

The Freedom of Information Act: The Need to Push for its Passage

January 26, 2007
Columbus Room, 42nd Floor, Discovery Suites
ADB Avenue, Pasig City

EXECUTIVE SUMMARY

The forum which began at 9:30 a.m. was moderated by Ma. Cristina M. Alikpala. There were a total of eighty (80) participants representing various sectors of society such as media, civil society organizations (CSOs), academe, and government.

Ms. Alikpala provided a brief background on the importance of transparency and access to government information as pillars of good governance acting as a deterrent to corruption as well as promoting public accountability.

Dr. Habito, in his welcome address, first gave a short introduction on the following: (1) what EPRA is, (2) different policy areas EPRA is seeking to achieve reforms in cooperation with CSOs, (3) the importance of transparency in BOT contracts, and (4) that passage of the pending information bill is vital in promoting transparency especially in projects which include private sector participation.

Key Speeches

Atty. Nepomuceno Malaluan of the Action for Economic Reforms (AER) and co-convenor of the Access to Information Network (ATIN) centered on the following: (1) the public's right to access government information as enshrined in the Constitution, (2) government's inability to fully implement the right of every Filipino to public information, and finally (3) the importance of an enabling law on access to information.

The 1973 Constitution, according to Atty. Malaluan, provides the Constitutional guarantee for the citizenry to gain access to matters of public concern, official records, including documents and papers that cover official acts, transactions or decisions, subject to limitations provided by law. He went further by saying that the 1987 Constitution does not only guarantee the right to public information as enshrined in the Bill of Rights and Declaration of Principles and State Policy but it even strengthened that guarantee by requiring information on the following be made public; namely, government guaranteed foreign loans, statement of assets and liabilities (SAL) of public officials and employees, including journal proceedings, records and books of accounts of legislature. He also mentioned cases where the right to public information was sustained by the Supreme Court.

Atty. Malaluan notes that although the right to information is already guaranteed by the Constitution, it has not been easy to get access to public information. According

to him, several issues must be addressed: 1. the absence of a uniform, simple, and speedy process to gain access to information, 2. in spite of the law which compels the government to provide access to public information as a matter of policy, government agencies continue to be discretionary in providing public information, 3. there remains to be insufficient sanctions for those who violate this right, 4. the judicial remedy to compel disclosure is inaccessible to the general public, 5. exorbitant costs in acquiring government statistical data, and 6. the increasing private sector participation in provision of "public goods and services" complicate matters in acquiring information on government documents.

To solve the difficulties in gaining access to public information, Atty. Malaluan brings to fore the information bill pending in Congress. The key features of the information bill are the following:

- A citizen who has been denied access to information may exhaust all administrative remedies, seek the assistance of the Office of the Ombudsman, or go directly to the courts;
- To the extent that both the scope of the covered information as well as the procedure for access has been made more definite by this law, then the system of sanctions and penalties will have greater enforceability

The second speaker, Dr. Milwida Guevara (former undersecretary of the Department of Finance and current CEO of the Synergeia Foundation), spoke on the relationship between transparency and public accountability in government and the importance of truthful analysis of public information and data.

Dr. Guevara notes that aside from public censure, there are virtually no disincentives to deter government officials from withholding access to public information. The possibility of public censure has not been an effective deterrent either because it assumes that the public official inherently is ethical and has a high sense of morality which may not always be the case.

She mentioned several reasons why withholding information has been pervasive in government: 1. withholding information is a source of power, 2. opaqueness purports corruption, and 3. controlling information can manage public perception. Thus the penalty for public officials not providing access to information should be heavier than the benefits of concealing information. Dr. Guevara also points out that the penalty imposed for withholding information of P 50, 000 is very low and cannot really neutralize the incentive to withhold corruption.

The law on information is just the initial step in promoting transparency and accountability. The next step according to her is forming institutions that can organize and analyze government data and make truthful yet simple presentations which the ordinary citizen can understand.

However, without access to information, such analysis will not be possible, the citizenry will be continuously subjected to propaganda and will be ignorant of whether government sets targets correctly and people in the job are performing their tasks well.

In closing, Dr. Guevara promised to work for the passage of the information bill pending in Congress as its passage will provide the citizenry to be more intelligently informed on issues.

The third speaker, Dr. Prospero de Vera, Associate Professor at the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP), discussed the importance of transparency in public governance. The heart of any democracy, according to him, is the active participation by its people in government decisions. Transparency allows the citizenry to put in check the actions of its public officials which would be otherwise impossible if it were shrouded in a cloak of secrecy. He sighted the Constitution, several republic acts as well as executive orders which guarantee every citizen's right to information.

Although the Philippines does not have a Freedom to Information (FOI) Act like other countries, the Supreme Court in several cases has decided in favor of providing access to information.

According to Dr. de Vera the government can promote transparency in public service in three (3) ways: 1. physical transparency (office lay-out, bulletin boards, charts, etc.), 2. administrative transparency (public information brochures that contain list of mandates, functions, newly enacted laws, administrative and executive orders, office activities and related costs, etc.), and 3. substantive transparency by practicing electronic governance.

In closing, he cites the following reasons why transparency should be promoted in public service: 1. it promotes other good governance practices—efficiency, accountability, participation and responsiveness, 2. it increases citizen's approval and support for public institutions, leaders, and democratic processes and institutions, and 3. transparency is good governance.

The Philippine Center for Investigative Journalism's (PCIJ) Alecks Pabico was the assigned reactor and made the following comments:

1. That the Philippine press is able to freely express its views compared to other parts of the world is a myth with the recent killing of journalists and the spate of libel suits filed by the First Gentleman against several journalists who are critical of him.
2. Even in the absence of an information law, his experience in accessing public information in the country has been fairly better compared to our South East Asian counterpart. However, journalists have been advocating for the passage of an information act as they are one of the recipients that will benefit from such law.
3. That though the courts have been very liberal in determining what constitutes "public concerns", PCIJ has had difficulties in obtaining SALs of people in the judiciary.
4. That provisions to standardize how the reporting of public records should be processed will address some of the journalists' difficulties in accessing public information
5. That the government must be able to integrate the use of electronic governance so that all documents in government websites are kept up to date.
6. Journalists continue to make use of technology as a tool to gain access to information.

Open Forum

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The following were the issues/questions raised during the open forum:

1. Cristina Alikpala (AER) wanted a reaction on the issue of confidentiality of the government's negotiating positions on trade issues
2. Marlon Aquino (Congressional Planning and Budgeting Office or CPBO) commented that he has had difficulty in gaining access to some public documents and wanted to know how to resolve the issue that private contracts with governments must be made public despite the confidentiality clause in those contracts
3. Ria Lee (Legal Rights Center) mentioned the high cost in obtaining information on government infrastructure projects which the urban poor and indigenous groups can not afford to pay.
4. Jose Aaron Pedrosa (Sanlakas Youth Coalition, FDC) inquired about the establishment of a centralized and information database
5. Dr. Florangel Braid (UNESCO) was concerned on how the implementing rules and regulations (IRR) can make public information available electronically through e-centers in barangays so the marginalized sectors of society can have easy access as well.
6. Dr. Renato Reside (UP School of Economics) highlighted the importance of the Commission on Audit (COA) in ensuring transparency in expenditures, that campaigning for more professional cabinet members who are capable to do the job at hand is important, and non-transparency leads to economic distortions.
7. Isagani Serrano (PRRM) commented that full disclosure should be a matter of government policy and must be demanded by the public.
8. Vergel Santos (Business World) raised the point that media has not been aggressive in asking the hard questions which need to be answered by government officials.
9. James Miraflor (Youth Against Debt) asked if there could be an administrative agency proactively making access to public documents readily available.
10. Emeterio Peña (Business Mirror) inquired if the passage of the information act would unnecessarily expose economic activities/information of companies whose stock is not listed in the Philippine Stock Exchange (PSE).
11. Maris dela Cruz (FDC) suggested that the bill should include the exact number of days it should take a government agency to make the public documents/information available. She also asked if the bill will include information on loans being negotiated with ADB or the World Bank.

Responses from the panel:

Professor de Vera response:

- That it may not be just access to information that is amiss but the actual public document itself is at times not on file with the government agencies.
- The availability of government information is a function of the personalities heading the agency instead of a principle of transparency in governance.
- To promote transparency, leadership in Congress is needed as this entails the use of resources and funds to say, update the website of Congress.
- He was involved in a project with USAID on the transparency, accountability and participation of the local government in order to develop an index to measure it.

Undersecretary Guevara:

- The power to inform the public does put a check and balance on government performance.
- She doesn't agree with the principle of confidentiality in relation to IMF negotiations as well.
- That she was worried about the exemptions to disclosure in the pending bill. Rather, the bill filed should be a benchmark of transparency and have the necessary parameters of a real FOI act.
- That the pending bill won't solve all transparency problems but only sets standards, procedures, and penalties. She suggested having a scorecard on all government agencies using transparency as criteria.

Atty. Malaluan:

- That the government has claimed confidentiality in negotiating the Japan-Philippines Economic Partnership Agreement (JPEPA). However, there is a case pending in the Supreme Court in relation to the negotiation of the treaty.
- That the culture of the "privilege few" in terms of information persists even among NGOs and media.
- Agreed to look into Dr. Guevara's point to address the incentives and motives of transparency.
- That the FOI advocates have tried to fight for total disclosure in the pending bill but have conceded to include a few exceptions (those affecting National Security and those based on how the President can classified documents) as the bill will have difficulty passing in Congress.

Dr. Habito:

- Agreed that the access to information is personality-oriented not based on the principle of transparency. Compounding the problem is also the Filipino's culture of secrecy.
- A FOI act will institutionalize the sharing of the information.
- Strongly suggested to have a provision that requires all contracts entered by the government with private sector to be posted on the website.

Signing of the Manifesto

The open forum was followed by participants signing a manifesto to support the campaign on Freedom of Access to Information.

Closing Remarks

Ms. Maita Gomez formally closed the forum at 12:50 in the afternoon.

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