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Tuesday, August 26, 1986

CALL TO ORDER

At 9:57 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Teodulo C. Natividad, to wit:

"Bathalang makapangyarihan sa lahat, kaming Iyong mga anak ay muling dumudulog sa Iyo upang minsan pa iluhog na makamtan ng bawat isa sa amin ang liwanag at talsik ng talinong higit kailan man ngayon namin kailangan upang aming mabalangkas sa itinakdang panahon ang isang Saligang Batas na tunay na kakatawan sa pangarap, adhikain at pithaya ng aming lahi.

Hinihiling namin sa Iyo Panginoon na papag- alabin Mo ang aming mga puso sa tunay na pag-ibig sa aming bayan at nang sa gayon, lubos naming maiwaksi ang ano mang pansariling hangarin at nang ang aming naisin sa bawat saglit ay ang kapakanan at tunay na kabutihan lamang ng aming bayan.

Isinasamo rin namin na ang ano mang hidwaan ng diwa ay huwag sanang maging daan upang kami ay ngayon pa magkawatak-watak at sa halip, sa ibabaw ng ano mang pagkakaiba ng palagay, ang umiral ay ang tunay na kapatiran at pagmamahalan ng magkakalahing ngayon ay inatangang maselan at mabigat na saguting ugutin ang daong ng kapalaran ng aming bayan hanggang sa mga susunod pang panahon.

Subaybayan Mo kami at patnubayan sa lahat ng saglit at huwag Mo po kaming itulot na mabulid sa kinusa o hindi man ng pagpapabaya sa aming tungkulin.

Bathalang makapangyarihan, loobin Mo po sana na mamayani sa aming lahat ang kababaang-loob at kami ay makapagpatuloy ng pagpapalitan ng kuru-kuro na siyang tanging paraan upang makatas ang katuwiran at katotohanan na hindi kami patatangay sa simbuoy ng aming damdamin.

Ito po ang taimtim naming hinihiling sa pamamagitan ni Hesukristong Panginoon namin.

Siya Nawa."

ROLL CALL

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

Alonto, A. D.

Natividad, T. C.

Bacani, T. C.
Nieva, M. T. F
Bengzon, J. F. S.
Nolledo, J. N.
Bernas, J. G.
Padilla, A. B.
Rosario Braid, F.
Muñoz Palma, C.
Calderon, J. D.
Rama, N. G.
De Castro, C. M.
Regalado, F. D.
Colayco, J. C.
De los Reyes, R. F.
Concepcion, R. R.
Rigos, C. A.
Davide, H. G.
Rodrigo, F. A.
Foz, V. B.
Romulo, R. J.
Gascon, J. L. M. C.
Sumulong, L. M.
Guingona, S. V. C.
Tan, C.
Jamir, A. M. K.
Tingson, G. J.
Laurel J. B.
Uka, L. L.
Lerum, E. R.
Villegas, B. M.
Monsod, C. S.

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

The following Members appeared after the Roll Call:

A.M.

Aquino, F. S.

Maambong, R. E.

Garcia, E. G.

Sarmiento, R. V.

Messrs. Rosales and Treñas were sick.

The following Members were absent:

Abubakar, Y. R.

Quesada, M. L. M.

Azcuna, A. S.

Suarez, J. E.

Bennagen, P. L.

Tadeo, J. S. L.

Brocka, L. O.

Villacorta, W. V.

Ople, B. F.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 629 — Constitutional Commission of 1986

Communication from the Movement for the Recognition and Enrichment of Philippine Ethno-Linguistic Groups, U.P. Diliman, Quezon City, signed by Mr. Benjie Cesar Y. Pepito, seeking to put the ethnic groups on equal terms by presenting the following for consideration: (1) denationalize Tagalog and halt the compulsory teaching of Pilipino in all levels; (2) leave the choice of medium of instruction to the regions or provinces; (3) Filipino has to be an amalgamation of the native languages; (4) Filipino should not be detrimental to the native languages; and (5) abolish the Institute of National Language.

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 630 — Constitutional Commission of 1986

Letter from the Philippine Peace and Solidarity Council, 11 Cardinal Street, St. Jude Subdivision, Novaliches, Quezon City, signed by its National Chairman, Emilio A. de Peralta, urging the Constitutional Commission to put an end to the U.S. military bases in the Philippines

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 631 — Constitutional Commission of 1986

Communication from three hundred five students, teachers and employees of the P.W.U. and Sr. Mary Joseph of Assumption, San Lorenzo Village, seeking to include in the new Constitution a provision obliging the State to protect the life of the unborn from the moment of conception.

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 632 — Constitutional Commission of 1986

Letter from Mr. Fred Magbanua, Jr. and three other officers of the Christian Leaders Alliance of the Philippines, P.O. Box 1, Valenzuela, Metro Manila, submitting a position paper recommending the adoption of a provision on the inviolability of the separation of the Church and the State

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 633 — Constitutional Commission of 1986

Letter from Mr. Delfin R. Manlapaz of 1707 E. Rodriguez, Sr. Blvd., Cubao, Quezon City, submitting his observations entitled "National Development and the New Constitution" which seek to clarify questions of nationalization and protectionism, and the role of transnationals on the subject of Philippine development

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

REMARKS OF MR. RAMA

At this juncture, Mr. Rama manifested that he would like to correct the misimpression of some Members of the Commission that he did not follow the order in the list of registered speakers in last Saturday's session which took up the controversial Section 15 of the Article on National Economy and Patrimony by calling Mr. Jamir ahead of Ms. Aquino. He denied that there was any such favoritism, the truth being that, Mr. Jamir was ahead in the list, followed by Messrs. Regalado, de los Reyes and Ms. Aquino.

Mr. Rama also denied that he had been unfair in the grant of time allocations to Members who took part in the deliberations. He pointed out that he had tried hard to be as fair as possible especially in a deliberative body like the Commission whose Members have normally been loquacious and effervescent.

MANIFESTATION OF MR. BENZON RE ORDER OF BUSINESS

Mr. Bengzon stated that during the previous session, on motion of Mr. Monsod, the Body decided to leave open the period of amendments on the Article on National Economy and Patrimony until noon of the day's session in view of Mr. Garcia's reservation to present an amendment, which decision was expanded to include any other

amendments which may be presented. However, he noted that Mr. Garcia was not yet around and that no amendment had so far been presented.

He informed that next in the agenda would be the approval on Third Reading of the Article on the Executive after Mr. Regalado shall have clarified the inquiry of Mr. de Castro. For August 28, 1986, he stated that the Commission would consider the Article on Human Resources in deference to the request of the Sponsor, Mr. Villacorta. In view thereof, he stated that the Body would consider during the morning the additional report of the Committee on Constitutional Commissions proposing a new constitutional body on human rights.

Meanwhile, upon his motion, there being no objection, the Body resumed the previous day's preliminary discussion on the Article on the Executive prior to voting on Third Reading.

Thereupon, the Chair recognized Mr. Regalado.

MANIFESTATION OF MR. REGALADO

Mr. Regalado stated that relative to the questions raised on the provisions of Section 4 of Proposed Resolution No. 517 appearing on page 2 thereof, a verification of the records showed that Mr. de Castro had correctly noted the error which arose from the fact that the notes of the Committee did not correctly reflect the changes as a result of the renumbering of the articles.

Adverting to the paragraph on page 2 which states "The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of the Congress", he stated that the question that arose was whether the Members of Congress would be voting jointly or would be voting separately. He stated that the transcript of proceedings of August 1, 1986 clearly showed the Body's approval of separate voting by the two Houses of Congress.

Thereupon, on motion of Mr. Regalado, there being no objection, the Body approved a nunc pro tunc amendment of the said paragraph, to read:

THE PERSON HAVING THE HIGHEST NUMBER OF VOTES SHALL BE PROCLAIMED ELECTED,
BUT IN CASE TWO OR MORE SHALL HAVE AN EQUAL AND HIGHEST NUMBER OF VOTES, ONE
OF THEM SHALL FORTHWITH BE CHOSEN BY THE VOTE OF A MAJORITY OF ALL THE
MEMBERS OF BOTH HOUSES OF THE CONGRESS, VOTING SEPARATELY

Mr. Regalado likewise manifested that the other question on the transposition of one section to the Article on Local Government was already resolved in the previous session.

APPROVAL ON THIRD READING OF THE ARTICLE ON THE EXECUTIVE

Thereafter, the Body proceeded to vote, on Third Reading, on the Article on the Executive, entitled:

Resolution to incorporate in the new Constitution an Article on the Executive Department.

Upon direction of the Chair, the Secretary-General called the Roll for nominal voting. There after, a second Roll Call was made.

EXPLANATION OF VOTES

Several Members explained their votes, namely:

By Mr. Garcia

Mr. Garcia registered a negative vote on the ground that Section 18 of the Article would vest the President with the power to declare martial law without the concurrence of Congress which, he opined, could lead to further accumulation of power and militarization of politics.

By Mr. Gascon

Explaining his negative vote, Mr. Gascon stated that there are not enough safeguard to prevent the recurrence of September 1972 since the Article would allow a unilateral declaration of martial law by the Chief Executive without the concurrence of the Legislature. He stated that the Article merely provides for submission of a report by the Chief Executive to Congress and, although Congress may revoke the declaration, such revocation has to wait for an opportune time when probably many of the critical members of government including Members of Congress and the Judiciary shall have already been arrested and imprisoned, and, with the help of the military, the whole country shall have been brought to total submission. In this event, he stated, there would be no use for the provision that the declaration of martial law would not supplant the functioning of the civil courts or legislative assemblies.

Mr. Gascon also stated that the deletion of the phrase "imminent danger thereof" does not preclude the declaration of martial law at this stage because a despotic chief executive may declare martial law with no evidence of actual invasion or rebellion. He opined that all he needs is a few hours to complete the scenario to perpetuate himself in power.

Mr. Gascon also stressed that consultations with the people showed overwhelming support for prior concurrence by the Legislature before the Chief Executive could declare martial law because of the feeling that leaving the declaration of martial law to the sole discretion of an individual would open the door to tyranny and oppression.

By Mr. Padilla

Mr. Padilla expressed regret over the deletion of the phrase "imminent danger thereof" which appears in both the 1935 and 1973 Constitutions, for purposes of the suspension of the privilege of the writ of habeas corpus. He maintained that imminent danger of invasion or rebellion would be a sufficient ground for such a suspension. He noted that Section 18 has not provided for a distinction between suspension of the privilege of the writ of habeas corpus and proclamation of martial law but confuses these two stages as one based only on actual invasion or actual rebellion. He stressed that there should be distinction between the three stages mentioned in the provision, namely 1) suppression of lawless violence; 2) suspension of the writ of habeas corpus; and 3) proclamation of martial law.

Mr. Padilla manifested, however, that notwithstanding said observations, he was voting in the affirmative.

By Mr. de los Reyes

Mr. de los Reyes registered an affirmative vote on the ground that the Article on the Executive clearly provides for safeguards against the emergence of a potential tyrant without, however, reducing the Executive into inutility.

By Mr. Rodrigo

Mr. Rodrigo stated that he was unhappy about Section 18 which provides that Congress shall vote jointly if it wants to act or revoke the proclamation of martial law and the suspension or extension of the writ of habeas corpus. He stated that voting jointly is not done in a bicameral Legislature and, although the two Chambers may meet jointly, they should always vote separately.

The provision, he said, sticks out like a sore thumb in the Constitution. He expressed regret that while records would show that he tried to present an amendment to allow the House of Representatives alone to take care of the

matter, he was voted down. He manifested, however, that he was happy about the rest of the provisions. He voted Yes.

By Mr. Sarmiento

Mr. Sarmiento explained his negative vote by stating that he was disturbed by the provision with respect to the Presidential proclamation of martial law when the Committee voted against its own recommendation for the President to seek the concurrence of Congress before he could declare martial law. He stressed that martial law was a bane to the country as it spelled doom to many of the people's rights and in view of the absence of this safeguard, he was voting against the Article on the Executive.

By Mr. Tingson

Mr. Tingson voted Yes because the Article provides an office for the Chief Executive who is strong enough to lead the nation, responsible enough to satisfy the country's needs, and accountable enough to give a good account of his accomplishment to the people.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor:

Alonto

Rosario Braid

Bacani

Calderon

Bengzon

De Castro

Bernas

Colayco

Concepcion

Padilla

Davide

Muñoz Palma

Foz

Rama

Guingona

Regalado

Jamir

De Los Reyes

Laurel
Rigos
Lerum
Rodrigo
Maambong
Romulo
Monsod
Sumulong
Natividad
Tingson
Nieva
Uka
Nolledo
Villegas
Against:
Aquino
Sarmiento
Garcia
Tan
Gascon

With 32 Members voting in favor and 5 against, the Body approved, on Third Reading, the Article on the Executive, as amended.

COMMITTEE REPORT NO. 37 ON PROPOSED RESOLUTION NO. 539 ON THE COMMISSION ON HUMAN RIGHTS

On motion of Mr. Bengzon, there being no objection, the Body proceeded to the consideration, on Second Reading, of Proposed Resolution No. 539 (Committee Report No. 37), entitled:

Resolution to incorporate in the new Constitution the provisions on the Commission on Human Rights.

The Chair recognized Mr. Foz and the members of the Committee on Constitutional Commissions and Agencies.

SPONSORSHIP REMARKS OF MR. SARMIENTO

Mr. Sarmiento manifested that Proposed Resolution No. 539 was sponsored by him and Mr. Garcia, and approved by the Committee as indicated in Committee Report No. 37.

He stated that the creation of a Commission on Human Rights is a timely innovation in the Constitution because it

has come at a time when recognition of the need to protect and promote human rights is at its height. He stressed that 15 years of abuses of fundamental rights and freedoms have awakened the people to the need of a comprehensive program for the promotion, protection and respect for human rights.

He explained that such program could be best formulated by a specialized agency which is independent of the three main branches of government and equipped with the necessary powers and functions to carry out its programs. He added that as envisioned, the Commission would investigate human rights abuses committed by any person and arising from any sources, whether caused by private practices inimical to human rights or resulting from government policies, rules and regulations or the implementation thereof.

Mr. Sarmiento added that in relation thereto, the Commission could recommend to the President or to the appropriate agencies the various courses of action from the prosecution of guilty parties to indemnification or adoption of measures for: protection review or repeal of oppressive rules, policies or laws. He also stated that the Commission would conduct education and public information campaigns to increase public awareness on human rights issues consistent with its objective of promotion and inculcation of respect for human rights.

Finally, Mr. Sarmiento opined that with a permanent Constitutional body pursuing long-term human rights goals through a continuing program, the country may be able to achieve what few Third World countries have been able to do: the establishment of a Commission on Human Rights in the Constitution as the symbol of the country's commitment to justice, peace and the promotion and protection of human dignity.

SPONSORSHIP REMARKS OF MR. GARCIA

Mr. Garcia stated that an outstanding feature of a Commission on Human Rights in the Constitution is the fact that it would establish a program of education and information to propagate human rights. He explained that the Committee envisions the prevention of human rights violations in the future where the citizenry knows what his basic human rights are and are convinced to uphold and defend them.

He added that those who implement the laws should also be educated in terms of proper treatment of prisoners and detainees and the proper procedures according to due process of law. He further stated that education would also show how human rights violations are committed in other parts of the world, so that the people would know and be conscious of protecting their human rights.

At this juncture, Mr. Sarmiento acknowledged the encouragement and support given by the following Members of the Committee: Messrs. Rigos, Foz, Abubakar, Monsod, Rosales, Concepcion, Jamir, de los Reyes and Villegas.

INTERPELLATION OF MR. NOLLEDO

Mr. Sarmiento agreed with Mr. Nollado's observation that the powers of the Commission on Human Rights are principally investigative and recommendatory in nature.

As to the coverage of such recommendation, Mr. Sarmiento replied that it would include among others the filing of appropriate criminal actions against parties guilty of human rights violations. He added that the appropriate government agencies such as the fiscal's office would undertake the prosecutions, and it is also possible that the Commission would assist the prosecutors.

On the query as to how violations of human rights would be prosecuted in areas outside Metro Manila such as violations in Visayas and Mindanao, Mr. Sarmiento stated that the Committee is recommending the creation of extension offices all over the country so that services could be rendered to all victims.

In addition, Mr. Foz stated that it is within the competence of the Commission to deputize even private lawyers or

public officers in the investigation of human rights abuses which occur in far-flung areas. He said that the Commission could also secure the assistance of lawyers' groups such as the Integrated Bar of the Philippines (IBP) in the investigation of such cases.

Mr. Sarmiento added that aside from the IBP, the Commission could also solicit the assistance of other groups like the Protestant Lawyer's League; Free Legal Assistance Group (FLAG); Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI); and the Citizens Legal Assistance Society of the Philippines (CLASP).

On whether the Commission is a purely administrative body or a quasi-judicial one, Mr. Sarmiento pointed out that it is a quasi-judicial body as indicated in Section 2 of the Article which enumerates its functions. He added that since it is a quasi-judicial body, the rules on evidence would not be strictly followed in the prosecution of offenses.

On whether "legal aid services to indigent persons" covers only cases filed before the Commission or whether it also includes those filed in other courts, Mr. Sarmiento explained that it would cover cases that are being handled by the Commission and if there are cases involving human rights violations pending before other courts, he opined that such are within the province of the Commission to provide assistance.

On whether he had recommended that human rights be part of the high school and college curricula, Mr. Sarmiento stated that it is one of the proposals that the Committee is going to make.

INTERPELLATION OF MR. RODRIGO

On Mr. Rodrigo's query whether the Commission on Human Rights would be added as the fourth constitutional commission as enumerated in Article XII which was already approved on Third Reading, Mr. Foz replied in the affirmative and explained that the Committee had made a reservation to include an additional commission. He added that being a constitutional commission, the Commission on Human Rights would also be subject to the common provisions of Article XII.

On whether the members of the Commission on Human Rights would also be subject to prohibition in Article XII which states that "No member of the Constitutional Commission shall, during his tenure, hold any other office or employment or engage in the practice of any profession", Mr. Foz stated that all appointees in the Constitutional Commissions would have to be subject to the same qualifications and disqualifications as provided in the common provisions.

On whether the country would still be able to acquire the services of men like former Senator Jose Diokno and Justice J.B.L. Reyes, the present Chair- man and Vice-Chairman of the Commission on Human Rights, if the prohibition would also apply to members of the Commission, Mr. Sarmiento opined that the dark days of martial law produced many able lawyers who are capable, dedicated and committed to the promotion and protection of human rights. He added that there are also many retired Supreme Court Justices who could provide wisdom, advice and assistance, and academicians who could be effective members of the Commission.

INTERPELLATION OF MRS. NIEVA

On Mrs. Nieva's query as to the meaning of "private parties", Mr. Sarmiento explained that the phrase includes those persons who are not in any way connected with the government but plain citizens. He added that this also covers all groups whether rightists, leftists or centrists.

INTERPELLATION OF MS. TAN

On Ms. Tan's contention that the recommendatory power of the proposed Commission on Human Rights is narrower than the existing Commission on Human Rights, Mr. Sarmiento stated that it is different from the Diokno Committee in some aspects, for instance, 1) Section 2(1) includes private parties; 2) Section 2(2) provides for appropriate legal measures and for legal aid services, and 3) Section 2(3) provides for the establishment of a continuing program of education.

Upon inquiry, Mr. Sarmiento explained that the Committee limited the recommendatory function of the proposed Commission because there are other government agencies which can handle prosecution such as the Office of the Provincial and City Fiscals, and the Ministry of Justice.

INTERPELLATION OF MR. RAMA

In reply to Mr. Rama's query how the phrase "within the Philippines" in Section 2(3) which seeks to provide "appropriate legal measures for the protection of human rights of all persons within the Philippines" would affect those who were persecuted abroad, Mr. Sarmiento agreed to the deletion of said phrase in order to enable the Human Rights Commission to make representations with other governments or make possible the sending of legal aid to such people who may suffer from persecution abroad.

INTERPELLATION OF MR. NATIVIDAD

Mr. Natividad stated that violations of human rights are also committed in prisons and detention centers for which he suggested that the Commission be vested with visitorial powers without need of prior authorization from any other authority, to which Mr. Sarmiento agreed.

In reply, Mr. Foz observed that while visitorial power is already implied in the power to investigate, he would agree to spelling out such power in the Article.

On the suggestion to include among the functions of the Commission the matter of providing compensation for the victims of human rights violations, Mr. Sarmiento adverted to the clause "perform such other duties and functions as may be fixed by law" in Section 2(5), which he said includes Mr. Natividad's concern. Mr. Natividad, however, stated that the duty is too complex and should not be embodied in a general statement as it would include the determination of the compensation to be paid, when it should be paid, and how claims are to be made, to which Mr. Sarmiento stated that the Committee would welcome any amendment on the matter.

On whether investigative powers include the exercise of police powers, Mr. Sarmiento stated that it covers fact-finding and police powers. He affirmed that a detention prisoner, who fails to have his case heard and who could not put up bail for his freedom, could appeal his case to the Commission, violation of one's right to a speedy trial being a violation of human rights. He also pointed out that Section 2(3) on legal assistance and counseling would take care of such circumstances as the inconveniences suffered by victims of crimes and harassment by the family or friends of the accused.

On whether the Commission could be empowered to direct the security forces of the country to provide protection for the victims of human rights, Mr. Sarmiento agreed stating that the suggestion would be a humane expansion of the functions of the Commission.

INTERPELLATION OF MR. DE CASTRO

Mr. de Castro invited attention to the inadvertent inclusion of his name as one of the sponsors of Committee Report No. 37.

On whether a non-lawyer could qualify as chairman or member of the Commission, Mr. Sarmiento stated that since the Commission would be dealing with legal matters, it would be best for lawyers to be appointed to the Commission. He opined, however, that even laymen such as psychologists or members of the religious dedicated to the promotion of human rights could likewise qualify.

Mr. Foz stated that the Committee would welcome suggestions on the matter.

Mr. de Castro observed that the qualification for the chairman and members only states that they should be members of the Bar with at least 10 years practice without the usual enumeration of qualifications for chairmen and members of the Constitutional Commissions, to which Mr. Sarmiento replied that the Committee would welcome suggestions for the inclusion of the usual qualifications.

On the constitutionalization of the Commission, Mr. Sarmiento stated that there is a need for a specialized body to handle cases of human rights violations.

On whether it is possible to just place the Commission under the Executive branch, Mr. Garcia stated that it is important to constitutionalize the Commission because 1) human rights is such an important issue that it should be safeguarded regardless of which political party holds the reins of government, and 2) human rights are not simply given, but it takes education for the people to know they have these rights which they must uphold and defend. In this connection, Mr. Sarmiento volunteered the information that in New Zealand, they have a Commission on Human Rights which undertakes the education of the people on their rights. He noted that in the Philippines, human rights violations are so massive as to require the formation of the proposed Commission.

Mr. de Castro, however, observed that there is no need to create such Commission, stating that it could just be a body under the Office of the President, especially considering the ban on presidential reelection, which could make the President a real statesman who could be looked upon as the protector of the country.

Mr. Garcia stressed that the Committee seeks to avoid undue pressure from a President whose administration may be guilty of human rights violations.

On the matter of providing security for victims of crimes, specifically whether it would be better to place the body under the Executive branch since the President is the Commander-in-Chief of all the Armed Forces, Mr. Garcia stated that the President could withhold the protection due the victims since he would have the judgment and discretion to do so.

On the possibility that the military would renege on its duty to provide protection to victims of human rights violation for reasons of national security, Mr. Garcia stated that the Commission would be empowered to direct the military to provide such protection. Mr. Sarmiento added that the Commission would not be precluded from securing the assistance of the President.

On the apparent overlapping of functions of the Commission on Human Rights and the Ombudsman Mr. Monsod explained that the matter had been anticipated during the discussions on the Office of the Ombudsman and that it had been agreed that the section on the Ombudsman would be adjusted should the Body decide to create the Commission on Human Rights, to avoid the overlapping of functions.

On the necessity of the creation of the Commission, Mr. Garcia stated that the Commission has a very precise task

as its international instruments would be the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration against Torture, which would ensure the protection of human rights in the country.

Mr. de Castro remarked that following this line, even a Commission to handle graft and corruption might soon be needed as it is a serious matter which affects society. In reply, Mr. Sarmiento pointed out that the Ombudsman is there to protect the people from graft and corrupt practices, prevent waste and mismanagement, and promote efficiency.

On whether the Ombudsman would investigate all complaints including violations of human rights, Mr. Sarmiento replied that investigation of human rights violations shall be conducted by the Human Rights Commission. He stated that cases involving graft and corruption, waste and mismanagement would be handled by the Ombudsman, the critic and watchdog, as was clearly stated and explained by Mr. Colayco. He noted that giving the Ombudsman additional power would be expanding the powers of this position to the point that it could become ineffective.

On the matter of investigation, Mr. Sarmiento drew attention to paragraph 2 of Section 2 which states that the Commission shall have the power to "issue subpoena and subpoena duces tecum to compel the attendance of any party to its proceedings" which would involve an investigation or inquiry.

Additionally, Mr. Monsod stated that although the Committee recognized the wide scope of the Ombudsman's functions even with the exclusion of the functions of the Commission on Human Rights, the Committee wanted a fallback position in case the Body disapproved the creation of a Commission on Human Rights.

On the number of hours that a person under investigation could be detained, Mr. Sarmiento stated that it would depend on the efficiency of the investigator. He underscored that while under such detention, the investigator has to respect the rights of the person who is under custodial interrogation or investigation, as provided for in the Article on the Bill of Rights.

On the 6-9-18 - hour formula, Mr. Sarmiento explained that this refers to the period within which the case has to be filed with the proper judicial body. He stressed that as pointed out by the Chairman of the Committee, the investigation does not partake of a custodial interrogation as originally and traditionally conceived. He stated that the purpose of the investigation is merely to get information and is not a custodial interrogation that is usually conducted by policemen or military personnel.

As to whether a person under investigation would be allowed to go home, Mr. Sarmiento stated that if he did not commit the crime, he would be allowed to go home.

On the possibility that the Commission may work in cooperation with other agencies of the government such as the National Bureau of Investigation (NBI), Mr. Sarmiento stressed that the Commission would work closely with various government agencies. He informed that the present Presidential Committee on Human Rights is working closely with government agencies like the NBI. He added that experts like Messrs. de Castro and Natividad may even be invited to assist the Commission.

As to whether under paragraph 1 of Section 2, 90% of the persons to be investigated are members of the military or the police, Mr. Sarmiento clarified that there would also be violations committed by private individuals although it would be difficult to approximate the percentage of such violations.

Mr. de Castro then observed that perhaps the President, as Commander-in-Chief, would be the right person to handle the Commission.

On whether the investigation would include members of the New People's Army, Mr. Sarmiento pointed out that in his reply to Mrs. Nieva's query, he stated that the investigation would cover violations committed by the NPAs. As to how these investigations would be conducted, Mr. Sarmiento replied that the details would be left to the Commission which should determine how it would implement its tasks.

Mr. Sarmiento affirmed that Members of the proposed Commission on Human Rights would be subject to the restrictions imposed on Members of the other Constitutional Commissions and would not be allowed to practice their profession.

With reference to the phrase "for legal aid services" on paragraph 3 of Section 2, Mr. Sarmiento admitted that this constitutes practice of profession, although it would be the task of the Commission to deputize human rights organizations to provide legal assistance inasmuch as some lawyers are very selective in handling cases. He noted that during martial law, many indigent persons were deprived of legal assistance because some lawyers refused to handle cases involving violations of civil and political rights.

Mr. Sarmiento clarified that the Commission may deputize human rights organizations and lawyers to handle cases involving human rights violations.

INTERPELLATION OF MR. BENGZON

On Mr. Bengzon's query, Mr. Sarmiento clarified that the reference on line 10 to members of the bar for at least ten years would apply to members of the bar who have been actively engaged in the practice of law and would even include law professors.

On whether this would also refer to a lawyer who has not practiced law but has been engaged in business, Mr. Sarmiento replied that said lawyer, if he is committed to the promotion of human rights, can be a member of the Commission. He affirmed that membership in the Commission would not be limited to practicing lawyers.

On whether under Section 2 the phrase "all forms of human rights violations" would include maltreatment of children, Mr. Sarmiento stated that it could.

As to whether such crime would fall under human rights violations, Mr. Sarmiento stated that paragraph 1 would refer to violations of civil and political rights and that maltreatment of children would not fall within these rights; He stated that another government agency may handle the problem.

Mr. Bengzon pointed out the difficulty in making distinctions. He then raised the question as to who would have jurisdiction over a case involving a woman detainee who is accused of murder and who was molested while in prison, in reply to which Mr. Sarmiento clarified that the crime against the woman's chastity would fall under the jurisdiction of the Commission inasmuch as the detainee's rights have been violated. Mr. Bengzon noted and Mr. Sarmiento concurred that in this instance, there will be two cases — the case against the policeman who molested the woman which will fall under the Commission and the case of murder against the woman which will be tried by the court.

Mr. Garcia further explained that although the other crimes mentioned by Mr. Bengzon may fall within the jurisdiction of the Commission, the primacy of its task must be made clear in view of the importance of human rights. He observed that civil and political rights have been determined by many international covenants and human rights legislations as well as the Constitution, specifically the Bill of Rights. He cautioned that widening the area of coverage would diffuse the impact of the Commission and would curtail its effectivity. He underscored that the parameters of the task of the agency should be delineated so that it can be most effective.

Mr. Bengzon remarked that civil and political rights are broad and even the Bill of Rights would cover these

rights. He then inquired on the distinction between the two, to which Mr. Garcia replied that civil and political rights have been made clear in the language of human rights advocates as well as in the Universal Declaration of Human Rights which would address a number of articles such as the right to life, the right against torture, the right to fair and public hearing. He stressed that these are very specific rights which have been enshrined in many legal and international instruments as constituting civil and political rights which should be enshrined in the Constitution.

On the query relative to civil and political rights defined in the Universal Declaration of Human Rights, Mr. Garcia stated that these are distinguished from other rights which encompass social and economic rights, violations of which can be addressed to the proper courts and authorities.

Adverting to the case previously mentioned by Mr. Bengzon, Mr. Sarmiento contended that the molestation of the woman detainee would partake of torture if the crime was committed to extract information or to harass said detainee. He noted that during martial law, he handled cases of this nature. Such maltreatment, he stated, would fall under the jurisdiction of the Commission.

Mr. Bengzon inquired if there is any jurisprudence laid down by international bodies showing that such a crime against chastity partakes of the nature of torture. He noted that crimes against chastity are covered by the Revised Penal Code and are prosecuted in accordance with the laws of the land. He observed that in the particular case he cited, there would be difficulty in delineating as well as in determining who will handle the investigation — whether the fiscal, the Ombudsman or the Commission.

Mr. Sarmiento, in reply thereto, stated that primacy would be given to civil and political rights. Inasmuch as the case would involve other issues, he noted that the Commission could work closely with other government agencies which will undertake the prosecution of officials guilty of such crimes.

As to how Section 2 can be worded so as not to create confusion or overlapping of governmental functions, Mr. Sarmiento informed that the Commission all be authorized to define its functions.

As to the possibility that under such authority, the Commission may claim cases which are at present under the jurisdiction of the ordinary investigative and prosecutorial agencies, Mr. Garcia clarified that the Committee would like to define the specific parameters which cover civil and political rights under international standards governing the behavior of governments on these specific rights of citizens especially of political detainees and prisoners. He added that in view of the martial law experience, these are the particular rights which should be safeguarded.

As to whether the rights stated in the Universal Declaration of Human Rights are the same human rights envisioned in the proposal, Mr. Garcia replied in the affirmative adding that they are also enshrined in the Bill of Rights as integral parts of the Constitution. He clarified that the human rights in the Bill of Rights pertain to civil and political rights.

On the phrase "provide appropriate legal measures", Mr. Sarmiento stressed that the intention is to give free legal aid services to indigents without foreclosing the possibility of adding other services and other measures among which are, as stated in the Bill of Rights, the indemnification and rehabilitation of victims of human rights violations.

On whether the Commission shall be given quasi. judicial powers in view of its powers to issue subpoena, subpoena duces tecum, compel attendance and cite parties for contempt, Mr. Sarmiento replied in the affirmative.

On Mr. Bengzon's difficulty in delineating the parameters between the functions of the Commission the

Ombudsman and the ordinary prosecutorial agencies, Mr. Sarmiento suggested that the former introduce an amendment to clarify this particular section at the proper time.

INTERPELLATION OF MR. TINGSON

On the query of Mr. Tingson on whether Mr. Rigos would agree that practically all violations of human rights are violations of moral law, the latter replied in the affirmative. Mr. Rigos also affirmed that all the moral ills of the world can be cured by two tablets containing the Ten Commandments.

Mr. Tingson adverted to Section 2 of the proposed Declaration of Principles which states "The Filipino people commit themselves to peace, equality and freedom. They renounce war as an instrument of national policy and adopt the generally accepted principles of international law as part of the laws of the land". He observed that the country is a signatory to the United Nations Charter and that whatever the U.N. draws up on the matter of human rights would be automatically approved by the Philippines as a signatory thereof, to which Mr. Foz affirmed that this is the stand of the government.

Thereafter, adverting to the booklet entitled "Universal Declaration of Human Rights", Mr. Tingson noted that some of the rights enumerated therein have been adopted by the Committee on Human Rights.

As to whether the Committee on Constitutional Commissions and Agencies would entertain an amendment that the State takes cognizance of the "Universal Declaration of Human Rights" and that adjudication of cases of human rights violations would be made in conformity therewith, Mr. Foz replied that the Committee would consider it at the proper time.

Mr. Tingson inquired whether President Aquino released the political detainees because she believed their human rights had been violated and not because she was sympathetic to their political ideologies, in reply to which Mr. Sarmiento stated that the primary motivation was the desire for reconciliation. Additionally, Mr. Foz stated that their release was made on the ground that no formal charges were filed against them which, he noted, was a violation of human rights. He expressed willingness to consider amendments that would make reference to the Universal Declaration of Human Rights. However, Mr. Sarmiento stated that the Universal Declaration of Human Rights also treats of economic, social and cultural rights violations would which not fall within the domain of the Commission on Human Rights.

INTERPELLATION OF MR. PADILLA

In reply to Mr. Padilla's inquiry whether the Commission on Human Rights would have the same functions as the Presidential Committee on Human Rights and that instead of dealing with past violations under the deposed dictatorial regime, it would deal with future violations, Mr. Sarmiento explained that while the Presidential Committee on Human Rights has limited functions, the Commission on Human Rights would have additional functions in relation to the investigation of all forms of human rights violations, past, present or future.

Mr. Sarmiento agreed that human rights would mean personal or individual rights, many of which are found in the Bill of Rights, although they must be distinguished from civil, political, economic, cultural and other rights. He also agreed that violations of the Revised Penal Code (except Title One) would also be violations of human rights, however, they could be handled by the appropriate government agencies. He affirmed that a more effective police protection and suppression of crime as well as the speedy and efficient administration of justice should be encouraged for the adequate protection and repression of violations of human rights. However, on the contention that the Commission on Human Rights, consisting of the Chairman and two members who would probably be housed in an air-conditioned room in Metro Manila, would not be able to prevent, much less remedy, violations of

human rights, Mr. Sarmiento stated that what the Committee had in mind are men who would not be confined to air-conditioned rooms but who would go to the field and conduct fact-finding investigations, work with the people and feel their sufferings and pains in order that they would be effective human rights advocates. Mr. Padilla pointed out that this work could be handled efficiently by the police forces and law enforcement agencies.

Mr. Padilla observed that Section 2(4) which provides for the "establishment of a continuing program of education and information to propagate the primacy of human rights" could be better placed in the Article on Human Resources. Mr. Sarmiento stated that the Committee on Human Resources had approved a resolution providing that the school curriculum should include education on human rights, however, schools should work closely with the Commission for an effective program of education on human rights.

With respect to Section 2(3) on legal aid services for indigent persons, Mr. Padilla inquired whether the Commission would supplant the Citizen's Legal Aid Office (CLAO). Mr. Sarmiento replied that although it could deputize the CLAO to handle cases, the assistance would not be enough because CLAO does not have enough manpower and facilities to handle cases of the Commission.

Mr. Padilla observed that Section 2(1) which provides for the investigation of all forms of human rights violations would seem to be a duplication of the main function of the Ombudsman. In reply, Mr. Sarmiento adverted to Mr. Colayco's explanation that the function of the Ombudsman would be that of a critic and a watchdog primarily to prevent waste and mismanagement and graft and corruption in government bureaucracy and does not contemplate all forms of human rights violations like salvaging, disappearance, torture, etc.

Reacting thereto, Mr. Colayco pointed out that the role of the Ombudsman is merely to help the ordinary citizen against the inaction of the administrative department of the government and not to take care of human rights violations.

With respect to carnappings done -in broad day- light, Mr. Padilla inquired whether the creation of the Commission on Human Rights could minimize deprivations committed with impunity against the right to property. Mr. Sarmiento replied that the investigation of carnapping cases could be better left to proper government agencies, otherwise the functions of the Commission would be unduly expanded.

Mr. Padilla pointed out, however, that if the Constitution would strengthen and improve the law enforcement agencies, not only in preventing but also in detecting, apprehending, and bringing the culprits to justice, it would be more effective in protecting and promoting human rights rather than creating another Commission which may duplicate existing functions. In reply, Mr. Sarmiento stressed that there would be no overlapping of functions considering that the Commission would be a specialized entity that would handle all forms of human rights violations. He stated that, although the President, aware of the magnitude of human rights violations, has created a Presidential Commission on Human Rights specifically to investigate all forms of human rights violations, the Committee wanted this Commission on Human Rights to go beyond fortunes, politics, whims and caprices of politicians, thus the need for an independent Commission. He also stated that the Commission may not achieve all its purposes but, at least, it would minimize violations and protect and promote human rights by conducting an educational campaign.

On whether the creation of the Commission on Human Rights contemplates a nationwide agency with many deputized offices and employees all over the country, Mr. Foz stated that the establishment of regional branches and offices would be taken care of by enabling legislation.

INQUIRY OF MR. GASCON

At this juncture, in reply to Mr. Gascon's query on the deadline for the proposed amendments to the Article on National Economy and Patrimony, the Chair stated that the matter would be taken up during the caucus.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session for a luncheon break.

It was 12:17 p.m.

RESUMPTION OF SESSION

At 3:20 p.m., the session was resumed.

INTERPELLATION OF MR. ROMULO

In reply to Mr. Romulo's observation, contrary to what the Committee stated in the course of Mr. Nollado's interpellation, that the Commission is not a quasi-judicial body because its main function is investigative and not adjudicatory, Mr. Sarmiento stated that it would have more than a fact-finding power because aside from conducting investigations, it would also provide adequate legal measures, establish a continuing program of education, and perform such other functions previously mentioned by Mr. Natividad.

On Mr. Romulo's comment that the broad term "human rights" may lead to overlapping of jurisdiction, Mr. Sarmiento replied that the problem could be resolved if primacy would be given to civil and political rights and not to economic, social and cultural rights so as to limit the functions of the Commission.

On whether a provision in the Article on the Judiciary on the promulgation of rules relative to the protection and enforcement of Constitutional rights would not overlap with Section 2(3) of the proposed Article, Mr. Sarmiento opined that there would be no such overlapping.

He affirmed that the Human Rights Commission like the other Constitutional Commissions, would be empowered to adopt rules of procedure.

Mr. Romulo suggested that the Committee use a stronger verb than "provide" in Section 2(3) which would mandate the Commission to "provide appropriate legal measures for the protection of human rights", to which Mr. Sarmiento replied that the Committee would welcome an amendment at the proper time.

On whether the country would still need a Commission on Human Rights if it already has an effective Tanodbayan, a reformed Judiciary, a reinvigorated prosecutorial service and a reoriented presidency and armed forces, Mr. Sarmiento stressed that the protection and promotion of human rights in an ongoing concern and would always be needed as long as people live as human beings.

On whether the Commission could be phased out once the judicial System is improved, Mr. Sarmiento stated that the Committee does not foreclose such possibility but at present there is a need to create such Commission.

Mr. Garcia pointed out the need for an ongoing information drive on human rights, both for civilians and military men. He stressed that if the armed forces are informed about human rights, they would know by what standards their behavior would be judged and at the same time they would know better how to enforce the laws. He opined that there is a permanent need for the Commission.

On whether it would be the Commission itself that would undertake the continuing program of education and

information or whether it would only recommend to the Ministry of Education, Culture and Sports to require schools to teach certain courses, Mr. Sarmiento stated that the Commission would have to do both.

On whether there should be a Commission to undertake this task, Mr. Sarmiento answered in the affirmative adding that Supreme Court Justices Concepcion and J.B.L. Reyes believe that there should be an independent Commission on Human Rights because many of the human rights violations are committed by members of the armed forces and the executive branch of government. He stressed the need to constitutionalize the Commission to insulate it from political interference.

INTERPELLATION OF MR. REGALADO

Mr. Sarmiento agreed with Mr. Regalado's suggestion that the phrase "promulgated by the Supreme Court" on page 2, lines 5 and 6, be substituted within the Philippines" so that it would read "Rules of Court in the Philippines"

Mr. Sarmiento also agreed with Mr. Regalado's observation that the phrase "perform such other duties and functions as may be fixed by law" should also be deleted because of a similar provision in the general provisions on the Constitutional Commissions.

On whether violation of the freedom to marry and found a family which is a human right would fall within the jurisdiction of the Commission on Human Rights Ms. Aquino, to whom Mr. Sarmiento referred the query, replied that in Third World countries like the Philippines, a more meaningful concept of human rights ,could be seen in collectivism like the collective right of the people against inhumanity, oppression, starvation and ignorance. But in First World countries they give more emphasis on individual rights as an end in itself. She expressed disagreement with the Committee's view that human rights should be limited to political rights or cases because in the Philippines, as a Third World country, human rights should be thought of as something basic like the right to life, shelter, food, decent education and standard of living, an assertion to the clamor of dignity to human life born out of a collective struggle of the Filipino people against neocolonial history. She stressed that human rights should then be viewed not as ends in themselves but rather as means of achieving greater ends.

Mr. Regalado stated that the query did not refer to conceptualization but rather to the question of jurisdiction since the government has other agencies such as the Ombudsman, the regular prosecutorial services and the courts of justice. He pointed out that implementation of the provision could give rise to many problems on jurisdiction and, unless specified, a person whose rights may have been violated would not know where to go. He then inquired whether the Committee would want the Human Rights Commission itself to define, enumerate and determine its own jurisdiction or it would allow Congress to state the cases that should fall under the jurisdiction of the Commission, to which Mr. Sarmiento replied that the enabling law to be enacted by Congress should specifically define what offenses would be covered by the Commission.

On Mr. Regalado's series of queries whether: 1) the Committee could formulate the parameters of the Commission's jurisdiction so that the Body would know whether there is really a need to constitutionalize the same since this would give the impression that violations of human rights are continuing and widespread; and 2) whether it would be better to merely have a constitutionally-mandated commission so that when violations are isolated and there would no longer be a need for the Commission, it could be abolished without amending the Constitution, Mr. Sarmiento replied that the fact-finding missions reported massive human rights violations throughout the country, and as to the need of constitutionalizing it, he stressed that this is needed to insulate the Commission from political interference from the Executive and members of the armed forces.

On whether the thrust of the Commission's work is mainly directed against human rights violations committed by

military authorities and by public officers, Mr. Sarmiento answered in the affirmative.

On the contention that human rights violations committed by private parties could be better taken care of by the regular prosecutorial arm of the government, Mr. Sarmiento explained that the proponents of the resolution originally limited it to violations committed by military authorities but the Committee recommended the inclusion of private parties. He stated that the Committee would in due time accept amendment to clarify the matter.

At this juncture, Mr. Rama pointed out that during the past regime every time violation of human rights is invoked, the Marcos government came out with the defense that, as a matter of fact, they have defended the human rights of the people to decent living, food, housing and a life consistent with human dignity. On his query whether it is the sense of the Committee to limit the definition of human rights to political rights, Mr. Sarmiento replied in the affirmative.

In addition thereto, Mr. Garcia enumerated the six areas where the Commission could work and act effectively: 1) protection of rights of political detainees; 2) treatment of prisoners and the prevention of tortures; 3) fair and public trials; 4) cases relative to disappearances; 5) salvaging; and 6) hamletting.

He added that there is a necessity for a permanent Commission on Human Rights especially in educating the people on their human rights which could only be defended and protected if the people are aware and conscious of such rights.

Lastly, he pointed out that soldiers and jail keepers are to be made conscious of rules regarding their behavior towards the prisoners.

On whether higher levels of human rights are taken care of by the Article on Social Justice, Mr. Garcia confirmed the same stating that the Ministry of Agrarian Reform shall take care of land reform while problems on labor shall be taken care of by the Ministry of Labor and Employment. He added that it is essential to elevate the concern on human rights into a provision on Constitutional Commission to make it permanent, lasting and beyond the reach of political changes in government.

INTERPELLATION OF MS. AQUINO

Taking exception to the statements of Mr. Garcia, Ms. Aquino stated that to limit the concept of human rights to political oppression would be an intellectual dishonesty since human rights lie at the roots of social disequilibrium. She stated that human rights in Third World countries speak of the means for the attainment of dignity to human life and that the problem is imbedded on the questions of social justice, economic justice, structural oppression and social disequilibrium.

Mr. Garcia agreed with Ms. Aquino's observation, but stated that her concern is already covered by the Article on Social Justice which corrects the structural, social and historical imbalances. He stressed that the provision on human rights concerns with political detention, arrests, torture, mysterious disappearances and salvaging are sought to be prevented. He stated that Amnesty International is an effective organization because it limits itself to political imprisonment and torture.

On whether oppression of workers and sexual discrimination would pertain to the jurisdiction of the Commission on Human Rights, Mr. Garcia stated that the Commission should have a more modest objective to make individuals stronger when confronted with the police power of the State. He stressed that the other areas of human rights are taken care of by other avenues.

INTERPELLATION OF MR. MAAMBONG

In reply to Mr. Maambong's query on the coverage of "human rights", Mr. Sarmiento stated that the Commission on Human Rights is limited to purely civil and political rights, and to the Bill of Rights. On Mr. Maambong's manifestation to present amendments relative to specific provisions on human rights, Mr. Sarmiento replied that the Committee would consider the matter at the proper time.

Mr. Maambong stated that he read the report of Amnesty International which handled cases more on individual rights than on violations of political rights. He then asked the Committee whether it would reconsider its stand with a view to including violations of individual rights.

Mr. Garcia argued that it is the individuals who enjoy civil and political rights and individual rights are necessarily included in political rights.

Mr. Sarmiento reiterated the stand of the Committee that the provision is a modest attempt to solve human rights problems in the country.

Mr. Maambong stated that as far as the classification of rights is concerned, individual rights are not covered by political rights. However, he stated that he is taking the Committee's word that violations of individual rights would be included in the term "violations of political rights."

On the manner of creating the Commission, Mr. Maambong stated that it could be done in three ways: 1) as a Constitutional Body; 2) Congress could be mandated by the Constitution to create the Commission; and 3) Congress even without the Constitutional mandate could create the Commission.

Mr. Sarmiento expressed agreement with Mr. Maambong's observation but stated that its creation should not be left to Congress if the Commission were to be insulated from political control and interference.

On whether the Commission on Human Rights could be created under a revolutionary government, Mr. Sarmiento answered in the affirmative stating that President Aquino had already created the Presidential Committee on Human Rights.

On whether a model of the Commission appears in the Constitution of the United States, Mr. Sarmiento stated that there is a Human Rights Commission in New Zealand which is principally educational in nature.

On the budget of the Commission, Mr. Sarmiento stated that its budget should be sufficient enough to make it independent.

Mr. Maambong made a parallelism between the Commission and the Ombudsman but observed that in the former, the implementation is passed on to the normal investigative bodies of the government.

At this juncture, Mr. Sarmiento corrected the misimpression stating that the Commission shall investigate and then refer the matter to the prosecutory agencies of the government.

On whether the Commission shall have its own corps of investigators and not rely on the Philippine Constabulary or the NBI, Mr. Sarmiento stated that it shall have its own corps of investigators but could solicit the assistance of the other investigative agencies.

On the meaning of "civilian and military authorities", Mr. Sarmiento stated that the phrase refers to paramilitary forces, members of the PC-INP, and the Armed Forces

On whether the Commission would, likewise, concern itself with the day-to-day crimes, Mr. Sarmiento stated that the same should be left to the proper law enforcement agencies.

Mr. Garcia stated that it includes the prisoner, an accused who is not given a fair trial and one who is tortured.

Mr. Maambong stated that "human rights" is a broad term such that one may perceive his problem as a violation of human rights. He then posed the query on how to solve the problem when the individual goes to the Commission and at the same time goes through the normal investigative process wherein two agencies of the government are working along the same line.

In reply, Mr. Sarmiento clarified that he construed the day-to-day crimes as referring to ordinary crimes such as robbery, homicide or murder. stated that violations of the right to freedom from torture, cruel or inhuman or degrading treatment or punishment or of the right to due process of law are violations well within the ambit of Commission on Human Rights, to which Mr. Maambong stated that the statement has cleared his mind on the issue.

Mr. Maambong expressed concern over the killings of police and military officers in Cebu which he said is once every two days. He then asked the Committee whether the matter is within the purview of the Commission, to which Mr. Sarmiento answered in the affirmative.

INTERPELLATION OF MRS. ROSARIO BRAID

Mrs. Rosario Braid commented that if ever such a Commission should be established constitutionally, it should concentrate more on education and policy research and action programs that focus on non-violence and peace strategies, and come up with uniquely Filipino value systems on family life and other institutions. She added that the Commission should not only have lawyers as members but also educators so that the Commission's objectives could be refocused on the establishment of a research institution that would be devoted to peace research and nonviolent strategies rather than on functions proposed in the Article.

In reply thereto, Mr. Garcia pointed out that there are various articles in the Constitution addressed to the myriad problems in the country. He added that the Committee on Human Resources would discuss more thoroughly those values on education, science, arts and culture. He stressed that the Committee simply proposes to defend and safeguard the civil and political rights of citizens especially when it concerns politically related offenses or rights. As to the suggestion to include educators, Mr. Garcia stated that the Committee would consider it at the proper time.

Mrs. Rosario Braid added that it would not just propagate the primacy of human rights but also focus on how habitual violators of these rights can be reoriented by providing them continuing educational programs which would stress nonviolent strategies that would help them understand that there are ways of solving problems other than by violent means. She observed that other countries have addressed the problem of human rights by establishing peace institutes and undertaking policy research and action programs.

Mr. Sarmiento stated that the suggestion of Mrs. Rosario Braid would be covered by one of the functions of the Commission which is to establish a continuing program of education and information which could cover the nonviolent strategies and creation of a peace institute.

Mrs. Rosario Braid underscored the need for an informal educational program which could teach children and adults the importance of human rights supported by an institute which could undertake research that would serve as the basis of applied actions programs.

Mr. Sarmiento observed that the Body is formulating a fundamental law which need not specify various educational approaches. He noted that such approaches are already covered the continuing educational program although for the record Mrs. Rosario Braid may mention these as part of the program.

INTERPELLATION OF MR. BACANI

Upon inquiry of Mr. Bacani, Mr. Garcia affirmed that the Committee considers the creation of the Commission necessary and has therefore proposed it. He also affirmed that this Commission should be a constitutional body which Mr. Sarmiento explained in his sponsorship remarks. He underscored the need for a Commission to deal with politically related violations and one which would be beyond the reach of political changes in government and independent enough to be able to check even the military and police who, although they are supposed to implement and enforce the rights of citizens, are the ones who sometimes repress these rights.

Mr. Bacani expressing that he is in full sympathy with the idea behind the proposal, stated that he is not convinced on the need to set up such a constitutional commission. He referred to deforestation and pollution problems which in spite of their seriousness and the need to check them have not prompted people to ask the Commission to set up constitutional Commissions on forest conservation, or pollution. He noted that the argument for the creation of the Human Rights Commission was based on the need for independent people to check a widespread problem.

Mr. Garcia, replying thereto, stated that the critical factor is political control and that the Commission should be above changes in politics. He also stressed that the Armed Forces and the police forces have tremendous power at their command and there would be a need to ensure that the members of the commission should be beyond the reach of these forces and also beyond changes which may take place in the political administration.

Mr. Bacani observed that this would hold true with regard to deforestation which would also involve the military, politicians, Presidential appointees and yet the Body is not being asked to create a commission in spite of the fact that the Ministry of Natural Resources warned that at the present rate of the deforestation, the situation may be irreversible by the year 2000.

With respect to the creation of a commission to handle the problem of deforestation, Mr. Sarmiento informed that his resolution advocated the creation of a commission for environmental protection which was disapproved by the Committee and what remained was the proposal to create the Commission on Human Rights.

Mr. Bacani noted that the three Constitutional Commissions presently existing would always have something to do. He observed that should the situation so vastly improve under the present administration, he asked what the Commission on Human Rights shall deal with inasmuch as violations of human rights by outlaws, who would be beyond the reach of the law, would not fall under the scope of the Commission.

Mr. Garcia, in reply, noted that the ongoing formation of consciousness of the people regarding human rights is a very big task and that not only citizens but soldiers and policemen who would uphold the law are also involved in this process. He also added that even if the country were to resolve the human rights problems, as a people who maintain its solidarity with victims of human rights abuses around the world, the Filipinos should always be conscious of these problems. He noted that a permanent Commission will ensure that human rights shall be protected no matter who is President and would be a safeguard for the future generations.

Mr. Bacani stated that with regard to education, he does not see it as a sufficient rationale for the creation of a commission. He drew attention to Section 4 of the Human Resources Committee Report which provides for education and pointed out that part of the curricula in all schools would be a study of the Constitution and human rights.

Mr. Monsod noted that given the structural problems of the economy, the poverty and the unequal distribution of income, and the political structure, problems of human rights would still be present five or ten years hence. He stated that personally, he would like to see the Commission expand its horizon beyond crimes involving political beliefs and eventually take into consideration the wider view of human rights, social and economic rights,

educational aspects and undertake research to study the reasons for all kinds of human rights violations. He noted that the creation of the Commission would be a recognition of the very importance of human rights. He added that he does not see any point in time in which the Commission on Human Rights will not be needed by the country. He stated that he would like to allow for a slight opening of the immediate problems, so that other problems could be attended to.

Thereupon, Mr. Bacani proposed that the Body specifically enumerate the violations which would fall under the competence of the Commission. He noted that although murder would not be included as a human rights violation, salvaging could be, under scoring the difficulty of defining the line of demarcation.

INTERPELLATION OF MR. GUINGONA

Mr. Guingona prefaced his interpellation by agreeing with Mr. Garcia that to make the Commission effective, the Body should delimit, without prejudice to future expansion, the coverage of the term "human rights". He stated that he was disturbed during the morning session when Mr. Garcia referred to the Universal Declaration of Human Rights but noted that such rights were qualified to refer to civil and political rights contained therein. He noted that Mr. Garcia linked the concept of human rights with other human rights specified in other conventions.

Mr. Garcia mentioned the 1985 Declaration Against Torture and the International Covenant on Civil and Political Rights,

Mr. Guingona queried whether it would be wise to link the concept of human rights to general terms such as "convention" rather than specify the rights contained in the convention. He observed that the Committee, before the period of amendments, can specify which of the Articles in the Universal Declaration of Human Rights can be considered within the scope of civil and political rights without necessarily including these in the Constitutional article but more with the idea of giving the sense on what human rights would be. He noted that the query of Mr. Regalado as to whether the right to marry would be a civil or social right was not properly answered.

In reply, Mr. Garcia reiterated the specific civil and political rights which must be initially envisioned by the provision such as the right to be free from political detention and arrest, prevention of torture, right to fair and public trials, as well as crimes involving disappearances, salvagings, hamlettings and collective violations. He stressed that these are limited to politically related crimes and would not open coverage to all other areas.

As to whether Mr. Garcia would no longer link the concept of human rights to civil and political rights contained in the Universal Declaration of Human Rights, Mr. Garcia stated that he was referring to it as an international instrument although it would not mean that each and every article therein would be referred to.

To clarify his point further, Mr. Garcia mentioned that after the Universal Declaration of Human Rights, there are two other international covenants — the International Covenant on Civil and Political Rights and the International Covenant on Social and Economic Rights — which further specify rights. He explained that the second would contain other rights such as right of labor to organize and the right to education, housing and shelter.

Upon inquiry, Mr. Garcia affirmed that the Committee would limit human rights to civil and political rights.

REMARKS OF MS. TAN

Ms. Tan stated that from the standpoint of victims of human rights abuses, she could not stress enough how much the country needs the Commission on Human Rights. She noted that it would be wrong to assume that the Aquino government has brought peace inasmuch as salvaging incidents are on the rise. She informed that there were two salvaging victims from her area just within the week — one was electrocuted in the Makati Police unit and the

other tortured in the Manila Police unit. She noted that human rights lawyers are scarce, that human rights victims are usually penniless and that very few lawyers would be willing to accept clients who can- not pay. She observed that the cases are serious since they involve torture, salvaging, arrest without warrant and massacre and that the persons who are allegedly guilty thereof are the politicians, the big shots, the men in the military. She stressed that the Commission should be independent. She underscored the need for the Commission especially for the welfare of the little individuals who need all the help but cannot get. She noted that human rights lawyers especially those belonging to MABINI and FLAG were heroes during martial law. Thereafter, Mr. Rama moved to adjourn the session in view of the inclement weather.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

On motion of Mr. Rama, there being no objection, the Body closed the period of interpellations.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 4:44 p.m.

RESUMPTION OF SESSION

At 5:01 p.m., the session was resumed with the Honorable Francisco A. Rodrigo presiding.

MOTION TO ADJOURN

Thereafter, Mr. Rama moved to adjourn the session in view of the inclement weather.

RESERVATION OF MR. MAAMBONG

At this juncture, Mr. Maambong made a reservation to present a motion in the next session on the Article on the Commission on Human Rights.

The Chair took note of the reservation.

ADJOURNMENT OF SESSION

Thereupon, the Chair declared the session adjourned until nine-thirty in the morning of the following day.

It was 5:01 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on August 27, 1986

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