

# Scrapping of EO 464 just symbolic – Solgen

By JESS DIAZ

The government's principal lawyer downplayed yesterday the significance of President Arroyo's scrapping of controversial Executive Order 464, saying it was just a "symbolic act."

Solicitor General Agnes Devanadera said she agreed with administration critics that the revocation of the executive order was almost an empty gesture.

"EO 464 had already been rendered ineffective by the Supreme Court in 2006. What was left of it were only the 'whereas' clauses," Devanadera told the Serye Café's news forum in Quezon City yesterday.

Devanadera was referring to the high court's decision striking down important parts of the executive order as unconstitutional.

"But we have to give credit to the President, because the scrapping of EO 464 was a symbolic act of cooperation by the executive (branch) with the Senate," she said.

The order's revocation was demanded by Catholic bishops, Vice President Noli de Castro, Mrs. Arroyo's allies in Congress and even some of her classmates at the Assumption College.

The President yesterday issued Memorandum Circular 151 revoking EO 464 and MC 108. The text of MC 151 was

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relaxed to media last night by Press Secretary Ignacio Bureno.

"Executive officials are advised to follow and abide by the Constitution, existing laws and jurisprudence, including, among others 'Senate vs. Ermita' p.r. No. 169777, April 20, 2006" when they are invited to legislative inquiries in aid of legislation," said Section 4 of MC 151.

Devanadera said with the scrapping of the order, Cabinet members and other administration officials appearing in congressional hearings could still invoke executive privilege if asked about their conversations with the President.

"This principle of executive privilege is like the concept of privileged communication. For instance, a lawyer cannot reveal his conversation with his client in the same manner that a priest cannot disclose a confession," she said.

Opposition lawmaker Parafanque Rep. Rolito Golez, a guest in the same forum, disagreed with Devanadera.

Unlike in the instances cited by the solicitor general, Golez said executive privilege has limited coverage.

"It covers only matters that involve national security and diplomatic concerns, military secrets and treaties. It cannot be invoked to hide or cover up a crime," said the former national security adviser.

Golez said in the Watergate scandal, the late US President Richard Nixon was forced to reveal his conversations with officials of the Central Intelligence Agency or order them to stop the Federal Bureau of Investigation from looking into the Watergate Hotel break-in.

Nixon was eventually found to have obstructed justice, which led to his resignation, he added.

Golez also said more than the scrapping of EO 464, what the people want to hear from the President is an assurance that he would instruct her officials to tell the truth behind the anomalous \$329-million national broadband network (NBN) deal and other controversies.

Another opposition congressman, Teodoro Casiso of the party-list group Bayan Muna, said the people have nothing to thank Mrs. Arroyo for in her revocation of the controversial executive order.

"This is a victory of people power," Casiso said.

He warned lawmakers that the administration would continue to hide the truth from them by indiscriminately invoking executive privilege.

### Impeachable offense?

Senators said yesterday President Arroyo could be held liable for obstruction of justice or cover up for having issued EO 464 as a means to prevent Cabinet members and key officials from revealing anomalies in the government.

Senators Alan Peter Cayetano and Benigno Aquino III pointed out that EO 464, Memorandum Circular 108, and the invocation of executive privilege were abused by the executive branch and were meant to render legislative inquiries inutile.

They said it would be quite unacceptable if Mrs. Arroyo would get away from responsibility for her actions in suppressing the truth about corruption issues raised against her government, despite her having revoked EO 464 and MC 108.

Cayetano though admitted it would be difficult at this time to get the numbers to support another impeachment complaint against the President, and criminal complaints can only be filed after Mrs. Arroyo's term expires in 2010.

Cayetano explained the criminal case for defying congressional inquiries is based on Article 150 of the Revised Penal Code.

"If it's a criminal law, punitive law under the Revised Penal Code, you have to show criminal intent, so by issuing EO 464, the President under color or pretending, there is a legal basis for them not to attend is shielding them from that criminal liability," he said.

While the appearance of executive officials in congressional

hearings would not guarantee that they would tell the truth, Cayetano said the reports of the Senate on the various anomalies would ensure that the liabilities of each one involved would be itemized.

Aquino, for his part, said efforts to compel the executive branch to respect the Senate through the budget and confirmation hearings were not effective because the president simply evades them.

In the case of the budget deliberations, Aquino said Mrs. Arroyo could just make use of a renegeated budget, which might even be more favorable for her since she can make her own realignments.

"She can also make use of the savings for the projects she wants," Aquino said.

As regards confirmation of her appointed officials, Aquino said Mrs. Arroyo would not care even if they were consistently bypassed.

"She just reappoints them, she disregards the confirmation process," he said.

Aquino said the Senate could also delay her legislative agenda but that would be counter-productive.

"After her term, you can file suit against those who are implementing what, you think is wrong; the President (at this time) is immune from suit but her subordinates are not," Aquino said.

### There are always critics

As far as Malacañang is concerned, there is no pleasing the critics because of their desire to remove the President.

Presidential Management Staff director general Cerge Remonde said critics showed their true colors in their response to the President's move to revoke EO 464.

"Nothing will satisfy them until they bring down the president and grab power for themselves," Remonde said.

Deputy presidential spokesman Anthony Golez said other critics are using the search for truth as a cover for their vested interests.

"We warn our people not to be deceived, manipulated or be

used by these groups," Golez said.

The other deputy presidential spokesperson Lorelei Fajardo said Mrs. Arroyo tried to be responsive to the issues raised by her critics but gained virtually no support in revoking EO 464.

"We hope that they would be able to see something positive in the move of the President. She has tried to reach out to the other side, we hope that they would appreciate this," Fajardo said.

"The President has responded positively by revoking EO 464. We trust that the Senate will exercise statesmanship and put the interests of the general public above anything else. The President has reached out and now we await the Senate's move," she added.

Malacañang maintained it is not preventing former socioeconomic planning secretary Romulo Neri from attending the Senate hearings on the scandal surrounding the NBN contract.

But Neri invoked executive privilege and filed a petition before the Supreme Court questioning the arrest order on him by the Senate.

Senators believe Neri is the key in unlocking the secrets behind the controversy that could directly link President Arroyo and other key officials to massive corruption.

Former President Joseph Estrada said Mrs. Arroyo's decision to revoke EO 464 would give the Senate opportunity to uncover the truth behind the controversy.

He said through the revocation of EO 464, government officials will no longer have a reason to snub congressional inquiries.

"Hopefully, it will unleash all the government officials involved in the anomaly and they will finally reveal all the truth about this anomalous deal," Estrada said.

Militant lawyer Bayan Muna Rep. Satur Ocampo, for his part, said the effects of the revocation of EO 464 remain to be seen.

"Let's wait for the next Senate hearing on the NBN deal controversy and see if it's effective," Ocampo said.

Even after Mrs. Arroyo revoked the presidential gag order, Ocampo said Malacañang will always find ways to prevent its officials from spilling the beans on the NBN. — With Aurea Calca, Marvin Uy, Jose Rodol Clapano, Jun Elias