



Open Letter to the OGP Steering Committee

8 February 2013

Dear Members of the OGP Steering Committee,

Access to information is a foundational commitment of the OGP, a value that is central to and underpins all of the OGP commitments. This is reflected in the eligibility criteria, which note: “An access to information law that guarantees the public’s right to information and access to government data is essential to the spirit and practice of open government.”

States are only required to obtain 75 percent of the eligibility points to join the OGP, reflecting a pragmatic approach which seeks to facilitate the induction of States into this movement. The expectation is that this will help them transition into a virtuous upward cycle of ever greater government openness.

Even as we endorse this approach, we strongly believe that having a right to information (RTI) law (for access to government information has been recognised as a human right under international law) cannot be seen as an optional commitment for OGP Participating States. We believe that an RTI law is so central to the effective delivery of all of the OGP goals, that all Participating States should be expected to move decisively towards the adoption and proper implementation of such a law.

In practice the precise implications of this will vary from State to State, and we are not suggesting a rigid template. However, States must demonstrate a genuine commitment to adopt an RTI law, where they do not yet have one, to improve their law, where it is unacceptably weak, and to promote proper implementation of the law, where a good law is already in place.

We would like to bring to the Steering Committee’s attention the failure of the Philippines to demonstrate such a genuine commitment to adopt an RTI law. While the Executive did transmit an FOI Bill to Congress, as promised in its OGP Action Plan for 2012, it failed to take the necessary measures to promote the FOI Bill’s passage. Such inaction was a key factor in the failure of the current Congress to pass

this long overdue legislation, despite a determined and broad national campaign. This failure of the Government of the Philippines is outlined in the latest statement by the national campaign, The *Right to Know, Right now!* Coalition, a copy of which we attach.

This development is rendered particularly deplorable by two circumstances. First, the Philippines is a member of the Steering Committee, and a founding Steering Committee member at that. According to the OGP Articles of Governance, Steering Committee members are expected to show “leadership by example for OGP in terms of domestic commitments”. Second, in its OGP Action Plan, the Philippines explicitly states that the proposed FOI Act is a “critical component” of its Public Access to Information Initiative. By failing to take reasonable steps to promote the adoption of the law, in circumstances reminiscent of the similar failure of the previous Congress, the Government of the Philippines is in breach of its own Action Plan commitments.

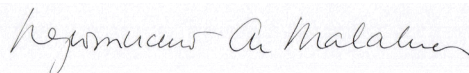
The OGP Articles of Governance indicate that where a Participating State acts contrary to the OGP process or its Action Plan for three consecutive years, the Steering Committee may review the continued participation of that State in the OGP. Presumably a mechanism is envisaged for notifying a State in any year that it is sliding in any of its commitments, particularly those that are central to the OGP framework.

We therefore call on the OGP Steering Committee to take action to signal to the Government of the Philippines that its actions are not in accordance with the norms and expectations of the OGP. Failure to act in this case will, we believe, pose a risk to the credibility and status of the OGP process.

Yours truly,



Toby Mendel
Executive Director
Centre for Law and Democracy



Nepomuceno Malaluan
Co-Director
Institute for Freedom of Information (Phils.)



STATEMENT OF THE RIGHT TO KNOW, RIGHT NOW! COALITION
06 February 2013

FOI: Mag-Ingat sa Hindi Tunay¹

TODAY, we close our people's campaign for the passage of the Freedom of Information (FOI) Bill in the 15th Congress. We have, to the extent that our capacities and limited resources permitted, exhausted all avenues that we thought were open to us to get positive, decisive action from the leaders of the House of Representatives and from President Aquino no less.

Yet they turned a deaf ear to our summons for leadership. Instead they caved in to their fears of an informed and empowered people. They gave us the lie to their avowed claims of transparency and good governance.

The campaign committed one big error -- we had thought, in all earnestness, that the passage of the FOI law in the 15th Congress would have the support of Aquino. Three years ago he had promised he would accord the bill top priority. Our sad lesson: Words are to candidates cheap, and Presidents lie, indeed.

Contrary to giving the FOI Bill priority, Aquino hobbled the campaign from the beginning with his variably petty and serious mutating concerns about the FOI Bill. Our reaction was to address these concerns and to engage his Study Group after it was belatedly created.

When finally he endorsed the work of the Study Group in January 2012, at the height of the Corona impeachment, we had thought the tide had changed. We were wrong again. Nothing would be heard from him since in support of the measure, except, ironically a left-field endorsement of the Right of Reply in a November 2012 speech. This no doubt affirmed and emboldened the obstructionist proponents of a patently unconstitutional Right of Reply rider to the FOI Bill at the House of Representatives.

Taking cue that the measure did not really enjoy Aquino's full support, the House

¹ Translated: "Beware of fakes"

assured the death of the FOI bill by deliberate inaction. Committee on Public Information Chairman Rep. Ben Evardone, who had jumped ship from the Lakas-Kampi party of former President Gloria Macapagal-Arroyo to join Aquino's Liberal Party, simply delayed and cancelled committee hearings on the bill on and on. When finally the committee members forced the vote to send the bill to plenary, two more Lakas-Kampi turncoats to LP holding the highest positions in the House -- Speaker Feliciano Belmonte Jr. and House Majority Leader Neptali Gonzales II -- made sure the FOI bill will not get off the ground.

Unto the FOI Bill's dying days in the last nine session days of Congress, we appealed to President Aquino to certify the passage of the FOI bill as an urgent measure. His response, given through his spokespersons was curt -- he wants to see a "healthy debate" on the FOI bill in the House.

It was an insult to say the least. It was as if the President was clueless about how the triumvirate of Evardone, Belmonte, and Gonzales had made sure that absolutely no debate would happen on the FOI Bill whether in committee or in plenary. And rather than taking the trio to task, the President, national chairman of the Liberal Party, even rewarded Evardone for his lackluster work, by installing the latter as a spokesperson of the administration's hodgepodge of an electoral coalition.

And so the FOI Bill dies again in the 15th Congress under Aquino, as it did under Arroyo. But a startling point of contrast must be made, too. The FOI Bill had advanced even much farther in Arroyo's time when it came just one step away from signing into law. In Aquino's time, it did not take off at all in the House.

Where does the FOI campaign go from here?

The people's movement for FOI will push on anywhere and everywhere, despite or in spite of Aquino and his allies. Rights, after all, are never served on a silver platter. Fight for our rights we must, and we will.

In the 16th Congress we commit to persevere even more. By the power of our own will and by the numbers of our people, we will heighten our demand to get our FOI Act.

We know this to be true: The FOI Bill did not pass in the 15th Congress because Aquino and the House of Representatives failed us. But the success story in our campaign for the FOI Bill's passage into law is writ large in the ever-growing movement for the passage of the FOI Bill that has united nearly all sectors of Philippine society. They include workers and businessmen, the youth and students, the media, the churches, the civil servants, professors and school officials, migrant workers and their families, and a whole range of civil society organizations across the nation.

They exclude, of course, Aquino, his allies, and politicians of all stripes who seem truly scared that their secrets and shenanigans will be exposed by an empowering transparency tool that an FOI Act will be.

Today we do not bury the FOI Bill. Instead we keep it alive and recommit ourselves to push it in the 16th Congress. With greater vigor we will keep the FOI bill alive on the streets, across all media platforms, and wherever else local communities can set it in motion, through a more determined push for legislation, and also by practice.

Today we bury instead the legacy of ineptitude of the House of Representatives of the 15th Congress, and the falsity of Aquino's promise as a candidate that he will see to the immediate passage of the FOI Act. Today, we stop hoping and appealing for Aquino to push the FOI Bill in the 16th Congress. By all indications, he supports reform bills that also the donor community, investors, and credit ratings outfits favor, but on the FOI Bill, he equivocates ceaselessly.

We take this opportunity to thank all the sectors and citizens who championed and stood up for the passage of the FOI in the 14th and 15th Congresses, despite the odds. The Senate, as an institution, has delivered not once, but twice, and there is no reason to doubt that it will again deliver in the 16th Congress.

We make special mention of Sen. Gregorio Honasan II, who made good on his commitment to work for the FOI Bill's passage in the Senate in the 15th Congress as committee chairman, and Sen. Alan Peter Cayetano, who did the same in the 14th Congress. We note that in both instances that the FOI Bill was passed by the Senate, it was headed by Senate President Juan Ponce Enrile.

At the House, while an unresponsive leadership and an indifferent majority killed the FOI bill a second time, a handful stood their ground -- Deputy Speaker Erin Tañada of Quezon, Rep. Teddy Baguilat of Ifugao, Representatives Walden Bello and Kaka Bag-ao of Akbayan Party List, and Representatives Sherwin Tugna and Cinchona Cruz-Gonzales of CIBAC Party List.

We also note that the 14th Congress' Committee on Public Information Chairman Benny Abante of Manila has kept alive his advocacy for the FOI bill, in his private capacity. We acknowledge the emerging supporters in the House, such as Rep. Emmeline Aglipay of Diwa Party List, and commit to work with them to expand the group of FOI champions in the 16th Congress.

In the Executive, we thank Justice Secretary Leila De Lima for being the one and only Aquino Cabinet member to publicly stand up for the passage of the FOI Bill in her speech before the Global Organization of Parliamentarians Against Corruption (GOPAC), a breath of fresh air amid the asphyxiating "it is up to Congress; we want a healthy debate" line of President Aquino and his spokespersons.

The people's movement for FOI lives on. We will never relent in our efforts to demand an open, honest, accountable, and transparent government that we all deserve.

In time, we will claim our victory.

Signed:

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