

## APPENDICES

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### SUFFRAGE: A RIGHT FOR EVERYONE

BY COMMISSIONER GREGORIO J. TINGSON

Madam President:

I would like to take this opportunity to explain why the right to vote in the election of officials of government and in the determination of all questions submitted to the people should be extended to the country's disabled and the illiterate, and how we can ensure the sanctity of their votes.

I believe in the theory that suffrage should be regarded as a natural and inherent right of every citizen, a right which belongs to him by virtue of his membership in the State.

In the 1935 Constitution, a vital development has been achieved by our people when both men and women were allowed to vote. That momentous year when all our qualified women trooped to the polling place to assert their exercise of suffrage equal to that of men was an achievement long ahead of women's liberation movement of the present.

We have advanced further than our 1973 Constitution, specifying that except as to citizenship, age and residence, no other disqualifications should be made. In fact, it further states that no literacy, property or other substantive requirement may be imposed.

For the disabled and the illiterate to vote is to give them the active chance to help shape the destiny of our nation. It is often said that the rich and the poor may have a gap as the heaven and earth, but in the exercise of their right of suffrage, they are equal, as they can only vote once.

Personally, I feel that the disabled and the illiterate should not be deprived of this right, as their hapless condition is such that they get the feeling of being less fortunate than others. To take away this one and precious right would further lower their stature in society.

But simply because they have physical deficiency or a low level of literacy, being unable to read nor write, we who are more fortunate should not deny them the only chance perhaps whereby they would feel as our coequals.

Many great thoughts and deeds have originated from people who have physical defects or are unlearned. Perhaps it is part of God's grand design for humanity. We should not hinder their right to live in this world as joyfully and as freely as the rest.

Receptive as we are, this body should consider further that in the exercise of this right, two entities, the disabled and the illiterates, have difficulty casting their votes, especially so where their votes do not have the complete secrecy and sanctity as compared to the other members of society casting the votes by themselves.

Under P.D. No. 1296, issued by our deposed President Marcos, a registered voter who is illiterate or physically unable to prepare the ballot by himself may choose a person of his confidence to assist him in the preparation of his ballot, preferably a relative by affinity or consanguinity within the fourth civil degree. The person thus chosen

shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him.

While it is true that the procedure is good in theory, in practice it is not so. Just consider this: One who is allowed to accompany the disabled or the illiterate is chosen by the voter himself from among his relatives, but there is always no way of telling whether the person is really his relative especially so in the urban areas where residents do not normally know each other. So, the result is that political parties may bring the illiterate or disabled resident to a voting center and claim that the one accompanying the disabled or illiterate voter is his or her relative. In other words, this procedure will always be subject to abuse, deceit or other fraudulent means. So, instead of really achieving the purpose of giving them the opportunity to exercise their political right, they become instruments to perpetrate fraud in the elections.

It is my proposal, therefore, that in the case of the disabled or illiterate who cannot write, they should be assisted only by a schoolteacher of the area, who is not necessarily a member of the election committee. In this manner the voter can cast his vote in confidence, and the sanctity of his ballot will be preserved.

Thank you for this opportunity.

### **SCHEMES ON THE TERM OF OFFICE**

(Numbers Correspond to No. of Years)

Scheme

Officials

Frequency

Preference

No.

Pres/

of

Results/

### **VP**

Senators

Reps

Local

Elections

(Pls. )

Total 43

**I**

6

6

4

4

Once every 2 years

20

**II**

6

6

3

3

3

12

**III**

6

6

6

3

3

1

**IV**

6

6

3

6

3

**V**

6

6

6

6

6 a/

1

## VI

5

5

5

5

5 b/

1

## VII

4

4

4

4

4 c/

5

## VIII

4

4

4

4

4 d/

2

Remarks re Scheme No. I

- No reelection for the President

No limit for all others

- No immediate reelection for President

Senators - with reelection

Congressmen - with reelection

Local officials - with one reelection

- Local officials - no immediate reelection

- No limit to reelection

- No reelection for all

Remarks re Scheme No. II

- No reelection for President

- No immediate reelection

Local officials - limited to 2 reelections

Senators - limited to one reelection

Representatives - allowed 3 reelections

- No reelection for President, immediate or otherwise

Senators - no reelection, immediate or otherwise

Representatives/Local officials - one reelection

- Unlimited reelection for Senators, Representatives, and  
Local officials

Remarks re Scheme No. VII

National/Local officials elected the same year but not the  
same date to avoid confusion of issues

Remarks re Scheme No. VIII

One reelection only

#### WHY THE SANDIGANBAYAN AND THE TANODBAYAN SHOULD NOT BE ABOLISHED BY COMMISSIONER GREGORIO J. TINGSON

I have taken my piece for this issue on the Sandiganbayan and the Tanodbayan on the statements made by distinguished resource persons invited by the Committee on Accountability of Public Officers.

Last June 18, the resource person invited was Justice Raul Gonzalez, Presiding Justice of the Tanodbayan.

As a backgrounder, Justice Gonzalez stated that the Tanodbayan is a constitutionally mandated office that is created by P.D. No. 1487 (further revised by P.D. No. 1607). It has broad powers to include investigative, recommendatory and prosecutorial functions.

To make it more responsive, Justice Gonzalez submitted the following recommendations:

- That it be constituted as a constitutional office to insure its independence;
- That its thrust be first preventive instead of prosecutorial;
- That its proceedings be made public.

Justice Gonzalez stressed that the Tanodbayan's jurisdiction should include offenses penalized under the Anti-Graft Act (RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act) and Revised Penal Code under the title, Crimes Committed by Public Officers (Chapter II, Title VII of the Revised Penal Code). This is due, he said, to the difficulty of delineating the specific offenses falling on either law. He, however, made it clear that he will indorse administrative cases to the Civil Service Commission.

When Commissioner Nollado cautioned Justice Gonzalez to the effect that the Tanodbayan should dispense with its prosecutorial power, citing the report prepared by 1971 Concon Delegate Robles to the Committee on Constitutional Bodies, Commissioner Nollado contended that it should act as mobilizer, watchdog and special critic. Justice Gonzalez, at this juncture, countered with the view that it should retain its prosecutorial function only as a last recourse. He believed that the Tanodbayan should first exhaust the other legal remedies before starting to prosecute.

Justice' Gonzalez came out with two grounds why the Sandiganbayan and the Tanodbayan should not be abolished:

- Tanodbayan retains control of the cases if they are not distributed to the different fiscals;
- Ordinary courts will be overburdened with the great number of cases filed before the Sandiganbayan when transferred to them.

Justice Gonzalez stressed that the creation of an independent commission on accountability is not necessary since as it is, the Tanodbayan is not a one-man body. He revealed that it has 4 deputies to be distributed in Luzon, Visayas and Mindanao and the nonimplementation of its regionalization is due to lack of funds.

On June 20, Justice Manuel Pamaran, former Presiding Justice of the Sandiganbayan, present Presiding Justice of the Sandiganbayan Francis Garchitorena and Sandiganbayan Justice Romeo Escareal were invited resource persons.

According to Justice Pamaran, the Sandiganbayan was created (by P.D. No. 1486, as revised by P.D. No.1606) to speed up the disposition of the cases against erring public officials. To strengthen the court, he advocated its direct creation in the Constitution by expressly providing its composition, jurisdiction and removal of the justices by impeachment. Additionally, he recommended that no pardon shall be granted to convicted public officials unless recommended by the Sandiganbayan.

While it is expensive for litigants in the provinces to be tried in the Sandiganbayan, he stressed that there is also the advantage that the witnesses before it are more free to testify. Besides, he said, the court is given the option in the decree to try cases either in Manila or in the province.

Commissioner Nollado presented the consensus of several (may not be the majority) Commissioners to abolish the Sandiganbayan (even the UP Draft does not contain a provision on the subject matter) on the following grounds:

- Regional Trial Courts and Metropolitan Trial Courts have concurrent jurisdiction over graft cases;
- There is denial of due process by way of discrimination to those accused of nongraft cases due to the better protection afforded them by the Sandiganbayan;
- The expediting of the trial of graft cases can be done by law passed giving priority to graft cases or designating a division of the Intermediate Appellate Court to handle exclusively those cases.

Justice Pamaran rebutted the said argument by stating that:

- The Sandiganbayan can still assume jurisdiction of cases tried by ordinary courts because of the proviso in the law saying "without prejudice of being tried anew by Sandiganbayan for offenses already on trial or tried by other courts;
- There is no protection to grafters since appeal of the decision to the Supreme Court is done only by certiorari on a question of law unlike in the ordinary courts whereby there is the ordinary appeal. There, questions of facts and

of law can be raised. The only time question of facts is reviewed in certiorari is when it is raised that the decision of the Sandiganbayan is not supported by facts.

When it was Justice Escareal's turn to speak, he cited that the decree cresting the Sandiganbayan amply projects the right of the accused because he is tried by a collegiate body requiring unanimous decision for conviction and that the Supreme Court decides en banc for cases brought to it; thus, lessening the possibility of erroneous decision.

According to Justice Garchitorena, the present thrust of the Sandiganbayan is to prosecute the "big fish" in the government service. To meet such objective, he recommended that the Sandiganbayan and the Tanodbayan be reinforced or institutionalized or probably given additional powers.

It was his contention that the abolition of the Sandiganbayan and the Tanodbayan will set back all gains of the government in its continuing efforts to prosecute dishonest officials. Furthermore, he mentioned its own rules. Together with Justice Pamaran, he proposed to the body that it be composed of nine members having the same tenure of office as that of a justice of the Supreme Court.

Personally, I believe that the principle of "public office is a public trust" finds visible meaning in the creation of the Sandiganbayan and the Tanodbayan. To an ordinary man, such entities serve as the "Damocles Sword" over our officials in the public service, who may have the tendency of being corrupt and prone to wrongdoings. To the masses, the Sandiganbayan and the Tanodbayan are the vanguards of an honest and responsible government.

#### STATEMENT RE PROPOSED RESOLUTION NO. 198

TO : The Honorable Chairman and Members  
Committee on the Executive

SUBJECT : Statement in Relation to Proposed Resolution  
No. 198

The resolution seeks to add a sentence in Section 5, 2nd paragraph of Article VII of the 1973 Constitution, as amended, at the same time retaining the first and second paragraphs.

The idea is to clarify that the canvassing duty is ministerial but it must be based on genuine returns. Technically, returns should be later on specified to mean "certificates of canvass."

Our proposal reads:

"The counting of votes stated in genuine returns shall be a ministerial function of the National Assembly."

The UP Draft is more specific. Section 2, Article VII reads:

"Upon receipt and determination of the authenticity and due execution of such returns in the manner provided by law the National Assembly shall forthwith, in public session, count the votes, and proclaim the persons elected President and Vice-President."

Concept and Problems:

#### 1. The word "Ministerial."

There seems to be no disagreement on the word "ministerial." In fact, the UP draft indicates that although the term is not found in the 1935 and 1973 Constitutions "the legislature has invariably interpreted its power as a ministerial one" (Vol. I, p. 9). Indeed, the congressional records of the 1965, 1969 and 1981 presidential elections support the UP statement. Commissioners Concepcion and Bernas from my understanding of their statements

believe so. I have cited all the cases decided by the Supreme Court reflected in the Board of Tellers' resolution of objections in the canvass of the February 7, 1986 elections, which support this view. Just for emphasis the Supreme Court in *Lopez vs. Roxas* (17 SCRA 756) said:

". . . Congress merely acts as a national board of canvassers, charged with the ministerial and executive duty to make said declaration, on the basis of the election returns duly certified by Provincial and City boards of canvassers. Upon the other hand, the Presidential Electoral Tribunal has the judicial power to determine whether or not said duly certified returns have been irregularly made or tampered with or reflect the true result of the elections in the areas covered by each and, if not, to recount the ballots cast, and, incidentally thereto, pass upon the validity of each ballot or determine whether the same shall be counted, and, in the affirmative, in whose favor, which Congress has no power to do."

Indeed, after the canvass of the February 7, 1986 elections, I heard MP (now Minister) Neptali Gonzales declare the same thing in a television interview.

So I believe we can leave it at that and proceed to the more problematic discussion of the determination of genuine returns.

## 2. The word "genuine."

UP presented an alternative proposal to delete in its formulation the phrase "determination of the authenticity and due execution" and "allow the legislature to make its determination of the nature of its power in the counting of votes" adding that "the members of the legislature are, in the end, responsible to the people."

I disagree. It was precisely on this point that a lot of accusations were hurled against the Batasang Pambansa's Board of Tellers in the February 7 elections.

In my earnest attempt to clarify the situation before the committee, I marked all the pertinent documents so that the committee will know the procedure adopted and the rulings made by the Board of Tellers. I have five volumes of the transcript of the proceedings for everyone to see. Many suspect that I was trying to justify the decision of the Board by inserting in the records these documents to establish the validity of the proclamation of President Marcos.

That is not my intention, although I will continue to maintain that the Board of Tellers of which I was an alternate member did not violate any law in the performance of our duties. These are public documents available in the Batasan archives. My only purpose is to indicate the objections posed during the canvass so that the committee can consider these in the interpretation of the word "genuine" in our proposal. How does the committee, for instance, feel about the lack of COMELEC paper seal in either the envelope containing the certificate of canvass and the statement of votes, or in the certificate of canvass, or in all of them; the nonuse of the authorized envelope; the lack of signature of one or more members of the board of canvassers, or allegations of unauthorized or forged signatures or fake certificates of canvass; erasures in the one-page certificate of canvass where the words and figures can be read; and even irregularities in the conduct of the elections? In ruling against the invalidation of these certificates, the Board of Tellers availed of the decisions of the Supreme Court, the provisions of the Omnibus Election Code, and the rules and regulations of the COMELEC and congressional proceedings. In other words, we did not go beyond what was written in the certificate of canvass. The allegation of statistical improbability was resolved on the basis of the certified records of the COMELEC as to the number of precincts and the number of registered voters and these records were made available to the opposition.

The question is, when the Board ruled the way it did against the vote of all the members of the opposition, did the Board violate known and available standards and criteria of genuineness of the certificate of canvass? All I can

say is we did our job as mandated by the Constitution. But what I really want is to bare all these documents to the Committee regardless of whether they will be put on record or not. Perhaps Commissioner Bernas will have some use for them in the future analysis of the word "genuine." I am happy that Commissioner Regalado has requested me for a copy for his own study and I have gladly complied. Due to financial limitations, I cannot furnish a copy to all of you regretfully but the Chairman has allowed me to leave the original with the Committee Secretary so that anyone who requests a copy can direct his or her request to the Committee. If I will have my way, however, I would rather have these documents on record for all legal researchers and historians to see. I assure all the members of the Committee that there is nothing illegal in the contents of these documents. If Commissioner Davide is fearful that these papers will topple the government, they won't. His excitement and aggravation about my marking them for probable offer to the Committee is misplaced. If he insists to close his eyes to these contents, I will not insist. It is my right to have these documents marked and presented before the Committee but since I have achieved my purpose, I will desist from doing so.

I am very thankful to President Cecilia Muñoz Palma (who went out of her way to attend our meeting), Commissioner (former Chief Justice) Concepcion, Commissioners Regalado, Aquino and Jamir for contributing their talents in the discussions. As a result thereof, we have come up with an amendment to our original proposal using the UP draft, as follows:

Sec. \_\_\_\_\_ The President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of \_\_\_\_\_ following the day of the election and shall end at noon of the same date six years thereafter when the term of his successor shall begin.

The CERTIFICATES OF CANVASS of every election for President, duly certified by the Board of Canvassers of each province, city or district, shall be transmitted to the Speaker at the NATIONAL ASSEMBLY. UPON RECEIPT AND DETERMINATION OF THE AUTHENTICITY AND DUE EXECUTION OF SUCH CERTIFICATES OF CANVASS, IN THE MANNER PROVIDED BY LAW, THE NATIONAL ASSEMBLY SHALL, NOT LATER THAN THIRTY DAYS AFTER THE DAY OF THE ELECTION, OPEN ALL THE CERTIFICATES IN PUBLIC SESSION, AND THE VOTES SHALL THEN BE COUNTED.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal highest number of votes, one of them shall forthwith be chosen by a vote of a majority of all the members of the National Assembly in session assembled.

Respectfully Submitted:

OPLE, MAAMBONG, NATIVIDAD & DE LOS REYES

Authors

By:

(Sgd.) Regalado E. Maambong

Committee Member

Copies for:

The Honorable Chairman and Members

Committee on the Executive

thru: The Committee Secretary

## PROPOSED PROVISION ON IMPEACHMENT

### ARTICLE\_\_\_\_

#### ACCOUNTABILITY OF PUBLIC OFFICERS

xxx xxx xxx

Section 3. (1) Impeachment may be initiated only by a resolution filed by at least one-fifth (1/5) of all the Members of the House of Representatives indorsing a verified complaint for impeachment of a Member thereof or any citizen alleging ultimate facts constituting ground or grounds for impeachment.

No impeachment proceeding shall be initiated against the same official more than once within a period of one year.

(Note: The 1/5 requirement or even a lesser number is necessary to protect the impeachable officers from BASELESS and embarrassing complaints FROM JUST ANYBODY. The President and Vice-President are politicians and they may have political enemies; the other impeachable officers, by the very nature of their work, could step on the toes of a lot of people in the performance of their duties and they deserve protection from harassment. It will also be A WASTE OF TIME for the proper committee to take cognizance of a complaint without even a minimal support from the Members of the House because in all probability, it will be dismissed.

The requirement of a RESOLUTION is standard procedure even in the United States. It gives the complaint the formality it deserves considering that the respondents are not ordinary government employees.)

(2) IF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES FINDS THAT THE RESOLUTION IS SIGNED BY AT LEAST ONE-FIFTH (1/5) OF ALL THE MEMBERS THEREOF AND THE SUPPORTING COMPLAINT IS PROPERLY VERIFIED AND SUFFICIENT IN FORM, THE RESOLUTION SHALL WITHIN THREE SESSION DAYS FROM RECEIPT BE INCLUDED IN THE ORDER OF BUSINESS FOR REFERRAL TO THE PROPER COMMITTEE FOR THE DETERMINATION OF PROBABLE CAUSE.

(3) UPON DUE REFERRAL AND AFTER DUE NOTICE AND HEARING WHEREIN THE PARTIES ARE ACCORDED THE OPPORTUNITY TO ADDUCE THEIR RESPECTIVE EVIDENCE, THE COMMITTEE SHALL DECIDE BY A MAJORITY VOTE OF ALL ITS MEMBERS WHETHER OR NOT A SUFFICIENT GROUND OR GROUNDS FOR IMPEACHMENT EXIST. IF THE COMMITTEE FINDS THAT PROBABLE CAUSE HAS BEEN ESTABLISHED, IT SHALL SUBMIT WITH ITS REPORT A RESOLUTION SETTING FORTH THE ARTICLES OF IMPEACHMENT ON THE BASIS OF THE EVIDENCE ADDUCED BEFORE THE COMMITTEE; OTHERWISE, THE COMPLAINT SHALL BE DISMISSED. THE REPORT OF THE COMMITTEE SETTING FORTH ITS FINDINGS AND RECOMMENDATIONS MUST BE SUBMITTED TO THE HOUSE WITHIN THIRTY (30) SESSION DAYS FROM SUBMISSION OF THE CASE FOR RESOLUTION. IT SHALL BE SCHEDULED FOR IMMEDIATE CALENDAR IN ACCORDANCE WITH ITS RULES.

(4) A MAJORITY VOTE OF ALL THE MEMBERS OF THE HOUSE IS NECESSARY FOR THE APPROVAL OF THE RESOLUTION SETTING FORTH THE ARTICLES OF IMPEACHMENT. IF THE RESOLUTION IS APPROVED, IT SHALL THEN BE REFERRED TO THE SENATE FOR TRIAL, TOGETHER WITH THE COMMITTEE REPORT CONTAINING ITS FINDINGS AND RECOMMENDATIONS INCLUDING ALL THE EVIDENCE ADDUCED BEFORE THE COMMITTEE. ON THE OTHER HAND, IF THE RESOLUTION IS DISAPPROVED, THE COMPLAINT FOR IMPEACHMENT IS DEEMED DISMISSED.

WHEN THE REPORT OF THE COMMITTEE DISMISSES THE COMPLAINT, THE REPORT SHALL BE NOTED BY THE HOUSE AND SENT TO THE ARCHIVES, UNLESS A MAJORITY VOTE OF ALL ITS MEMBERS DECIDE TO RECOMMIT THE MATTER TO THE COMMITTEE OF ORIGIN FOR FURTHER DELIBERATIONS, OR, THEY OVERRULE THE COMMITTEE AND PRESENT BEFORE THE HOUSE A RESOLUTION SETTING FORTH THE ARTICLES OF IMPEACHMENT, SIGNED BY SUCH MAJORITY OF THE HOUSE. SUCH RESOLUTION SHALL THEN BE REFERRED TO THE SENATE FOR ITS ACTION, TOGETHER WITH THE ORIGINAL COMMITTEE REPORT CONTAINING ITS FINDINGS AND RECOMMENDATIONS DISMISSING THE COMPLAINT INCLUDING ALL THE EVIDENCE ADDUCED BEFORE THE COMMITTEE.

THE VOTING ON THE REPORT AND RECOMMENDATION OF THE COMMITTEE SHALL BE BY ROLL CALL, AND THE VOTE OF EACH MEMBER SHALL BE RECORDED.

(5) THE SENATE SHALL HAVE THE SOLE POWER TO TRY ALL CASES OF IMPEACHMENT. WHEN SITTING FOR THAT PURPOSE, THE MEMBERS OF THE SENATE SHALL BE ON OATH OR AFFIRMATION. WHEN THE PRESIDENT OF THE PHILIPPINES IS ON TRIAL, THE CHIEF JUSTICE OF THE SUPREME COURT SHALL PRESIDE BUT WITHOUT THE RIGHT TO VOTE. NO PERSON SHALL BE CONVICTED WITHOUT THE CONCURRENCE OF TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE.

(6) JUDGMENT IN CASES OF IMPEACHMENT SHALL NOT EXTEND FURTHER THAN THE REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE UNDER THE REPUBLIC OF THE PHILIPPINES, BUT THE PARTY CONVICTED SHALL NEVERTHELESS BE LIABLE AND SUBJECT TO PROSECUTION, TRIAL AND PUNISHMENT IN ACCORDANCE WITH LAW.

(7) THE HOUSE OF REPRESENTATIVES SHALL PROMULGATE ITS OWN RULES OF PROCEDURE TO GOVERN THE INITIATION, COMMITTEE DELIBERATIONS, AND ACTION OF THE HOUSE IN IMPEACHMENT PROCEEDINGS. LIKewise, THE SENATE SHALL PROMULGATE ITS OWN RULES TO GOVERN THE TRIAL AND JUDGMENT IN IMPEACHMENT PROCEEDINGS. ALL SUCH RULES MUST PROVIDE DUE PROCESS AND MUST BE CONSISTENT WITH THE PROVISIONS SET FORTH HEREIN.

(Sgd.) Regalado E. Maambong  
Member, Constitutional Commission

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- A verified complaint and a resolution initiates the impeachment in the House; on the other hand, the Senate only acquires jurisdiction upon receipt of the Articles of Impeachment from the House. The Articles is the equivalent of the "indictment" in the United States and the "information" in the Philippines. Usually, a Committee or some members of the House are assigned to present the Articles to the Senate in a bipartisan manner. Once the Articles are received, they can only be modified or amended by a resolution of the House filed before the Senate.

- In impeachment, we come into contact with three resolutions: Resolution initiating (or indorsing) a verified complaint for impeachment; Resolution of the proper Committee setting forth the Articles of Impeachment; and a resolution of the House referring the Articles of Impeachment (among other papers) for trial.

#### PROPOSED AMENDMENT TO THE ARTICLE ON SOCIAL JUSTICE

Section 1 of the proposed Modified Resolutions is hereby deleted and in lieu thereof insert the following:

SECTION 1. THE STATE SHALL PROMOTE SOCIAL JUSTICE AS A PRIMARY IMPERATIVE IN ALL

PHASES OF NATIONAL DEVELOPMENT. IN PURSUIT THEREOF, CONGRESS SHALL GIVE HIGHEST PRIORITY TO THE ENACTMENT OF MEASURES THAT PROTECT AND ENHANCE THE RIGHT OF EVERY CITIZEN TO HUMAN DIGNITY, REDUCE SOCIAL, CULTURAL, ECONOMIC AND POLITICAL INEQUITIES, AND EQUITABLY DIFFUSE WEALTH AND POLITICAL POWER FOR THE COMMON GOOD.

SECTION 2. Towards these ends, the State shall regulate the acquisition, ownership, use and disposition of property and its (fruits and) INCREMENTS THEREOF, promote the establishment of independent and self-reliant socio-political and economic structures.

#### LABOR

SECTION 3. IT SHALL BE THE DUTY OF THE STATE TO:

a)

AFFORD FULL PROTECTION TO LABOR, BOTH DOMESTIC AND OVERSEAS, ORGANIZED AND UNORGANIZED, AND TO PROMOTE FULL EMPLOYMENT AND EQUALITY OF EMPLOYMENT OPPORTUNITIES REGARDLESS OF SEX, AGE, CULTURE, CREED OR POLITICAL AFFILIATION.

b)

GUARANTEE THE RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND NEGOTIATIONS, PEACEFUL CONCERTED ACTIVITIES, INCLUDING THE RIGHT TO STRIKE IN ACCORDANCE WITH LAW, FOR THEIR MUTUAL BENEFIT, WELFARE OR AID, SECURITY OF TENURE, JUST AND HUMANE CONDITIONS OF WORK, AND TO A DECENT LIVING WAGE, AND TO PARTICIPATION IN POLICY AND DECISION-MAKING PROCESSES AFFECTING THEIR INTERESTS.

c)

PROMOTE THE PREFERENTIAL USE OF VOLUNTARY MODES OF SETTling DISPUTES BETWEEN WORKERS AND EMPLOYERS, INCLUDING CONCILIATIONS, AND ENFORCE MUTUAL COMPLIANCE THEREOF.

d)

REGULATE RELATIONS BETWEEN WORKERS AND EMPLOYERS IN A MANNER THAT RECOGNIZES THE PRIMACY OF THE RIGHTS OF LABOR TO ITS JUST SHARE AND THE CORRESPONDING RIGHTS OF BUSINESS ENTERPRISES TO REALIZE THEIR GROWTH POTENTIAL AND REASONABLE RETURNS ON INVESTMENTS.

#### AGRARIAN AND NATURAL RESOURCES REFORM

SECTION 5. THE STATE SHALL UNDERTAKE A GENUINE AGRARIAN REFORM PROGRAM FOUNDED ON THE BASIC RIGHT OF FARMERS AND REGULAR FARM-WORKERS TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL OR, IN THE CASE OF OTHER FARM-WORKERS, TO RECEIVE A JUST SHARE OF THE FRUITS THEREOF. TO THIS END, THE STATE SHALL ENCOURAGE AND UNDERTAKE THE JUST DISTRIBUTION OF ALL AGRICULTURAL LANDS, SUBJECT TO SUCH PRIORITIES, REASONABLE RETENTION LIMITS AND OTHER

CONDITIONS AS CONGRESS MAY PRESCRIBE, TAKING INTO ACCOUNT ECOLOGICAL, DEVELOPMENTAL OR EQUITY CONSIDERATIONS AND SUBJECT TO A JUST AND PROGRESSIVE SYSTEM OF COMPENSATION.

SECTION 6. The State shall recognize the right of farmers and farmworkers, of cooperatives and other independent farmer's organization AND LAND OWNERS to participate in the planning, organizing, and management of the program and shall provide support to agriculture through appropriate technology, RESEARCH AND DEVELOPMENT and adequate financial, production, and marketing assistance.

SECTION 7. The State shall apply the principles of agrarian REFORM WHENEVER APPLICABLE IN ACCORDANCE WITH LAW IN the disposition of other natural resources, including lands of the public domain SUITABLE TO AGRICULTURE under lease or concession, subject to prior rights, (of original inhabitants and without violating) homestead rights of small settlers and the rights of indigenous communities to their ancestral lands.

SECTION 8. The State shall protect the PREFERENTIAL rights of MARGINAL FISHERMEN and local communities to the (direct or communal) use of marine and fishing resources, both inland and offshore, PARTICULARLY MUNICIPAL FISHING GROUNDS, and shall provide appropriate financial, technical and research assistance TO SAID FISHERMEN for the development and conservation of such resources.

SECTION 9. The State shall promote the integrated development of agricultural, fishing and marine resources to meet the basic needs of the people and the industrialization objective of the country.

#### ENTREPRENEURS

SECTION 10. THE PROMOTION OF SOCIAL JUSTICE SHALL INCLUDE THE COMMITMENT TO CREATE ECONOMIC OPPORTUNITIES BASED ON THE FREEDOM OF INITIATIVE ESPECIALLY THROUGH SMALL AND MEDIUM SCALE ENTREPRENEURS.

#### URBAN LAND USE AND HOUSING

SECTION 11. The State shall regulate the ownership and use of urban land for the common good and undertake a continuing urban land USE (Reform) and housing program that will (ensure) MAKE decent SHELTER/housing AND SERVICES AVAILABLE at affordable cost to deserving low-income citizens in urban centers and resettlement areas (together with complementary infrastructure, neighborhood services and employment-generating economic activities.)

SECTION 12. Urban poor dwellers shall not be evicted nor their dwellings demolished (without) EXCEPT IN ACCORDANCE WITH law AND IN A JUST AND HUMANE MANNER. No resettlement OF URBAN OR RURAL DWELLERS shall take place without consultation with the communities to be relocated. (, and their involvement in its planning and implementation.)

(Delete Section 12 of the modified version)

#### HEALTH

SECTION 13. The State shall protect and promote the RIGHT TO HEALTH (, people's right to health and). TO this end, IT SHALL ADOPT (establish and maintain) an integrated and comprehensive APPROACH TO health care (program that) WHICH shall make essential goods and social services available to all citizens at affordable cost, with priority for the needs of the disadvantaged, the sick, women and children, aged and disabled.

SECTION 14. The State shall maintain an effective food and drug monitoring system and promote appropriate health man-power development and research on health care problems.

SECTION 15. The State shall establish a special body of disabled persons which shall consolidate the functions of existing government agencies and provide for the rehabilitation, self-development and self-reliance of the disabled towards their total integration to the mainstream of society.

SECTION 16. The State shall afford protection to working women by providing for (optimum) SAFE AND HEALTHFUL working conditions especially in relation to their material functions.

SECTION 17. The State shall PROVIDE FACILITIES THAT WILL promote the welfare and well-being of women to fully realize their capabilities in the service of the country. (Section 18 on Indigenous Communities is hereby deleted and recommended for transfer to the Declaration of Principles.)

#### MINORS

SECTION 18. THE STATE SHALL PROVIDE SPECIAL PROTECTION TO MINORS, ESPECIALLY WORKING MINORS, AND SHALL PROHIBIT THEIR EXPLOITATION AND INSURE THEIR FULL DEVELOPMENT.

### ROLE AND RIGHTS OF PEOPLE'S ORGANIZATIONS

SECTION 19. In the pursuit of the ends of Social Justice, the State shall respect the independence and the role of people's organizations as a (principal) means of empowering the people to pursue and protect through peaceful means their legitimate and collective interests and aspirations.

SECTION 20. The State shall respect the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making, and shall (ensure) MAKE POSSIBLE adequate consultation mechanisms (for such participation).

#### MANIFESTATION OF COMMISSIONER GUINGONA

Commissioner Guingona requested the Presiding Officer that he be allowed to present his manifestation to the Secretariat concerning his view on the matter of compensation in the case of expropriation of property for agrarian and urban land reform purposes. The manifestation is as follows:

At the outset, let me say categorically and emphatically that I favor giving the landless farmers and farm workers, as well as homeless urban poor, property of their own. As a matter of fact, Commissioner Villegas and I had submitted a proposed resolution which would provide for a Special Provident Fund to be used exclusively to provide homes for the homeless poor at subsidized cost. But I strongly object to the expropriation of property to favor one sector of our society to the prejudice of another sectoral by denying the latter their right to just compensation. Of course, I realize that the poor may find it difficult to afford to buy the property needed. This can be remedied, however, through government subsidy or other forms of State assistance. I think that a number of landless and homeless poor of today through government aid will no longer be so in the future. They would be encouraged to own and expand their property knowing that they, their children, their children's children cannot be deprived of their property without the payment of just compensation.

In the expropriation of property for agrarian or urban land reform purposes, the State, as we know, exercises its inherent or sovereign power of eminent domain. This power dates back to the days of Grotius who described the said power as dominium eminens. This concept was adopted later in England. Today, the power of eminent domain is part of American law and jurisprudence, I would like to give a few citations from Grotius, as well as statements and rulings from authorities and court decisions, to underscore the fact that the concept of just compensation requires full and equivalent payment for the property to be expropriated.

My stand is taken on the assumption that the proponents of the payment of compensation in expropriation for

agrarian and urban land reform purposes conceive of a different and lesser amount of compensation for property taken than just compensation as specified in the Bill of Rights (the concept of which is well established in our jurisprudence) when they speak of "fair and progressive system of compensation" (in the case of agrarian land reform) and "affordable cost" (in the case of urban land reform).

The citations are as follows:

Grotius — ". . . for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added, that when this is done, the State is bound to make good the loss to those who lose their property."

Blackstone — ". . . while the good of the individual must yield to that of the community, the legislature alone may interpose to compel the individual to acquiesce, but such interposition is not arbitrary but only upon full indemnification and equivalent for the injury thereby sustained."

Among the U.S. cases we have the following:

"The word 'just' is not used as an antithesis of unjust, but evidently to intensify the meaning of the word compensation." *Virginia & T.R. Co. v. Henzy*, 8 Nev. 165.

"Market value means the fair value of the property as between one who wants to purchase and one who wants to sell an article; not what could be obtained for it under peculiar circumstances, not its speculative value; not a value obtained from the necessity of another. Nor is it to be limited to that price which the property would bring when forced off at auction under the hammer." *Lawrence v. Boston*, 119 Mass. 126.

In the Philippines, our Supreme Court had ruled that "the word 'just' is used simply to emphasize the meaning of compensation. Just compensation means a fair and full equivalent for the loss sustained from the act of expropriation." *Manila R.R. Co. vs. Velasquez*, 32 Phil 286; *Manila vs. Estrada*, 25 Phil 208.

Kent in 2 Com. 339 says, "This principle, in American constitutional jurisprudence, is founded in natural equity, and is laid down by jurists as an acknowledged principle of universal law." This means that the concept of just compensation is founded not only on law but also on equity.

In the expropriation of property by virtue of the proposed provision on agrarian reform and urban land reform, the State exercise its power of eminent domain. The same State also exercise the same power of eminent domain in other extra-ordinary circumstances and for the common good, such as the construction or expansion of an airport or construction of a highway. Except for expropriation under the proposed provisions on agrarian and urban land reform, the Constitution in the Bill of Rights provides for payment of just compensation while in cases of expropriation for purposes of agrarian or urban land reform, a compensation less than the accepted measure of just compensation is provided for. Although the particulars are different, the essence is the same. Eminent domain is exercised under extraordinary circumstances and for the common good. In providing for a lesser payment to the owner, the agrarian and urban land reform proposal would, in my opinion, be violative of the equal protection of law clause in our Constitution.

In summary, this representation favors strongly the granting of land to farmers, farm workers and urban poor but I strongly oppose the Robin Hood type of proposal of taking from those who have without payment of just compensation to give to the poor. In thus objecting, I speak on behalf of the many middle class marginal landowners who have endured a lifetime of hard work and savings to be able to own their properties. I object to their being compelled to sell their properties through the exercise of the State power of eminent domain at less than just compensation because (1) such a payment is not founded on law as well as on equity; and (2) it is

violative of the equal protection guarantee in our Constitution.

PROPOSED RESOLUTION NO. 517

(SUBSTITUTE RESOLUTION)

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION

AN ARTICLE ON THE EXECUTIVE

Be it resolved as it is hereby resolved, by the Constitutional Commission in session assembled, To incorporate in the new Constitution the following provisions on the Executive Department:

ARTICLE \_\_\_\_\_

EXECUTIVE DEPARTMENT

SECTION 1. The executive power shall be vested in a President of the Philippines.

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and resident of the Philippines for at least ten years immediately preceding such election.

SECTION 3. There shall be a Vice-President who shall be elected with and in the same manner as the President and who shall have the same qualifications and term of office. He may be removed from office in the same manner as the President as provided in this Constitution.

The Vice-President may be appointed as a member of the cabinet.

SECTION 4. The President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of \_\_\_\_\_ following the day of the election and shall end at noon of the same date six years thereafter. He shall be disqualified from immediate reelection.

Upon receipt of the certificates of canvass, the National Assembly shall, not later than thirty (30) days after the day of the election, open all the certificates in public session, and upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the members of the National Assembly.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

SECTION 5. If, at the time fixed for the beginning of his term, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President shall have failed to qualify, then the Vice-President shall act as President until a President shall have qualified. The National Assembly shall by law provide for the case where neither a President-elect nor a Vice-President-elect shall have been chosen or shall have qualified, or both shall have died at the time fixed for the beginning of their term, declaring who shall then act as President or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

SECTION 6. Before he enters on the execution of his office, the President or Acting President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or

Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted)

SECTION 7. The President shall have an official residence. The President and Vice-President shall receive a salary to be fixed by law, which shall not be increased or decreased during their term of office. They shall not receive during their tenure any other emolument from the government or any other source. Unless the National Assembly shall provide otherwise, the President and the Vice-President shall receive an annual salary of \_\_\_\_\_ and pesos, respectively.

SECTION 8. Whenever there is a vacancy in the office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the members of the National Assembly who shall take office upon confirmation by a majority vote of all the members of the National Assembly.

SECTION 9. In case of permanent disability, death, removal from office or resignation of the President, the Vice-President shall become the President to serve the unexpired term. The National Assembly shall by law provide for the case of permanent disability, death, removal from office or resignation of both the President and Vice-President declaring which officer shall then become Acting President or the manner in which one shall be selected.

The National Assembly shall by law provide for the case of death, permanent disability or resignation of the Acting President at the time the vacancy in the Office of the President occurs or subsequently thereafter, declaring who shall serve as President until the President and the Vice-President shall have been elected and qualified, subject to the same restrictions of powers and disqualifications as the Acting President.

SECTION 10. The National Assembly shall, at ten o'clock in the morning of the third day after the vacancy occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph (2),[\*] Section 23,[\*] Article VIII [\*] of this Constitution and shall become law upon its approval on third reading by the National Assembly. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph (3),[\*] Section 22,[\*] Article VIII [\*] of this Constitution. The convening of the National Assembly cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within seventy days before the date of the next presidential election.

SECTION 11. Whenever the President transmits to the National Assembly his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the members of the cabinet transmit to the National Assembly their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the National Assembly his written declaration that no inability exists, he shall resume the powers and duties of his office unless a majority of all the members of the cabinet transmit within five days to the National Assembly their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon, the National Assembly shall decide the issue, convening within forty-eight hours for that purpose, if not in session. If the National Assembly, within twenty-one days after receipt of the latter written declaration, or, if not in session, within twenty-one days after it is required to assemble,

determines by a two-thirds vote of all the members that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

SECTION 12. An Acting President shall not declare martial law or suspend the privilege of the writ of habeas corpus without the concurrence of at least a majority of all the members of the National Assembly.

Appointments extended by an Acting President shall remain effective, unless revoked by the elected President within ninety days from his assumption or reassumption of office.

SECTION 13. An incumbent or Acting President shall not make appointments within two (2) months preceding the date of the next presidential election and thereafter until the expiration of the term of the former or the tenure of the latter, except temporary appointments to executive positions when continued vacancies would prejudice public service or endanger public safety.

SECTION 14. The President shall have control of all the executive departments, bureaus, and offices. He shall exercise general supervision over all local governments as may be provided by law, and shall take care that the laws be faithfully executed.

SECTION 15. The President shall be the commander-in-chief of all the armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, and, with the concurrence of at least a majority of all the members of the National Assembly, suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law. The National Assembly, by a vote of at least a majority of all its members in regular or special session, may revoke such proclamation or suspension, or extend the same if the invasion or rebellion shall persist and public safety requires it.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof and must promulgate its decision on the same within thirty (30) days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or for offenses inherent in or directly connected with invasion.

SECTION 16. The President shall nominate and, with the consent of a Commission on Appointments, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain and all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The National Assembly may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments.

SECTION 17. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction. However, the power to grant executive clemency for violations of corrupt practices laws may be limited by legislation.

He shall also have the power to grant amnesty with the concurrence of a majority of all the members of the

National Assembly.

SECTION 18. The President may contract or guarantee foreign and domestic loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board. The Monetary Board shall, within thirty (30) days from the end of every quarter of the calendar year, submit to the National Assembly a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt and containing other matters as may be provided by law.

SECTION 19. The President, Vice-President, members of the cabinet, and chiefs of bureaus or offices and their assistants shall not, during their term, hold any other office or employment, nor may they practice any profession, participate directly or indirectly in any business, or be financially interested directly in any contract with, or in any financial or special privilege granted by the government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporations, and shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the third civil degree of the President shall not be appointed as minister, deputy minister or head of bureau or office.

SECTION 20. No treaty or international agreement shall be valid and effective unless concurred in by a majority of all the members of the National Assembly.

SECTION 21. The President shall submit within fifteen days of the opening of each regular session of the National Assembly a budget of receipts and expenditures, which shall be the basis of the general appropriations bill.

SECTION 22. The President shall address the National Assembly at the opening of its regular session. He may also appear before it at any other time.

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[\*] based on the draft Report on the National Assembly under Committee Report No. 22

## **PROPOSED RESOLUTIONS APPROVED ON THIRD READING**

### **RESOLUTION NO. 9**

#### **RESOLUTION TO INCORPORATE IN THE CONSTITUTION AN ARTICLE ON THE JUDICIARY**

Be it resolved by the Constitutional Commission in session assembled, To incorporate in the Constitution the following provisions:

#### **ARTICLE \_\_\_\_**

#### **THE JUDICIARY**

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

SECTION 2. The National Assembly shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 7

hereof.

No law shall be passed reorganizing the judiciary when it undermines security of tenure.

SECTION 3. (1) The Supreme Court shall be composed of a Chief Justice and ten Associate Justices. It may sit en banc or in two divisions. In case of any vacancy, the same shall be filled within ninety days from the occurrence thereof.

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, international or executive agreement, or law may be declared unconstitutional without the concurrence of a majority plus one of the members. The same number of votes shall be required for the imposition of the death penalty.

(3) All other cases including those involving the constitutionality, application or operation of presidential decrees, proclamations, orders, instructions, ordinances and other regulations which under the rules of court are required to be heard en banc shall be decided with the concurrence of a majority of the members who actually participated when the case was submitted for decision.

(4) Cases heard by a division shall be decided with the concurrence of a majority of the members who actually participated when the case was submitted for decision but if such required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

SECTION 4. (1) No person shall be appointed member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

(2) The National Assembly shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

(3) A member of the judiciary must be a person of proven competence, integrity, probity and independence.

SECTION 5. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by a Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

With respect to the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

SECTION 6. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex-officio Chairman, the Minister of Justice and a representative of the National Assembly as ex-officio members, a representative of the integrated bar, a professor of law, a retired member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the members first appointed, the representative of the integrated bar shall serve for four years, the professor of law for three years, the retired justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex-officio and shall keep a record of the proceedings of the Council.

(4) The regular members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

SECTION 7. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the rules of court may provide, final judgments and decrees of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is death or life imprisonment.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not last longer than six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedures of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the judiciary in accordance with the Civil Service Law.

SECTION 8. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial and/or administrative functions.

SECTION 9. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

SECTION 10. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order dismissal by the vote of a majority plus one of the Members who actually participated when the matter was submitted for resolution.

SECTION 11. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to

the record of the case and serve upon the parties. Any Member dissenting or abstaining from a decision must state the reason for his dissent or abstention. The same requirements shall be observed by all lower collegiate courts.

SECTION 12. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

SECTION 13. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased. Until the National Assembly shall provide otherwise, the Chief Justice shall receive an annual salary of \_\_\_\_\_, and each Associate Justice \_\_\_\_\_ pesos.

SECTION 14. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of court or by the court itself.

(3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties.

SECTION 15. The judiciary shall enjoy fiscal autonomy. Appropriations for the judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

SECTION 16. The Supreme Court shall, within thirty days from the opening of each regular session of the National Assembly, submit to the President and the National Assembly an annual report on the operations and activities of the judiciary.

Adopted, July 19, 1986.

## **RESOLUTION NO. 10**

### **RESOLUTION TO INCORPORATE IN THE CONSTITUTION AN ARTICLE ON THE CONSTITUTIONAL COMMISSIONS**

Be it resolved by the Constitutional Commission in session assembled, To incorporate in the Constitution the following provisions:

## **ARTICLE XII**

### **THE CONSTITUTIONAL COMMISSIONS**

#### **A. COMMON PROVISIONS**

SECTION 1. The Constitutional Commissions shall be the Civil Service Commission, the Commission on Elections and the Commission on Audit.

SECTION 2. Until otherwise provided by law, the Chairman and each of the Commissioners shall receive an annual salary of \_\_\_\_\_ and \_\_\_\_\_, respectively, which shall not be decreased during their tenure.

SECTION 3. No Member for a Constitutional Commission shall, during his tenure, hold any other office or employment, or engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, or be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

SECTION 4. The Commissions shall enjoy fiscal autonomy. The approved annual appropriations for the Commissions shall be automatically and regularly released.

SECTION 5. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

SECTION 6. Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase or modify substantive rights.

SECTION 7. Each Commission shall perform such other functions as may be provided by law.

SECTION 8. The Constitutional Commissions shall appoint their officials and employees in accordance with law.

## **B. THE CIVIL SERVICE COMMISSION**

SECTION 1. (1) The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters.

(2) Appointments in the Civil Service shall be made only according to merit and fitness to be determined, as far as practicable and except to those which are policy-determining, primarily confidential and highly technical, by competitive examination.

(3) No officer or employee of the Civil Service shall be removed or suspended except for cause provided by law.

(4) No officer or employee in the Civil Service shall engage, directly or indirectly, in any electioneering and other partisan political campaign.

(5) Temporary employees of the government shall be given such protection as may be provided by law.

SECTION 2. (1) The Civil Service shall be administered by an independent Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the election immediately preceding their appointment.

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and

courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

SECTION 4. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

SECTION 5. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government, or any government-owned or controlled corporation or in any of its subsidiaries.

SECTION 6. No Member of the Armed Forces in the active service shall, at any time, be appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations.

SECTION 7. No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the Congress any emolument or official title of any kind from any foreign government.

SECTION 8. Notwithstanding any provision of this Article, the right to self-organization shall not be denied to government employees.

SECTION 9. The National Assembly or the Legislature shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the positions concerned.

Adopted, July 22, 1986.

#### RESOLUTION NO. 11

Resolution to Incorporate in the New Constitution the Provisions on the Commission on Elections

Be it resolved as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate in Article XII of the Constitution the following provisions:

#### C. THE COMMISSION ON ELECTIONS

SECTION 1. (1) There shall be an independent Commission on Elections composed of a Chairman and six (6) Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding election. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten (10) years.

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven (7) years without reappointment. Of those first appointed, three (3) Members shall hold office for seven (7) years, two (2) Members for five (5) years, and the last Members for three (3) years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

SECTION 2. The Commission shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, recalls, initiatives and referenda;

(2) Exercise exclusive jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial, and city officials, and of all contests involving municipal or barangay officials on appeal from trial courts of general jurisdiction and from trial courts of limited jurisdiction, respectively;

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters;

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest and peaceful credible elections;

(5) Register, after sufficient publication, political parties organizations or coalitions, which in addition to other requirements must present their platform or program of government, and accredit citizens' arms of the Commission. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence, unlawful means or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration;

Financial contributions to political parties and organizations or candidates from foreign governments and their agencies related to elections constitute an act of interference in national affairs and when accepted shall be an additional ground for the cancellation of the registration of a political party or organization in addition to other penalties that may be prescribed by law;

(6) On a verified complaint or on its own initiative, file petitions in court for inclusion of voters in or exclusion from the registry of qualified voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election fraud, offenses and malpractices;

(7) Recommend to the National Assembly effective measures to minimize election spending including limitations of places where propaganda materials shall be posted and prevent and/or penalize all forms of election frauds, offenses and malpractices, nuisance candidacy or other similar acts;

(8) Recommend to the President the removal of, or any other disciplinary action against, any officer or employee it has deputized for violation or disregard of or disobedience to its directive, order or decision; and

(9) Submit to the President and the National Assembly a comprehensive report on the conduct and manner of each election, plebiscite, or referendum.

SECTION 3. No votes cast in favor of a political party, organization or coalition shall be valid, except as may be provided in this Constitution under the party-list system.

SECTION 4. A free and open party system should be allowed to evolve according to the free choice of the people, subject only to the provisions of this Article.

SECTION 5. Bona fide candidates for any public office shall be free from any form of harassment and discrimination.

SECTION 6. Political parties or organizations or coalitions registered under the party-list system shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.

SECTION 7. The Commission may sit en banc or in two divisions, and shall promulgate its rules of procedures in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

SECTION 8. The enjoyment or utilization of all franchises or permits for the operation of transportation and other

public utilities, media of communication or information, all grants, special privileges or concessions granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, may be supervised or regulated by the Commission during the election period, to ensure equal opportunity, equal time, equal space and right to reply including reasonable, equal rates therefor for public information campaigns and forums among candidates for the purpose of ensuring free, orderly, honest and peaceful elections.

SECTION 9. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

SECTION 10. No pardon, amnesty, parole or suspension of sentence for violation of election laws, rules and regulations shall be granted by the President without the favorable recommendation of the Commission.

SECTION 11. Decisions, final orders or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory and not appealable.

SECTION 12. Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, referenda and plebiscites shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission.

Adopted, July 22, 1986.

## **RESOLUTION NO. 12**

### **RESOLUTION PROVIDING FOR THE PROVISIONS ON THE COMMISSION ON AUDIT IN THE NEW CONSTITUTION**

Be it resolved by the Constitutional Commission in session assembled, To incorporate in the Constitution the following provisions:

## **ARTICLE XII**

### **D. THE COMMISSION ON AUDIT**

SECTION 1. (1) There shall be an independent Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, certified public accountants with not less than ten years of auditing experience or members of the Philippine Bar who have been engaged in the practice of law for at least ten years and must not have been candidates for any elective position in the election immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

SECTION 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the government, or any of its subdivisions, agencies, or instrumentalities, including, on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) government-owned or

controlled corporations and their subsidiaries; and, (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity: Provided, however, that where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures including temporary or special pre-audit as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitation in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.

SECTION 3. The Commission shall submit to the President and the National Assembly, within the time fixed by law, an annual report covering the financial condition and operation of the Government, its subdivisions, agencies, and instrumentalities, including government-owned or controlled corporations, and such non-governmental entities subject to its audit and recommend measures necessary to improve their efficiency and effectiveness. It shall submit such other reports as may be required by law.

SECTION 4. No law shall be passed exempting any entity of the government or its subsidiary in any guise whatever, or any investments of public funds, from the jurisdiction of the Commission on Audit.

Adopted, July 22, 1986.

### **RESOLUTION NO. 13**

#### **RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE BILL OF RIGHTS**

Be it resolved as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate in the Bill of Rights of the new Constitution the following provisions:

#### **ARTICLE \_\_\_\_**

#### **BILL OF RIGHTS**

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

SECTION 2. Private property shall not be taken for public use without just compensation.

SECTION 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the person or things to be seized.

SECTION 4. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order require otherwise, as prescribed by law. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

SECTION 5. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health as may be provided by law.

SECTION 6. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as government research data used as basis for policy development shall be afforded the citizen subject to such limitations as may be provided by law.

SECTION 7. The right of the people including those employed in the public and private sectors to form associations, unions, or societies for purposes not contrary to law shall not be abridged.

SECTION 8. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

SECTION 9. No law shall be passed abridging the freedom of speech, expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

SECTION 10. No law impairing the obligation of contracts shall be passed.

SECTION 11. No ex-post facto law or bill of attainder shall be enacted.

SECTION 12. No person shall be imprisoned for debt or non-payment of a poll tax.

SECTION 13. No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

SECTION 14. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

SECTION 15. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

SECTION 16. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or may be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

SECTION 17. No person shall be held to answer for a criminal offense without due process of law nor shall any person be detained merely by reason of his political beliefs and aspirations. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

SECTION 18. No person shall be compelled to be a witness against himself.

SECTION 19. Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

No torture, force, violence, threat, intimidation or any other means which vitiates the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

Penal and civil sanctions for violations of this section as well as compensation for and rehabilitation of victims of tortures or similar practices, and of their families, shall be provided by law.

SECTION 20. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted, unless for compelling reasons involving heinous crimes the National Assembly provides for the death penalty. Death penalty already imposed shall be reduced to reclusion perpetua.

The employment of physical, psychological or degrading punishment against any prisoner or detainee or the use of sub-standard or inadequate penal facilities under subhuman conditions should be dealt with by law.

SECTION 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

SECTION 22. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Adopted, July 22, 1986.

## **RESOLUTION NO. 14**

### **RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON SUFFRAGE**

Be it resolved as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate in the new Constitution the following provisions on Suffrage:

#### **ARTICLE\_\_\_\_\_**

#### **SUFFRAGE**

SECTION 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election.

No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage.

The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote as well as a system for absentee voting by qualified Filipinos abroad.

In the case of the disabled and the illiterates, the legislature shall design a procedure which will not require the assistance of another person. Until the legislature provides for the appropriate procedure, the illiterates and the disabled shall be allowed to vote under the existing law and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Adopted, July 22, 1986.

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