

AID AND ACCOUNTABILITY:
THE STATE'S OBLIGATION TO ENSURE TRANSPARENCY AND ACCOUNTABILITY
AS TO INTERNATIONAL DISASTER AID AND ASSISTANCE¹

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ABSTRACT

Basic Statement of the Issue - This study delves into the role of foreign assistance with respect to disaster management in the Philippines and scrutinizes the existing mechanisms and processes instituted by the Philippine Government with respect to the handling of foreign aid. It will show that disaster aid transparency and accountability is not institutionalized in the Philippine legal system and that such lack of transparency and accountability has had the resultant effect of seriously hindering the effective and efficient management of disaster relief, recovery, and rehabilitation efforts in the Philippines. The study then aims to establish that the institutionalization of foreign disaster aid transparency and accountability measures is a State obligation under the 1987 Constitution of the Philippines and under the international law obligations of the Philippines. Lastly, the study aims to propose a legislative measure creating a legal framework that will remedy the problem plaguing status quo, ensuring that the Philippines will comply with its obligation to exact transparency and accountability with respect to foreign humanitarian aid.

Hypothesis – A comprehensive survey of existing disaster relief, mitigation, and rehabilitation laws and procedures in the Philippines reveals that there are no legal mechanisms directing the State to impose transparency and accountability measures as to the handling of foreign aid. This severe lack of transparency and accountability measures in the Philippine legal system has led to the serious mismanagement of disaster aid, relief, and rehabilitation efforts. Further, upon exhaustive review of the 1987 Constitution of the Philippines, local jurisprudence, and the Philippines' international law obligations, the Philippine Government's failure to adopt transparency and accountability measures as to foreign aid and assistance can be deemed an infringement of its legal obligation to uphold the right of the Filipino people to obtain access to information on matters of public concern. As the situation presented in status quo subverts the mandate of the Philippine Constitution and the various international commitments made by the Philippines with respect to ensuring transparency and accountability as to matters of great public interest, a legal framework must be introduced, making sure that the timely collation and publication of relevant information on foreign aid and assistance are institutionalized in the Philippine legal framework.

Methodology - In order to enable one to have a clear and thorough understanding of international disaster aid and assistance, this study will involve a survey of historical and economic data, case studies, and dissertations on the concept and nature of foreign aid and assistance. Furthermore, the study will examine Philippine constitutional provisions, deliberations of the 1986 Constitutional Commission, several Philippine statutes, current government policies adopted by certain State agencies, jurisprudence, and treaties and other international agreements signed and ratified by the Philippines. The study also includes certain interviews and interactions conducted with several government agencies, revealing the incessant and recurring problem of lack of transparency and accountability in disaster aid. Lastly, the study includes a draft legislative bill that may be proposed to the Congress of the Philippines to remedy the problem posed by the study.

The analytical framework utilized in conducting the study is the Right-Duty Relations framework of Wesley Newcomb Hohfeld, which views legal rights and duties as jural correlatives – whenever a legal right exists, there is a correlative legal duty that likewise exists to protect and safeguard such right, and vice versa.² The study endeavors to examine

² Cullison Allan D., A Review of Hohfeld's Fundamental Legal Concepts, 16 Clev.-Marshall L. Rev. 559 (1967)

whether or not positive law (sourced from the Constitution and international law) grants the Filipino people the right to information with respect to disaster aid, hence, correlatively establishing a corresponding duty on the part of the State to uphold, recognize, and protect such right.

Scope and Limitations of the Study – The scope of this study is limited to aid, assistance, and donations in the form of cash, kind, or service in times of natural or man-made disasters and calamities that are coursed through the Philippine government, channeled through the various government agencies and instrumentalities, as well as local government units. Disaster relief aid and assistance extended through private organizations, institutions, and individuals are beyond the scope of this study. In addition, loan agreements and funds coursed through the Official Development Assistance (ODA) mechanism will not be included in this study.

I. The Great Vulnerability of the Philippines as to Natural Calamities and Disasters

The significance of undertaking an extensive scrutiny on the manner by which the Philippines manages information on foreign disaster aid and assistance is grounded on the grim reality that the Philippines is one of the countries most susceptible to debilitating natural calamities. Within the years 2010 to 2013 alone, there had been 80 recorded occurrences of natural disasters that beset the Philippines.³ The World Risk Index, created in 2012 by the United Nations University Institute of Environment and Human Security (UNU-EHS), found that the Philippines is the third most disaster-prone country in the world, being heavily exposed to natural disasters brought about by climate change.⁴

Noting the critical need for the country to be disaster-ready in the face of impending calamities, the Philippine Commission on Audit (COA), the body mandated by the 1987 Philippine Constitution to examine the spending of public funds,⁵ made a critical assessment of the disaster management practices observed in the Philippines, in light of the widespread devastation caused by Typhoon Haiyan (locally named Yolanda), which ended thousands of lives and decimated several cities across the Visayas Region. The COA, in discussing the financial constraints with respect to disaster relief and mitigation, deemed that “the national budget continues to lag behind, still unable to meet the country’s many competing needs. The composition of government expenditures ... leaves little room for flexibility to allow a bigger impact on disaster spending.”⁶ Hence, international aid and assistance plays a highly significant role in disaster management efforts in the Philippines.

II. The Philippines and Foreign Aid

Being a developing country highly vulnerable to disasters and calamities, the Philippines has historically been one of the largest recipients of foreign aid.⁷ Since 1946, the

³ Centre for Research on the Epidemiology of Disasters, Emergency Events Database, *available at* <http://www.emdat.be/> (last accessed Aug. 18, 2018).

⁴ United Nations University Institute for Environment and Human Security, World Risk Report 2010, *available at* <http://www.ehs.unu.edu/file/get/10487.pdf> (last accessed Aug. 18, 2018).

⁵ PHIL. CONST. art. IX, § D, § 1.

⁶ Commission on Audit. “Disaster Management Practices in the Philippines: An Assessment.” <http://www.coa.gov.ph/index.php/reports/disaster-risk-reduction-and-management-reports?download=20593:disaster-management-practices-in-the-philippines-an-assessment> (last accessed Aug. 18, 2018).

⁷ Rajarshi Mitra. Foreign Aid and Economic Growth in the Philippines (An Unpublished Paper Examining The Role of Foreign aid in Per-capita Economic Growth in the Philippines), *available at* <http://ideas.repec.org/a/ebl/ecbull/eb-13-00061.html> (last accessed Aug. 18, 2018).

Philippine has been a recipient of substantial foreign assistance from bilateral and multilateral donors.⁸ Foreign donors' offer of assistance to Philippine Government are mainly given in the form of deployment of search-and-rescue teams and medical personnel, provision of relief goods, such as food, water, tents, and blankets, provision of medical supplies and vaccine, deployment of ships and aircrafts, and cash donations.⁹ The impact of foreign aid with respect to alleviating the destructive effects of natural calamities in the Philippines was greatly apparent in the aftermath of Typhoon Yolanda. According to official government figures, the Philippines has received a total of P14,997,132,777.47 of foreign aid for reconstruction and recovery efforts from the damage caused by Typhoon Yolanda.¹⁰

The Existing Legal Framework: Republic Act No. 10121 or the Philippine Disaster Risk Reduction Management (PDRRM) Act of 2010

Bearing in mind the great need to ensure that country is well prepared for the eventuality of any calamity and disaster, in 2010, the Congress of the Philippines enacted Republic Act No. 10121 or the Philippine Disaster Risk Reduction Management (PDRRM) Act of 2010.

The law transformed the National Disaster Coordinating Council (NDCC) to the National Disaster Risk Reduction and Management Council (NDRRMC), headed by the Department of National Defense (DND), with the cooperation of the Secretary of the Department of Science and Technology (DOST) for disaster prevention and mitigation; the Secretary of the Department of the Interior and Local Government (DILG) for disaster preparedness; the Secretary of the Department of Social Welfare and Development (DSWD) for disaster response; and the Director General of the National Economic and Development Authority (NEDA) for disaster rehabilitation and recovery.¹¹

The NDRRMC is the body "empowered to perform policy-making, coordination, integration and supervisory functions, as well as monitor the preparation, implementation and evaluation of the National DRRM Plan (NDRRMP) to ensure the protection and welfare of the people in times of disaster."¹² Under the status quo, the Department of Foreign Affairs (DFA) is the main agency of the State that deals with the acceptance of aid and assistance from various governments, international organizations, and other foreign entities, with the coordination of the Office of Civil Defense (OCD) and the NDRRMC.¹³

⁸ Kang, Hyewon. "The Philippines' Absorptive Capacity for Foreign Aid." *The Philippine Institute for Development Studies Paper Series* (2010).

⁹ The Department of Foreign Affairs, Statement of the Department of Foreign Affairs: On foreign assistance for relief and rehabilitation efforts in provinces hit by typhoon Yolanda (Online Press Statement by the DFA on Typhoon Yolanda Relief Operations), available at <http://www.gov.ph/2013/11/11/statement-dfa-on-foreign-assistance-for-relief-and-rehab-efforts-in-typhoon-hit-provinces/> (last accessed Aug. 18, 2018).

¹⁰ The Republic of the Philippines, Foreign Aid Transparency Hub or FaiTH (Full Report posted on the Online Portal of the Official Gazette of the Republic of the Philippines), available at <http://www.gov.ph/faith/full-report> (last accessed Aug. 18, 2015).

¹¹ Commission on Audit. "Disaster Management Practices in the Philippines: An Assessment." <http://www.coa.gov.ph/index.php/reports/disaster-risk-reduction-and-management-reports?download=20593:disaster-management-practices-in-the-philippines-an-assessment> (last accessed Aug. 18, 2018).

¹² *Id.*

¹³ *Id.*

III. The Clandestine Management of Foreign Aid: The Problem in Status Quo

Under the existing Philippine legal system, there is no provision of law mandating government agencies handling foreign disaster aid donated to the national government or any of its instrumentalities to disclose and grant public access, in a timely and comprehensible manner, relevant information on the amount, the target beneficiaries, and the current status of disaster aid. Moreover, there are no punitive measures penalizing responsible public officers in the event that they fail to observe transparency and proper accountability as regards foreign disaster relief aid and assistance. The mandatory publication of and granting public access to information on foreign disaster aid are not provided under Republic Act No. 10121, nor in any other statute. With the non-existence of any legal mechanism mandating foreign disaster aid transparency, as well as accountability measures exacting responsibility from liable public officers, **the status quo readily permits concerned government agencies to abuse and misuse their inherent discretionary power over the control of information access.**¹⁴ **The concomitant result is the current legal framework's perpetuation of the routine violation and disregard of a basic and fundamental right granted to every Filipino – the right to information on matters of public concern.**¹⁵

The COA itself recognizes the glaring absence of transparency and accountability as to foreign disaster aid and its sweeping ramifications in the country's disaster risk reduction and management efforts. In noting that the tracking of disaster aid information is tremendously strenuous due to the lack of publicly available information, COA asserted that “[i]t is ... difficult to measure the efficiency and effectiveness of government response to disasters. The lack of a system that tracks what commodities and services have been delivered to the people also makes it hard to draw the lines of accountability.”¹⁶ In 2014, COA released a report on the special audit of Typhoon Yolanda relief operations. In its analysis of the established system of handling aid in the Philippines, the Commission noted the great need to introduce transparency and accountability measures that will guarantee the citizenry's access to aid information, ensuring that relief goods and other donations are effectively and efficiently delivered. The COA recommended that **“the concerned agencies [should] revisit the existing relief operations system and adopt measures to ensure the smooth flow of procedures and regular reporting to provide information to management and other stakeholders for decision making and monitoring purposes.** Moreover, the agencies must establish an efficient feedback mechanism that would pinpoint responsibility and enhance accountability and transparency in the relief operation process.”¹⁷ (Emphasis supplied)

Moreover, the same report noted that the systems adopted by concerned government agencies with respect to relief distribution operations, such as the DSWD field offices, **“did not provide daily and periodic reporting on the results/status of its operations as well as accounting of funds received and its utilization.”**¹⁸ (Emphasis supplied) Lapses in the

¹⁴ Eirene Jhone E. Aguila, *Lifting the Invisible and Obscure Veils of Transparency: Setting the Standards for Government Transparency and Accountability vis-à-vis the Right to Access Information*, (2004) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

¹⁵ *Id.* at 358.

¹⁶ Ramoran, C. “Foreign Aid: Process from donor to beneficiaries.” Rappler Website. <http://www.rappler.com/nation/43801-foreign-aid-from-donors-to-the-victims> (last accessed Aug. 18, 2018).

¹⁷ Commission on Audit. “Report on the Audit of Typhoon Yolanda Relief Operations.” www.coa.gov.ph/index.php/reports/disaster-risk-reduction-and-management-reports%3Fdownload%3D20594:report-on-the-audit-of-typhoon-yolanda-relief-operations+%&cd=1&hl=en&ct=clnk&gl=ph (last accessed Aug. 18, 2018).

¹⁸ *Id.* at 46.

documentation and recording of donated cash/relief goods and supplies “were sometimes moved from warehouses without the accompanying approved supporting documents. There are also discrepancies between the accounting and reporting of family food packs (FFPs) between warehouse personnel and DSWD employees.”¹⁹ All in all, the COA determined that there is an extreme necessity “to look into the problematic areas and aspects where the government came up short or had no response at all, especially in the fundamental elements of leadership, capabilities and accountability.”²⁰

An investigation on the management of disaster relief relating to Typhoon Yolanda conducted by a Philippine Senate panel headed by Philippine Senator Francis Escudero concurred with the findings of COA. **The panel report asserted that there was an absence of any law “instituting a mechanism for the receipt, accounting, and monitoring of foreign and local donations by the government for various calamities that plague the country.”**²¹ (Emphasis supplied) The Senate panel found out that “there was no single agency in the government that has possession and knowledge of the total amount of local and foreign donations for the victims of Typhoon Yolanda.”²²

*Actual Denial of Requests for Information by
Several Government Agencies*

To illustrate how the situation in status quo leads the State to renege on its obligation to ensure transparency and accountability as to public matters, including critical and relevant information on international humanitarian aid and assistance, the Philippine Center for Investigative Journalism (PCIJ) conducted a study in 2009 on the ability of the public to gain access as to information on matters involving public interest. The said PCIJ study confirmed that **“the absence of an enabling law has apparently enabled various government agencies and officials ... to violate [the public’s right to information].”**²³ The PCIJ study revealed how, despite the existence of the constitutional right to information, many government agencies remain to be “stuck in confidentiality mode and require prodding and coaxing to release documents. The most hostile, in fact, simply flatly deny or altogether ignore requests for public documents.”²⁴ At least 14 cases of requests for information were denied by 12 different government agencies, “with the reasons ranging from the condescending to the incredulous.”²⁵

An examination of the current state of government agencies’ policy on the granting of public access to information, through actual attempts to coordinate with government bodies, produced alarming results, revealing **“an alarming reluctance by government agencies to allow public access to documents and information for other reasons – especially if the**

¹⁹ Commission on Audit. “Disaster Management Practices in the Philippines: An Assessment.” <http://www.coa.gov.ph/index.php/reports/disaster-risk-reduction-and-management-reports?download=20593:disaster-management-practices-in-the-philippines-an-assessment> (last accessed Aug. 18, 2018).

²⁰ *Id.* at 41.

²¹ Amita O. Legaspi, Senate panel recommends special audit on local, foreign aid for Yolanda victims. Aug. 8, 2014, *available at* <http://www.gmanetwork.com/news/story/376770/news/nation/senate-panel-recommends-special-audit-on-local-foreign-aid-for-yolanda-victims> (last accessed Aug. 18, 2018).

²² *Id.*

²³ The Philippine Center for Investigative Journalism, Multiple requests for access to info meet with flat denials, *available at* <http://pcij.org/stories/multiple-requests-for-access-to-info-meet-with-flat-denials/> (last accessed Oct. 30, 2018).

²⁴ *Id.*

²⁵ *Id.*

data may prove unflattering to the agencies concerned.”²⁶ Requests by ordinary citizens for information from government agencies were met with “flimsy reasons for refusing access to documents; most of the time, the agencies didn’t even bother to give any reason at all.”²⁷ For such reasons, the State’s constitutional obligation to respect and uphold the people’s right to information on matters of great public interest, which includes information on international disaster aid, is reneged, without a clear and well-defined legislative measure on foreign aid transparency and accountability mechanisms.

The Grave Consequences of Lack of Transparency and Accountability

What then are the repercussions of the lack of transparency and accountability in the capacity of foreign aid to provide efficient and effective relief and assistance to the persons and communities affected by calamities? The State’s failure to adopt a strong policy on aid transparency and accountability seriously undermines the capability of foreign assistance to augment the recovery efforts and economic rehabilitation of developing countries stricken by disasters. It is maintained by the COA that “[f]ollowing a catastrophic disaster, decision-makers face a tension between the demand for rapid response and recovery assistance—including assistance to victims—and at the same time, implementing appropriate controls and accountability mechanisms.”²⁸ However, transparency measures cannot be sidestepped as **“[a]ccountability controls and mechanisms ensure that resources are used appropriately for valid purposes.”**²⁹ (Emphasis supplied)

According to a study conducted by the *United States Congressional Budget Office* on international humanitarian assistance, entitled *The Role of Foreign Aid in Development*, foreign aid may either promote or hinder development, depending on the environment in which aid is used and the conditions under which it is given.³⁰ According to the same study, **“aid given to countries that have been governed poorly [as to disaster aid management] ... is less likely to make a positive contribution to their development.”**³¹ (Emphasis supplied) The lack of publicly available information with respect to how much aid from external sources is bestowed to a disaster-stricken country “undermines macro-planning and stability thus affecting exchange rates, monetary supply and fiscal policy, potentially making poverty reduction harder to achieve.”³²

²⁶ The Philippine Center for Investigative Journalism, Survey of Reporters: Execs give flimsy, inane excuses to rebuff access to info requests, *available at* <http://pcij.org/stories/execs-give-flimsy-inane-excuses-to-rebuff-access-to-info-requests/> (last accessed Oct. 28, 2018).

²⁷ *Id.*

²⁸ Commission on Audit. “Report on the Audit of Typhoon Yolanda Relief Operations.” www.coa.gov.ph/index.php/reports/disaster-risk-reduction-and-management-reports%3Fdownload%3D20594:report-on-the-audit-of-typhoon-yolanda-relief-operations+%&cd=1&hl=en&ct=clnk&gl=ph (last accessed Aug. 18, 2018).

²⁹ *Id.*

³⁰ The Congress of the United States Congressional Budget Office. “The Role of Foreign Aid in Development.” *The Congress of the United States Congressional Budget Office* (1997).

³¹ *Id.*

³² Publish What You Fund. “Briefer Paper 1: Why Aid Transparency Matters, and the Global Movement for Aid Transparency.” Publish What You Fund Movement Website. http://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_bp1_whyaid_transparency_matters.pdf (last accessed Aug. 18, 2018).

IV. The State Obligation to Account for Foreign Aid: Foreign Aid as Public Funds

A. The Constitutional Underpinnings of Foreign Aid Transparency and Accountability

The 1987 Constitution lays the foundation for the imposition of an obligation upon the State to adopt transparency and accountability measures as regards its management of public funds, which indubitably includes foreign disaster aid granted through State instrumentalities.

The right of the people to obtain vital information on public matters is a clear constitutional imperative. Under Article II, Section 27 of the Constitution, it is the policy of the State “to maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.”³³ Article II, Section 28 states that “[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”³⁴ (Emphasis supplied) Furthermore, under Article III, Section 7, “[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”³⁵ (Emphasis supplied) Moreover, under Article XI, Section 1, “[p]ublic office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.”³⁶

The State’s obligation to ensure transparency and accountability regarding international disaster aid and assistance stems from the constitutional right of the people to possess information on matters of public concern. In recognizing the indispensability of an informed citizenry in any thriving democracy, the 1987 Constitution bestows upon the people the right to information. Being an enshrined constitutional right, the State is obliged to preserve and uphold such right. This was explained in no uncertain terms by the Philippine Supreme Court in the landmark case of *Chavez v. NHA*. In the aforementioned case, the Supreme Court explained that the right to information is composed of – (1) **the governmental “duty to disclose information”**³⁷ and (2) **the governmental “duty to permit access to information.”**³⁸

According to noted Filipino constitutionalist and framer of the Philippine Constitution, Fr. Joaquin G. Bernas, S.J., Section 7 of the Bill of Rights guarantees “the right to information on matters of public concern,” and “the corollary right of access to official records and documents.”³⁹ Fr. Bernas adds that the term “public concern” embraces “a broad

³³ PHIL. CONST. art. II, § 27.

³⁴ PHIL. CONST. art. II, § 28.

³⁵ PHIL. CONST. art. III, § 7.

³⁶ PHIL. CONST. art. XI, § 1.

³⁷ *Chavez v. National Housing Authority*, 530 SCRA 235 (2007).

³⁸ *Id.*

³⁹ Bernas, S.J., Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, Manila: Rex Book Store Inc., 2003.

spectrum of subjects which the public may want to know, either because these directly affect their lives or simply because such matters arouse the interest of an ordinary citizen.”⁴⁰

In another landmark case involving the right to information, *Legaspi v. Civil Service Commission*, the Supreme Court emphasized that “[f]or every right of the people recognized as fundamental, **there lies a corresponding duty on the part of those who govern, to respect and protect that right. That is the very essence of the Bill of Rights in a constitutional regime.**”⁴¹

As further explained by the Supreme Court in another case, *i.e.*, *Baldoza v. Dimaano*, the right to information on matters of public concern enshrined in the Bill of Rights “is a recognition of the fundamental role of free exchange of information in a democracy. There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times.”⁴² (Emphasis supplied)

A more extensive discussion on the Philippine Constitution provisions on the constitutional right to information through the deliberations of the 1986 Constitutional Commission, as well as a brief survey of Philippine jurisprudence on the matter is attached herewith as **Annex A**.

B. The International Law Underpinnings of Foreign Aid Transparency and Accountability

Furthermore, the advocacy of ensuring transparency and accountability in disaster aid has also emerged as an international trend and is widely recognized as an obligation that should be observed by States under international law. The right of citizens to actively participate and be involved in the governance of public funds and the right to acquire information on matters of great public interest are contained in various international instruments signed by the Philippines, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).⁴³

Article 19, Paragraph 2 of the ICCPR echoes the UDHR’s provision on the right to information, stating that “[e]veryone shall have the right to freedom of expression; *this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*”⁴⁴ (Emphasis supplied) The aforementioned provision of the ICCPR embraces **a right of access to information held by public bodies**. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production ... the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output.⁴⁵ (Emphasis supplied)

⁴⁰ *Id.*

⁴¹ *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987).

⁴² *Baldoza v. Dimaano*, 71 SCRA 14 (1976).

⁴³ United Nations Human Settlements Programme, *International Legal Instruments Addressing Good Governance* (2002).

⁴⁴ International Covenant on Civil and Political Rights, 1966, 999 U.N.T.S. 171 [“ICCPR”].

⁴⁵ Article 19: A Healthy Knowledge - Right to Information and the Right to Health, *available at* <http://www.article19.org/data/files/medialibrary/3452/12-09-12-POLICY-right-to-health-WEB.pdf> (last accessed Aug. 18, 2018).

The U.N. Special Rapporteur on Freedom of Opinion and Expression, *Mr. Abid Hussain*, in delving into the obligation of governments to observe the right of its citizens to have open access to information on public matters, stressed that the right to information “imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems[.]”⁴⁶ Furthermore, the U.N. Special Rapporteur on Freedom of Expression of the Organisation of American States asserts that “[t]he right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”⁴⁷ (Emphasis supplied)

Touching specifically on how the lack of transparency and the proliferation of corrupt practices dissuade foreign donors from contributing disaster aid and assistance, the United Nations Convention Against Corruption (UNCAC), signed by the Philippines in 2004, recognizes that “[c]orruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment.”⁴⁸ The UNCAC also obligates State parties to “take appropriate measures ... to promote the active participation of individuals and groups outside the public sector ... by such measures as: **[e]nhancing the transparency of and promoting the contribution of the public to decision-making processes; [e]nsuring that the public has effective access to information[.]**”⁴⁹ (Emphasis supplied)

In 2005, the Philippines signed an international instrument called the Paris Declaration on Aid Effectiveness, which mandates signatory countries and donors “to enhance mutual accountability and transparency in the use of development resources.”⁵⁰ In addition, the Accra Agenda for Action, signed by the Philippines in 2008, “recognises that greater transparency and accountability for the use of development resources—domestic as well as external—are powerful drivers of progress.”⁵¹ Increased coordination between the various sources of information, including national statistical systems, budgeting, planning, monitoring and country-led evaluations of policy performance, are required to be observed by State Parties.⁵² In addition, donors are mandated to align their monitoring with country information systems.⁵³

Another international document signed by the Philippine government in 2011, the Busan Partnership for Effective Development Co-operation, implements a unitary standard for the publication of “timely, comprehensive, and forward-looking information on resources ... taking into account the statistical reporting of the OECD-DAC and the complementary efforts of the International Aid Transparency Initiative and others. This standard must meet

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ U.N. Convention Against Corruption foreword, *entered into force* Dec. 14, 2005, 2349 U.N.T.S. 41 [hereinafter UNCAC].

⁴⁹ *Id.* art. 13.

⁵⁰ Organisation for Economic Co-operation and Development [OECD], *Paris Declaration on Aid Effectiveness* (Mar. 2, 2005) [hereinafter Paris Declaration].

⁵¹ Organisation for Economic Co-operation and Development [OECD], *Accra Agenda for Action* (Sep. 4, 2008) [hereinafter Accra Agenda].

⁵² *Id.*

⁵³ *Id.*

the information needs of developing countries and non-state actors, consistent with national requirements.”⁵⁴ State Parties to the Geneva Convention and the International Red Cross Red Crescent Movement, including the Philippines, adopted the guidelines on International Disaster Response Laws Guidelines,⁵⁵ obligating State Parties to ensure “in a transparent manner, [the] sharing [of] appropriate information on activities and funding.”⁵⁶ This mandate was further stressed when the United Nations General Assembly adopted U.N. Resolutions 63/139, 63/141, and 63/137.⁵⁷

The emergence of various international movements and organizations advocating for aid transparency and accountability, such as the International Aid Transparency Initiative (IATI) and the Global Campaign for Aid Transparency, as well as data collection and publication initiatives being introduced by the U.N. and the Organization for Economic Cooperation and Development (OECD) show that there is an emerging global trend in the international community calling for the imposition of transparency and accountability measures with respect to the management of disaster aid information.⁵⁸ A more extensive discussion on the international law obligations of the Philippines regarding aid transparency is attached herewith as **Annex B**.

V. Strengthening the Philippine Legal Framework: Recommendations to Address the Problem

A. The Proposed Foreign Aid And Assistance Transparency And Accountability Act Of 2018

As concluded by the findings of the COA special audit, the Senate panel which undertook a careful scrutiny of Typhoon Yolanda relief operations, and the NEDA report on the adherence of the Philippines to the Paris Declaration, for the State to truly adhere to its obligation under the Philippine Constitution and under international law to ensure transparency and accountability as to foreign disaster aid and, a legislative measure which will institutionalize aid transparency and accountability mechanisms in the disaster management system should be enacted. In order to ensure that the government will abide by its commitment to ensure aid transparency and accountability, the proponent puts forward a proposed legislative measure that mandates concerned government agencies to both proactively release and grant public access to relevant information on foreign disaster aid and assistance, which should be timely released through readily accessible and reachable mechanisms in an easily comprehensible format.

This legislative measure is largely modeled after an unfiled Senate Bill, Senate Bill No. 2342, introduced by Philippine Senator Francis Escudero, entitled “AN ACT MANDATING THE FULL ACCOUNTING OF ALL DISASTER-RELIEF AID OR DONATIONS RECEIVED BY THE PHILIPPINE GOVERNMENT FOR NATURAL AND

⁵⁴ Organisation for Economic Co-operation and Development [OECD], *Busan Partnership for Effective Development Co-operation* (Dec. 1, 2011) [hereinafter *Busan Agreement*].

⁵⁵ International Federation of Red Cross and Red Crescent Societies, *IDRL Guidelines* (Guidelines on International Disaster Response Law posted on the IFCR Website), *available at* <https://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/> (last accessed Aug. 18, 2018).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Publish What You Fund. “Briefer Paper 1: Why Aid Transparency Matters, and the Global Movement for Aid Transparency.” http://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_bp1_whyaid_transparency_matters.pdf (last accessed Aug. 18, 2018).

HUMAN-INDUCED CALAMITIES.” Some parts of the proposed legislative measure are also patterned after R.A. No. 10121 or the Philippine Disaster Risk Reduction and Management Act of 2010. The proposed legislative measure is entitled “AN ACT MANDATING TRANSPARENCY AND ACCOUNTABILITY AS TO DISASTER-RELIEF AID OR DONATIONS RECEIVED BY THE PHILIPPINE GOVERNMENT FROM THE INTERNATIONAL COMMUNITY FOR NATURAL AND HUMAN-INDUCED CALAMITIES.” Such act shall be known as the “FOREIGN AID AND ASSISTANCE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2018.” A draft version of the proposed legislative measure is found on the attached **Annex C**.

B. Institutionalization of Disaster Aid Transparency and Accountability through an Amendment of the

The Philippine Congress is currently in the process of reviewing the existing disaster management law, *i.e.*, Republic Act No. 10121. There are certain draft legislative proposals being considered by Congress calling for the creation of an entirely separate department under the Executive dedicated to disaster management, such as Senate Bill No. 1735,⁵⁹ and House Bill No. 6075.⁶⁰ While these bills are laudable in their objective of further strengthening the Philippines’ capability to manage disasters, as well as streamlining government bureaucracy in order to more effectively and efficiently manage disasters, a perusal of these draft legislative measures reveals that disaster aid transparency and accountability measures are still not introduced and prioritized under the said proposals.

Hence, it is recommended that any amendment to Republic Act No. 10121 should include explicit provisions that mandate concerned government agencies to both proactively release and grant requests from the public access to relevant information on foreign disaster aid and assistance, which should be timely released through readily accessible and reachable mechanisms in an easily comprehensible format.

C. The Passage of The Freedom of Information Law

Another undertaking that can address the present failure of the State to comply with its obligation under the Constitution and under international law to ensure foreign aid transparency and accountability is the immediate passage of the Freedom of Information Law (FOI Law). The Freedom of Information Law ensures that the State will fully recognize the right of the people to information on matters of public concern by providing clear and specific procedures, guidelines, limitations, and penalties on the implementation of “a policy of full public disclosure of all its transactions involving public interest[.]”⁶¹ The FOI Law guarantees that the citizenry will have a “significant and widening role ... in governmental decision-making as well as in checking abuse in government.”⁶² Under the FOI Law, “[p]ublic officials and employees, in the performance of their duties under this Act ... shall endeavor to handle information kept or obtained under this Act with due care, to the end that inaccuracies and distortions are avoided.”⁶³

⁵⁹ S. B. No. 1735, 17th Cong., 2nd Reg. Sess. (2018).

⁶⁰ H. B. No. 6075, 17th Cong., 1st Reg. Sess. (2017).

⁶¹ S. B. No. 1733, 16th Cong., 1st Reg. Sess. (2013).

⁶² *Id.*

⁶³ *Id.*

On March 10, 2014, the Senate passed Senate Bill No. 1733 or the “People’s Freedom of Information Act of 2013” on third and final reading, with Philippine Senator Grace Poe as principal sponsor.⁶⁴ The FOI Act of 2013 makes certain that the citizenry will have access as to critical information on foreign aid and assistance granted to the government in times of natural and man-made disasters and calamities, as Section 5 of the proposed law recognizes that “[e]very Filipino citizen has a right to and shall, on request, be given access to any record under the control of a government agency regardless of the physical form or format in which they are contained[.]”⁶⁵ Section 9, on one hand, mandates each government agency to “regularly publish, print and disseminate at no cost to the public and in an accessible form, consistent with the provisions of Republic Act No. 9485, or the Anti-Red Tape Act of 2007, and through their website, timely, true, accurate and updated key information[.]”⁶⁶ On the other hand, Section 12 recognizes that with respect to information on matters of public concern, which includes information on disaster aid and assistance from foreign sources, “[a]ny person who wishes to obtain [such] information [can] submit, free of charge, a request to the government agency concerned personally, by mail, or through electronic means”⁶⁷

VI. Conclusion

With disasters and calamities seen to inevitably and recurrently pummel the Philippines, and considering the inadequacy of State resources in sufficiently addressing the country’s disaster management needs, international disaster aid and assistance assume a crucial role in disaster mitigation, relief, and rehabilitation.

The very animus behind the granting, storage, and distribution of foreign disaster aid is the lending of much-needed help and assistance to calamity-stricken victims and destroyed communities. Foreign aid and assistance directly affect the lives of the Filipino people - a resilient people that continually face the menacing threat of calamities and disasters.

Furthermore, Philippine law treats international humanitarian assistance coursed through State instrumentalities as public funds, being part and parcel of the people’s money. For those reasons, critical information on foreign disaster aid and assistance are incontrovertibly impressed with great public interest, being a matter of grave public concern. The right of the people to obtain access to information on matters of public concern and the correlative obligation of the State to uphold and defend such right are firmly enshrined in the fundamental law of the land - the 1987 Constitution.

Moreover, the Philippines has obligated itself to institute transparency and accountability measures in the acceptance, storage, and distribution of international disaster aid by being a signatory to various international conventions and documents - the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action, the Busan Partnership for Effective Development Co-operation, and the United Nations Convention Against Corruption (UNCAC). By adhering to the established principle of *pacta sunt*

⁶⁴ *Id.*

⁶⁵ *Id.* § 5.

⁶⁶ *Id.* § 9.

⁶⁷ *Id.* § 12.

servanda, the Philippines has made the solemn vow of ensuring that the obligations made under such international agreements shall be realized.

As the situation presented in status quo subverts the mandate of the Philippine Constitution and the various international commitments made by the Philippines with respect to ensuring transparency and accountability as to matters of great public interest, a legal framework must be introduced, making sure that the timely collation and publication of relevant information on foreign aid and assistance are institutionalized under law. By institutionalizing, through means of legislation, international disaster aid transparency and accountability, the Philippine's obligations under international law and under its own Constitution will not be undermined and will be duly subscribed to. With the State's fulfillment of its obligation to account for disaster aid, the end result can only be the true and concrete advancement of the democratic and republican ideals held dear by the Filipino nation's Constitution – that the sovereignty of the State truly emanates from the people.

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ANNEX A

THE STATE'S OBLIGATION TO ENSURE FOREIGN AID TRANSPARENCY AND ACCOUNTABILITY: THE CONSTITUTIONAL RIGHT TO INFORMATION

1. THE RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN AS EXPLICATED IN THE DELIBERATIONS OF THE 1986 CONSTITUTIONAL COMMISSION

In order to have a better understanding of the constitutional right to information, an examination of the deliberations of the members of the 1986 Constitutional Commission that drafted the 1987 Constitution must be had. It provides us with a clearer grasp of the intent of the constitutional framers as to the import of the provisions on the right to information. The Supreme Court, in a long line of cases, has resorted to an examination of the intent of the framers of the Constitution in order to gain better insights as to the meaning of the various constitutional provisions. As explained in the case of *Tolentino v. COMELEC*, “[t]he **indispensability of access to information involving public interest and government transparency in Philippine democracy is clearly recognized in the deliberations of the 1987 Constitutional Commission.**”¹ (Emphasis supplied)

During the discussions of the commissioners on the policy of full public disclosure of information concerning matters of public interest, a State policy now contained in Article II, Section 28 of the 1987 Constitution, Commissioner Ople made the following remarks:

MR. OPLE. Mr. Presiding Officer, this amendment is proposed jointly by Commissioners Ople, Rama, Treñas, Romulo, Regalado and Rosario Braid. It reads as follows: “SECTION 24. THE STATE SHALL ADOPT AND IMPLEMENT A POLICY OF FULL PUBLIC DISCLOSURE OF ALL ITS TRANSACTIONS SUBJECT TO REASONABLE SAFEGUARDS ON NATIONAL INTEREST AS MAY BE PROVIDED BY LAW.”

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In the United States, President Aquino has made much of the point that the government should be open and accessible to the public. This amendment is by way of providing an umbrella statement in the Declaration of Principles for all these safeguards for an open and honest government distributed all over the draft Constitution. **It establishes a concrete, ethical principle for the conduct of public affairs in a genuinely open democracy, with the people’s right to know as the centerpiece.**² (Emphasis supplied)

Recognizing the need of enabling citizens to actively seek information on public concerns, Commissioner Bernas added his insights to the discussion, making the following

¹ *Tolentino v. COMELEC*, 420 SCRA 438 (2004).

² The 1986 Constitutional Commission, Records of the Constitutional Commission, p. 24.

observations on the State principle of government transparency and the public's right to information:

FR. BERNAS. Just one observation, Mr. Presiding Officer. I want to comment that Section 6 (referring to Section 7, Article III on the right to information) talks about the right of the people to information, and corresponding to every right is a duty. **In this particular case, corresponding to this right of the people is precisely the duty of the State to make available whatever information there may be needed that is of public concern.** Section 6 is very broadly stated so that it covers anything that is of public concern. It would seem also that the advantage of Section 6 is that **it challenges citizens to be active in seeking information rather than being dependent on whatever the State may release to them.**³ (Emphasis supplied)

Furthermore, Commissioner Rama dissected the meaning of the constitutional right to information, explaining that there is a critical difference between the right to information provisions found under the Declaration of Principles and State Policies and under the Bill of Rights:

MR. RAMA. There is a difference between the provisions under the Declaration of Principles and the provision under the Bill of Rights. The basic difference is that the Bill of Rights contemplates coalition (sic) between the rights of the citizens and the State. **Therefore, it is the right of the citizen to demand information. While under the Declaration of Principles, the State must have a policy, even without being demanded, by the citizens, without being sued by the citizen, to disclose information and transactions. So there is a basic difference here because of the very nature of the Bill of Rights and the nature of the Declaration of Principles.**⁴ (Emphasis supplied)

For her part, Commissioner Braid pointed out that for the right to information to be truly upheld, there are certain qualities that must be observed, explaining **“that such concept of information should encompass an adequate, accurate, balanced, and productive information.** Additionally, she opined that the right to communicate should also be incorporated in the meaning thereof, so that the people could initiate or demand information; hence, a two-way communication.”⁵ (Emphasis supplied)

With respect to the scope and coverage of the constitutional right to information, Commissioner Braid manifested a query on the exact meaning of the phrase *right to information on matters of public concern*. In reply to her question, Commissioner Bernas explained that the coverage of constitutional the right to information involves “information [which] refers to anything that affects public interest.”⁶

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Furthermore, the deliberations of the Constitutional Commission reveal the rationale invoked by the framers of the Constitution behind the constitutional provisions establishing the people's right to information and the corollary governmental duty to uphold such right:

MS. ROSARIO BRAID. We cannot talk of the functions of communication unless we have a philosophy of communication, unless we have a vision of society. Here we have a preferred vision where opportunities are provided for participation by as many people, where there is unity even in cultural diversity, for there is freedom to have options in a pluralistic society. **Communication and information provide the leverage for power. They enable the people to act, to make decisions, to share consciousness in the mobilization of the nation.**⁷ (Emphasis supplied)

2. THE RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN AS EXPLICATED IN PHILIPPINE JURISPRUDENCE

As decisions of the Supreme Court, the highest court of the land, become part and parcel of the legal system of the Philippines,⁸ it is imperative to consider the interpretations laid out in Philippine jurisprudence as regards the people's right to gain access to matters of public concern. Dissecting the rulings of the high court on the right to information gives us a more comprehensive understanding of the entitlements, obligations, and limitations involved as to the aforementioned constitutional right.

2.1 Legaspi v. Civil Service Commission: Explaining The Term "Matters of Public Concern" and the Self-Executory Nature of Article III, Section 7

In the case of *Legaspi v. Civil Service Commission*, "[t]he fundamental right of the people to information on matters of public concern [was] invoked in this special civil action for mandamus instituted by petitioner Valentin L. Legaspi against the Civil Service Commission."⁹ The CSC denied the petitioner's request "for information on the civil service eligibilities of certain persons employed as sanitarians in the Health Department of Cebu City."¹⁰

In deciding whether or not the CSC should be required to grant Legaspi's request for information, the Supreme Court expounded on the right to information enshrined in the Bill of Rights, explaining that the constitutional provision establishing the right to information is a self-executing provision.¹¹ The right to information is "a self-executory constitutional right. The role given to the National Assembly was not to give the right but simply to set limits on the right given by the Constitution."¹² In explaining the self-executory nature of the right to information, the Supreme Court explained that:

[t]hese constitutional provisions are self-executing. They supply the rules by means of which the right to information may be enjoyed (Cooley,

⁷ *Id.*

⁸ An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

⁹ *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987).

¹⁰ *Id.*

¹¹ *Id.*

¹² Bernas, S.J., Joaquin G., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, Manila: Rex Book Store Inc., 2003.

A Treatise on the Constitutional Limitations 167 [1927]) by guaranteeing the right and mandating the duty to afford access to sources of information ... What may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest (Constitution, Art. 11, Sec. 28). However, it cannot be overemphasized that whatever limitation may be prescribed by the Legislature, **the right and the duty under Art. III Sec. 7 have become operative and enforceable by virtue of the adoption of the New Charter.** Therefore, the right may be properly invoked in a mandamus proceeding such as this one.¹³ (Emphasis supplied)

In deciding in favor of the petitioner, the Supreme Court emphasized that “[f]or every right of the people recognized as fundamental, **there lies a corresponding duty on the part of those who govern, to respect and protect that right. That is the very essence of the Bill of Rights in a constitutional regime.**”¹⁴ This case stressed that when information is of public concern and such information is not exempted from public disclosure by law, the public must be given access to such records.¹⁵

In determining pieces of information that qualify as matters of public concern, the Supreme Court explained that **public concern is “a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen.”**¹⁶ (Emphasis supplied)

In *Legaspi*, the Supreme Court explained that “the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., **(a) being of public concern or one that involves public interest, and, (b) not being exempted by law from the operation of the constitutional guarantee.**”¹⁷ (Emphasis supplied) To resolve the question on “whether or not the information sought is of public interest or public concern ... this question is first addressed to the government agency having custody of the desired information.”¹⁸ However, the Supreme Court adds that “this does not give the agency concerned any discretion to grant or deny access. In case of denial of access, the government agency has the burden of showing that the information requested is not of public concern, or, if it is of public concern, that the same has been exempted by law from the operation of the guarantee.”¹⁹ The pronouncement of the Supreme Court in *Legaspi* that the right to information is self-executory was reiterated by the high court in the 1999 case of *Echegaray v. Secretary of Justice*.²⁰

¹³ *Legaspi*, 150 SCRA at 530.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Legaspi*, 150 SCRA at 530.

²⁰ *Echegaray v. Secretary of Justice*, 301 SCRA 96 (1999).

2.2 Valmonte v. Belmonte, Jr.: The Right to Information is not Absolute

Meanwhile, in the case of *Valmonte v. Belmonte, Jr.*, the petitioners asked for a mandamus with preliminary injunction, invoking “their right to information and pray that respondent be directed ... to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos[.]”²¹

In granting the petition, the Supreme Court said that “[t]he right to information is an essential premise of a meaningful right to speech and expression.”²² (Emphasis supplied) The high court also explained that the right to information “goes hand-in-hand with the constitutional policies of full public disclosure and honesty in the public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.”²³ (Emphasis supplied)

But the Supreme Court also pointed out that the right to information on matters of public concern is not absolute, maintaining that “yet, likely all the constitutional guarantees, the right to information is not absolute. As stated in *Legaspi*, the people’s right to information is limited to ‘matters of public concern’, and is further “subject to such limitations as may be provided by law.”²⁴

2.3 Aquino-Sarmiento v. Morato: Protecting the Right to Information on Matters which are Public in Character

In the case of *Aquino-Sarmiento v. Morato*, the petitioner, a member of the Movie and Television Review and Classification Board (MTRCB), “wrote its records officer requesting that she be allowed to examine the board’s records pertaining to the voting slips accomplished by the individual board members after a review of the movies and television productions.”²⁵ But such request for information was denied by the MTRCB, led by respondent Morato.²⁶

In deciding for the petitioner, the Supreme Court held that “the decisions of the Board ... are acts made pursuant to their official functions, and as such, are neither personal nor private in nature but rather public in character. **They are, therefore, public records access to which is guaranteed to the citizenry by no less than the fundamental law of the land.**”²⁷ (Emphasis supplied) Furthermore, the high court stressed that the public’s exercise of the right to information “cannot be made contingent on the discretion, nay, whim and caprice, of the agency charged with the custody of the official records sought to be examined ... otherwise, the said right would be rendered nugatory.”²⁸

²¹ *Valmonte v. Belmonte, Jr.*, 170 SCRA 256 (1989).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Aquino-Sarmiento v. Morato*, 203 SCRA 515 (1991).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

2.4 Gonzales v. Narvasa: An Illustrative Case

In the case of *Gonzales v. Narvasa*, the petitioner prayed for the issuance of a writ of mandamus “ordering Executive Secretary Ronaldo B. Zamora to answer his letter ... requesting for the names of executive officials holding multiple positions in government, copies of their appointments, and a list of the recipients of luxury vehicles seized by the Bureau of Customs and turned over to Malacanang.”²⁹

The Supreme Court, in recognizing the right of the petitioner to information on matters of public concern, ruled that the “respondent Zamora, in his official capacity as Executive Secretary, has a constitutional and statutory duty to answer petitioner’s letter dealing with matters which are unquestionably of public concern[.]”³⁰

2.5 Chavez v. Public Estates Authority: A Careful Dissection of Article III, Section 7

The case of *Chavez v. Public Estates Authority* is a Supreme Court case of great importance, extensively explaining the different nuances of the constitutional right to information on public matters.

In this case, the petition of Chavez sought “to compel the Public Estates Authority (“PEA” for brevity) to disclose all facts on PEA’s then ongoing renegotiations with Amari Coastal Bay and Development Corporation (“AMARI for brevity) to reclaim portions of Manila Bay.”³¹

Firstly, the Supreme Court expounded on the nature of the provisions of the Constitution on the right to information:

the twin provisions of the Constitution seek to promote transparency in policymaking and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are essential to the exercise of freedom of expression. **If the government does not disclose its official acts, transactions and decisions to citizens, whatever citizens say, even if expressed without any restraint, will be speculative and amount to nothing.** These twin provisions are also essential to hold public officials ‘at all times x x x accountable to the people,’ **for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation.** An informed citizenry is essential to the existence and proper functioning of any democracy.³² (Emphasis supplied)

²⁹ *Gonzales v. Narvasa*, 337 SCRA 733 (2000).

³⁰ *Id.*

³¹ *Chavez v. Public Estates Authority*, 384 SCRA 152 (2002).

³² *Id.*

Secondly, the Court explained that once a government agency, makes an official recommendation, “there arises a ‘definite proposition’ on the part of the government, and from this moment, the public’s right to information attaches, and any citizen can access all the non-proprietary information leading to such definite proposition.”³³

Additionally, the Supreme Court pointed out that the right to information does not merely pertain to consummated government transactions, but also applies to the negotiations leading to the consummation of the transaction. The Court explains that “[t]he commissioners of the 1986 Constitutional Commission understood that the right to information contemplates inclusion of negotiations leading to the consummation of the transaction.”³⁴ The Supreme Court added that “requiring a consummated contract will keep the public in the dark until the contract, which may be grossly disadvantageous to the government or even illegal, becomes a fait accompli.”³⁵

The Supreme Court found an opportunity in this case to give a dissection of the various rights contemplated under Section 7 of the Bill of Rights. The Court clarified that under the aforementioned provision of the Constitution, “[t]he right covers three categories of information which are ‘matters of public concern,’ namely: (1) official records; (2) documents and papers pertaining to official acts, transactions and decisions; and (3) government research data used in formulating policies.”³⁶ (Emphasis supplied)

As to the first category, the right to information “refers to any document that is part of the public records in the custody of government agencies or officials.”³⁷ (Emphasis supplied) The second category, on the other hand, “refers to documents and papers recording, evidencing, establishing, confirming, supporting, justifying or explaining official acts, transactions or decisions of government agencies or officials.”³⁸ (Emphasis supplied) Lastly, the third category “refers to research data, whether raw, collated or processed, owned by the government and used in formulating government policies.”³⁹ (Emphasis supplied)

The case of *Chavez* further explained that, while the public enjoys the right to information on matters of public concern under the Constitution, such right is not absolute.⁴⁰ The Supreme Court pointed out that the right to information on public matters “does not extend to matters recognized as privileged information under the separation of powers.”⁴¹ This means that the public does not have the right to information as to “information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused, which courts have long recognized as confidential.”⁴² The Court added that the right to information “may also be subject to other limitations that Congress may impose by law.”⁴³

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Chavez*, 384 SCRA at 152.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Chavez*, 384 SCRA at 152.

2.6 Guingona, Jr. v. COMELEC: The Correlative Duty of the State

In the case of *Guingona, Jr. v. COMELEC*, the Supreme Court laid emphasis on the correlative duty of government to respect and uphold the right of the Filipino people to have access to information which relates to public matters. According to the Supreme Court, “the people’s constitutional right to information is intertwined with the government’s constitutional duty of full public disclosure of all transactions involving public interest. **For every right of the people, there is a corresponding duty on the part of those who govern to protect and respect that right.**”⁴⁴ (Emphasis supplied)

⁴⁴ *Guingona, Jr. v. COMELEC*, 620 SCRA 448 (2010).

ANNEX B

THE STATE'S OBLIGATION TO ENSURE FOREIGN AID TRANSPARENCY AND ACCOUNTABILITY UNDER INTERNATIONAL LAW AND AS AN EMERGING GLOBAL TREND

The source of the State's obligation to account for and provide public access to information on international aid and assistance granted to persons and communities affected by natural and man-made disasters and calamities goes beyond the constitutional provisions on the right to information. The various international agreements entered into by the Philippines likewise establish the State obligation to ensure transparency and accountability with respect to foreign disaster aid information.

International law forms an integral part of the Philippine legal system. Under the doctrine of transformation, international law coalesces with domestic law "through the appropriate constitutional machinery such as an act of Congress or parliament."¹ Treaties entered by the Philippines become part of the law of the land, having the force and weight of law, when consented by the State, "in accordance with Article VII, Section 21 of the Constitution which sets down the mechanism for transforming a treaty into binding municipal law."² Aside from the adoption of a treaty by the Philippine Senate, international agreements become integral in our legal system by virtue of the doctrine of incorporation.³ According to Section 2, Article II of the Constitution, the State "adopts the generally accepted principles of international law as part of the law of the land."⁴

As enunciated in the Philippine Supreme Court case of *Tanada v. Angara*, "while sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations."⁵ The Supreme Court, in the aforementioned case, stressed that "by the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda*—international agreements must be performed in good faith."⁶ International agreements, such as the international instruments adhered to by the Philippines pertaining to transparency and accountability of public funds, "is not a mere moral obligation but creates a legally binding obligation on the parties."⁷

Transparency and accountability as to public funds, including foreign disaster relief aid and assistance, have been recognized as an obligation that should be observed by states under international law and has now emerged as an international trend, with "[m]omentum ... building amongst a range of actors from different sectors to promote greater transparency of the funding and delivery of aid. There are a variety of initiatives and organisations working

¹ Bernas S.J., Joaquin G., *An Introduction to Public International Law*, Manila: Rex Book Store Inc., 2002.

² *Id.*

³ *Id.*

⁴ PHIL. CONST. art. II, § 2.

⁵ *Tanada v. Angara*, 272 SCRA 18 (1997).

⁶ *Id.*

⁷ *Id.*

on the availability of aid information ... [which are] extensive, ranging from analytical and empirical research to advocacy and media outreach.”⁸

The growing international movement towards aid transparency and accountability involves the spearheading of initiatives on the production of crucial, relevant, and timely information on foreign aid, such as establishment of “the OECD data collection, individual agencies’ management information systems and more than 50 country-level data collection systems.”⁹ The global trend on foreign aid transparency and accountability also focuses on the initiation of disclosure mechanisms on the publication of aid information, as well as common standards for formatting.¹⁰ In addition, the international community has made it a priority to establish monitoring mechanisms as to the disclosure of aid information.¹¹ This has been done through the establishment of various international bodies and campaigns such as the “Publish What You Fund, International Aid Transparency Initiative and Aid Info, ... Center for Global Development, EU Aidwatch, and UN Development Cooperation Forum.”¹²

Over several decades, there has been widespread recognition by the international community that the right to information, including relevant and timely information on foreign aid and assistance, is a human right that should be respected and upheld by states.¹³ “Based on the idea that transparency and accountability are central to democratic governance,”¹⁴ several international treaties, conventions, and other instruments entered by State Parties “refer to transparency and accountability as core tools for regulating the exercise of public power.”¹⁵

The Philippines is a State Party to such international agreements that call for an adoption of a policy of transparency and accountability as to public funds, which include international aid and assistance in times of disasters and calamities. Being a State Party to such agreements, the Philippines is obliged to make true of the commitments it had solemnly undertaken.

1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The first international agreement signed and ratified by the Philippines pertaining to transparency and accountability as regards public funds is the Universal Declaration on Human Rights (UDHR). The United Nations, through the UN General Assembly, by enacting UN General Assembly Resolution 217A(III) on December 10, 1948,¹⁶ created the UDHR. The UDHR was envisioned “as a common standard of achievement for all peoples and all nations ... to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance,

⁸ Publish What You Fund. “Briefer Paper 1: Why Aid Transparency Matters, and the Global Movement for Aid Transparency.” Publish What You Fund Movement Website. http://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_bp1_whyaid_transparency_matters.pdf (last accessed Aug. 18, 2018).

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Mendel, T. “International Standards on Transparency and Accountability.” Centre for Law and Democracy.

<http://www.law-democracy.org/live/understanding-democracy-right/publicationsreportspapers/> (last accessed Aug. 18, 2018).

¹⁵ *Id.*

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 (December 10, 1948) [hereinafter UDHR].

both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”¹⁷

The UDHR, “as a UN General Assembly resolution, is not formally binding.”¹⁸ However, “**parts of it, including Article 19, are widely understood as having matured into customary international law, binding on all States.**”¹⁹ (Emphasis supplied)

Article 19 of the UDHR guarantees, as part and parcel of the right to freedom of expression, the rights of citizens to seek and receive information and ideas.²⁰ The aforementioned article states that: “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and **to seek, receive and impart information** and ideas through any media and regardless of frontiers.”²¹ (Emphasis supplied)

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Subsequently, the International Covenant on Civil and Political Rights (ICCPR) was “adopted, and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI)”²² on December 16, 1966;²³ it was entered into force on March 23, 1976.²⁴ The Philippines signed the ICCPR on December 19, 1966 and ratified it on October 23, 1986.²⁵ Thereafter, the Philippines signed the Optional Protocol to the International Covenant on Civil and Political Rights on December 19, 1966, and ratified it on August 22, 1989.²⁶

The ICCPR was enacted with the intent of “[r]ecognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights....”²⁷

Firstly, Article 2(3) of the ICCPR enshrines “[t]he right to an effective remedy for violations of rights ... also serves as a human rights foundation for accountability. Such remedies represent accountability mechanisms while, conversely, elected officials cannot be said to be accountable if there is no remedy against them when they abuse human rights.”²⁸ The aforementioned article states that:

Each State Party to the present Covenant undertakes:

¹⁷ *Id.* pmb1.

¹⁸ Mendel, T. “International Standards on Transparency and Accountability.” Centre for Law and Democracy. <http://www.law-democracy.org/live/understanding-democracy-right/publicationsreportspapers/> (last accessed Aug. 18, 2018).

¹⁹ *Id.*

²⁰ UDHR, art. 19.

²¹ *Id.*

²² ICCPR.

²³ *Id.*

²⁴ *Id.*

²⁵ Commission on Human Rights, Ratification of International Human Rights Treaties – Philippines, *available at* <http://www.ihumanrights.ph/help-2/ratification-of-international-human-rights-treaties-philippines/> (last accessed Aug. 18, 2018).

²⁶ *Id.*

²⁷ ICCPR, pmb1.

²⁸ Mendel., at 5.

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.²⁹

Article 19 of the ICCPR mirrors the right to information introduced by Article 19 of the UDHR. The said article states that:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.³⁰

Two general comments on Article 19 of the ICCPR, General Comments 10 and 34 of the Office of the High Commissioner for Human Rights, elucidate clearly and exhaustively the rights contained in the said article. The general comments, as an elaboration of Article 19, make it clear that **the right to information by the public at large is an inseparable component of the right to freedom of expression contained in Article 19 of the ICCPR.**

General Comment No. 10 of the ICCPR states that Article 19 of the said treaty:

requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", **but also freedom to "seek" and "receive" them**

²⁹ ICCPR, art 2(3).

³⁰ *Id.* art. 19.

"regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media of his choice". Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.³¹ (Emphasis supplied)

Furthermore, General Comment No. 10 explains that the right to information "carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole."³² However, whenever a government of a state party puts into place restrictions on the rights contained in Article 19 of the ICCPR, "these may not put in jeopardy the right itself."³³ Such restrictions must be "provided by law; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph and they must be justified as being 'necessary' for that State party for one of those purposes."³⁴

General Comment No. 34 provides a more exhaustive explanation and interpretation of the right to information on matters of public concern enjoyed by the citizenry as provided by Article 19 of the ICCPR. The said general comment states that **the public at large has a right to gain access to information held by public bodies.**³⁵

The public bodies being referred to by the general comment pertain to "[a]ll branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – [which] are in a position to engage the responsibility of the State party."³⁶ According to General Comment No. 34, Article 19 of the ICCPR **"also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression** to the extent that these Covenant rights are amenable to application between private persons or entities."³⁷ (Emphasis supplied)

General Comment No. 34, in no equivocal terms, explain that, in essence, Article 19 of the ICCPR makes it an obligation of signatory parties to recognize their respective citizens' right to access to information on matters of public concern.³⁸ The said general comment states that:

Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as

³¹ U.N. Office of the High Commissioner on Human Rights, General Comment No. 10: Freedom of expression (Art. 19), CCPR/C/GC/10 (June 29, 1983).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ U.N. Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (September 12, 2011).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records. The Committee, in general comment No. 32 on article 14, set out the various entitlements to information that are held by those accused of a criminal offence. Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general. Under article 27, a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities.³⁹ (Emphasis supplied)

Furthermore, General Comment No. 34 clarifies that under Article 19 of the ICCPR, **the access to information referred to by the said article must be open, easily obtainable, and comprehensible to the general public.**⁴⁰ According to the aforementioned general comment, under the ICCPR, “[t]o give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.”⁴¹ (Emphasis supplied)

In addition, by adhering to the ICCPR, the State Parties undertake to “also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation ... **should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.**”⁴² (Emphasis supplied)

As regards any fee or charge as to the gaining of access to information on matters of public concern, “fees for requests for information should not be such as to constitute an unreasonable impediment to access to information ... [a]rrangements should be put in place

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ U.N. Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (September 12, 2011).

⁴² *Id.*

for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.”⁴³

As to any attempt by signatory parties to curtail the right to information contained in Article 19 of the ICCPR, General Comment No. 34 states that “[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴⁴

In addition, Article 25 of the ICCPR provides for the right of citizens to be equipped with the tools in order to actively engage in civic affairs.⁴⁵

Under Article 25 of the ICCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) **To have access, on general terms of equality, to public service in his country.**⁴⁶ (Emphasis supplied)

It must be stressed that without providing any access to relevant, timely, and comprehensible information on foreign aid and assistance, the citizens are denied their right under the ICCPR to participate in the process of managing and disbursing foreign aid that are supposed to go to them.

3. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights was set into force through the adoption by the UN General Assembly of UN GA Resolution No. 2200 on December 16, 1966.⁴⁷ The ICESCR recognizes that it is “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ ICCPR, art.25.

⁴⁶ *Id.*

⁴⁷ International Covenant on Economic, Social and Cultural Rights, 1966, 993 U.N.T.S. 3 [“ICESCR”].

rights.”⁴⁸ The Philippines signed the international agreement on December 19, 1966; it was subsequently ratified by the Philippine Senate on June 7, 1974.⁴⁹

Article 2, Paragraph 1 of the ICESCR mandates State Parties to undertake all efforts to maximize its resources, including those stemming from international aid and assistance, for the upholding of the economic rights of its citizens.⁵⁰ The said provision of the ICESCR states that “[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁵¹

General Comment No. 3, composed by the UN Committee on Economic, Social and Cultural Rights (CESCR), gives an explication of the aforementioned provision of the ICESCR. It explains that “Article 2 (1) obligates each State party to take the necessary steps ‘to the maximum of its available resources’ ... it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”⁵² General Comment No. 3 also clarifies that “the means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be “all appropriate means, including particularly the adoption of legislative measures”. The Committee recognizes that “in many instances legislation is highly desirable and in some cases may even be indispensable.”⁵³

4. THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

The United Nations Convention Against Corruption (UNCAC) is notable for being “the first legally binding international anti-corruption instrument, [which] includes proactive disclosure in the chapter on preventing corruption.”⁵⁴ Signed by 142 countries,⁵⁵ the UNCAC mandates State Parties “**to publish information about [public] matters ... and also requires transparency of anti-corruption policies and the publication of periodic reports on the risks of corruption in the public administration.**”⁵⁶ (Emphasis supplied)

The UNCAC was a product of UN resolution 55/61,⁵⁷ which was passed on December 4, 2000,⁵⁸ recognizing that “an effective international legal instrument against corruption ... was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument....”⁵⁹ The UNCAC was then entered into force on December 14, 2005.⁶⁰ The UN Human Rights Council (UNHRC), through a panel discussion on the negative impact of corruption on human rights, describes the UNCAC as an international legal binding instrument that “acknowledges transversal principles such as transparency, accountability,

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* art 2(1).

⁵¹ *Id.*

⁵² U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 3, E/1991/23 (December 14, 1990).

⁵³ *Id.*

⁵⁴ Darbshire, Helen, *Proactive Transparency: The future of the right to information?* The World Bank Institute, 2010.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ U.N. Convention Against Corruption foreword, *entered into force* Dec. 14, 2005, 2349 U.N.T.S. 41 [hereinafter UNCAC].

⁵⁸ *Id.*

⁵⁹ *Id.* *pmb.*

⁶⁰ *Id.*

integrity, participation, respect of the rule of law, right to information, independence of the judiciary, fair trial, equality and non discrimination that enforce human rights.”⁶¹ The UNHRC also recognizes that “[a]ccess to information remains a key component of transparency and allows for conditions in which the society can significantly participate.”⁶² (Emphasis supplied)

The Philippines became a signatory country to the UNCAC on December 9, 2003,⁶³ and “was ratified by the Philippine Senate on November 8 2006.”⁶⁴ The Philippines recognizes the UNCAC as a “legally binding international anti-corruption instrument that requires States parties to implement, through laws, institutions, programmes, and practices, a wide range of measures to prevent, detect, prosecute, and sanction corruption and recover its proceeds.”⁶⁵

In its prefatory statement, the UNCAC recognizes that “[c]orruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment.”⁶⁶ As contained in Articles 5, 9, 10, and 13 of the treaty, the UNCAC “calls for states parties to promote public and civic engagement in accountability processes and emphasises access to information as critical in the fight against corruption.”⁶⁷ (Emphasis supplied)

Article 5 of the UNCAC contains provisions on the institutionalization of preventive anti-corruption policies and practices. Such article states that:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, **develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

⁶¹ U.N. Human Rights Council, U.N. Human Rights Council Panel Discussion on the Negative Impact of Corruption on Human Rights, *available at* <http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/ClaudiaAntiCorruption.pdf> (last accessed Aug. 18, 2018).

⁶² *Id.*

⁶³ Office of the Ombudsman, Review of Philippine Compliance with the UNCAC on Criminalization and International Cooperation, *available at* <http://www.ombudsman.gov.ph/index.php?home=1&navId=Ng==&subNavId=NTE=&sub2NavId=NjQ=&projId=ND A=&disp=1> (last accessed Aug. 18, 2018).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ UNCAC, prefatory statement.

⁶⁷ The OGP Civil Society Hub, Progressing access to information: global platforms available to civil society organizations, *available at* <http://www.ogphub.org/blog/progressing-access-to-information-global-platforms-available-to-civil-society-organizations/> (last accessed Aug. 18, 2018).

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.⁶⁸ (Emphasis supplied)

On the one hand, Article 9 of the UNCAC focuses on provisions on public procurement and management of public finances. The said article states that:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.
2. Each State Party shall, in accordance with the fundamental principles of its legal system, **take appropriate measures to promote transparency and accountability in the management of public finances.** Such measures shall encompass, inter alia:
 - (a) Procedures for the adoption of the national budget;
 - (b) Timely reporting on revenue and expenditure;
 - (c) A system of accounting and auditing standards and related oversight;
 - (d) Effective and efficient systems of risk management and internal control; and
 - (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.
3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, **to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.**⁶⁹ (Emphasis supplied)

On the other hand, Article 10 of the UNCAC contains provisions on public reporting. Article 10 states that “**each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate.**”⁷⁰ (Emphasis supplied) Such measures may include:

⁶⁸ UNCAC, art. 5.

⁶⁹ *Id.* art. 9.

⁷⁰ *Id.* art. 10.

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.⁷¹

Article 13 of the UNCAC contains provisions that ensure that citizens have the right of participation in society. Such article states that:

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, **to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:
 - (a) **Enhancing the transparency of and promoting the contribution of the public to decision-making processes;**
 - (b) **Ensuring that the public has effective access to information;**
 - (c) Undertaking public information activities that contribute to non- tolerance of corruption, as well as public education programmes, including school and university curricula;
 - (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary....⁷² (Emphasis supplied)

5. THE PARIS DECLARATION ON AID EFFECTIVENESS

Another important international instrument that binds signatory countries to ensure the institutionalization of transparency and accountability measures regarding the

⁷¹ *Id.*

⁷² *Id.* art. 13.

management of foreign aid is the Paris Declaration on Aid Effectiveness. Signed by more than 100 countries in March of 2005 at the conclusion of the 2nd High-Level Forum on Aid Effectiveness,⁷³ the Paris Declaration “seeks to accelerate the achievement of the 2015 Millennium Development Goals (MDGs) by addressing five key development cooperation principles: alignment, harmonization, managing for results, mutual accountability and ownership.”⁷⁴

As indicated by the annex of the Paris Declaration, the Philippines is one of the signatory countries that acceded to the declaration.⁷⁵ As the Philippines “is a signatory to the Paris Declaration on Aid Effectiveness, ... it has put in place a monitoring system based on the principles spelled out in the Paris Declaration (PD).”⁷⁶

While the Paris Declaration is not an international agreement ratified by the Philippine Senate, it remains to be a legally binding agreement as far as the Philippines is concerned. According to the decision of the International Court of Justice (ICJ) in the *Nuclear Test Cases: Australia v. France, New Zealand v. France*,

[i]t is well-recognized that declarations made by way of unilateral acts concerning legal or factual situations, may have the effect of creating legal obligations ... **When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration.**⁷⁷ (Emphasis supplied)

From the aforementioned ICJ case, an international instrument or declaration creates a binding obligation if there are two characteristics present: the commitment was very specific and there was a clear intent to be bound.⁷⁸

It must be stressed that the Philippines recognizes the Paris Declaration as a binding international instrument and has expressed its intent to accede to its specific commitments on aid transparency and accountability, acknowledging the document “for its ‘clarity, coherence, and relevance’ [i]t is essential ... that the government monitors the Paris Declaration commitments on a regular basis to ascertain compliance with the targets.”⁷⁹ According to the National Economic Development Authority (NEDA), “the government acknowledges that acceptance of the Paris Declaration must be brought to the level of all implementing agencies of government, whether national or local, as well as civil society organisations (CSOs).”⁸⁰ In addition, the NEDA emphasizes that “[o]n the government side, the Paris Declaration

⁷³ PNOWB, PARIS DECLARATION ON AID EFFECTIVENESS AND ACCRA GENDA FOR ACTION – PNOWB PARLIAMENTARIANS & DEVELOPMENT SERIES – BRIEFING #1 (2009)

⁷⁴ *Id.*

⁷⁵ PARIS DECLARATION, appendix b.

⁷⁶ National Economic Development Authority, *Evaluation of the Implementation of the Paris Declaration: Case Study of the Philippines Executive Summary*, Manila: NEDA, 2008.

⁷⁷ *Nuclear Test Cases (Aus. v. F.r., N.Z. v. Fr.)*, 1974 I.C.J. 457 (Dec. 20).

⁷⁸ BERNAS, at 26.

⁷⁹ National Economic Development Authority, *Evaluation of the Implementation of the Paris Declaration: Case Study of the Philippines Executive Summary*, Manila: NEDA, 2008.

⁸⁰ *Id.*

commitments and indicators are clear at the national level”⁸¹ and that “[t]he Philippines finds the commitments and targets under the principle of ownership clear.”⁸²

In fact, the Philippines played an important role in the introduction of the Paris Declaration, being part of the High Level Forum in Paris in 2003 that led to the creation of the declaration.⁸³ A recognition of the obligations set by the Paris Declaration, “the Philippines have initiated a process of pursuing harmonisation with donors ... the [Government of the Philippines] has shown ... leadership/ownership in committing to prepare a set of progress indicators as required by the Paris Declaration.”⁸⁴

The Paris Declaration was signed, not only by participating countries, “but also by 30 other actors in the development cooperation field.”⁸⁵ The declaration in Paris is notable in developing the international movement towards foreign aid transparency and accountability as it “expanded the scope of the aid effectiveness agenda after the realization that aid had created dependency issues that inhibited development ... [b]y adhering, they committed their countries and organisations to put into practice a set of principles to improve aid effectiveness, enabling them to reach specific targets by 2010.”⁸⁶

The signatory countries of the Paris Declaration on Aid Effectiveness agree on five main principles: “Ownership, Alignment, Harmonisation, Managing for Results and Mutual Accountability.”⁸⁷ The declaration mandates the participating countries to adopt:

[a] more practical, action-oriented roadmap to improve the quality of aid and its impact on development. It establishes a commitment to track and set targets against 12 indicators of progress. The Declaration thus highlights the importance of predictable, well aligned, programmed, and coordinated aid. Its purpose is to improve aid delivery in a way that best supports the achievement of the Millennium Development Goals by 2015. The PD notes managing for results as relating to improving planning and decision-making structures in a way that focuses on desired results. This mainly entails strengthening the link between national development strategies and annual budget processes and evaluating outcomes against key indicators for which data is available.⁸⁸

The Paris Declaration on Aid Effectiveness places much importance on transparency and accountability in foreign aid, “in which recipient countries and donors become accountable to each other and to their citizens ... have committed to a model of partnership, where donors and partner countries are mutually accountable for development results and aid effectiveness.”⁸⁹ The signatories of the Paris Declaration deem the international instrument as

⁸¹ *Id.*

⁸² *Id.*

⁸³ INTERNATIONAL BUSINESS PUBLICATIONS, USA, PHILIPPINES COUNTRY STUDY GUIDE VOLUME 1 STRATEGIC INFORMATION AND DEVELOPMENTS, 189 (2013).

⁸⁴ *Id.*

⁸⁵ AFRICAN FORUM AND NETWORK ON DEBT AND DEVELOPMENT, THE EFFECTIVENESS OF FOREIGN AID BEYOND BUSAN: CASE STUDIES IN ZAMBIA, GHANA AND MOZAMBIQUE 14 (2013).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 15.

“a practical response to recent experiences in building greater transparency and accountability at country level, and to lessons learned about the role of country ownership in delivering development results.”⁹⁰ The Paris Declaration also acknowledges “that corruption and lack of transparency erode public support; impedes effective resource mobilisation and allocation while diverting resources away from activities that are vital for poverty reduction and sustainable economic development.”⁹¹

The Paris Declaration, under Paragraph 3, enumerates the commitments undertaken by the signatory countries, which include “defining measures and standards of performance and accountability of partner country systems in public financial management, procurement, fiduciary safeguards and environmental assessments[.]”⁹²

Under Paragraph 4, the signatory countries commit to taking “**concrete and effective action to address the remaining challenges, including: ... [c]orruption and lack of transparency, which erode public support, impede effective resource mobilisation and allocation and divert resources away from activities that are vital for poverty reduction and sustainable economic development ... inhibits donors from relying on partner country systems.**”⁹³ (Emphasis supplied)

Paragraph 17 of the Paris Declaration states that signatory countries should increase aid effectiveness “by strengthening the ... sustainable capacity to develop, implement and account for its policies to its citizens and parliament. Country systems and procedures typically include ... national arrangements and procedures for public financial management, accounting, auditing, procurement, results frameworks and monitoring.”⁹⁴

Under Paragraph 19 of the declaration, both recipient countries and donor countries of foreign aid and assistance “jointly commit to work together to establish mutually agreed frameworks that provide reliable assessments of performance, transparency and accountability of country systems[.]”⁹⁵

Under Paragraph 20, the countries which are signatories to the declaration that receive foreign aid undertake to “[c]arry out diagnostic reviews that provide reliable assessments of country systems and procedures; undertake reforms that may be necessary to ensure that national systems, institutions and procedures for managing aid and other development resources are effective, accountable and transparent[.] ... [and] undertake reforms, such as public management reform[.]”⁹⁶

Focusing on the strengthening of the public financial management capacity with respect to foreign aid, Paragraph 25 of the declaration states that the signatory countries make the commitment to: “intensify efforts to mobilise domestic resources, strengthen fiscal sustainability, and create an enabling environment for public and private investments; publish timely, transparent and reliable reporting on budget execution; [and] take leadership of the public financial management reform process.”⁹⁷

⁹⁰ *Id.*

⁹¹ AFRICAN FORUM AND NETWORK ON DEBT AND DEVELOPMENT, *supra* note 488, at 16.

⁹² Paris Declaration, par.3.

⁹³ *Id.* par.4.

⁹⁴ *Id.* par.17.

⁹⁵ *Id.* par.19.

⁹⁶ *Id.* par.20.

⁹⁷ *Id.* par.25.

Paragraphs 47 to 50 of the Paris Declaration deals specifically with the mutual accountability commitments expected from both recipient and donor countries of foreign aid and assistance.⁹⁸ Paragraph 47 states that “[a] major priority for partner countries and donors is to enhance mutual accountability and transparency in the use of development resources ... strengthen public support for national policies and development assistance.”⁹⁹

Under Paragraph 48, the recipient countries commit to “strengthen as appropriate the parliamentary role in national development strategies and/or budgets”¹⁰⁰ and “[r]einforce participatory approaches by systematically involving a broad range of development partners when formulating and assessing progress in implementing national development strategies.”¹⁰¹

6. THE ACCRA AGENDA FOR ACTION

Prompted with the need to augment the initiatives set by the Paris Declaration on Aid Effectiveness, “[i]n September 2008, donor and developing countries and multilateral agencies met for the 3rd High Level Forum (HLF-3) on Aid Effectiveness, held in Accra, Ghana to assess progress in the implementation of the Paris Declaration. At this meeting the Accra Agenda for Action (AAA) was agreed upon, building on the commitments in the Paris Declaration.”¹⁰²

The Accra Agenda for Action is a significant international instrument as it introduced “48 new or strengthened commitments (34 of which target the donor community), in addition to the 12 indicators agreed within the Paris Declaration.”¹⁰³ The Accra Agenda contains obligations with respect to “predictability and transparency of aid flows, true ownership by CSOs and parliaments over aid decisions, reliance on the systems of developing country governments rather than donor systems, and a better and more efficient division of labour amongst donors.”¹⁰⁴ The Accra Agenda also underscored the “importance of recipient countries determining their own development strategies by playing a more active role in designing development policies and taking a stronger leadership role in coordinating aid.”¹⁰⁵ The Philippines is one of the countries that signed the Accra Agenda for Action in 2008.¹⁰⁶

Under Section 24 of the Accra Agenda for Action, the signatory countries make the commitment to “be more accountable and transparent to our publics for results.”¹⁰⁷ The Accra Agenda deems that “[t]ransparency and accountability are essential elements for development results. They lie at the heart of the Paris Declaration, in which we agreed that countries and donors would become more accountable to each other and to their citizens.”¹⁰⁸ (Emphasis supplied)

⁹⁸ Paris Declaration, pars.47-50.

⁹⁹ *Id.* par.47.

¹⁰⁰ *Id.* par.48.

¹⁰¹ *Id.*

¹⁰² Nerea Craviotto and Anne Schoenstein, Primer #8: The Accra Agenda for Action: A brief review from a women’s rights perspective, *available at* www.awid.org/content/download/103005/1189184/.../Primer%208.pdf (last accessed Aug. 18, 2018).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ AFRICAN FORUM AND NETWORK ON DEBT AND DEVELOPMENT, at 16.

¹⁰⁶ Accra Agenda.

¹⁰⁷ *Id.* sec.24.

¹⁰⁸ *Id.*

Under the Section 24, Paragraph A of the Accra Agenda, the signatory parties, under no equivocal terms, undertake to “**make aid more transparent. Developing countries will facilitate parliamentary oversight by implementing greater transparency in public financial management, including public disclosure of revenues, budgets, expenditures, procurement and audits.**”¹⁰⁹ (Emphasis supplied)

Under Paragraph B of the aforementioned section of the international agreement, the signatory countries obligate themselves to make sure that “mutual assessment reviews are in place ... based on country results reporting and information systems complemented with available donor data and credible independent evidence.”¹¹⁰

In Paragraph C, “to complement mutual assessment reviews at country level and drive better performance, developing countries and donors will jointly review and strengthen existing international accountability mechanisms, including peer review with participation of developing countries.”¹¹¹

Under Paragraph D, the signatory parties acknowledge that “effective and efficient use of development financing requires both donors and partner countries to do their utmost to fight corruption. Donors and developing countries will respect the principles to which they have agreed, including those under the UN Convention against Corruption.”¹¹²

Specifically, the Accra Agenda mandates developing countries that are signatories of the said international instrument, such as the Philippines, to “address corruption [in the management of foreign aid and assistance] by improving systems of investigation, legal redress, accountability and transparency in the use of public funds. Donors will take steps in their own countries to combat corruption by individuals or corporations and to track, freeze, and recover illegally acquired assets.”¹¹³

7. THE BUSAN PARTNERSHIP FOR EFFECTIVE DEVELOPMENT CO-OPERATION

To further develop and augment the transparency and accountability agenda established by the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, the Busan Partnership for Effective Development Co-operation was acceded to by hundreds of countries, including the Philippines,¹¹⁴ and several international organizations in Busan, South Korea in 2011.¹¹⁵

The international instrument which was produced after the high level meetings conducted in Busan, called the Busan Partnership Agreement, obligates partner countries and donors to implement mechanisms that address the critical issues of “effective institutions, results and accountability, statistics, gender, public private partnership, transparency[.]”¹¹⁶

¹⁰⁹ *Id.* sec.24(A).

¹¹⁰ *Id.* sec.24(B).

¹¹¹ *Id.* sec.24(C).

¹¹² Accra Agenda, sec.24(D).

¹¹³ *Id.*

¹¹⁴ Organisation for Economic Co-operation and Development, Countries, Territories and Organisations Adhering to the Busan Partnership for Effective Development Co-operation, *available* at <http://www.oecd.org/dac/effectiveness/busanadherents.htm> (last accessed Aug. 18, 2018).

¹¹⁵ AFRICAN FORUM AND NETWORK ON DEBT AND DEVELOPMENT, at 17.

¹¹⁶ *Id.* at 18.

The Busan Partnership Agreement stressed “the importance of the aid effectiveness agenda and emphasized the need for those who endorsed it to ensure that the commitments made in Paris and Accra are met in full. The Busan Principles are founded on common set of principles that underpin all forms of development cooperation.”¹¹⁷

Under the Busan Partnership for Effective Development Co-operation, the signatory countries assent to the following core principles: “developing countries have to be owners of the development process at country level and the country itself should lead the process; the focus is on results; the development partnership has to be inclusive’ mutual accountability and transparency for donor and beneficiaries.”¹¹⁸

The Busan Partnership Agreement places much emphasis on the obligation of signatory parties to uphold transparency and accountability as to foreign aid, **“calling for the adoption of a common, open standard for the publication of aid data which builds on the International Aid Transparency Initiative (IATI) among other agreements.”**¹¹⁹ (Emphasis supplied)

Furthermore, the Busan Partnership Agreement compels signatory countries to “use financial and administrative systems of development countries as the default mechanism for aid delivery ... to use country led road maps to deliver development, [supporting] the role of national parliaments and local governments in ensuring, democratic ownership through the provision of adequate resources and action plans.”¹²⁰

Specifically under Section 11 of the Busan Agreement, signatory parties make the commitment of ensuring “[t]ransparency and accountability to each other. Mutual accountability and accountability to the intended beneficiaries ... as well as to our respective citizens, organisations, constituents and shareholders, is critical to delivering results. Transparent practices form the basis for enhanced accountability.”¹²¹

Under Section 18 of the agreement, Paragraph B, developing countries that signed the agreement undertake to institutionalize “transparent, country-led and country-level results frameworks and platforms will be adopted as a common tool among all concerned actors to assess performance based on a manageable number of output and outcome indicators drawn from the development priorities and goals of the developing country.”¹²²

Furthermore, in Paragraph E, the parties to the Busan Agreement commit to “improve the quality, consistency and transparency of reporting on the tying status of aid.”¹²³

Section 23 of the Busan Partnership Agreement contains the obligations of the signatory parties as to transparent and responsible management of foreign aid, stating that the parties undertake to “improve the availability and public accessibility of information on

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 19.

¹²⁰ *Id.*

¹²¹ Organisation for Economic Co-operation and Development [OECD], *Busan Partnership for Effective Development Co-operation* (Dec. 1, 2011)

¹²² *Id.* sec. 18(b).

¹²³ *Id.* sec. 18(e).

development co-operation and other development resources, building on our respective commitments in this area.”¹²⁴

Under Paragraph A of the aforementioned section of the agreement, it is an obligation of the recipient countries to “make the full range of information on publicly funded development activities, their financing, terms and conditions, and contribution to development results, publicly available subject to legitimate concerns about commercially sensitive information.”¹²⁵

Under Paragraph B, recipient countries must establish information management systems as to foreign aid, stating that the recipient countries must “[f]ocus, at the country level, on establishing transparent public financial management and aid information management systems, and strengthen the capacities of all relevant stakeholders to make better use of this information in decision-making and to promote accountability.”¹²⁶ (Emphasis supplied)

In Paragraph C, countries that receive foreign aid must observe a common standard of making foreign aid information transparent and subject of accountability, stating that the parties are mandated to institute an accessible and comprehensible “standard for electronic publication of timely, comprehensive and forward-looking information on resources provided through development co-operation, taking into account the statistical reporting of the OECD-DAC and the complementary efforts of the International Aid Transparency Initiative ... must meet the information needs of developing countries and non-state actors, consistent with national requirements.”¹²⁷

8. FOREIGN AID TRANSPARENCY AND ACCOUNTABILITY IN SOFT LAW

Aside from the aforementioned international agreements acceded to by the Philippines, other international instruments call for the State’s adoption of transparency and accountability mechanisms as to international disaster aid and assistance. Resolutions enacted by the U.N. General Assembly are “normally referred to as soft law.”¹²⁸ While soft law are technically not legally binding, “their legal significance and potential to affect State behavior cannot be taken for granted ... soft law cannot be simply dismissed as non-law.”¹²⁹

Soft law, such as U.N. General Assembly Resolutions, finds significance in the sense that “under the complexity and dynamism of contemporary international law-making, international standards may well emerge as a result of the interplay of different instruments, regardless of their nature.”¹³⁰

Furthermore, “various soft law instruments will have different legal significance, as well as different degrees of effectiveness ... the different contexts within which an instrument

¹²⁴ *Id.* sec. 23.

¹²⁵ *Id.* sec. 23(a).

¹²⁶ *Id.* sec. 23(b).

¹²⁷ Busan Agreement, sec. 23(c).

¹²⁸ Mauro Barelli, The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on The Rights of Indigenous Peoples, *available at* http://openaccess.city.ac.uk/585/2/_ILQ_ILQ58_04_S0020589309001559a.pdf (last accessed Aug. 18, 2018).

¹²⁹ *Id.*

¹³⁰ *Id.*

is adopted, the circumstances which have led to its establishment, its very normative content and the institutional setting within which it exists.”¹³¹

The international community must take into consideration U.N. General Assembly Resolutions because “legal obligations continue to be associated with greater expectation of conforming behavior and consequences for non-compliance ... States have also become concerned about ‘compliance with other forms of international commitment.’”¹³²

In December 14, 1946, the U.N. General Assembly passed U.N. General Assembly Resolution 59(1), which was a “Calling of an International Conference on Freedom of Information.”¹³³ According to such resolution, the General Assembly recognizes that “[f]reedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated.”¹³⁴ (Emphasis supplied) The U.N. General Assembly also recognized that the freedom of information of the citizenry on matters of public concern is “an essential factor in any serious effort to promote the peace and progress of the world.”¹³⁵

Furthermore, on February 28, 2001, the U.N. General Assembly adopted a resolution “[p]romoting and consolidating democracy.”¹³⁶ According to U.N. General Assembly Resolution 55/96, the nations composing the General Assembly undertake to ensure “[i]mproving the transparency of public institutions and policy-making procedures and enhancing the accountability of public officials.”¹³⁷

On April 19, 2012, the United Nations General Assembly adopted a resolution enacted by the United Nations Human Rights Council.¹³⁸ The U.N. General Assembly Resolution A/HRC/RES/19/36 on “Human Rights, Democracy, and the Rule of Law”¹³⁹ stresses the great need for States to recognize the indispensability of “transparency and accountability in public administration and decision-making and free, independent and pluralistic media.”¹⁴⁰

The aforementioned U.N. resolution also states that “transparent and inclusive decision-making and effective rule of law is essential for a legitimate and effective Government that is respectful of human rights.”¹⁴¹ Additionally, the resolution gives further emphasis on “the importance of effective, transparent and accountable legislative bodies, and acknowledges their fundamental role in the promotion and protection of human rights, democracy and the rule of law.”¹⁴²

Another important resolution adopted by the U.N. General Assembly on March 3, 2009 is U.N. General Assembly Resolution 63/137, which focuses on “[s]trengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian

¹³¹ *Id.*

¹³² *Id.*

¹³³ G.A. Res. 59 (I), at 95, U.N. Doc. A/RES/59(1) (December 14, 1946).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ G.A. Res. 55/96, ¶ 1, U.N. Doc. A/RES/55/96 (February 28, 2001).

¹³⁷ *Id.* at 5.

¹³⁸ G.A. Res. 19/36, ¶ 1, U.N. Doc. A/HRC/RES/19/36 (April 19, 2012).

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 2.

¹⁴¹ *Id.* at 3.

¹⁴² *Id.*

Ocean tsunami disaster.”¹⁴³ The adopting of the U.N. General Assembly Resolution was of great importance, stressing that many lessons were learned from the 2004 Asian tsunami disaster. According to the said resolution, the U.N. General Assembly “[r]ecognizes and encourages ongoing efforts to promote transparency and accountability among donors and recipient countries by means of ... a unified financial and sectoral information online tracking system, and highlights the importance of timely and accurate information on assessed needs and the sources.”¹⁴⁴

Another U.N. General Assembly Resolution, adopted on December 11, 2008, called for the “strengthening of the coordination of emergency humanitarian assistance of the United Nations.”¹⁴⁵ UN General Assembly Resolution 63/139 calls on member states to move towards “further developing common mechanisms to improve the quality, transparency and reliability of humanitarian needs assessments, to assess their performance in assistance and to ensure the most effective use of humanitarian resources by these organizations.”¹⁴⁶ In addition, the U.N. General Assembly stressed that all member states should exert initiatives that would lead to the improvement of the “humanitarian response to natural and man-made disasters and complex emergencies by further strengthening the humanitarian response capacities at all levels, by continuing to strengthen the coordination of humanitarian assistance at the field level, including with national authorities of the affected State, as appropriate, and by further enhancing transparency, performance and accountability.”¹⁴⁷

¹⁴³ G.A. Res. 63/137, ¶ 1, U.N. Doc. A/RES/63/137 (March 3, 2009).

¹⁴⁴ *Id.* at 2.

¹⁴⁵ G.A. Res. 63/139, ¶ 1, U.N. Doc. A/RES/63/139 (December 11, 2009).

¹⁴⁶ *Id.* at 4.

¹⁴⁷ *Id.* at 2.

ANNEX C

DRAFT LEGISLATIVE BILL

**SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
THIRD REGULAR SESSION)**

SENATE
S.B. No. _____

Introduced by Sen. _____

Explanatory Note

The right of the people to information on matters of public concern, which includes information on aid and assistance granted through the State by foreign governments, organizations, and individuals for victims of disasters and calamities, is enshrined in the 1987 Constitution. Furthermore, the Constitution maintains the concept of public office as a public trust, such that public officers and employees tasked to handle foreign aid should be held accountable to the people at all times.

Moreover, the Philippines has obligated itself to enhance transparency measures with respect to information on the storage and distribution of international aid by being a signatory to various international conventions and documents such as Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action, the Busan Partnership for Effective Development Co-operation, and the United Nations Convention Against Corruption (UNCAC).

The absence of any legislative compulsion to account for foreign aid has significant consequences as to the effective and efficient distribution of aid and assistance to calamity-stricken persons and communities in dire need of expedient relief. As seen during the onslaught of Typhoon Haiyan, locally named Typhoon Yolanda, the dearth of legal measures ensuring transparency and accountability with respect to foreign aid led to the failure of government agencies to account for aid worth millions of Pesos, which inevitably resulted to the wastage of a significant amount of relief aid. As there is great public clamor for the government to fully account for aid and assistance which should be duly received by the affected persons and communities ravaged by disasters and calamities, this legislative measure, the Foreign Aid and Assistance Transparency and Accountability Act of 2015, shall ensure that the State shall comply with its obligation to account for foreign aid by mandating concerned government agencies to grant timely access to the public with respect to relevant data on foreign aid and assistance.

In view of the foregoing, the approval of this bill is resolutely prayed for.

(SGD.)
Senator

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
THIRD REGULAR SESSION)

SENATE
S.B. No. _____

Introduced by Sen. _____

AN ACT MANDATING TRANSPARENCY AND ACCOUNTABILITY AS TO DISASTER-RELIEF AID OR DONATIONS RECEIVED BY THE PHILIPPINE GOVERNMENT FROM THE INTERNATIONAL COMMUNITY FOR NATURAL AND HUMAN-INDUCED CALAMITIES.

SECTION 1. Title. - This Act shall be known as the “Foreign Aid and Assistance Transparency and Accountability Act of 2018.”

SECTION 2. Declaration of Policy. - It is hereby declared that the State adopts and implements a policy recognizing international aid and assistance granted to the Philippine government and to any of its instrumentalities as part and parcel of public funds, being a matter of utmost public concern and of great public interest. Thus, the State adopts a policy of full public disclosure of all its transactions involving public interest, promoting transparency and accountability in the receipt, storage, management, and utilization of foreign donations for natural and human-induced calamities that cause havoc and destruction in the country.¹

SECTION 3. Coverage. - This act shall cover all foreign donations directed to the national government, other state instrumentalities, government owned and controlled corporations (GOCCs). and local government units (LGUs) from all foreign sources, such as foreign governments, bilateral or multilateral organizations and institutions, and private individuals or groups.²

SECTION 4. Definition of Terms. - For purposes of this Act, the following shall refer to:

(a) "Calamity" - a natural or human-induced disaster causing widespread human, material, economic or environmental losses to a community or society.³

¹ S. B. No. 2342, 16th Cong., 2nd Reg. Sess. (2014).

² *Id.* § 3.

³ *Id.* § 4.

(b) "Donations" - cash or non-cash aid or grants received by the government for disaster relief, recovery, or rehabilitation from foreign governments, institutions, and individuals, and other foreign entities.⁴

(c) "Donor" - refers to foreign governments, bilateral or multilateral organizations and institutions, private individuals or groups who donate cash or non-cash aid or grants to the Philippine government for disaster relief, aid, or rehabilitation.⁵

(d) "Donee" - refers to departments, bureaus, and offices of the national government including constitutional offices, state universities and colleges, government owned and controlled corporations (GOCCs) and local government units (LGUs) that receive donations from foreign sources.⁶

(e) "Donations in Cash" - refer to cash assistance from donor entity/individual to the Philippine government through any of its agencies or instrumentalities.⁷

(f) "Donations in Kind" - refer to assistance in kind such as but not limited to food, clothing, medicine, and equipment coming from the donor entity/individual to a specific national government agency or local government unit for the purpose of disaster relief, recovery and rehabilitation efforts.⁸

SECTION 5. Acceptance of Foreign Donations. - All foreign donations, whether in cash or in kind, from foreign persons or entities granted to any department, bureau, and office of the national government, including constitutional offices enjoying fiscal autonomy, and state universities and colleges, as well as donations to LGUs, shall be subject to the prior clearance and approval of the President upon the recommendation of the Department of Foreign Affairs (DFA). The DFA shall submit to Office of Civil Defense (OCD) a report on all foreign donations that it has processed.⁹

Departments, bureaus and offices of the national government, including constitutional offices enjoying fiscal autonomy, state universities and colleges, and LGUs are authorized to accept donations in cash or in kind from foreign sources, subject to the prior clearance and approval of the President upon recommendation of the DFA, for purposes relevant to their respective functions, and which shall be used to cover aid, relief and rehabilitation, repair, and reconstruction of permanent structures affected by natural and man-made calamities. Such donations, whether in cash or in kind, shall be deemed automatically appropriated.¹⁰

SECTION 6. Utilization and Treatment of Donations. - Donations shall be only be utilized in accordance with the purpose identified by the donor. Donations for a specific purpose, as identified by the donor, shall be treated as trust receipts, PROVIDED that in case the donor does not identify a specific project or activity to be funded, such donation shall be considered as calamity aid for the use of the Department of Social Welfare and Development

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ S. B. No. 2342, § 4.

⁸ *Id.*

⁹ *Id.* § 9.

¹⁰ *Id.* § 5

(DSWD): PROVIDED further, that donations intended for program support for calamities in general shall be booked as income of the national government or LGU, as the case may be.¹¹

SECTION 7. Cash Donations. - All cash donations shall be deposited under the account of the Bureau of Treasury (BTr), except when the donation is made directly to the agencies, in which case the donee-agency shall inform the BTr of the cash donation upon receipt thereof: PROVIDED, that if the donation is made directly to an LGU, the Bureau of Local Government Finance (BLGF) shall be informed upon its receipt of the cash donation for purposes of consolidating the quarterly reports to be submitted to the Office of Civil Defense (OCD), the secretariat of the National Disaster Risk Reduction and Management Council (NDRRMC). An official receipt shall be issued by the concerned donee-agency or LGU for cash donations received.¹²

Donations in Foreign Currency shall be converted to the Philippine Peso at the prevailing rate at the time of the receipt of the donation. Donations shall be taken up in the books of the BTr as income or trust receipts.¹³

The amounts received by the donee-agency shall thereafter be deposited to the account of the Treasurer of the Philippines, and shall be made available to the implementing agency concerned through a Special Budget pursuant to Section 35, Chapter 5, Book VI of B.O. No. 292: PROVIDED that, if the donee-agency is an LGU, the same shall be deposited to the account of the Local Treasury as a separate special account maintained in every provincial, city, or municipal treasury and recorded as a Trust Fund under the Special Funds pursuant to Section 309 (b) Article I, Chapter II, Title V, Book II of the Local Government Code.¹⁴

In no case shall the cash donation be used for payment of Personal Services of any government unit or any other expenses not related to disaster relief, recovery and rehabilitation efforts.¹⁵

SECTION 8. Donations in Kind. - For donations in kind, an acknowledgement receipt shall be issued to the donor by the donee-agency. The value of donated Property, Plant and Equipment (PPE) shall be based on the declared value in the Deed of Donation or the bill of lading/airway bill/parcel notice and other related documents. The fair market value/appraised value shall be used in the absence of declared value. The donee-agency shall submit either in printed form or by way of electronic document to the OCD, quarterly reports on the receipt of donations in kind: PROVIDED that, the LGU shall submit to OCD through the LGP all donations in kind that they have received: PROVIDED further that, the Bureau of Customs (BOC), which process all foreign donation pursuant to Section 18 of R.A. 10121, otherwise known as the "Philippine Disaster Risk Reduction and Management Act," shall submit a report on the conditionally-free importation under this section to the OCD.¹⁶

The head of the donee-agency or LGU shall be primarily responsible for the accounting and safeguarding of all donated supplies, materials, equipment and relief goods against loss

¹¹ *Id.* § 6.

¹² *Id.* § 7.

¹³ S. B. No. 2342, § 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* § 8.

and wastage.¹⁷

SECTION 9. Mandatory Release of and Granting Access to Information with respect to Foreign Disaster Aid and Assistance. - The head of the donee-agency and LGU, and such agency and LGU's web administrator or his/her equivalent, shall be responsible for ensuring that a report of donations received, whether in cash or in kind, which includes relevant information such as, but not limited to, the amount, source, date of donation, the intended beneficiaries, purpose, and target date of distribution of the aid are posted on the agency's official website, no later than five (5) working days from the receipt of the aid. Such online report shall be regularly updated by the concerned donee-agency and LGU.

Copies of such report shall also be made readily available to requesting parties in the main office of the donee-agency no later than five (5) working days from the making of the request. All citizens of the Republic of the Philippines shall be given access to such reports, subject to reasonable expenses incurred in the production of such report.¹⁸

The BTr shall submit to OCD a quarterly report on all amount deposited under the special account it maintains for all donations received, including the amount retained by the donee-agency under Section 7 of this Act.¹⁹ The OCD shall make this report accessible to the public through its online portal no later than five (5) working days from the receipt of such report.

The Department of Foreign Affairs (DFA) shall likewise submit a report on all donations and aid pledges made by foreign governments, bilateral or multilateral organizations and institutions, private foreign individuals or groups to any instrumentality of the National Government and LGUs for disaster relief, aid, or rehabilitation to the OCD.²⁰

The DFA shall maintain an online portal wherein all information as to all disaster relief aid, assistance, and donations in cash and in kind, as well as aid pledges, made by foreign governments, bilateral or multilateral organizations and institutions, private foreign individuals or groups to any instrumentality of the national government and LGUs for disaster relief, aid, or rehabilitation are posted. Relevant information with regard to donations and aid pledges, such as, but not limited to, the source, amount, purpose, date of donation or pledge, the intended beneficiaries, and the target date of aid distribution shall be posted on the online portal maintained by the DFA no later than five (5) working days from the granting of the donation or making of the pledge.²¹

The DFA shall also ensure that such relevant information on all foreign relief aid, assistance, and donations shall be included in the Official Gazette of the Republic of the Philippines.

The OCD shall submit, both in printed form and by way of electronic document, to the Department of Budget and Management (DBM), the House Committee on Appropriations and the Senate Committee on Finance, a consolidated quarterly report of all submissions

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ S. B. No. 2342, § 10.

²⁰ *Id.* § 10.

²¹ *Id.*

made to OCD under this Act. The Executive Director of the OCD and the NDRRMC's web administrator or his/her equivalent shall be responsible for ensuring that said quarterly reports are likewise posted on the official website of NDRRMC.²²

SECTION 10. Prohibited Acts. - Any person, group, or corporation who commits any of the following prohibited acts shall be held liable and be subjected to the penalties prescribed in Section 11 of this Act:

(a) Dereliction of duty on the part of heads of donee-agencies and LGUs and their corresponding web administrators, through bad faith or inexcusable negligence, to make accessible relevant information as regards foreign donations and pledges, in accordance with Section 9 of this Act;

(b) Preventing the proper accounting and recording of information as regards foreign aid and pledges;

(c) Misrepresenting the source, amount, and other relevant information as regards foreign donation composed of relief goods, cash, equipment or other aid commodities;

(d) Tampering information as to the source, amount, and other relevant data as regards foreign donation composed of relief goods, cash, equipment or other aid commodities;

(e) Deliberate use of false or inflated data in support of the request for funding, relief goods, equipment or other aid commodities for emergency assistance or livelihood projects.²³

(f) Misappropriation of the granted aid, assistance, or donation in cash or in kind contrary to the intended use of the aid as indicated by the donor, unless permitted by such donor.

SECTION 11. Penalty Clause. - Any individual, corporation, partnership, association, or other juridical entity that commits any of the prohibited acts provided for in Section 10 of this Act shall be prosecuted and upon conviction shall suffer a fine of not less than One hundred thousand pesos (Php 100,000.00) or any amount not to exceed One million pesos (Php 1,000,000.00) or imprisonment of not less than six (6) years and one (1) day or more than twelve (12) years, or both, at the discretion of the court, including perpetual disqualification from public office if the offender is a public officer, and confiscation or forfeiture in favor of the government of the objects and the instrumentalities used in committing any of herein prohibited acts.²⁴

SECTION 11. Implementation, Rules, and Regulations. - The DFA, DBM, OCD, DOF, DILG, and the COA shall promulgate the Implementing Rules and Regulations to implement this Act within thirty (30) days from its approval.²⁵

²² *Id.*

²³ Philippine Disaster Risk Reduction and Management Act of 2010, § 19 ¶ (I).

²⁴ *Id.* § 20.

²⁵ S. B. No. 2342, *supra* note 556, § 11.

The Implementing Rules and Regulations shall take effect five (5) days after publication in a newspaper of general circulation.²⁶

SECTION 17. Repealing Clause. – All other laws, decrees, executive orders, or proclamations inconsistent with, or contrary to the provisions of this Act are hereby amended or repealed accordingly.

SECTION 18. Separability Clause. – If any provision of this Act shall be declared unconstitutional or invalid, the other provisions not affected shall remain in full force and effect.

SECTION 19. Effectivity Clause. – This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette.

Approved.

²⁶ *Id.*