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FOI and the State's egemony of Information

By the Policy Study, Publication, and Advocacy
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Twenty-four years since the Constitution was ratified, the provision on the people's right to information (Section 7, Article III, Bill of Rights) still lacks an implementing law – seen by many civil libertarians as an instrument giving teeth to such principle. Years of efforts to enact an implementing law have hit snags and now, in the 15th Congress, President Benigno Aquino III has reneged on a campaign pledge to prioritize its legislation. As a token of appeasement, the presidential office has drafted its own bill. The measure, however, retains a long list of restrictions to public information in the guise of executive privilege as well as defense, security, and foreign policy limitations.

Since it was shot down at the 14th Congress until its snail pace today, the Freedom of Information (FOI) bill appears to be locked in a battle of attrition. Given this gridlock, it would take awhile before an implementing bill gets enacted or even if realized, whether it would put to inconsequence the state's hard-line position to favor the people's right to know.

While concerted efforts by the media, citizens' watchdogs, human rights advocates, and other groups for the FOI deserve wider support there is a need to infuse a new track. This track aims to address a basic requirement in the right to information, that is, for the state to comply with its obligation in making available a

database infrastructure of official acts, transactions, or decisions at all levels and units of government.

The prerequisite to effective governance is not just transparency – the people's unrestricted access to public information – but to make sure first that there is information to which the people can have access. The Philippines has a large stock of laws and issuances on information access including rules on writs, administrative orders, circulars, and agency guidelines. Disappointingly, however, public information suffers from scarcity or inadequacy, poor system and storage due to administrative incompetence, bureaucratic maze, and other problems. In many instances, doctored documents, lies, and disinformation are passed on as legitimate information. Even worse, data that potentially reveals a trail of corruption or some other criminal act is either destroyed or swept under the rug often with the complicity of high bureaucrats.

In the dark

At the local level, many barangay units keep poor records or barely publicize programs and projects for which big public funds and foreign grants are earmarked. Uninformed of such transactions, the

public is kept in the dark on how public money is spent – or misspent for private ends. In another instance, mining operations and other so-called development projects are promoted through their PR spinners as vectors of employment and community development when the reverse is true – large communities suffer irreversible losses to their life, property, and environment.

Despite modern information technology, many national agencies maintain poor system of documentation and database. A prime example is the Commission on Elections (Comelec) where the problem is not just the lack of transparency but the shortage of data or in safekeeping files. Piles of election records are lost allegedly due to fire and other calamities although investigations reveal possible human intervention. The adjudication of election protests generated by the recent first automated elections is made futile by the absence of credible document trail caused by errors in the technology software and by the poor management of election database.

The dismal record of government information is partly a result of sheer bureaucratic inefficiency and a poor appreciation of its importance for effective public service. Accuracy is also sacrificed when information is sanitized or “massaged” to produce rosy pictures with their authors motivated by greed of promotion or other agenda. Economic authorities have been criticized for altering social indicators to reduce unemployment and poverty figures, hence, to project positive growth. Government multi-media services, far from being the machinery of public information and education as mandated serve instead as partisan mouthpieces of the chief executive as well as the military’s counter-insurgency psywar campaign.

Defense authorities tend to bloat national security threats and scenarios in a bid to lobby for increased U.S. military assistance. This was illustrated lately when they hyped about a Chinese threat in the disputed Spratly islands followed in the next breath by a call for U.S. armed intervention. Information that is unreliable

or inaccurate is fatal: A concrete example is when weather authorities issue a wrong forecast or none at all leaving large populations at the mercy of devastating typhoons and flashfloods.

With the labor department, Philippine Overseas Employment Agency (POEA), and immigration bureau showing discrepancies in OFW statistics, no government agency is effectively keeping track of Filipino contract workers much less of abuses committed against them overseas. With these discrepant statistics compounded by faulty monitoring of potential flashpoints and instabilities in areas where OFWs could be displaced – especially in the Middle East and northern Africa – crisis management will always remain reactive and aimless.

Reliable, accurate, truthful

Daunting indeed is the challenge for the state bureaucracy, with 6,000 bureaucrats on top of some 1.5 million employees, to put its house in order in terms of making public information reliable, accurate, and truthful. There have been proposals in the past 30 years to “re-engineer” this bloated bureaucracy but the way public information is turning out to be far from being ideal today raises a question whether such efforts ever took off. Aside from corruption, mismanagement, and poor system of transparency and accountability a weak architecture of information leads to a failure in public services.

Malacanang’s hard-line stance putting restrictions on public information involving defense, security, foreign affairs, and executive privilege is baseless and is open to suspicion. To insist on such restrictions is to justify violations of sovereignty and territorial integrity resulting from secret transactions and treaty negotiations involving various presidents with the U.S. and other foreign governments. Whether in the cold war Mutual Defense Pact of 1951 or the more contemporary Visiting Forces Agreement (VFA, 1998), the national government has invoked “presidential prerogative” and confidentiality to insulate their

negotiations from critical public scrutiny – the very same lens that would have prevented far-reaching damage to national interest arising from arbitrary impositions by foreign powers. Clearly, many treaties and executive agreements proved to be inimical to the national interest; they were entered into primarily to promote the interests of foreign governments in return for which political and economic support was extended to ruling regimes in the Philippines.

Until now, the executive office refuses to compel the armed forces to comply with Supreme Court (SC) orders under the writs of amparo and habeas corpus to release information linking military suspects to the extra-judicial killings and disappearances of activists. Perpetrators of human rights violations are shielded from restrictions to security information for reason that without it vital military operations would be jeopardized. Such irrationality legitimizes state terrorism and makes political murder a military privilege.

The invocation of “executive privilege” by Gloria M. Arroyo in the middle of her term to prevent Cabinet officials from testifying in Congress effectively aborted further legislative investigations of corruption charges against the former president. President Aquino III now hints that he will invoke the same – which he had denounced while in Congress - by retaining it as a restriction to public information access in the executive layer.

Clearly, the presidential strategy with regard to the FOI bill is to put heavy restrictions so as to make the government in control of public information. Such impediments will favor the state if and when the bill is passed – or would make legislation more protracted so as to stall its final enactment. Either way, the national government wins.

But it also signifies a weak regime. Hiding information makes a government unworthy of public trust. Fear of public scrutiny and criticism only means a leadership unsure of itself.

Stripped of its undue restrictions, the enactment of the FOI bill is a step toward making government transparent and accountable. Access to public information is also a step toward making all types of information compliant with the demands of accuracy, credibility, and reliability.

In the realm of bill of rights, the campaign for FOI deserves a broad public support. Opening up all official acts, transactions, decisions, and other data is a key to effecting people’s claim over governance and is a means for making government accountable to the people. The people have the rightful stake over public information. When information is owned by the people governance becomes more responsive to social and economic reform.

For reference regarding this issue analysis:

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