

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

January 26, 2007  
Columbus Room, 42<sup>nd</sup> Floor, Discovery Suites  
ADB Avenue, Pasig City

---

## PROCEEDINGS

At 9:30 in the morning, the forum began. Ma. Cristina M. Alikpala moderated the forum. It was attended by a total of eighty (80) participants: forty (42) female and thirty eight (38) male. (Please see attendance sheet for a complete detail of the participants)



Ms. Alikpala started off the forum with a brief background and note on the subject matter of the forum.

### Economics of Information Governance - check on corruption

'Transparency' - commonly understood as 'government according to fixed and published rules, on the basis of information and procedures that are accessible to the public' - is a widespread nostrum of good governance today. It is built into European Community law (through the EU transparency directives, requiring decisions to be based on objective and verifiable criteria published in advance and communicated to the parties affected), invoked in the widespread development of freedom of information laws in developed countries over the past forty years (reflecting some variant of Swedish practice) and commonly incorporated into more general recipes for improved accountability and better governance of every kind (including corporate governance). 'Transparency is held to be 'central to contemporary discussions of both democratic governance and public service reform, since open access to information and elimination of secrecy is taken to be a condition for the prevention of corruption and promoting public accountability.' Indeed, a host of benefits are commonly assumed to flow from increasing transparency, including certainty, predictability, fairness, challenge ability and learning capacity.

Transparency is not a new idea or even a new term. The term goes back at least to Jeremy Bentham's early nineteenth-century 'transparent-management' principle. But the idea received renewed emphasis in jurisprudence after the era of fascist and Nazi rule in Europe and came to be further stressed after the fall of communism in the former USSR and Eastern Europe. Transparency or cognate ideas are now central to developments in several disciplines, including law, economics, accountancy, political science and public administration, and it has become important in other fields, including information sciences (notably over the issue of the accessibility of cyberspace 'codes').

Ironically, however, transparency is an idea that is used in different ways in different discourses and disciplines, and the different dimensions of transparency can be obscure. The scope and limits of this apparently exceptionable doctrine have been only limitedly explored and it is often implicitly presented as a trade-off-free institutional design principle. And the history of the idea across different disciplinary discourses has not been spelt out. An idea so commonly invoked in institutional governance debates merits closer and more critical attention than it has hitherto received. The aim of the workshop is to give the subject that attention.

## Welcome Remarks

*Dr. Habito is currently a Professor of Economics in the Ateneo de Manila University, where he is also Director of the Ateneo Center for Economic Research and Development (ACERD). He is also a Professorial Lecturer at the University of the Philippines-Los Baños (UPLB). He sits in the Board of several private corporations and foundations, and is also a regular columnist of the Philippine Daily Inquirer.*



*Dr. Habito served in the Cabinet of President Fidel V. Ramos as Secretary of Socioeconomic Planning and Director-General of the National Economic and Development Authority (NEDA), throughout the six-year Ramos presidency in 1992-1998. To this day, NEDA staff members remember him fondly and would even say that he is the most-loved NEDA chief in recent history.*

*Dr. Habito holds a Master of Arts degree and a Doctor of Philosophy degree in Economics from Harvard University. He likewise holds a Master of Economics from the University of New England in Australia. He graduated Summa cum Laude from the UP-Los Baños in 1975 with a Bachelor of Science in Agriculture, Major in Agricultural Economics.*

Thank you Tin-tin for the generous remarks. I am just giving the Welcome Remarks so I did not need an elaborate introduction although my job this morning is to welcome and introduce to you the project that bridge us all together here this morning. As already mentioned, this particular legislation that we will be discussing this morning has been languishing in Congress. In fact, even in the freedom of information was placed in the 1987 Constitution but as I was telling the audience earlier, the problem is the so-called enabling law has become the excuse for too many people in the government to engage in secrecy and undue secrecy at that. Now, let me first mention why we are the EPRA have taken intent in those and what we at EPRA, first of all. I welcome you on behalf, not only of Ateneo but also the Action for Economic Reforms, our partner NGO in this particular project. EPRA is a project with Ateneo joined by six (6) or seven (7) civil society organizations in order to push for reforms, or we would like to call as sound reforms in six (6) policy areas: agriculture, fiscal management, tax administration, financial markets development, local government finance and planning budget and for this particular forum today, and private sector participation in public infrastructure. So you can see in this particular interest in the context of transparency on the freedom to access to information lies in this particular forum in the context of government contracts especially the BOT contracts that have led to the PIATCO-EPISA-KASAGNAN and many others that I have to tell you personally that I have wasted too much time in the Blue Ribbon Committee, long before I have left the government. And the reason for that was the lack of transparency all throughout the process of developing and even implementing such project and so our interest really, at least in this particular context in EPRA, is in this area of at least making sure that the public especially the tax payers money on the BOT/private sectors money goes to the best benefit of the Filipino people. And obviously when transparency is lacking, this will not be the case. And so we know that the Freedom of Information Act has much wider implication for all of us beyond the private sector participation. And that's what we don't necessarily have to delve ourselves in the context of the law here.

I think that what brings us all here is the common resolve to continue pushing its provision in the Constitution to be put into realization of the government. And of course, the pre-requisite is that, we are told, is the enabling law. And this enabling law has already been in Congress for so many years. As Atty. Malaluan was saying, "It was already in the three Congresses." And some of you might think: What are we doing here when we know that only a few days is left to the 13<sup>th</sup> Congress. Well, I don't think it has to stop from continuing to widen the constituency and reform and widening the constituency towards getting the legislation done. And so I

would like to think that even though we are at the 11<sup>th</sup> hour of the 13<sup>th</sup> Congress, and we do hope that there's still a 14<sup>th</sup> Congress, that at least we could hit the ground running on this particular advocacy on transparency. And we part it in concrete terms in the legislation. So, we all share the same conviction. I am sure how we can work together. And in fact widen the partnership that have formed and trying to make sure that we can still have transparency and accountability in our government. And so the EPRA, where we have been working with AER in this particular area, are really convinced in ensuring maximum participation and the stakeholders in economic policy reform. I have always been arguing the policies that ensure the greatest good to the greatest number. And how else can we ensure this unless you can widen the participation in the crafting of the policies. And that is the credo of EPRA. And that it the mission we would like to think we have put ourselves. Frankly, we don't have much time in this project itself. EPRA will last only up to August 31 of this year. But between now and then, we hope to place an irreversible course that will lead to the passage of this law eventually. And so in a small way, we hope to have contributed to an important policy reform which will have a wide ramification to the entire government and the society. I am very pleased to see familiar faces that I know have been much longer in this advocacy. And I know that we can benefit in fact from these people who are more seasoned in fighting for this cause. We welcome this new partnership that we might form. And we really think this is a forum to merge partnership to strengthen the constituency and to widen the support for this particular reform. Warm welcome to all of you and I certainly look forward and pray for a productive discussions that will lead us to concrete actions in the days to come.

## Key Speeches

### The Proposed Law on Access to Information

Nepomuceno Malaluan

Action for Economic Reforms (AER)

*He is a Trustee of Action for Economic Reforms, Co-Convenor of Access to Information Network (ATIN), and ATIN representative to the steering committee of the Global Transparency Initiative. He holds BS Economics and LLB degrees from the University of the Philippines, Diliman.*



### Three Parts:

- Overview on the law on access to information in the Philippines
- Summary of gaps in the implementation
- Summary of the key elements of the proposed legislation

### Law on access to information

- Philippines one of the few that have elevated the right to information as a distinct Constitutional guarantee, and at a much earlier time
- Section 6 of the 1973 Constitution reads: The right to information on matters of public concern shall be recognized. Access to official records, and documents and papers pertaining to official acts, transactions or decisions, shall be afforded the citizen subject to such limitations as may be provided by law.

### The 1987 Constitution further strengthened the guarantee

- Section 7 of the Bill of Rights

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

- New provision in Article II (Declaration of Principles and State Policies). Section 28 reads:

Subject to reasonable conditions as prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest

### The 1987 Constitution further strengthened the guarantee

- In addition, there are specific informations that the Constitution requires to be made public. These includes:
  - Information on foreign loans obtained or guaranteed by the government (Art XII, Section 21)

-The declaration by public officers or employees of their assets and liabilities (Article XI., Section 17)

-The journal of the proceedings of the legislature (Article VI, Section 16 (4) as well as its records and books of accounts (Article VI, Section 20)

### Sustained by jurisprudence

- The guarantee is self-executing. It does not require any enabling legislation for it to become enforceable.
- The right to information is a public right. This makes the people the real party in interest, and petitioner who anchors case on such public right need not show any special interest in the result. It is sufficient that petitioner is a citizen.
- Government agencies are without discretion in refusing access to information of public concern. Only the manner of examining records may be regulated, for instance, by prescribing the manner and hours of examination.
- Not being discretionary, the performance of the duty to afford access to information of public concern may be compelled by a writ of mandamus.
- The Constitutional guarantee is not absolute. The information must be of public concern or one that involves public interest. The Court stated that “public concern”—“public interest”—embraces a broad spectrum of subjects which the public may want to know either because these directly affect their lives or simply because they arouse the interest of the ordinary citizen. In addition to being of public interest or concern, the information must also not be exempted by law from the operation of the guarantee.

### Problems to address

1. Absence of a uniform, simple, and speedy access to procedure
2. While in law there is no discretion in giving access to information, it remains discretionary in practice
3. There is still untested, if not sufficient, basis for sanctions in cases of violation of the right to information
4. The remedy to compel disclosure, primarily judicial, remains inaccessible to the general public

5. Government's record-keeping system is in a very poor state
6. There is a very low level of bureaucratic commitment to openness
7. The cost of access to certain information, particularly statistical data, is excessive
8. Relapse under Presidential Arroyo (advertise publication)
9. Challenge posed by increasing private sector participation in the provision of what used to be publicly-provided goods and services

### Key features of the proposed legislation

- A cumulative system of remedies that a citizen who has been denied access to information may choose from

The citizen may exhaust all administrative remedies, or seek the assistance of the Office of the Ombudsman, or go directly to the courts

- Clear administrative and criminal liability for violation of the right to information

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

- A cumulative system of remedies that a citizen who has been denied access to information may choose from

The citizen may exhaust administrative remedies, or seek the assistance of the Office of the Ombudsman, or go directly to the courts

- Clear administrative and criminal liability for violation of the right to information

To the extent that both the scope of the covered information as well as the procedure for access had been made more definite by this law, then the system of sanctions and penalties will have greater enforceability

## Fiscal Issues and Transparency

Milwida Guevara

President and Chief Executive Officer

Synergeia Foundation



*A recognized public servant par excellence and known policy reformist, Dr. Milwida M. Guevara holds a Doctoral degree in Public Finance and a university degree in Elementary Education. Dr. Guevara served as a public school teacher for five years before moving into a career in economics. She served as a Career Undersecretary in the Department of Finance. She was responsible for revenue generation and tax reforms during the Ramos administration, a period when the country saw four years of budgetary surplus and structural economic reforms. In 2000, she joined the Ford Foundation as Program Officer of the Manila office and worked on a portfolio built on "Building a Constituency to Make Education Work."*

*Today, Dr. Guevara is the Chief Executive Officers of Synergeia Foundation, a coalition of individuals and institutions that is dedicated to improve access of Filipino students to quality basic education. She is member of the panel of Fiscal Experts of the International Monetary Fund and was elected Chairman of the Group of Tax Experts which was convened by ESCAP, United Nations.*

Good Morning. I'll explain to you later why I am close to AER's heart. This is really on the use of information. People behave in incentives and disincentives. They do things which provide them satisfaction. I am sure the reason you came here is because of a satisfactory resolve: if not on the speeches, at least on the food. They avoid behavior that results to painful experiences. I still believe, for example because I took the world from a rosy window, that people pay their taxes willingly if they will see that public service will be delivered efficiently. In fact, the core of Synergeia's work, that we were not able to do with the Central Government and we hoped to work with Local Governments, are able to prove that the money spent that they paid for their taxes are devoted for the education of their children. They pay their taxes willingly. However, the more realistic theory in finance is that people pay when they know that by not doing so, they will be caught and imprisoned. They will not pay their taxes when they know that tax evasion

cannot be detected. However, if is detected, they will not be punished and they can get away with it. With respect to providing the public with access to information, there are virtually no disincentives except for public censure. One needs a relatively high level of ethics and morality to feel ashamed or at least responsibly respond to the reproach of the citizenry. But if you have a thick face, there's no effect of public censure. We can clearly see that.

There should also be processes that should lead public censure to disqualification, suspension. And loss of respect and if it is strongly possible that people described by Arce Tolentino as without shame can still get elected, right? On the contrary, the incentives which should encourage officials to be more open are insignificant. Of course, there is the intrinsic motivation to be good and pursue good governance. But one needs an unscrupulous conscience to be able to do that. A genuine love of country and patriotism are abstract concepts and difficult to quantify. How many sacrilegious acts were committed in the guise of love of country and as a mission from God? Awards and recognition programs aim to foster and reinforce good behavior. Mayor Jessie Robredo of Naga City is a model in transparency and accountability and has been intentionally recognized for making all documents public and for posting the budget, contracts, appointment and details of his proclamation and details and of his proclamation on the net. But public recognition is insufficient to reward and reinforce the significance of outstanding behavior, the good mayor would find it difficult to get elected and to be appointed at a national post at the lowest level even beat the Villafuerte's in a local election. It breaks my heart in a local election. It bleeds my heart that he cannot even be Governor of Bicol. The incentive, for notwithstanding like him and withholding information, are overwhelmingly pervasive.

Case No. 1: **Withholding information is a source of power.** I remember the time when I was a new undersecretary at the Department of Finance (DoF) during the Japanese occupation and about to face the IMF Mission for negotiation. I panicked when I realized that I did not have any tables on the revenue program. What was the incentive of the DoF staff for withholding the information from their undersecretary and for not providing me with any data? They wanted to retain power. Although I was head of the table, I was utterly powerless because I did not know what was causing the deficit. I have constantly relied on the staff and hold them to explain and analyze and give explanation. It was a very disempowering moment. You can just see the secrecy of the Bicameral Conference Committee where there are no public records where you can trace the amendments given by the Bi-Cam Committee. The secretary of the Third Chamber of Commerce gives them tremendous power.

Case No. 2: **Opaqueness purports corruption.** I was recently visiting one of our programs sites that was a beneficiary of the computer program under the Pork Barrel. The purchase order for an unbranded unit of a computer was P 145, 000.00 when in fact you can only purchase a computer unit for P 30, 000. There were no bidding documents and comparative prices. Overpricing and corruption are facilitated by the lack of corruption. And to be fair, during our time, there were also various scams and the most staggering of which is the tax credit scam at the DoF. And of course that scam was perpetuated by the lack of information. Even I myself had no access to the tax credits provided by the DoF and who were recipients of this tax credit.

Case No.3: **Controlling information can “manage public perception.”** I, myself, have participated in controlling the shape of the information. We kept data on the impending budget in 1997 which we estimated could reach P45B in confidence. We thought that it was in the best interest of residents and investors believed that the fiscal programs were on track. We were in the midst of the Asian Crisis and revealing the state of the public finance will make the market jittery and of course we eventually ended with the true small surplus due to the timely intervention of the government especially by Cielito Habito. While there may be abundance of good intention, like what we had, it is good to remember that there is a very thin line in good and bad motives and proper behavior can always be rationalized. We should therefore strongly support and persistently advocate for a law that prescribes disincentives for denying the public access to information. Sanctions can at least neutralize the awards from hiding or keeping the information. The caveat is the penalty for non-compliance should be heavier than the benefits. Learning from economics class, the marginal class should equal the benefits. But as I looked at the law drafted by Atty. Malaluan and his colleagues, it appears that the penalty imposed of P 50, 000 is very low. It cannot really neutralize incentive from withholding corruption.

The law is the first step in promoting transparency and accountability. The next step is to forming individuals and institutions who can organize and analyze those data and present in simple form that ordinary citizen can understand. Unfortunately, public finance is an area that is very complicated. Information can be prevented in an oversimplified form. A good example is the news item recently that the Bureau of Customs is at record high. In fact, a milestone and surpasses collection in all previous months. For a layman, this is rather impressive. But those with the discerning eye can only smile. Of course, the 2006 collections will be higher than the one done 10 years ago, 3 years ago or 1 year ago. Incomes are higher today. Exchange rate and volume of trade are already different.

Similarly, the BIR annually benchmarks current performance relatively to how much it collected in the past year and under a scenario of rising prices and income increasing in population and with our extensive withholding system, its collection should naturally increase. With the progressive income tax range, which means that as you increase your income, you move to a higher tax rate, the increase in tax collection should be more than the increase in GNP. And tax rate increase in the VAT, that is, from 10 to 12%. And the increase in the corporate tax rate from 32% to 35% plus a significant of the broadening of the tax base to include petroleum products should have significantly "void" the tax rate. Work has to be done to pin down too much in the improvement of the fiscal performance is really due to the improvement in the tax administration. And how much is due in tax increase program? This, without proper implementation, we know is subject to a double whammy than 12% vat being charged in the price which include the 10% vat. I find myself complaining about a tax which I helped create. But first things first. Without access to information, such analysis will not be possible. We will be continuously subjected to propaganda and buttocks injection from the public relations handler. We will be continuously ignorant of whether government sets targets correctly and people in the job are performing their tasks well. Quoting a number from the First Day Group, Luigi Bernal, he knows that we need to have a "shared reality." We need to understand our taxable capacity that is how much we collected and how much is actually being collected. We should know the burden of taxes and we should know that household from different groups bear and we should know who are the winners and losers from tax exemption and tax incentives.

Of equal importance is the budget. Focusing on the numbers especially on the "shrinking fiscal deficit sidetracks understanding of governments which results to low and poor deliveries of public services particularly health and education services, of course, it hides the very little provision for training and development of the most important resources of the government-its personnel. This is probably the reason why the president said in frustration that we are growing except that the people don't know or feel that they are growing. Beyond the macro numbers, we need information and the cost of goods and public services. Otherwise, public will always rely on the feeding programs. They do not know that they are given overpriced rice and provided with their own tax money. The school buildings are priced at P1.5M. And that all these public expenditures are used publicly. I have had the time of experiencing and being empowered by information. We used data in the past with the Freedom from Debt Coalition (FDC) that the expansion of the VAT will include services and geared toward sound justice. Convincing that FDC led to the formation of AER, fortunately, unfortunately, fortuitously,

coincidentally, that's the reason why I am close with AER. If we were able to lose data and convince Men Sta. Ana and the right side, it will not be difficult to convince the public. We also recognize the power to information in the passage of the Tobacco Excise Tax Reform on the cigarette and beer and the Income Tax Reform. Our only weapon was information.

We used data to demonstrate how manufacturers under price the cigarette and used marketing companies to defraud the government. We used data to quantify revenues that were foregone and how the Filipino people were deprived of the homes that they should have had and the public care. We also use data to quantify the impact of 1, 001 proposals of Congress on tax schedules and tax exemptions. Data need to inform decisions and effectively debunk and explore lies. As what the late Senator Roco said: "information is always mightier than any swords. I promise to passionately work for this bill in more, in better times. I am sure there will be better times because we will provide opportunities for citizens to be more intelligently informed. This is the most effective means to liberate ourselves from ignorance and from being a slave to the powerful and the almighty.

## Transparency and Governance

**J. Prospero de Vera III**

**Professor, National College of Public Administration and Governance**

**University of the Philippines-Diliman**

*Dr. Prospero de Vera is an Associate Professor at the National College of Public Administration and Governance, University of the Philippines. He is the Legislative Liaison of the UP System to the Senate, and also serves as Senior Consultant for Agriculture, Environment, and Agrarian Reform in the Office of Senator Aquilino Q. Pimentel, Jr. He is well recognized as a political consultant and is currently the vice-president of the Association of Political Consultants of Asia and the Pacific.*



*He has served as consultant to various organizations including the UNICEF, UNDP, USAID, GTZ, the Congressional Commission on Labor, and other executive departments. He has also been a visiting scholar in University of Southern California, California State University, and Johns Hopkins University.*

## WHY TRANSPARENCY

- James Madison...

*"A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."*

- Thomas Jefferson...*"information is the currency of democracy."*

<http://spectrum.troyst.edu/~estevens/644-7.htm>

- Texas Lt. Gov. Bill Hobby when receiving the John Henry Faulk Award for Civic Virtue on March 25, 2003 in Austin:

*"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*

*"In other words, the public's right to know does not depend on the whims of officials... Winning an election or getting a government job doesn't make anybody smarter than they were before, or less subject to law. In fact, public officials not only have to obey the law like everybody else, they have an even higher duty. They 'solemnly swear to preserve, protect and defend the Constitution and laws.'*

- The heart of any democracy is active participation by its people in government decisions that touch their
- The "Soul" of such a system is the ability of ordinary citizens to hold government officials accountable for their actions
- The "Soul" is an essential democratic process or practice - "TRANSPARENCY" - which allows citizens to see openly into the actions of their government rather than permitting these to be cloaked in secrecy.

## PHILIPPINE CONSTITUTION:

*"The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." (Art. II, Sec. 1)*

*"The right of people to information on matters of public concern shall be recognized. Access to official records, and documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizens, subject to such limitations as may be provided by law." (Art. III, Sec. 7)*

*"Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest." (Art. II, Sec. 28)*

## SPECIFIC LAWS:

Section 4(e) (R.A. 6713) - Code of Conduct and Ethical Standards for Public Officials and Employees - requires public officials and employees to *"provide information on their policies and procedures in clear and understandable language.."*

Sec. 2(c) (R.A. 7160) - Local Government Code - requires all national agencies to conduct *"periodic consultations...before any project or program is implemented"*...particularly when it affects the *"maintenance of ecological balance"* (Sec. 26) and requires *"prior consultation"* and *"prior approval of the sanggunian concerned"* (Sec. 27).

E.O. No. 89 (May 18, 1993) requires:

1. All heads of the executive departments, bureaus, offices, and agencies of Government..."to implement a policy of accessibility and transparency";

2. Develop "procedures for obtaining access by the public to official records, documents, and papers pertaining to official acts, transactions or decisions, and government research data used as a basis for policy development in their respective offices"; and

E.O. No. 89 (May 18, 1993) requires:

3. Post in conspicuous place "procedures for all public transactions... including the procedure by which an aggrieved party may seek administrative redress for any violation...in the form of flow-charts, using clear and understandable language in Pilipino and the dialect predominantly spoken in the locality".

### TRANSPARENCY REQUIREMENTS IN OTHER COUNTRIES

Freedom of the Press Act of 1766 (Sweden); Finland (1919)

Freedom of Information Act of 1966 (US); Australia (1982)

Freedom of Information and Protection of Privacy Act 1985 (Canada)

- Citizens have the right to see "records" - defined in FIPPA as "any record of information however recorded" includes drafts, "post-it" notes, files on hard drive, palm pilot, email, voice mail, agenda address book ([www.ellisriley.on.ca](http://www.ellisriley.on.ca)) and in FOIA includes tape recordings, maps, and photographs.
- Individuals are not required to disclose why they want records.
- Excludes documents belonging to the President, Vice President, members of Congress, and Courts but these are routinely released.
- In the White House - list of who were invited, how much was spent, and the food consumed has been accessed using FOI
- Some agencies like the FBI post frequently requested records in its website ([www.fbi.gov](http://www.fbi.gov))

All countries in Europe have FOI laws including the EU Charter, Nigeria (1999), S. Africa (2000), N. Zealand (1982), India (2000)

- US Sunshine Act (1976) requires executive officials, when they conduct government business, to announce their meetings (time, place, agenda) in advance and to hold these in forums that are open to the public.

All 50 states in the US have open meeting or “sunshine laws” and all 13 provinces (states) in Canada have FIPPA laws

- **Privacy Act (1979)** restricts the government from compiling anything other than necessary information on a person, prevents the information from being accessible to anyone other than the person (<http://spectrum.troyst.edu>), and gives citizens the right to see records assembled on them.
- **Federal Register** - published every business day and available on-line (<http://www.gpoaccess.gov>) contains:
  1. Rules and regulations that federal agencies are preparing before they are adopted; and
  2. Detailed instructions on how to comment within the 30-60 day time period. ([www.access.gpo.gov](http://www.access.gpo.gov))

#### **NO F.O.I. OR SUNSHINE LAW BUT ATTEMPTS AT CITIZEN’S ACCESS TO DOCUMENTS HAVE BEEN SUSTAINED BY THE SUPREME COURT**

- **Valmonte vs. Belmonte** - requested the list of names of the opposition who were able to secure GSIS loans on guarantee of Mrs. Marcos [203, SCRA, 515-527 (1989)]
- **Aquino-Sarmiento vs. Morato** - requested that she be allowed to examine board records (voting slips) after review of movies and television production. [170, SCRA, 256-273 (1991)]

#### **HOW MIGHT PUBLIC SERVICE BECOME MORE TRANSPARENT?**

##### **PHYSICAL TRANSPARENCY**

- Office lay-out
- Directional signs
- Bulletin boards
- Process Flow Charts

## ADMINISTRATIVE TRANSPARENCY

(official gazettes, publications, information brochures)

- List of mandates, functions, memberships, and activities of department-created committees, task forces, advisory councils
- Newly enacted laws, executive orders, administrative orders
- Activities of the office (meetings, public hearings, field inspections, workshops, training) and their costs
- Schedule of meetings (time, place, agenda)
- Highlights of issues discussed, agreements reached in public hearings, meetings and consultations involving citizens participation

## ADMINISTRATIVE TRANSPARENCY

- Procedures, requirements, and approval criteria for applications
- List of pending (and approved)
- Statistics on arrest and
- List of department projects funded through GAA, PDAF, other sources (type, funding, source, date of completion, contracting party)

## SUBSTANTIVE TRANSPARENCY

### PRACTICING "DIGITAL" (ELECTRONIC) GOVERNANCE

"Digitalization of information and knowledge within a network which links every citizen, including the decision maker, and gives democratic freedom to everyone to access and make use of information"

- **Technical** - automation of tedious or repetitive governance tasks to improve efficiency of governance processes. [Automated filing of tax forms, checking the status of an application online etc.]

Practicing "digital" (electronic) governance

- **Facilitating / Supportive** -- using ICT to complement existing efforts/ methods to improve governance [Putting government information on a website, or opening avenues for people to communicate with government officials through email]

## SUMMING UP:

### WHY PROMOTE TRANSPARENCY IN THE PUBLIC SERVICE?

- Simple, accessible information is vital for efficient, accountable and transparent system
- **TRANSPARENCY** promotes other good governance practices—efficiency, accountability, participation and responsiveness
- **TRANSPARENCY** increases citizen's approval and support for public institutions, leaders, and democratic processes and institutions
- **TRANSPARENCY IS GOOD GOVERNANCE**

## Reaction from Media



Alecks Pabico

Head, Multi-Desk Media

Philippine Center for Investigative Journalism (PCIJ)

The Philippines has almost prided itself with the freer or the freest press in this part of the world or if not, in the world. That of course is partly true. Probably, at best the longing for story glory or worse, embracing myth. This is especially true in the recent practice of the presidential prerogative and other prevalent issues like the killing of journalists under threats in the form of libel suits many of which have come from the presidential spouse, among others. But the more important answer, which many of the media will take for granted is the still to considered right of access to information in matters of public concern. While there are several reasons but maybe I think that first, we know that information is power. That is so true among journalist in the journalism profession. I still would like to believe after all are engaged cutthroat competition to outcoop each other. So there's this element of exclusivity. This is the culture of cultivating someone in the mode of "deep threat." What's the Philippine counterpart? The second is that even in the absence of a law like Atty. Malaluan mentioned earlier, our experience in accessing public

information has been fairly better compared to our South East Asian counterpart. So that's what I really think is the main reason why this has been much of an advocacy among a lot of journalist and having said that, journalists are a direct beneficiary of this proposal.

We, at the PCIJ certainly welcome the passage of the law, in the 14<sup>th</sup> Congress hopefully. The Senator has been on the forefront in pushing the limits and boundaries of the Constitution in the courses of during investigative journalism. We are also part of the Access to Information Network. And we would like also to believe that we are the first to demand our public officials their Statement of Assets and Liabilities (SAL). We were able to obtain the declaration from the executive and legislative departments and even local officials but we face a wall when it comes to the judiciary. Since then the request for statements has become a perennial mode of attention between court spokesperson and PCIJ so much so that we have stopped requesting in the last several years. We feel unfortunate. It is ironic that the court has issued laws that are very liberal of what constitutes matters of public interest on the one hand but behaves in this manner, in reality. These to us introduce a special category of public officials, as far as the magistrates are concerned. We hope that the proposed bill will finally be able to address this. We also acknowledge the provisions of the law providing specific procedures to standardize how report for public record should be processed and will be able to address the difficulty most journalist encounter. Hopefully, with the law, we will be doing away our practice in the PCIJ is to send letters to government agencies asking for copies and furnishing a copy to the Office of the Ombudsman and Civil Service Commission but that is not really the butting average of that because the Ombudsman is in itself selective in giving out information.

I'd like to go to the point where Professor de Vera said on electronic governance and digital democracy. I am addressing this to the government. There has to accompanying integration of how governance should be done in this country to promote transparency and accountability. I'd like to believe that technology can expand the right to information that can be downloaded. While the compliance has improved somehow through the years, it seems that somehow some of them are still stuck. The case in point here is the House of Representatives. It has lots of documents or information that can be downloaded by citizens and journalists. It cannot even produce us a soft copy of the budget. As Obet Bersola will tell you: "Are you able to get a copy of the budget?" They are not able to promptly update the resolutions. And another agency is the COA with all these report but right now it's only 2004 and 2005. So the previous months are not provided to citizens and journalist, The SEC is another case. This is in the case of information to private sector. Until now, the records had not been digitized for people to view and then for agencies

where we cannot get the bidding documents. Finally, I'd like to address my last point to my fellow journalist because like I mentioned earlier that we also contribute somehow by not providing or disclosing to the reading public the documents. Here again, I go back to technology being a useful tool for journalist. We have this at being unlimited access that can be maximized for downloading of such documents. The PCIJ is strong in this arena. Somehow, some other new sites have been able to provide downloadable materials and other links and important information that provide context, background and further information on what stories are being reported. This has to continue in a more dramatic way.

## Open Forum

For an organized flow of the open forum, Ms. Alikpala divided it into four (4) sets, each set being composed of three entertained question or commentary, and the panel reacts by sets as well.

### *(1) Ma. Cristina M. Alikpala*

How confidential is the government's position in the negotiation panel, for example, economic treaties, when I used to do advocacy on the WTO and it is extremely hard to get information from DTI, DA, and NEDA. One either id they did not know themselves what the other was doing which is for me not very smart, but also particularly on the General Agreement on Trade and Services. It seems that there's only one person in NEDA who knows what the offers are, and the report. Even if you talk to the NEDA personnel who know what the offers are, and the report, they don't know themselves. And this person who knows what we are doing on GATS, I have only seen him once. It was at the UP School Of Economics. And it's surprising because if you look at the GATT, its coverage is wide-reaching and broad. And so I would like to seek reaction with the panel regarding the confidentiality of negotiating positions from our government.

### *(2) Marlon Aquino (Congressional Planning and Budgeting Office)*

This is not the official position of the House of Representatives. This is just a commentary. Because there's no legislator here, I might as well raise some points. First, I would like to thank Nepo for putting Congress in a good light now as to the Freedom of Information. Another thing is we are here today, we have met with Dr. Habito last week, and we are here now because we are planning to get inputs for the February 9 activity of the House. And the Office

of the Senate will try to do some workshop wherein we will map out possible inputs to the legislative agenda setting formulation for the 14<sup>th</sup> Congress. That's why we are here and hopefully with your permission, we want to be part of that. Some issues, Nepo and I know and I commiserate with Professor de Vera because it's not only the CSO or Usec. Guevara has a problem in accessing information. That's why we tried some innovative schemes to get the information we need. Undersecretary Guevara knows some of the schemes we employed. One, we dropped names or we seek an internal route where we look for people we know from the inside. So, it does not only happen to you but to us. Another issue is that with regard to, I asked this with Joseph Tigue's regarding public contracts and whether it should be accessible and he told us that any private contract with the government should be made public. Another, the problem is that there are some things that need to be resolved in regard to that because from the lawyers here, that's a proprietary condition in contracts themselves. And so it could not be made public. That's one issue that needs to be resolved. How do you resolve that clause? In fact, I was surprised that when I met my friend, they were placing the confidentiality clause in those contracts. That's a big problem. How do we address that? We also had this forum attended by Maita and I was pleasantly surprised that an official of a foreign chamber in fact, gave the recommendation that to improve transparency, contracts with the government should be uploaded in the web. It surprised me. How do we realize such proposal now because as you said, transparency will resolve a lot of things? In fact, in one forum I attended last week, I brought up an issue that we discussed with Dr. Habito. The secretary in regard to infrastructure wants to know what contracts was it in which oversight agencies cannot access the said contract. So I might be rambling because I didn't prepare. It's just a sort of a commentary. So I guess there are a bit of issues with respect to transparency. And I appreciate the efforts done by AER and EPRA and hopefully the Freedom from Information Act will be passed in the next Congress because this will solve a lot of problems.

*(3) Ria Lee (Legal Rights Center)*

I would like to raise two points. Atty. Malaluan touched on this topic. Alternative Law Group (ALG) works with the marginalized sectors of the society. It is generally composed of the public affected by infrastructure and government projects. It is permissible, however, that we are talking here of information of which would mean, it would be open, transparent or accessible. But also I think that part of its being like that, it must be affordable. As what was mentioned earlier, one document cost P12, 000. Government contracts, by experience, are very thick. You cannot photocopy it without putting it out of the office. And so for a marginalized sector, urban poor, indigenous, fisherfolks--they cannot afford that. Between trying

to survive and accessing those information about infrastructure and government project that would affect their lives primarily. Even if the information is open, it's available, but then it's not affordable. It seems like nothing. Add to that, there are centers located outside the city. Add to the cost of transportation, in fact in Davao City, the SEC don't have there the information. And it will still take two weeks to get those documents here in Manila. Maybe we could add to our legislators to add a special provision that information must be free for indigents because not all sectors of society have access to NGO assistance. Secondly, in this paper produced by EPRA Multi-Stakeholders, may I suggest that in the first page, it should be added that if there's no sufficient disclosures of the human rights assessment of the project, it shouldn't be information that is not limited as to who the contracting parties are, the amount, etc. It should include the impact so that the affected can make an informed decision.

*Responses from the panel:*



*Professor de Vera:*

I don't know any experience with other Departments except DA. And the NGOs are happy in terms of their participation and negotiation. That is a function both of mechanism and participation built-in within the procedure of DA as Undersecretary Serrano is very close and open to the issue. And as to the access to information in Congress, that is true. I remember when I was a very young technical assistant during the time of Senator Laurel. We want to get information on the behest loans in 1988. We never got it. Eventually, Joker Arroyo did it in 1996 because that was the basis of a privilege speech. As to accessibility, you can get a copy of these bills on the websites. You have the

title and committee referrals you can get from the Senate, and not from the House for reasons not clear to us. The people in the house reasons that there are plenty of local bills. You can upload only national bills of national application. It is quite surprising that we if we go at the local level, even the constituents of the legislators do not have access to the bills. And the district offices and the members of the house do not provide the copies either. Regarding the issue of accessibility and affordability, I guess this will be answered if these documents can be uploaded electronically. There are already plenty of internet connections all over. And I guess before the impact, what is the most important is the document itself. They must have that so that they will know the agencies and institutions which could be held accountable.

*Undersecretary Guevara:*

I have participated in the negotiations and I really hate the confidentiality with respect to negotiations. In fact, I was actually the one who leaked information to the press with respect to the International Monetary Fund (IMF) negotiations because I feel that we should develop a strong advocacy against performance. During that time, people were protective of their won turf. I guess the Bureau of Internal Revenue (BIR) would not like the public to see areas of weaknesses and incompetence. And out of my frustration, I used to leak out important documents to the press and I know that my friends in the IMF would think that when confidential informations are on the news, they would identify that it was I who leaked the information. So, I really believe in the power of information to inform the public and to put a check and balance.

*Atty. Malaluan:*

In one of the treaty negotiations, the legal lines are drawn in terms of legal positions in favor of the claim of confidentiality and privilege. They say that is the parliament's secret. There's a case presently pending in the Supreme Court in relation to the negotiation of the Japan-Philippines Economic Partnership Agreement (JPEPA) and so the legal arguments are there. When the JPEPA was signed, the treaty was published after the fact of its agreement then the Supreme Court case, I guess, has become moot in a way. We don't know if the court will make pronouncements as to that. On the legal side, it might take another public like that to see the result. But the fact is, that's not a common fact because the consultations as to Japan's side or its stakeholders were ongoing. And that's even if the Congressional hearing would disclose a copy until it was raised in court and after it was signed, still there was no decision. And I would also point out that there's really a great level of impunity with how the government has been tending towards its secrecy. And

even in cases, you know, that there's a problem as well, when Professor de Vera mentioned that DA was open to negotiations with respect to agriculture. That is quite a personal relationship with Undersecretary Serrano and when he's gone, we don't know what will happen next. And secondly, that culture of privilege few even among NGOs is very bad because we have experienced that other NGOs are hiding information because they say that if Undersecretary Serrano knows of it, then their own access to it will be gone. That culture is similar to the culture in the media. And so this goes back and well. And just one note: I have been speaking about the law on access to information for quite sometime now. And I feel like getting old. And surprisingly, with different audiences each time, our colleagues with ATIN, it is common concern and but there's always a refreshing insight. Dr. Guevara's point on the incentives and motives to secrecy should be addressed from that perspective. And so I think it would be good to think of that.

*Dr. Habito:*

Actually, I share the concern particularly on the JPEPA being secretive on the proceeding even though at its earlier part, it has sought some of the academe to the IDS which might be a potential opportunity that we should negotiate so on and so forth. And I think that the attitude was wrong. As Atty. Malaluan said, it is always a function of the different personality concerned. It just so happened at WTO now that Serrano and DA have been very open in sharing the effort by really consulting the CSOs but unfortunately that's not the case with the DTI. Now, I don't know if Tin-tin will agree at my era when it was the GATT, even when the GATT was ratified subsequently in the Senate, for my own time in the NEDA as well. Indeed, that she was correct that there was one person that was very proprietary about the negotiations there. So as not to be unfair to that person, I will just discuss the matter with Tin-tin privately later on. Again, calling back attention to the fact that personality works sometimes. And that is the reason why we need legislation like this to institutionalize the sharing of the information. And I would like to comment that our culture has already deeply ingrained among employees down to the local level. I remember that long before I left the government, I did some research on the energy process. And I sent a research assistant from UP Los Baños to the minister just to get data on the international prices of oil prices. It was very public information. And so it was a logical thing to ask it from the Minister of Energy. When my poor assistant, coming all the way from Los Baños, was told that they needed a signed letter from your boss. I see it's a culture among government people no matter how public the information might have been. We, in the Civil Society, must take steps on how to address that. Beyond legislation, you cannot change culture. That culture should be overcome.

(4) *Emily Green (Newsbreak)*

It seems to be that any information as determined by the president could not be disclosed, that pertaining to the JPEPA, corruption—could be private items. And I would like to ask in the white book that you gave out, it refers to the people you were trying to get back at....making accessible to everybody...

(5) *Jose Aron Pedrosa (Sanlakas Youth Coalition, FDC)*

Is there an establishment of a centralized and information database or is the advocacy on the uniform, speedy procedure to accessing information?

On the level of discourse, since it was already mentioned about governance, is the push for the Right to Information Act a prelude to a larger movement to democratic information? Meaning to say, that people will not only get information but more importantly later on, to generate information.

(6) *Flora Gilbert (UNESCO)*

We, at UNESCO, are very much involved with policy discussions concerning public domain. My comment concerns on how information could be integrated. By public domain, I mean informations generated by the government, all research institutions funded by the government, government-initiated loans and all informations and increments are public domains. And of course, there's copyright information. Of course it can be used by the public free of charge when used for educational purposes. Now, my concern is how this can be integrated in the law in terms of the IRR where we can identify existing institutions that can help make this possible like the Commission on Information Communication Technology and community E-centers that are now being established. That's about 1, 500 of them and the barangays and the marginalized society, NGOs, CSOs in terms of access to information. I think there are many terms that could probably be integrated in the law. We are in touch with the drafters of the law and projects. For example, we have a project on access to justice. Even that, it is access to information that gives protection to women and children, in different ways, etc. And these are integrated and not available to the male beneficiaries. And so I hope that all these bills can be integrated in the existing mechanisms that can be set up and make the law more attractive. I think it is the law which links to the needs of the marginalized sectors. I have been reading the Right to Information Act, and many are anchored on the needs of the deprived. To make it socially attractive, it's the package.

*Responses from the panel:*

*Atty. Malaluan:*

On the exceptions, that is the trickiest part in the bill. And we are grappling for the longest time. In fact, the first bill did not have any exemptions. And that is really a push forward the idea of a full access to information is good. In fact, the economy even, for example, in one article is a challenge both among commonly accepted exceptions. We did grapple with that but at the end of the day, there has to be balances. And the bill has to move forward. And no bill will pass in Congress without any of the exception. And so the struggle is to put it as many as possible and to provide guidelines, for example, on the National Security. There was a letter of intent from Marcos on the classification system which is being used by government agencies and that gives all heads of agencies the function to classify all information. Of course, some heads are not even aware of that authority. There are those that do not know. And so they can have even classes of confidentiality and so on. And this law tries to limit that by putting centralized power only to the executive and the legislative to be expressly given in executive form. And there's as standard as well in terms of what would classify as a national security. That's the problem always in having to compromise grey areas but, yes, there are compromises that we have done so far. Going over and over this bill for the longest time as well, we are happy that there's fresh eye looking at this. Certainly, we will be happy to discuss it. Sometimes, it cannot be loaded all here, for example, record-keeping. It cannot load here. It's a comprehensive thing. It requires two legislators as well. And there's national archive bill pending in Congress.

*Professor de Vera:*

There was a bill that wanted to create a privilege statistical system during the Aquino administration. The intent was that there will be centralized information that is kept limited, taken with the power that agencies will have a power to create statistical data. It passed the Senate and the House. It was vetoed by the president because of strong lobby from the cabinet member who was going to be affected by that bill. So I would agree that maybe there are issues here to be captured in another administration. And maybe that proposal can be studied in order to look at it as confidential information.

*Atty. Malaluan:*

Just a very quick note on the contract. That's part of the impunity integrated in the confidentiality clause contracts. But it is in violation of the

Constitution. That leaves us again to the loopholes in terms of enforcing this right particularly as I have mentioned. The remedy is that you have to go to the Courts. And then, all you can do to complete disclosure and not have the sanctions because you know Congress.... And that is why, that will be partially addressed for clarity in the disclosure as well as the sanctions that are imposed.

(7) Dr. Recide (UP School of Economics)

First of all, I'd like to thank the panel. I just have some comments. I think right now we are at the stage where we need to be enlightened about some of these things from an economic standpoint, like commodity expenditures. They have at least expenditures, balance sheets, income statements. So I think COA has an important role. As far as I know, they have audit reports Congressman by Congressman, project by project. Next, another point raised by Aquino being strong to veto a bill, it's good. Now, I don't know. In reference to this, I also would like to emphasize that it is important in one case because we do not have laws that guarantee freedom from information. But they are not enforced. There's another need on the executive level, we cannot do so much about the selected officials, so in the executive level, we can lobby for the appointment of cabinet and other serious official of the government who actually internalize the need for transparency. We should campaign for more professional cabinet members. We should ask where they come from. We should ask for their background. I am the specialist for infrastructure in EPRA and based on our discussion in several fora, the problem really is the lack of transparency. You have different motives for lobbying per project which are not transparent. It causes distortion when the government approves on the project. And we need to go about it. And this applies also to the executive and the legislative level.

(8) Isagani Serrano (PRRM)

....What are the real points here?...with the billing method. I still could sense that a right is...human equality. The citizen will not be able to exercise their right if they do not know what it is...And so it's like.. And if you don't know the information, you wouldn't ask for it, right? It should already be declared as a matter of policy with the government. That is the responsibility. My wording here, Nepo, is "allow", if there is a demand whereas, it is the policy of the government to do full disclosure not to demand. It's already a long battle on policy in the World Bank and ADB with regard to that particular contention...in whether the government should take it from upper mandate. Second, on matters of grey areas, those to what needs to be classified. They are to be part of the declaration of the policy. But in grey areas, the policy

should be in favor of disclosure rather than withhold it. I don't know when the bill should be placed. How do we recognize the privacy, as in the case of Anti-Terror Bill? Is it already a law? Until it is still fresh, I hope there's reconciliation.

*(9) Obet Bersola*

I think this is the time of Ramos on the electronic version in the same detail...(inaudible)...Would this not be able in Congress and how do we get it? If not, why?

*Responses from the panel:*

*Atty. Malaluan:*

We in fact held meetings for the issuance of ...and that ties in.. provision for alternative disclosure of information on the part of the government. I guess they can put incentives, as one suggested earlier. So yes, it can be included in the principal as well as the distinct provisions.

*(10) Marlon Aquino (Congressional Planning and Budgeting Office)*

For the access of information in Congress, I guess the problem is one, I think I have only learned a few months ago that the memory of Congress' website is low. That's true. I think that the e-government funds for the 2007 budget. And part of that is to upgrade the site of the house. And even the CPBO does not use an electronic copy. What we get from the DBM is the voluminous folders. And so for those who want to get a copy of the proposal, get it from DBM because we also ask from them. As to GAA, it's difficult to track changes because it's hard to print a copy of that. And that means, they don't approve on the basis of the electronic copy.

*Responses from the panel:*

*Dr. Guevara:*

Nepo, I'm already worried about your exemption where the president is given the power to classify certain information. I understand your predicament with respect to making compromises but I think when the sponsor of a bill from CSO or government's side. I think we should draft a bill that incorporates the real bill so that at least we can have a benchmark. Let them designate the bill

but at least you have your parameters. The second point I would like to stress is really the impression of this bill address the problem as to lack of transparency. This bill sets standards, procedures, and penalties, but it will not cure all the problems. From our side, we can do a lot to uphold transparency. I think we should have a scorecard on all government agencies using transparency as criteria. And so we should choose the most opaque government agency and the most information friendly agency. Let them be subject of public censure. As I said earlier, there should be a high level of conscience. I guess there's a threshold that government officials get shy on it. Again, I would like to invite everybody to the experience of Naga City especially for the marginalized.

Synergeia, I guess, empowers everybody by identifying all the responsibilities and all privileges of very citizen. For example, every citizen of Naga is entitled to get their business permit in five (5) minutes. And they have the number of the mayor where they can easily report the incident. I think there are many empowering measures that we can do for the bill being legislated.

*Professor de Vera:*

Three quick points. First, I think one that must be considered is that we need leadership in Congress to promote transparency. I remember before there was another professor. We took a project in discussing with the speaker. He was disinterested. He said that we should just do a "pr" project because if you see the website of CPBO, it's really small. You did institutional leadership because this requires your resources. Then, the website of the US Congress, the most developed, has really appropriated an amount to slowly develop it. But leadership was crucial there in putting money. Then, we need to convince the speaker and the senate president. Second, on the Congress in relation to GAA, I agree. I have a difficulty, too. And I didn't want to go over these thick documents. I just have to photocopy portion of the document that I had to analyze. It's really difficult to get data. Finally, on the scorecards for the government national agencies by the CSO, we did a transparency project with USAID on the transparency, accountability and participation of the local government. We tried to develop an index to measure it. The DENR people did not like the scorecard that was given to them. These initiatives can be useful to strengthen the bill and correspond to.

*Atty. Malaluan:*

Just two points. In the 2007 budget, there's an initiative to push Sen. Drilon to insert in the 2007 budget a provision on the access to information. And we

lift it or worked a language for that. And it's complete in terms that the procedure is there in one provision. While it is year legislation, it's very important because this year is an election year. I know some would be monitoring election hearing but those coming from the budget in a surreptitious way can be used. Second, on NGO assisting in active transparency, one idea is to have this statistical data really be put up in a public website because when you buy that, they will make you sign a waiver that you will not prohibit it. We will validate that. We can publish because that is our right. Taken from an economic standpoint, there's really a public good in the production of those documents. And it should be restricted on a user-basis.

*(11) Marlon Aquino, CPBO*

About the GAA, I remember my friend telling me whose sister works at COA that they are using the electronic copy. Another thing is that we have a project with the World Bank right now. You may access it. It's in beta stage but it should be an oversight website with the CPBO. Data, agencies, feedback and e-mail but it still needs to be refined. It's [www.bantaygobyerno.org](http://www.bantaygobyerno.org). You may want to look at it and give feedback. This is one way to promote transparency. And not only transparency, but on the use of intervention. If you read Cielito Habito's column last week on Congress, we are the culprits. I give my hands to him because instead of feeding us, what he did was to tell his management committee that instead of attacking us, what we have learned from CPBO and how that information could be used with NEDA. The relationship of NEDA and Congress, that is. Another, even DENR requested the information not on the ranking but on the feedback of the constituents. We just blocked out. And DENR was actually excited in the feedback from the department. I think it's two way not only transparency, but on the good use of information. And I'd like to thank Dr. Habito for that. That was 10 years ago.

*Response from Dr. Habito:*

I just want to put a couple of things on the context of the law itself. Two only: Is it okay to insert a clause there that prohibits clauses in the contracts entered into by the government, proprietary or confidentiality. Hopefully, we will no longer have that which prohibits public access. If that is done, then that can be invoked instead of a lack of law. Another, can we do also have a provision that requires all contracts entered by the government with private sector to be posted on the website? I would have to see that expressly stated in the bill. There are two provisions that will really require public disclosure.

*(12) Vergel Santos, Business World*

It seems that on my own moral conviction will be weakened show in any way secretive. I would like to know who that cabinet member under Cory Aquino who is trying to block and in fact succeeded. Second point, I am sure that all these things, once they happen will be much easier for us. But it seems to the media themselves, have been able to match the kind of risk that the likes of Guevara took, I think media should exercise more aggressively. I don't see enough posted questions. I think media continue to rely on official sources that are not best sources in the world. And in the meantime, that we are trying to get things done, it might be of use in the effort to let the media to get the wall.

*(13) James Miraflor (Youth Against Debt)*

Is it possible that on top of a uniform standard in the access to information, we have some sort of an administrative agency which will serve as buffer in the public information? These agencies can act which could proactively give information even when there's no demand if they see the confidentiality on the particular detail on information.

*(14) Emeterio Peña (Business Mirror)*

Just two points. I would like to tell Atty. Malaluan that water cost more transparent at the Manila Water Company consistent with the financial or information, stock, etc. I would like to ask if this law, once it is passed, would unnecessarily expose the target companies to unscrupulous information that might reveal their trade secrets. At SEC, it is very open on ownership and financial statements that are not necessarily available at the BIR. I think if this law is passed and give too much access to information, the SEC or any government agency might be forced to disclose information related to economic activities even corporations whose stock are not listed in the PSE. Nevermind, if it is listed because everything is disclosed.

*(15) Maris dela Cruz (FDC)*

I would like to make suggestions. Actually I haven't read yet the version of the bill. But still the suggestions can still be incorporated regarding the duration of the government agencies to respond to request for information to be available to them. In our experience, they actually say they will consult their supervisors. It usually take one year or beyond. And that is like when they ask from our comments on public hearing. We might as well ask the same. Another, it should also be required from them to have written response to the

public. These are even s=used by officials as an excuse. That should be an SOP. Once documents are submitted in Congress, the public must have access to it. We have experiences like that. Through the hearing, we were able to subpoena these agencies to give those documents.

Also, in the access to information, will this be included also cover on creditors like ADB or World Bank? Last year, they have estimated loan to the private sector. We call it as disapproved by government and ADB. But they withheld information from us. They only gave the copy after the loan was approved. There was no chance to intervene effectively. Once approved, it's even harder to make amendments to that.

*Ms. Alikpala had to leave for she a scheduled appointment in UP. She transferred her task to Ms. Maita Gomez. Before she left, she expressed that she felt that all seems to be in agreement here that there's a need for Freedom for Information Act. And seemingly, the main reason why the Act has been languishing in Congress is lack of priority. She continues that the greatest trick the devil ever played is to make us believe that he didn't exist. She clarifies that what she meant with that was of the existence of a serious opposition to such bill. Even though if the people will say it loud publicly. And that is why there's a need for a clamor for its passage. And she asks Professor de Vera to name who the cabinet member was. And finally, she thanked everybody who attended and participated in the forum.*

*Professor de Vera:*

For the record, DOLE, NEDA and DA officially opposed the bill. But we were able to surmount that even if they opposed at first, we were not able to push for it. It's difficult to document. But from the reports, it was NEDA who was able to convince the president. That was in 1989 or 1990. That was Cory's time. The bill was filed in 1988. That's what I heard. The other question I'd like to respond to is the creation of the agency. I don't think that's logical. The important thing is the framework on how to do it. If you create another level, you might create problems on transparency. More importantly, the interest of the bill is to cover all branches of the government. So, it's really difficult to conceptualize.

*Atty. Malaluan:*

On the issue of the agency, the original bill had an information commission, but in the process we had to drop it but the decision to built on existing

powers of the Ombudsman. But it was difficult. On the private sector information, we did not tackle the private sector because meaning we were proceeding from a Constitutional guarantee with respect to the government. And we also know that it will increase the opposition in Congress. And so we took it one step at a time even noting the challenge. Of course, certain corporate decisions in SEC but there are certain information, for example on the tariff setting. Maynilad is asking for tariff increase. And certain information that will not be available to SEC. And so we left the issue on the private sector. But we are happy that EPRA is taking it up in relation on how it impacts. And in the consolidation to the draft which touches on information by private sector...technical working group. And I hope that EPRA will continue this as it is in its competence to develop it.

*Dr. Guevara:*

I'd like to allay the fears here about my Kababayan on the confidentiality of information with respect to private citizen. In fact, we have problems of transparency in government offices. Here, on the public information supplied by the citizens. If you look at the BIR Tax return, you would say that it's vague. Taxpayers don't fill up the spaces. Rather, it's indicated there to just see attached. I, myself, is trained to look at tax returns, but I cannot understand the kind of information. I think the opaqueness applies also to citizens. Therefore, you can never have secrets from its tax returns and this submitted to SEC. Also, when they were trying to push for the Comprehensive TAX Program, and are even trying to lift the Bank Secrecy Act and really giving BIR the power to look at the bank record because as you know transfer of funds and tax evasion is really done electronically and due through banking system. But without this power to BIR, it is really toothless. Unfortunately, people don't trust BIR. Then Secretary Teves wanted to publish the top 100 taxpayers to show who the people are, especially the self-employed, but are not even included in this list. But the BIR and some public sectors said that it will unduly subject us to hold up as if they don't have enough information. I think we should ask them because they have access to information.

*(14) Remi*

Is it not that we incur debt, if it is approved by ADB or World Bank? When the project is not done on time, interest tends to go up. Apparently, from the fiscal budget, we pay big amount because of the money not being used on time. But there are plenty of projects of the government not done on time and even for two years. And so we pay for the interest in two years.

*Responses from the panel:*

*Dr. Guevera:*

You were correct on that. We have also observed that. But a stop has to be done on that. In fact, during the time of the Japanese occupation, we have terminated loans but on grounds that there was lack of funds as our counterpart. It's already the time of the Spanish regime now, that's why I don't know.

*Atty. Malauan:*

I just forgot to answer Maris' question of FDC. The provision on the duration of responses from government agencies is on the bill of information on the hands of international financial organization. Because there's a compromise, on the international financial organization laws have been to get information provided it is in the government already granted by financial institutions like in the case of India, on their water privatization. World Bank intervened on the bidding consultancy and telling the government to change the bidder who won. The government relented. World Bank get, not convinced by it, used their international information laws to get email exchanges on the part of the government. And that setback their privatization.

## Signing of the Manifesto

Two sets of manifesto were prepared and placed on every table. One contained an interest in signing the manifesto immediately as an advocacy to the campaign on the Freedom of Access to Information. And the other one contains a proposal to sign the manifesto upon consultation from their organization. They mentioned that the manifesto is also available online through [www.aer.ph](http://www.aer.ph).

## Closing Remarks

Ms. Maita Gomez thanked everyone who attended, and formally closed the forum at 12:50 in the afternoon.

