

R.C.C. NO. 68

VOL. IV, August 28, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3811ea908bbb/>

Thursday, August 28, 1986

OPENING OF SESSION

At 10:12 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Cirilo A. Rigos.

Everybody remained standing for the Prayer.

PRAYER

REV. RIGOS: Most merciful God, in whom we have our being, we thank Thee for the beauty of Thy presence in our midst. As we face the challenges of this day, take away the fear and suspicions in our hearts, the self-righteousness in our souls, the pride in our intellect. Make us sensitive to the leading of Thy Spirit, that we may be humble in times of victory, and honorable in times of defeat.

May our work today be an investment unto eternity, and may it contribute to the rebuilding of this nation we all love so dearly.

Grant us the grace to rise beyond the tumults of our age, and always to put our trust in Thee.

In Jesus' name we pray. Amen.

ROLL CALL

THE PRESIDENT: The Secretary-General will call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar Present [*] Natividad Present [*]

Alonto Present [*] Nieva Present

Aquino Present [*] Nollado Present

Azcuna Present [*] Ople Absent

Bacani Present [*] Padilla Present

Bengzon Present [*] Quesada Present [*]

Bennagen Present [*] Rama Present

Bernas Present [*] Regalado Present

Rosario Braid Present Reyes de los Present

Brocka Absent Rigos Present

Calderon Present Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Present Suarez Present [*]

Foz Present Sumulong Present

Garcia Present [*] Tadeo Present [*]

Gascon Present Tan Present

Guingona Present Tingson Present [*]

Jamir Present Treñas Absent

Laurel Present [*] Uka Present

Lerum Present [*] Villacorta Present [*]

Maambong Present [*] Villegas Present

Monsod Present

The President is present.

The roll call shows 26 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of a quorum.

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that we dispense with the reading of the Journal of yesterday's session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. CALDERON: Madam President, I move that we approve the Journal of yesterday's session.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Just a minor correction. On the last paragraph of page 20, it states: "Commenting on the statements of Mr. Bernas, Mr. de los Reyes stated that rebellion is not a complex crime." The phrase should read: "rebellion CANNOT BE COMPLEXED WITH ANOTHER CRIME."

THE PRESIDENT: Will Commissioner de los Reyes please repeat that.

MR. DE LOS REYES: The sentence should read: "Commenting on the statements of Mr. Bernas, Mr. de los Reyes stated that rebellion CANNOT BE COMPLEXED WITH ANOTHER CRIME."

Thank you, Madam President.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; let the proper correction be made.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I also ask for a correction on page 21, the second paragraph. It says: "Mr. Regalado expressed support for Mr. de los Reyes' observations stating that in the cases of *People vs. Geronimo* and *People vs. Taruc*, it was held that any other offense committed by the rebels NOT in furtherance of the rebellion." The word "NOT" has been omitted.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; let the proper correction be made.

MR. REGALADO: Thank you, Madam President.

APPROVAL OF JOURNAL

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the Journal of yesterday's session is approved.

MR. CALDERON: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Communications, the President making the corresponding references:

COMMUNICATIONS

Communication from the Cooperative Union of the Philippines, Inc., Room 400-G N. de la Merced (Delta) Bldg., West Avenue, Quezon City, signed by Mr. Vicente Arroyo Martires, Legal and Management Counsel, ASEAN Cooperative Organization, submitting a copy of the Resolution of the First National Cooperative Congress and the communication to President Muñoz Palma, requesting the Constitutional Commission to consider the inclusion in the Constitution of a state policy on cooperatives.

(Communication No. 635 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Communication from Mr. Elias Q. Tan of 309-G Tres de Abril, Victor Village, Cebu City, urging inclusion in the Constitution of a provision that shall promote the establishment of open economy or special economic zones in

selected areas, prototypes of which may be set up by the private sector at no cost or liability to the State, and towards this end, the State shall ensure their full development as self-reliant communities enjoying a high degree of autonomy.

(Communication No. 636 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from Mr. Jorge de Ramos, President, Student Council of Asian Theological Seminary, 54 Scout Madriñan, Quezon City, suggesting a provision on "the inviolability of the separation of the Church and State."

(Communication No. 637 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from the teachers and personnel (62 signatories) of Claret School of Zamboanga, urging the Constitutional Commission to consider the following: (1) the Filipino child's right to education and corresponding duty of the State to provide for the same; (2) reorientation of the Philippine educational system; (3) enlightenment — the ultimate role of education; and (4) no distinction or discrimination between privately owned or public schools.

(Communication No. 638 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from Ms. Rosalinda V. Tirona, Ambassador to India, transmitting copies of UN documents relating to the "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Relief," which might be useful in the work of the Constitutional Commission.

(Communication No. 639 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from Ms. Agustina B. Carrasco, President, Senior Citizens of the Philippines, Vinzons, Camarines Norte, suggesting to include in the Constitution a provision for the upliftment of the senior citizens of the Philippines.

(Communication No. 640 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Communication from Mr. Julio P. Macuja, Secretary-General, Lakas ng Kabataang Pilipino (LKP), and 16 others, proposing an Article on Education, Science, Technology, Sports, Arts and Culture for consideration by the Constitutional Commission.

(Communication No. 641 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from the Katipunang Manggagawang Pilipino TUCP Training Center, TUCP-PGEA Compound, Diliman, Quezon City, signed by former MP Jeremias U. Montemayor, containing negative reactions elicited among peasant and labor groups to the draft article on social justice and hope that the defects perceived therein may be corrected.

(Communication No. 642 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Communication from 1,748 concerned citizens of Negros Occidental, declaring and manifesting their adherence to democracy and to the tenets and principles of the democratic form of government, and repudiating communism in all its forms and implications, and at the same time favoring the retention of the U.S. Military and Naval Bases in the Philippines for a reasonable period.

(Communication No. 643 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

Communication from Ms. Ester B. Sy-Quimsiam, Deputy Executive Director and Officer-in-Charge, Commission on Population, MSSD, Welfareville Compound, Mandaluyong, Metro Manila, and 2,260 other signatories coming mostly from the NCR and parts of the Ilocos region, seeking amendment to Section 8 of the proposed Article on General Provisions.

(Communication No. 644 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from the Central Visayas Ecumenical Fellowship, 49 Mabini St., Cebu City, signed by the Chairperson of its Executive Committee, Rev. Maxwell Codillo, UCCP, and 868 other signatories, expressing opposition to Proposed Resolution No. 289, entitled: "Resolution providing in the new Constitution the teaching of religion in public elementary and secondary schools under certain conditions."

(Communication No. 645 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Communication from 750 members of the Philippine General Council of the Assemblies of God, P.O. Box 49, Valenzuela, Metro Manila, urging the Constitutional Commission to incorporate in the Constitution the provision that the separation of the Church and the State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines.

(Communication No. 646 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from the Mindanao Press and Radio Association, Cagayan de Oro City, signed by Mr. Gabino R. Labial, Jr., submitting a resolution adopted by the association proposing amendments to Section 4, Article II and Section 10, Article XV of the 1973 Constitution for inclusion in the proposed Constitution.

(Communication No. 647 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from former MP Renato L. Cayetano, requesting approval or rejection of the proposed redistricting of the parliamentary district of Pateros, Taguig, and Muntinlupa into Pateros and Taguig as one district, and Muntinlupa and Las Piñas as another.

(Communication No. 648 — Constitutional Commission of 1986)

To the Committee on the Legislative.

Communication from the Sangguniang Bayan of Mabini, Batangas, signed by the Municipal Mayor, Basilio C. Calangi, requesting the Constitutional Commission, thru the Honorable Cecilia Muñoz Palma, to reconsider its decision on the scrapping of the death penalty because it might have an adverse effect on the ratification of the

proposed Constitution.

(Communication No. 649 — Constitutional Commission of 1986)

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Letter from Mr. Oscar N. Rivera of 131 F. Zobel Street, San Miguel Village, Makati, Metro Manila, expressing agreement to the proposal of Commissioner Joaquin Bernas that a piecemeal submission to the people of the proposed charter be adopted to give the people wider choices in deciding on major controversial issues.

(Communication No. 650 — Constitutional Commission of 1986)

To the Committee on Amendments and Transitory Provisions.

Letter from 76 members of the Faculty of the University of the Philippines and members of the academic community, seeking to include in the Constitution a provision obliging the State to explicitly protect the human life of the unborn from the moment of conception.

(Communication No. 651 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 539

(Article on the Constitutional Commissions — Commission on Human Rights)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: I move that we continue the consideration of Committee Report No. 37 on Proposed Resolution No. 539.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The honorable members of the committee, Commissioners Foz, Monsod, Sarmiento, Garcia and the others, are requested to occupy the front table.

MR. RAMA: Madam President, I ask that Commissioner Nollado be recognized.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to give a short background on what happened in yesterday's session. I presented an amendment to the report of the Committee on Constitutional Commissions authorizing the Commission on Human Rights to set forth the cases that shall fall within its jurisdiction. The amendment was objected to by Commissioners Bernas and Monsod. Commissioner Monsod suggested that it should be Congress that should be authorized to fix the cases which shall fall within the exclusive jurisdiction of the Commission on Human Rights and that we should provide in the Transitory Provisions that, until Congress shall provide otherwise, the presently constituted Commission on Human Rights shall continue to function. And so, I presented this amendment to the committee yesterday afternoon — an amendment that should appear as Section 3 of the committee report and it reads as follows: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT

SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS."

We will have a provision in the Transitory Provisions of the 1986 Constitution authorizing the continuity of the discharge of functions of the presently constituted Commission on Human Rights. In giving some guidelines to Congress, I stated that the following shall be the points of reference that shall be taken into account by Congress in fixing the jurisdiction of the Commission on Human Rights: the pertinent provisions of the Bill of Rights of the Constitution; the pertinent provisions of the Universal Declaration of Human Rights; the provisions of the International Covenant on Civil and Political Rights; and the answers of Commissioners Garcia and Sarmiento to the interpellations of Commissioner Bengzon with respect to cases that should fall within the jurisdiction of the Commission on Human Rights.

And so, I would like the committee to react to this proposed amendment that I am now presenting, as suggested by Commissioner Monsod and accepted by my coauthors, Commissioners Bengzon and Tingson.

MR. SARMIENTO: Would the Gentleman kindly repeat the amendments?

MR. NOLLEDO: The amendment that should appear in Section 3 reads as follows: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS."

We agreed also that there will be a provision on the Transitory Provisions authorizing the presently constituted Commission on Human Rights to continue exercising its powers and functions until otherwise provided by the Congress.

THE PRESIDENT: Please restate the amendment.

MR. NOLLEDO: Yes, Madam President. The amendment will read: "SEC. 3. CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS."

This is coauthored by Commissioners Bengzon and Tingson.

MR. SARMIENTO: Madam President, the amendment is accepted.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We are accepting it with the manifestation that there will be a complementary provision in the Transitory Provisions.

MR. NOLLEDO: Thank you.

MR. PADILLA: Madam President.

THE PRESIDENT: Are there any comments?

Commissioner Padilla is recognized.

MR. PADILLA: Will the distinguished proponent yield to a few questions.

MR. NOLLEDO: Gladly, Madam President.

MR. PADILLA: I hear that the proposed Section 3 mentions violations of human rights within the exclusive jurisdiction of the commission. Does the Gentleman realize that the Bill of Rights, which guarantees human rights and the protection of which is the concern of the entire nation, should be the concern of the entire governmental

machinery including the law enforcement agencies and the effective administration of justice to arrest, prosecute and punish the guilty?

MR. NOLLEDO: I agree with the Vice-President but the words "EXCLUSIVE JURISDICTION" are used in the light of the functions of the Commission on Human Rights which are investigative and recommendatory. We do not do away with the enforcement of civil and political rights by other agencies of the government in appropriate cases.

MR. PADILLA.: No, we are not talking of civil, political or what they sometimes call economic and cultural rights; they are human rights. If this commission is only investigative and recommendatory, it must have as effective arms the law enforcement agencies, including the prosecution arm of the government and the prosecution, trial and judgment to be rendered by the competent courts. Why should we mention "EXCLUSIVE JURISDICTION" as if the other branches of government, particularly the judiciary and the executive, and not to exclude the legislative, should have not only jurisdiction but must implement the protection of human rights and, therefore, prevent and punish those violators of human rights?

MR. NOLLEDO: In the light of the Vice-President's observations and to avoid some confusion, I will recommend to the committee that we delete the word "EXCLUSIVE" because when we talk of jurisdiction here, we are talking of cases that can be investigated by the Commission on Human Rights and in relation to which appropriate recommendations may be given by the Commission on Human Rights.

MR. PADILLA: There is no question about the commission having the authority to investigate and recommend but the more important thing is for these violators of human rights to be arrested, prosecuted, tried and convicted, and this cannot be done by the commission. It has to rely on the other branches of government particularly the law enforcement agencies — the police, the NBI and other agencies — and an effective administration of justice to be administered by the trial courts up to the Supreme Court.

MR. NOLLEDO: Yes, I agree with the Gentleman. That is why I am in favor of deleting the word "EXCLUSIVE."

MR. PADILLA: The Gentleman's amendment starts with "CONGRESS SHALL PROVIDE FOR THE CASES." Why should Congress still provide as if we are imposing upon Congress the duty to specify the various violations? We all know what human rights stand for; these are provided and guaranteed by the Bill of Rights. We do not have to tell Congress, "provide or specify the various violations."

MR. NOLLEDO: The Vice-President will notice that in previous sessions of our Commission, Commissioner Bengzon asked questions on what the specific cases are which shall constitute the bases for investigation by the Commission on Human Rights. And he asked several questions that will indicate that probably all cases of violations in the Revised Penal Code, even maltreatment of children, et cetera, may fall under the jurisdiction of the Commission on Human Rights. It is on the basis of these interpellations by Commissioner Bengzon that the committee felt there was a need to specify the cases that can be investigated by the Commission on Human Rights.

MR. PADILLA: The danger in specifying or enumerating is that it might mean the exclusion of others not specified or enumerated under that basic principle of *inclusio unius, exclusio alterius*. I think it is not necessary and, in fact, it is even dangerous to limit the functions of the commission.

MR. NOLLEDO: We do not preclude Congress from stating that the violations of human rights that may fall under the jurisdiction of the commission shall include but are not limited to the following, because if one will really study the provisions of the Universal Declaration of Human Rights in the Bill of Rights, practically all

conceivable violations may fall under the jurisdiction of the Commission on Human Rights.

MR. PADILLA: That is precisely my point. The Bill of Rights mentions many human rights, including the rights of a person to liberty, property, due process, equal protection, et cetera. Why should we require Congress to specify the cases? Those are the two problems.

MR. NOLLEDO: Commissioner Monsod would like to explain further, Madam President.

MR. MONSOD: Madam President, things might be clarified if we put this in the context of the deliberations yesterday. During the interpellations yesterday, it was the intent of the committee that the commission would have very modest objectives because there were certain concrete and immediate matters that needed to be addressed. While a constitutional commission that we see has a horizon wider than the present functions of the Presidential Committee on Human Rights, the objectives now of the commission would be modest.

So, perhaps, we can try to place this in the context of this provision, if it is all right with the Commissioner. We wanted a catch-all provision so that over time, the commission's functions could be enlarged, if indeed we come to the point where there is less problem on the political and civil rights that are now the subject of the Presidential Committee on Human Rights. That was the purpose of suggesting a catch-all phrase. But the catch-all phrase, as I understand it from Commissioner Padilla, might have two problems. One is the problem of the word "EXCLUSIVE" and the other is that Congress might unnecessarily expand the scope of the commission beyond its intended modest objectives at the present. So, we were wondering if we could put the phrase "IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION" which would tie in with the proposed Transitory Provisions.

With respect to the word "EXCLUSIVE," the committee that has accepted the amendment is not inflexible as to its use because Commissioner Padilla's points are also well taken.

MR. NOLLEDO: Madam President, I understand Commissioner de los Reyes is intending to amend the amendment.

MR. DE LOS REYES: Madam President, may I seek recognition?

MR. MONSOD: Is it acceptable if we put "IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION"?

MR. NOLLEDO: Yes, it is acceptable to me, Madam President.

MR. MONSOD: Thank you.

MR. NOLLEDO: And then we delete the word "EXCLUSIVE."

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: And may I offer an amendment of Commissioner Nolleto that instead of using the word "JURISDICTION" which might be confused with the jurisdiction of the regional trial courts, the municipal courts, we put "AUTHORITY". I think that will be a more appropriate term in defining the scope of the work of the commission. Is that acceptable to Commissioner Nolleto?

MR. NOLLEDO: I would like to consult the committee because if we accept the amendment of Commissioner de los Reyes, more or less the amendment will read as follows: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION ON HUMAN RIGHTS TO INVESTIGATE." Will the committee be amenable?

MR. SARMIENTO: We will take into account the priorities recommended by the Human Rights Commission.

MR. DE LOS REYES: So, it will be "AUTHORITY" instead of "JURISDICTION."

THE PRESIDENT: Is that acceptable?

MR. NOLLEDO: I will accept the amendment, Madam President.

MR. SARMIENTO: The amendment is accepted, Madam President.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner Davide, I think, was ahead. Commissioner Davide is recognized.

MR. DAVIDE: Madam President, may I be allowed to introduce an amendment to carry the intent of the committee? My proposal is that the new section shall read: "UPON RECOMMENDATION OF THE COMMISSION, CONGRESS SHALL DEFINE THE CASES OF VIOLATIONS OF HUMAN RIGHTS WHICH SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION."

THE PRESIDENT: How did it begin? Will Commissioner Davide please state it again?

MR. DAVIDE: It will read: "UPON RECOMMENDATION OF THE COMMISSION, CONGRESS SHALL DEFINE THE CASES OF VIOLATIONS OF HUMAN RIGHTS WHICH SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION."

So, we leave it to the commission to determine the cases over which it may have expanded jurisdiction or authority, but it should be mandated by Congress.

MR. MONSOD: May we just ask a question on this. We might have a "chicken and egg" situation here, because theoretically, the commission will not come into existence until the law has been formulated.

MR. DAVIDE: No, Madam President, because we will provide that the existing Presidential Committee on Human Rights shall continue its functions and exercise the powers conferred to the commission created in this Constitution.

SUSPENSION OF SESSION

MR. RAMA: Madam President, the phrase "mandated by Congress" is a little controversial. May I ask for a suspension of the session for us to confer.

THE PRESIDENT: The session is suspended for a few minutes. I request the Commissioners to please confer on the matter.

It was 10:46 a.m.

RESUMPTION OF SESSION

At 11:35 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, during the suspension of the session, Commissioners Nolleto and Davide made a reformulation of the proposed amendment, so may we ask Commissioner Davide to share that

reformulated amendment with us.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

This is the modified proposal which is jointly authored by the following: Commissioner Nollado, the principal author, Commissioner de los Reyes, the main proponent, Commissioners Regalado, Bengzon, Monsod, Garcia, Sarmiento, and this Member. The new Section 3 will read as follows: "CONGRESS MAY PROVIDE FOR OTHER CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION, TAKING INTO ACCOUNT ITS RECOMMENDATION."

MR. NOLLEDO: Madam President, that is an amendment to my amendment. I would like to say that I am gladly accepting the amendment with the understanding that the primary jurisdiction of the Commission on Human Rights is found in Section 2(1) of the committee report, and with the further understanding that we are going to provide in the Transitory Provisions that the presently constituted Commission on Human Rights shall continue to function until otherwise provided by the Congress.

MR. DAVIDE: Not only that, Madam President, the said commission, to be proposed later, will also exercise the functions conferred on the commission created under this Constitution.

THE PRESIDENT: Thank you.

MR. DAVIDE: These understandings bear our full accord.

THE PRESIDENT: What does the committee say so that we can submit it to a vote?

MR. SARMIENTO: Accepted, Madam President.

VOTING

THE PRESIDENT: It has been accepted. This has been read by Commissioner Davide.

As many as are in favor of this particular new section, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor, none against and 2 abstentions; the new section, as amended, is approved.

MR. SARMIENTO: Madam President, from the committee, we wish to introduce an amendment to the amendment proposed by Commissioner Davide and approved by the body yesterday. Yesterday we adopted this amendment which reads: "Adopt its own rules of procedure, cite for contempt for violations thereof in accordance with the Rules of Court in the Philippines."

We wish to introduce the words "PRIORITIES AND" between the words "own" and "rules." So that the amendment will read: "Adopt its own PRIORITIES AND rules of procedure, cite for contempt for violations thereof in accordance with the Rules of Court in the Philippines."

THE PRESIDENT: Did the committee mark it as subparagraph 2? Will the Gentleman read it?

MR. SARMIENTO: Madam President, it will read: "Adopt its own PRIORITIES AND rules of procedure, cite for contempt for violations thereof in accordance with the Rules of Court in the Philippines."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: It will affect the amendment I earlier introduced. May I be allowed to modify to clearly distinguish the two and define the scope of each? I would propose that it should read as follows: "Adopt its PRIORITIES, PROMULGATE ITS OWN rules of procedure."

THE PRESIDENT: Is that accepted?

MR. SARMIENTO: Accepted, Madam President.

MR. DE LOS REYES: Madam President, may I ask for recognition?

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: May I ask some clarificatory questions of the committee?

THE PRESIDENT: Please proceed.

MR. DE LOS REYES: During the discussion yesterday, it was made clear that the authority of this commission shall extend not only to violations of human rights by the military but also by private parties which shall include violations committed by those who are working against the government forces. When we say "priorities," does it mean, for example, that the commission, in exercising its right to prioritize its investigation, can investigate only violations committed by the military disregarding in the meanwhile abuses committed by private parties? As I understood it yesterday, when Commissioner Ople introduced his amendment, the purpose of placing therein investigations of violations committed by those who rebel against the government and the military is to strike a balance between the investigation and reporting of the results of the investigation by this commission. But with the word "priorities," it can defeat that purpose by simply concentrating in its investigation on violations of human rights by the military. So what is the real meaning of "priorities"? Why is there a need for that insertion?

MR. SARMIENTO: As explained yesterday, we stated that the commission shall investigate all forms of human rights violations committed by public officers, civilian and military authorities and private parties, so there will be no exception, Madam President. When we say "priorities," we will leave it to the commission to give priority as to what forms of violation should be first investigated because we expect massive human rights violations. So, considering the volume of work, we leave it to the commission as to what forms of violation should be given priority.

MR. DE LOS REYES: In the first place, I think there is no need to state that in the Constitution. Any commission, I think, has the right to investigate all violations not on the basis of what it thinks should be prioritized but on a first-come, first-served basis because if other people, for example, will complain against violations of human rights by forces outside the military, certainly the commission's duty should be to investigate these things on a first-come, first-served basis and not on what it thinks should receive priority. And for this reason, I respectfully object, with all due respect to the committee, to the amendment being introduced.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: I would also be in favor of explicitly saying that the commission can adopt its own priorities as a recognition of the fact that it can be overwhelmed with complaints and so forth. So it does have to make a choice. But as far as where the provision should be, may I propose an amendment by transposition by putting the subject of priorities in the last paragraph of this section. So that the last paragraph would read: ESTABLISH ITS OWN

PRIORITIES and perform such other duties and functions as may be provided by law."

MR. SARMIENTO: No objection to the proposed amendment by transposition.

THE PRESIDENT: So what is to be voted now?

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

I agree with the observations of Commissioner de los Reyes. It is not proper, I believe, that the priorities to be recognized by the commission be placed in the Constitution. In the first place, when one is in that office, he is already making up in his mind the priorities of his job. And it would be quite misplaced if we place in the Constitution what will be in the minds of the people performing their work. Certainly, when one goes to a certain job, he has certain priorities. But it would not be good for the Constitution to state so.

Thank you, Madam President.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Since we have accepted the proposed amendment by transposition, and since we have this objection from Commissioners de los Reyes and de Castro, may we throw the issue to the body?

THE PRESIDENT: Please read the wordings of this amended section or subsection again.

MR. FOZ: This is the last paragraph: "ESTABLISH ITS OWN PRIORITIES and perform such other duties and functions as may be FIXED by law." So the amendment actually consists of the following words: "ESTABLISH ITS OWN PRIORITIES" as the last subsection.

MR. DE CASTRO: Madam President, if there is a voting on this, I move that the voting be only on the wording, "ESTABLISH ITS OWN PRIORITIES" and not to include "perform such other duties and functions."

MR. FOZ: Madam President, I was just reading the whole provision and I said the amendment would actually consist of the following words: "ESTABLISH ITS OWN PRIORITIES."

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion desires to be recognized. May we hear from him.

MR. CONCEPCION: Thank you, Madam President.

The reason for the statement of priorities is that the commission would not want to create expectations on the part of the public which cannot be fulfilled immediately. There are a number of violations of human rights like hunger, for instance. The commission knows that whatever it does, it cannot do anything about that. That is a question of economic development, social consciousness and a number of things. Even in the case of violation of human rights, the commission may have to determine which type of violation, regardless of the order in which complaints have been filed, deserve immediate attention. So that is just to explain that it is precisely to avoid creating an expectation and then thereafter disillusionment on the part of the public if every complaint cannot be attended soon enough, considering that this is the first time that a constitutional commission of this type is established for the defense, protection, and promotion of human rights.

I thank you, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT: May we suspend the session for a few minutes.

It was 11:50 a.m.

RESUMPTION OF SESSION

At 12:01 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. SARMIENTO: Madam President, may I ask that Commissioner Regalado, after conferring with Commissioners de Castro, de los Reyes and Davide, be recognized for his amendment.

MR. REGALADO: Thank you, Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: This is also in collaboration with the proposals of Commissioners Natividad and Guingona by way of an amendment to subparagraph 2 to read as follows: "ADOPT ITS OPERATIONAL GUIDELINES, RULES OF PROCEDURE, AND CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT IN THE PHILIPPINES."

May I explain, Madam President?

THE PRESIDENT: Please proceed.

MR. REGALADO: The use of the phrase "OPERATIONAL GUIDELINES" is understood to underscore the fact that in its operations, the commission shall not resort to any discriminatory programs but should have the enforcement of its policies, as well as operations, done on the basis of equality, parity and without any intent to unduly put at a disadvantage a particular sector, but also in consideration of the volume of work that may be encountered by the commission.

VOTING

THE PRESIDENT: As many as are in favor of this particular section — because this was already approved yesterday — as amended, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (Few Members raised their hand.)

The results show 30 votes in favor, none against and 2 abstentions; the section, as amended, is approved.

Are there any other pending amendments?

MR. RAMA: There is one more, Madam President. May I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, my amendment is on Section 1, but may I first seek the recognition of Commissioner Bengzon.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, this will be the second paragraph because the first paragraph states that there shall be an independent Commission on Human Rights.

The second sentence shall read as follows: "THE COMMISSION SHALL BE COMPOSED OF FIVE INCLUDING THE CHAIRMAN ALL OF WHOM SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE TERM AND OTHER QUALIFICATIONS AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW."

May we know the reaction of the committee?

MR. FOZ: Madam President, after the word "FIVE," may we suggest that we put the word "MEMBERS"?

MR. BENGZON: Yes.

MR. SARMIENTO: Accepted, Madam President.

MR. GUINGONA: Madam President.

THE PRESIDENT: Is there any comment?

MR. GUINGONA: Instead of saying "COMPOSED OF FIVE," we say "COMPOSED OF A CHAIRMAN AND FOUR MEMBERS."

MR. BENGZON: We accept the amendment.

THE PRESIDENT: Shall we submit this particular portion to a vote?

MR. BENGZON: Yes.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the amendment is approved.

MR. BENGZON: I have another paragraph, Madam President. This could be a separate section or another paragraph depending on what the committee desires and what the Committee on Style would wish: "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY. THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED." It will align this Human Rights Commission with other commissions that we have created in the Constitution in order to further insure the independence of the Human Rights Commission.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I introduced that particular amendment yesterday, but there was a proposed modification presented by Commissioner Maambong to delete the first sentence. I am in favor of the modification presented earlier. So, may I propose that the particular amendment should not carry the first sentence, only the second sentence which reads: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

MR. BENGZON: Why do we want to delete the sentence which says, "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY"?

MR. DAVIDE: That would be a surplusage because the autonomy actually intended is the automatic release of

these appropriations.

MR. BENGZON: If that is the case, then maybe we should also delete such sentence in the other articles that we have approved. I will just leave it up to the Committee on Style, as long as it is in the record that that is the sense of the Commission, Madam President.

THE PRESIDENT: What does the committee say on this point?

MR. SARMIENTO: Accepted, Madam President. We leave it to the Committee on Style, so long as the intent is there.

MR. BENGZON: In other words, what we are really saying is that if the Committee on Style feels that it would be more elegant and it is a surplusage to include the first sentence, then so be it as long as it is recorded in the Journal that it is the sense of the Commission that the Human Rights Commission will enjoy fiscal autonomy.

MR. GUINGONA: Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I respectfully invite the attention of the honorable Commissioners that there are two committees that are tasked with the same work and, therefore, reference can be made not only to the Committee on Style but also to the Sponsorship Committee.

Thank you, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Maybe we should just say that the minimum condition that the committee agrees to is: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED." That is a minimum condition and we just allow the committees to add the first sentence if they wish. But with the second sentence, the sense is already there.

MR. BENGZON: No problem, Madam President.

THE PRESIDENT: This was taken up yesterday.

MR. BENGZON: But it was deferred. I understand, Madam President. So if we approve this now, then it will be firmly included.

THE PRESIDENT: So, will the Commissioner please read it now as it is?

MR. BENGZON: I will read the amendment as accepted. "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

THE PRESIDENT: Is there any objection to this proposed amendment which has been accepted by the committee?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: The wording reminds me of the provisions under the judiciary and the constitutional commissions. Is the intention to elevate the position of this proposed commission which is only investigative and

recommendatory to the high dignity of a constitutional commission, as well as the independence of the judiciary, by making a positive statement in the Constitution that its appropriation shall be released automatically and so forth? It seems that we are complicating and also reiterating several provisions that would make our Constitution not only too long but too complicated. I wonder if that is the purpose because even other bodies with semi-judicial functions do not enjoy such kind of constitutional guarantee. It is just an inquiry.

MR. BENGZON: It is not so much the fact that we want to elevate this into a constitutional commission as it is more of an insurance that the independence of the Human Rights Commission, even though it is not considered as a constitutional commission as contemplated and as compared to the Civil Service Commission, the COMELEC and COA, is maintained. And this is as elegant as the other sentences. So, we submit the same to the body.

MR. SARMIENTO: The proposed amendment has been accepted by the committee, but we have this objection from Commissioner Padilla. So, may we throw the issue to the body?

MR. GUINGONA: Madam President, just for clarification. Does the amendment of the honorable Commissioner Bengzon refer only to the release? I was thinking that although I am very, very strongly in favor of this commission and would give it one of the top priorities, there are other top priorities that we may want to address ourselves to. For example, in the Committee on Human Resources, we would like to give top priority to education; therefore, if this does not refer only to an automatic and regular release but would refer to the matter of priorities in the preparation of the budget, then I am afraid that we might already be curtailing too much the discretion on the part of both the legislature and the executive to determine the priorities that should be given at a given time.

MR. BENGZON: Madam President, the sentence means what it says and it is clear.

THE PRESIDENT: Will the Commissioner please read.

MR. BENGZON: It only refers to the release which should be automatic and regular.

THE PRESIDENT: Please state it again so that we will be clarified before we take a vote.

MR. GUINGONA: Thank you. Madam President.

MR. BENGZON: It will read: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

VOTING

THE PRESIDENT: As many as are in favor of this particular section, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 26 votes in favor, 4 against and 2 abstentions; the amendment is approved.

MR. RAMA: Madam President, there is one last amendment from Commissioner Davide. I ask that he be recognized.

MR. DAVIDE: Thank you, Madam President.

This will be the last sentence to Section 1. It will read: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS

FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED TO THE COMMISSION HEREIN CREATED."

MR. MONSOD: May we ask a question of the proponent, Madam President?

THE PRESIDENT: Please proceed.

MR. MONSOD: Just a matter of placement. Does the proponent believe that this is better placed here than in the Transitory Provisions?

MR. DAVIDE: Madam President, to give strength to the proposal and in order to attain a symmetry in the matter of our recognition of the National Economic and Development Authority, as well as our recognition of the Monetary Board in the Article on National Economy, where this almost similar proposal appears, I think the proper situs for this must be here.

MR. FOZ: One suggestion, Madam President, instead of the words "TO THE COMMISSION," we suggest "ON THE COMMISSION."

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I respectfully express my view that this particular provision should be entered in the Article on Transitory Provisions.

MR. DAVIDE: I have also expressed my view, Madam President, that in the Article on the National Economy and Patrimony, more particularly on the creation and establishment by Congress of an independent economic and planning agency, we provided as a second paragraph the following: "Until otherwise provided by law, the National Economic and Development Authority shall be the independent planning agency"; and in the matter of the central monetary authority, we also provide as a second paragraph the following: "Until otherwise provided by Congress or by law, the Monetary Board shall be the central monetary authority."

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We just want to call the attention of the proponent that the National Economic and Development Authority, the Monetary Board and the Central Bank have been established by law. These have been created by virtue of an act of Congress. The present Committee on Human Rights is not a creation of Congress. Does that not make a difference?

MR. DAVIDE: It would not make any difference because even if it is created as a committee, the authority creating it is the President of the Philippines in the exercise of her legislative power. And so, even if it is created merely by an executive order, that executive order partakes of the nature of law because it is by virtue of the authority of the President to legislate.

Moreover, the importance of why it should be stated here is the fact that we should now want this particular committee to exercise immediately upon the ratification of the Constitution the very functions and powers conferred to the commission created.

MR. GUINGONA: Madam President, the desire of the honorable Commissioner that there should be immediate implementation could also be achieved even if there is a transfer to the Article on Transitory Provisions. Besides, my understanding is that there is a motion or a request which we will consider regarding the reopening of the

Article on National Economy and Patrimony. And, perhaps, it would be best to include all of these provisions about the Monetary Board, the NEDA and this commission under one provision in the Transitory Provisions.

MR. DAVIDE: I will leave it to the body, Madam President, insofar as the proper place for this is concerned. But, perhaps, we can vote on the concept already. So, the moment we approve this, the succeeding motion will be that it should be placed in the Transitory Provisions.

THE PRESIDENT: Will Commissioner Davide please repeat what he said about the present Committee on Human Rights?

MR. DAVIDE: The entire paragraph, which may be a section in the Transitory Provisions, will read: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED."

MR. MONSOD: The committee accepts that amendment subject to a decision of the body on its proper placement.

VOTING

THE PRESIDENT: As many as are in favor of this particular amendment of Commissioner Davide which has been accepted by the committee, with the reservation as to its proper place, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (Few Members raised their hand.)

The results show 29 votes in favor, none against and 2 abstentions; this new amendment is approved.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Regarding the reservation made by Commissioner Monsod, may we defer action on this until we definitely know whether or not we are reopening the Article on National Economy and Patrimony so we can take all of these proposed transfers at the same time?

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We believe that these issues can be handled separately because, as we pointed out, there is a difference between this section and the other sections of the Article on National Economy and Patrimony and that those have already been created by law; whereas we are talking of an executive order here.

MR. GUINGONA: Then, Madam President, I respectfully move that we transfer this particular subsection to the Article on Transitory Provisions.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: We would rather throw it to the body as to whether this should be placed in this article or be transposed to the Article on Transitory.

VOTING

THE PRESIDENT: As many as are in favor that this particular amendment just approved be placed in the Transitory Provisions of the new Constitution, please raise their hand. (Few Members raised their hand.)

As many as are against, please raise their hand. (Several Members raised their hand.)

As many as are abstaining, please raise their hand. (Four Members raised their hand.)

The results show 11 votes in favor, 16 against and 4 abstentions; the motion is lost.

MR. DE LOS REYES: Madam President, parliamentary inquiry.

MR. RAMA: Commissioner Rustico de los Reyes would like to be recognized, Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Is this not the function of the Sponsorship Committee — to decide which article to place a specific provision in? Suppose we decide now that it should be placed in the Transitory Provisions, is the Sponsorship Committee not empowered anymore to transfer it to another place?

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: The view of some of the members of the Sponsorship Committee is that, with regard to matters that have been decided on the floor, the committee should respect the decision of the Commission in plenary. Of course, we are divided on this issue, but that is the view of some of the members of the Sponsorship Committee where a matter has not been decided. For example, if the transfer of a provision from one article to another has not been decided on the floor, then we have the prerogative to suggest or recommend. But once it is decided on the floor, some of us believe that there is no longer the power or authority on the part of the Sponsorship Committee to make any change or suggest any change.

Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: The parliamentary situation calls for a vote on the whole Section 1 as amended.

MR. SARMIENTO: Madam President, the section will read: "THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED A COMMISSION ON HUMAN RIGHTS. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS INCLUDING THE CHAIRMAN AND FOUR MEMBERS ALL OF WHOM SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES, AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE TERM, QUALIFICATION AND DISABILITIES OF THE MEMBERS SHALL BE PROVIDED BY LAW."

THE PRESIDENT: May Commissioner Sarmiento repeat that last sentence.

MR. SARMIENTO: "THE TERM, QUALIFICATION AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW."

And then, the last sentence reads: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION."

THE PRESIDENT: That is irrespective of its present membership, I suppose. I understand the present committee is composed of seven, while we have now put five here.

MR. SARMIENTO: Yes, Madam President.

THE PRESIDENT: So, will Commissioner Sarmiento read the whole section again?

MR. SARMIENTO: Yes, Madam President. "THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED COMMISSION ON HUMAN RIGHTS.

"THE COMMISSION SHALL BE composed of ONE Chairman AND four MEMBERS ALL OF WHOM shall be natural-born citizens of the Philippines, AND A MAJORITY OF WHOM SHALL BE members of the Bar. THE TERM, QUALIFICATIONS AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW.

"THE APPROVED ANNUAL APPROPRIATIONS FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

"UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION."

THE PRESIDENT: Will the Gentleman repeat that last sentence?

MR. SARMIENTO: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION.

THE PRESIDENT: Yes, Commissioner Bacani.

BISHOP BACANI: Madam President, when we say "CONFERRED ON THE COMMISSION CREATED BY THIS . . .," is its existence really de facto?

MR. SARMIENTO: It should be "ON THE COMMISSION THE BY CONSTITUTION."

BISHOP BACANI: Because it is herein created?

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: The commission referred to is the Commission on Human Rights to be created in the Constitution, because the existing body is not a commission but merely a committee.

BISHOP BACANI: Thank you very much.

MR. SARMIENTO: To make it clear, Madam President, the amendment should read: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED."

VOTING

THE PRESIDENT: As many as are in favor of the entire Section 1, as read by Commissioner Sarmiento, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

As many as are abstaining, please raise their hand. (One Member raised his hand.)

The results show 36 votes in favor, none against and 1 abstention; Section 1, as amended, is approved.

MR. RAMA: Madam President, I move that we vote on the entire Section 2, as amended.

MR. SARMIENTO: Madam President, Section 2 will read: "The Commission on Human Rights shall have the following powers and functions:

"(1) Investigate all forms of human rights violation INVOLVING CIVIL AND POLITICAL RIGHTS;

"(2) ADOPT ITS OPERATIONAL GUIDELINES AND RULES OF PROCEDURE, AND cite for contempt for violations thereof in accordance with the Rules of Court;

"(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD, AND PROVIDE FOR PREVENTIVE MEASURES AND legal aid services TO THE UNDERPRIVILEGED whose human rights have been violated or IN need OF protection;

"(4) EXERCISE VISITORIAL POWERS OVER JAILS, PRISONS, OR DETENTION FACILITIES;

"(5) Establish a continuing program OF RESEARCH, education and information to ENHANCE RESPECT FOR THE primacy of human rights;

"(6) RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS;

"(7) MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS;

"(8) GRANT IMMUNITY FROM PROSECUTION TO ANY PERSON WHOSE TESTIMONY OR WHOSE POSSESSION OF DOCUMENTS OR OTHER EVIDENCE IS NECESSARY OR CONVENIENT TO DETERMINE THE TRUTH IN ANY INVESTIGATION CONDUCTED BY IT OR UNDER ITS AUTHORITY;

"(9) REQUEST THE ASSISTANCE OF ANY MINISTRY, BUREAU, OFFICE OR AGENCY IN THE PERFORMANCE OF ITS FUNCTIONS;

"(10) APPOINT ITS OFFICERS AND EMPLOYEES IN ACCORDANCE WITH LAW; AND

"(11) Perform such other duties and functions as may be PROVIDED by law."

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: There were two amendments earlier accepted by the committee and voted upon favorably by the Commission which were not incorporated in what has been read: The first is on Section 2 (1) which says: "ON ITS OWN OR ON COMPLAINT BY ANY PARTY," and the other is on Section 2 (10) which says: "APPOINT

ITS OFFICERS AND EMPLOYEES IN ACCORDANCE WITH LAW."

MR. SARMIENTO: We read the amendments, Madam President.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: In reading Section 2 (1), did I hear the term "civil and political rights" instead of human rights?

MR. SARMIENTO: Will the Gentleman kindly repeat his question?

MR. PADILLA: I was inquiring whether I heard correctly the term "civil and political rights" instead of human rights on Section 2 (1).

MR. SARMIENTO: Yes, Madam President. Let me read the whole paragraph: "Investigate, ON ITS OWN OR ON COMPLAINT BY ANY PARTY, all forms of human rights violations INVOLVING CIVIL AND POLITICAL RIGHTS."

THE PRESIDENT: So the Gentleman is limiting human rights to violations of civil and political rights. Is that the intention?

MR. SARMIENTO: In this section, yes, Madam President.

MR. PADILLA: I do not know about the wisdom of limiting human rights only to civil and political rights. In fact, I doubt whether political rights are included strictly in the term "human rights."

MR. SARMIENTO: Madam President, we have another section covering that point; it will be Section 3. May I ask Commissioner Nolleto to read Section 3, his amendment?

MR. NOLLEDO: May I refer the body to Commissioner Davide who made this substitute amendment.

MR. DAVIDE: Madam President, Section 3 reads: "CONGRESS MAY PROVIDE FOR OTHER CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION, TAKING INTO ACCOUNT ITS RECOMMENDATIONS."

MR. PADILLA: Madam President, I do not believe in the wisdom of limiting human rights violations, under Section 3 (1), to civil and political rights.

Thank you, Madam President.

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI: I have a question for clarification before we vote, Madam President. When there is an assertion of the primacy of human rights, primacy vis-a-vis what? We are speaking of the primacy of human rights — primacy in relation to what? "Primacy" is a relational term. One may speak of the primacy of labor in relation to capital, for example. But here it is spoken of absolutely. So, what do we mean by that?

MR. GARCIA: Here, we are referring to the basic human rights which are inalienable. In other words, these are constitutional guarantees that must be respected regardless of any emergency situations which perhaps may occur where some rights can be derogated. As is accepted also in international covenants or conventions, there are certain situations where some rights may be derogated, but they are basic rights which can never be taken away, and these are the basic rights that we are respecting.

BISHOP BACANI: Yes. But when we are speaking of the primacy of human rights, we actually do not make a

distinction of which human rights have the primacy. Which among the human rights has the primacy? We are just speaking of primacy of human rights tout court; it is just like that.

MR. GARCIA: In general, we are saying that these rights are fundamental or are important. This is the kind of idea that we want to put across in this statement.

BISHOP BACANI: Does the Gentleman mean all civil and political rights?

MR. GARCIA: Yes, especially those which are inalienable; in other words, those belonging to the individual. In other words, the power of the State, or what we would call reasons of State, can never touch basic human rights which are given to each person in society.

BISHOP BACANI: Madam President, would the Gentleman consider the right to assembly among the human rights that he wishes to indicate?

MR. SARMIENTO: Yes, Madam President.

BISHOP BACANI: Under certain circumstances, such a right can be controlled by the State, can it not?

MR. SARMIENTO: That is correct.

BISHOP BACANI: Therefore, when we speak of the primacy of human rights in that sense, it would not be correct?

MR. SARMIENTO: As a general rule, Madam President, we should respect the primacy of human rights, but this does not mean that we should not take into account other provisions of the Constitution.

BISHOP BACANI: That is it, Madam President. What is it "primary" in relation to? That is what I am speaking of.

MR. SARMIENTO: Madam President, these are basic inalienable human rights. We should not speak of rights in relation to anything, to any person or entity

BISHOP BACANI: My difficulty is this — pardon me if I use religious terminology — when we speak for example, of the primacy of the Pope, we speak of the primacy of one person over others. When we speak of the primacy of the President in this Constitutional Commission, we speak of her primacy in relation to the Members. But here, we simply speak of the primacy of human rights in relation to what?

MR. GARCIA: The primacy of life, for example, over property rights. Human rights are the rights that a person needs to be able to survive, to be called "human," and these are the basic rights that he is endowed with.

BISHOP BACANI: Yes. I have no quarrel about that. Primacy in relation to what? That is my very simple question. Is it primacy in relation, for example, to the exigencies of development?

MR. GARCIA: Yes, definitely to other rights.

THE PRESIDENT: May we call on Commissioner Villegas? Maybe he would like to contribute something to this discussion.

MR. VILLEGAS: Yes. To clear up the ambiguity of words, could we say "ENHANCE RESPECT FOR THE INALIENABLE NATURE OF HUMAN RIGHTS," because I think that is the meaning it seeks to convey.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: I think the discussion of the concept of primacy in the context of its being a relational concept is at best a diversion. When we speak of a relational concept, it does not necessarily have to be adversarial. In fact, it can be mutually supportive, mutually reinforcing such as, I understand, the position of the committee when it says "the primacy of human rights." We do not have to compare this in a hierarchy of values. In fact, the position of the committee is that, in the hierarchy of legal values or constitutional mandate, human rights take preeminence over other considerations which may even support or reinforce it. It does not have to be adversarial. It is not, of course, a zero sum.

BISHOP BACANI: Yes. That is what I am asking.

THE PRESIDENT: How about Commissioner Rosario Braid?

MS. ROSARIO BRAID: Maybe, the difficulty of Commissioner Bacani is that he needed to compare the concept of human rights with another noun.

BISHOP BACANI: I was really asking for something of that sort.

MS. ROSARIO BRAID: So, if we equate human rights with individual rights, we could say primacy of individual rights over collective rights. This is probably what Commissioner Bacani is seeking for. I mean, Commissioner Bacani is seeking for the primacy of human rights over something.

BISHOP BACANI: Please let me explain. If we speak of the primacy of human rights without any qualification whatsoever, I ask precisely about the right to assembly. In this case, the right to assembly under certain circumstances may yield to something else and, hence, it is not shown to have any primacy at all.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: The way I appreciate the dilemma of Commissioner Bacani is that he wants to canalize the concept of primacy within a negative relationship wherein one offsets the other. It does not have to be so because the basic postulate of the committee is that human rights are important, they have preeminence, and in the hierarchy of values, they take prior notice.

MR. GARCIA: Madam President, I think the issue has been explained very well. That is precisely the point we want to make — the preeminence of human rights.

BISHOP BACANI: Preeminence over what?

MR. GARCIA: Political, civil, social and economic rights. We are not trying to compare. We are simply saying the preeminence of human rights, of the totality of these rights. That is the sense.

BISHOP BACANI: Madam President, when we speak of the preeminence of something, it is over some other thing which is not necessarily adversarial. I am not saying it is necessarily adversarial. But when we speak of a preeminence, it is over something or over some persons. This is what I am just trying to clarify because if we speak of them completely in that sense, just wholesale, as was admitted by Commissioner Sarmiento, we cannot simply speak of the preeminence of this particular human right over, for example, the exigencies of national security at the particular point in time.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I was just wondering, Madam President, if we can resolve this in the context of a parallel

provision. If we will recall in the Article on Social Justice, we talked about Congress giving highest priority to the enactment of laws. The explanation was that highest priority does not necessarily mean the exclusion of other priorities, but that this is the first that should be taken up by Congress. I do not know if that resolves the issue raised by Bishop Bacani. In this case, when we say "the primacy of human rights" we mean the highest value but it does not necessarily mean that there are no values that could be at par with it.

BISHOP BACANI: Yes. But I wish to point out that I am not opposed to this. I am only asking for an explanation so I can vote intelligently. In this particular case, it was quite well explained by Commissioner Bernas that when we speak not of the highest priority, but that something should be given highest priority, this means it should be among the laws that Congress will tackle first. And there is a particular point of reference. There is a point of relationship. The only thing I am asking for is the point of reference here, especially because the word used is really stronger than highest priority — we are speaking of primacy.

THE PRESIDENT: Let us be guided by the intent of the committee in the use of the word "primacy." I suppose that will settle the whole matter.

MR. SARMIENTO: The intent of the committee, Madam President, is to stress the importance of human rights, not primacy of human rights over anything, but to stress the importance of human rights.

BISHOP BACANI: So, why do we not say "TO PROPAGATE THE GREATEST IMPORTANCE OF HUMAN RIGHTS"?

MR. RAMA: Madam President, I ask that Commissioner Suarez be recognized.

THE PRESIDENT: Does Commissioner Azcuna wish to be recognized?

MR. AZCUNA: I yield to Commissioner Suarez, Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

I heard Commissioner Padilla question the propriety of practically defining the sphere and scope of human rights violations to civil and political rights under Section 2 (1). I do not know if this matter has already been taken up in connection with the question of jurisdiction. This provision would operate against the jurisdiction of existing investigatory bodies. For example, an investigation conducted by the Commission on Human Rights would operate to divest the fiscals of jurisdiction to investigate mother cases which could also involve at the same time violations of human rights.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, we explained a few days ago that the investigation will be conducted by the Human Rights Commission without depriving appropriate agencies of the government to conduct prosecution. But the fiscal on his own can also conduct a supplementary investigation of human rights violations.

MR. SUAREZ: Are they not exclusive of each other?

MR. SARMIENTO: Not exclusive, Madam President.

MR. SUAREZ: If an investigation is already being conducted by the fiscal, will that not operate to deprive the Commission on Human Rights of jurisdiction to conduct further investigation on the human rights aspects?

MR. SARMIENTO: Our submission is that primacy will be given to the investigation being conducted by the Commission on Human Rights.

MR. SUAREZ: Suppose there are two conflicting findings — a fiscal would say after investigation, "There is no case"; and here is the Commission on Human Rights saying after investigation, "There is a strong case." What happens then with respect to the prosecution of the guilty party or parties?

MR. SARMIENTO: Our position, Madam President, is that all forms of human rights violations involving civil and political rights will be conducted by this commission to the exclusion of other agencies of the government.

MR. SUAREZ: It will not go further than the indictment of the guilty parties?

MR. SARMIENTO: There will be no indictment. As we said, we limit it to the investigation. The prosecution will be conducted by the fiscal, by the Ministry of Justice or agencies of the government.

MR. SUAREZ: Madam President, if we promote the investigation to the judicial level on the assumption that the fiscal would already file the case after conducting a preliminary investigation and the case is now pending before the courts, will that not serve to divest the Commission on Human Rights of further right to investigate the human rights violations?

MR. SARMIENTO: If the case has been filed by the fiscal and is now pending before the courts, then that deprives the commission of the right to conduct its investigation. All it can do is to assist the fiscal in the prosecution of these cases.

MR. SUAREZ: Would that not subordinate what we call the primacy of human rights to judicial proceedings, Madam President? I thought we were fighting for the primacy of human rights.

MR. SARMIENTO: Let us clarify, Madam President. We have said that the investigation of all forms of human rights violations involving civil and political rights will be conducted primarily by this commission. The prosecution will be conducted by the fiscals.

MR. SUAREZ: I see. But it is theoretically possible that the noble motivation behind the creation of the Commission on Human Rights may not be effectively exercised the moment a case is filed in court. Can we think of ways and means to prevent the stifling of this noble primacy of human rights theory?

MR. SARMIENTO: Madam President, let us make a distinction. The prosecution of cases will be handled by the fiscals. All that the Commission on Human Rights will undertake is the investigation. The prosecution of all cases involving human rights will not be stifling that power to investigate by the commission. Here we should make a distinction — investigations shall be conducted by the commission; prosecution to be conducted by the fiscals.

MR. SUAREZ: But may I go back to my original example. If there are conflicting findings, what would be the recourse of the Commission on Human Rights in order to further the prosecution in accordance with its findings when the fiscal says: "No case, sir"? What are we going to do?

MR. FOZ: Madam President, there are remedies. The procedure under our existing rules is for the fiscal to conduct the preliminary investigation or the prosecutor of the Ministry of Justice will conduct the preliminary investigation. But before that, the fact-finding aspect is handled exclusively by the proposed Commission on Human Rights. In other words, the evidence, materials are gathered by the commission itself. After the investigation, all evidence, all the papers are referred to the fiscal's office for the formal preliminary investigation. During the preliminary investigation, I suppose the commission will actively involve itself by providing assistance to the aggrieved parties. And from thereon, if the fiscal files the case or refuses to file the case on the ground of lack of evidence, lack of probable cause or prima facie evidence, then there is the remedy of appeal to the Ministry of Justice to review the findings of the fiscal.

MR. SUAREZ: That is correct from the procedural standpoint but what happens to the good decision and findings

of the Commission on Human Rights when it is faced with the findings of the fiscal that there is no violation? Can we not strengthen this office over and above the findings of the fiscal?

MR. FOZ: Unless we are willing to grant the proposed commission judicial or quasi-judicial functions, it will stop short of doing just that

MR. BENGZON: Madam President, may I request Commissioner Suarez to yield to me because this was precisely the thrust of my interpellation when we were in the period of interpellations?

MR. SUAREZ: Gladly, Madam President.

MR. BENGZON: Madam President, this was precisely my difficulty when we were in the period of interpellations. I had envisioned possible confusion in the investigation of these human rights violations that is why I wanted to zero in on what human rights violations mean. I wanted to sharply focus the jurisdiction of the commission over human rights violation because my interpretation of this section was that the Human Rights Commission would have exclusive jurisdiction in the investigation of human rights violations. After they investigate and they find a prima facie case, then they should refer this to the fiscal's office, fiscal has no choice but to prosecute. But the way I understand the explanation of the committee now is that this is not exclusive. A complainant goes to the Human Rights Commission and files his complaint, but at the same time he can also go to the fiscal's office and file his complaint. So, there will be two agencies investigating the case and there may be two conflicting decisions. What I understood was that human rights violations will be exclusively investigated by the commission, to the exclusion of the other agencies of the government, to the exclusion of the Ombudsman and to the exclusion of the fiscal's office.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: What I have just explained refers to the ordinary interpretation of the word "investigate." But if our intention really is to strengthen the proposed Commission on Human Rights, then we should be able to give it its investigative power to include an exclusive power to investigate, to the exclusion of the ordinary prosecutory offices of the government. That would conform with the views now expressed by Commissioner Bengzon, so that an investigation completed by the commission would no longer be reviewed by the fiscal's office or the Ministry of Justice. Once the papers of the case are received by the fiscal's office or the Ministry of Justice, the fiscal's only duty would be to file the case in court and prosecute it.

SUSPENSION OF SESSION

MR. BENGZON: Madam President, may I move that we suspend the session until two-thirty this afternoon.

THE PRESIDENT: The session is suspended until two-thirty this afternoon.

It was 1:02 p.m.

RESUMPTION OF SESSION

At 3:02 p.m. the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I move that we continue consideration of the Article on Human Rights.

THE PRESIDENT: May we ask the honorable members of the committee to please come to the front table?

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bengzon be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, this is on the matter of the difficulty that Commissioner Suarez and I had late this morning just before we recessed for lunch, and this is with respect to Section 2 (1). We are willing to leave the sentence as is:

Investigate on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.

With regard to the investigative powers of the commission, after discussing this matter with the committee over lunch, we agreed that the word "investigate" would mean that the Human Rights Commission will have the exclusive power to investigate all human rights violations. And therefore, we would like to read this in the Record and in the Journal. Should the commission find a prima facie case, then it shall transmit these records to the proper fiscal, who must in turn file the case in court. In the event that the fiscal, after reviewing on its own the files of the case, believes otherwise, then the records would automatically be elevated to the Minister of Justice who will, in turn, make the necessary review. And if the findings of the Minister of Justice agree with the findings of the commission, a special prosecutor would then be appointed by the Minister of Justice to prosecute the case. If, however, the findings of the Minister of Justice would be in agreement with the findings of the fiscal, then that is the end of it.

With that interpretation entered in the Record, then I believe Commissioner Suarez and I will be satisfied with this particular paragraph.

MR. SARMIENTO: Madam President, some Commissioners have expressed their reservations with respect to the comments made by Commissioner Bengzon. It is possible, they say, that the Ministry of Justice will not be supportive of the commission, so that it is possible that the ministry will delay the case. That would defeat the purpose of the commission. Because of that reservation, we have formulated a section which we would like to share with the body for their comments.

MR. BENGZON: Is it a section that will be included in the Constitution or will it be just the interpretation of this sentence that will be read in the records?

MR. SARMIENTO: This will be an interpretation of that paragraph concerning investigation.

MR. BENGZON: Can we hear it then?

MR. SARMIENTO: "The Commission may deputize fiscals or government prosecutors if warranted by the evidence for the filing of appropriate cases in court."

MR. BENGZON: Does the Gentleman mean that the commission will now have the power to directly deputize the fiscal of the proper province or city to file the case in court should it find that there is a prima facie case?

MR. SARMIENTO: Yes, Madam President.

MR. BENGZON: And under that instance, the fiscal has no choice but to file and prosecute the case?

MR. SARMIENTO: Yes.

MR. BENGZON: What happens if the fiscal does not agree with the finding of the commission?

MR. SARMIENTO: If the fiscal does not agree, then the commission can deputize any competent person to prosecute the case.

MR. BENGZON: Any practicing lawyer, for instance?

MR. SARMIENTO: He could be a practicing lawyer.

MR. BENGZON: Let me consult with Commissioner Suarez on that.

MR. FOZ: Or maybe an alternative would be for the commission to consult the Ministry of Justice for the assignment of another fiscal or state prosecutor who may be deputized for the purpose.

MR. BENGZON: The problem there is that it is really the Minister of Justice who has control and supervision over all these prosecution agencies. And, therefore, for us to give this additional power to the commission would be making an exception to the rule.

MR. FOZ: But we envision that this will not be a regular thing, that the deputation will be an exceptional procedure, that the commission will be very careful in referring or in deputizing the fiscals or the government prosecutor and will see to it that only in those instances where the evidence is really strong and can hold water will the commission really go ahead with the deputation.

MR. BENGZON: That is a bit vague. In other words, is the Gentleman trying to say then that this proposal of his is just a fall-back position, and that the general procedure would be to refer the matter first to the fiscal and only in the event that the fiscal refuses to prosecute would the commission then have the right to deputize another fiscal or any practicing lawyer that would have the right to prosecute? Am I to understand that, Madam President?

MR. FOZ: No. It will be a direct action by the commission to deputize the fiscal concerned and if the fiscal withdraws or refuses, then the commission may request the Ministry of Justice to assign a state prosecutor which is a regular practice by the Ministry of Justice. In case the regular fiscal is not available for any reason at all or is accused of bias or prejudice in a certain case, the practice in the Ministry of Justice is actually to assign a state prosecutor to handle the case even if it is out of town or in far-flung provinces.

MR. BENGZON: In other words then, I am wrong in understanding that under the proposal of Commissioner Foz, the commission can directly appoint a special prosecutor.

MR. FOZ: No, that is the first step. The commission will directly deputize the fiscal concerned and the fiscal is bound by the findings of the commission. And so, the fiscal will file the case in court and prosecute with the active assistance of the commission or its lawyers.

MR. BENGZON: Yes. If it happens that the fiscal does not believe in the findings of the commission?

MR. FOZ: Then that is the time for the commission to request the Ministry of Justice for the assignment of a special prosecutor whom it will also deputize, whom it will also designate as its deputy in the prosecution of that particular case.

MR. BENGZON: So, the only difference between the proposal of Commissioner Foz and mine is that, in my case, the records will still have to be reviewed by the Minister of Justice; while in his case, there is no more need for the Minister of Justice to review because the Constitution will give that right to the commission to request the Minister of Justice to immediately assign a special prosecutor.

MR. FOZ: Yes. There is a short circuiting of the procedure so that there is a quick, speedier action on a particular case.

MR. BENGZON: That is all right with me.

THE PRESIDENT: The Chair believes, in brief, that the Commission on Human Rights is now becoming a superbody over and above even the Ministry of Justice.

MR. BENGZON: That is the reaction that I am beginning to consider, Madam President.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, that is also my concern because we seem to have a dichotomy in the matter of prosecutorial services. Under our present system of justice, it is the Minister of Justice who is in full charge of all prosecutorial services from which even now, the special prosecutor, formerly the Tanodbayan, has to get his bearings in the matter of deputation.

Firstly, according to what I have heard, it is the position of the committee that the moment the Human Rights Commission finds a prima facie case — under the present rules, we do not call that a prima facie case anymore nor a probable cause, we call that now "only sufficient grounds to believe that a crime has been committed" under the 1985 Rules of Criminal Procedure — then it will prosecute. This was actually taken from Presidential Decree No. 911. When the case is sent to the fiscal's office, and this time the commission is in effect the complaining party, the fiscal has to proceed in accordance with the 1985 Rules of Criminal Procedure. If the fiscal differs from the position of the commission, which is the complaining body, he cannot be bound and be compelled to prosecute even if the fiscal believes there is no prima facie case because a fiscal is not a ministerial officer. The fiscal is a quasi-judicial officer and to compel him to prosecute the case, as has been explained in the case of *Liwag vs. Salcedo* or rather *Salcedo vs. Liwag*, would do grave injury to our prosecutorial system of penal justice. We cannot compel a person vested with discretionary powers to file and prosecute a case as if he were a ministerial officer. That has been pointed out as early as in the case of *Guiao vs. Figueroa* a long time ago. If the fiscal disagrees, the remedy is for the complaining party to bring up the matter to the Minister of Justice. That was the procedure even before as explained by the Supreme Court in the case of *Assistant Provincial Fiscal of Bataan vs. Dollete*. It later became P.D. No. 911 and now, it is part of our Rules on Criminal Procedure adopted in 1985. But to compel the fiscal and bind him by the finding of an administrative agency will reduce the fiscal to being a mere robot. That is why the law has made such provisions.

However, if the commission wishes to avoid all the trouble of going to the fiscal's office, and since they themselves can be assisted by a special prosecutor, then they can avail of the provisions of the Revised Administrative Code — Section 1686, for instance, provides additional counsel to assist fiscal. They can have special prosecutors assigned to them by the Ministry of Justice which prosecutors will conduct the preliminary investigation and proceed to file the case without having to deal anymore with the regular or city fiscals, provincial fiscals as the case may be.

But to proceed on that theory that the fiscals are bound by the findings of the commission and can thereby be compelled to file and prosecute the case, I think, will destroy completely the concept of the prosecutorial service that we have had for so many years already.

MR. SARMIENTO: Madam President, we are aware of that procedure. However, we have these fears that if elevated to the Ministry of Justice, the Ministry of Justice might delay the case or might decide otherwise.

MR. REGALADO: Then why not have special prosecutors assigned to the commission itself?

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: With due respect to the position of the committee, I fully support the dissertation made by Commissioner Regalado. There is no reason for us to feel insecure about the potency of the Human Rights Commission. The fact is we have already elevated it to the level of a constitutional body. That by itself renders it viable and potent in implementing and enforcing its powers and functions. It would be different if it were any ordinary administrative or quasi-judicial body. But the fact that it is a constitutional body gives it enough moral compulsion such that its rulings and decision will have a very strong persuasive effect on the prosecutorial arm of the judiciary. At this moment we cannot deprive the fiscals of their discretionary powers lest we disturb the very essence of the adversary system in prosecution.

MR. BENGZON: Madam President, in view of all these statements, I would like now to have the issue on our interpretation decided by the body.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, we have consulted with several Commissioners who are far wiser than we in the committee. We are, however, concerned with the sad prospects that the findings of the commission might just be sidelined or thrown aside by the fiscal who would not exactly agree with the findings of the commission. In such a case, an appeal could be made to the Minister of Justice following the regular procedure on appeals from the rulings and resolutions of fiscals, considering that if we grant the commission the power to directly deputize, the fear has been expressed that this might destroy existing provisions of law and existing procedures on the discretionary power of the fiscals in such matters that directly bear on his functions. The committee is then willing to subscribe to the interpretation made by the chairman of the Steering Committee on the provision of the extent and the scope of the power of the Commission on Human Rights to investigate.

Thank you.

MR. BENGZON: Thank you very much.

MR. NOLLEDO: Madam President, I would like to make some important remarks, if I may be permitted by the Chair.

THE PRESIDENT: Commissioner Nolleddo is recognized.

MR. NOLLEDO: I understand that under the 1985 Rules on Criminal Procedure which adopted some provisions of P.D. No. 911, the fiscal does not conduct actual hearings for purposes of preliminary investigation. The complainant files an affidavit, together with supporting affidavits, of his witnesses and the respondent files counter affidavits. It is only when the fiscal would like to be clarified on certain matters that he will propound some clarificatory questions. So, Madam President, I feel that the Commission on Human Rights is really a fact-finding body and, therefore, there should be a provision in the committee report that, as a fact finding body, the duty of the fiscal to determine the existence of a prima facie case should be taken over by the Commission on Human Rights. Therefore, the moment the Commission on Human Rights determines the existence of a prima facie case, there should be a provision that the commission can deputize any prosecutor or any person, any lawyer for that matter to prosecute the case before the appropriate court of justice. What I mean is that the fiscal is deprived of the jurisdiction to determine the existence of a prima facie case and it is the Commission on Human

Rights that should determine the existence of the prima facie case. And when the existence of the case is so determined, the commission should not be powerless to deputize any person, even a fiscal, or to request the Ministry of Justice to appoint a fiscal to be deputized by the commission to prosecute the case.

Thank you, Madam President.

MR. RAMA: Madam President, I ask that Commissioner Padilla be recognized.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Thank you, Madam President. I heard Commissioner Bengzon use the word "exclusive," and from the committee, I heard that the commission "may deputize" fiscals. Madam President, under Rule 110 of the 1985 Rules on Criminal Procedure, which updated the 1940 and the 1964 Rules of Court, the prosecution of offenses is commenced by complaint or information. And Rule 112 provides for preliminary investigation. This covers felonies not only under the Revised Penal Code but also under the special penal laws, and all those may involve violations of human rights. For example, a person is murdered or there is a holdup or robbery with homicide, and these are the only more serious felonies but there are so many other grave felonies, less grave and light felonies. Our present system is to have a complaint filed with the fiscal's office, and the fiscal's office in every province, and probably even in every city and municipality, will conduct a preliminary investigation in accordance with the Rules on Criminal Procedure. There are thousands, maybe hundreds of thousands, of cases being filed all over the country but under this proposal all the criminal cases may have to be referred to the Commission on Human Rights. How can the commission undertake the immediate preliminary investigation leading to the filing of the of the criminal information for prosecution, trial and judgment? We may be destabilizing the whole system of criminal procedure in our country under these proposals of the committee, which seem to ignore the present satisfactory situation. There may be a few instances where the fiscal prosecutes when he should not, or he does not prosecute when he should, but these are exceptional cases, and the Rules provide for the aggrieved party to file an appeal with the Minister of Justice. There are cases where a complaint or an information has already been filed in court, and notwithstanding the efforts of the fiscal to either prosecute or to dismiss the case the trial courts correctly hold that once the information has been filed and especially after the accused has been arraigned, it is no longer the province of the prosecuting arm. The decision rests exclusively on the courts of justice.

We cannot make the prosecution of offenses which involve the more important human rights dependent on the action of this proposed commission. Our system now is that a private person, the aggrieved party, the police, the constabulary, the peace or law enforcement agencies, and even private prosecutors, may file a complaint leading to an information by the fiscal. But to provide that the commission must first deputize the fiscals or that the commission must have the exclusive authority or jurisdiction is not to promote or protect human rights nor to punish the violators of human rights, but maybe to place so many impractical obstacles in the speedy administration of justice.

MR. SARMIENTO: Madam President, we have accepted the interpretation made by Commissioner Bengzon, but we have these remarks made by Commissioner Nollado. We would like to throw the issue to the body.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Before the body votes, may I just restate the issue so that everything is clear.

There were two things that were brought up by Commissioner Padilla, one is this exclusivity aspect and the other

one is the deputization aspect. I suggest that we take up these two issues one by one and vote on them one at a time. The first issue I would like to put to a vote is whether or not the Human Rights Commission will exclusively investigate human rights violations.

MR. PADILLA: Madam President, I think the first issue has been decided this morning when I objected to the phrase "exclusive jurisdiction" or "exclusive authority," and Commissioner Nollado and the committee sustained the objections to exclusivity.

MR. BENGZON: That is precisely why I stood up and raised this question again because during the period of interpellations I was made to understand that the commission will have exclusive jurisdiction over the investigation of these human rights violations.

SUSPENSION OF SESSION

THE PRESIDENT: The Chair suspends the session for a few minutes.

It was 3:28 p.m.

RESUMPTION OF SESSION

At 3:36 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, I ask that Commissioner Sarmiento, the chairman of the committee, be recognized.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, after conferring with the members of the committee, this is now our interpretation of Section 2 (1): The commission shall exclusively investigate all forms of human rights violations. This means that if there is a prima facie case, the commission will refer it to the fiscal for filing. If the fiscal agrees to file it, then there is no problem. If the fiscal disagrees, the case will automatically be elevated to the Ministry of Justice. If the Ministry of Justice agrees with the commission's findings, the case will be assigned to a special prosecutor whom the Ministry of Justice will deputize. If the Ministry of Justice, after evaluation of the case, disagrees with the commission, that is the end of the case. That is our interpretation of Section 2 (1).

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Just one clarificatory question. In the first statement given by Commissioner Sarmiento, he used the word "exclusive" to define jurisdiction." In the second reading of the interpretation, the word "exclusive" no longer appeared. Which shall be the controlling statement?

MR. SARMIENTO: May I clarify that point, Madam President. The second statement is the controlling statement, not the first one.

MR. NOLLEDO: Madam President, one very important clarificatory question. The moment the Minister of Justice decides not to file the case, considering that he is an alter ego of the President, I disagree that the case is terminated there because of the possibility of appeal to the Office of the President. It is only when the Office of the President affirms the decision of the Minister of Justice that the case terminates there, because the Minister is under the control of the President. So I hope the committee will qualify its statement that the moment the Minister

of Justice says that there is no prima facie case, we do not preclude an appeal on the part of the aggrieved party or the complainant to the Office of the President. Am I right?

MR. SARMIENTO: Yes, the Commissioner is right.

MR. NOLLEDO: Thank you very much.

THE PRESIDENT: I would just like to call the attention of the Commissioners whether or not all these different subsections of Section 2 have been approved individually, either yesterday or this morning.

What we are going to do now is to vote on the whole Section 2 with all its subsections. I request Commissioner Sarmiento to read the whole Section 2.

MR. PADILLA: Madam President, before the reading of the whole Section 2, may I say that this matter be left to the Supreme Court because this is part of the judicial system. Why will this Commission now provide for certain rules when the Rules on Criminal Procedure, as well as the Rules of Court, has been promulgated by the Supreme Court? That is already covered by the approved Article on the Judiciary.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, before the reading of the whole Section 2, may we request the committee to listen to the explanation of Commissioner Aquino regarding that primacy, because the explanation of the committee was not so convincing and persuasive. I would like to ask commissioner Aquino to present to the committee for approval her own explanation of it.

MR. SARMIENTO: May I yield to Commissioner Aquino, Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: I hope this will satisfy Commissioner Bacani and the committee. I think the intent of the concept of primacy or terms of application is that any apparent conflict between the exigencies of the times and the people's basic human rights must be resolved according to the principle that a social organization exists to serve and to protect men, and that it cannot claim to sense the common good if human rights are not safeguarded.

MR. SARMIENTO: May I proceed, Madam President. Section 2 states: "The Commission on Human Rights shall have the following powers and functions.

"(1) Investigate, on its own or complaint by any party, all forms of human rights violations involving civil and political rights;

"(2) Adopt its operational guidelines, rules of procedures and cite for contempt for violations thereof in accordance with the Rules of Court;

"(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as citizens of the Philippines residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;

"(4) Exercise visitorial powers over jails, prisons, or detention facilities;

"(5) Establish a continuing program of research education and information to enhance respect for the primacy of human rights;

"(6) Recommend to Congress effective measures to promote human rights and for compensation to victims or their families of violations of human rights;

"(7) Monitor the Philippine government's compliance with international treaty obligations on human rights;

"(8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

"(9) Request the assistance of any ministry, bureau, office or agency in the performance of its functions;

"(10) Appoint its officers and employees in accordance with law; and

"(11) Perform such other duties and functions as may be provided by law."

VOTING

THE PRESIDENT: As many as are in favor of the whole Section 2 as read by Commissioner Sarmiento, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (A Member raised his hand.)

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 31 votes in favor, 1 against and 2 abstentions; the whole Section 2 is approved.

MR. RAMA: Madam President, I move that we close the period of amendments on the Article on Commission on Human Rights.

THE PRESIDENT: I think there is still another section for consideration, which is Section 3.

MR. RAMA: I ask that Commissioner Sarmiento be recognized.

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Section 3 says that Congress may provide for other cases of human rights violations that should fall within the authority of the Commission taking into account its recommendations.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, may I ask the committee how that would differ substantially from the last function of the commission as enumerated, which states: "Perform such other duties and functions as may be provided by law." Is not that the last one?

MR. SARMIENTO: No, this is the intent of Section 3, madam President. As we have said, this commission has a modest attempt and that is to investigate all forms of human rights violations involving civil and political rights, but we envision the inclusion of other human rights like economic, social and cultural rights. In the future, or as the need arises, the Commission may investigate human rights violations affecting these rights. This is the reason we leave it to Congress to provide for other cases of human rights violations upon the recommendation of the commission.

BISHOP BACANI: But, precisely, is that not covered by the last function, "Perform such other duties and functions as may be provided by law"?

MR. FOZ: Madam President, Section 3 is a more particular directive to Congress to look into the feasibility of providing that other cases or instances of human rights violations may also be investigated or fall within the

authority of the commission to investigate. On the other hand, Section 2 (11) is a catchall provision which would authorize the commission to perform other functions that Congress may assign to it.

BISHOP BACANI: Yes, but, precisely, since it is a catchall provision, I thought that was what the Commissioner meant by this Section 3.

MR. FOZ: Yes. But there is nothing like providing for a specific directive to Congress to look into the feasibility of, perhaps, expanding the authority of the commission to investigate other cases of human rights violations.

BISHOP BACANI: Does the Commissioner not think that Section 2 (11) would be adequate?

MR. FOZ: I do not think that would be adequate to express the constitutional directive to Congress to make such a feasibility study into further broadening the scope of the authority of the commission.

BISHOP BACANI: In fact, to be honest with the Commissioner, when I voted for the whole Section 2, I thought the understanding was that that last function, "Perform such other duties and functions as may be provided by law," covers what is now proposed in Section 3. So I have no objection to that.

MR. FOZ: We look at the said section in that light, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: I also ask the same question asked by Commissioner Bacani because I did make a proposal worded similarly to that effect, and Commissioner Bernas said that that is contained in the last provision under "other function." That is the reason why I have withdrawn my proposal for Congress to expand the functions because I was satisfied by Commissioner Bernas' reply that that would be taken care of by the last provision. So if we look at yesterday's Journal, that is the same proposal I made yesterday.

MR. SARMIENTO: Madam President, this amendment was proposed by Commissioner Nollado and we voted on it favorably. So may we ask Commissioner Nollado what is the intent of this proposal which was approved by the body.

MR. NOLLEDO: I understand that the primary jurisdiction of the Commission on Human Rights is set forth in Section 2 (1), where we talk of civil and political rights. I remember Commissioner Padilla asking, "How about economic and social rights or other rights, or rights other than civil and political rights?" That is the reason why we are opening an avenue towards expanding the jurisdiction of the Commission on Human Rights as provided for in Section 3. We leave it to Congress to expand the jurisdiction of the Commission on Human Rights.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: The statement of Commissioner Nollado might give the wrong impression that I was that satisfied with human rights. Precisely, I was questioning why he qualifies human rights involving civil or political rights. I never wanted to expand further because I am against the entire provision which is superfluous and overlapping.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, if this Section 3 is submitted to a vote, it is with the understanding that it will be a surplusage since the last provision Section 2 already covers the provision.

MR. SARMIENTO: As we have explained before, this is a section that looks forward. At present, we are limiting the jurisdiction to civil and political rights. The need may arise when the commission must investigate other human rights violations involving economic, social and cultural rights.

BISHOP BACANI: Yes, but the other provision also looks forward. It does not look backward — "Perform such other duties and functions as may be provided by law." That certainly looks forward.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Section 3 is the formulation after the modification of the Nollado proposal. May I explain that this is not a surplusage. This is with full meaning and import. If we consider Section 2 (1), we will notice that the power is to investigate violations of human rights affecting civil and political rights. Let us remember that this is a power. Section 2 (5), which was pointed to by Commissioner Bacani, refers to other duties and functions which would not, therefore, include the broadening of the power to investigate other cases of human rights violations. I repeat, it is not a surplusage; it is not repetitious. It seeks to broaden precisely the power of the commission later because it is only starting rather very modestly.

MR. NOLLEDO: Madam President, just one statement. If we are to adopt the interpretation of Commissioner Bacani, we will be unduly burdening the Commission on Human Rights and, in effect, we negate the laudable purposes for which it was established.

Thank you.

MR. RAMA: Madam President, the body is now ready to vote.

THE PRESIDENT: The Chair asks Commissioner Sarmiento to read Section 3 again.

MR. SARMIENTO: Section 3 provides: "Congress may provide for other cases of human rights violations that should fall within the authority of the commission taking into account its recommendations."

VOTING

THE PRESIDENT: As many as are in favor of this section, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

As many as are abstaining, please raise their hand. (Two Members raised their hand.)

The results show 28 votes in favor, 3 against and 2 abstentions; Section 3 is approved.

MR. RAMA: Madam President, I move that we close the period of amendments on the Article on Human Rights Commission.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. RAMA: Madam President, if there is no objection from any of the Commissioners, I move that we approve on Second Reading the Article on Commission on Human Rights.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote on Second Reading on the Article on Human Rights Commission, I would like to propound a few questions.

The object of my questions is to apprise our people on what to expect and what not to expect from these provisions which we are considering. I would like to premise my question by stating that this provision regarding the creation of a Commission on Human Rights is not self-implementing. It calls for an implementing legislation, especially for the appropriation of needed funds by Congress. Am I correct, Madam President?

MR. SARMIENTO: The Commissioner is correct, Madam President.

MR. RODRIGO: In the meanwhile, while Congress has not yet acted, the Presidential Committee on Human Rights continues to function. And, as a matter of fact, in the Transitory Provisions, there is a proposal to give to the Presidential Committee on Human Rights the powers given to the Commission on Human Rights. Am I correct?

MR. SARMIENTO: Yes, Madam President.

MR. RODRIGO: I was just imagining that, if I were a Member of Congress, and I see that we have this Presidential Committee on Human Rights which is functioning very well, a committee with teeth which is being backed by the President who has the control over the ministries, bureaus and offices of the government, then I would consider this newly proposed commission, which is an "island" segregated from the President, with no inherent powers of its own. If I were a Member of Congress, I would say, "Instead of appropriating money for this new and untried commission, why do we not appropriate more for the Presidential Committee on Human Rights?" Suppose Congress does that, which I think is a very wise move, or Congress does not pass any implementing legislation to give life to this proposed commission or does not appropriate but instead strengthens the Presidential Committee on Human Rights, would Congress be acting in accordance with its constitutional powers and prerogatives?

MR. SARMIENTO: Madam President, we have this provision approved by the body, and the Constitution shall provide that there be an independent office for the Commission on Human Rights. So Congress is required to create this commission.

MR. RODRIGO: It is already created by the Constitution. But suppose Congress does not want to appropriate money for it? Instead of wasting the money of the people on this Commission on Human Rights which I label a "paper tiger," why not use that money to strengthen an already existing and tried Presidential Committee on Human Rights?

MR. SARMIENTO: But the existing Committee on Human Rights is a presidential creation.

MR. RODRIGO: Yes. Suppose Congress says, "All right, let us give it a congressional blessing. Instead of appropriating money for a new and untried Commission, let us legalize this Presidential Committee on Human Rights."

MR. SARMIENTO: That is different, Madam President. This Commission is an independent constitutional body. If Congress insists on its decision, then it will be violating the Constitution, because it mandates Congress to create an independent constitutional body.

MR. RODRIGO: Suppose Congress does what I said, the Commissioner claims it would be violating the Constitution. But what can we do about it?

FR. BERNAS: Madam President.

THE PRESIDENT: Is Commissioner Rodrigo through?

MR. RODRIGO: No, not yet, I have some other questions. This matter is very important. We might be raising the hopes of our people but afterwards frustrate them.

MR. SARMIENTO: May I yield to Commissioner Bernas.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, this morning we approved this provision:

Until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions and shall exercise the powers conferred on the Commission.

The understanding here is that upon the ratification of this Constitution, the present Presidential Committee on Human Rights becomes the Human Rights Commission and it begins to enjoy the status of the Human Rights Commission being created by the Constitution. It ceases to be a mere creation of the President, so that whatever Congress appropriates, it appropriates for the Human Rights Commission.

MR. RODRIGO: No, there is a distinction between the Human Rights Commission and the Presidential Committee on Human Rights. There is a basic difference, and this, to me, is very important. The Presidential Committee on Human Rights is backed up by the President, with all the powers of the President over the whole executive department behind it. On the other hand, the Commission on Human Rights which we plan to create by means of this provision in the Constitution is isolated from the President, independent of the President and does not have inherent powers of its own.

FR. BERNAS: What I am saying is that upon the ratification of this Constitution, that present Presidential Committee on Human Rights ceases to be dependent on the President and becomes independent by virtue of this provision. That is the intent of the paragraph we approved this morning.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I ask one clarification. According to Commissioner Bernas, upon the ratification of this Constitution the Presidential Committee on Human Rights will now become the present Commission on Human Rights.

FR. BERNAS: The composition, Madam President.

MR. REGALADO: But what this provision approved this morning states is: "Until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions."

So there is a little gap from the time of the ratification of the Constitution to the time Congress shall have convened and have passed a law. What I would like to find out is what would be the committee's or the commission's status during that period between the ratification of the Constitution and until such a law has been passed by Congress.

FR. BERNAS: Precisely, what I am saying is that upon the ratification of this Constitution, the status of the present committee becomes constitutional although its composition, until it is otherwise provided by law, will continue to be the way it is.

MR. REGALADO: That would not be the way I would read it, Madam President, because the phrase "until otherwise provided by law" qualifies that succeeding clause "shall continue to perform its functions." I am just concerned with respect to this cutoff or starting point because, on the one hand, we have, as the Commissioner has

said, the ratification of the Constitution and, on the other, this continuance of functions and powers of the present Presidential Committee on Human Rights until otherwise provided by Congress. So how do we reconcile this?

MR. RODRIGO: May I add something to what Commissioner Regalado said?

MR. DAVIDE: Point of information, Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: This is a point of information because Commissioner Regalado did not read the entire section. He stopped at merely "exercise its functions." We added — and this was my amendment — "and to exercise the functions conferred on the commission herein created." So it is very clear that the Bernas interpretation is the correct interpretation of that particular amendment which I introduced.

MR. REGALADO: Was that an amendment? When we voted this morning, this was the one I voted for, which ended with the word "Commission." This is the one furnished us by the committee, ending with the word "Commission" and cancelling "herein created."

MR. SARMIENTO: As read, Madam President, we added the words "herein created."

BISHOP BACANI: Madam President, I asked a question this morning which led to the clarification by the committee and the addition of the words "herein created."

MR. RODRIGO: Madam President, let us start from that premise — that the Presidential Committee on Human Rights, as now functioning, continues to function until otherwise provided by law. Suppose Congress, instead of abolishing the Presidential Committee on Human Rights, decides to create by legislation this Presidential Committee on Human Rights, instead of the commission provided for in the Constitution, because this Presidential Committee on Human Rights is more effective — it is backed by the President — unlike the proposed commission which is an island segregated from the President. It has to plead with fiscals; it has to plead with prosecuting officers; it has no power; it is a toothless commission. What happens then? Can we compel Congress to appropriate money for this if Congress says, "No, we do not want to appropriate money for that; that is a waste of money. We prefer the Presidential Committee on Human Rights"?

FR. BERNAS: Madam President, I take exception to the statement that even after the ratification of this Constitution the present Presidential Committee on Human Rights continues to be a presidential commission. It ceases to be a presidential commission. And it, therefore, becomes independent of the President.

MR. RODRIGO: But it says here that the President will appoint five commissioners. Does the Commissioner mean we automatically appoint, by means of this constitutional provision, the five commissioners? Are there five commissioners in the Presidential Committee on Human Rights now?

THE PRESIDENT: There are seven commissioners.

MR. RODRIGO: Madam President, it is provided in these provisions we are discussing that the President shall appoint the chairman and the four members of the commission. Before that appointment shall have been done, I do not suppose there will be any commission.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: The meaning of the phrase "until otherwise provided by law" has reference to the scope and extent of the powers of the present Presidential Committee on Human Rights. In other words, the moment the

Constitution is ratified, the Commission on Human Rights has all the powers given to the presidential committee, together with the powers that are here, and what may be changed by law are the powers given to the presidential committee which are not found here.

MR. RODRIGO: At present, the Presidential Committee on Human Rights is under the President, supported by the President and backed by the powers of the President. So it can, with the backing of the President, call on any fiscal, prosecuting officer to cooperate. Does the Commissioner mean to say that when this Constitution takes effect, we shall say: "Well, you, in the Presidential Committee on Human Rights are now an isolated island."

FR. BERNAS: Yes, Madam President, this is the precise intention.

MR. RODRIGO: If this is the case, I want to speak en contra, Madam President.

FR. BERNAS: Madam President, the entire discussion or tenor we had when we were creating this commission was to make it independent of the President, precisely, so that it cannot be pressured by the President.

MR. RODRIGO: But this is ironic, because by making it independent of the President, we weaken instead of strengthen it. It is all right to make an office independent of the President, if we vest it with powers of its own; if it can act on its own. But what if its power is merely recommendatory, merely investigative, with no power to act on its own? It is stronger if backed by the President. We weaken that office if we segregate it from the President and make it an isolated island in an uncharted sea.

FR. BERNAS: I think it is very clear that the Commissioner's position is in complete disagreement with the position of the committee.

MR. RODRIGO: Yes. May I ask another question. Let us say the implementing legislation is enacted and Congress appropriates the money for the commission; but the President says: "No, I do not want to appoint the chairman and the members of that commission, because I already have this presidential committee and I am very happy with it. It is doing very good work; it is very effective, and I think if this other commission is created, if I appoint the members, it will be as effective as the committee that I have now. As a matter of fact, it will be a 'paper tiger.'" Can the President refuse to appoint?

FR. BERNAS: The fact is that once this is ratified, the Presidential Committee on Human Rights ceases to exist. So the President will have no authority to appoint anybody to the presidential committee because the office no longer exists. If the President appoints somebody to a nonexisting office, that is a violation of the Constitution.

MR. RODRIGO: No. The provision says that the President must appoint the chairman and the members of this commission that is being created by this constitutional provision. But suppose the President says: "No, I will not appoint any body to the commission."

FR. BERNAS: It is a speculation, Madam President.

MR. RODRIGO: No, it is not a speculation because the President is happy with the present presidential committee. I think it is very profitable. Why waste money on a new commission which is untried and powerless? This came out during the interpellations. Can this commission investigate, and later on tell the fiscal, "You file a case"? The answer is: "No, it cannot compel." So what is the use of spending money on it? We will just be raising the hopes of our people and then frustrate them later on.

Another thing, Madam President. Even if Congress, let us say, appropriates the money, and the President appoints the five commissioners, we will have a commission with its office in Manila.

Human rights are violated all over the Philippines: in Mindanao, Visayas, Luzon, up to Batanes. How will the

victims of human rights violation in faraway places communicate with the commission in Manila?

FR. BERNAS: It is obvious, Madam President, that Commissioner Rodrigo wants to speak en contra. I think the matter he is raising was already raised here during the period of amendments, and it is just a question of voting on Second Reading.

REV. RIGOS: Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: I am a member of the committee but when I voted for the last paragraph of Section 1, which reads "Until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions. . .," my impression was that the Presidential committee on Human Rights will continue to perform its function as a Presidential Committee on Human Rights and will not automatically become the Commission on Human Rights envisioned in this article. That was my understanding.

In other words, the Presidential Committee on Human Rights will continue to function until this Commission on Human Rights is created. Following the provisions we have spelled out in this article, it does not automatically become the Commission on Human Rights.

FR. BERNAS: Madam President, I think it is quite obvious that there are varying interpretations of the provisions by this body. So, perhaps, a motion for reconsideration would be in order.

SUSPENSION OF SESSION

THE PRESIDENT: May we suspend the session for a few minutes.

It was 4:18 p.m.

RESUMPTION OF SESSION

At 4:37 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Floor Leader is recognized.

MR. RAMA: Madam President, I ask that Commissioner Rigos be recognized.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: Madam President, I move for a reconsideration of the approval of Section 1 (3) of the Article on the Commission on Human Rights.

VOTING

THE PRESIDENT: As many as are in favor of the motion of Commissioner Rigos to reconsider the approval of Section 1 (3), which was the section involved just before the suspension of the session, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 31 votes in favor and none against; the motion for reconsideration is approved.

MR. RAMA: Madam President, I ask that Commissioner Regalado be recognized to present the amendment.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President. In connection with the last paragraph of Section 1 (3), I respectfully submit this amendment, coauthored by Commissioners Rodrigo, de los Reyes and Rigos, to read as follows: "Until THIS COMMISSION IS CONSTITUTED, the existing Presidential Committee on Human Rights shall continue to EXERCISE its PRESENT functions and powers."

THE PRESIDENT: What does the committee say?

MR. SARMIENTO: We have no objection, Madam President.

MR. NOLLEDO: Clarificatory questions, Madam President.

THE PRESIDENT: The Commissioner will please proceed.

MR. NOLLEDO: When we use the phrase "Until THIS COMMISSION IS CONSTITUTED," does this mean that Congress is mandated to create the commission within a reasonable time?

MR. REGALADO: Yes, Madam President.

MR. NOLLEDO: Thank you.

MR. DE CASTRO: Madam President, point of clarification.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Madam President, the first statement of Commissioner Regalado was "Until THIS COMMISSION IS CONSTITUTED." In his answer to the Honorable Nollado, he said, "Until it is created by Congress."

Section 1 clearly states that the commission shall be created. So Section 1 already created it.

MR. REGALADO: I did not mention the word "created." I just gave the answer yes, because Commissioner Nollado was asking whether by the phrase "Until THIS COMMISSION IS CONSTITUTED," Congress is mandated to create the commission within a reasonable time. My answer was yes. I did not use the word "created."

What we mean here by "CONSTITUTED" is when Congress passes the enabling law which includes, among others, the statement about the qualifications, as well as the ratification and the conjoint action of the President in appointing the Commissioners therein, from that moment this proposed commission is constituted.

MR. DE CASTRO: So the Commissioner means that the word "constituted" here is different from the word "created" as used in Section 1.

MR. REGALADO: Yes, Madam President.

MR. DE CASTRO: Thank you.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Does the word "mandate" refer to the first Congress or could it be to subsequent Congresses?

FR. BERNAS: It certainly refers to the first Congress, but if the first Congress does nothing about it, it is a continuing mandate.

MR. TINGSON: That is what I wanted to find out. It is a continuing mandate. But the first Congress does not need to do it, if it does not want to.

FR. BERNAS: We cannot compel Congress, Madam President.

MR. TINGSON: Thank you, Madam President.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: May we ask some clarificatory questions of the distinguished Commissioner Regalado.

When the Commissioner says that the commission should be constituted, I understand he has in mind the organization of this commission by virtue of the appointment by the President of its membership. Am I correct, Madam President?

MR. REGALADO: Yes, Madam President, consequent to the enabling legislative act.

MR. SUAREZ: Thank you. From that time on, it will be this commission that will be operative.

MR. REGALADO: That is right, Madam President.

MR. SUAREZ: And that means the automatic abolition of what is now known as the Presidential Committee on Human Rights.

MR. REGALADO: The Presidential Committee on Human Rights will thereby become functus officio.

MR. SUAREZ: Thank you.

What would happen to the cases pending before the committee upon its abolition?

MR. REGALADO: Congress, I suppose, should make the corresponding provisions with respect to pending cases, as well as with respect to the disposition of the personnel, the transfer of equipments and assets, and the accounting of undisbursed funds which is standard, after all, in any congressional act whenever a new office is created in lieu of a preexisting one.

MR. SUAREZ: And what the Commissioner is declaring now can be read into the record.

MR. REGALADO: Yes, Madam President.

MR. SUAREZ: What will happen to the personnel and officers of the present committee, Madam President?

MR. REGALADO: As I have stated, as is standard in most congressional acts of this nature, there are provisions as to whether these personnel, those who are qualified, will be given preferential appointment to the new commission or will be considered automatically absorbed therein.

MR. SUAREZ: That could also be read into the record for future reference by Congress.

MR. REGALADO: Yes, Madam President, for the guidance of the Members of Congress when they work on this.

MR. SUAREZ: Thank you, Madam President.

MR. REGALADO: Thank you.

VOTING

THE PRESIDENT: As many as are in favor of this proposed amendment read by Commissioner Regalado, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 35 votes in favor and none against; the amendment is approved.

MR. RAMA: Madam President, in view of the fact that we do not have the clean draft of the Article on the Commission on Human Rights, I move for deferment of the vote on Second Reading until this clean text shall have been distributed among the Members.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. RAMA: Madam President, I ask that Commissioner Bengzon be recognized.

THE PRESIDENT: Commissioner Bengzon is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NOS. 496 AND 533
(Article on National Economy and Patrimony and Provision on Ancestral Lands)
Continuation

PERIOD OF AMENDMENTS

MR. BENGZON: Madam President, in line with the agreement of this Commission during the caucus, I move that we continue the consideration on Second Reading of the Article on National Economy and Patrimony.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

We request the members of the Committee on the National Economy and Patrimony to please occupy the front table.

MR. BENGZON: Copies of the Davide amendment have already been distributed, Madam President.

MR. MONSOD: Madam President, just for a clarification. What we are considering is the committee report on which Commissioner Davide has an amendment.

MR. VILLEGAS: Yes, Madam President.

THE PRESIDENT: May we request Commissioner Davide to propose his amendment.

MR. DAVIDE: This proposed amendment is on Section 1 of Committee Report No. 32. I seek to reformulate this section to simply read as follows: "the State, SUBJECT TO the provisions of this Constitution AND NATIONAL DEVELOPMENT POLICIES AND PROGRAMS, shall guarantee the rights of CULTURAL OR TRIBAL communities to their ancestral lands to ensure their economic, social and CULTURAL WELL-BEING. WHENEVER EXPEDIENT, CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS in determining the ownership and extent of the ancestral domain."

THE PRESIDENT: What does the committee say?

MR. VILLEGAS: Commissioner Bennagen will react.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: May we know from the proponent why he wants to reformulate Section 1 this way.

MR. DAVIDE: The reason, Madam President, is: First, with respect to the so-called ancestral lands of tribal or cultural communities, we have to consider the provisions of this Constitution and national developmental policies and programs of the government. Second, insofar as the application of the customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain is concerned, it is respectfully submitted that that particular matter must be submitted to Congress. I understand that the idea of Commissioner Bennagen is for the possibility of the codification of these customary laws. So before these are codified, we cannot now mandate that the same must immediately be applicable. We leave it to Congress to determine what are these customary laws to be codified and how these customary laws may be made applicable in determining the extent of the ancestral domain and the ownership thereof in relation to whatever may have been codified earlier. So, in short, let us not put the cart ahead of the horse.

MR. BENNAGEN: Is that the interpretation of the second sentence?

MR. DAVIDE: Yes, Madam President.

MR. BENNAGEN: May we have the second sentence again, Madam President.

MR. DAVIDE: "WHENEVER EXPEDIENT, CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS in determining the ownership and extent of the ancestral domain."

MR. BENNAGEN: Originally, I thought we agreed that we will delete "WHENEVER EXPEDIENT" and include the concept or idea of codification.

MR. DAVIDE: I can agree to striking it out, but in the matter of the mandate on codification, we feel that the proper place for that would be in the Article on General Provisions. So the proposed amendment would complement, if there is such a proposal for codification in the General Provisions. The mandate here will remain: CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS, meaning, customary laws which may have earlier been codified.

MR. BENNAGEN: If we accept the amendment, will it be on the understanding that that provision for codification should be included in the Article on General Provisions?

MR. DAVIDE: I hope the two of us could work together to remind ourselves, at the time we take up the Article on General Provisions, that a provision be inserted in said article regarding codification of the customary laws, which I believe would be the proper place.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President. May I seek some clarifications from either Commissioner Bennagen or Commissioner Davide regarding this phrase "CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS in determining the ownership and extent of the ancestral domain," because ordinarily it is the law on ownership and the extent thereof which determine the property rights or relations arising therefrom. On the other hand, in this proposed amendment the phraseology is that it is the property rights or relations which shall be used as the basis in determining the ownership and extent of the ancestral domain. I assume there must be a certain difference in the customary laws and our regular civil laws on property.

MR. DAVIDE: That is exactly the reason, Madam President, why we will leave it to Congress to make the necessary exception to the general law on property relations.

MR. REGALADO: I was thinking if Commissioner Bennagen could give us an example of such a customary law wherein it is the property rights and relations that determine the ownership and the extent of that ownership, unlike the basic fundamental rule that it is the ownership and the extent of ownership which determine the property rights and relations arising therefrom and consequent thereto. Perhaps, these customary laws may have a different provision or thrust so that we could make the corresponding suggestions also by way of an amendment.

MR. DAVIDE: That is exactly my own perception.

MR. REGALADO: Can Commissioner Bennagen explain the concept further.

MR. BENNAGEN: Let me put it this way.

There is a range of customary laws governing certain types of ownership. There would be ownership based on individuals, on clan or lineage, or on community. And the thinking expressed in the consultation is that this should be codified and should be recognized in relation to existing national laws. That is essentially the concept.

MR. REGALADO: The Commissioner will recall that when we had a public hearing at the Asian Institute of Tourism, he, as well as some of the speakers therein, made mention of a work being conducted by Professor Fernandez.

MR. BENNAGEN: Yes.

MR. REGALADO: I was wondering if perhaps we could have even a rough draft or a precis of that work for the benefit of the Commissioners, so we will have an idea of what these customary laws are that we are voting on and which we are using as a basis in the matter of ancestral lands. Incidentally, this is also mentioned in the Article on Social Justice, Article on National Economy and Patrimony and in the Article on General Provisions. We really have just a rough and hazy approach or knowledge of the customary laws referred to.

MR. BENNAGEN: Unfortunately, the studies are still going on. However, one way to know these customary laws would be in terms of genealogies. These are stories told by succeeding generations in terms of how they have cultivated certain areas, the improvements made therein and other things like those. These were usually transmitted orally from one generation to the next generation.

MR. REGALADO: There was a certain UP lady professor who promised to send us a summary to be used just for a working knowledge of the other Commissioners, and which we intended to disseminate.

MR. BENNAGEN: Yes, an idea of that would be in the paper circulated to the body which comes from the Philippine Law Journal. It is taken from the article entitled "The Interface Between National Land Law and Kalinga Land Law" by Ma. Lourdes Aranal-Sereno and Roan Libarios. That would give us an idea of the kind of ownership rights that we are referring to in this section.

MR. REGALADO: I assume they were also distributed to the Commissioners.

MR. BENNAGEN: Yes.

MR. REGALADO: So that at least we will have even just a working knowledge.

MR. BENNAGEN: Yes.

MR. REGALADO: Madam President, this is regarding the phrase "cultural or tribal communities" which I addressed to Commissioner Davide. We will notice that this phrase was changed to the words "indigenous

communities" as indicated in Section 6 of the Article on Social Justice.

Would the Commissioner care to comment on whether we should use the same phraseology or is there a difference in the intent, in the specification here, this time of cultural and tribal communities, although in the Article on Social Justice we used "indigenous communities" to refer to ancestral lands?

MR. DAVIDE: In the 1973 Constitution, these tribal groups were described as cultural communities, not as indigenous communities, the idea being that we should not really downgrade them.

MR. BENNAGEN: That is why the term "minorities" was stricken off the record.

MR. DAVIDE: Precisely. We changed it to "COMMUNITIES."

MR. BENNAGEN: However, we added the word "INDIGENOUS" to refer to their being native-born in the Philippines, in contrast to other cultural communities who may have different ethnic origins.

MR. REGALADO: So, just to align this proposed amendment of Commissioner Davide with Section 6 of the Article on Social Justice, will the committee consider the insertion of the words "INDIGENOUS CULTURAL COMMUNITIES," eliminating the phrase "or tribal" because this phrase "or tribal" appears to mean a very small group?

MR. BENNAGEN: Yes.

MR. REGALADO: So, the amendment will be "INDIGENOUS CULTURAL COMMUNITIES" which would be acceptable to the body.

MR. BENNAGEN: It is already accepted by certain groups, but the word "tribal" is some kind of an "exonym." It is imposed by people from the outside. Usually it is in reference to corporate groups like American-Indians. So, for consistency, we accept "INDIGENOUS CULTURAL COMMUNITIES."

MR. DAVIDE: So, we delete the words "or tribal."

MR. BENNAGEN: But the obvious reference here would be those groups that have retained a high degree of continuity from prequest culture, and especially those of the two autonomous regions, because we have to make provisions for their ancestral lands. The assumption is that this will be taken into account.

MR. DAVIDE: As a matter of fact, this particular section that has specific reference to the indigenous cultural communities is principally outside the autonomous regions.

MR. BENNAGEN: Yes. That should also be the intent of the codification provision in the Article on General Provisions.

MR. REGALADO: So, that is the phraseology we will also use here.

MR. DAVIDE: We accept the proposed amendment. So, before the word "cultural" insert the word "INDIGENOUS," and then we delete the words "or tribal."

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: May I ask a question of Commissioner Davide.

MR. DAVIDE: Gladly.

BISHOP BACANI: In Commissioner Davide's formulation of the first sentence, he says: "The State, SUBJECT

TO THE provisions of this Constitution AND NATIONAL DEVELOPMENT AND PROGRAMS shall guarantee the rights of cultural or tribal communities to their ancestral lands to insure their economic, social and cultural well-being." There are at least two concepts here which receive different weights very often. They are the concepts of national development policies and programs, and the rights of cultural or tribal communities to their ancestral lands, et cetera. I would like to ask: When the Commissioner proposed this amendment, which was the controlling concept? I ask this because sometimes the rights of cultural minorities are precisely transgressed in the interest of national development policies and programs. Hence, I would like to know which is the controlling concept here. Is it the rights of indigenous cultural communities to their ancestral lands or is it national development policies and programs?

MR. DAVIDE: It is not really a question of which is primary or which is more paramount. The concept introduced here is really the balancing of interests. That is what we seek to attain. We have to balance the interests taking into account the specific needs and the specific interests also of these cultural communities in like manner that we did so in the autonomous regions.

MR. BENNAGEN: Yes.

MR. DAVIDE: Regarding the formation of the autonomous regions, the legislative powers vested on the autonomous regions will always be subject to the provisions of the Constitution and national law and the developmental goals in order to achieve a balancing of interests.

At this juncture, the President relinquished the Chair to the Honorable Rustico F. de los Reyes, Jr.

BISHOP BACANI: Is it understood that in the balancing of these different interests, the cultural communities will be consulted?

MR. DAVIDE: Certainly, that is the effect.

BISHOP BACANI: Thank you very much.

MR. CALDERON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Assistant Floor Leader is recognized.

MR. CALDERON: I would like to ask some questions of Commissioner Bennagen in line with the questions asked by Commissioner Bacani concerning ancestral lands and codification of laws. Shall they prevail over the rights granted under the regalian doctrine?

MR. BENNAGEN: The idea is for this matter to be incorporated as part of the national law and, therefore, they should be taken in those terms. Again, when there is a conflict between this and the national law, the general principle is that the national law shall prevail, but there should always be the effort to balance the interest as provided for in the national law and the interest as provided for in the customary law.

MR. CALDERON: To be specific, shall mining rights granted by the government under the regalian doctrine be recognized by the tribal communities?

MR. BENNAGEN: Yes, as long as there is a just share and it is subject to due process, because what has happened in the past is that the rights of the indigenous communities are not respected in terms of their share of the benefits derived from extraction of resources including minerals. It is as if we are dealing with them as private persons and that, therefore, they should benefit from this.

MR. CALDERON: I see; I am satisfied.

Thank you.

MR. RAMA: May we know the thinking of the committee regarding the amendment so we can vote?

THE PRESIDING OFFICER (Mr. de los Reyes): The committee will reply to the question of the Floor Leader.

MR. VILLEGAS: The committee accepts the amendment.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Maambong is recognized.

MR. MAAMBONG: The second sentence of the accepted amendment says: "Congress shall provide. . ."

MR. VILLEGAS: "Congress may provide."

MR. MAAMBONG: What I have here is "shall." I was about to ask the committee, since it has accepted the amendment of Commissioner Davide, if we could change this to "MAY."

MR. VILLEGAS: Yes, the original is "may."

MR. MAAMBONG: That is why I am asking the committee, considering that I heard Commissioner Davide say "shall."

MR. BENNAGEN: My understanding is that the word "shall" will be used.

MR. MAAMBONG: That is precisely why I am proposing an amendment to change the word "shall" to "MAY." May I hear from Commissioner Davide?

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Davide is recognized.

MR. DAVIDE: Yes. The original proposal was really "may." Commissioner Bennagen, however, requested that it should be "shall." In the light of the agreement that we shall introduce in the Article on General Provisions a provision regarding the codification of these customary laws, and necessarily the act of the Congress will have to follow after the codification of the customary laws, the word "may" shall prevail.

MR. BENNAGEN: With that explanation, we accept the reversal to the word "may."

MR. DAVIDE: May I also propose to change the word "guarantee," as proposed by Commissioner Concepcion, to the word "PROTECT."

THE PRESIDING OFFICER (Mr. de los Reyes): What does the committee say?

MR. VILLEGAS: "Shall PROTECT the rights of indigenous cultural communities."

MR. DAVIDE: May we know the thinking of the committee on the change of the word "guarantee" to "PROTECT" as recommended by Commissioner Concepcion?

MR. VILLEGAS: It is accepted.

MR. DAVIDE: The committee has accepted. So, it will now read in full as follows: "The State, SUBJECT TO THE provisions of this Constitution and NATIONAL DEVELOPMENT POLICIES AND PROGRAMS, shall PROTECT the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being. CONGRESS MAY PROVIDE FOR THE APPLICABILITY OF customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain."

THE PRESIDING OFFICER (Mr. de los Reyes): What is the reaction of the committee to the amendment as read?

MR. VILLEGAS: We accept it, Mr. Presiding Officer.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Maambong is recognized.

MR. MAAMBONG: Before we take a vote on this, I just want some clarification on the words "indigenous communities." Just how many indigenous communities do we have in the Philippines?

MR. BENNAGEN: It depends on how fine the distinctions that the Commissioner wants to make. But we still go by the old listing of CNI, PANAMIN and also by anthropologists Fox and Florry. What else? It also includes the Manahan report and all others. In other words, there is already an increasing consensus as to the indigenous communities referred to whenever we speak of indigenous communities.

MR. MAAMBONG: So, more or less, how many do we have?

MR. BENNAGEN: There are about 100 to 130, sometimes more, depending on how fine the distinctions are.

MR. MAAMBONG: And this is the number of which we expect Congress to provide for laws governing property rights or relations? Is that it?

MR. BENNAGEN: Actually, the number of groups is misleading in terms of the property concepts because there is a kind of similarity that runs through all these various ethnic groups.

MR. MAAMBONG: In other words, as far as these 100 or so indigenous communities are concerned, is the Commissioner saying that Congress could probably make a general law for all of them which runs through the same fabric of provisions?

MR. BENNAGEN: I would say so. Yes. There would be certain variations. We have the Negrito groups, on the one hand, the Mangyan groups, on the other, and those groups in Mindanao that are outside of those two autonomous regions.

MR. MAAMBONG: Let us clarify that.

The Commissioner is saying that these laws on property could be generalized in some areas of the Philippines like in Mindanao. This group of indigenous communities and some in Luzon could have a grouping of general laws which cover their property relations.

MR. BENNAGEN: The Commissioner is right.

MR. MAAMBONG: If my memory serves me right, there was a book published by Professor Perfecto Fernandez on customary laws of the Philippines. Would that be a good starting point for the formulation of these laws?

MR. BENNAGEN: Yes, as a starting point. However, other starting points could be seen in a listing of works. I thought I provided the Members of the Commission copies of that. Maybe I failed to do that, but my understanding is that these existing materials would already provide viable starting points for this kind of work that we hope Congress will pick up from here as soon as it is duly constituted.

MR. MAAMBONG: Yes, the Commissioner did furnish us some materials regarding the concept of property as far as the Cordillera area is concerned; but as the Commissioner said, the book, if I am correctly quoting the name of Professor Perfecto Fernandez, could provide a good starting point for Congress to make this kind of laws.

MR. BENNAGEN: Incidentally, that too, would include even ethnic laws covering also lowland Filipinos.

MR. MAAMBONG: Thank you. I am satisfied.

THE PRESIDING OFFICER (Mr. de los Reyes): Are we now ready to vote?

MR. NATIVIDAD: Mr. Presiding Officer, just one question.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Natividad is recognized.

MR. NATIVIDAD: Just one question. I want to clear this section protecting ancestral lands. How does this affect the Torrens title and other prior rights?

MR. BENNAGEN: I think that was also discussed in the committee hearings and we did say that in cases where due process is clearly established in terms of prior rights, these two have to be respected.

MR. NATIVIDAD: The other point is: How vast is this ancestral land? Is it true that parts of Baguio City are considered as ancestral lands?

MR. BENNAGEN: They could be regarded as such. If the Commissioner still recalls, in one of the publications that I provided the Commissioners, the parts could be considered as ancestral domain in relation to the whole population of Cordillera but not in relation to certain individuals or certain groups.

MR. NATIVIDAD: The Commissioner means that the whole Baguio City is considered as ancestral land?

MR. BENNAGEN: Yes, in the sense that it belongs to Cordillera or in the same manner that Filipinos can speak of the Philippine archipelago as ancestral land, but not in terms of the right of a particular person or particular group to exploit, utilize, or sell it.

MR. NATIVIDAD: But it is clear that the prior rights will be respected.

MR. BENNAGEN: Definitely.

MR. NATIVIDAD: Thank you.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Suarez be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

I am also a member of that committee, and I support this section. However, I think there is need to clarify some terms being used in this particular section.

For example, we are talking of "ancestral lands"; on line 1 and on line 2, we are talking in terms of "ancestral domain." Is there any substantial difference between "lands" and "domain"?

MR. BENNAGEN: I tried to go into the deliberations on the 1973 Constitution, following the proposal of Atty. William Claver and I did notice that in the deliberations, distinctions were made between ancestral land and ancestral domain, as well as in the existing literature even outside of the Philippines. Ancestral lands would be more specific in relation to how people use, exploit and sell; whereas, ancestral domain would include a broader area, including those that are not yet actually being occupied but which generally belong to what we call a cultural region. So, deep forests that are not yet in effective use are part of the ancestral domain, but not yet a part of the ancestral land.

MR. SUAREZ: That is a good distinction but under line 1, what is only sought to be protected by the State would

be the lands and not the domain. Is my understanding correct?

MR. BENNAGEN: That is why it is important to have that provision in the Article on General Provisions to codify the extent of the ancestral domain.

MR. SUAREZ: So, we are clear on the fact that the State is mandated to protect only the ancestral lands but not the ancestral domain.

MR. BENNAGEN: Pending the resolution of the issue, because that is also important in relation to the definition of "autonomous region" when all these will have to be defined territory.

MR. SUAREZ: So, the moment the extent of the ancestral domain is determined by Congress, then it already deserves state protection.

MR. BENNAGEN: Yes.

MR. SUAREZ: In terms of codifying the customary laws on the part of Congress, is my understanding correct in that regard? Is Congress under obligation to codify the customary laws?

MR. BENNAGEN: That is my understanding.

MR. SUAREZ: Therefore, before the codification of these customary laws by Congress, the State may not apply these customary laws to property relations or rights?

MR. BENNAGEN: My understanding is that, even without the action of Congress, the State shall already protect. But the final definition of the ancestral domain shall wait for the action of Congress in respect to codification. So once it is codified, it will be included as part of national law.

MR. SUAREZ: When we speak of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain, are we thinking in terms of the tribal ownership or community ownership or of private ownership within the ancestral lands or ancestral domain?

MR. BENNAGEN: The concept of customary laws is that it is considered as ownership by private individuals, clans and even communities.

MR. SUAREZ: So, there will be two aspects to this situation. This means that the State will set aside the ancestral domain and there is a separate law for that. Within the ancestral domain it could accept more specific ownership in terms of individuals within the ancestral lands.

MR. BENNAGEN: Individuals and groups within the ancestral domain.

MR. SUAREZ: That is right and this will be governed by the customary laws. I have a last question with respect to the first sentence and this is a little more serious because it will affect the national development policies and programs.

Let us take a particular situation where there is need to develop a hydroelectric project which might violate the property rights on ancestral domain. Since under this section we are saying that it must be subject to the provision of this Constitution and national development policies and programs, in a situation like that which will prevail?

MR. BENNAGEN: I think we take the cue from the discussion of the provision on autonomous regions when we say that given all these considerations, we should do a lot of systematic consultation to balance local regional needs, as well as national plans.

MR. SUAREZ: So, we will apply the same rules and principles and come up with a decision which may favor

national development programs or the continued existence of the tribal communities.

MR. BENNAGEN: Yes. The assumption is that the national plan takes into account the requirements of the region after thorough consultation. That is why we insisted that in the national planning there should be systematic consultation with other groups including those from the indigenous communities.

MR. SUAREZ: If the consultations would result in a stalemate of some sort, how does the Commissioner imagine that to be resolved? Should it be resolved in favor of national development or in favor of the survival of tribal communities?

MR. BENNAGEN: At this point, learning from the lessons of the Marcos years, I do not think of that possibility, but in case of a worse case scenario, I would imagine that the harm done to the local communities and to the national interest should be thoroughly investigated and the decision should be in relation to the minimization of the social cause to both the indigenous communities and national interest.

MR. SUAREZ: Thank you.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Floor Leader is recognized.

MR. RAMA: The body is now ready to vote.

THE PRESIDING OFFICER (Mr. de los Reyes): Will the committee please read the amendment again.

MR. VILLEGAS: "The State SUBJECT TO THE provisions OF THIS CONSTITUTION AND NATIONAL DEVELOPMENT POLICIES AND PROGRAMS, shall PROTECT the rights of indigenous CULTURAL communities to their ancestral lands TO ensure their economic, social AND CULTURAL well-being. CONGRESS MAY PROVIDE FOR THE APPLICABILITY OF customary laws governing property rights OR RELATIONS in determining the ownership and extent of the ancestral domain."

THE PRESIDING OFFICER (Mr. de los Reyes): Is there any objection to the amendment as read?

MR. RAMA: Commissioner Padilla would like to be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Padilla is recognized.

MR. PADILLA: Mr. Presiding Officer, with regard to the second sentence which says, "customary laws governing property rights or relations" and the idea is that the Congress may be required to codify, I notice that in the Article on Local Governments, particularly Section 18, referring to additional powers of autonomous regions itemized under nine subheadings, mention is made of ancestral home as indicated in item (3); personal family and property relations in item (4); preservation and development of the cultural heritage in item (8) and to which I interposed my objections before. Should not the second sentence be more applicable under the Article on Local Governments, rather than under the Article on National Economy and Patrimony?

THE PRESIDING OFFICER (Mr. de los Reyes): May the committee reply please?

MR. BENNAGEN: Commissioner Padilla, the provision here in the Article on National Economy and Patrimony is intended primarily for those outside and within the autonomous regions.

MR. PADILLA: Section 18 of the Article on Local Governments refers specifically to autonomous regions with legislative powers.

MR. VILLEGAS: We are thinking that this specific provision will apply to indigenous cultural communities

outside of the autonomous regions, as well as those within the autonomous region. And we were thinking actually of putting it immediately after the provision in the Article on National Economy and Patrimony which talks about the disposition of land. And so, we think this is very appropriate to be included in the Article on National Economy and Patrimony because it actually talks about how certain lands will be disposed of.

MR. PADILLA: I am not referring to the first sentence of the proposed amendment regarding ancestral lands, but I am referring to the second sentence regarding customary laws governing property rights or relations.

MR. VILLEGAS: That is why we are referring to property rights.

MR. PADILLA: Should that not be more appropriate in the Article on Local Governments?

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Davide is recognized.

MR. DAVIDE: May I add some thoughts on this?

The provision on the autonomous regions is very specific. The intention here is to make this applicable even to the indigenous communities outside of the autonomous regions. And this is proper under the Article on National Economy and Patrimony for the reason that it would involve the extent and the ownership of ancestral domain. It involves land. So, it cannot be under the portion of autonomous regions in the Article on Local Governments because it may cover cultural communities outside of the autonomous regions. There is no other place for this but here.

MR. PADILLA: I believe it is more proper to place the provision under the Article on Local Governments. We provide for autonomous regions to Muslim Mindanao and Cordillera, then we should also recognize the rights of other indigenous cultural or tribal communities.

MR. DAVIDE: Mr. Presiding Officer, it cannot be placed under the Article on Local Governments for two reasons: (1) the provision on autonomous regions is on local governments. We do not speak here of local autonomy or local government for these tribal communities; (2) if we place the matter there, it would appear that the autonomous regions will cover other tribal areas outside of the areas to which the autonomous regions are confined.

MR. BENNAGEN: May I add also another? It would also assume that all other indigenous communities belong to clearly delineated local political units which is not necessarily the case. Sometimes they struggle for more than one political unit.

MR. PADILLA: No, I am not saying that these tribal minorities are within the two so-called autonomous regions, but what I am saying is that the same ideas of ancestral domain, property relations, cultural heritage are all mentioned in the Article on Local Governments.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Davide is recognized.

MR. DAVIDE: Yes, that is correct, because these are the powers conceded to the autonomous regional legislative departments. Section 18 of the Article on Local Governments enumerates precisely the powers of the local autonomous regions and, therefore, in respect to the matter of customary laws on the ancestral lands or domains within the autonomous regions, these matters would be within the legislative authority of the autonomous regions. If we place this matter now as a concept within local autonomy, it may be made to appear that the autonomous regions will have jurisdiction over ancestral domains not within the autonomous regions.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Floor Leader is recognized.

MR. RAMA: The body is now ready to vote with those clarifications.

THE PRESIDING OFFICER (Mr. de los Reyes): Is the comment of Commissioner Padilla an objection or just a suggestion?

MR. RAMA: I understand it is just a suggestion.

MR. PADILLA: It is in the nature of an observation, suggestion and, therefore, an opposition.

VOTING

THE PRESIDING OFFICER (Mr. de los Reyes): In view of the suggestion which is actually an opposition, we will vote on the issue.

As many as are in favor of the amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (A Member raised his hand.)

MR. PADILLA: Mr. Presiding Officer, I am only against the second sentence, as inserted.

THE PRESIDING OFFICER (Mr. de los Reyes): As many as are abstaining, please raise their hand. (No Member raised his hand.)

The results show 31 votes in favor and none against; the amended section is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Floor Leader is recognized.

MR. RAMA: There are no more registered speakers; may I ask that Commissioner Bengzon be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): The chairman of the Steering Committee is recognized.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Bengzon is recognized.

MR. BENGZON: There is a suggestion here, and I would like to request that Commissioner Suarez be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

With the indulgence of my fellow colleagues, may we venture the suggestion that we be given the opportunity to present some proposals, which may not be substantive in character, before the committee chaired by Commissioner Villegas in order that we may be able to thresh out on the committee level some proposals which we feel may be supportive of and perhaps clarificatory of the provisions which have already been approved by the Commission considering that there are already about 21 or 22 sections approved in the Article on National Economy and Patrimony. I hope the committee will be good enough to continue extending its liberality by sitting with us at the end of the session to spend the whole night together ironing out these problems.

MR. BENNAGEN: I object to the reference of spending the whole night.

MR. SUAREZ: At any rate, the idea is to get it over with sometime tonight and maybe the committee can sleep over it and we can call anew discussion on the Article on National Economy and Patrimony by tomorrow morning.

THE PRESIDING OFFICER (Mr. de los Reyes): What is the reaction of the committee?

MR. VILLEGAS: We would be happy to meet with the committee. In fact, if we can adjourn right now, we do not have to work the whole night.

MR. BENGZON: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Bengzon is recognized.

MR. BENGZON: There is just one loose thread hanging in the Article on Accountability of Public Officers and I would like to get this out of the way. May I suggest that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Monsod is recognized.

MR. MONSOD: We circulated to the Commissioners a memorandum that was unanimously endorsed by the members of the committee, except for one member who is absent. In this memorandum, we suggested the deletion of a phrase which we consider redundant in the context of the intent of the committee. We wanted to ask the body for any comment it may have on it because we feel we do not need to reopen the article if the body agrees with us that it is not a substantial change, but a change to reflect the intention of the body and the committee on this matter.

THE PRESIDING OFFICER (Mr. de los Reyes): On what article is that, Commissioner Monsod?

MR. MONSOD: It is on the Article on Accountability of Public Officers which was circulated a couple of days ago.

On Section 13, lines 7 and 8, we propose to delete the phrase "or to prosecute offenses in connection therewith." The committee considers this phrase redundant with its intent on the recovery of property illegally acquired. The action contemplated by the committee is a civil action. However, since jurisprudence considers such action for recovery as partaking of a criminal action, we believe that it is not necessary to mention "or to prosecute offenses in connection therewith." Hence, we ask the body if there is any objection to delete that phrase.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Monsod, what is the phrase sought to be deleted?

MR. MONSOD: The phrase "or to prosecute offenses in connection therewith."

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. de los Reyes): The session is suspended.

It was 5:36 p.m.

RESUMPTION OF SESSION

At 5:40 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. de los Reyes): The session is resumed.

Commissioner Monsod is recognized.

MR. MONSOD: May we ask Commissioner Davide, the proponent of some of these amendments, on this article?

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Mr. Presiding Officer.

After deeper reflection on the consequences of the amendments which I introduced and which are now sought to be deleted, and taking into account the massive consensus of opinions on the part of the committee which is now seeking for its reconsideration, I would have no objection to it. However, there is a point to be taken up and I understand that Commissioner Regalado has also a point to take up on this.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Mr. Presiding Officer.

I move for the deletion of the phrase "co-principals, accomplices or accessories," because what is contemplated in that amendment is a civil action. The phrase "co-principals, accomplices and accessories" is proper only in a criminal action. So, I have asked the committee to delete those words.

THE PRESIDING OFFICER (Mr. de los Reyes): So how will the section now read?

MR. MONSOD: The section as amended by deletion will now read: "Sec. 13. The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches or estoppel."

THE PRESIDING OFFICER (Mr. de los Reyes): So for the information of the Members of the Commission, what phrases are deleted?

MR. MONSOD: The phrases that are deleted are as follows: "or to prosecute offenses in connection therewith" and "or their co-principals, accomplices or accessories."

THE PRESIDING OFFICER (Mr. de los Reyes): So, in effect, the Commissioner is asking for a reconsideration.

MR. MONSOD: It has been suggested that that would be appropriate in order to make sure that this is properly regularized.

RECONSIDERATION OF APPROVAL OF PROPOSED RESOLUTION NO. 456 (Article on the Accountability of Public Officers)

THE PRESIDING OFFICER (Mr. de los Reyes): As many as are in favor of reconsidering Section 13, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 27 votes in favor and 1 against; the reconsideration is approved.

Commissioner Monsod is again recognized.

MR. MONSOD: I propose that we delete the phrases: "or their co-principals, accomplices or accessories" and "or to prosecute offenses in connection therewith." So, the entire article will now read: "The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches or estoppel."

THE PRESIDING OFFICER (Mr. de los Reyes): Is there any objection to the amendment?

Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Commissioner may proceed.

MR. SUAREZ: I just would like to request the proponent to make it very clear that the elimination of the phrases "co-principals, accomplices, or accessories" and "or to prosecute offenses in connection therewith," shall not preclude those who may have been connected with the commission of the offense even if they are not public officials or employees. They still can be part of the prosecution of the crime committed.

THE PRESIDING OFFICER (Mr. de los Reyes): What is the reaction of Commissioner Monsod?

MR. MONSOD: That is correct.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

MS. QUESADA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Quesada is recognized.

MS. QUESADA: This is just for clarification on the parliamentary procedure. I am not familiar with the rules on this particular situation wherein we approved the Article on Accountability of Public Officers on Second Reading which we have already approved before.

THE PRESIDING OFFICER (Mr. de los Reyes): There was a reconsideration to correct an error which the Chair believed to be substantial. It was then put to a vote with 27 votes in favor of the reconsideration of the section, and one voted against. Commissioner Monsod then read the section as amended. Hence, we will now vote on that particular section, as amended.

MS. QUESADA: So, the parliamentary situation is that we are on the Third Reading then?

THE PRESIDING OFFICER (Mr. de los Reyes): No, we are only on Second Reading.

Is there any objection to the amendment of Commissioner Monsod?

Commissioner Azcuna is recognized.

MR. AZCUNA: Mr. Presiding Officer, the phrase "co-principals, accomplices and accessories" refers to criminal cases. So I propose to insert the phrase "OR THEIR TRANSFEREES IN BAD FAITH" in order to be able to recover these properties even from transferees of the public officers if they are done in bad faith. Hence, the amended section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees OR THEIR TRANSFEREES IN BAD FAITH."

THE PRESIDING OFFICER (Mr. de los Reyes): What does Commissioner Monsod say?

MR. MONSOD: We have no objection to that, but I understand there is a comment on this matter.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Davide is recognized.

MR. DAVIDE: I would object if we qualify transferees in bad faith, because to my mind if an action to recover the ill-gotten wealth proceeds from a criminal act, then there cannot be any obstacle to its recovery even from anybody regardless of the manner of acquisition. Here, we will be putting up the defense of good faith, and so it could no longer be recovered if it had been transferred to another party. So I would really object. It is better that we should not make any qualification whether the transferee is a transferee in good faith or a transferee in bad

faith.

MR. NOLLEDO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Azcuna, the proponent of the amendment, is recognized first.

MR. AZCUNA: Mr. Presiding Officer, I share with the statement of Commissioner Davide that the right should extend to transferees. However, there are transferees in good faith against which even stolen goods under present law cannot be recovered, like the goods bought in a public market. My concern, therefore, is that there should be some words inserted to make it clear that the State can, regardless of prescription laws, still go after this ill-gotten wealth in the hands of the associates of the public officials or private persons. Perhaps, the word "associates" in R.A. No. 1379 can be used instead of the phrase "co-principals" or "TRANSFEREES IN BAD FAITH."

MR. NOLLEDO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Nolleddo is recognized.

MR. NOLLEDO: Mr. Presiding Officer, thank you for recognizing me.

I share the views of Commissioner Davide because I am the original author of this provision. I filed a resolution to this effect, and I hope Commissioner Azcuna will be kind enough to withdraw his amendment, because pursuant to Article 1505 of the Civil Code of the Philippines, a certain title could be passed only if the transferor has a valid title over the property. In this case, if it is an ill-gotten wealth or a wealth unlawfully acquired, the transferor has no title whatsoever. Therefore, applying the pertinent provisions of Article 1505 of the Civil Code of the Philippines dealing on sales, whoever is in possession of the ill-gotten wealth whether in good faith or in bad faith must surrender the same to the government.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Regalado is recognized.

MR. REGALADO: Mr. Presiding Officer, I sustain the position of Commissioner Davide and consequently that of Commissioner Nolleddo also. We should not make permutations in this constitutional provision. The law will deal with the specific case. If a property is acquired in bad faith, under Article 1379, Section 12, that act is already a criminal offense. Assuming that it was not a criminal offense, at least, the civil law will come in as to whether or not there was bad faith for value or for a consideration, or as to whether or not there was conspiracy. Let us not look into all the varied situations and the permutations. It is sufficient as a statement of principle. What we are just trying to avoid here is the setting in of the statute of limitations. Perhaps, individually, different cases, there may be different defenses that may also arise which the parties may invoke. Let us have the courts of justice appreciate those defenses exclusive of the question of the statute of limitation or prescription because this is a constitutional provision. We cannot make subject to these conditions, like "except," "provided," "however," and so forth.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Azcuna is recognized.

MR. AZCUNA: Mr. Presiding Officer, I am willing to withdraw my amendment as long as it is made clear that the absence of prescription runs even against a private person who has acquired this ill-gotten wealth — that is, we have the same intention. We want the right of the State to recover this property regardless of prescription, even when this property is in the hands of transferees or whether or not they are in bad faith or good faith as long as that is the intention because the wording refers only to recovering it from the public officials or from government employees.

Thank you.

THE PRESIDING OFFICER (Mr. de los Reyes): The amendment of Commissioner Azcuna is deemed withdrawn.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Padilla is recognized.

MR. PADILLA: I second the proposed amendment of Commissioner Azcuna. I think he should not withdraw. The Civil Code has been mentioned and, precisely, the Civil Code provides that an owner who has lost or has been unlawfully deprived of his property has the right to recover it from whoever may be the possessor. However, if the possessor be an alleged pledgee or buyer in good faith, the right of the owner is superior to the transferee and it need not be in bad faith. If it is in bad faith, it is with more reason. But under Article 559 of the Civil Code, the transfer of stolen property does not vest title on the transferee because the original owner has superior rights over this property.

Mr. Presiding Officer, there have been many decisions regarding personal property which has been stolen and transferred by sale or even in good faith to a third person, now called a transferee. As long as the owner is deprived by an unlawful act of his property, that owner has a superior right to recover from the transferee, even if the latter be a pledgee or a buyer in good faith. The only exception is about public fairs and markets which are not really in effect because even the State in a sale at public auction does not warrant the title. We agree to remove the phrase "co-principals, accomplices, or accessories," because that would imply a criminal action against the persons criminally liable. However, in the recovery of ill-gotten wealth belonging to the people or to the nation, this act is superior over any supposed rights of a transferee, even if he claims to have acted in good faith. So, the suggested phrase "public officials or employees is already a good amendment. The phrase "OR THEIR TRANSFEREES IN BAD FAITH" need not be mentioned.

MR. NOLLEDO: That is correct.

MR. PADILLA: As long as the property is stolen, the original owner has a superior right over any other transferee.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. de los Reyes): The session is suspended.

It was 5:55 p.m.

RESUMPTION OF SESSION

At 5:56 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. de los Reyes): The session is resumed.

MR. AZCUNA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Azcuna is recognized.

MR. AZCUNA: Convinced by the persuasive logic of Commissioner Padilla, I would like to reintroduce my amendment in modified form. The amendment would be just to add the word "TRANSFEREES" so as to read: "to recover the ill-gotten wealth from the government officials, employees or their TRANSFEREES."

THE PRESIDING OFFICER (Mr. de los Reyes): Is that satisfactory to Commissioner Monsod?

MR. MONSOD: There is a problem on the interpretation of this Article 13 once we add that word "TRANSFEREES," because it says: "The right of the State to recover properties unlawfully acquired by public officials or employees." If we add that word "TRANSFEREES," it would mean that the transferees were also involved in the unlawful acquisition of the said property.

THE PRESIDING OFFICER (Mr. de los Reyes): I thought the Commissioner said he had agreed to the formulation.

MR. MONSOD: That is why we are all reconsidering our positions here.

SUSPENSION OF SESSION

THE PRESIDING OFFICER (Mr. de los Reyes): The session is suspended.

It was 5:57 p. m.

RESUMPTION OF SESSION

At 5:58 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. de los Reyes): The session is resumed.

The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Monsod is recognized.

MR. MONSOD: In order to clarify the intent of the amendment, we suggest that the amendment be stated this way: "FROM THEM OR FROM THEIR TRANSFEREES." So, the entire section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees FROM THEM OR FROM THEIR TRANSFEREES shall not be barred by prescription, laches or estopped."

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Azcuna is recognized.

MR. AZCUNA: I accept the amendment.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, I recall I presented an amendment precisely on this provision. I gave way to Commissioner Davide at that time because the imprescriptibility provision was supposed to cover both criminal and civil actions. I just want to clarify this from Commissioner Monsod or from Commissioner Davide if in the present formulation, what is covered is only imprescriptibility of civil action and not of criminal action. Commissioner Davide can probably answer that.

MR. MONSOD: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): Commissioner Monsod is recognized.

MR. MONSOD: Yes, it is just the imprescriptibility of the civil action.

MR. MAAMBONG: If only civil action, it does not cover imprescriptibility of criminal action.

MR. MONSOD: Yes, that is right.

MR. MAAMBONG: Thank you.

THE PRESIDING OFFICER (Mr. de los Reyes): Is the Commission now prepared to vote on the issue?

MR. RAMA: Yes.

THE PRESIDING OFFICER (Mr. de los Reyes): Is there any objection to the amendment of Commissioner Monsod? (Silence) The Chair hears none; the amendment is approved.

MR. RAMA: I ask that the chairman of the Steering Committee be recognized to state the schedule for tomorrow.

MR. BENGZON: Before we adjourn, Mr. Presiding Officer, may I just state the schedule for tomorrow. Since the Committee on the National Economy and Patrimony will be meeting right after the session, whatever will be agreed upon will be presented formally tomorrow morning. Therefore, our schedule for tomorrow morning will be a continuation of the discussion on the Article on National Economy and Patrimony. In the afternoon, we are going to take up the period of sponsorship and debate on the Article on Human Resources.

THE PRESIDING OFFICER (Mr. de los Reyes): But before we adjourn, there is a minor procedure which we have to comply with. Since we have reconsidered a certain section on the Article on Accountability of Public Officers, we have to approve the whole article now on Second Reading.

MR. BENGZON: Let us put that now to a vote.

THE PRESIDING OFFICER (Mr. de los Reyes): Will the chairman please read the article? It will be read first by the Secretary General.

MR. RAMA: Mr. Presiding Officer, I move that we dispense with the reading of that article.

THE PRESIDING OFFICER (Mr. de los Reyes): Is there any objection? (Silence) The Chair hears none; the motion is approved.

APPROVAL OF PROPOSED RESOLUTION NO. 456

ON SECOND READING

(Article on the Accountability of Public Officers)

MR. RAMA: I move that we now vote on Second Reading on the Article on the Accountability of Public Officers.

THE PRESIDING OFFICER (Mr. de los Reyes): We now vote on Second Reading on the Article on Accountability of Public Officers.

As many as are in favor of the Article on the Accountability of Public Officers will raise their hand. (Several Members raised their hand.)

As many as are against will please raise their hand. (One Member raised his hand.)

The results show 33 votes in favor and 1 against; the Article on Accountability of Public Officers is, therefore, approved on Second Reading.

MR. SUAREZ: Mr. Presiding Officer, I voted against, because of the provision on the Ombudsman

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes): The Floor Leader is recognized.

ADJOURNMENT OF SESSION

MR. RAMA: I move that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDING OFFICER (Mr. de los Reyes): Is there any objection? (Silence) The Chair hears none; the motion is approved.

The session is adjourned until tomorrow at nine-thirty in the morning.

It was 6:04 p.m.

[*] Appeared after the roll call.

[*] Resigned as of September 1, 1986.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.