens' audit

(undertaken by Civil Society Organizations)

But, a combination of the four types is also workable. For instance, Ecuador fulfills their PDA by creating a Commission composed of government representatives, citizens, experts, and international society expert advisors.

ECUADOR, THROUGH ITS (CPCAC), SHOWED THE FEASIBILITY OF
CONFRONTING THE CREDITORS THROUGH SUSPENSIONS OF PAYMENT OF
DEBT.



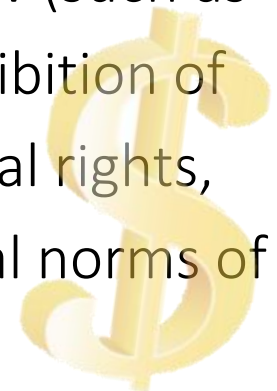
ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

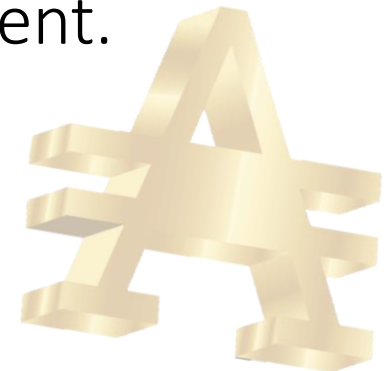
Forming Leaders. Leading Reforms.

The system of indebtedness...has been characterized by a less-than-transparent management, deriving in the predominance of the payment of amortizations, interest, and commissions in the national budget; in the growing need for new credits; and, as a consequence, in the recurring dependence of the State and the national economy on funds coming from public and private debt.”

“In the process of indebtedness, general principles of law (such as good faith, the free determination of peoples, the prohibition of usury, contractual balance, human rights, environmental rights, among others), international covenants, and fundamental norms of domestic law were violated.”



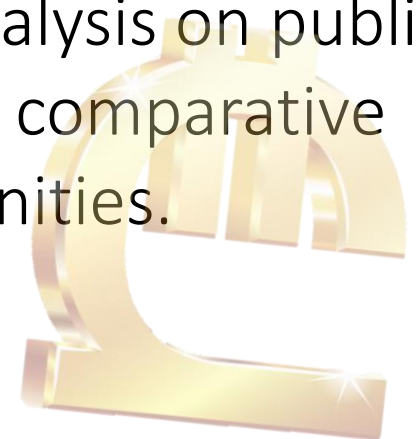
In 2014, Argentina sought through legislation the creation of an investigative commission to audit its public debt. Such was the Argentine legislature's response to the fervent call of campaigners to perform audits and discover any odious or illegitimate loans, which according to them should not be paid for by the Argentine government.



A group of financial experts in the Committee for a Citizen's Audit on the Public Debt prepared a report derived from numerous local debt audits. The report drew several conclusions such as illegitimate debts comprising 59% of French public debt mainly because of excessive interest rates; and that more and more of the decreasing tax revenues plus other financial resources are being used solely for interest repayments.



For the period 2010-2014, the State Audit Office of Georgia conducted its Performance Audit of Public Debt Management; the audit revealed several deficiencies in their debt management like the lack of risk assessment of agencies concerned (i.e. Ministry of Finance). Among the audit recommendations are the evaluation of contingent liabilities in the conduct of macroeconomic analysis on public debt, monitoring of debt portfolio risks, and comparative analysis of available funding opportunities.



THE PHIL DEBT MANAGEMENT SETTING



ATENEO

ATENEOSCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

Republic Act (RA) No. 8182 requires the President to submit a separate report to both Houses on the loans and grants incurred by the government. Also, under RA No. 245, the President has to transmit to Congress a detailed statement of all expenditures.

An Act Excluding Official Development Assistance (ODA) from Foreign Debt Limits and Providing ODA Resources to be Optimized for the Priority Development Projects of the Government dated 11 June 1996

COA Circular 2018-022 –creating the Public Debt Management and Audit Division



CHALLENGES



ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- No thorough report on public debt
- Lack of skills and knowledge on PDA
- As the audit of public debt became fragmented, consolidation is a challenge.
- majority of the respondents (65%) agree that the current public debt audit process is time-consuming

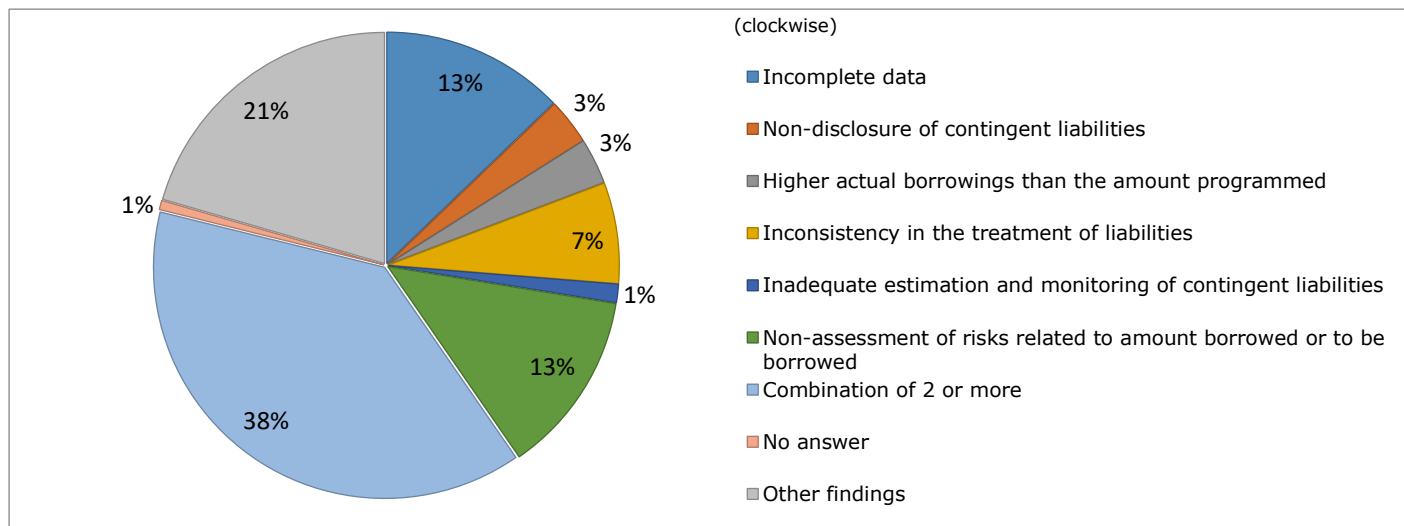


Figure 5. Breakdown of common audit findings related to public debt



- The current public debt audit does not ostensibly check or monitor project implementations; only the fund releases or fund transfer are being monitored but whether these funds are being utilized for the project to which they were intended is not being looked into;
- There is no evaluation of the necessity of incurring public debt, analysis of the most advantageous and appropriate funding source, and the reasonableness of the immediate fund releases and implementation of projects;
- The determination of borrowing needs and borrowing activities are not also being covered.
- [There is no] evaluation of necessity of incurring public debt and the analysis of most appropriate and advantageous source of funding including reviewing the reasonableness of management's basis in immediately implementing the project funded by loans;
- Least covered in the audit process and reports is the monitoring.
- Feasibility of loans is not given attention.

Build a Common Understanding of Public Debt

Public Debt Debate

Utang na loob vs Utang sa Labas
Utang ko, Utang mo, Utang Nating Lahat
Until Debt Tear us apart

Transparency in Public Debt Reporting and Debt Management Policies

Review Legal Framework for Borrowing
Transparency and Oversight



ISLANDS OF GOOD GOVERNANCE

Transparency

Accountability

Citizens'
Participation



Integrity Circles

Role of Public Sector Unions

I-Kwenta

Audit of Public Debt

Results should be available to the Public

**Should we return to Pre-Audit
on selected transactions such
Public Debt?**





ATENEO

ATENEO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

Thank you!

CORROSIVE CAPITAL: CHALLENGES TO THE PHILIPPINES

Heidi L. Mendoza, CPA, MPA, MNSA



PHOTO CREDITS /REFERENCES



ATENEIO

ATENEIO
SCHOOL OF
GOVERNMENT

Forming Leaders. Leading Reforms.

- Ecomparemo.com
- https://www.123rf.com/photo_19912256_the-words-compliance-rules-regulations-and-guidelines-on-colorful-arrow-road-signs-directing-you-to-.html
- <https://australiancompetitionlaw.org/blog/2017/10/22/harper-competition-reforms-pass/>
- <https://www.vectorstock.com/royalty-free-vector/text-quote-sign-dark-gray-icon-on-transparent-vector-9548072>
- <https://www.rappler.com/voices/thought-leaders/analysis-how-philippines-fell-china-debt-trap>
- <https://www.mindthegap.ngo/governance-gaps/>
- <https://patolangpilipina.com/economics-101/tumaas-ang-utang-ng-pilipinas-ng-11-ngayong-marso/>
- PIDS Policy Paper on Public Debt
- CIPE Case Study
- www.vectorstock.com