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**Statement of *THE RIGHT TO KNOW, RIGHT NOW! COALITION***

**15 February 2012**

**Coalition Welcomes People’s Gains in FOI**

The ***Right to Know. Right Now! Coalition*** welcomes the recent public endorsement by President Benigno Simeon C. Aquino III of the passage of the Freedom of Information (FOI) law and the release of the executive’s final proposed bill.

The President’s endorsement achieves two things: it removes the main reason why the bill has been stalled in the legislative wringer, particularly at the House of Representatives, and 2. it resolves the “concerns” about the bill that the President has expressed, thereby reducing the danger of a Presidential veto.

Yet most important of all, the endorsement reaffirms the Aquino administration’s commitment to transparency, accountability, and good governance, and clears the way for the long-overdue passage of the FOI law as part of the larger struggle to advance our human right to information.

**Cumulative effort, balancing of concerns**

The Aquino-endorsed FOI bill has been labeled as the “Malacañang version” but, in fact, it derives from the historical and cumulative efforts that began with the strengthened guarantees on transparency and the people’s right to information in the 1987 Constitution.

The present version finds its roots in various FOI bills filed post-1987 but the bill with deep collaboration from public interest organizations was first filed in the 12th Congress as House Bill 5784, sponsored by Representatives Joel Villanueva, Del De Guzman, Nereus Acosta, Loretta Ann Rosales, and Mario Aguja. A counterpart Senate Bill 2508 was filed by Senator Francis Pangilinan. The bills underwent refinements and considered inputs from various stakeholders, but failed to advance considerably in both the 12th and the 13th Congresses.

The biggest advance on the measure came in the 14th Congress as the campaign strengthened, consensus deepened, and commitment by champions in both Houses progressed. Under the leadership of Rep. Erin Tañada and then House Committee on Public Information chairman Rep. Benny Abante (with strong support from then Representatives Joel Villanueva, Del De Guzman, Risa Hontiveros, Walden Bello, and Satur Ocampo), the FOI bill hurdled third reading at the House on May 12, 2008 even before the close of the first regular session of the 14th Congress.

Senator Alan Peter Cayetano, as chairman of the Senate Committee on Public Information in the 14th Congress, then decisively shepherded the bill through the committee and all the way to passage on third reading, in partnership with Senator Juan Miguel Zubiri as majority leader, and with the full backing of Senate President Juan Ponce Enrile.

Unfortunately, the bill would not become law as the House leadership chose to kill it at its final legislative stage by refusing to ratify the bicameral conference committee report. It is the failed bicameral conference committee report in the 14th Congress that has been refiled by the champions of the bill in the House and the Senate in the current 15th Congress.

Securing President Aquino’s endorsement would be, we had hoped, the culminating episode to the FOI legislation. Early on in his term our optimism for immediate passage of the law was dampened by the administration’s mixed signals on the FOI, with the President expressing a number of concerns.

In March 2011, the President he created a study group to address his concerns. It adopted as template the proposed consolidated version drafted by Rep Erin Tañada as technical working group chairman for the House Committee on Public Information.

Based on our understanding, the study group worked to address the following key issues:

* The President’s concern that the need for confidentiality of certain national security matters is not adequately protected;
* The President’s concern that the latitude to afford free and frank deliberation of decisions with his closest advisers is not protected; and
* The bureaucracy’s concern that the penalties imposed by the proposed legislation are unduly harsh. In addition, the Study Group also looked at ways to further improve the bill, from the executive’s perspective.

We note that the Study Group has produced at least three amended versions. The first version it released embodied amendments that FOI advocates found unacceptable, in particular the wide expansion of exceptions, the removal of criminal liability, and the introduction of an Information Commission under the Office of the President (and hence, not independent), in place of the Office of the Ombudsman as an appellate body.

In consultation with and through the efforts of Rep. Erin Tañada, there have been adjustments in the Study Group amendments that reflected a better balancing between the President’s concerns and the protection of the people’s right to information.

In particular, while the insertion of the words “national security” in the exceptions was non-negotiable for the Study Group, it adopted the advocates’ suggestion that the safeguard provisions be strengthened.

In addition to reaffirming that the burden of proving an exception rests on government, the amendments provided that the exceptions are to be strictly construed, and that the exceptions are not used to cover-up crime, wrongdoing, graft, or corruption.

It confined the deliberative process privilege to the chief executive instead of making it available to all officials as it initially drafted, and provided limitations on its invocation. It removed all other new exceptions introduced.

It made the Information Commission independent by removing it from the Office of the President and by introducing independence mechanisms, and ultimately withdrew its proposal for an Information Commission altogether. It retained certain acts as criminal, while imposing high administrative penalties for those categorized as administrative offenses.

Finally, the Study Group on its own introduced a number of improvements to the bill, most significant of which is the inclusion of the Statements of Assets, Liabilities, and Net Worth(SALN) in the list of important documents that should be released to the public, without need of request.

**People’s gains in latest version**

No doubt the difficult and protracted process of FOI legislation owed in large part to the institutional resistance to a measure that will contribute significantly to democratizing and making accountable governmental power. Such institutional resistance is best exemplified by the brazen manner by which the House leadership of the 14th Congress killed the FOI bill.

In this context we again welcome the endorsement by the President and acknowledge the efforts done by reformers in the Executive like Sec. Butch Abad and Usec. Manolo Quezon.

In its latest form, the FOI bill if passed will mean substantial gains to all citizens.

First, it will impose a uniform and speedy procedure for people’s access to information, thereby removing the wide room for administrative avoidance of dis**c**losing information under current laws.

Second, it frees the broadest amount of non-sensitive information to easy and effective access for the everyday needs of citizens in availing of government services.

Third, for information that may be regarded as sensitive, and for which government presently invokes wide discretion in withholding, the bill now lays down clear limits on exceptions. In addition to defining the limits of exceptions, the bill reaffirms existing and adds new safeguards against abuse of exceptions. The government has the burden of proving an exception, which must be strictly construed, and may not be used to cover-up crime, wrongdoing, graft, or corruption.

Fourth, it identifies a list of documents of high public interest that are required to be disclosed without need of request, including SALNs that have otherwise been very difficult to access.

Fifth, it introduces basic standards on government’s record keeping and introduces various mechanisms to facilitate easy access of information.

Sixth, it introduces a number of better remedies to denial of access and violation of our right to information, including the imposition of substantial administrative and criminal liability.

All these will allow all citizens, not just the media, to effectively exercise their right to information:

* For news, general information, and notice of government decisions, policies, plans and accomplishments;
* To exact greater accountability of government officers and employees;
* To enable their participation in policymaking;
* To investigate corruption;
* To conduct research; and
* To avail of government services and programs.

To be sure, there will be continuing challenges that will have to be fought if the bill in its present form is passed. One of these will be the continuing struggle against the abuse of the broadening of the national security exception under the Malacañang amendments.

On this matter we argue that even in the present version we have achieved significant gains.

For one, we have already mentioned the safeguards that apply to all exceptions.

For another, we have secured the repeal of Memorandum Circular 78, a 14 August 1964 guideline currently still in use that provides for the classification of sensitive documents into top secret, secret, confidential, and restricted.

MC 78 is overbroad and grants authority to classify to almost all government officials. Under the memorandum, heads of departments have the authority to classify information as top secret or secret, which authority may be delegated. For confidential and restricted matter, any officer is authorized to make such classifications. The classes of information that may be classified under MC 78 is practically unlimited. Top secret matter may include “major governmental projects”; confidential matter need not involve matters of national security, and may include “such matters as would cause administrative embarrassment”; and restricted matter can include matters as vaguely defined as “requiring special protection”.

What is left is the task of obtaining a reasonable definition and scope of national security when the President issues the executive order providing the guidelines for classification as provided in Section 6 (a) of the bill.

The alternative offered by some of our allies is to force a clear definition of national security during the legislative process. We fear, however, that forcing a definition at this stage will only hold the entire bill hostage to a difficult debate, or invite a Presidential veto should the definition not be acceptable to the executive.

**Next steps**

In sum, we accept the executive’s proposed amendments to the bill. However, we encourage Congress to still consider non-contentious refinements and improvements.

The important thing, however, is to facilitate the immediate passage of the long-overdue FOI law.

In this regard we appreciate the firm commitment of Senator Honasan to submit a committee report to the plenary at the soonest, a commitment he made even prior to the President’s endorsement. We challenge the House leadership to now commit to the same.