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Wednesday, August 27, 1986

OPENING OF SESSION

At 9:58 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 Ricardo J. Romulo.

Everybody remained standing for the Prayer.

PRAYER

MR. ROMULO: Dear God, in the words of St. Francis:

Make us an instrument of Your peace,
Where there is hatred, let us bring love,
Where there is injury, pardon
Where there is doubt, faith
Where there is despair, hope
Where there is darkness, light
Where there is sadness, joy.

Dispel, therefore, from our hearts those dark shadows of suspicion and fear which becloud our minds and our vision.

In drafting this new Covenant for all our people, teach us to accept with serenity the things that cannot be changed. Give us courage to change the things that can and should be changed. And, above all else, grant us the wisdom to distinguish one from the other so that we can be spared further strife and dissension.

This we ask in the name of our Lord, Jesus Christ. 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 Present

Bacani Present Padilla Present

Bengzon Present Quesada Absent

Bennagen Absent 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 Absent

Foz Present Sumulong Present

Garcia Present Tadeo Absent

Gascon Present Tan Present

Guingona Present Tingson Present

Jamir Present Treñas Absent

Laurel Absent Uka Present

Lerum Present Villacorta Absent

Maambong Present Villegas Present

Monsod Present

The President is present.

The roll call shows 36 Members responded to the call.

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

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: Madam President, 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.

APPROVAL OF JOURNAL

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

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

MR. RAMA: 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 Communication, the President making the corresponding reference:

COMMUNICATION

Communication from Mr. Edgardo J. Angara, President, University of the Philippines, Quezon City, transmitting, a copy of the Executive Summary submitted by Atty. Casiano O. Flores, Head of the Division of Continuing Legal Education of the UP Law Center who had been conducting a series of 2-day "constitutional mini-conventions" in the various regions of the country as part of the UP Constitution Project to get the perceptions and reactions of various sectors in the deliberations/discussions of the Constitutional Commission of 1986.

(Communication No. 634 — Constitutional Commission of 1986)

To the Steering Committee.

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: We are now in the period of amendments on the Article on the Commission on Human Rights. I move that we take up the said article.

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

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, yesterday I entered in the record a reservation to file a motion concerning the Article on the Commission on Human Rights. I am now prepared to present the motion.

Madam President, I move that we create or establish the Commission on Human Rights, not as an independent constitutional commission but through Congress by mandate of the Constitution.

Madam President, this motion is filed because of the feeling of some Commissioners that this Commission on Human Rights should only be constitutionally mandated and not created as an independent constitutional commission, and I mentioned this in our caucus.

THE PRESIDENT: Can that not be in the form of an amendment?

MR. MAAMBONG: Yes, Madam President.

THE PRESIDENT: So, to resolve the particular motion of the Floor Leader, we shall now continue the deliberations. We are now in the period of amendments. May we call the honorable Members of the Constitutional Commission who are involved in this particular matter.

MR. MAAMBONG: Yes, Madam President. As a matter of fact, we feel that this is a prejudicial question which should be resolved, and if the motion is approved on that assumption, then another motion will be presented before the committee to delete the whole Article on the Commission on Human Rights and substitute it with one section to be transposed to the Article on General Provisions which will be presented for approval. This is, of course, on the assumption that our motion will be approved.

THE PRESIDENT: We will give the members of the committee time because they have to be informed of this motion and be given a chance to confer among themselves as to the action they will take with respect to the Commissioner's motion.

MR. MAAMBONG: Yes, Madam President. As a matter of fact, I was informed by Commissioner Calderon that he will speak in favor of my motion.

I will now present a copy of this formulation to the committee.

SUSPENSION OF SESSION

THE PRESIDENT: In the meantime, the session is suspended.

It was 10:07 a.m.

RESUMPTION OF SESSION

At 10:26 a.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 would like to ask that Commissioner Maambong be recognized.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, may I be allowed to withdraw the motion which I presented earlier. Considering that we are now in the period of amendments on this Article on the Commission on Human Rights, I now formally move to delete the whole Article on the Commission on Human Rights and in its place substitute this provision which reads: "SECTION___ CONGRESS SHALL CREATE A COMMISSION TO

INVESTIGATE VIOLATIONS OF INDIVIDUAL, CIVIL AND POLITICAL RIGHTS COMMITTED BY OR AGAINST PUBLIC OFFICERS, CIVILIANS, POLICE AND MILITARY AUTHORITIES OR PRIVATE PARTIES. IT SHALL HAVE SUCH POWERS AND FUNCTIONS AS MAY BE PROVIDED BY LAW."

This motion, an amendment by substitution, is presented by Commissioners Calderon, Jamir, Colayco, de Castro and this humble Member. However, I reserve the right of Commissioner Calderon to talk on the motion. In the meantime, I am asking the committee for its comment.

THE PRESIDENT: Is the committee ready to react now?

MR. MONSOD: Yes. It is the committee's position that this proposed special body, in order to function effectively, must be invested with an independence that is necessary not only for its credibility but also for the effectiveness of its work. However, we want to make a distinction in this Constitution. Maybe what happened was that it was referred to the wrong committee. In the opinion of the committee, this need not be a commission that is similar to the three constitutional commissions like the COA, the COMELEC, and the Civil Service. It need not be in that article.

As a matter of fact, if the Commissioner could recall, in the case of the Ombudsman, which is a body created by the Constitution, it is not considered one of the constitutional commissions. The intent here of the committee is not that it will be the fourth constitutional commission within that article, but merely to establish it as an independent body. We need not call it a commission, an independent office that can function in the area of human rights.

Our suggestion, therefore, is that we should approve this regardless of where we end up putting it in the Constitution. It need not be in the Article on Constitutional Commissions. We are asking this Commission to approve the creation of an independent body, independent in the sense that the process of nomination and appointment will be shielded from politics and our proposal is that it can be through the Judicial and Bar Council and fiscal autonomy. This way, we are sure that this special body will be independent. That is the reaction of the committee. If we can proceed to the consideration of the special body within those terms of reference, then maybe we can separate this from the issue of why we are adding an extra constitutional commission.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I clarify the thinking of the committee, Madam President? First, the committee is saying that the Commission on Human Rights must be an independent body but it is not in the category of the three constitutional commissions. Is that the thinking of the Committee?

MR. MONSOD: Yes.

MR. MAAMBONG: Considering that it is not in the category of the three constitutional commissions, can the Commission on Human Rights, if created, be dissolved by Congress? That is one concern also.

MR. MONSOD: No. We would like it to be a constitutional creation because we could feel the problems of human rights particularly in the next few years. We foresee in the foreseeable future that we will have more problems of human rights, even in the narrow sense of the political and civil rights. But we also foresee that over time as we become more developed, as our institutions function normally, the scope of this commission, since it is a constitutional body, can be enlarged to include social and economic rights. It can include the concepts proposed by Commissioner Rosario Braid in looking into the causes of the violations of human rights, both in their narrow and broad senses. Therefore, it has a place in the Constitution because the horizon for its functions is well beyond

the immediate problems.

MR. MAAMBONG: In other words, the Commissioner is saying that it will not become *functus officio* at all. It will be a continuing body, regardless of whether it has performed its function in the field of human rights, as far as the individual, political and civil rights are concerned.

MR. MONSOD: Yes, and it can expand its scope as the need and circumstances arise because human rights is a very broad concept. The only reason we are limiting this concept now and trying for very modest objectives at this time is because we do not like the committee to dilute its efforts at this time when there are very real and concrete problems that have to be addressed.

MR. MAAMBONG: The third point I would like to be clarified about is the officers or the functionaries of the Commission on Human Rights starting with the acting chairman or members thereof, whatever may be the composition. I am referring to top level officers. Are they impeachable?

MR. MONSOD: We do not conceive the process of impeachment for them. We may leave it to Congress to provide the means for their removal. Let us take the case of the Sandiganbayan. The process and the causes for the removal of its officers are left to Congress because even if this Sandiganbayan is a constitutional creation, there will still be a need for an act of Congress in order to put in the details of the implementation of this special body.

MR. MAAMBONG: In other words, the officers thereof will be contradistinguished with the officers of the Ombudsman because the Ombudsman officers are impeachable officers. Here we are contemplating a situation where they may be removed under the civil service law or by laws to be provided by Congress.

Incidentally, the Commissioner mentioned Sandiganbayan. I think the impeachability of Sandiganbayan officers is only found in law. In the last discussion that we had, there was already an agreement with the Committee on Constitutional Commissions and Agencies that said officers are not supposed to be impeachable.

MR. MONSOD: Yes, by virtue of the amendment of Commissioner Regalado wherein we are limiting the method of impeachment only to those specifically provided in the Constitution.

MR. MAAMBONG: Personally, I understand the sentiments of the committee about this. But I must reflect for the record that I am only one of the proponents of this motion; there are also other proponents like Commissioners Calderon, Jamir, Colayco and de Castro. I would like to know their sentiments because I am only the presenter of this motion.

Thank you, Madam President.

MR. JAMIR: Madam President.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: I agree fully with the sentiments of Commissioner Maambong.

MR. MONSOD: Thank you.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

May I ask just one question of the committee? I heard the Commissioner state that this will be a section in the Constitution. Did I hear him right?

MR. MONSOD: No. I mentioned that this need not be placed in the Article on Constitutional Commissions; it can

be in other sections. It can even be in the Article on General Provisions.

MR. DE CASTRO: Where does the Commissioner intend to place this at this time?

MR. MONSOD: Frankly, we would like to be guided by this Commission regarding the appropriate place to put this provision in.

MR. DE CASTRO: Will the formation of Commissioner Maambong on this matter still be subject to certain amendments?

MR. MONSOD: Yes, but I believe he withdrew it when we explained our position. We are always open to amendments within the framework of our concept.

MR. DE CASTRO: Then, if we can be furnished a clean copy of this formulation, we can use it so that we can be guided formally on how to make our amendments.

Thank you.

MR. MAAMBONG: To be clarified on this matter, we have presented before the committee our amendment by substitution and it is now on record. With the thinking of the committee regarding the issues which we have raised and to save time, I am hoping that the committee could reformulate, on the basis of our proposed amendment by substitution, a definite provision which we could work on.

However, I would like to ask the committee one question again. Assuming that the reformulation of our proposed amendment by the committee will be carried, would it be one section only? I ask because we have made reference to the Article on the Ombudsman, and it includes other sections which provide for its functions. We are thinking along the line that, perhaps, if the committee will agree, once the members reformulate the section, then it would only be one section and all the other provisions, like the functions of the office will have to be provided for by law. I really do not know the thinking of the committee; that is why I am asking.

MR. RODRIGO: Madam President, parliamentary inquiry.

Did I hear it correctly that Commissioner Maambong had withdrawn his proposed amendment?

MR. MAAMBONG: No.

THE PRESIDENT: Not yet.

MR. MAAMBONG: It is still on stream.

MR. RODRIGO: Therefore, I would like to support that amendment, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: I believe that Commissioner Sarmiento was intending to react to the question propounded by Commissioner Maambong.

MR. SARMIENTO: Madam President, may I ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

In order not to lose time, I suggest that no reformulation be undertaken by the committee. We could work on the framework as presented, but it is to be clearly understood that it will not be considered as a separate subdivision of the Article on Constitutional Commissions.

Let us totally disregard the heading and subheading above Section 1, and we begin to work from Section 1. And since it might be included in the Article on General Provisions, Section 2 may be treated only as the second paragraph of one single section of this particular article. There is no need really for a reformulation of the entire proposed section.

MR. MAAMBONG: Madam President.

THE PRESIDENT: May we hear Commissioner Colayco first? He may have some ideas on this, and then we will call on Commissioner Villegas.

MR. COLAYCO: Thank you, Madam President.

When this matter was first proposed yesterday, I assured the committee that I would support the proposal as it was presented, although some of my colleagues had already declared their reservations about making it a part of the Article on the Constitutional Commissions. My thinking at that time was this, and I will be honest, that if the body did not approve the proposal as worded in Proposed Resolution No. 539, I was going to move that it be a mandated commission. After hearing the brief explanations of the committee, personally, I am willing to go along. In other words, the commission will still be a constitutional commission but not a separate constitutional commission.

MR. VILLEGAS: Madam President.

THE PRESIDENT: Commissioner Villegas is recognized.

MR. VILLEGAS: Madam President, this is just to present an analogous situation. The Central Monetary Authority, which we approved in the Article on National Economy and Patrimony, is a mandated body which Congress cannot dissolve at will, and is independent of the President. That is precisely why we wanted a Central Monetary Authority. So, more or less, that could be the analogous situation that would support the committee's views.

MR. SARMIENTO: May we know if the manifestation of Commissioner Davide satisfies Commissioner de Castro; that is, we start with this article or this draft as presented by the committee so as to save time?

MR. DE CASTRO: As we have stated, this independent body will have to be created by law to include its functions and the removal of the officers thereto, so, it will be quite difficult if we follow the formulation in Sections 1, 2 and 3 of the Proposed Resolution No. 539. So, I would then support the motion of Commissioner Maambong that there be an independent body, like the Commission on Human Rights, to be created by law.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: There is, in fact, an unresolved question which I presented to the committee. The question was: In the reformulation of the committee, would this provision be another section or would it cover also functions, duties and others, like the Ombudsman? On the assumption that that would be so, I suggest that the proposed section which we have presented before the committee be the lead section that will be amended without making reference to the present formulation because it would only confuse us. At any rate, this section that I am presenting can be amended anytime. We can add, deduct, and, for purposes of clarity, make reference to the sections which are now in the committee report.

Would it be a one-section thing or would it be several sections?

MR. SARMIENTO: It will not be a one-section thing. If we will note the Article on Accountability of Public

Officers, when we created the Sandiganbayan, we enumerated its powers and functions, but it was not a one-section thing. Maybe we can have two or three sections on this independent body known as the Commission on Human Rights.

THE PRESIDENT: Commissioner Maambong's proposed amendment poses a very basic question.

MR. MAAMBONG: Yes, Madam President.

THE PRESIDENT: The proposed amendment of Commissioner Maambong is to the effect that it is Congress which shall create, whereas it is the sense of the committee that the creation of this body be already enshrined in the Constitution.

MR. MAAMBONG: Yes, I was about to go into that by suggesting to the committee that perhaps we should ask the commission itself to determine at first blush whether we should have this body created by the Constitution or whether it should be created by Congress. That is precisely why I want the first motion I presented earlier to be clarified. I do not know what is the thinking of the committee on this matter.

MR. SARMIENTO: It will be created by the Constitution, not by Congress. Commissioner Monsod explained why it should be shielded from the executive power or from political interference. That was the manifestation made by Commissioner Villegas. It should be similar to that independent body, the Central Monetary Authority.

MR. MAAMBONG: I understand that.

THE PRESIDENT: In other words, the committee does not accept the proposed amendment of Commissioner Maambong as formulated.

MR. MAAMBONG: Yes, that is quite clear. That is why I was thinking whether we should submit that issue to the body first because that is basic to all the provisions which we will formulate later on.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, I would like to say a few words in favor of the amendment proposed by Commissioner Maambong. I am afraid that, like the Ombudsman which I also opposed, this office will be a paper tiger if we make it independent of the President. Its powers are merely to investigate and to recommend.

Let us visualize this office, if it is created by the Constitution. When the Constitution is approved, we will need an implementing act to create this office, and especially an appropriation for this office. It will be an office segregated from the President. The appropriation will be for three commissioners, for personnel, office equipment and office rental. The office will be in Manila. Human rights violations occur all over the Philippines, Madam President. Who will investigate human rights violations in Mindanao, in the Visayas, Northern Luzon and in Bicol? There are only three Commissioners, so are we going to give them branch offices everywhere? This will be very expensive. So, they will have to depend on the present investigating agencies of the government which are under the President. But since this office is segregated from the President, it will have no power to compel police agencies or fiscals to investigate and to prosecute. So, it will just be a paper tiger. As I said of the Ombudsman, we will just again be raising the hopes of our people — false hopes — that here, at last, is an office and we will solve human rights violations.

I do not know why we seem to have lost all our confidence in the President and also in the members of our Congress. We refer to them as politicians, and we say we cannot trust politicians. But remember that these politicians will be elected by the people. They are representatives of the people. We seem to have developed a paranoia just because of one Marcos. That is my basic objection to this. So, I favor the proposed amendment of Commissioner Maambong. Let Congress, composed of elective officials elected by the people, enact the law

creating this office and let it be under the executive department. Otherwise we will be again creating another office which is a paper tiger. We will spend the money of the people uselessly. Public funds will be appropriated for an office which is only in Manila.

Furthermore, we will just be raising false hopes among our people. We do not want to disillusion them anymore.

Thank you, Madam President.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: I think one of the basic questions that we should answer is whether or not the Commission on Human Rights is necessary and whether it should be placed in the Constitution.

Let me call attention to the fact that all over the world, there is a very grave concern for people whose human rights have been violated. This crime has been considered an international crime. We will notice that there are now international organizations on human rights and that even the biggest and the most prestigious institutions and foundations have granted awards to those people who fought for human rights. Therefore, it is necessary that we should recognize the importance of human rights and the Commission on Human Rights or a body on human rights to be included in our Constitution. That is the point precisely of the committee. We cannot just ignore this very important problem on human rights which is now the concern all over the world because of the brutal violation of humanity by dictatorships and other agencies. Therefore, as far as that is concerned, we should recognize the importance of a body on human rights.

There is no basic conflict, Madam President, because Commissioner Maambong, as well as the committee, has agreed that it need not be a constitutional commission with the rights and powers and the status of the other constitutional commissions, like the COA and the COMELEC, but definitely we should include it in the Constitution.

That is the only basic problem and the committee has agreed to that. So, there is no basic conflict. It is a matter of definition of what are the powers. Therefore, I agree with Commissioner Davide that in the meantime that we have not formulated a policy on the status of that body, we may continue the amendments to the rest of the section, which merely defines the functions and the qualifications of the members of this commission.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Is Commissioner Nollado still here?

Is Commissioner Rodrigo through?

MR. RODRIGO: No, not yet, Madam President. There is no disagreement that we should have such an office, such a body. Call it an office. Call it a commission. I also agree that we must have a provision in the Constitution. That is precisely the proposed amendment by Commissioner Maambong: that we enact a provision in the Constitution mandating Congress to create that body. So, there is no disagreement on that. The disagreement, as far as I am concerned, is in isolating this office or this commission from the President, but, at the same time, not giving this commission enough power to act on its own but merely to investigate violations all over the Philippines, without any personnel of its own. It will have to depend on the personnel in the executive department which is under the President but is segregated from the President.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: I am giving way to Commissioner Colayco. I will just speak after Commissioner Colayco.

MR. COLAYCO: Just one clarificatory question for Commissioner Rodrigo.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: Earlier the Commissioner gave me the impression that he was against the entire idea because he was talking about the "toothless tiger," the way he also talked about the Ombudsman. But afterwards he said that he had no objection to the principles.

MR. RODRIGO: No, as a matter of fact, I am in favor of the proposed amendment of Commissioner Maambong which proposes a provision in our Constitution to mandate Congress to create this body. My disagreement is in the status of the office. What is the status of this office? Will it be segregated from the President but, at the same time, not have powers to act on its own? My stand is that it should be an office within the executive, department, so that it can get the cooperation of the whole executive department in investigating cases all over the Philippines and in prosecuting or recommending prosecution of those cases anywhere in the Philippines. We already have the offices and the personnel under the executive department all over the Philippines for this.

MR. COLAYCO: The Commissioners' main objection then is the mechanics suggested by the committee in effecting the protection intended for those who are victims of violations of human rights.

MR. RODRIGO: It is not only the mechanics, but it is also the form. I said form because I do not know what this is. If we create an office it should be either under the judiciary or the executive or the legislative, but this one will be in limbo. It is not even a constitutional commission.

MR. COLAYCO: The Commissioner's earlier objection was that the Office of the President is not involved in the project. How sure are we that the next President of the Philippines will be somebody we can trust? Remember, even now there is a growing concern about some of the bodies, agencies and commissions created by President Aquino.

MR. RODRIGO: If that is the case, how sure are we that the members of the commission are people we can trust. At least the President is elected by the people.

MR. COLAYCO: Yes, but the President will be the one who will be handling the whole commission, and he can get away with anything he wants.

MR. RODRIGO: Why can we not trust the President, elected by the people, and we seem to be putting more trust on a commission composed of three people, appointed by the President?

MR. COLAYCO: I will leave it to the body.

MR. MONSOD: Madam President.

THE PRESIDENT: The committee desires to react now.

Commissioner Monsod is recognized.

MR. MONSOD: We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. We also want a commission to function even under the worst circumstance when the

executive may not be very cooperative. However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: I would like to speak for two or three minutes against the amendment.

THE PRESIDENT: The Commissioner may proceed.

MR. NOLLEDO: Thank you.

I beg to disagree with Commissioner Rodrigo that the Commission on Human Rights is a paper tiger. I have some amendments here that would strengthen the powers of the commission. In my No. 3 amendment distributed to the Members of this Commission, I wanted to add after the word "measures" on line 7, page 2, an amendment that will give the Human Rights Commission the power to provide appropriate legal measures which may include injunctive relief and issuance of the writ of habeas corpus. I heard the same arguments from Commissioner Rodrigo when he talked against the creation of the Ombudsman.

His argument seems a broken record. He said that we are suffering from a paranoia which is understandable and he wants to leave to Congress the power to create. Why do we have to pass the buck? He wants to mandate Congress to create the body similar to the Human Rights Commission now under consideration. I think we should not pass the buck to Congress. We should not miss that golden opportunity of creating this very important body based on the sad experiences we had during the Marcos regime. We are learning lessons from history. But if we remain adamant by not adopting remedies to avoid the condemnable practices of the past regime — I refer to the Marcos regime — then history might repeat itself. We will, in the words of Commissioner Aquino, be judged harshly by the future generations.

Madam President, for many years during the Marcos regime, human rights were abundantly violated. Even in the present regime, we still have these violations. Commissioners Rodrigo, Rama and I were victims of the violations of human rights when, without previous charges, we were sent to jail. The concern for the protection of human rights is worldwide as indicated by Commissioner Rama. The provisions on the constitutional authority known as the Human Rights Commission underscore the need to strengthen a mechanism that will truly protect human rights and vindicate victims of violations thereof.

I have filed a resolution to include in the Declaration of Principles a provision that the State will respect the dignity of the human personality and guarantee full respect for human rights. A nation which does not intensely value human rights does not deserve the respect of other freedom-loving nations.

By setting up the Commission on Human Rights as a veritable watchdog and guardian of our people against violations of human rights, we manifest to the world our respect for human dignity and honor. I cannot understand the hesitation to set up the Commission on Human Rights just because we have other commissions already set up in the 1986 Constitution. The sufferings and the anguish of the victims of violations of human rights in the Philippines and everywhere in the world should find sympathy in the heart of everyone of us, including the heart of Commissioner Rodrigo who himself suffered in jail by reason of the abundant violations of human rights during the repressive Marcos regime. Leaving to Congress the creation of the Commission on Human Rights is giving less importance to a truly fundamental need to set up a body that will effectively enforce the rules designed

to uphold human rights.

Thank you, Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Madam President, Commissioner Maambong proposed the substitution of this proposed Article on Commission on Human Rights to one section, probably to be inserted in the General Provisions. Commissioner Davide suggested that we continue the amendments of the committee draft. I believe that the Maambong recommendation for a substitute section is an a priori that deserves our prior consideration.

In line with my interpellations yesterday, I am of the opinion that this draft of the committee is not necessary because, for the protection of human rights, we have the entire machinery of government, particularly the law enforcement agencies, the prosecuting arm and the administration of justice. But if there be need to insert a section in the Constitution, then we should consider the substitute amendment of Commissioner Maambong instead of the suggestion of Commissioner Davide, because if this Commission decides for one section in another portion of the Constitution, like in the General Provisions, rather than a separate article, that issue would be in the nature of a prejudicial question.

To give, as Commissioner Nollado claims, even injunctive relief and issuance of the writ of habeas corpus, then how can this function be given to this Commission on Human Rights when this is essentially judicial? That human rights are very important, there is no question. That violations must be prevented, detected and punished, there is also no question. But what is the issue now? Shall we entertain the Maambong amendment by substitution? I believe we should, because if that should be accepted by the majority, then we can limit our amendments to the substitute section proposed by Commissioner Maambong.

Thank you, Madam President.

MR. GARCIA: Madam President, may the committee respond?

THE PRESIDENT: Commissioner Garcia is recognized.

MR. GARCIA: Thank you very much, Madam President.

Before we address the procedural question which Commissioner Rodrigo requested, I would like to touch on a very important question which I think is at the very heart of what we are trying to propose — the independence of this Commission on Human Rights. I would like to relate to the body a personal experience of mine which I think is important to understand why this commission should be independent from political pressure or control.

When I was working as a researcher for Amnesty International, one of my areas of concern was Latin America. I headed a mission to Colombia in 1980. I remember the conversation with President Julio Cesar Turbay Ayala and he told me that in Colombia, there were no political prisoners. This is a very common experience when one goes to governments to investigate human rights. From there, we proceeded to the Procuraduria General to the Attorney-General, to the Ministry of Justice, to the Ministry of Defense, and normally the answers that one will get are: "There are no political prisoners in our country"; "Torture is not committed in this country." Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because it is independent of the present administration. Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on. Therefore, this commission plays a vital role. And, finally, as I repeatedly mentioned yesterday, there is no substitute for the formation of consciousness of a populace that is willing to stand up and defend and uphold its basic rights. This can only be inculcated through a continuing educational program regarding human rights.

And so we believe that this is necessary. I would also like to request those of us who have had more experiences on how to make this more effective to make suggestions. If it is true, as it stands, that it is not as effective as we would wish, then we would like to accept amendments which would precisely strengthen this office, make it a nationwide effort to ensure that human rights will be protected.

Thank you very much, Madam President.

THE PRESIDENT: I think the issue is clear.

Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, I was about to ask for the suspension of the consideration of my motion for substitution, and in its place, to put before the body the issue on whether or not the Commission on Human Rights be created as an independent body in the Constitution or created by Congress by mandate of the Constitution. But I am wondering if the committee could perhaps present some amendments to the amendment by substitution which would, just the same, resolve the basic issue. The other proponents believe that the basic issue should be resolved: whether this be constitutionally mandated to be created by Congress or directly created by the Constitution.

But if the proposed reformulation of the committee will solve the issue, I think we can save time by using that kind of procedure.

THE PRESIDENT: But there are observations that have been made here to the effect that some Commissioners believe that this should be left only to Congress rather than for an office to be created in the Constitution itself.

So, I suppose that is the issue that we should present now to the body.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: What we would like to suggest, as proposed by Commissioner Davide, is to put to a vote the first paragraph of the proposal of the committee. We just want to make some minor change on that, but what we want to put to a vote is this issue now.

THE PRESIDENT: The proposed amendment of Commissioner Maambong is pending before the body.

MR. MONSOD: Yes, this will be by way of an amendment by substitution of the Commissioner's proposal, but it will deal with the same issue.

What we would like to propose to a vote is the paragraph which reads as follows: "THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS COMPOSED OF A CHAIRMAN AND TWO COMMISSIONERS WHO SHALL BE NATURAL BORN CITIZENS OF THE PHILIPPINES, MEMBERS OF THE BAR, AND WITH SUCH OTHER QUALIFICATIONS AND DISQUALIFICATIONS AS MAY BE PROVIDED BY LAW."

That is the only paragraph that we would like the body to vote on.

The understanding is that this office will not be in the same status or in the same category as the other constitutional commissions like the COA, the COMELEC and the Civil Service.

Secondly, the word "INDEPENDENT" does not preclude amendments that may be proposed by Commissioner Rodrigo to resolve the issues that he has raised earlier on the need for cooperation and at the same time, that there is a need for some independence.

So, that is the understanding behind this, but we would like to ask the body to vote on this first paragraph which also resolves the issue implicit in the Maambong amendment.

THE PRESIDENT: What does Commissioner Maambong say since he is the proponent of this amendment?

MR. MAAMBONG: The parliamentary situation is that we have proposed an amendment which is now before the committee, and the formulation of the committee is supposed to be an amendment to the amendment which we proposed.

THE PRESIDENT: Does Commissioner Maambong accept the amendment?

MS. NIEVA: May I be recognized, Madam President? May I ask for further clarification of the proposal as read by Commissioner Monsod?

THE PRESIDENT: We will first request Commissioner Maambong to make a reply.

MR. MAAMBONG: Madam President, as long as it will resolve once and for all the issue in the mind of the proponent, we accept; that is, whether this Commission on Human Rights will be directly created by the Constitution or by Congress through the mandate of the Constitution.

In order to resolve the issue, we are willing to accept that amendment to the amendment.

MR. MONSOD: Madam President, the issue will be resolved because if the body votes for this first paragraph, then it becomes a constitutional office, although it will still need an implementing act of Congress.

MR. MAAMBONG: In other words, if the body will not vote in favor of that amendment to the amendment, it means that the body does not want the Commission on Human Rights to be created directly by the Constitution but instead it would want it to be created by Congress through the mandate of the Constitution, is that it?

MR. MONSOD: That is the implication.

THE PRESIDENT: Why do we not pose this simpler question to the body? Does the body desire to have a Commission or a Committee on Human Rights created by Congress but mandated by the Constitution or for Congress to create such a body?

MR. MAAMBONG: As a matter of fact, Madam President, that was our original formulation.

THE PRESIDENT: I think that is simpler. Those who will vote yes would mean that they are in favor that this should be left to congressional action.

MR. MAAMBONG: That would be more direct and we would favor that, Madam President.

THE PRESIDENT: Does Commissioner Nieva have any question so as to guide her in her vote?

MS. NIEVA: After we have voted on this, because my question is on the qualification of the members.

THE PRESIDENT: Yes, we will take that up later.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Just one clarificatory question. If we vote on the proposal making it a constitutionally mandated office to be created by Congress, will we be able also to present amendments to strengthen that office?

MR. MAAMBONG: Definitely, Madam President, we can still do that.

MR. NATIVIDAD: So, it will not prevent us because we have the impression that it will just become a section in the General Provisions.

MR. MAAMBONG: The other members of the commission will not be precluded to do that. That would be up to the committee actually because that would constitute an amendment to my amendment which is only one section.

MR. NATIVIDAD: We intend to present amendments to further strengthen that body. In that case, we are clarified.

Thank you, Madam President.

MR. MAAMBONG: Yes, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: I have a similar problem. I think the issue here is that if we vote for Commissioner Maambong's amendment, we should ensure that we have an appropriate framework within which Congress can act rather than leaving it to the Congress to set that office. So that if we vote otherwise, it means that we can proceed to tightening and strengthening the framework within which an office can operate. I think this is also in support of the amendment of Commissioner Natividad, although I would like to propose subsequent sections that would define the functions and scope of this type of commission.

MR. MAAMBONG: In that case, Madam President, I will answer the same way as I have answered Commissioner Natividad. The Commissioner is not precluded to propose additional provisions but these will be subject again to the acceptance of the committee.

MR. RAMA: Madam President.

THE PRESIDENT: What is to be decided is which is better — to have this in the Constitution or will it just be a creation of Congress?

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, just for a clarification. If we are going to mandate Congress to establish this office on human rights and provide a framework for such a body as to function, et cetera, we might as well provide right here in the Constitution for such a body. Under the limitations that we would like to put, as suggested by the committee, we might as well do it here so that we can provide for all the amendments that we have in mind, such as the ones being proposed by Commissioners Rosario Braid, Natividad and the others.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, may I suggest as a compromise that we briefly say something like this: "THERE SHALL BE A COMMISSION ON HUMAN RIGHTS WHOSE FUNCTIONS, LIMITATIONS WILL BE DETERMINED BY LAW."

MR. RAMA: Madam President.

THE PRESIDENT: Is that acceptable?

BISHOP BACANI: With this amendment, we will be creating it and at the same time leave the details to Congress; hence, we will satisfy those who want that it be created and at the same time those who are not against its creation but would like to leave the further details to the future legislature. So, I propose that amendment.

MR. RAMA: Madam President.

THE PRESIDENT: Is that acceptable to Commissioner Maambong?

MR. MAAMBONG: Madam President, in order to save time and in accordance with the suggestion of the Chair, I would rather that the issue as to whether this Commission should be directly created by the Constitution or should be created by Congress by mandate of the Constitution be resolved. And for that purpose, Madam President, to keep the parliamentary situation in order, I am now formally asking the committee to defer consideration of my amendment by substitution, and instead I am now presenting this motion before the body. I move that the creation of the Commission on Human Rights be by Congress through the mandate of the Constitution.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: I would like to speak against that motion, Madam President. We have forgotten the basic concept of the Constitution. The basic concept and the most necessary provisions in a Constitution precisely is the structure of government and the Bill of Rights. The reason for this is that the Bill of Rights guarantees the rights of the citizens against the violations of a ruler. We have to provide certain guarantees to the citizens against the excess of the government. In the same manner, we have to have a Human Rights Commission which would guarantee certain rights of the citizens against the excesses of the government. That is the most basic concept in the Constitution. Therefore, as to the question set forth by the Chair as to whether we should include this in the Constitution, certainly we should because it is part of the basic and most fundamental principle of a constitution. I think Commissioner Bernas will agree. It is just proper and necessary because of our experience and the trend in the world today wherein human right is a concern of many international organizations.

THE PRESIDENT: That has been the subject of all the observations that have been given here this morning. Is there anybody else?

MR. MONSOD: Yes, Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May we request a vote at this time with the understanding that a vote of yes is a vote for the Maambong amendment and a vote of no is a vote for the committee's position.

MR. MAAMBONG: I will further clarify that.

THE PRESIDENT: Please restate the motion.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Parliamentary inquiry. Does it mean that whatever would be the vote would not preclude the presentation of subsequent amendments?

THE PRESIDENT: I think that is understood.

MR. DAVIDE: Thank you.

THE PRESIDENT: That has been clarified.

MR. MAAMBONG: May I restate the motion?

THE PRESIDENT: Please restate the motion now.

MR. MAAMBONG: I move that the Commission on Human Rights be created by Congress by mandate of the Constitution and not to be created directly by the Constitution. And I would like to clarify this motion by saying that those who are in favor of this motion will actually be saying that they would like this Commission on Human Rights to be created by Congress upon mandate of the Constitution.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Madam President, I do not agree with the alternative. I think we should vote only on the question of whether or not the Commission on Human Rights shall be created either as recommended by the committee or the amendment of Mr. Maambong. But the consequence of the voting is a different thing. A negative vote on this question does not mean that it is an affirmative vote on the other alternatives suggested. We vote on whatever the Commission wants to settle. We vote yes or no. If the vote is negative, we should discuss the other alternative.

THE PRESIDENT: But what is before us now is the proposal or the motion of Commissioner Maambong to the effect, in brief, that it should be created by Congress.

MR. CONCEPCION: What I object to is that a vote which is adverse to the point voted on, will constitute an affirmative vote for some other point.

MR. MAAMBONG: Madam President, I accept the amendment. And so the motion would be that the Commission on Human Rights should be created by Congress under the mandate of the Constitution.

BISHOP BACANI: May I just ask Commissioner Maambong one question.

Since there is no doubt in the Commissioner's mind that such a body should anyway be established, I just like to ask whether or not the Commissioner wants this Constitutional Commission to have the honor of establishing that body, because there is no doubt whatsoever in his mind that he wants it to be mandated by this Constitution, that such a body should be established by Congress. And so, would he not rather have the honor to do that here? That is why I proposed that amendment. We can leave the further determination of the membership, functions and limitations of this commission to the enabling law.

MR. MAAMBONG: The Gentleman is correct in that I am in favor of the creation of the Commission on Human Rights, but in this Constitutional Commission we have actually two options; either we create it directly in the Constitution itself or we mandate Congress to create it for us. And that is precisely the point proposed by the Chair to which we agree.

THE PRESIDENT: Which is now before the body; that is clear.

BISHOP BACANI: That is why I am asking the Commissioner whether or not he wants the honor of having it actually established.

VOTING

THE PRESIDENT: Commissioner Maambong has already answered that in the negative. So, that is clear now in the minds of everybody.

As many as are in favor of the motion of Commissioner Maambong, please raise their hand. (Few Members raised their hand.)

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

The results show 11 votes in favor and 22 votes against; the Maambong motion is lost.

Let us go back to the committee report.

MR. RAMA: Madam President, Commissioner Rosario Braid has registered ahead.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: In view of the result of the voting, I am now formally withdrawing my motion for a substitution.

Thank you.

THE PRESIDENT: Thank you.

Does Commissioner Rosario Braid have an amendment?

MS. ROSARIO BRAID: Madam President, may I suggest an amendment to Section 1, between lines 9 and 11. It should state this way: "There shall be an independent Commission on Human Rights composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines. THE CHAIRMAN AND ONE MEMBER SHOULD BE MEMBERS OF THE BAR FOR AT LEAST TEN YEARS, THE THIRD MEMBER SHOULD REPRESENT ANOTHER SECTOR SUCH AS EDUCATION OR OTHER DEVELOPMENT AREAS."

This is my substitute amendment which could be rephrased later, but this is the essence.

BISHOP BACANI: Madam President, may I have an anterior amendment.

MR. SARMIENTO: Madam President.

THE PRESIDENT: Commissioner Sarmiento is recognized.

SUSPENSION OF SESSION

MR. SARMIENTO: Madam President, may we request the proponents to approach the table so that we will consider all the amendments. So, we will ask for a suspension, Madam President.

THE PRESIDENT: The session is suspended for a few minutes.

It was 11:32 a.m.

RESUMPTION OF SESSION

At 11:51 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: Madam President, may we ask Commissioner Bernas to sit with us as we entertain the amendments from our colleagues.

Thank you.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We would now like to propose that we go by paragraph and the committee would like to ask the body for the approval of the first paragraph which will only state the principle: "THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS." And then after that, we can go to the next paragraph.

THE PRESIDENT: Is there any objection to this particular first paragraph which has been given by Commissioner Monsod?

MR. RODRIGO: I just want to make of record my belief that an office such as this which is not granted sufficient powers of its own, if independent of the executive, will be a paper tiger.

THE PRESIDENT: Please restate it so that we can take a vote.

MR. MONSOD: The first paragraph will state: "THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS."

THE PRESIDENT: As many as are in favor of this particular sentence or paragraph, please raise their hand.

BISHOP BACANI: Madam President, may I introduce an amendment to that which will read: "THERE IS HEREBY CREATED AN OFFICE WHICH SHALL BE CALLED THE COMMISSION ON HUMAN RIGHTS."

MR. MONSOD: We accept, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of this particular sentence, 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. (One Member raised his hand.)

The results show 33 votes in favor, no vote against and one abstention; the first paragraph is approved.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Before considering the composition and qualifications of this commission, the committee would like to consider the functions first. And I think the idea of the committee is to put down some minimum functions with an opening for Congress to expand the functions. And for that purpose, the committee would like to begin consideration on the basis of Section 2, before we go back to the composition and qualifications.

THE PRESIDENT: How will it read?

MR. MONSOD: Madam President, I believe Commissioner Ople has a proposal in that regard.

MR. OPLE: May I be recognized?

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you, Madam President.

I would like to propose an amendment to subparagraph 1 of Section 2, line 22, in the form of an additional clause following the phrase "private parties."

May I read the whole paragraph, as proposed to be amended: "Investigate all forms of human rights violations committed by public officers, civilian and military authorities, or by private parties INCLUDING THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION OR INSURRECTIONAL." And if the committee will kindly allow me, I would like to state very briefly the reason for this amendment.

The Armed Forces of the Philippines, through its Chief of Staff, General Fidel Ramos, has time and again expressed strong reservations concerning a human rights policy that shuts itself to violations committed by forces adversary or hostile to the State. They say there must be no area of violations that should be closed to human rights inquiry, including those atrocities that may be perpetrated by rebel or insurrectionary forces.

The military, of course, is understandably the most exposed and the most vulnerable to human rights investigations in the nature of the task they have to do. But where even the conceptual application of human rights standards to their adversary forces is denied from the start, as though this were a sacrosanct and impenetrable area of concern, the effect is highly demoralizing.

There are already reports, Madam President, that the efficiency of the AFP might be impaired where they have to exist in fear of prosecution for human rights violations while their adversaries are exempt from such inquiry and immune to such risks.

This amendment, therefore, enters the caution that the "private parties" designated here in this subparagraph who may be liable will not mean that if violations are committed by forces adversary to the State, they are exempted from responsibility as "private parties." This will ease a great burden on the minds of soldiers defending the Republic, that the human rights policy of the Constitution is discriminatory and unfair to them, while creating a zone of immunity for others, and will also put undisciplined forces outside the military on notice that the arm of the law in the Philippines with respect to human rights violations recognizes no barriers.

So, I seek the committee's kind consideration of this proposal, Madam President.

THE PRESIDENT: What does the committee say?

MR. DAVIDE: Madam President.

THE PRESIDENT: Can we have the reaction of the committee on this?

MR. GARCIA: Madam President, I would like to make a few comments.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I am seeking to introduce an amendment to the Ople amendment, but I believe that the committee would still react.

MR. GARCIA: Would the Commissioner like to speak first?

THE PRESIDENT: Commissioner Davide is proposing an amendment; the Gentleman may proceed.

MR. GARCIA: I would like to react to the proposed amendment of Commissioner Ople.

This debate about the scope of the Human Rights Commission has been a long one. In fact, if one has followed the discussions between the armed forces and the present Committee on Human Rights, I think the conclusion of the committee is rather clear. In fact, our committee is also divided on this point. Perhaps, the body should resolve this. All crimes are violations of human rights in many ways. But the precise idea of the Committee on Human Rights is that we have to try to investigate those violations of political and civil rights where remedies are not feasible, where the victims do not have ready access to legal remedy. And so, if we include in the scope of this committee, crimes committed by lawless elements, outlaws or insurgents, we will then be duplicating the functions of ordinary courts and fiscals because all crimes, for example, kidnapping and murder, are punishable by the courts and these can be prosecuted by fiscal. Secondly, even if we put this under the scope of the existing Human Rights Committee, we will find it extremely difficult, if not impossible, to actually prosecute because they are not recognized as legitimate forces. For example, in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, the signatories are state signatories. In fact, the entity that is supposed to make sure that the rights of the citizens are respected is the State, and they have all the forces of law and the armed forces to make sure that these rights of all the citizens are respected. And if there are violations, they are precisely supposed to go after those who have committed the crimes. Therefore, we have an existing system of justice — ordinary courts and fiscals — to prosecute these crimes, but Human Rights Commission has a very precise purpose. Those who do not have ready access to justice nor ready access to legal remedy are supposed to be helped by this commission.

MR. OPLE: Madam President.

MR. DE CASTRO: Madam President.

MR. OPLE: May I reply briefly to the points made by Commissioner Garcia. I think this Commission is right in creating an independent office to be known as the Commission on Human Rights, first of all, because this proclaims a national commitment not only to punish violations of human rights but also to deter the violations of human rights no matter who committed them. It is true that when, let us say, rebel forces commit an atrocity, probably these crimes would correspond to certain violations of the Penal Code or the criminal law. But why do we hesitate to put upon such crimes — obviously, political crimes — the stigma and the moral deterrent of the designation of such crimes as also human rights violations? Secondly, we are not saying that the violator of human rights on the part of such forces will be immediately accessible. Members of the military will, of course,

be more accessible but certainly the moral force of this commission can be applied so that there is this deterrent effect of acknowledging a stigma of human rights violations also on those atrocities perpetrated by what I call adversary forces or those hostile to the State. We are not saying that they will be immediately brought to the fiscals and the courts. The times may not yet be propitious for that but facts can be gathered; witnesses, if they dare to come forward, can be encouraged so that there is a record of this violation of human rights in the Human Rights Commission. And the Human Rights Commission may then make the appropriate recommendations.

Madam President, I also recognize that rebel forces are not signatories to the International Convention of Civil and Political Rights; neither are they signatories to any international treaty which has the force of law in our own country. But the Philippine State is not prohibited thereby from exercising its jurisdiction and enforcing the law and a symmetry of justice that recognizes no barriers, whether these barriers are ideological or military in character at this time. And, therefore, I think, in the interest of constitutional symmetry, justice and security, I would like to submit that this is a very proper and necessary amendment.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: May the proponent agree to an amendment to his amendment?

MR. OPLE: May I respectfully listen to the proposed amendment.

MR. DE CASTRO: I will say: "INVESTIGATE ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND POLITICAL RIGHTS." We shall refrain from enumerating "public officers" and so on. This, I believe, will include everybody, even members of this commission.

MR. OPLE: So that we do not have to face this painful choice, Madam President.

MR. DE CASTRO: Yes, because the more we enumerate, the more there will be exclusions of certain enumerations. With this amendment, there will be no exceptions, whether they be the military, police, civilian or whoever they are. As I said, it will include every member of this commission.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: May I just make an observation on the amendment of Commissioner Ople before we decide on the amendment to the amendment? The observation I would make would be a technical one which, I think, in the context of existing jurisprudence in criminal law, might make this amendment of Commissioner Ople self-defeating. In the present jurisprudence in criminal law, when there is a charge of rebellion, all other offenses are swallowed in the charge of rebellion. So that if we connect violations of human rights with rebellion, under the present jurisprudence, we will have to ignore the specifications of violations of human rights and pay attention only to the single crime of rebellion because rebellion absorbs everything else. Whereas if we do not connect this with rebellion, then we can go after the human rights violations of the rebels without having to tag them as rebels. But if we connect human rights violations with rebellion, then the defense would be: "I am charged with rebellion" and that absorbs everything else.

MR. OPLE: Madam President, may I just call the attention of Commissioner Bernas to the fact that rebellion is not a condition sine qua non for a rebel committing a violation of human rights. We just raise him to the level of responsibility and accountability of every other citizen who may commit such violations of human rights. It is not a necessary condition and it does not even have to provide the essential context to the violations of human rights contemplated in this subparagraph.

FR. BERNAS: The problem I see, Madam President, is that by the very fact that we mentioned "including those who may be engaged in acts of rebellion," we are using "rebellion" in fact as the context; and once we use "rebellion" as the context, then the context colors everything else.

MR. OPLE: The name "rebellion" or "insurrection" here, I think, casts a constitutional net so that violators of human rights among these forces, let us say, engaged in an armed insurrection may refer not to actual conditions of combat. There might be other rules governing combat. An example is what the armed forces do at times wherein perhaps because of misplaced orders or loss of control and discipline; they massacre some people who are innocent. Then that, I think, creates a violation of human rights which can be segregated and proceeded against independently as a violation of human rights that this Human Rights Commission can take cognizance of.

FR. BERNAS: The problem I have is the language of the proposed amendment.

MR. OPLE: I am willing to listen to an amendment to improve the language.

FR. BERNAS: Because the language of the amendment says "INCLUDING THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION." So, the Gentleman is, in fact, making the acts of rebellion as the context for this addition. If we just take that out, everyone else comes under "private parties." So, even the rebels come under "private parties" and we do not have to take the act of "rebellion" as the context because the moment we do, the defense will come up with the argument that the act of "rebellion" is the context.

MR. OPLE: Does the committee subscribe to this construction just made by Commissioner Bernas?

MR. DE CASTRO: Madam President, I have a proposed amendment to the amendment.

THE PRESIDENT: Is the proposed amendment of Commissioner de Castro accepted by Commissioner Ople?

MR. OPLE: Yes, Madam President.

MR. DE CASTRO: This will exclude enumeration of people and parties.

MR. OPLE: My answer will probably depend on the committee's collective response to the question that I just put to them.

MR. RAMA: Madam President.

THE PRESIDENT: Yes, because it affects the formulations made by the committee.

MR. RAMA: Madam President, Commissioner Aquino would like to be recognized.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I would just like to volunteer some observations on the proposal of Commissioner Ople. I am apprehensive that the proposed amendment has a very myopic focus on the problem of human rights. In fact, I think the emphasis is a bit askew. When we speak of human rights, we speak of an improper balance of power between the masses and the State such that traditionally and historically, human rights are best appreciated in the context of state and institutional violence where the masses lay destitute and powerless. Even in the context of contemporary political theory, they are known to have surrendered a certain measure of their personal liberties in favor of the State if only to yield to the requirements of social order and regulation.

When we speak of state violence, we think of the people who, sundered from the seats of power and gasping in forlorn fashion over futile ideologies, become reservoirs of hate and bitterness whenever they feel the institutionalized state violence being perpetrated by the powers-that-be. So, we speak of human rights in the context of the State which has the unchallenged monopoly of the legal use of force. This is the kind of imbalance

that is sought to be corrected by a human rights commission which is being proposed by the committee.

THE PRESIDENT: Is Commissioner Ople insisting on his amendment after the explanation?

MR. OPLE: I am waiting for the response of the committee, but in the meantime, will the Chair allow me to reply briefly to Commissioner Aquino's points?

THE PRESIDENT: Please proceed.

MR. OPLE: Yes, there is no question that when we speak of human rights, the main concern is that of an overpowering and, perhaps, overbearing State violating, through any of its instrumentalities, the political and civil rights of presumably helpless citizens. There is no question about that, and I would like to say that the reason that I think providing for an independent office to be known as the Commission on Human Rights is an excellent decision is that this all-powerful and overbearing State must be countered and be put under reins through mainly the moral and legal force of a nation exemplified in the Commission on Human Rights.

But I merely put it to the Commission to understand that the armed forces says that about 17 percent of all the villages in this country have now come under the influence, if not control, of insurrectionary forces, and whether we believe them or not, the reports are there showing that some of our brothers engaged in this armed struggle against the State are committing their own excesses. And recently, an NPA commander in Cagayan de Oro City and Misamis Oriental did publicly apologize and offer reparation to some civilians who lost their lives probably because of a failure of control in discipline.

If we do not make an attempt to satisfy the sense of lopsided justice in terms of human rights, knowing the hurts suffered by some of our own soldiers now, then the result is demoralization and since the committee, in my previous consultations with them, candidly admits that private parties cover violations of human rights also by these inimical forces, what I wanted to find out was the reason for hesitating to make this explicit.

I have listened to Commissioner Bernas and I think his point is valid, but I am waiting for the committee to respond.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: The committee would like to say that it prefers the amendment presented by Commissioner de Castro because it gives much leeway; it is all-embracing, and Congress will really have the chance to specify what will be the scope of the jurisdiction of the power of the proposed Commission on Human Rights.

MR. DE CASTRO: Thank you.

MR. OPLE: Madam President, I was looking for a symmetry and Commissioner de Castro has now proposed a kind of symmetry by the deletion of the enumeration of various parties, public or private, that will fall within the scope of the investigation of human rights violations. Nevertheless, by eliminating this enumeration of "public officers, civilian and military authorities or by private parties," if it is understood that the purview of the Commission on Human Rights extends to all citizens whoever they may be and whatever pursuits they may be engaged in, then I will be willing to yield to the amendment of Commissioner de Castro.

MR. SARMIENTO: Madam President, those are not excluded, but, as Commissioner Foz said, we will leave it to Congress.

MR. REGALADO: Madam President.

MR. RAMA: Madam President.

MR. OPLE: But the principle of universal application of the human rights policy is not denied by the committee.

MR. SARMIENTO: Yes, Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, I would just like to comment on the statement of Commissioner Bernas that when we speak of rebellion, other crimes are swallowed. Perhaps, what he meant was that all other crimes are absorbed. It is true that there is no such thing as a complex crime of rebellion with murder or rebellion with arson and, in that sense, other crimes are absorbed. But these crimes committed independently of rebellion amounting to torture, are certainly not absorbed by rebellion but are independent crimes which can be prosecuted independently.

And I think there should be a balance in the investigation by the proposed Human Rights Commission. Doon po sa amin, ang mga NPA ay kinuha ang isang PC na nabalitaan lamang nilang nang-aabuso. At sa harap ng kanyang pamilya, pinahirapan at pinatay. Iyan po ba ay bahagi pa ng rebellion? Sa palagay ko ay abuso na iyan. That is already a human rights violation.

Isang pulis ang nagkagusto sa isang babae, subali't nang hindi sila magkasundo, inihabla ng rape ng babae iyong pulis. Iyong kapatid ng babae na sumama sa NPA ay kinuha ang pulis at pinutol iyong kanyang "organ." Is that still part of rebellion that can be swallowed or absorbed by rebellion? That is human rights violation.

But the important thing is that when this Human Rights Commission investigate cases, it will publish all the abuses of the military, thereby presenting a very bad image of the military. But if we place there the amendment of Commissioner Ople, stating that this will include violations by people who are engaged in acts of rebellion, then there will be a balanced investigation and reporting and people will see not only the abuses of the military but also the abuses of these people who seek to overthrow our government.

Thank you, Madam President.

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

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Madam President.

To start with, I would like to propose an amendment to the amendment and that is simply to add the words "PRIVATE PARTIES WITHOUT DISTINCTION" and I will explain, if the Chair will permit me.

As I understand it, the Commission on Human Rights is not in charge of prosecuting violations thereof. It should be more interested in determining where and why human rights are violated and recommending measures to forestall such violations.

I hope that the Commission on Human Rights would undertake studies and provide statistics therefor. As regards violations committed by the military or the civilians, the prosecution of violations and their punishment is the function of the prosecutors and ordinary courts of justice. But the commission may render a more important public service by devising means and ways to prevent or minimize violations regardless of who the violators are.

Thank you.

FR. BERNAS: Madam President.

THE PRESIDENT: Does Commissioner Regalado still want to say something?

MR. REGALADO: I just want to support that statement of Commissioner de los Reyes that the use of the word "rebellion" here absorbs all other crimes that may have been committed by the rebels on the occasion thereof. That was the old case of *People vs. Hernandez* applying the doctrine of *pro reo* and which, as a matter of fact, was penned by Justice Concepcion. But subsequently in the cases of *People vs. Geronimo* and *People vs. Taruc*, it was clearly stated that any other offenses committed by the rebels not in the furtherance of the rebellious movement are separate crimes. I think the purpose of Commissioner Ople here is to emphasize the fact that most of these human rights violations committed by these adversary forces are on the occasion of acts of rebellion. Of course, I take issue here with the words used, "of rebellion or insurrection," which after all mean the same. But if the purpose of Commissioner Ople is really to underscore this concern which has been articulated even by the Chief of Staff, General Ramos, in the matter of his comment on the Presidential Committee on Human Rights which seeks to investigate soldiers but not the rebels, and if he will really insist on this and it is acceptable to the committee, then we can just state there "CRIMES AGAINST PUBLIC ORDER," which would involve rebellion, sedition, tumultuous disturbances and not only rebellion per se.

MR. CONCEPCION: Madam President.

MR. REGALADO: Although all other crimes committed in connection therewith or on the occasion thereof are always separately punishable, the doctrine of *pro reo* does not apply there.

FR. BERNAS: Madam President.

THE PRESIDENT: Let us first hear Commissioner Concepcion who desires to explain.

MR. CONCEPCION: I would simply make this observation. The more we specify the offenses that are included, the more we limit the function of the Commission on Human Rights under the theory that when a specification is made, all those not specified are excluded. So it would be better not to mention what particular crimes are intended or what we have in mind. We simply leave it to the commission because their function is broad enough, particularly if we add the phrase "ALL PARTIES WITHOUT DISTINCTION" or a phrase of a similar nature. So we would broaden rather than limit the ambit of our intendment with the phrase "those committed in connection with" or as a means necessary for the commission of the crime of this or that. This would exclude all other crimes or offenses.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: That is precisely the reason why we would like to avoid any mention of any crime so that we do not have to go through any trouble of trying to determine whether or not the violation of human rights was done in furtherance of rebellion. So we would like the focus to be on the violations of human rights. It is for that reason that we think the proposal of Commissioner de Castro gives us that proper focus. The focus is not so much on any particular crime or crime in general but on the violations of human rights.

THE PRESIDENT: I think that is acceptable to Commissioner Ople.

MR. OPLE: Madam President, the response of the committee to my question as to the purview or the scope of human rights violations within the jurisdiction of the Commission on Human Rights has not been very satisfactory. I think there is a tendency to evade the issue of whether or not human rights violations committed by forces inimical to the State are encompassed within the purview of the Commission on Human Rights by the term "private parties."

FR. BERNAS: I think the committee is clear that that is covered by the term "private parties." What we are trying to avoid precisely is any language that would tend to connect it to any specific crime especially if we connect it with rebellion because we may have to go through the trouble of determining whether it was done in furtherance of, or independently of, rebellion. But, certainly, "private parties" would cover the rebels since they are not public officers; they are not civilian or military authorities. And, again, it is for that reason that I think the amendment of Commissioner de Castro is preferable because the focus is on the violation and not on the violator.

MR. OPLE: May I hear the final official position of the committee through the chairman of the committee. Is this construction supported?

THE PRESIDENT: That is, whether the term "private parties" include rebels, insurgents . . .

MR. OPLE: Yes, precisely the point just made by Commissioner Bernas.

MR. SARMIENTO: Madam President, the committee is divided on this issue, so may we hear the side of Commissioner Garcia.

MS. NIEVA: Can I just ask for a clarification, Madam President?

Yesterday, I asked the question: What did "private parties" include? And it was made clear to me that it included all sides — leftists, rightists, centrists, rebels, sects and any private groups. So, I am now a little bit perturbed because it is in the minutes, and that was clarified to me by Commissioner Sarmiento.

MR. SARMIENTO: Yes, Madam President. That was my reply to the query made by Commissioner Nieva, but Commissioner Garcia would like to make his observations on this issue.

MR. GARCIA: Madam President, I would like to clarify. What Commissioner Nieva observed is correct. The committee report, in fact, says "all parties" which includes different groups. What I have tried to present this morning is precisely the long debate on the issue of human rights being followed by the existing Presidential Committee on Human Rights created by the present government. In other words, they have themselves discussed this issue and the conclusion is precisely that all crimes, in one way or another, are violations of human rights, punishable by courts and prosecuted by fiscals. If we are going to suggest that crimes by all these groups are going to be committed, the committee will be constrained to pursue so many of these different crimes, rather than go to its essential task which is to go after crimes where victims do not have ready access to legal remedy. Following the philosophy enunciated by Commissioner Aquino where the government, which has the monopoly of legitimate power, controls the legal system and is also armed to punish crimes, they can thus pursue cases through the ordinary courts of law. We are admitting that there are violations of human rights committed by rebel forces, but what we are saying is that the commission we are creating is precisely to enable ordinary citizens to have access against all the forces of the State. So, I am stating the actual position of the committee.

MR. OPLE: Madam President.

MR. GARCIA: Secondly, to give the international context, when I headed the Commission of Amnesty International to Colombia, I remember the very first statement made by President Julio Cesar Turbay Ayala of Colombia on January 16, 1980. He said:

Before you investigate the human rights violations of my government, because there are no political prisoners in my country, why don't you go after the crimes committed by the guerillas?

In other words, that is normally the answer of government. And, therefore, Amnesty International's response was, because the state parties are signatories to the human rights covenants and instruments, they are the ones who must be responsible for human rights to be respected in their countries. And unless they are willing to give

legitimate recognition to the rebel forces, then the commission cannot go after them. What governments should do is to make sure that these crimes are punished in the ordinary courts.

MR. RAMA: Madam President.

MR. MONSOD: May the committee respond?

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: With all due respect to the opinion of Commissioner Garcia, who is not a member of the committee, the position of this committee is what is stated in the report — that it would include offenses by government and military officials as well as of private parties. Our acceptance of the proposal of Commissioner de Castro is merely to give flexibility to Congress and the commission to determine the priorities of their work; but in terms of the scope, the committee report is very clear.

MR. OPLE: If that is the case and the sponsoring panel is not united on this point, I am considering to decline the amendment of Commissioner de Castro and to ask the committee whether it is their pleasure to put my amendment to a vote.

BISHOP BACANI: Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: I think all the members of the committee are united, Commissioner Garcia is not a member of the committee.

MR. OPLE: I am speaking of the sponsoring panel, Madam President.

BISHOP BACANI: That is why. Before, I thought that they were all members of the committee. My point was to ask the committee even before any voting takes place to show how many of them agree with the opinion of Commissioner Garcia, so we would really know the sense of the committee. But it is now very clear that the committee's sense is really the same as it was yesterday, and Commissioner Garcia, therefore, even though he is a member of the sponsoring panel, is not in accord with the committee.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: It is the sense of the committee that when we use the term "private parties," we really want to make it clear that aside from those mentioned in the enumeration, all other parties may be offenders or violators of human rights and, of course, it is so general that it covers even the amendment of Commissioner Ople when it says, "THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION OR INSURRECTION AGAINST THE STATE."

MR. OPLE: Thank you very much.

MR. FOZ: And this was precisely raised by Commissioner Nieva yesterday during the interpellations and it was very clear.

MR. OPLE: With that categorical reiteration of the definite intent of the committee, I now would idle to accept the amendment to my amendment by Commissioner de Castro.

THE PRESIDENT: So that what will be submitted to the body for a vote is the amendment of Commissioner de Castro.

MR. RAMA: The body is ready to vote.

MR. DE CASTRO: Madam President, may I just have a word, please? I am very thankful to the committee and to Commissioner Ople for accepting my amendment to the amendment, but I would like to inform the body that since the creation of the Human Rights Commission, the military has always felt that it is always directed to them. When I saw Justice J.B.L. Reyes and Madam Avanceña and they talked to me about human rights, I told them that this is principally directed towards the military, and that my problem is how to create this Human Rights Commission and remove from its function the word "military." It really is demoralizing to the military when we say that they are subjects of investigation by the commission. I found this morning the appropriate wordings to use so I can eliminate the word "military" in the formulation of the provision on the investigation of human rights violations.

Thank you.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: We have previously manifested that we have accepted the amendment proposed by Commissioner de Castro.

THE PRESIDENT: Yes, as formulated, the proposed amendment reads this way: "Investigate all forms of human rights violations INVOLVING CIVIL AND POLITICAL RIGHTS." Is that correct?

MR. FOZ: That is correct, Madam President.

VOTING

THE PRESIDENT: As many as are in favor of this proposed amendment, 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 34 votes in favor, none against and 1 abstention; the proposed amendment is approved.

MR. RAMA: Madam President, may I ask that Commissioner Nollado be recognized for some information?

THE PRESIDENT: Please proceed.

MR. NOLLEDO: Madam President, I have here in my possession a statement from our separated brethren. I would like to read the last two paragraphs with the kindest indulgence of the Members of this Commission:

August 27, 1986

We are repeatedly told that our action has generated broad and keen interest in the work of the Constitutional Commission. If rather unintended, we take this as a salutary consequence. We trust that the generated interest shall remain alive and supportive of our collective efforts at framing a Constitution. We enjoin the people to remain steadfast in their wholehearted participation in the writing of a vital chapter of our history.

With this call, we are happy to announce that tomorrow, Thursday, we shall be returning to the Constitutional Commission to continue our work in seeking new pathways for a collective development fully aware that the needs and ideals of the people shall always remain paramount.

(Sgd.) Minda Luz Quesada (Sgd.) Jaime Tadeo

(Sgd.) Ponciano Bennagen (Sgd.) Wilfrido Villacorta

Jose Suarez

Thank you, Madam President.

MR. RAMA: Madam President, another information from Commissioner Tingson before we suspend the session.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, soon after the Constitutional Commission was convened, Commissioner Tan and I filed a resolution unanimously approved by this body and implemented by the President of the Philippines to give the public franking privileges. Commissioner Davide amended the said resolution so that the franking privileges would last only until August 15. But, Madam President, I am happy to inform our colleagues that I received information today that the post office will continue our franking privileges until our work here is over. This means the people can write to us without stamps and we also can do the same thing until our work is over.

Thank you, Madam President.

BISHOP BACANI: Madam President, I would like to correct Commissioner Tingson. We cannot exercise that franking privilege ourselves.

THE PRESIDENT: We can. The executive order of the President grants us the same privilege.

BISHOP BACANI: I am sorry.

SUSPENSION OF SESSION

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

THE PRESIDENT: The session is suspended.

It was 12:44 p.m.

RESUMPTION OF SESSION

At 2:56 p.m., the session is resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President, we are still in the period of amendments.

THE PRESIDENT: Is there any pending amendment?

MR. RAMA: Madam President, may I ask that Commissioner Davide be recognized on the Article on the Commission on Human Rights?

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

The first amendment is on Section 2(1), page 1, line 20. After the word "investigate," add a comma (,) and the phrase "ON ITS OWN OR ON COMPLAINT BY ANY PARTY" followed by another comma (,).

THE PRESIDENT: What does the committee say?

MR. FOZ: May we ask the proponent to repeat the amendment?

MR. DAVIDE: On Section 2(1), line 20, after the word "investigate," add a comma (,) and the phrase "ON ITS OWN OR ON COMPLAINT BY ANY PARTY" followed by another comma (,).

MR. FOZ: We accept the amendment, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Davide which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On Section 2(2), page 2, delete the phrase "issue subpoena and subpoena duces tecum" and substitute it with the following: "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES," so that the two lines will now read: "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES to compel the attendance of any party to its proceedings or the . . ."

MR. FOZ: What about the power to cite for contempt?

MR. DAVIDE: The amendment is only up to that part because we will retain the phrase on the power to cite for contempt. So, I would propose the following omnibus amendments: First, on line 1, substitute "issue subpoena and subpoena duces tecum" with the phrase "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES"; on line 3, insert after the word "materials," a comma (,) and the word "RECORDS"; on line 4, delete the phrase "in accordance with"; on lines 5 and 6, delete all the words. The entire paragraph will read as follows: "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES to compel the attendance of any party to its proceedings or the production of materials, RECORDS and documents, with the power to cite for contempt for violations thereof."

MR. NOLLEDO: Madam President, I thought the amendment of Commissioner Davide would cover only the first page or Section 1. I have an anterior amendment, copies of which were already distributed to the Members of the Commission.

My anterior amendment, Madam President, is to add a new Section 2(2) after line 22 of page 1. This is coauthored by Commissioner Tingson, and takes into account the observations of Commissioner Bengzon during his interpellation in yesterday's session. The proposed Section 2(2) will read as follows: "DEFINE THE SCOPE OF HUMAN RIGHTS VIOLATIONS WHICH SHALL FALL WITHIN ITS JURISDICTION TAKING INTO ACCOUNT THE BILL OF RIGHTS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS."

I would like to state here, Madam President, that former Chief Justice Concepcion made a statement in this morning's session that the Commission on Human Rights may define the extent of its jurisdiction. I think it should be the commission that should be given the power to define its jurisdiction because the whole gamut of civil and political rights covers a very wide field and it is the commission itself that should be empowered to identify the cases over which it can exercise jurisdiction.

MR. FOZ: Madam President, we have a question to ask of the proponent.

Is the Commissioner, in effect, granting some kind of legislative power to the Commission on Human Rights by giving it the power to define the scope of human rights violations which shall fall under its jurisdiction?

MR. NOLLEDO: It is not exactly a legislative power because it is implementing Section 2(1) which provides that the commission has the function to investigate at its own instance or at the instance of any party all forms of human rights violations. The words "all forms of human rights violations" will constitute the basis for the commission to define the instance of violations of human rights over which it can assume jurisdiction.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: I was precisely going to stand up and talk about lines 20 to 21, and with the permission of Commissioner Nollado, I would be satisfied with the reading into the record what we really mean by human rights violations. The way things stand now, the meaning is so broad. I wanted to have a sharper focus on what these human rights violations are so that there will not be any confusion later on when a case arises and several agencies of the government might wish to have jurisdiction. For that reason, I would be satisfied with a question addressed to the committee and with an answer to the effect that these human rights violations consist of the rights as articulated by us in the Bill of Rights and in the Civil and Political Rights in the United Nations.

If we enter those in the Journal, then, to me, it is more than sufficient focusing of what we mean by "human rights violation." And, therefore, there is no need any longer for the proposed amendment of Commissioner Nollado. I hope that Commissioner Nollado shares that view.

MR. NOLLEDO: Madam President, I do not share the view of Commissioner Bengzon — with due respect to him — because the Human Rights Commission is expected to promulgate its own rules of procedure, including rules that are directly connected with procedure, and one of these is to set forth the instances over which the commission has jurisdiction. While it is true that entering in the records the instances over which the commission has jurisdiction would seem to suffice, I think there is no need of further research on the part of persons who would like to take advantage of the benefits afforded by the existence of this commission when the commission itself so promulgates the instances that shall fall under its jurisdiction.

MR. BENGZON: But, Madam President, I think it goes without saying that this commission would have that right without our really specifying it. Assuming that the amendment is approved, I was wondering if Commissioner Nollado would be willing to substitute the phrase "THE CONVENTION OF THE CIVIL AND POLITICAL RIGHTS IN THE UNITED NATIONS" instead of "UNIVERSAL DECLARATION OF HUMAN RIGHTS" which is so broad.

MR. NOLLEDO: I agree.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, what we had in mind was to enumerate some basic functions of the commission, with the last subsection providing that Congress shall define the initial functions of the commission as well as those functions granted to it over time. Our idea, Madam President, is for the commission to have more modest objectives during its initial years, as we had mentioned earlier, and then these can be expanded to go even beyond the civil and political rights as the level of our development increases and there will be changes in the types of human rights violations existing in the country. So, if it is all right with both Commissioners Nollado and Bengzon, we can put this as a catchall phrase at the end of the enumeration and to give enough leeway for Congress to expand the functions of the Commission from the initial modest objectives.

MR. BENGZON: Madam President, is the committee suggesting that the formulation of Commissioner Nollado, as amended by me, would then be transposed to page 2, somewhere on the last line?

MR. MONSOD: Yes, after we have gone through some basic functions of the commission, then we can have a last phrase and leave that up to Congress. We have taken that into account, Madam President.

MR. NOLLEDO: In that case, we can add to the last part of the section the phrase "UNTIL OTHERWISE

PROVIDED BY CONGRESS." So, we will give to the commission the initial duty to define its jurisdiction, taking into account the Bill of Rights and the convention mentioned by Commissioner Bengzon, after which we add the phrase "UNTIL OTHERWISE PROVIDED BY CONGRESS." Ultimately, it will be Congress that will determine the extent of the jurisdiction of the Commission on Human Rights.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: I am a little uncomfortable with the idea of allowing the commission to fix its jurisdiction. Fixing jurisdiction is a function either of the Constitution itself or of the legislative body, not even courts fix their own jurisdictions. It is either the Constitution or the legislature that does this. So, it would seem to me that if we have to talk about jurisdiction at all, we should not leave it to the Human Rights Commission but we either do it ourselves or we leave it to Congress.

MR. MONSOD: Madam President, just an additional comment. We were going to propose as a complementary provision to this article a section in the Transitory Provisions to the effect that until the Human Rights Commission is established by Congress in accordance with this Constitution, the present Presidential Committee on Human Rights will function as the commission so that it will already have its own terms of reference. Then Congress may expand, delineate or add to these functions.

So, that would be the complementary approach to this section, Madam President.

MR. BENGZON: I think we will agree to that as an addition to the interpretation I articulated a few minutes ago and which should be read into the record. Then we leave the definition of functions to Congress.

MR. NOLLEDO: I agree with Commissioner Bengzon, Madam President.

MR. MONSOD: Madam President, we will be glad to consider the subsequent wordings as we go further into this article.

MR. NOLLEDO: Thank you.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, since I am a cosignatory to the first part of the amendment by Commissioner Nollado, may I be clarified on one point. The chairman of the committee or the committee itself provides on page 2, line 12 the establishment of a continuing program of education and information to propagate the primacy of human rights. I suppose we are referring to a continuing program of education that is based on the Bill of Rights, which is part of the Constitution. Is that right, Madam President?

MR. GARCIA: With regard to human rights education, this would depend on the audience, of course. The program will be based on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and then, of course, the Bill of Rights. Now, for the particular audiences among law enforcement agencies, such as the military, there are definite standard rules for the treatment of prisoners. There is also the Declaration Against Torture and other such treaties or international instruments which could help educate our people and form their consciousness regarding human rights protection.

MR. TINGSON: Specifically, would that include materials like the Universal Declaration of Human Rights issued by the United Nations?

MR. GARCIA: Exactly.

MR. TINGSON: Thank you very much.

MR. RAMA: Madam President, I ask that Commissioner Davide be allowed to continue his presentation of amendment.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May we know what is the reaction of the committee to my proposed amendment on Section 2(2)?

MR. NOLLEDO: Madam President.

THE PRESIDENT: Commissioner Nolleddo is recognized.

MR. NOLLEDO: Thank you, Madam President.

I would like to amend the amendment of Commissioner Davide by adding some words to his last word. What is the last word of the Commissioner, please?

MR. DAVIDE: We will stop at the word "thereof" on line 4.

MR. NOLLEDO: Does that complete Section 2(2) on page 2 of the committee report?

MR. DAVIDE: Yes.

MR. NOLLEDO: Madam President, I propose to add the following clause and place a period (.) after it: "PROVIDED, HOWEVER, THAT THE RULES OF EVIDENCE SHALL NOT BE STRICTLY FOLLOWED IN HEARINGS CONDUCTED BEFORE THE COMMISSION."

MR. DAVIDE: Madam President, that might be included already in the authority of the commission to adopt its own rules of procedure.

MR. NOLLEDO: Madam President, when we authorize the commission to adopt its own rules of procedure, it does not necessarily mean that the rules of evidence shall not be strictly followed. If the Gentleman does not mind, may I ask him to reconsider because giving the commission the power to adopt rules of procedure will not preclude my amendment.

MR. DAVIDE: May I suggest that the proposal be taken later because it could be incorporated, probably, as a separate sentence.

MR. NOLLEDO: I would like to know what is the reaction of the committee to my amendment to the amendment?

THE PRESIDENT: We do not have the reaction yet of the committee to the Davide amendment. So, can we have that first?

FR. BERNAS: I think the committee is in favor of having a generalized statement of the power of the Human Rights Commission to issue rules and regulations necessary for its investigatory function.

MR. DAVIDE: Yes. Is this separate from the present Section 2(2)?

FR. BERNAS: It will be in lieu of, and will include the power to issue subpoena and subpoena duces tecum.

THE PRESIDENT: Will Commissioner Davide read his proposal again for the guidance of the committee.

MR. DAVIDE: Yes, Madam President. On line 1, substitute the words "Issue subpoena and subpoena duces

tecum" with the following: "ADOPT ITS OWN RULES OF PROCEDURES INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES."

On line 3, insert between the words "materials" and "and" the following: comma (,) RECORDS; then on line 4, delete the words "in accordance with"; delete the entire lines 5 and 6; so that the amended subsection will now simply read as follows: "ADOPT ITS OWN RULES OF PROCEDURE INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES to compel the attendance of any party to its proceedings or the production of materials, RECORDS and documents, with the power to cite for contempt for violations thereof."

FR. BERNAS: The language is a little awkward, Madam President.

MR. DAVIDE: "ADOPT ITS OWN RULES OF PROCEDURE WHICH SHALL INCLUDE RULES ON THE ISSUANCE OF COMPULSORY PROCESSES."

FR. BERNAS: But would that not be included already in the idea of empowering the commission to adopt its own rules.

MR. DAVIDE: Precisely.

FR. BERNAS: In other words, we are trying to shorten this as much as possible.

MR. DAVIDE: My proposal is just to substitute the original with "ADOPT ITS OWN RULES OF PROCEDURE."

MR. MONSOD: Is it all right with the proponent if we say, "ADOPT ITS OWN RULES OF PROCEDURE AND EVIDENCE"?

MR. DAVIDE: I do not think it is necessary because the idea is that this commission should not really be bound by the technical rules of evidence. It is investigative in character.

MR. MONSOD: We are amenable to just using the phrase "ADOPT ITS OWN RULES OF PROCEDURE."

MR. DAVIDE: Yes.

MR. NOLLEDO: In that case, I will be satisfied if the committee reiterates the statement of Commissioner Davide that in adopting the rules of procedure the commission will necessarily adopt rules on evidence; that the commission is not bound by the technical rules of evidence; and that the rules of evidence shall not be strictly followed in proceedings before it.

FR. BERNAS: The rules of evidence that will be followed are the looser rules applicable to administrative agencies.

MR. NOLLEDO: And, therefore, they are not strictly applied as technically understood in the presentation of evidence before judicial bodies.

FR. BERNAS: Yes.

MR. NOLLEDO: In that case, Madam President, I withdraw my amendment.

Thank you.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla seeks to be recognized.

MR. PADILLA: With the insertion of the phrase "ADOPT ITS OWN RULES OF PROCEDURE," and with the

elimination of the last phrase "in accordance with the Rules of Court promulgated by the Supreme Court," will this mean that the rules of procedure of this commission can depart from, or even violate, the Rules of Court?

MR. DAVIDE: Madam President, may I respond to it?

THE PRESIDENT: Please proceed.

MR. DAVIDE: Under the Article on the Judiciary, rules of procedure of all quasi-judicial bodies and administrative bodies will be subject to review by the Supreme Court. And, therefore, the rules of procedure to be adopted by the proposed Commission on Human Rights will be subject to review by the Supreme Court.

MR. PADILLA: Yes. That does not answer the question. Whether it can be reviewed by the Supreme Court is something separate. My question is: Will the elimination of the phrase "in accordance with the Rules of Court" mean that the rules of procedure to be adopted by this commission can deviate from, and even contradict or violate, the Rules of Court?

MR. DAVIDE: It will not follow because the Supreme Court will have the authority to review all rules of procedure and the Supreme Court will see to it that it would be within the framework of the Rules of Court.

MR. PADILLA: Why then eliminate the Rules of Court that have been promulgated by the Supreme Court?

MR. DAVIDE: My first answer, Madam President, will be that in all the provisions on constitutional commissions, or on the Ombudsman, for instance, we always allow these commissions to adopt their own rules of procedure, but subject to the review of the Supreme Court. Since this is practically an independent commission, even at a lower level than the regular constitutional commissions, we should adopt the same procedure in the matter of vesting it with certain authority and powers.

MR. PADILLA: So, the words "SUBJECT TO REVIEW" should be added.

THE PRESIDENT: Maybe, we could also add that the mention of the Rules of Court here was made in relation to the power to cite for contempt.

MR. DAVIDE: Yes.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I comment on this?

THE PRESIDENT: Please proceed.

MR. REGALADO: Yesterday, there was a question as to whether the proposed Commission on Human Rights would be, in effect, a quasi-judicial body, and the committee said that they envisioned a quasi-judicial body. Although later, on questioning by Commissioner Romulo, it seems that the position of the committee was that this is purely an administrative body, not a quasi-judicial body. I agree that it is not a quasi-judicial body because it has no adjudicatory functions subject to review by a higher tribunal. It is purely an administrative fact-finding body similar to the Agrava Board. It is not a "judicial body softened with a quasi" because it has no adjudicatory functions and there is no provision here for appellate review of its functions.

Commissioner Davide has called attention to the provisions of the Article on the Judiciary that these rules will, after all, be subject to review by the Supreme Court. I regret to differ with the Commissioner because under Section 7 of the Article on the Judiciary, the rules of procedure of special courts and quasi-judicial bodies are the ones to be reviewed by the Supreme Court, and this proposed commission is not a quasi-judicial body. While the

commission may, therefore, adopt its own rules, these must not differ substantially from the provisions of the Rules of Court. Of course, on the matter of the rules of evidence, it is obvious that the rules of evidence here will not strictly be applied because this is an administrative body. The Rules of Court provide that they will only have supplementary application to nonjudicial proceedings.

On this matter of the power to cite for contempt for violations thereof, wherein properly appended is the phrase "in accordance with the Rules of Court," I am in favor of retaining the phrase "in accordance with the Rules of Court" for this reason: there are two kinds of contempt proceedings that are followed in the Philippines — the judicial method which is under the Rules of Court, and that method under the legislative power to cite for contempt. And there is a whole of a difference between the two. These are not merely rules of procedure because the peculiarity of the rule on contempt is its being a procedural rule with a penal character. As a matter of fact, it is a special civil action in the nature of a criminal charge. In the case of contempt, pursuant to the provisions of the Rules of Court, there are specific penalties for direct contempt or in facie curiae and indirect contempt.

On the other hand, there is also another kind of contempt proceedings in the legislative, like Congress. Let us take the case, for instance, of *Arnault vs. Nazareno* where the power of Congress to punish for contempt and to hold Arnault indefinitely in detention until he would reveal what was desired in the investigation of the Tambobong Buenavista estates was pursuant to the inherent powers of Congress to punish for contempt, not in accordance with the Rules of Court on the power of the Judiciary to punish for contempt.

The peculiarity of the Commission on Human Rights is that, it is purely administrative, it is not quasi-judicial at all. If it were a quasi-judicial body, just like the fiscal's office, if the subpoenas are not followed and while the fiscal does not have the power to cite for contempt, he can apply to the proper regional trial court for the contemner to be ordered to appear before the fiscal. But, again, this is not a quasi-judicial body. This is similar to the Agrava Board which was purely fact-finding that is why it was necessary to empower it with the power to cite for contempt and to punish for contempt in accordance with the Rules of Court, in order to distinguish it from the legislative process of holding persons in contempt wherein the penalty is subject only to the discretion of Congress, unlike those in the Rules of Court where there are specific penalties for direct or indirect contempt.

For that reason and to avoid some confusion or doubts in the future, I am proposing an amendment to the amendment of Commissioner Davide, if he will consider it, that we maintain after the word "thereof" the phrase "in accordance with the Rules of Court IN THE PHILIPPINES" — the "Rules of Court in the Philippines" being the correct and complete official title of the rules — just so, this commission may not adopt rules of contempt similar to legislative bodies which is a little dangerous.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: In the light of the disquisitions made and it being now made to appear that the review by the Supreme Court of the rules will not be available because of the admission of the committee that this Human Rights Commission is not a quasi-judicial body, may I propose a compromise amendment which would read: "ADOPT ITS OWN RULES OF PROCEDURE SUBJECT TO REVIEW BY THE SUPREME COURT." This amendment will be equated with the rules of procedure of quasi-judicial bodies and special courts under the Article on the Judiciary.

FR. BERNAS: The understanding is that if there is a review by the Supreme Court, the purpose of the review is to see whether it is in accordance with the Rules of Court in the Philippines.

MR. DAVIDE: Yes.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: May I ask some questions of the proponent? If we do not place in the Constitution the phrase "adopt rules of procedure," is there anything that will prevent this Human Rights Commission from adopting its own rules of procedure even if the Constitution were silent on that?

MR. DAVIDE: Madam President, if the Constitution were silent on that, the commission might not have that power, and that is the reason why we made an enumeration of its powers and functions. The issuance of subpoenas duces tecum, as well as citing an individual for contempt for failure to appear in any of its proceedings, must be in accordance with the Rules of Court.

MR. DE LOS REYES: I think I have to disagree most respectfully. Whenever a commission is created, it carries with it the necessary power to make its own rules of procedure; and, therefore, it is my respectful submission, Madam President, that the amendment which will empower the commission to make its own rules of procedure is superfluous and unnecessary.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: It would seem to me that this is not just a question of empowering the commission to promulgate its own rules, but it is also a command to the commission to make sure that it promulgates its own rules because it is possible that the commission might not, and in fairness to the public under investigation, the public should know what the rules of the game are. So, it is more than just giving it the power, but rather giving it a command that it better issue rules. I would also tend to agree with Commissioner Regalado that if this is a purely administrative body, we would have to specify its power to cite for contempt, if it is going to have the power to cite for contempt because the power to cite for contempt is in connection with judicial and quasi-judicial powers.

MR. DAVIDE: Can we have the committee formulate the proposed combined amendment?

THE PRESIDENT: May we have the amendment read again?

FR. BERNAS: "ADOPT ITS OWN RULES OF PROCEDURES, CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT PROMULGATED BY . . ."

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

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, in connection with my statement yesterday to the committee, I propose to delete the phrase "PROMULGATED BY THE SUPREME COURT," and continue with the phrase: "IN THE PHILIPPINES" because that is the official title of the rules.

THE PRESIDENT: Is this accepted by the committee?

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

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

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

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, I have already given the intended amendment, and I have to ingraft it to the Davide amendment.

MR. RAMA: Madam President, I ask that Commissioner Rosario Braid be recognized on Section 2.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, I would like to propose an amendment to Section 2(4), lines 12 to 13.

MR. NOLLEDO: Madam President, with due respect to Commissioner Rosario Braid, I have an anterior amendment to Section 2(3).

THE PRESIDENT: Please proceed, Commissioner Nollado.

MR. NOLLEDO: Madam President, copies of this amendment have been distributed to the honorable Members of the Commission. After the word "measures" on line 7, page 2, I propose to add the following words so that Section 2(3) will now read as follows: "Provide appropriate legal measures WHICH MAY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS for the protection of human rights of all persons within the Philippines, provisions for legal aid services for indigent persons whose human rights have been violated or need protection." The words I propose to add are "WHICH MAY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS," and these are intended to strengthen the powers and jurisdiction of the Commission. These words are recommended to be included therein, taking into account the interpellations of Commissioner Natividad in yesterday's session. And if the commission would have no power to issue injunctive relief, say, against harassments which may also involve violations of human rights, and there would be no power to issue the writ of habeas corpus which is a judicial power, but which this Constitutional Commission has jurisdiction to give to the Commission on Human Rights then the commission would have no reason to exist.

I would like to cite an example, Madam President. Here comes a complainant. Her husband is detained and being tortured; she goes to the Human Rights Commission for relief. Do we mean to say that the commission is powerless to order that the person of the husband be produced before it, before investigation proceeds, especially if there are charges of torture? The members of the Human Rights Commission would like to see if there are really physical injuries inflicted upon the detained person.

I ask every Member of this Commission to think it over, because I was also a victim of humiliation inside the jail, together with Commissioners Calderon, Rama and Rodrigo. If the commission can investigate without having the power to issue a writ of habeas corpus or a writ of Amparo as contemplated by Commissioner Azcuna, then let us not create this Human Rights Commission anymore. It is really a paper tiger as stated by Commissioner Rodrigo. It can investigate but then it does not even know what is happening inside the jail of the military. A man is being tortured, and yet the commission is powerless to order the production of the body to see whether the charges have sufficient legal basis or not.

I ask the members of the committee to please consider seriously the inclusion of the power to issue injunctive relief and the writ of habeas corpus to make the creation of the commission more meaningful.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Without meaning to contradict Commissioner Nollado, when we give this commission the power

of injunctive relief, and not just any injunctive relief, and including the issuance of a writ of habeas corpus, are we not changing the nature of the commission, that is, are we making it a quasi-judicial body, as a matter of fact?

MR. NOLLEDO: Madam President, we can grant judicial powers to quasi-judicial bodies. An example is the National Labor Relations Commission, formerly ably headed by Commissioner Ople, which had the power to issue subpoena duces tecum, subpoena testificandum and to hold in contempt witnesses before it. These are judicial powers.

FR. BERNAS: They are correct, Madam President. I was just trying to clarify this in the light of what we just approved. So that if we accept the amendment of Commissioner Nollado our discussion with Commissioners Regalado and Davide would really have to be reversed because we have converted the Commission into a quasi-judicial body. And I am not saying that I am against converting this into a quasi-judicial body.

MR. NOLLEDO: Thank you.

FR. BERNAS: In fact, that is the effect.

MR. NOLLEDO: We are constituting, Madam President, a body that is an exception to the rule. As contemplated by the Davide amendment, it must be in accordance with the pertinent provisions of the Rules of Court because we are strengthening the powers of the Commission.

I recommend that we just drop the idea of creating an independent Commission on Human Rights if we do not give teeth to this body.

FR. BERNAS: Let us suppose that we accept this. Everything we said in Section 2(2) would really be unnecessary because now, we have a body that is quasi-judicial and, therefore, subject to all the rules of a quasi-judicial body as found in our Rules in the judiciary.

MR. NOLLEDO: I agree with that as a general statement. But we have to consider the functions of the commission in considering my amendment.

FR. BERNAS: Madam President, I am not disagreeing with the substance of the proposal of the Gentleman. I just trying to clarify concepts.

MR. NOLLEDO: Thank you.

FR. BERNAS: Personally, I would leave the issuance of the writ of habeas corpus to the courts because the very nature of the writ of habeas corpus is that it is an instantaneous remedy and the body itself can go to court and ask for the issuance of a writ of habeas corpus.

MR. NOLLEDO: In the meantime, the husband is already dead.

MR. SARMIENTO: May I share this information, Madam President. Lately, the Supreme Court has been liberal with respect to the issuance of a writ of habeas corpus on the basis of mere telegrams. So, does the Gentleman not think that this would be unnecessary since courts are now very liberal? This was a vote adopted just recently by the Supreme Court.

MR. NOLLEDO: I do not believe so, Madam President.

MR. SARMIENTO: And besides, courts are operative, they are really liberal.

MR. NOLLEDO: When Ninoy Aquino filed a petition for a writ of habeas corpus, it took the Supreme Court several years to decide on the petition. Even with respect to the presently constituted Supreme Court, I have my doubts because circumstances change. If this is an instantaneous remedy as stated by Commissioner Bernas, I

think the committee should adopt this amendment because the commission would really be useless if it cannot give instantaneous remedy as circumstances may demand.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: I think there is some kind of divergence of opinion in the committee because personally I would support the proposal of Commissioner Nollado to vest the proposed commission with the power to issue injunctive relief and also all other reliefs depending on the circumstances.

MR. NOLLEDO: I am happy that the chairman supports me. Why do we not compromise? As chairman of the Committee on Local Governments, when I hear an amendment, I would try to reason out and suggest amendments, too. For example, in order to meet the objections of Commissioner Bernas, we have to subject the order of the Human Rights Commission to judicial review. I will agree with subjecting to review the order of the commission by the Supreme Court.

THE PRESIDENT: May we hear Commissioner Aquino first before we enter into any compromise?

MS. AQUINO: Madam President, I would only like to express my support for the position of Commissioner Nollado, however, we might have to confront the problem of overhauling the very nature of the Human Rights Commission in the sense that, if we vest the commission with adjudicative functions, necessarily it will have to assume likewise the multifarious accoutrements which are needed for the enforceability of its powers to issue the writ of habeas corpus.

As an administrative agency, the commission cannot enforce its ruling against the military establishment, for example, unless we realign its powers and duties accordingly as an adjudicative body.

MR. NOLLEDO: And the Constitution, Madam President, can grant that power. Besides, there is a distinction between adjudicative power and the power to issue a writ of habeas corpus. The power to issue a writ of habeas corpus does not necessarily mean that the quasi-judicial body is making an adjudication or is making a decision. It is only preparatory to further consideration of the case. When a man is being tortured and there is no power on the part of the commission to issue a writ of habeas corpus to order the production of his body in order to see whether tortures are being done, then please let us not create this Commission on Human Rights.

MS. AQUINO: Madam President, I already agreed with Commissioner Nollado, however, I cannot agree to his position that the issuance of the writ of habeas corpus as a remedy is not an adjudicative power; it is. Before the remedy is granted by the court, there is a level of appreciation of evidence needed to vest precisely in the person seeking relief the right to be delivered to court and for an inquiry into the legality of his detention.

MR. NOLLEDO: The appreciation of evidence is not done in the technical sense because affidavits are attached to the petition and then as long as the allegations show a prima facie case on the part of the complainant, the court or the administrative body must be able to grant immediate relief.

MS. AQUINO: I am not so much concerned with that as I am concerned with the power of the court to enforce the writ. I mean, as it is already constituted the way we have agreed in the initial sections, the commission would not have that power.

SUSPENSION OF SESSION

MR. SARMIENTO: Madam President, may we ask for a suspension.

THE PRESIDENT: The session is suspended.

It was 3:43 p.m.

RESUMPTION OF SESSION

At 3:57 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

REV. RIGOS: Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

REV. RIGOS: We ask that Commissioner Nollado be recognized.

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Madam President, after exhaustive and deep consultation with the chairman and members of the committee, my amendment on line 7, page 2, will now read as follows: "Provide appropriate legal measures WHICH MAY INCLUDE PREVENTIVE RELIEF." It is understood that the words "PREVENTIVE RELIEF" should cover an order from the commission to conserve the body of the detainee and to prevent the authorities from hiding it, or from torturing or transferring the body until further orders of the court, without prejudice to the right of the aggrieved party to petition for the issuance of a writ of habeas corpus with the Supreme Court or appropriate court.

FR. BERNAS: It is not only the party who can ask for a writ but the commission itself can ask for it.

MR. NOLLEDO: Yes. And this provision is aligned with the provisions on preventive measures contemplated in Article 24 of the Revised Penal Code.

I would like to mention Commissioners Colayco, Aquino, Regalado, Natividad and Azcuna as co-authors.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I propose an amendment in the nature of placement of the amendment? The amendment should be placed on line 9 after the word "including," so that the phrase will read: "including PREVENTIVE MEASURES AND provisions for legal aid services."

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

MR. SARMIENTO: How will the amendment read, Commissioner Davide?

MR. DAVIDE: The amendment will now read: "including PREVENTIVE MEASURES AND provisions for legal aid services for indigent persons."

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Just for clarification and also for the record. Does this power include the power to order visitation

by counsel and relative?

MR. NOLLEDO: Certainly.

MS. AQUINO: Does this power include the power to order medical treatment for the detainee?

MR. NOLLEDO: Yes.

MS. AQUINO: But does this exclude the power to release or to inquire into the legality of the detention which essentially pertains to the writ of habeas corpus?

MR. NOLLEDO: Yes. It will be the Supreme Court that will decide those cases.

MR. FOZ: Madam President, in that connection, I do not see any legal bar for the Human Rights Commission to inquire into the legality of detention.

MR. NOLLEDO: Without finally deciding on it.

MR. FOZ: Yes.

MR. NOLLEDO: I see.

MR. FOZ: But the commission can really inquire as to when it can investigate and then it inquires into all the aspects of the detention.

MR. NOLLEDO: I agree. That will be part of its investigative power, and will form also part of its recommendation to the appropriate court or body or officer.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: I heard the phrase "PREVENTIVE MEASURES" and reference was made to Article 24 of the Revised Penal Code. These are preventive measures that are not considered penalties. They have no reference whatever.

MR. NOLLEDO: I used the word "alignment" upon suggestion of Commissioner Regalado. I did not say that I am applying the provisions of that article. They are only similar to each other, Madam President.

MR. PADILLA: And we should not forget, Madam President, that a person who has been arrested or detained but is not judicially charged must be released within five working days.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: During the interpellations, I brought up the matter of this power to enjoin because I believe in the statement of my coproponent that this is necessary to implement the program of protection of human rights. Suppose there is a claim that the complainant is being harassed. Will this amendment we are proposing cover this situation where the commission, with the help of the local police, enjoin the parties from continuing the harassment of the complainant?

MR. NOLLEDO: Not being an adjudicative function, I say yes.

MR. NATIVIDAD: Thank you.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Just one clarification. Will this power have to arise necessarily from an adversarial procedure?

MR. NOLLEDO: No.

MS. AQUINO: In which case, they will have to be bound by the rigid requirements of substantive and procedural due process which, I submit, should not saddle the function and the power of this commission.

MR. NOLLEDO: Not necessarily, Madam President. I would like to know the reaction of the committee.

MR. FOZ: The committee accepts the amendment, Madam President.

MR. SARMIENTO: Madam President, we accept the amendment including the answers of Commissioner Nolleddo.

THE PRESIDENT: Does Commissioner Sarmiento mean that Commissioner Nolleddo's answers will be included in the amendment?

MR. SARMIENTO: Madam President, as part of our record, to clarify.

May we ask the proponent to read the amendment?

THE PRESIDENT: Commissioner Nolleddo is recognized.

MR. NOLLEDO: "Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, including provisions for PREVENTIVE RELIEF AS WELL AS for legal aid services for indigent persons, et cetera."

MR. DAVIDE: Madam President.

MR. NOLLEDO: May I ask Commissioner Davide, who amended my amendment, to please read my amendment as amended by him?

MR. DAVIDE: On line 9, after the word "including," insert the phrase "PREVENTIVE MEASURES AND" so that the entire line will read: "including PREVENTIVE MEASURES AND provisions for legal aid services for indigent."

MR. NOLLEDO: Thank you, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

REV. RIGOS: Madam President, we are now ready to vote on paragraph (3) as amended.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: There are still amendments on page 2, paragraph (3), which we would like to introduce.

THE PRESIDENT: Commissioner Davide will please proceed.

MR. DAVIDE: On line 9, before "including," insert the following: "AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD." This was taken up yesterday especially in the light of the interpellation by Commissioner Rama. So this will then be jointly sponsored by both of us.

MR. SARMIENTO: It is accepted, Madam President.

THE PRESIDENT: The amendment has been accepted.

Is there any objection to this proposed amendment?

Commissioner Colayco is recognized.

MR. COLAYCO: Clarificatory question, Madam President. How do we expect the commission to give protection to people outside our country?

MR. DAVIDE: The commission may avail of our diplomatic and consular offices to give immediate assistance to groups of Filipinos who are victims of violations of human rights and apply for the necessary remedy with the proper forum in said areas.

MR. COLAYCO: I am not too enthusiastic about that particular section.

MR. DAVIDE: There are many Filipinos, especially in the Middle East, who are victims of violations of human rights, but we are not providing any assistance. So perhaps the commission can expand its services even to Filipinos residing abroad.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Madam President, I would like to support this proposal very much because we have reports of many Filipino maids and dancers and other Filipinos working abroad who need legal assistance. They have no place to go, and when they go to our embassy, they are not given assistance and they come back home, some mentally ill.

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Why do we not just simplify line 8 to read: "human rights of ALL FILIPINO CITIZENS"?

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: When it comes to persons within the Philippines, we should not distinguish between Filipinos and non-Filipinos, but when it comes to persons abroad, the mantle of protection must be only to Filipino citizens, and that is the reason why we have to adopt a separate concept — to those in the Philippines, all the people, outside the Philippines, only the Filipinos.

THE PRESIDENT: Is there any objection to the proposed amendment of Commissioner Davide which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On the same paragraph, lines 9 and 10, Madam President, I would like to change the words "for indigent persons" to the phrase "TO THE UNDERPRIVILEGED." Again, I would like to say if special attention must be given, it should not just be to the indigent persons, but even to those who may be able to afford the necessary assistance of private lawyers. They must be given the same protection since this is for all the people of the Philippines.

MR. FOZ: No, Madam President.

MR. DAVIDE: So the indigent poor under the proposal will be the only ones benefitted by the legal aid. Madam President, in the Social Justice Article, we used the word "underprivileged," so I insist on my amendment to have

some symmetry in the broader concept of the Article on Social Justice.

MR. FOZ: I am not exactly opposing the Commissioner's amendment, but I just would like to state that this provision really speaks of free legal aid to the indigents.

MR. DAVIDE: Yes, free legal aid, because there are many underprivileged who cannot afford to pay for legal aid services.

MR. FOZ: But if the Commissioner would change "indigent persons" to "UNDERPRIVILEGED" it would cover a lot more ground.

MR. DAVIDE: Yes, that is the intention. After all, we have the CLAO to take care of it.

MR. FOZ: The committee accepts the amendment.

THE PRESIDENT: The committee has accepted the amendment. Is there any objection?

MR. NOLLEDO: Madam President, I object to the amendment.

THE PRESIDENT: Commissioner Nolleto is recognized.

MR. NOLLEDO: Madam President, as I understand it, "underprivileged" is broader than "indigent." There are many underprivileged squatters who are engaged in profitable business and they can afford to pay the legal fees. So I think the committee should stick to the word "indigent" as used in the Laurel laws. When we say "indigent," it is almost equivalent to paupers. They have no source of livelihood, or what they earn from their sources of income will just be sufficient to keep their body and soul together. I repeat, "underprivileged" is so broad so that the use of it would give advantage to those who can easily afford to pay the legal fees.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, line 9 does not say "free legal aid services."

MR. NOLLEDO: That was the understanding when the chairman was asked whether or not it is free legal aid services. The chairman answered in the affirmative. The word "underprivileged," Madam President, is really broad. One may be underprivileged in the sense of political rights; underprivileged in the sense of civil rights; or underprivileged in the sense of social rights, et cetera. So, I believe that the word "indigent" is appropriate in the provision. I refer to pauper litigants in the Rules of Court. When we talk of "underprivileged persons," they may be underprivileged in many respects. So the word "indigent" should prevail. We submit it to the floor for a vote.

MR. FOZ: Actually, without having a provision like this, I think the proposed Commission on Human Rights may provide free legal aid services to the poor. I think this provision would really emphasize that the commission shall be available for legal aid for those whose rights are being violated. So this applies, more or less, to victims of human rights violations.

MR. NOLLEDO: Regardless of financial capacity. What does Commissioner Bernas say? If he is agreeable to the word "underprivileged," I will withdraw my objection.

FR. BERNAS: Legal aid is rather broad, Madam President. It does not have to be free. In the case of those who can afford, it could involve referrals to private practitioners.

MR. NOLLEDO: So it may be free or not.

FR. BERNAS: It will be free or not. I guess the understanding is that when the commission itself gives legal aid,

it will be free. But in the case of people who can afford, the commission is also free to give their service by referrals.

MR. NOLLEDO: In that case, Madam President, I withdraw my objection.

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

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Just a minor clarification which may lead to some amendments. Does the use of the words "legal measures" on line 7, page 2, mean that this commission will recommend to Congress, for example, the passage of certain laws? Or are we referring to legal measures to be adopted by the commission itself?

MR. SARMIENTO: I think legal measures would include legal assistance and procedures and safeguards to ensure that the government would respect human rights which the commission would recommend to Congress.

MR. MAAMBONG: That includes the proposal of measures to be passed by Congress.

MR. SARMIENTO: Yes, Madam President.

MR. MAAMBONG: Regarding the words "legal aid services," does it mean that there would be some sort of assistance other than by the present Citizen's Legal Assistance Office (CLAO) under the Ministry of Justice? Is this another form of assistance other than that given by the Ministry of Justice?

MR. SARMIENTO: Yes, Madam President.

MR. MAAMBONG: And that has nothing to do with the legal assistance services given by private organizations, like CLAO, FLAG or MABINI.

MR. SARMIENTO: Madam President, these legal aid services would cover "providing legal assistance." And this commission would possibly seek the services of these human rights organizations for effective legal aid services.

MR. MAAMBONG: Could we properly say that this is in addition to the agencies now existing under the Ministry of Justice and in coordination with private legal assistance offices?

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

THE PRESIDENT: In addition, the Integrated Bar of the Philippines has been giving its own legal aid.

MR. MAAMBONG: Thank you, Madam President. I have no amendment.

REV. RIGOS: I ask that Commissioner Natividad be recognized for an anterior amendment on page 2, paragraph (2).

THE PRESIDENT: The same section — Section 2.

Commissioner Natividad is recognized.

MR. NATIVIDAD: I would like to propose a separate paragraph (3) after paragraph (2) which reads: "EXERCISE VISITORIAL POWERS OVER ANY JAIL, PRISON OR DETENTION FACILITY." I would like to explain with the indulgence of the committee.

THE PRESIDENT: Commissioner Natividad may proceed.

MR. NATIVIDAD: I feel that motu proprio, or upon the complaint of a citizen or a person, the commission

should have the power to visit these jails, prisons and any detention facility because I think most human rights violations happen in these facilities. It will be a ray of hope to those who are detained in these facilities, if they know that at any moment this commission may be coming for a visit and will witness the condition under which they are being detained. So even without a complaint, I would like to see that this commission can *motu proprio* visit these detention facilities and determine for itself if there is any violation of human rights being committed.

MR. SARMIENTO: The amendment which is a new paragraph is accepted, Madam President.

THE PRESIDENT: Will Commissioner Natividad please restate the whole amendment so that we can put it to a vote?

MR. NATIVIDAD: The new paragraph (3) reads: "EXERCISE VISITORIAL POWERS OVER ANY JAIL, PRISON OR DETENTION FACILITY."

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: May I ask a few questions of the proponent?

MR. NATIVIDAD: Gladly, Madam President.

MR. DE CASTRO: Suppose with the visitorial powers of the commission it found that the prisoners are living in substandard or subhuman conditions, what will the commission do?

MR. NATIVIDAD: The commission will be guided by its own rules, which will determine whether or not any situation constitutes a violation of human rights. And if the situation constitutes a violation of human rights, then the commission has to follow its own rules and regulations.

MR. DE CASTRO: I mean, suppose the commission found out that the jail facilities are in subhuman conditions, what will it do? I am not referring to the rules; the thing is what it will do.

MR. SARMIENTO: Madam President, I think that will be covered by the new paragraph (4) which provides for legal measures for the protection of human rights.

MR. DE CASTRO: Will the commission investigate the police officer, which handles the jail facilities, if they found out that the facilities are in subhuman conditions?

MR. SARMIENTO: Yes, Madam President.

MR. DE CASTRO: Suppose the police officer said, "We have no fund; you give us money so we can provide them the human conditions."

MR. NATIVIDAD: That is their defense, and that would be taken into consideration.

MR. DE CASTRO: It is not a defense, it is a reality.

MR. NATIVIDAD: Yes, that is why it is a complete defense for lack of funds. But I think the commission will be more interested in whether people in jail are being tortured; whether there is a complainant; whether they are being kept in a solitary cell over an extended period of time. And to my own perception, these are the instances where they should be interested in. A surprise visit, for example, will help the commission find out that there are many people in solitary cells. We have reports that people who are kept in solitary cells over a long period of time, say months or years, lose their power to speak.

Madam President, these are the practices which I perceive will be unearthed if this commission has the visitorial

powers over these detention facilities.

MR. DE CASTRO: Madam President, I do not question those who are in solitary confinement and so on. What I ask about is the subhuman conditions of the jail facilities. The Commissioner had been in the police service for some time. He had investigated and inspected all these jail facilities and had made urgent reports for their reform, construction or improvement. But until now, nothing has happened. So what are our reports for?

MR. NATIVIDAD: Yes, I agree with the Commissioner. We are always reporting these to higher authorities, but in this new Constitution, I remember in our discussion with Father Bernas that we had these provisions approved that in these instances where the conditions in jails are subhuman, these may constitute unusual and inhuman punishment, subject to abatement by the State. And the remedy is wide open now. We are, therefore, for educational measures or for representations to Congress to give more appropriations for the detention facilities, Madam President.

MR. DE CASTRO: Madam President, if this commission will go to all the jails in Metro Manila, it will find out that these are all in subhuman conditions. The prisoners are sleeping on the cement floor without mat, without anything, and yet the jail authorities, and even the city authorities, could not do anything because they do not have the funds.

Thank you.

THE PRESIDENT: We now proceed to vote on the amendment that has been accepted by the committee, which reads: "EXERCISE VISITORIAL POWERS OVER JAIL, PRISON OR DETENTION FACILITY."

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

REV. RIGOS: Madam President, we ask that Commissioner Rama be recognized.

THE PRESIDENT: Commissioner Rama is recognized.

MR. RAMA: My amendment was already stated by Commissioner Davide.

REV. RIGOS: Madam President, we ask that Commissioner Rosario Braid be recognized.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, may I join Commissioner Davide in this amendment on overseas labor. I have this as one of my amendments, and the other one will be an amendment to line 12, paragraph (4) which now becomes paragraph (5). After the sentence "Establish a continuing program of education and information to propagate the primacy of human rights," add the following: "UNDERTAKE RESEARCH ON PEACE, DEMILITARIZATION, NONVIOLENT STRATEGIES, AND RELATED PROBLEM AREAS." May I give the reason for this amendment?

THE PRESIDENT: The Commissioner will please proceed.

MS. ROSARIO BRAID: Madam President, the present functions focus on investigative and recommendatory powers given to the commission which would include situationers and statistics on human rights violations, which is a short-term strategy. The policy research aspect here would include the medium-to long-term program which will undertake research on means to attaining national and international peace, studying ways of working towards the goal of respect for all the rights of people without distinction to race, sex, language, religion or philosophical conviction, attending to factors which lead to violence, ethnic, racial or religious discrimination including colonialism and neocolonialism; and expanding programs on rehabilitation of torture victims. This would, therefore, expand the tools of legal measures now employed to research and would lead to more continuing

education and more use of media in achieving the ends of the commission.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: The committee accepts the spirit of the amendment but would like to simplify matters by inserting between "of" and "education" on line 12, the word RESEARCH, so lines 12 to 13 would read: "Establish a continuing program of RESEARCH education and information to propagate the primacy of human rights." This is with the understanding that the research, education and information program covers the whole gamut of the things Commissioner Rosario Braid has enumerated.

THE PRESIDENT: Does Commissioner Rosario Braid accept the amendment?

MS. ROSARIO BRAID: I accept the amendment as long as I have it on record.

I have another amendment, Madam President.

THE PRESIDENT: Let us have the amendment approved first.

Is there any objection to the proposed amendment of Commissioner Rosario Braid which has been accepted by the committee? (Silence) The Chair hears none; the amendment, as amended, is approved.

MS. ROSARIO BRAID: May I read my other amendment: "THE CONGRESS MAY EXPAND THE SCOPE OF THE COMMISSION TO INCLUDE CONCERNS STATED IN THE BILL OF RIGHTS AND OTHER SOCIAL, ECONOMIC AND CULTURAL RIGHTS, SHALL IDENTIFY CAUSES AND CONSEQUENCES OF VIOLATIONS OF THESE RIGHTS AND ESTABLISH APPROPRIATE MECHANISMS AND PROGRAMS THAT SHALL PROMOTE THESE RIGHTS."

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: I think we would again accept the spirit of the amendment with the understanding that all those are covered by the present paragraph (5), which is now paragraph (6): "Perform such other duties and functions as may be fixed by law."

MS. ROSARIO BRAID: I accept, Madam President, as long as it is read into the record for the purpose of future legislation.

Thank you, Madam President.

MR. OPLE: Madam President, I thought I would like to support the main idea behind some of the previous remarks of Commissioner Rosario Braid with respect to the international treaty obligations of the Philippines in the field of human rights. Commissioner Garcia had earlier referred several times to our international treaty obligations under various United Nations covenants, the latest of which are the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, and, of course, right now the Philippine government is a respondent in various forums on human rights within the United Nations system.

Will the committee, in the spirit of the remarks earlier made by Commissioner Rosario Braid, therefore, consider just one more function for the Human Rights Commission? I propose that before paragraph (5), on line 14, we insert the following: "MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS," which means that the Human Rights Commission then becomes the focal point for the efforts of the Philippine government in seeing to it that

Congress enacts the proper laws by way of implementing our treaty obligations, and in the exercise of this function it may actually call upon other agencies of the government, especially the diplomatic service, to render support to the commission.

THE PRESIDENT: Will Commissioner Ople please restate his proposed amendment?

MR. OPLE: The amendment, which would now become Section 5, reads: "MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS." This is a monitoring function, but based on experience, we know how difficult it is to respond to these international obligations. Very often, the Ministry of Foreign Affairs relies mainly on the Ministry of National Defense to assemble the information that we submit to the various international fora.

MR. GARCIA: The amendment can be accepted by the committee as long as it is understood that it is an independent monitoring of the compliance of the Philippine government to international standards which, in fact, if I understand it correctly, is being done right now by independent private organizations, like the Task Force Detainees and other such organizations.

MR. OPLE: Yes. What I am saying is that this is a more congenial focal point for the Philippine government especially for private organizations that do collaborate in putting together the information that we submit to international fora including the human rights commissions in Geneva and other bodies in specialized agencies, such as the Committee of Application of Standards in the International Labor Organization, which is also in Geneva so that this monitoring function is part of the independent mandate of the Commission on Human Rights.

MR. GARCIA: Yes, I accept. I think that would be acceptable and also its credibility, of course, in international circles would depend very much on its independence and effectivity.

MR. OPLE: Yes. It also happens based on our experience that many queries from abroad concerning human rights in the Philippines are generally referred to the Ministry of National Defense, which takes a long time before it acknowledges these queries. So if we build this independent monitoring function into the Human Rights Commission, I think the mutual flow of information will be much better.

MR. GARCIA: Yes, I think so, Madam President.

THE PRESIDENT: What does the committee say?

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

MR. OPLE: Thank you.

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

MR. OPLE: Commissioner Rosario Braid and I are the sponsors of this amendment, Madam President.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: Madam President, I just want to make an observation.

If I understand it correctly, when Commissioner Sarmiento was explaining the spirit and the origin of this proposed commission, it was supposed to be a modest commission which should give immediate relief and action on cases of human rights violations especially for the "indigent" which was changed to "underprivileged." But now we are becoming immodest. We have research, we have cultural rights, and now we have to take care of international treaties on human rights. I am just afraid that the commission will have no time to take care of the

individual violations of human rights.

MR. OPLE: I appreciate the point made by Commissioner Tan, which is a very good precaution about the Human Rights Commission getting overextended right from the start. But I think the research function already built into the commission is very compatible with this monitoring function, and I think this really means that three or four people combined into a modest section can take care of this monitoring function with highly disproportionate benefits to the country, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: If I may add to what Commissioner Ople said, these functions could be linked or related to existing research institutions. A small unit within the commission can identify the problem areas and can link these areas as concerns of existing research institutions, like the UP. So it really will not mean considerable overhead costs. They will monitor and identify the problem areas and suggest them for research by other more established research bodies.

Thank you.

MS. AQUINO: Madam President, just one comment.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: After all the amendments have been approved and with the very liberal posture of the committee in terms of the spiritual endowments of the article, do we still want to be confined to the definition of this commission as an administrative body? Surely, we must provide some kind of a conceptual cohesion between the powers and the nature of the commission.

MR. SARMIENTO: I think Commissioner Aquino is now asking us about the nature of the Commission on Human Rights because previously we said it was purely an administrative body. But because of its new functions, it has acquired a new feature, a new character, so it is now a quasi-judicial body.

MS. AQUINO: So this would necessarily require a readjustment in the functions and the concepts of the commission.

MR. SARMIENTO: Madam President, considering the adjustments we made, the new powers we added, the commission will no longer be a purely administrative body; it will be a quasi-judicial body.

MS. AQUINO: Thank you, Madam President.

MR. OPLE: Madam President, a quasi-judicial body still belongs to the genus of administrative bodies.

Thank you.

THE PRESIDENT: We are now ready to vote on this Ople amendment which has been accepted by the committee.

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

REV. RIGOS: Madam President, we ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President. The first amendment is on the original Section 2 (5), line 13, which

is to substitute the word "propagate" with "ENHANCE."

THE PRESIDENT: What does the committee say?

MR. SARMIENTO: It is accepted, Madam President.

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

MR. DAVIDE: Still on Section 2, but before paragraph (5), I propose to insert the following: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. NOLLEDO: Anterior amendment, Madam President. I think that should be the last section as recommended by Commissioner Monsod, if the Commissioner would note a while ago.

MR. DAVIDE: No, this is not the last section; this is entirely different. The proposal of Commissioner Monsod was the possibility of extending the authority of the commission to include practically all kinds of violations of human rights, not just civil and political rights. But this is among the functions: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

FR. BERNAS: Could we have the amendment again? I think we have that in the Bill of Rights.

MR. DAVIDE: There is, but the one in the Article on Bill of Rights is for victims of tortures and similar practices. This one now is broader.

FR. BERNAS: Could we have the amendment again.

MR. DAVIDE: It reads: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. SARMIENTO: It is accepted, Madam President.

THE PRESIDENT: Is there any objection?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I thought, in my interpellation on the original Section 2 (3), the answer of Commissioner Sarmiento was that the words "provide appropriate legal measures" cover recommendations to Congress of such laws which may be promulgated. Why are we providing this now, if it is already covered by paragraph (3)?

MR. SARMIENTO: I recall, in answer to Commissioner Maambong's question yesterday, that I said legal measures would cover indemnification of victims of human rights violations. So, possibly, we can have a reformulation of these paragraphs to accommodate the amendment of Commissioner Davide for more clarity.

FR. BERNAS: Would the Commissioner have any problem with this amendment? It makes clearer the functional recommendation.

MR. MAAMBONG: I would not have, if it makes clearer the functional recommendation. I was thinking that probably the committee, as suggested by Commissioner Sarmiento, could accommodate the amendment of Commissioner Davide right in the original paragraph (3), which is now paragraph (4), so that we do not have to put in a new paragraph. If it cannot be done, then I have no objection to this amendment.

FR. BERNAS: The paragraph, perhaps, will get very long. I just have one question of Commissioner Davide regarding compensation.

MR. DAVIDE: It reads "FOR COMPENSATION TO VICTIMS," which means that the commission will recommend to Congress measures to compensate the victims.

FR. BERNAS: But it will not fix the compensation.

MR. DAVIDE: No, it will only recommend. So the authority of the commission would necessarily include some remedial measures by way of recommendation for necessary legislation to compensate victims of human rights violations.

MR. NATIVIDAD: Madam President.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Will Commissioner Davide yield to one question?

MR. DAVIDE: Gladly, Madam President.

MR. NATIVIDAD: I have the impression that in the Article on Bill of Rights we have already provided for a mandate to Congress to provide for a victim compensation plan or system to victims of violations of human rights.

MR. DAVIDE: No, Madam President. The provision on the Article on Bill of Rights is limited to victims of tortures and other similar practices.

MR. NATIVIDAD: But these are violations of human rights, Madam President.

MR. DAVIDE: Yes, these are human rights violations, but the proposal is broader. The tortures there may be accomplished while a person is under detention.

MR. NATIVIDAD: I ask this question, Madam President, because I intend to propose an amendment to Commissioner Davide's proposal so that it would read: "THE COMMISSION SHALL ADMINISTER THE GOVERNMENT'S VICTIM COMPENSATION SYSTEM," rather than for the commission to just recommend now a law with regard to the compensation of victims of human rights violations. I propose that the commission be the one to administer the payment of victim compensation, because I already presuppose in my mind that a direction for Congress to provide for such a law is already in the Article on Bill of Rights. And, therefore, in this article it is much better to make one step farther by providing that the commission should be the one to administer the victim compensation system to strengthen its function as the human rights enforcer of our country. But if it is the pleasure of the commission that we now recommend a new victim compensation system, I will not insist on this amendment. I thought that we are ready.

Madam President, the better step would be to provide that any victim compensation system shall be administered by the commission so that it will reinforce its functions. It will deal directly with the victims of human rights violations and pay them in accordance with the availability of funds and with the rules that it might promulgate.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Since it is Congress which will provide for the compensation, together with the system of compensation, I think we would rather leave it to Congress to decide how this victim compensation system is to be administered. At any rate, if Congress decides that it should be administered by this commission, it can be

given to this commission. And Congress may think of some other more effective ways.

MR. NATIVIDAD: My interest here is that presently, the Ministry of National Defense and the Philippine Constabulary pay the compensation for victims of human rights violations. There is this provision in the appropriations law, so I am worried by the fact that even with this provision in the article, if we do not make a clear message or signal to the incoming Congress, it might give this function to the Ministry of National Defense. And I do not see this schematic relationship. It should be to this commission because I do not want to leave the gap open, whereby we amass the responsibilities to deal with the problem of human rights violations and then in the final act of helping them materially and financially, Congress might opt to give it to the Ministry of National Defense. So if the committee agrees, we should state clearly that this functional area should belong to the functions and responsibilities that we reserve for the Commission on Human Rights.

MR. DAVIDE: Madam President, may I say that the recommendation itself for such compensation may provide that the compensation to be appropriated by Congress shall be handled by the commission itself. I think that would be the most logical step for any such recommendation to be made by the commission.

MR. NATIVIDAD: How would Commissioner Davide word it now, Madam President?

MR. DAVIDE: It is built into the proposed power: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS." So the very recommendation may already contain how these funds are to be kept and who shall distribute the funds to the victims of human rights violations.

MR. NATIVIDAD: It does not say so in that statement, Madam President.

MR. DAVIDE: That is why in the recommendation itself the commission may, otherwise we will also be broadening the power of the commission, include the function of a treasurer. I think it would be best that we leave or we grant greater flexibility to Congress as to how the compensation which may be legislated shall be distributed or allotted. I am sure that the recommendation itself will contain, for instance, who are the beneficiaries, taking into account already the discovery of violations of human rights — the victims of violations of human rights. So the report, in the nature of a recommendation, will even enumerate how much funds should be allotted and to whom these funds shall be given.

FR. BERNAS: It seems to me, Madam President, that it is an administrative detail which we need not put in here and which can be provided for by the law itself providing for compensation.

MR. NATIVIDAD: I submit. I just wanted to make clear that it is best that the commission handle this function.

FR. BERNAS: Madam President, before Commissioner Davide returns to his seat, may I be allowed to go back to his amendment on page 2, line 13, which states "information to enhance the primacy of human rights." I propose to add after "enhance," "RESPECT FOR."

MR. DAVIDE: It is accepted, Madam President.

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

MR. JAMIR: Madam President.

THE PRESIDENT: Commissioner Jamir is recognized.

MR. JAMIR: May I propose an amendment to the last amendment of Commissioner Davide.

MR. DAVIDE: That would not be the last; that would be the latest.

MR. JAMIR: I mean, the current one. I propose to substitute the last three words "OF HUMAN RIGHTS" with the word "THEREOF," because there are two "HUMAN RIGHTS" already: "TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, AND THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. DAVIDE: No, Madam President, because "THEREOF" would refer to just "HUMAN RIGHTS," not to compensation to victims of violations of human rights. These are compensations to victims of violations of human rights. If we delete that phrase and substitute it with "THEREOF," it would have no sense because the first is promotion of human rights, and the latter is compensation to victims of violations of human rights.

MR. JAMIR: But what is being violated is human rights, so they are being compensated for that.

MR. DAVIDE: The compensation would be given to the victims or the families.

MR. JAMIR: Yes, but they will be compensated by reason of the violation.

MR. DAVIDE: Yes, by reason of the violation. That is why we have to stick to "VIOLATIONS OF HUMAN RIGHTS" because at the start of the proposed paragraph we do not mention "of violations of human rights." So we cannot substitute "THEREOF" with "OF HUMAN RIGHTS."

MR. JAMIR: I am just suggesting that as an amendment. If the Commissioner does not accept, I will not press for it.

MR. DAVIDE: Thank you.

THE PRESIDENT: May we have a vote now?

Commissioner Monsod is recognized.

MR. MONSOD: May I just ask a question. Would the coverage of the human rights violations include violations by private parties?

MR. DAVIDE: All kinds of violations pursuant to paragraph (1) of this section.

MR. MONSOD: Yes. So here we are saying that regardless of who perpetrated it, the victims would be entitled to a compensation under the Commissioner's amendments.

MR. DAVIDE: That would be subject to the recommendation of the Human Rights Commission. I think the Human Rights Commission will have to determine also the priority of what kind of violation should be subject to a recommendation of adequate compensation by Congress.

FR. BERNAS: In other words, the compensation need not come from the government?

MR. DAVIDE: That is correct, Madam President.

FR. BERNAS: But the law can require the guilty party to pay the compensation.

MR. DAVIDE: Yes.

MR. MONSOD: So this is not corresponding strictly to the section in the Article on Bill of Rights.

FR. BERNAS: The provision on the Article on Bill of Rights contemplates offenses committed by public officers.

MR. MONSOD: That is right. I just wanted to clarify that there is no correspondence between the two provisions.

FR. BERNAS: But even in the Article on Bill of Rights, if a government compensates for offenses of public officers, then the government can also collect from the public officers themselves.

MR. MONSOD: Yes. Thank you, Madam President.

THE PRESIDENT: Will Commissioner Davide restate his amendment so that we can put it to a vote?

MR. DAVIDE: Immediately preceding the original paragraph (5), between lines 13 and 14, insert: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS," and a semicolon (;).

THE PRESIDENT: This has been accepted by the committee.

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

MR. DAVIDE: And the next, Madam President, would be another paragraph to follow the amendment just approved. It reads: "APPOINT ITS OFFICIALS AND EMPLOYEES IN ACCORDANCE WITH LAW," and a semicolon (;).

MR. SARMIENTO: It is accepted, Madam President.

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

REV. RIGOS: There are other amendments, Madam President, so we ask that Commissioner Gascon be recognized.

THE PRESIDENT: Commissioner Gascon is recognized.

MR. GASCON: I have some proposed additional paragraph to the powers of the Human Rights Commission. The first is to read: "TO 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."

MR. SARMIENTO: One question, Madam President. That power is one of the powers of the existing Presidential Committee on Human Rights, am I correct?

MR. GASCON: Yes, Madam President. In fact, it is a verbatim statement from the existing executive order creating the Presidential Committee on Human Rights.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I request that the consideration of the Commissioner's amendment be deferred because I have a proposal to the effect that until Congress shall provide otherwise, the Presidential Committee on Human Rights shall continue to exercise its functions in addition to the rights conferred in this new provision.

FR. BERNAS: I think, Madam President, the purpose of this amendment is to enshrine the power in the Constitution.

MR. DAVIDE: To institutionalize this power?

FR. BERNAS: That is right, so that even if the existing executive order is repealed, the power will continue.

MR. DAVIDE: There will be no conflict.

MR. GASCON: May I know what is the position of the committee.

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

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioner Gascon which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. GASCON: Another proposed power which is also included at present in Executive Order No. 8, creating the Presidential Committee on Human Rights, is: "TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNIT."

MR. SARMIENTO: It is accepted, Madam President.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I introduce an amendment to add after "ASSISTANCE" the following: "IN THE EXERCISE OF ITS FUNCTIONS."

MR. SARMIENTO: It is accepted, Madam President.

THE PRESIDENT: The amendment has been accepted.

Is there any objection to this proposed amendment by Commissioner Gascon as amended by Commissioner Davide? (Silence) The Chair hears none; the amendment, as amended, is approved.

Commissioner Rodrigo is recognized.

MR. RODRIGO: The President of the Philippines has control over all ministries, bureaus and offices. We are creating a commission which is an island in itself, separate from the President. This is an exception from that. And now we are derogating from this power of control of the President over ministries, bureaus and offices, and transferring part of that power to this commission. Am I correct, Madam President?

MR. GASCON: No, that is not it. It is just in the exercise of its function. It may be necessary for the commission to seek assistance from other ministries or agencies or bureaus but it is not taking power from the President.

MR. RODRIGO: Suppose the ministry or bureau does not comply with the request?

MR. GASCON: From my point of view, in the exercise of the powers of the commission, it should comply so that the advocacy for and protection of human rights will be assured.

MR. RODRIGO: But suppose the bureau director does not comply and says: "Well, we are under the President. Let the President order us." What can the commission do? Can it compel?

MR. SARMIENTO: I think the Commissioner is correct, Madam President.

FR. BERNAS: May I offer something else. We give power to the commission, but then the President has a right to refuse in case the bureau or ministry feels that it should not be doing it. And then, if the President says it should not do it, that is the end of it.

MR. RODRIGO: That is the end of it; the commission cannot compel.

FR. BERNAS: Yes, Madam President.

MR. GASCON: As it is written now, my proposal is the power to call upon agencies, ministries, bureaus, et cetera, to assist.

FR. BERNAS: On the understanding that this can be countermanded by the President.

MR. GASCON: Yes, Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Maybe this is a parallel provision in the Article on Commission on Elections, where it mentions "deputized, with the concurrence of the President," and this would be more in line with the statement of Commissioner Rodrigo. So I should suggest to Commissioner Gascon that probably in order not to encounter constitutional roadblocks, we could adopt some form of a terminology as this one: "deputize, with the concurrence of the President or authorize, with the concurrence of the President."

MR. GASCON: The committee has already accepted my amendment, and I think the suggestion of the Commissioner is within the jurisdiction of the committee now.

MR. SARMIENTO: We are willing to accommodate the amendment of Commissioner Maambong for harmony.

MR. MAAMBONG: It is not an amendment. It is just a suggestion so that we can align it with the provision in the Commission on Elections where there is concurrence by the President.

MR. GASCON: So it shall read: "TO CALL UPON, WITH THE CONCURRENCE OF THE PRESIDENT, ANY MINISTRY, BUREAU . . ."

FR. BERNAS: Would it not be more effective if we just say: "SUBJECT TO A COUNTERMAND ORDER OF THE PRESIDENT"?

MR. MAAMBONG: It will amount to the same thing.

FR. BERNAS: In other words, no prior concurrence of the President is needed.

MR. MAAMBONG: Yes, as long as there is presidential involvement so that we can do away with the objection of Commissioner Rodrigo that the proposed power might be in derogation of the powers of the President. At least, the President should know one way or the other.

MR. GASCON: May I ask the committee how it is reworded based on the comments of Commissioner Rodrigo.

FR. BERNAS: It reads: "PROVIDED THAT THE PRESIDENT MAY COUNTERMAND." We want to preserve the control of the President over all executive agencies. On the other hand, we also do not want to paralyze the commission. So, if the President feels that what the commission is asking should not be done, then he can give the necessary order to countermand the request.

MR. MAAMBONG: In concept, I have no difficulty with that but the word "COUNTERMAND" does not seem to sound good. Could the committee please recommend some other word?

FR. BERNAS: We would entertain something better; perhaps, we can say, "SUBJECT TO THE PRESIDENT'S RIGHT OF REFUSAL."

MR. MAAMBONG: We are still thinking, Madam President.

FR. BERNAS: But the concept is there. We would like the President to have the last word.

MR. MONSOD: Why do we not just say, "SUBJECT TO REFUSAL BY THE PRESIDENT."

FR. BERNAS: The Committee on Style can take care of it.

THE PRESIDENT: Will Commissioner Gascon restate his amendment as modified.

MR. GASCON: It would read: "TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE IN THE EXERCISE OF ITS FUNCTIONS WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNIT, SUBJECT TO REFUSAL BY THE PRESIDENT."

MR. DAVIDE: Madam President, it is a fact that right now we have such a law. So it could be adequately provided by law, but if there is a need to institutionalize this particular power, can we not just simply say: REQUEST THE ASSISTANCE OF ANY MINISTRY, OFFICE OR AGENCY IN THE EXERCISE OF ITS FUNCTIONS? It may be a request, but I am sure that no agency will reject or decline.

MR. GASCON: So we will delete the proposal "SUBJECT TO."

MR. DAVIDE: We delete "REQUEST" and "AGENCY."

FR. BERNAS: Then the understanding is that that request can be declined.

MR. GASCON: What is the position of the committee which has already accepted my amendment?

FR. BERNAS: I think we can rely on the prestige of the commission, and also it would be politically costly for the President to decline the request of the commission.

MR. MAAMBONG: Madam President, I think that would be a good compromise considering that, if the bureau or office requested will comply, we can presume regularity of the performance or the functions of its office, which means that it must have the clearance from the Office of the President. So I think it is a good compromise.

MR. SARMIENTO: It is accepted, Madam President.

THE PRESIDENT: Is there any objection to this proposed amendment, as amended? (Silence) The Chair hears none; the amendment, as amended, is approved.

REV. RIGOS: Madam President, we ask that Commissioner Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, this will be a proposed Section 3, which will read as follows: "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY AND ITS MEMBERS SHALL BE SUBJECT TO THE SAME DISQUALIFICATIONS AND DISABILITIES AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS."

MR. SARMIENTO: May I ask Commissioner Monsod to comment on that amendment.

MR. MONSOD: Madam President, we may be limiting the members of the commission too much by comparing them to members of other constitutional commissions, because it is possible that they could also be working part-time or they may be of a different discipline. Perhaps, we should leave the matter to Congress, just like the members of the Monetary Board. But the fiscal autonomy is one of the features that the committee wants to install.

FR. BERNAS: Could we consider "FISCAL AUTONOMY" separately?

MR. DAVIDE: I will delete "FISCAL AUTONOMY."

FR. BERNAS: No, consider it separately.

MR. DAVIDE: Yes. On the matter of the disqualifications and disabilities of the members of the commission, we are not putting them on the same level with the members of the other commissions. It cannot be said that they would be serving part-time. We provide for a definite term. If we approve Section 1 on a specific term — one will serve for seven years, the second for five years and the third for three years — this would demand full-time work. And if it would not be full-time, we will dilute really the special place that we have allocated for them. It is a Commission on Human Rights.

FR. BERNAS: Madam President, could we defer consideration of that amendment until after we consider Section 1?

MR. DAVIDE: I would be willing to defer because there might be some changes in the matter of the creation and the composition of the commission.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, I just want to inquire whether or not that proposed provision on fiscal autonomy has been accepted.

FR. BERNAS: We are not so clear on the status of that. We have asked that it be separated from disqualifications, and the proponent was agreeable to separating it. So it is neither dead nor alive now.

MR. MAAMBONG: It appears to me that the amendment of Commissioner Davide is that the commission shall enjoy fiscal autonomy. I would just like to advance an amendment to that amendment by deleting that portion and just say: "THE APPROVED ANNUAL APPROPRIATION FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY. . ." This would be in line with the provision on the constitutional commissions. But I understand that will be taken up later.

Thank you.

FR. BERNAS: Perhaps, we can go to the composition of the office now, unless we have more to discuss on powers and functions.

MR. NOLLEDO: I think my proposed amendment should also pertain to the powers of the commission. This should appear as Section 3, Madam President, as recommended by Commissioner Monsod when I was interpellated by him in connection with my amendment authorizing the Commission on Human Rights to fix the cases that should fall within its jurisdiction. It reads: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHOULD FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS." According to Commissioner Monsod, there should be some points of reference to guide Congress in fixing the jurisdiction of the Commission on Human Rights; namely, 1) the pertinent provisions of the Article on Bill of Rights, 2) the pertinent provisions of the Universal Declaration of Human Rights and 3) the answers of the chairman and members of the Committee, especially Commissioners Sarmiento and Garcia, to the interpellations of Commissioner Bengzon. According to Commissioner Monsod, the other members of the committee apparently concurred with the suggestion that there should be a provision in the Transitory Provisions that pending action on the part of Congress, the presently constituted Committee on Human Rights shall continue to function. So I would like to know the reaction of the committee.

Thank you, Madam President.

ADJOURNMENT OF SESSION

REV. RIGOS: Madam President, we ask that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDENT: Is there any objection that we adjourn until tomorrow at nine-thirty in the morning? (Silence)
The Chair hears none; the session is adjourned until tomorrow at nine-thirty in the morning.

It was 5:13 p.m.

[*] Appeared after the roll call

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