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GOPAC SESSION 4: THE RIGHT TO INFORMATION AND CIVIL SOCIETY PARTICIPATION IN THE FIGHT AGAINST, AND PREVENTION OF, CORRUPTION

delivered by
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Dear Parliamentarians and other delegates, welcome to the Fourth Workshop Session of the 5th GOPAC Global Conference. I am immensely privileged and humbled to have been given this opportunity to address a community that has tremendous influence in the direction of anti-corruption policy all over the world. I must, therefore, give thanks to the organizers, particularly Dr. Naser Al Sane and Senator Edgardo J. Angara, as Chairperson and Vice-Chairperson respectively, for this honor bestowed upon me.

I think it was serendipitous that my talk on the Right to Information is scheduled as the first session of the day, as morning appears to be the most appropriate time to have a meaningful discourse on a legislative measure normally referred to as a sunshine law.
HISTORY

The metaphor that a Freedom of Information (FOI) Act shines like the sun is accurate in that an FOI measure promotes transparency, allows openness of and access to information, otherwise only available to Government, its officers and employees. Indeed, it gives me poetic satisfaction to note that the principle of Freedom of Information takes its roots from the 18th Century – the Age of Enlightenment.

The Nordic countries must be honored and acknowledged to have been the proponents in this movement calling for freedom of information. The first legislation in the world of this variant was passed by the Swedish Diet in 1766. It precedes the Universal Declaration of Human Rights by 182 years and its equivalent in the United States of America by 200 years. In three (3) years’ time, the Swedish law crafted by Finnish Anders Chydenius will be celebrating 250 years of existence. With such a forward-looking perspective and vision, is it any wonder that the human development index of Scandinavian countries remains to be one of the highest in recent history and which is a region that enjoys the exceptional reputation of being the least corrupt in the world.

It would be more than a hundred years from this landmark legislation when trade expanded the wealth and middle class base in the Philippines in the 19th century. This allowed for Western enlightenment to cause the early stirrings of nationhood and for the country to produce sons and daughters who will strongly invoke the ideals, principles and salutary notions of freedom of information and push first for a more progressive and inclusive empire that was a Spain but which will quickly graduate into a call for complete independence.

It cannot be emphasized enough that our heroes and heroines were shaped by the words written in the novels of our Jose Rizal, in the searing commentaries of the underground newspaper, La Solidaridad and in the pamphlets secretly printed by Andres Bonifacio’s Katipunan. Because of access to the printed word, a national epiphany began to take shape as our hero Apolinario Mabini observed, “Filipinos saw their condition for the first time.”

The Philippine revolution in our colonial history was not to be the last time that our people, driven by information and experiences of corruption,

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2 Carmen Guerrero Nakpil, Heroes and Villains, p. 35.
inequality and irregularity, participated in a fight against a debilitating and corrupt system of government. In 1986, when the Filipinos had little access to any information as they develop real time, people, mostly listeners, were moved by the impassioned plea of the influential Jaime Cardinal Sin, through the independent radio station, Radio Veritas, to go to EDSA and defend those who withdrew support from the authoritarian regime of Ferdinand Marcos. Little did the millions in yellow who heeded the call and populated the long, wide avenue that was EDSA realize that they were to augur the start of the Color Revolutions that swept the globe towards the 1990s and demonstrated the power of civil resistance and a nonviolent call for reform.

**FOI AS HUMAN RIGHT AND ANTI-CORRUPTION TOOL**

The Right to Access Information is a human right and which therefore creates obligations for the dutybearer, which is the State, to ensure the promotion, protection and fulfillment thereof. The International Covenant on Civil and Political Rights (ICCPR) clearly recognizes the individual’s two-pronged right to seek AND to impart information.

Today, we see a proliferation of FOI laws documented to have been passed in 93 countries, 60 of which constitutionally protect the right to access official information\(^3\). Despite the propagation and popularization of FOI legislation, there remain impediments in the provision of access to information. Very recently, the whole world was saddened by the tragic passing of one of the brightest stars of the World Wide Web, internet activist Aaron Swartz. While his methods may not be universally accepted, Swartz embodied the desire of a common citizen to gain free, cheap and unimpeded access to information that can educate and enlighten the masses.

Notwithstanding the continued difficulties in making effective FOI legislations, I believe most, if not all the people in this room, agree with me that freedom of information is THE most effective modality to prevent corruption. Its basic premise is that a well-informed citizenry can and will meaningfully participate in the governance of a country. Indeed, one of the aspirations of institutionalizing the Freedom of Information principle in our country is for our people to enjoy economic and social mobility as anticipated fruits of political maturity. Freedom of information will ensure the people’s access to public documents and information that would enable them to hold accountable the Government for any irregularity or wrong doing.

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\(^3\) GOPAC Manila 2013 material on Session 4.
Transparency and participation as principles of the human right to good governance are not anymore concepts that are relegated to only pedagogical discussions in the Philippines. We have witnessed how openness and freely affording access to information to the public has empowered the locals and encouraged their active participation in governance. Such emancipation of the citizenry transformed a lethargic city into a booming economy. This was the story of Naga City under the leadership of Jesse Robredo. He personified good governance such that when he lived, he was the only mayor who was awarded the Ramon Magsaysay Award, Asia’s equivalent to the Nobel Peace Prize. So profound was his impact to our national psyche that even in his death, he was awarded Filipino of the Year. In a historical sense, the remembrance of a Jesse Robredo encapsulates the Filipino nation’s elusive dream of complete emancipation from crippling and retrogressive corruption.

CONSTITUTIONAL AND STATUTORY FRAMEWORK OF THE RIGHT TO INFORMATION IN THE PHILIPPINES

For an FOI law to be an effective tool against corruption, I concur that the following elements highlighted by GOPAC must be existent, namely: there is a regime of free expression; the FOI law makes maximum disclosure of information possible; it limits the fields about which information may not be disclosed; it allows clear, uniform and speedy procedure for access to information; and, there is a measure to protect whistleblowers.

Here in the Philippines, the two succeeding 1973 and 1987 Constitutions recognize the people’s right to information on matters of public concern.

Interestingly, notwithstanding the regime of secrecy and authoritarianism that ensured only a limited access of information, the Marcos Supreme Court frowned on the non-publication of presidential issuances and ruled that publication of laws of general applicability penned by the President is a requirement of due process and that “before any person may be bound by law, he must first be officially and specifically informed of its contents.” One of the petitioners of this case was an institution of human rights discourse in the Philippines, the late and great lawyer, Lorenzo Tañada. It is noteworthy to underscore that almost 30 years from the resolution of the case, his grandson, Erin Tañada, as Deputy Speaker of the House, is now doggedly pursuing the passage of the FOI bill in the House of Representatives.

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4 Ibid.
5 Tañada vs. Tuvera, 136 SCRA 27.
In the democratic regime of Pres. Corazon Aquino, the right to information was further strengthened by the Constitutional provisions which underline as a national policy the full public disclosure of all its transactions involving public interest as well as enshrining the right of the people to information of matters of public concern. Also ensured by the Constitution is the 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 but subject to certain limitations.

The Supreme Court of the Philippines has ruled that such provisions are self-executing thereby dispensing the need for any ancillary act of the Legislature.

Due to the absence of a specific FOI statute in the Philippines, jurisprudence interpreting the constitutional right to information provides definitive guidelines in the enforcement of such right.

In the case of *Chavez vs. PCGG*, the Court recognizes governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national matters. The same case held that closed-door Cabinet meetings are also a recognized limitation on the right to information. Similarly, in the case of *Chavez vs. Public Estates Authority*, the Court ruled that privileged information extended to Presidential conversations, correspondences and discussion in closed-door Cabinet meetings. The same exemption to the right to information extends to investigations of crimes by law enforcement agencies.

By far, one of the strongest cases upholding the Constitutional right to information came in the wake of public anger against the gag order of then President Gloria Macapagal Arroyo via her Executive Order 464 which disallowed any member of her Executive family to heed the invitation of the Senate to appear before its inquiry in aid of legislation. Our Supreme Court ruled that Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to certain types of information of a sensitive character. In a clear victory for human rights advocates, the Court in

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6 1987 Constitution, Sec. 28 Article III.
7 Article III, Section 7.
8 Ibid.
9 Legaspi vs. Civil Service Commission, 150 SCRA 530.
10 299 SCRA 744.
11 384 SCRA 152.
12 Senate of the Philippines vs. Ermita, 488 SCRA 1, p. 51.
the said case declared that the “extraordinary character of the exemptions indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure”.

However, two years later around 2008, owing to the political temperature at that time, the Philippine Supreme Court was again deferential to the Executive and ruled that presumptive privilege of presidential communications when invoked by the President on a matter clearly within the domain of the Executive shall be recognized and be given preference or priority, in the absence of proof of a compelling or critical need for disclosure by the one assailing the presumption. In this case, the Senate, intent on uncovering corrupt practices and policies of the previous administration, called for an investigation concerning the National Broadband (NBN) Project. There ensued an impasse in the Senate proceedings as one member of the Executive family, invoking executive privilege, refused to divulge more information on an alleged bribery attempt on him and specifically refusing to answer the following questions propounded by the Senators: (a) whether or not the President followed up on the NBN Project; (b) whether or not she directed him to prioritize it; and (c) whether or not she directed him to approve it. In upholding the right of the Executive to invoke privilege communication in a Senate inquiry, the Supreme Court concluded, thus:

_The recent clamor for a “search and truth” by the general public, the religious community and the academe is an indication of a concerned citizenry, a nation that demands an accounting of an entrusted power. However, the best avenue for this noble undertaking is not in the political branches of government._

The demand for accountability, despite this setback, continued. It may have taken a different path but the well-intentioned efforts proceeded unfettered and resolute. And contrary to the aspiration of the Court, it was still in the engagement of a political exercise where the citizenry’s laudable stance against the abomination of corruption was made manifest. Last year, the “hero”, if one can call it that, was an innocuous public document which caused the Chief Justice of the Philippines his rank and esteem. The members of the House of Representatives, acting as prosecutors, proved the disparity of his

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13 Ibid.
14 Neri vs. Senate Committee on Accountability of Public Officers and Investigations, 564 SCRA 152, p.196.
15 Ibid.p.233.
declaration in his Statement of Assets, Liabilities and Net worth or SALN from his bank accounts, which was an act deemed by the Senate, sitting as an impeachment court, to be an impeachable offense. Due to his failure to disclose to the public his real assets, liabilities, and net worth in his SALN, as required of all Government officers and employees, the Chief Justice was found guilty by the Senate for betrayal of public trust and culpable violation of the Constitution.

A victory against corruption could not have been anymore clearer than such a political exercise of our Congress which demonstrated how a public document can be used as a most potent tool to fight corruption.

FYI ON FOI: THE ROAD AHEAD

The governance philosophy of President Benigno S. Aquino III of *tuwid na daan* or the “straight path” has harvested gains in our relentless anti-corruption campaign. But it is noted that certain conditions have to be engendered in order for the right to information to be meaningfully practiced. One fundamental requirement is the passage of Freedom of Information laws. The willingness and the good faith of this Government to make an authentic commitment to transparency as an important element in democratic, efficient and honest governance will not be enough unless there is a very well-crafted law that not only encourages requests for information by the public but also affords speedy processing of the same.

In my humble opinion, I assess that the Philippine society is now poised to divest itself of the shackles of secrecy and complacency. We have taken the responsibility of slowly and steadily strengthening our democratic institutions. As a people, we are starting to be inveigled by the promise of a well-informed citizenry. Philippine media is one of the freest in the world. And, we have a very vibrant civil society, actively engaging in various discourses and advocacies. After many years of legislative lobbying, the opportunity to create a Freedom of Information Act is within our reach. The path has been laid out before us. We need only now to simply take it. With that thought, I close with an ancient Buddhist expression that I find enlightening: *If we are facing in the right direction, all we have to do is to keep on walking.*

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16 Id, n.3.
17 Id, n.3.
18 Id. n.3.
Thank you very much for your time and attention. I wish you all a meaningful journey. *Mabuhay po kayong lahat!*