

WATCHDOGS

WE ARE NEEDED MORE THAN EVER

G-WATCH CENTER, 14 FEBRUARY 2018

A great Chinese sage said it best: “A politician says one thing during the election, and something else when he takes office.”

At the height of the presidential campaign in 2016, then-candidate Rodrigo Duterte promised voters, “I will fix the government,” and that he will do so by “simultaneously attacking crime, criminality, and graft and corruption.” This commitment was further underscored in his *A Platform for Genuine Change*, which enumerated several measures to strengthen accountability, including:

- The passage of the Freedom of Information Law.
- The lifting of the rule on public officials’ secrecy.
- Institutionalizing governance partnership with civil society.
- And instituting a government that is based on the four principles of transparency, accountability, participation and predictability.

But less than two years into his administration, Duterte is already singing a different tune. In fact, in the past few months, the President and his allies have undertaken several actions that threaten to undermine the system of accountability that we have in place.

- First, is the apparent attack on press freedom, which has targeted media organizations critical of the administration. These include the *Philippine Daily Inquirer* (which was recently bought by businessman and Duterte ally Ramon Ang), and news website *Rappler*, whose registration was revoked by the Securities and Exchange Commission (SEC).
- Second, was the President’s instruction to the Philippine National Police (PNP) to withhold from the Commission on Human Rights (CHR) any information regarding alleged cases of extrajudicial killings under the so-called “War on Drugs.”
- Third, was the decision of Malacañang to have the statements of assets, liabilities and net worth (SALNs) of Cabinet officials redacted or shaded with black ink to ensure their “right to privacy.” This was done as then-Presidential Spokesman Ernesto Abella assured the public that the government continues to uphold transparency and accountability in public service.
- Fourth, was the signing of Executive Order No. 34 on 17 July 2017, which stated that government procurement worth Php500 million and above will no longer need the approval of the Government Procurement Policy Board (GPPB). This

action directly undermines the Government Procurement Reform Act (GPRA), which introduced that provision to limit personal discretion which, in the past, has resulted in numerous instances of corruption.

- Fifth, the Philippine government's moves to replace competitive bidding with a method called a Swiss challenge that does not require a bidding process without prior consultation or public scrutiny and without clear accountability measures.
- And sixth, is the present attempt of the House of Representatives to change the Constitution through a Constituent Assembly. Under their proposal, legislators seek to remove several accountability provisions in the current charter, by lifting term limits and by abolishing the Office of the Ombudsman (Article XI, Sections 5-14). They also intend to curtail press freedom by adding the qualifier "responsible" before the phrase "freedom of speech, of expression, or of the press" (Article III, Section 4), thus making it vulnerable to state censorship.

If accountability continues to be undermined, then we should expect corruption to become more widespread and government abuse more prevalent. More than ever, it is important for citizens to undertake collective action to protect and advance transparency, participation and accountability under the Duterte administration.

Citizen action for accountability achieves success if four pre-requisites are met: access to information, mechanisms for accountability, citizen action (voice) and response of government (teeth). These pre-requisites are premised on the democratic order and basic human rights that the current legal-institutional framework of the country guarantees. How do we ensure that citizen accountability groups and watchdogs are able to do their job to hold government to account? Are the four pre-requisites of effective citizens' action for accountability still being protected, promoted and upheld? And how can democratic values and respect for human rights be best defended?

As an independent watchdog, Government Watch (G-Watch) aims to take part in this endeavor by initiating monitoring activities along with our local partner organizations based in different parts of the country, especially focusing on key progressive and anti-poverty programs of the government. If and when Charter Change pushes through, G-Watch intends to undertake a civil society monitoring and advocacy campaign to protect the accountability and anti-corruption principles and mechanisms provided in the 1987 Constitution.

It is only through the citizens' direct efforts can accountability be assured. After all, politics is so important to be left in the hands of a few politicians who say one thing during elections, and something else once it is over.

Another Threat to Accountability - This time on Public Procurement

Monday, January 29, 2018

By: Joy Aceron, G-Watch/ Accountability Research Center

As we continue to confront the threats to press freedom, the danger of an exclusive and fast Constitutional Change process that attempts to remove certain human rights and accountability provisions in the Constitution and the prevailing impunity in the implementation of the government's Drug War, there is another challenge that democracy defenders concerned about the Philippines must also contend with: a possible threat to open, transparent and accountable public finance management, specifically procurement.

Latest news have reported that the Philippine government intends to challenge the public/competitive bidding policy under the Government Report and Procurement (GPRA) Act, replacing it with a method called a Swiss challenge. According to news reports, "Under the Swiss challenge system, a government agency that receives an unsolicited proposal for a project from a private group invites third parties to match or offer a better proposal. The original project proponent would be allowed to match that counterbid or improve on it." The President finds this better than the current system that he describes as "a policy of lowest bid ...that dragged us into corruption." (See <http://newsinfo.inquirer.net/964140/duterte-no-more-public-bidding-on-big-projects#ixzz55XL4SCdR>)

It is not the first time that the President criticized the GPRA and has taken actions to undermine it. On 17 July 2017, President Duterte signed EO No. 34 that overrides a requirement in the GRPA. As per the said EO, government procurements worth Php500 million (US\$10 million) and above would no longer need the approval of the Government Procurement Policy Board (GPPB), a requirement in the GPRA.

The government is using the Build-Operate-Transfer (BOT) law to justify the use of the Swiss challenge method. Republic Act No. 6957 or the BOT law provides "that national government can enter into a public-private partnership for flagship infrastructure projects to speed up their construction. The bidding process is not required under this arrangement." (See <http://newsinfo.inquirer.net/964310/palace-swiss-challenge-for-big-govt-projects-legal> and http://www.lawphil.net/statutes/repacts/ra1990/ra_6957_1990.html)

There has been no discussion on how to ensure accountability in utilizing this method. Whether this is legal has yet to be settled. The extent and effectivity of the use of the Swiss challenge method is also unclear.

The safeguards of the GPRA are there for a reason: to limit discretion that, in the past, resulted in big corruption. (See <https://www.senate.gov.ph/publications/PB%202008-05%20-%20Plugging%20the%20Loopholes.pdf>).

While the criticisms about the GRPA - that after years of implementation, corrupt contractors have already adapted and learned how to go around the safeguards - are valid and need to be addressed, taking an action that undermines an existing law, is not subjected to public scrutiny and without clear accountability measures is a red flag that needs urgent attention.

Not As Good As it Seems:

A Closer Look at the 2017 Open Budget Survey Result on the Philippines

Thursday, February 1, 2018

By: Joy Aceron, G-Watch/ Accountability Research Center

The result of the latest Open Budget Survey (OBS) is certainly encouraging for the Philippines. Since the Report has come out, the report has been covered by media (<https://www.rappler.com/nation/194902-philippines-rank-open-budget-transparency>) and has been hailed by the government as an affirmation of its efforts on budget reform.

In a press statement, Budget Secretary Benjamin Diokno states: "We very proud of what we've accomplished to date. In surpassing our Asian neighbors, we have further cemented our position as a global leader in Open Government. It encourages us to persevere, to do even better, in the years ahead." (<http://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/506-philippines-ranks-first-in-asia-for-budget-transparency>)

The OBS Report is best appreciated in context and with the proper nuancing of its details and the implications given the current situation. This is not being captured in the reports and statements to date.

Timeframe of OBS 2017

- Spearheaded by the International Budget Partnership (IBP), the OBS started in 2006 and is described as "the world's only independent, comparative assessment of the three pillars of public budget accountability: transparency, oversight and public participation." The OBS Report is "produced by independent budget experts around the world, using internationally-accepted criteria developed by multilateral organizations."
- The 2017 OBS is the sixth round that evaluated 115 countries across six continents. For this round, according to the report's methodology, the data collection took place from September 2016 to December 2016. "Thus, the OBS 2017 assesses only those events, activities, or developments that should have occurred up to 31 December 2016; any actions occurring after this date are not accounted for in the 2017 survey results," says the Methodology section of the OBS Report.
<https://www.internationalbudget.org/open-budget-survey/methodology/>
- In the Philippines, the period of September 2016 to December 2016 was a transition period. The Duterte administration assumed office on June 30, 2016. This means that the Report covers the third to sixth months (4months) of the new government. During this period, it is safe to assume that the same policies and programs of the previous government were in place, unless they were explicitly zeroed in for scrapping from the onset by new government.

This is an important detail of the context of the 2017 OBS Report. Given this context, the Report hardly reflects what has been achieved by the new government. Instead, it covers what has been sustained immediately after the assumption of office of the new government and largely reflects the practices and policies adopted by the immediately preceding government.

Constant Transparency

- The Philippine's 2017 scores in transparency or Open Budget Indicators (OBI) show improvement compared to its standing in the last OBS in 2015. PHL's score increased to 67 (out of 100) from 64 in 2015. The PHL's score on transparency is highest in Asia and far higher than the global average of 42.
- However, according to the report, "the Philippines' score of 67 on the 2017 Open Budget Index is largely the same as its score in 2015." This is a detail that is not mentioned in the statements. The Philippine summary of the report did not elaborate on this, but this is likely in account of its methodology and scoring. The OBS summary report on the Philippines also listed down budget information disclosure practices that started in 2015 that are presumed to have been continued in 2016 and noted an instance when a document (Mid-Year Review) was not made public on time.

Concerning Participation Score

- On participation, the Philippines scored 41 out of 100. This translates to limited opportunities for the public to engage in the budget process.
- This is viewed positively by the Philippine budget department in its statement because "the Philippines ranked first in ASEAN" and the PHL score is "three times the global average at 12...and one of only four countries to achieve a moderate score in the category, sharing this distinction with New Zealand, Australia, and the United Kingdom."

However, in a Tweet, the International Budget Partnership (IBP) stated that the global trend is bleak. The IBP Tweet says: "amid declining public trust in government and increasing inequality, progress toward global budget transparency has stalled for the first time in a decade." This makes the global average not exactly the best benchmark for comparison.

- This round's score is below its 2015 OBS of 67, which translated to presence of "adequate" mechanisms for citizen participation in the budget. Though OBS explains that there has been changes in its methodology and indices on this pillar this round in consideration of other global standards, the drop from 41 to 67 is something that is better underscored.
- For the Philippines more importantly, getting a score that translates to "limited opportunities to engage the budget process" should merit concern across all sectors, especially from civil society. This is the country that prides itself of mainstreaming participation at all fronts of governance. The immediate previous administration won on the platform of participatory governance and had consistently claimed achievements in advancing and deepening citizen participation through its programs and policies.
- It is not stated in the PHL summary report, but the question that needs to be asked is whether the termination of the national participatory budgeting program of the Aquino government called Bottom-Up-Budgeting (BuB) under the Duterte administration made a big difference in the score. The scrapping took place during the period the OBS survey was being conducted. (See <https://www.pids.gov.ph/pids-in-the-news/1737>). Meanwhile, while the participation of the Philippine government on the Open Government Partnership (OGP) was sustained in the transition of 2016, this did not happen without difficulties due to threats of backsliding. Had this been factored in too?

Puzzling Findings on Accountability

- The Philippines' standing on Oversight in the 2017 OBS has improved on legislative oversight from limited and weak in 2015 to adequate and limited in 2017. Its score on oversight of the supreme audit institution went down 9 notches from 92 in 2015 to 83 in 2017, though still the same equivalence of "adequate budget oversight."
- This finding seems undramatic, though it is good to understand the reason for the improvement on legislative oversight and the slight decrease of the score of Philippine's supreme budget institution. The Commission on Audit (COA) has sustained its Citizen Participatory Audit, hence it is puzzling why the score went down.
- Finally, this part on the summary must be an error: "the head of the institution is appointed by the legislature or judiciary and cannot be removed without legislative or judicial approval, which bolsters its independence." In the Philippines, the COA Chair is appointed by the President as per the 1987 Constitution. In fact, this fact has been raised as one institutional flaw that posts potential danger in the independence and autonomy of COA.

Communication, Communication

- We have seen the impact of international recognitions in legitimizing reforms undertaken by governments. This is a double-edge sword; it may or may not be beneficial to a country's effort to open government and deepen democracy.
(See <http://g-watch.org/resources/political-democracy-and-reforms-poder-studies/opening-government-philippines-open-government-partnership>)
- The usual danger is oversimplification in communicating the key findings of an international assessment, especially in the case of indices that rank countries according to numerical scores. The devil is in the details, yet the details of the context is often left hidden, buried in the loudness of numbers that say very little, hence can easily be misrepresented, even manipulated, by whoever is presenting the figures.
- A critical question needs to be raised: shouldn't it be the responsibility of international bodies doing international assessments and global rankings to ensure that their findings are communicated properly and that the conclusions of their research is not misrepresented in a way that detracts the very reason they are doing what they do? Ranking may motivate better performance from governments. Or, real status of government performance can be muddled by bad communication.