

JOURNAL NO. 47

VOL. I, August 04, 1986

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Monday, August 4, 1986

CALL TO ORDER

At 9:52 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Adolfo S. Azcuna, to wit:

Remember You are Mother Mary that You won't say You won't because You are our Mother and You can't say
You can't because You are God's mother, so You win, won't You?

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary-General of the Commission called the Roll and the following Members responded:

Azcuna, A. S. Padilla, A. B.

Bacani, T. C. Muñoz Palma, C.

Bennagen, P. L. Quesada, M. L. M.

Bernas, J. G. Rama, N. G.

Rosario Braid, F. Regalado, F. D.

Brocka, L. O. De los Reyes, R. F.

Calderon, J. D. Rigos, C. A.

De Castro, C; M. Rodrigo, F. A.

Concepcion, R. R. Romulo, R. J.

Davide, H. G. Suarez, J. E.

Foz, V. B. Sumulong, L. M.

Garcia, E. G. Tadeo, J. S. L.

Gascon, J. L. M. C. Tingson, G. J.

Guingona, S. V. C. Treñas, E. B.

Jamir, A. M. K. Uka, L. L.

Nieva, M. T. F. Villacorta, W. V.

Nolledo, J. N.

With 33 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R. Maambong, R. E.

Alonto, A. D. Monsod, C. S.

Aquino, F. S. Natividad, T. C.

Bengzon, J. F. S. Ople, B. F.

Lerum, E. R. Rosales, D. R.

Sarmiento, R. V. Villegas, B. M.

Tan, C.

P.M.

Colayco, J. C. Laurel, J. B.

READING AND APPROVAL OF THE JOURNAL

On motion of Mr. Calderon, there being no objection, the reading of the Journal of the previous session was dispensed with and the said Journal was approved by the Body.

REFERENCE OF BUSINESS

On motion of Mr. Calderon, there being no objection, the Body proceeded to the Reference of Business.

REFERRAL TO COMMITTEES OF COMMUNICATIONS

Upon direction of the Chair, the Secretary-General read the titles of the following Communications which were, in turn, referred by the Chair to the Committees hereunder indicated:

Communication No. 431 — Constitutional Commission of 1986

Letter from Atty. Paz E. Vicada, Chairman, Socio-Cultural Task Force, PCCC, Misamis Oriental, and fifty-six teachers with their corresponding schools, requesting inclusion in the Constitution the following proposals: (1) that the educational system shall be free from political intervention, (2) public school teachers shall have the right to unionize as well as the right to strike, (3) city and barangay schools shall have their budget nationalized, (4) teachers shall have representation in the legislature and in academic policy-making bodies, and (5) there shall be a national commission to investigate offenses committed by administrative officials

against classroom teachers

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 432 — Constitutional Commission of 1986

Letter from Mr. Ambrosio Rilloza of 383 Bo. Cruz, La Trinidad, Benguet, submitting for consideration of the Constitutional Commission, his version of a new Constitution

TO THE STEERING COMMITTEE

Communication No. 433 — Constitutional Commission of 1986

Letter from Mr. Daniel M. Mercado, Jr., President, Filipino Life Insurance Companies Association, Inc., suggesting that life insurance be included among those to be considered for limitation of ownership to 100%, if not, at least 75% Filipino

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 434 — Constitutional Commission of 1986

Communication from Mr. Hermogenes Martir, Jr. of Dal-Al-Amarah, P.O. Box 1727, Jeddah, Kingdom of Saudi Arabia, suggesting, among others, (1) that the term of the President be six years with one reelection, (2) that the term of the Members of the Legislature be six years with two reelections, (3) that there should be no constitutional convention during martial law, and (4) that the voting age should be twenty-one

TO THE STEERING COMMITTEE

Communication No. 435 — Constitutional Commission of 1986

Letter from Mr. Rafael A. Pabillore of Sagay, Camiguin, submitting, for consideration by the Constitutional Commission, his views and suggestions on such issues as schedule of elections, block voting, political parties, term of office, and presidential immunity

TO THE STEERING COMMITTEE

Communication No. 436 — Constitutional Commission of 1986

Letter from Mr. Ciriaco S. Nietes of Binoligan, Kidapawan, Cotabato, submitting an outline of a new Constitution for study and deliberation by the Constitutional Commission

TO THE STEERING COMMITTEE

Communication No. 437 — Constitutional Commission of 1986

Letter from Ms. Nila Fragante of 9 Victoria Avenue, New Manila, Quezon City, and one hundred seventy others with their corresponding addresses, urging the Constitutional Commission to incorporate in the Constitution a provision obliging the State to protect the life of the unborn child from the moment of conception

TO THE COMMITTEE ON CITIZENSHIP, BILL OF RIGHTS, POLITICAL RIGHTS AND OBLIGATIONS AND HUMAN RIGHTS

Communication No. 438 — Constitutional Commission of 1986

Letter from Fr. Mario Cruz, 319 Elm Avenue, Apt. 37, Long Beach, California 90802, U.S.A., urging the Constitutional Commission to include in the Constitution a provision allowing Filipinos to have dual citizenship

TO THE COMMITTEE ON CITIZENSHIP, BILL OF RIGHTS, POLITICAL RIGHTS AND OBLIGATIONS AND HUMAN RIGHTS

Communication No. 439 — Constitutional Commission of 1986

Letter from Ms. Ma. Luisa D. Palillo of the Planning Service, Ministry of Education, Culture and Sports, Manila, submitting through the Honorable Commissioner Joaquin G. Bernas, S.J., her position papers, which are self-explanatory, on religion in Philippine schools, colleges and universities

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 440 — Constitutional Commission of 1986

Letter from Dr. Jesus V. Tamesis of 42 Quezon Avenue, Quezon City, submitting for consideration by the Constitutional Commission, his position paper on the protection of the patrimony of the nation

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 441 — Constitutional Commission of 1986

Communication from Ms. Teresita Quintos Deles of 61 Molave Street, Monte Vista, Marikina, Metro Manila, and one hundred five others, entitled: "Statement of Common Position and Concern re: Proposed constitutional provision on the 'Right to Life from the Moment of Conception'"

TO THE COMMITTEE ON CITIZENSHIP, BILL OF RIGHTS, POLITICAL RIGHTS AND OBLIGATIONS AND HUMAN RIGHTS

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 34 ON PROPOSED RESOLUTION NO. 534 ON THE ARTICLE ON SOCIAL JUSTICE

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of Proposed Resolution No. 534, entitled:

Resolution to incorporate in the new Constitution a separate Article on Social Justice.

Mr. Rama stated that the Body was still in the period of interpellations.

INTERPELLATION OF MR. RIGOS

In his interpellation on Section 4, Mr. Rigos made the following suggestions 1) that the Committee consider an amendment to include management participation in the policy and decision-making of labor unions; and 2) inasmuch as the phrase "right of labor to its just share" refers to profit-sharing, that the Committee should, likewise, consider an amendment regarding loss-sharing.

Replying thereto, Ms. Aquino explained that allowing management to participate in policy and decision-making of the labor unions would not sit well with the concept of unionism which is to preserve the sanctity and independence of workers when they organize as a collective bargaining agent. She stressed that management intrusion into the union of workers is anathema to the concept of trade unionism.

INTERPELLATION OF MR. DE LOS REYES

Relative to Section 5, on agrarian and natural resource reform, Mr. de los Reyes recalled that the 1973 Constitution emancipated the farmers from the lands which they tilled and that Presidential Decree No. 27 had been hailed as the most revolutionary and most advanced land reform decree although it was confined only to rice and corn lands. In addition, he cited several letters of instruction and decrees regarding the implementation of the

land reform program. He then inquired as to the scope of land reform that the Committee wants.

In reply, Mr. Tadeo stated that PD No. 27 covers only 6.8 million hectares, of which 3.5 million hectares are rice lands and 3.3 million hectares are corn lands. He pointed out that in its implementation, 1,462,570 hectares or 13.7 percent was covered benefitting 1,905,124 farmers or 13.1 percent out of the 7,445,500 supposed beneficiaries, leading to the conclusion that the program covered only a small portion and failed to eradicate land monopoly. Moreover, he stated that the compensation fixed by the government was not within the paying capacity of the farmers and it was for this reason that only 9 percent were able to pay the amortization.

Mr. Tadeo stated that what worsened the agrarian problem was the grant of big landholdings simultaneous with the program's implementation to cronies and multinationals, like Dole Philippines and Sime Darby, among others, which was done in utter disregard of the law.

Mr. de los Reyes pointed out that the land reform program applied only to middle class families because the owners of haciendas, in order to be spared from the program, made their operations appear to be an agro-industrial entity. He stated that under the Public Land Act, one could own 24 hectares of alienable and disposable land provided he personally cultivates the land. Because of hard work and per severance, he stated that these people were able to make progress in their standard of living. He advised that these middle class families have expressed apprehension that because of the Commission's desire to expand the coverage of land reform, the lands which they acquired through hard work, may be affected and they might eventually become landless.

In reply, Mr. Tadeo stressed that agrarian reform has one of its objectives the person's right to own the land he personally tills. In practice, however, he pointed out that the landowners took advantage of the requirement of personal cultivation and were able to eject their tenants. It was for this reason, he stated, that the Federation of Free Farmers initiated the move to amend RA 6389 by deleting "personal cultivation" as one of the requirements.

Moreover, Mr. Tadeo cited several anomalies which were committed in order to be spared from the coverage of PD No. 27. In order to avoid a repetition of such anomalies, Mr. Tadeo stressed the need of expanding the coverage of land reform by not limiting it only to rice and corn lands but also to cover other lands. He stated that simultaneous with the pursuit of agricultural development, there must be industrial development so that small landowners who are given priority, could benefit therefrom.

Mr. de los Reyes informed that in Laguna, there is only one big landholding and the rest are small coconut landowners who rely more on their harvests and if ever there is inter-cropping, the owners are not included in the sharing because according to Laguna custom and practice all harvests would only go to those who did the planting. These people, he asked, should be spared from the program, in reply to which Mr. Tadeo pointed out that Section 5 provides for a retention limit whereby an owner-cultivator would retain not more than seven hectares of land which could meet the needs of his family.

On Section 8, Mr. de los Reyes congratulated the Committee for the provision on the rights of fishermen to direct or communal use of marine and fishing resources, which would benefit some 10,000 families around Laguna Lake who were deprived of their livelihood with the building of large fishpens owned by the few influential rich.

Mrs. Nieva agreed with Mr. de los Reyes' observation that the Bill of Rights contains civil and political rights of citizens that could not be violated by the State while the Article on Social Justice contains provisions for social and economic rights mandating the State, through Congress, to pass necessary laws to implement the meaning and substance of social justice.

She also affirmed Mr. de los Reyes' observation that the Article on Social Justice is not communistic because unlike the manner by which the Constitution of Russia has provided for such rights as the right to work, guarantee

of employment, payment for work, rest, material security, education, and the equal rights of women with men, the proposed Article merely enjoins the Congress to pass legislations towards these ends.

In this connection, Mr. Bacani stated that even if those rights mentioned in the Constitution of Russia were incorporated in the proposed Constitution, it would not make the Article communistic because said rights are also intrinsic human rights.

Additionally, Mr. Tadeo stated that even Pope John Paul II, in his message in Colombia, strongly supported the right of the peasants to property and just distribution of income.

INTERPELLATION OF MR. ROMULO

In reply to Mr. Romulo's query on whether the Congress can redistribute the powers set forth in the Constitution, Mr. Garcia explained that what Section 1 provides is that there must be an effort to redistribute economic wealth thereby giving the majority of the people equal opportunity for access to political power, as in the case of the party list system which seeks to make political power available to those who are normally excluded from political decisions. However, on the extent of the power to regulate the acquisition and ownership of property, Mr. Garcia explained that when property is excessive, the State could limit it for the common good in accordance with due process.

On the definition of property in Section 2, Mrs. Nieva stated that it refers to practically all kinds of property which the State may regulate through taxation for the common good. In this respect, Mr. Tadeo opined that one's right to property would have to yield to the rights of the majority for the common good.

Mrs. Nieva affirmed that the rights embraced in the proposed Article are limited by the Bill of Rights, the due process clause and laws which the Legislature may provide.

On Section 4, in reply to Mr. Romulo's query by what other means could labor participate in the policy and decision-making affecting its rights in the absence of a collective bargaining agreement, Mrs. Nieva pointed out that the Article also provides for voluntary modes of settling disputes between workers and employers and for collective negotiations for unorganized workers. She stated that the means would depend on the situations obtaining in the different companies and on what the Legislature would later provide. In addition, Ms. Aquino underscored that the concern is with respect to negotiations which would be the forum for statutory implementation to accommodate the needs of ununionized workers in their negotiation with management. For this reason, Mr. Garcia stated that the right of workers to self-organization is encouraged for them to be able to participate.

On the matter of returns on investment, Mrs. Nieva affirmed that the risks involved would also be considered in determining its reasonableness.

On the potential cost of the agrarian reform program, Mrs. Nieva stated that the Ministry of Agrarian Reform has been studying the matter, and no exact figures were yet available. Mr. Tadeo, however, pointed out that since it would surely involve a large amount of money, the authors of Republic Act No. 3844 even thought of selling some military camps and that Mr. Montemayor had suggested increasing the U.S. Bases rentals to finance the program. He then opined that the \$2 billion spent for the Bataan Nuclear Plant should have been used for agrarian reform. Nevertheless, he assured Mr. Romulo that even if it would need a large amount, the farmers could reciprocate through agricultural development which could rebuild the economy and provide job opportunities.

Mrs. Nieva also stated that the land reform program in Taiwan should be an example on how to improve the economy.

As to the basis of just compensation, Mr. Tadeo affirmed that fair and progressive system of compensation should be based on fair market value, while the right of redemption should be based on the farmer's reasonable capacity to pay.

On whether it is the intent of the Committee to disregard the landowner by providing in Section 6 the right of farmers to participate in the planning, organizing and management of the land reform program, Mrs. Nieva believed that the landowners are as important as the farmworkers, although the Section merely highlights the rights of farmers. In this connection, Mr. Tadeo adverted to the reply given in an interview of the Secretary-General, Professor Florida Ruth P. Romero, which stated that the first thing the government planners should do is consult the farmers and the real independent farmers' organizations — not the government-run Samahang Nayon — from the initial stage of planning and policy-making to its implementation.

Furthermore, in line with Mr. de los Reyes' concern for the rights of the middle class, Mr. Romulo inquired if Section 7 intends to include lessees and concessionaires in the disposition of other natural resources, in reply to which Mr. Tadeo explained that the term "natural resources" includes mineral lands and forests, such that the agrarian reform program should be extended only to arable lands and should not destroy the ecological balance and forest reservations.

Mrs. Nieva also opined that Section 7 does not encroach on the rights to concessions which were lawfully acquired.

On the possible cost of urban land reform and housing, Mrs. Nieva pointed out that since housing embraces the concepts of sites and services, there would not be enough funds to provide every poor family such housing requirements, such that the private sector should be encouraged to help the government in financing this program.

On Mr. Romulo's query whether the Committee had consulted the National Housing Authority as to the potential cost of providing infrastructure and neighborhood program, Mrs. Nieva replied that although the Committee was not able to get the exact figures, the present trend is that it is the NHA itself which provides for the sites, services and improvements through the so-called Zonal Improvement Program (ZIP).

On Section 11, relative to the matter of giving "due process" to "urban poor dwellers" assuming that they refer to squatters who had been declared as nuisance per se and who could be punished under the Revised Penal Code for squatting, Mrs. Nieva stated that it is indeed a problem which should be ironed out.

In addition thereto, Ms. Aquino stated that the provision on squatters and urban poor dwellers addresses squatting as a social problem and that the phrase "due process" essentially refers to procedure. She also stated that the Committee would be trilling to accept an amendment on the matter at the proper time.

On the affordability of agrarian reform, natural resource reform and urban land reform programs, Mr. Garcia replied that the Committee had presented general directions for Congress to use as bases in enacting remedial measures such as the creation of structures and provision for funding to realize objectives.

Mr. Romulo stressed that he asked the question of affordability so as not to raise the expectation of the people and thereby create further frustration. On whether a cost/benefit analysis was undertaken for all the programs, Mr. Garcia replied that it was understood that the same was undertaken and that the Legislature should give these programs priority when it enacts laws.

At this juncture, Ms. Tan, on a point of information, stated that there is a distinction between "squatters" and "urban poor dwellers". She explained that the former refers to those who occupy lands overnight while the latter refers to those who live in similar conditions but have occupied the land for 10 or more years, had paid rents but

could not secure titles thereto because of government bureaucracy, graft and corruption. She stressed that the anti-squatting drive should be addressed to the real squatters while the "urban poor dwellers" must be given possible shelter and land.

Mrs. Nieva agreed with Mr. Romulo's interpretation that comprehensive agrarian reform on Section 12 means genuine land reform.

On whether the Committee had calculated the cost of an integrated and comprehensive health program, Mrs. Quesada explained that it means the unification of all government instrumentalities as well as the private sector in providing the much needed health care to the people. She added, however, that no computation had been made as to how much it would cost because to date only the Ministry of Health had responded to WHO's and UNICEF's call for health for all by the year 2000, while the unified approach envisions the participation of other ministries such as Labor and Employment and National Defense, and the private sector.

Mrs. Quesada further explained that comprehensive health care includes promotion of health, prevention of diseases, immunizations, providing workers with protective gadgets to prevent injuries, treatment, rehabilitation of disabled persons because of injury, trauma or disease and providing services even to those who are mentally retarded. She stressed that because of the unification and comprehensiveness of the services to meet the people's basic right to health, no computation as to costs had been made.

Mrs. Quesada agreed with Mr. Romulo's observation that the integration and rationalization of all health services being offered by various government agencies would involve only minimal costs but to make the health services comprehensive would entail additional funding.

On the role of the private sector, Mrs. Quesada stated that there must be collaboration between the government and the private sector.

Mr. Romulo observed that it would be better to have separate parallel services provided by the government and the private sector instead of integrating both, because they provide different benefits and work on different levels.

Mrs. Quesada maintained that it is best to leave to the Legislature how the task of integration could be implemented. She stressed that what is needed is maximum utilization of the government's limited resources and to look into ways wherein the private sector could help in areas where government facilities alone could not provide.

On the meaning of Section 19, Mr. Garcia explained that the Legislature would still remain as the "principal means of empowering the people to pursue and protect through peaceful means their legitimate and collective interests and aspirations" and the people's organizations would merely ensure that these rights are defended if ever the Legislature would not be responsive to their needs.

Mrs. Nieva added that since the new Constitution would provide for the system of initiative and referendum, then the people have to organize themselves to be felt.

On how Section 20 is envisioned to operate, Mr. Garcia explained that the people must be consulted on decisions which would affect their lives as much and as practicable as possible. He added that the function of the Legislature regarding this is to formulate mechanisms of consultation that would ensure regular and direct dialogue between the people and the different government agencies so as to harness and institutionalize people participation.

INQUIRY OF MRS. ROSARIO BRAID

On Mrs. Rosario Braid's query whether cost/ benefit analysis refers to economic and financial cost and also to social cost, Mr. Romulo stated that he referred to all those elements particularly the financial and economic cost.

INTERPELLATION OF MR. BENNAGEN

On cost, in reply to Mr. Bennagen's query whether the Committee had considered Resolution No. 253, authored by Messrs. Guingona and Villegas, which proposed a concrete way of supplementing funds that the government is expected to shoulder for all the programs, Mrs. Nieva stated that Congress would surely enact laws that would implement the programs.

Mr. Bacani added that the programs would be implemented gradually as more funds become available.

REMARKS OF MR. GUINGONA

At this juncture, Mr. Guingona, on behalf of the Sponsorship Committee, raised two prejudicial questions concerning at least two provisions which may cause inconsistencies, namely: 1) the provision on the Bill of Rights which allows government workers to form organizations, associations, unions or societies but which does not mention their right to strike, while the Article on Social Justice makes specific reference to the right to strike; and 2) whether the fair and progressive system of compensation mentioned in Section 5 of the Article under agrarian and natural resource reform, and the compensation which should be affordable to deserving low-income citizens under Section 10 of the Urban Land Reform and Housing means the same as the "just compensation" stated in the approved Article on the Bill of Rights as applied to the government's exercise of eminent domain.

Mr. Guingona stressed that if both forms of compensation means simply "just compensation", then both terms should be changed with the latter term and if not, the Committee on Sponsorship should be given authority to place exceptions in the provisions on the power to exercise eminent domain in the Article on Human Rights

Finally, Mr. Guingona invited attention to the fact that the use of the word "shall" has been left ambiguous as in some cases, the word is intended to be mandatory while in others merely directory, in view of which he suggested that the Committee shed light on its intended use for each case.

The Chair suggested that the Sponsorship Committee take time to clarify, reconcile and harmonize the different provisions in caucuses that may be held for the purpose.

REMARKS OF MR. BERNAS

Reacting thereto, Mr. Bernas manifested 1) that he would oppose any attempt to give the Sponsorship Committee advance authority to make any adjustment without first presenting it to the Body for approval or disapproval; and 2) that it is his opinion that there is no incompatibility between "just compensation" mentioned in Section 5 in the proposed Article on Social Justice and "just compensation" enunciated in the Bill of Rights. He stated that the general concept of "just compensation" as embodied in the Bill of Rights is that it is the price at which the owner of property would be willing to sell the same, although he is under no obligation to sell, and at which a buyer would be willing to buy although he is under no obligation to buy. Under the concept of social justice, he stated that the mention of a fair and progressive system of just compensation is an attempt to determine just compensation in the context of the capabilities of the underprivileged.

REMARKS OF MR. REGALADO

Mr. Regalado stated that the formula for determining just compensation is fair market value plus consequential damages, minus consequential benefits, provided that the consequential benefits do not exceed the consequential damages. He pointed out that the formula stated by Mr. Bernas is the jurisprudential meaning of fair market value. He stated, however, that under the Marcos regime, the fair market value was determined based on the owner's declaration or the assessed value, whichever is lower. He suggested that the Committee look into these two points in relation to just compensation.

Replying thereto, Mr. Bernas stated that the determination of just compensation by presidential decrees was a prima facie determination and rather than something contradictory to the jurisprudential meaning of just compensation, it was an attempt by the legislative authority to create a prima facie meaning of just compensation which was always subject to judicial review, it being a question of fact. He stated that he is not aware of any Supreme Court decision that binds the courts to such concept.

INQUIRIES OF MR. RODRIGO

Mr. Rodrigo adverted to the land reform program

Finally, Mr. Guingona invited attention to the of Taiwan which carried two-pronged objectives, namely: 1) to give the land to the cultivator; and 2) to give enough returns to the original owner for him to be able to invest in business. He stated that the success of the Taiwan land reform program lends credence to the fact that it was financed by the government.

On whether the Taiwan land reform program is feasible in the Philippines, Mr. Bernas stated that such possibility cannot be excluded. He stated that while he was in agreement with Mr. Rodrigo's observation that just compensation should not involve a diminution of what is due the owner, the progressive compensation spoken of in the Article envisions the programming of what is due from the poor.

On whether the government would finance the difference between just compensation and affordable cost, Mr. Bernas stated that the success of the land reform program would depend on how effective is the financing scheme of the government.

Mr. Rodrigo suggested that the landowner should be paid in lump sum and not by mere pittance or land bonds for him to be able to invest in business. He inquired whether a financing scheme had been conceptualized for this purpose.

In reply, Mr. Villegas informed that a number of development agencies, both government and private, had signified willingness to commit large funds not only to compensate landowners but also to correct the economic and social instability. He gave the assurance that the Taiwan model is being looked into for possible adaptation.

REMARKS OF MR. GUINGONA

At this juncture, Mr. Guingona invited attention to the timetable which had set August 16, 1986 as the start of his Committee's work, to be completed within one week. He stated that it is necessary to reconcile the inconsistencies on the right to strike in the Bill of Rights and that contained in the Article on Social Justice, which he suggested could already be acted upon by the Body in order to expedite the work of the Committees on Style and Sponsorship.

Specifically, with respect to Mr. Bernas' explanation on just compensation, he commented that he could not see how it could be said that a seller under an expropriation proceeding is not compelled to sell his property.

Upon inquiry from the Chair when he would like the inconsistencies reconciled, Mr. Guingona suggested that the inconsistencies could already be reconciled during the consideration of the Articles. He cited the matter of the right to strike on which there was no consensus, in reply to which the Chair stated that there would still be the period of amendments for this particular issue.

COMMENTS OF MR. ROMULO

Anent the problem raised by Mr. Guingona, Mr. Romulo stated that under the Rules, the Sponsorship Committee and the Committee on Style are not authorized to change the sense, substance or purpose of any proposal without referring the matter to the Committee concerned.

Mr. Guingona stated that in case of conflict between two committees, the same should be presented to the Body in plenary session.

INQUIRIES OF MR. AZCUNA

In reply to Mr. Azcuna's query on the component elements of social justice, Mrs. Nieva stated that they are as stated in Section 1 of the Article on Social Justice.

Mr. Azcuna proposed a rewording of Section 1 to read as follows: THE PROMOTION OF SOCIAL JUSTICE IS A NATIONAL IMPERATIVE TO ENSURE THE WELL-BEING AND ECONOMIC SECURITY OF ALL THE PEOPLE BUT PARTICULARLY THE POOR AND THE DISADVANTAGED IN LIFE, to which Mrs. Nieva stated that the Committee would welcome the suggestion at the proper time.

On the alleged inconsistency between the provisions in Sections 1 to 18 and Sections 19 and 20, Mr. Garcia explained that it is the obligation of the State to ensure that the structures mentioned in Sections 19 and 20 make social justice possible. He stated that these Sections recognize the importance of people's organizations and the fact that the State should recognize their independence so that the people may realize their objectives.

Mrs. Nieva stated that one example would be the Samahang Nasyon which was imposed by the State. She stated that the same did not succeed because the people themselves were not consulted from its inception.

On women, Mr. Azcuna observed that the draft provisions treat more of women's working rights than their rights in general, to which Mrs. Nieva replied that the rights of women in general shall be embodied in the Declaration of Principles.

On whether the Committee would be amenable to include children in the provision, Mrs. Nieva stated that the Committee is open to suggestions.

REMARKS OF MR. BENZON

Mr. Benzon clarified that the Article on Social Justice merely articulates the concepts and objectives leaving the details to the Legislature to enact. He also manifested that the Committee would be open to suggestions designed to remove any ambiguity in the provisions.

REMARKS OF MR. BENNAGEN

Adverting to Mr. Azcuna's observation on the apparent conflict between Sections 1 to 18 and Sections 19 and 20, Mr. Bennagen stated that there are two actors in the realization of social justice: the executive, legislative and the judicial structures on one hand, and the people's organizations on the other.

He explained that while the Article mandates the State to provide for the formal structures in order that the people may achieve social justices, it suggests that the people's organizations could exert pressure on the government to be more responsive to their needs. He stressed that one does not contradict but complement the other.

INTERPELLATION OF MR. SARMIENTO

As to whether "all" in Section 5, page 2, line 22 in the phrase "undertake the just distribution of all agricultural lands", would refer to (1) all tenanted private agricultural lands regardless of crop; (2) all haciendas and plantations, regardless of crop land and tenure arrangement; (3) idle, abandoned and foreclosed lands suited for agriculture; and (4) public lands and for government and military reservations and ranches suited for agriculture, Mr. Tadeo stated that the term "all" would refer to the lands mentioned by Mr. Sarmiento. Ms. Aquino further explained that under Section 5, the State should undertake just distribution of all lands, which at present, would cover 4.1 million hectares or 1/3 of the agricultural lands. She noted that on the basis of the program, a maximum of 17.1% of the landowners would be affected by "operation land transfer". The program, she added, would cover 393,780 tenants representing about 5% of the 7.7 million workers engaged in agriculture, fishing and forestry.

As to whether "genuine agrarian reform program" in Section 5 would refer to several phases of genuine agrarian reform, namely: 1) confiscation and distribution of lands owned by former President Marcos and his cronies; 2) the expansion of free distribution to all of crop lands; and, 3) the nationalization of transnational agri-business plantations and the total abolition of feudalism, Mr. Tadeo observed that Mr. Sarmiento was adverting to the land reform program of the Kilusang Magbubukid ng Pilipinas and stated that this land reform program is being envisioned by the farmers' organization.

As to whether this "genuine land reform" is the same "genuine land reform" intended by the Committee, Mr. Tadeo explained that the phrase adverted to is that envisioned by the farmers' organization, to serve as a guide to the Legislature in coming up with the details in the implementation of the program.

Ms. Aquino, on behalf of the Committee, observed that from the tenor of Sections 5 to 9, it is clear that the land reform program is not confiscatory. Social justice in land reform, she stated, intends to equalize bounty and does not intend to equalize oppression. She stressed that the Committee does not advocate confiscation of property.

Mr. Bacani added that the essence of the land reform program envisioned by the farmers' organization is not the essence of the genuine land reform program desired by the Committee.

On the matter of urban land reform and housing program in Section 10, Mr. Sarmiento inquired whether the program would refer to the urban land reform initiated by the former President. He noted that President Marcos issued decrees such as PD Nos. 1517 and 1640 and Proclamation Nos. 1767, 1893 and 1967 as well as others on urban land reform. He also noted that limitations were also issued, as in the case of Metro Manila where the President limited urban land reform to only 244 sites. He inquired whether the Committee intends to refer to these 244 sites as well as to limitations provided in the proclamations on urban land reform.

Mrs. Nieva, in response thereto, cited Article XIV Section 12 which explicitly maintains the urban land reform provision. She stated, however, that the Committee intends to ask Congress to pass the implementing legislation which would not necessarily be in accordance with the rules and regulations, decrees and proclamations of the former President. She added that she is not aware if the Transitory Provisions or the Freedom Constitution includes the rules and regulations or the decrees on urban land reform.

Mr. Sarmiento remarked that the decrees were restrictive and oppressive inasmuch as they limit urban land reform to certain sites and not to all sites which have urban poor dwellers and squatters. He commended the Committee for including the clause "without due process of law" because, based on the several cases of the urban poor he

handled during the past administration, the houses were dismantled and the dwellers were ejected on the basis of mere clearances issued by the National Housing Authority and the City Engineer's Office. He adverted to PD No. 691 dated May 16, 1978 which the then Administrator of the NHA referred to as the strongest anti-squatting issuance of the President inasmuch as it directed all local government officials to immediately apprehend all squatters and demolish the illegal constructions they had built on public and private lands and only after the arrest and demolition were these people prosecuted before the appropriate court.

Mr. Sarmiento stressed that his concept of social justice is justice to the common tao. He adverted to Dean Sinco who defined social justice as looking after the well-being and economic security not only of large groups but also of particular persons or interests who are under real handicaps in the struggle for existence, such as farmers, fishermen, workers, indigenous cultural communities and women. He noted, however, that it fails to mention the youth, children, infants and mothers who are among the exploited in Philippine society as evidenced by child labor, child prostitution and other cases.

Mrs. Nieva explained that the Committee did not want to duplicate provisions which may be included in the other Articles. She stated that the Committee on Declaration of Principles included provisions which deal with the youth specifically relating to their physical, mental and spiritual welfare as well as a provision against the youth's exploitation. The Committee on Human Resources, she added, has also a provision on family rights which has reference to the youth. She conceded that provision on the youth, specifically on exploitation of minors at work, should be incorporated in the Article.

On Mr. Sarmiento's suggestion to include a provision on the youth, Ms. Aquino stated that the Article on Social Justice assumes a peculiar bias in favor of the underprivileged, the oppressed and the marginalized sectors and the Committee had focused on the social structures which have caused the marginalization. She maintained that the problem of the youth which may be pertinent to the Article would be the exploitation of minors as workers and that other problems pertaining to the youth would be more effectively addressed in the other Articles.

Mr. Sarmiento recalled that during the discussion on sectoral representation, the Members made it clear that the youth is one of the marginalized sectors and being so was included with the other marginalized sectors. As to whether the Committee would be willing to accept a provision on the youth, Ms. Aquino clarified that the inclusion of the youth as a sector in the scheme of sectoral representation was based on the ground that the youth comprises a basic sector and was not because the youth is an underprivileged or marginalized sector.

As to whether the Committee would be willing to accommodate provisions on infants, children and mothers, Ms. Aquino affirmed the Committee's reluctance to incorporate such provisions in the Article. She maintained that they would be rightfully included in the Articles on Human Resources, Declaration of Principles, and Family Rights.

On Section 1, page 1, line 10, Mr. Sarmiento suggested replacing the word "reduction" with "elimination" inasmuch as the thrust of social justice, being the centerpiece of the 1986 Constitution, is the enhancement of human rights and the realization of human dignity, in reply to which Mrs. Nieva stated that the Committee was being practical inasmuch as social, economic and political inequities cannot be eliminated entirely although these can be reduced. She added that the Committee would entertain an amendment to this effect.

As to whether Section 1 can provide also for the "creation" and not merely the "promotion" of structures and processes which shall enhance inalienable rights to human dignity, Mrs. Nieva stated that it could be considered as another amendment.

INTERPELLATION OF MR. TINGSON

Addressing his questions to Mr. Tadeo, Mr. Tingson inquired whether "genuine agrarian reform" referred to in the Article would reflect his dissatisfaction with President Macapagal's land reform program and President Marcos' agrarian reform program embodied in PD No. 27, to which Mr. Tadeo explained that the two land reform programs covered only rice and corn lands and that PD No. 27 affected only 13.7% of the total area cultivated and involved only 13.1% of total agrarian workers. He added that the programs could not even break the land monopoly of the few landowners. Ms. Aquino further clarified that the inadequacy of the land reform program of President Macapagal and more specifically of PD Nos. 2 and 27 were due to four factors, namely: (1) very limited coverage of the land reform program which encompasses only the rice and corn lands which, according to statistics, would benefit less than 1/3 or 393,000 of the tenants as compared to more than 521,000 leaseholders who work in farms which are less than 7 hectares; (2) very weak governmental machinery in implementing the program; (3) economic difficulties arising from the mandate of President Marcos' land reform program, stating that PD No. 27 speaks of high-yielding varieties that required heavy expenditures for the purchase of machinery and fertilizers which encouraged greater dependence of farmers on borrowing, thus, farmworkers were eased out from equitable sharing in the land reform program, in addition to forced contributions to the Samahang Nayan; and (4) the land reform program of President Marcos did not involve the participation of the farmers in the planning and implementation stages.

As to whether the phrase "to own directly or collectively the lands they till" would refer to land for the tillers or land for the landless, Mr. Tadeo stated that the principle would be land for the tillers. He explained that the term "directly" would refer to the land tilled by the owner himself while the word "collectively" would refer to lands collectively or cooperatively owned, as those lands in Negros.

On whether sugarlands would be included in the phrases "distribution of all agricultural lands" and "genuine land reform", Mr. Tadeo answered in the affirmative.

Thereafter, Mr. Tingson adverted to Chapter IV of the Book of Acts and inquired from Mr. Tadeo if Section 5 of the Article was based on the philosophy of this portion from the Gospel according to St. Matthew, in reply to which Mr. Tadeo explained that what he adverted to earlier concerning a statement of Secretary-General Florida Ruth Romero was based on an interview on April 20 at which time the Constitutional Commission was not yet in place. On Chapter 4, verses 32 to 35, Mr. Tadeo explained that the "just society" is one where property is for all and this shall be distributed based on the needs of each one.

SUSPENSION OF SESSION

The Chair suspended the session until two-thirty in the afternoon.

It was 12:18 p.m.

RESUMPTION OF SESSION

At 2:48 p.m., the session was resumed.

INTERPELLATION OF MR. NATIVIDAD

Mr. Natividad stated that his interpellation would be premised on the belief that there could be no social justice unless there is a redistribution of land and more equitable diffusion of wealth.

On whether the Committee had considered the pitfalls which caused the failure of land reform during the previous

administration, particularly the lack of financing from banking institutions which should have filled the void left by the landlords who loaned money to the farmers, Mrs. Nieva pointed to Section 6 which provides that the State shall provide the necessary support to agriculture through appropriate technology and adequate financial and marketing assistance, the lack of which was the main reason why the previous administration failed in its land reform program. She agreed that the Land Bank of the Philippines could be one of the instrumentalities that could extend adequate financial support and assistance.

On the possibility that under the proposal the small landowners like teachers who had saved to own lands would find themselves deprived of the lands which they worked hard for, Mrs. Nieva stated that the program would be subject to the retention limits to be provided for by Congress.

On whether Section 6 contemplates farm mechanization, Mrs. Nieva stated that it contemplates technology that is appropriate to the situation.

On the principle that social justice cannot be invoked to trample upon the rights of others which are also protected by the Constitution, Mrs. Nieva agreed that such principle is being upheld in the Article.

On the right of workers to self-organization, she affirmed that this would include public employees but with respect to the military and the police, the Committee had decided to leave it to the Body, including the question on whether the right to strike is part of the right to self-organization. Mrs. Nieva pointed out that the Committee was divided on whether the term "workers" includes the military and civil defense. She reiterated that the Committee would be willing to consider amendments at the proper time.

On Section 14, in reply to the suggestion that the prevention of drug addiction should be the concern of the State in addition to maintaining an effective food and drug monitoring system, Mrs. Quesada stated that the provision goes beyond the problem of drug abuse and that it encompasses all other areas that would refer to food and drugs. She also expressed willingness to consider amendments to specifically address the problem of drug addiction, although she felt that such problem would probably fall under the purview of legislation.

On Section 15, Mrs. Nieva adverted to the fact that the disabled constitutes about 13% of the population and that this Section would extend to the disabled a program of rehabilitation so that they may be integrated into the mainstream of society.

INTERPELLATION OF MR. MAAMBONG

In reply to Mr. Maambong's query whether or not the provisions on Social Justice are all-encompassing considering that other portions of the Constitution have several social justice clauses, Mrs. Nieva agreed that most of them are explicitly provided for in the Article on Social Justice although some are included in the Articles on the Bill of Rights, Human Resources, and the Judiciary. She disagreed that the main objective of the provisions on Social Justice is the pursuit of national development but stressed the need to reduce inequities and promote the structures and processes needed to pursue national development.

On whether Article XXIII of the Universal Declaration of Human Rights has any relation to the protection of the people's inalienable right to human dignity, Mrs. Nieva explained that the main concern of the Social Justice provisions is the common good and the pursuit of national development objectives which encompasses the objectives of the provisions on labor, agrarian and natural resource reform, urban land reform, housing, health, women and indigenous communities.

On whether the principle of social justice, as enunciated in the cases of *Calalang vs. Williams* and *Guido vs. Rural Progress Administration*, applies to the present social justice provisions, Mrs. Nieva stressed that there has never

been any contradiction.

In reply to Mr. Maambong's query on the relevance of the doctrines laid down in the cases of *Samanilla vs. Cruz* and *Astudillo w. Board of Directors of PHHC*, to the present configuration of the social justice provisions, Mrs. Nieva stated that all provisions would be subject to the observance of the due process clause and the Bill of Rights. She also affirmed that the principles enunciated in the laws pertaining to land reform, namely, Republic Acts 3844, 6389 and 6390, Presidential Decrees 2 and 27, are in consonance with the proposed social justice provisions on agrarian reform.

With respect to the term "common good", Mrs. Nieva stressed that this would refer to the whole society but with special focus on the low income groups because they have less opportunities and less voice.

On whether the existing laws on urban land reform would still be in effect despite the provisions on Social Justice, Mrs. Nieva stated that the intention is to uphold the principles behind these laws although the Committee felt that these laws did not do justice to the overall objectives of the urban land reform program.

On whether the provision on housing would affect certain existing laws like the Rent Control Law and the Anti-Squatting Law, Mrs. Nieva stated that it is up to the legislature to decide which of these laws should be repealed or amended and which should be retained.

On whether the provisions on social justice would drastically affect certain provisions of the Civil Code, specifically on the rights of owners contained in Articles 428, 429, 437, 440 and 476 to 480 thereof, Mr. Suarez stated that full implementation of the provisions on social justice could affect some of these laws although in the event of conflict, the Civil Code provisions would have to yield to the Constitutional provisions.

Mr. Maambong opined, however, that any adverse effect of the social justice provisions on the rights granted to owners by the provisions of the Civil Code and enshrined in jurisprudence could be alarming unless property owners would be assured of due process.

COMMENTS OF MR. BENNAGEN

Explaining the basic philosophy that underlies the provision on social justice, Mr. Bennagen quoted Atty. Diokno in his paper *Batasan at Katarungan*, Vol. I, No. 1 of the UP College of Law, to wit:

"Social justice for us Filipinos means a coherent, intelligible system of laws made known to us, enacted by a legitimate government freely chosen by us and enforced fairly and equitably by a courageous, honest, impartial and competent police force, legal profession and judiciary that 1) respect our rights and our freedoms both as individuals and as a people; 2) seek to repair the injustices that society has inflicted on the poor by eliminating poverty as our resources and our ingenuity permit; 3) develop a self-directed and self-sustaining economy that distributes its benefit to meet changes in institutions and structures, a way of doing things and relating to each other so that whatever inequalities remain are not caused by those institutions or structures, unless inequality is needed temporarily to favor the least favored among us and its cost is borne by the most favored; and 4) adopt means and processes that are capable of attaining these objectives".

As the background on Section 1, Mr. Bennagen stated that the concept of national development as expressed in several plans of the previous regime had been developed around three major objectives, namely, growth, equity and the preservation of the natural resources for future use. He pointed out, however, that in practice, statistics showed that instead of closing the gap between the very rich and the very poor, the gap has widened. It is for this reason, he opined, that the Article on Social Justice seeks to pay attention to the basic inequities of society by encouraging the people to participate through people's organizations which may create the necessary impulse for the State to respond to the needs of the greater majority of the poor without doing so, at the expense of the rich.

On the concept of agrarian reform, Mr. Bennagen adverted to a survey of agrarian reforms in ancient times and in modern societies in Europe, Latin America, North America, and Asia which showed the reasons for failure of this program, namely, 1) lack of management capabilities; 2) apathy of government and sometimes even of peasants themselves; 3) inefficient or inadequate organization of complementary resources and services; and 4) lack of indigenous research and development. In the same survey, Mr. Bennagen pointed out that the success of some agrarian reform programs, particularly of the liquidation of feudalism, had taken place along with industrialization. He stated that in order that agrarian reform would be successful, Congress should see to it that it would enact appropriate legislations.

Finally, Mr. Bennagen stated that it would be in order for the Body to make use of extensive and comprehensive studies on agrarian reform, with special attention to the historical and structural background of agrarian reform in the Philippines.

INTERPELLATION OF MR. OPLE

Mr. Ople stated that it is incumbent upon the Commission to try to discover, unravel and determine the significance and implications of certain radical proposals, particularly the land reform program considering the millions of individuals and family interests involved and the great passions that radical approaches to social and economic relations are capable of generating.

Adverting to a study made by a leading economist on the causes of poverty in Asia, Mr. Ople stated that two conclusions were made, to wit: 1) the reason Asia remained economically backward was because most of them were soft states, in the sense that they have no political will to enforce genuine civil equality; and 2) these countries had arrested their own growth because of lack of the political will to introduce radical social reforms. In the same study, Mr. Ople pointed out that while most of these countries professed to inaugurate a social revolution through land reform, they sought every means and pretext to thwart genuine land reform.

Mr. Ople stated that based on newspaper reports, the government is allocating in its annual budget the sum of P29 billion as equity infusion to government financial institutions to prevent them from collapsing. This amount, he stated, dwarfs the entire budget of the Ministry of National Defense, Ministry of Health and the Ministry of Education, Culture and Sports combined, although these are fait accompli to which the government must respond.

Mr. Ople warned that a continuing failure to improve social and economic relations based on land through a meaningful land reform could imprison the country in poverty. He expressed the hope that the Committee would consider an amendment to Section 1 which would link social justice to economic growth. He opined that money would come with the political will to commit the whole nation to land reform.

Mr. Ople stated that when he spoke of radical social justice proposals, he meant going down to the roots of the problems. He observed that the land reform provision embodies a radical approach.

On whether all agricultural lands, whether a big hacienda or small plantation, regardless of crop size or productivity, would be covered by the agrarian land reform program, Mr. Tadeo explained that all agricultural lands with tenants working therein would be covered by the program but not the lands cultivated by the owner himself. He added that Congress would provide for the implementation of the land reform program in the lands thereby covered.

In view thereof, Mr. Ople observed that if tenancy relations would be the basis of the coverage of land reform, the Visayan and Mindanao regions may not be included because of labor-management relations obtaining therein.

On whether fishponds would be covered by the agrarian land reform program, Mr. Tadeo pointed out that

agricultural lands refer to lands devoted to any growth, including but not limited to croplands, saltbeds, fishponds, idle and abandoned lands. He stated, however, that the manner of implementation of land reform to fishponds would be provided by Congress.

On whether Section 7 intends to encroach on the rights of lessees or concessionaires in the timber industry which were acquired under existing laws, such that their licenses would be cancelled, Mr. Tadeo stated that the term "lands" covers the forests whether titled or untitled, and the provision would specially apply to lands where there is social conflict because of unjust distribution. He affirmed, however, that lands on which residential, commercial and industrial establishments had been built may not be redistributed, especially where there is fair and progressive compensation.

Furthermore, on whether earned rights or vested rights would be nullified with the implementation of land reform, Mr. Tadeo affirmed that torrens titles would just be transferred to the new owners.

Mr. Tadeo also agreed with Mr. Ople that even vast tracts of lands like the Hacienda Luisita, should be redistributed to the agricultural workers, consistent with the principle of agrarian land reform to give lands to the landless who till the soil. In view thereof, he believed that other natural resources should be redistributed to some 4 million farmers, in reply to which, Mr. Ople opined that some 1.2 million hectares of arable lands which were disposable and which the government had already identified and repossessed, could answer the demands of the insurgents in the hills.

On Section 9, Mr. Ople inquired if integrated development of agricultural, fishing and marine resources refers to the program initiated by Mr. Cojuangco, wherein industry undertakes the growth of crops, its processing, marketing and financing through its own banks, in reply to which Mr. Tadeo underscored that although the idea may be the same, the one who should undertake such integrated development should be the farmers.

Additionally, Mr. Bennagen stated that it means integration in each sector, such as the agricultural sector, which would be related to the industrial development, to form a total economic development. In this manner, he affirmed that even beneficiaries of agrarian land reform could enjoy the benefits of the national integrated development.

On how the State would recover the amount it paid for the lands to be redistributed, Mrs. Nieva pointed out that the lands would not be granted to beneficiaries as dole-outs but to be paid on amortization for cumulative years, in reply to which, Mr. Ople observed that this was not the desire of the members of the Kilusang Magbubukid ng Pilipinas, who sought to stop payments of their amortizations because of economic difficulties due to high prices of pesticides and fertilizers.

In this connection, Mr. Tadeo pointed out that what the farmworkers want, is to give priority to small and medium-sized landholdings and to improve the compensation package so that instead of the old manner of payment, which was 90% bond and 10% cash, it should be reversed, such that 10% would be in the form of bonds and 90% in cash.

Mr. Ople, however, suggested that there should be separate policies for small landowners and big landowners, considering the difficulty of the government in recovering the cost of big haciendas, like the Hacienda Luisita, which were already redistributed to farmworkers and banks' nonrecognition of the 90% bonds as collaterals, in reply to which, Mr. Tadeo maintained that if only the government would support the farmers to use their land as capital for industry, the country would not need foreign loans, aids and investments, and the country would achieve industrial development, hand in hand, with the success of the agrarian reform program.

Mr. Ople stated that the system was successful in Taiwan because the landowners who had been placed under land reform were paid in stocks of profitable corporations.

On Section 4, in reply to Mr. Ople's query whether the National Labor Relations Commission would be abolished since the provision would deprive the State of the power of compulsory arbitration, Ms. Aquino pointed out that the 1935 Constitution did not contain a provision on compulsory arbitration and that Republic Act No. 875 provided for compulsory arbitration in the Court of Industrial Relations on matters which would involve unfair labor practices and strikes which involve national interest as certified by the President. She stressed, however, that although the provision for compulsory arbitration was not included in the Committee Report, this would not preclude the State from providing through legislation acceptable norms of compulsory arbitration whenever conditions warrant, adding that the use of free collective bargaining as a mode of settling industrial disputes is ideal only in highly industrialized countries which could withstand prolonged work stoppages but which developing countries like the Philippines cannot afford and which has to adopt compulsory arbitration as a last resort whenever free collective and voluntary modes of settling disputes prove unavailing.

On Mr. Ople's query whether the right to strike implies the right to lock out, Ms. Aquino affirmed that it is in cases provided by law.

At this juncture, Mr. Lerum stated that there is nothing in the Constitution which gives the employers the right to lock out. He pointed out that what is provided is the right of workers to security of tenure.

On Section 4, in reply to Mr. Ople's query whether Congress would be precluded from enacting new minimum wage laws, Mr. Lerum stated that there is nothing in the Constitution which would prohibit the government from fixing minimum wages.

In reply to Mr. Bennagen's query as to the reasons why land reform was not successful despite Mr. Marcos' vast powers, Mr. Ople stated that P.D. No. 27 had effected some transformation in the lives of the people who benefited or lost because of it. He stated that land reform should have been extended to other crops but that, despite his efforts which were shared by Messrs. Estrella, Montemayor, Lerum and Taruc at suggesting it, Mr. Marcos did not agree because of political pressures against the idea.

INTERPELLATION OF MR. DAVIDE

Mrs. Nieva agreed with Mr. Davide's observation that the doctrine laid down by the Supreme Court in the case of *Calalang vs. Williams*, *Guido vs. Rural Progress Administration*, *Samanillo vs. Cruz*, *Astudillo vs. Board of Directors of Philippine Housing* would remain valid and subsisting and would not be modified, repealed or superseded by the Article on Social Justice until Congress decides otherwise.

On Mr. Davide's query as to the meaning of structures and processes in Section 1, Mr. Garcia replied that structures mean economic, political and social structures, and processes refer to the mechanisms that would enable the people to participate in consultations and decisions affecting their lives, and include referendum, initiative, election, representation in the legislature through the party. list system and even public hearings to be conducted by the Office of the President and the various ministries.

On Section 5, in reply to Mr. Davide's query whether the land reform and agrarian reform programs would still be governed by existing laws even after the effectivity of the new Constitution, Mr. Nieva answered in the affirmative.

At this juncture, Mr. Bennagen stated that the General Provisions would include one to the effect that all laws which are inconsistent with the Constitution would not be enforced and another in the Transitory Provisions for the formulation of an Agrarian Reform Code in consultation with the sectors concerned. However, he stated that he has not made an inventory of the laws.

On Section 6, in reply to Mr. Davide's query on the meaning of "independent" and which farmers' organizations are independent and which are not, Mr. Bennagen stated that the Committee intended to avoid the past experience of farmers' organizations being created and manipulated by the government. He explained that by being independent, a farmers' organization should be able to formulate its own programs but at the same time accept support from the government.

On why farmers' organizations had to be qualified with respect to those which are independent, Mr. Bennagen underscored the fact that farmers' organizations should maintain a distance from the government to allow it to become critical about the administration. Mr. Davide pointed out that keeping its distance would be contradictory since the government is supposed to which Mr. Bennagen contended that with relative independence, the organizations could not be dictated upon by the government but a process of consultation would result which would be beneficial to both the government and the organizations.

On the degree of support that the government would extend to non-independent organizations, Mr. Bennagen stated that independence is crucial in terms of capability to develop their own programs of action. Mr. Davide, however, stated that to distinguish between members of independent farmers' organizations from non-independent farmers' organizations would practically create a class struggle between two kinds of farmers' organizations, thereby defeating the purpose of social justice, to which Mr. Bennagen maintained that the distinction is crucial because there should be organizations which should be formally independent of the government.

On whether the phrase "other natural resources" on Section 7 has the same meaning as that enunciated in Section 8, Article XIV of the 1973 Constitution, Mrs. Nieva answered in the affirmative, stating that forest and pasture concessions allotted to the cronies of the past regime and those occupied by cultural minorities are embraced in the definition. Mr. Tadeo added that any land that is arable or suitable for agriculture are embraced therein as distinguished from coal, petroleum and mines which pertain to the State by virtue of the regalian doctrine.

On whether it is the intention of the Committee to grant ownership to individuals hired by a corporation to work on the land which was leased from the government, Mr. Tadeo referred Mr. Davide to the definition of the full natural resource coverage.

On whether "social conflict in an area", would refer to conflicts between workers and the concessionaire in such area, Mrs. Nieva stated that it may even refer to the workers and the residents, citing the case of CELLOPHIL in Abra.

Mr. Davide stated that protecting the interests of cultural communities properly pertains to the Article on National Patrimony since the principle of agrarian reform might in effect vest land ownership even on the hired hands working in grazing lands.

Reacting thereto, Mr. Bennagen stated that in the particular case cited by Mr. Davide, the workers could be present in the area and work on the land without necessarily acquiring land titles thereto.

On whether Section 7 means that lands covered by concessions or leases cannot be awarded to hired hands working therein, Mr. Bennagen stated that complementary structures are necessary to attain the objectives of equity, for which reason the phrase "according to agrarian principles" is included.

On urban land reform, Mr. Davide contended that there should be no distinction between low-income citizens who would be entitled to decent housing from those who would not be entitled to the same privilege because their income is even lower or that they have no income at all to which Mr. Bennagen maintained that there must be a scientific basis for classifying the beneficiaries, so that not anyone who claims that he is poor and deserving would be granted such services.

Mr. Davide observed that categorizing low-income citizens into deserving or not deserving or less deserving would be dangerous as social justice does not conceptualize such classification.

On whether Presidential Decree No. 772, the Anti-Squatting Law, would in effect be repealed by the draft provisions, Mrs. Nieva stated that the Committee would welcome amendments on the matter.

On whether contractual relationships such as leases would be negated by the draft provisions, Mr. Garcia answered in the negative, stating that the provision is based on past experiences wherein inhabitants were evicted with the use of force. Mr. Davide stressed that urban land reform and housing programs should not affect contractual rights between lessors and lessees.

Mrs. Nieva affirmed Mr. Davide's statement that urban land reform would not affect Contractual relations between the lessors and lessees of lands or building; however, a lessee who constructed a house on the land of the lessor which he has Occupied for more than 10 years would already benefit under the proposed program.

SUSPENSION OF SESSION

Upon request of Mr. Romulo, the Chair suspended the session.

It was 5:08 p.m.

RESUMPTION OF SESSION

At 5:36 p.m., the session was resumed.

REMARKS OF MR. VILLACORTA

Reseting to the observations made and the questions raised by lawyer-Members of the Commission on the Article on Social Justice, Mr. Villacorta stated that he understood the concern with existing laws and how these laws would harmonize with the provisions of the proposed Article. He noted that the Article spells out a vision which would take Philippine society towards a desired direction and that the Committee had provided the legal framework for such a vision with no intention to shelve laws or judicial precedents not inconsistent therewith, adding that the Committee's vision of social justice is not new since it was also the vision and spirit of the 1971 Constitutional Convention. He adverted to former Chief Justice Enrique Fernando who, in his book on Constitutional Law, acknowledged that the spirit of the times is not inclined towards laissez faire but towards social welfare. He observed that Mr. Maambong referred to the *Calalang vs. Williams* case which affirms that social justice means "the adoption by the government of measures calculated to ensure economic stability of all the competent elements of society through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community."

He opined that economic and social equilibrium is predicated on the idea of social balance and that in this time of acute imbalance, the proposals of the Committee, which would attempt to achieve that balance by raising the poorest quality of life, takes on extreme urgency. He added that social equilibrium assumes an environment in which peaceful transactions are possible but in view of the unjust relations and structures, the future of peaceful transactions is imperilled as evidenced by widespread insurgency and continuing unrest.

Mr. Villacorta reiterated that the purpose of social justice is to correct the imbalance. He noted that should there be conflict between the common good and the right to private property which is enshrined in the Civil Code and in Supreme Court decisions, the imperatives of the present social and economic crisis would dictate that priority be given to the common good and should common good take on primacy, the concept of *salus populi* or people's

welfare assumes a more contemporary meaning which would be the good of the majority which in the Philippine context would mean the good of the poor, the workers and the peasants.

He stated that two choices confront the Body — whether the Body shall effect change or meaningful reforms in social structures and relations through the Constitution or whether change can only be effected through a total overhaul of society possible only after a revolution or a military solution.

REMARKS OF MR. CONCEPCION

Mr. Concepcion agreed with the observations of Mr. Villacorta although he noted that the queries of lawyers only signify that they do not know what is actually encompassed by the thoughts that the Body is developing. He added that such questions are important inasmuch as the Members would not only vote on the Constitutional provisions but should also be able to explain these to the public. He raised the question of how the masses of people would be able to understand these provisions when the lawyers, who are supposed to be intelligent, find it difficult to understand them. He added that it will be the duty of the Body, after the adoption of the Constitution or even before the plebiscite, to explain to the people. He noted that there is a problem of communication, of understanding. He stated that some perceive that certain ideas are full of beautiful phrases but the actual substance of the theme escapes them insofar as it affects the status quo. He asked the Committee not to misunderstand the position of lawyers who are candid when they raise questions as they foresee the questions they will have to answer later on and that it would be embarrassing for the Members not to be able to explain these matters with the simple thoughts which the masses would hope they would be able to convey. He stated that the problem in the framing of these provisions is that there seems to be so much verbiage that substance is lost in elaborating the form.

Mr. Villacorta inquired whether it would be correct for the Body to assume that the Constitution being framed would necessarily overrule the existing laws and decrees. Mr. Concepcion answered that it would depend on the provisions of the Constitution. He added that in case of conflict between the new Constitution and existing laws, lawyers would have a problem as they would not be able to determine how the new Constitution would affect past jurisprudence.

Mr. Villacorta manifested his personal observation that there is so much concern with legalese. He maintained that in speaking about a basically non-legal issue such as social justice, the main consideration should not be the legal status because the provisions are aimed at restructuring society for the good of all. He added that in speaking of the rights of the poor, the benefits of the poor are not being particularized for the benefit of society.

Mr. Concepcion agreed with Mr. Villacorta but noted that it cannot be helped. He said that those who have grown up in a climate of legality think in terms of legality because these provisions will have to be brought to the courts of justice and lawyers will have to defend them one way or another, or apply them or reconcile them or state that they have been modified.

REMARKS OF MS. TAN

Ms. Tan informed that the Members of the Committee on Social Justice had been working very hard, but it seemed that the Committee Members and the Members of the Commission had been working along parallel lines.

In this connection, she requested the lawyers in the Commission to help the Committee formulate the provisions in legal language instead of trying to look for loopholes and mistakes.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid observed that, in trying to evolve a genuine agrarian reform program, the Committee could link it with a little of history in terms of past attempts to transfer power to a few, and in rectifying the Macapagal Land Reform Code which did not have enough safeguards against transfer of ownership and tax evasion. Among the deterrents to the land reform program are the following laws, decrees and regulations: (1) General Order No. 47 establishing the corporate farming program to boost food production; (2) Presidential Decree No. 619 permitting the conversion of certain lands into reserves for large-scale grazing projects; and (3) Letter of Instruction No. 46 giving equal consideration to the requirements of the agro-industrial program and the implementation of the agrarian reform program.

In this connection, she opined that these laws put the government in a situation where it had to reconcile its conflicting interests, like social justice and productivity, and could be one of the reasons why the lawyers in the Commission were trying to look at all the Presidential Decrees and Letters of Instruction, considering the rapid increase of corporate landholdings.

On the matter of benefits, Mrs. Rosario Braid stated that only one million beneficiaries had benefitted, while 1.4 million agricultural workers were left out, with only 17 per cent of the total agricultural lands being placed under the land reform program.

On the dependency on export markets and imported inputs, she stressed that where there is increased productivity, there is also the negative impact in terms of total documented credit of 3.5 billion in 1983 as a result of the land reform program.

On Section 1, Mrs. Rosario Braid pointed out that the background of this definition is the equitable sharing of fruits and means of production and power which uses need rather than merit as an attribute of the concept.

She called attention to the lack of linkage of non-formal education with information that would ensure that attitudinal transformation would take place, meaning reaching the middle class, the employer, the landowners and the planters as the linkage mechanism in achieving land reform. In this regard, she opined that it would be best if the Commission could look at the human resource development program in terms of reorientation of these sectors so that they themselves would voluntarily share the lands and the profits.

On Section 16, Mrs. Rosario Braid suggested that said section focus itself on the illiterate workmen who had been exploited through low wages by employment agencies.

Finally, on Section 16, Mrs. Rosario Braid suggested that the Committee concentrate on the need for information among the illiterates on right food habits and the appropriate use of indigenous resources such as herbal medicine in order to respond more fully to the needs of the poorest of the poor.

INTERPELLATION OF MR. SARMIENTO

In reply to Mr. Sarmiento's query on whether Section 6 of PD No. 1517, especially the right of first refusal by legitimate tenants, is within the intendment of Sections 10 and 11 of the Article on Social Justice with respect to urban land reform and housing, Mr. Suarez affirmed that such intendment would be affected by Sections 10 and 11 of the Article, the justification being that under the Preamble of this draft Constitution which seeks to establish a government that is just and humane, the country must be governed by the rule of law which is for the common good. He opined that even if drastic provisions would have to be enacted calling for a change in the complexion of government-people relationship, the country would have to be governed by the existing laws until such time that the Legislature could provide otherwise. In this connection, he agreed that the right of first refusal by

legitimate tenants remains valid.

On the effect of the ratification of this Constitution on presidential decrees on urban land reform, Mr. Suarez stated that all presidential decrees, laws, general orders or letters of instructions inconsistent with the provisions of this new Constitution would be invalid and inoperative.

INTERPELLATION OF MR. BACANI

In reply to Mr. Bacani's query whether there is any distinction in law between having a right and actually being able to exercise such right and whether the denial of the ability to exercise a particular right actually means the denial of such right, Mr. Suarez agreed that although the right exists, the exercise of such right may be restrained, so much so that it all depends upon the one exercising such right. He stated, however, that the mere fact that such right exists will pose a number of complex problems, although one could always waive that right except in certain instances where a right granted by the Constitution is not waivable.

On a situation wherein a man, who has been employed to till a piece of land owned by another could have primacy to own the land, Mr. Tadeo stated that true land reform is based on the fact that the landowner who would reap all the fruits from that land would be the one who actually tills the soil, regardless of tenurial arrangement.

On instances wherein lands were inherited, Mr. Bacani observed that actual tillers could not own the land just because they were actually tilling the soil, to which Mr. Villacorta replied by adverting to a parable that one should not put importance to inheritance because it is a privilege and not a right.

Additionally, Mr. Bennagen pointed out that Philippine society is still dependent on the cultural background relating to the love of the farmer of his land.

Mr. Bennagen stressed that primacy should be seen in relation to an agrarian reform leading to later stage of social development which at some point in time may already negate this kind of attachment on the assumption that there are already available options to the farmers. In other words, as embodied in Section 9, Mr. Bennagen opined that this process of reforming an agrarian society would hopefully lead to some kind of industrialized society. He stated that the agrarian reform program should be seen as a long-term program.

REMARKS OF MR. PADILLA

Adverting to certain statements made, Mr. Padilla noted that they should not remain unchallenged.

On Mr. Villacorta's remark that "inheritance is not a right but a privilege", Mr. Padilla noted that it is a strange doctrine because it will destroy the whole system of succession in the Civil Code and will even take away the incentive to industry from parents who work hard to provide their children financial security.

On the statement that there is a right but it may not be exercised, he stated that right and duty are correlative in the sense that if one has a right, others affected by that right have an obligation although the exercise of such right may be limited by law, by some public interest or by the police power of the State.

On Mr. Tingson's biblical quotation about a small community owning and working together on a small property, Mr. Padilla stated that while this is good from a voluntary standpoint, it would not apply to the entire nation.

With respect to the "common good" that had been repeatedly invoked, Mr. Padilla stated that it is the inherent power of the State to promote the common welfare by the exercise of its police power. He pointed out that if a right is detrimental to the common good or obstructs the promotion of the common welfare, such right could be

restricted, limited or even denied. He noted that the Committee assumed that all its proposals are for the common good even if they restrict or impair the rights of others.

He described as alarming Mr. Villacorta's statement that "there is now a far-reaching imbalance which must be corrected in the new Constitution, otherwise we may have a revolution". He counselled that the Members should not be alarmed to approving all these far-reaching programs under the so-called social justice for fear that the nation and people could not proceed peacefully. He also cautioned the Members against granting rights to one sector at the expense of other sectors. In this connection, he adverted to President Lincoln's statement, to wit: "Property is the fruit of labor. Property is desirable. It is a positive good in the world. That some should be rich shows that others may become rich, and hence, it is just encouragement to industry and enterprise. Let not him who is homeless pull down the house of another but let him work diligently and build one for himself, thus, by example, assuring that his own shall be safe from violence when built".

Mr. Padilla disputed Mr. Sarmiento's assumption that the urban land reform program of deposed President Marcos was not only for the common good but also valid, proper and desirable. He opined that many decrees issued during the past regime should no longer be honored because they are not good decrees. He stated that the urban land reform program of Mr. Marcos was illegal and unconstitutional because it is a direct violation of the right to private property which is guaranteed by the Constitution.

Mr. Padilla then adverted to the case of *Calalang vs. Williams*, in which the Supreme Court said that "the promotion of social justice is to be achieved not through a mistaken sympathy towards any given group. Social justice therefore must be founded on the recognition of the necessity of interdependence among diverse units of society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic rights . . .".

Mr. Padilla counselled that in trying to protect and promote the well-being of the poor, the Body may do so by fomenting progress and prosperity, by increasing productivity of goods and services whether it be by domestic or foreign investments. These, he said, would require private entrepreneurs who would risk their capital to turn the wheels of industry to be able to absorb a portion of the growing unemployed because labor alone, not discounting their potentialities, could not promote economic development.

Mr. Padilla ended his remarks by quoting some statements of Justices Tuazon and Montemayor in *Guido vs. Rural Progress Administration* and in *Republic vs. Baylosis*, to wit:

"The promotion of social justice ordained in the Constitution does not supply paramount basis for untrammelled expropriation of private land by the Rural Progress Administration or any other government instrumentalities."

"Social justice does not champion division of property or equality of economic system. What it, in the Constitution, does guarantee, are equality of opportunity, equality of political status. What it and the Constitution do guarantee are equality of political rights, equality before the law, equality between values given and received and equitable sharing of the social and material goods on the basis of efforts exerted in their production.

"It intended to discourage the concentration of an excessive landed wealth in an entity or a few individuals but surely it did not intend or seek to distribute wealth among citizens or take away from a citizen land which he did not actually need and give it to another who needs it. That does not come within the realm of social justice".

REJOINDER OF MR. VILLACORTA

By way of a rejoinder, Mr. Villacorta stated that when he interpreted a biblical excerpt that inheritance is a privilege rather than a right, he was invoking the belief that the word of God says not what human laws say. He maintained that the Members could not be constrained from quoting the Bible which is the source of moral law and which, he opined, is more reliable than human statements. He pointed out that there is no reason why he could not quote from Saint Luke and use it as an equally authoritative source for determining principles of morality and law.

He concluded with a quotation from the Old Testament, to wit: "The Lord is not prejudiced against the poor and if you love the Lord, do not be prejudiced against the poor".

ADJOURNMENT OF SESSION

Thereafter, on motion of Mr. Romulo, there being no objection, the Chair declared the session adjourned until nine-thirty in the morning of the following day.

It was 6:39 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO
Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA
President

Approved on August 5, 1986

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