

JOURNAL NO. 60

VOL. II, August 20, 1986

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Tuesday, August 19, 1986

CALL TO ORDER

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

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Alberto M. K. Jamir, to wit:

"Merciful God, we approach the end of our pilgrimage in search of a constitution which will embody the highest ideals and aspirations of our people with increasing unease. While we are, all of us, sincere in our efforts to apply the proper solutions to the pressing problems of our country we find ourselves divided in the manner of solving them. There are those amongst us who would channel our country's course along lines that are in keeping with and respectful of the rights of others. There are those, however, who prefer a different path by dangling before our people's eyes a hope for economic emancipation without regard to its effects upon others.

In such a time as this, we implore Thy divine guidance that we may avoid creating an unattainable Utopia which, in the end, increase their discontentment. We beg of Thee to show us the way so that no seed may find a place in the Constitution we are making which may one day be the cause of a fratricidal class struggle among our countrymen so that this beloved land may not be drenched with the blood and tears of its own children.

It is inevitable that one of these precepts would all to find acceptance. Should this come to pass show us, Oh Lord, how to bear the resulting disappointment in good grace. Keep us together in spite of our differences in outlook, so that we can continue to fashion a Constitution which will come from Thy hands, through ours, that our people may have a vibrant and living charter to guide them in their journey through peace and progress throughout the ages.

Amen."

ROLL CALL

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

Aquino, F. S.

Quesada, M. L. M.

Bernas, J. G.

Rama, N. G.

Rosario Braid, F.
Regalado, F. D.
Calderon, J. D.
De los Reyes, R. F.
De Castro, C. M. .
Rigos, C. A
Colayco, J. C.
Rodrigo, F. A.
Concepcion, R. R.
Romulo, R. J.
Davide, H. G.
Rosales, D. R.
Foz, V. B.
Sarmiento, R. V.
Garcia, E. G.
Suarez, J. B.
Jamir, A. M. K.
Sumulong, L. M
Laurel, J. B.
Tadeo, J. S. L.
Monsod, C. S.
Tan, C.
Nieva, M.. T. F.
Tingson, G. J.
Nolledo, J. N.
Uka, L. L.
Padilla, A. B.
Villegas, B. M.
Muñoz Palma, C.

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

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R.

Guingona, S. V. C.

Alonto, A. D.

Lerum, E. R.

Azcuna, A.S.

Maambong, R. E.

Bacani, T. C.

Natividad, T. C

Bengzon, J. F. S.

Ople, B. F.

Bennagen, P. L.

Villacorta, W. V.

Mr. Treñas was sick.

Messrs. Brocka and Gascon were absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS AND COMMITTEE REPORT

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

Communication No. 576 — Constitutional Commission of 1986

Communication from Mr. Herminio H. Cacanindin, Provincial Secretary, transmitting Resolution No. 70 of the Sangguniang Panlalawigan of La Union, declaring/embodying the opposition of the Province of La Union against the storage of nuclear armaments in the Philippines
TO THE COMMITTEE ON PREAMBLE,
NATIONAL TERRITORY AND DECLARATION OF PRINCIPLES

Communication No. 577 — Constitutional Commission of 1986

Letter from Ms. Joanna K. Carino of Bontoc, Mountain Province, transmitting a resolution signed by one thousand one hundred eighty-nine (1,189) Tinggians and Bontoks of the Cordilleras calling for an autonomous region and respect for ancestral land rights, among others.

TO THE COMMITTEE ON LOCAL GOVERNMENTS

Communication No. 578 — Constitutional Commission of 1986

Letter from Mr. Simeon R. Ventura urging the Constitutional Commission to consider the following issues: a) abolition of the CHDF; b) agrarian reform; c) allocation of seats in the bicameral legislative body; d) autonomy for the Cordilleras and our Muslim brothers, and e) American military bases

TO THE STEERING COMMITTEE

Communication No. 579 — Constitutional Commission of 1986

Communication from Dr. Victor A. de la Cruz, Filamer Christian College, Roxas City, and three others, upholding the inviolability of the separation of the Church and State

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 580 — Constitutional Commission of 1986

Letter from Ms. Phyllis Zaballero and Ms. Maria Isabel Ongpin of the Alliance of Women Towards Action and Reform (AWARE), proposing inclusion in the Constitution of the following provision: "The State recognizes the right of women to equal treatment with men in all spheres of civic, political, economic, social and cultural life."

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

Communication No. 581 — Constitutional Commission of 1986

Letter from Minister Candu I. Muarip of the Ministry of Muslim Affairs and Cultural Communities transmitting two resolutions of the Zamboanga del Norte Muslim Association, to wit: Resolution No. 02-86 urging inclusion of a provision in the Constitution recognizing the existence and establishment of the sultanate as a form of sociocultural and political organization in Regions IX and XII; and Resolution No. 04-86 urging inclusion in the Constitution of a provision recognizing Arabic as one of the basic Filipino languages in Southern Philippines and authorizing and encouraging the teaching thereof in both public and private schools and the same to be regulated by the national government

TO THE STEERING COMMITTEE

COMMITTEE REPORT

Committee Report No. 39 on Proposed Resolution No. 542, prepared jointly by the Committee on Social Justice and Committee on Human Resources, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A SEPARATE ARTICLE ON FAMILY RIGHTS,

recommending its approval in substitution of Proposed Resolution No. 272.

Sponsors: Hon. Nieva, Villacorta, Gascon, Uka, Tadeo, Monsod, Aquino, Brocka, Suarez, Ople, Quesada, Bacani, Garcia, Lerum, Tan, Bennagen, Bengzon, Jr., Rodrigo, Guingona, Rigos, Rosario Braid and Treñas

TO THE STEERING COMMITTEE

UNFINISHED BUSINESS: COMMITTEE REPORTS NOS. 21 AND 25, AS AMENDED, ON PROPOSED RESOLUTION NO. 470 ON THE ARTICLE ON LOCAL GOVERNMENTS

On motion of Mr. Rama, there being no objection, the Body resumed consideration of Committee Reports Nos. 21 and 25, as amended, on Proposed Resolution No. 470, entitled:

Resolution proposing to incorporate in the new Constitution an Article on Local Government.

Thereupon, the Chair recognized Mr. Nollado, Chairman of the Committee on Local Governments, and the members of the Committee for further individual amendments.

For the record, Mr. Rama stated that Proposed Resolution No. 470 is a consolidation of Proposed, Resolutions Nos. 470 and 511 of the Committee on Local Governments.

MOTION TO DEFER CONSIDERATION OF THE SUBHEADING ON LOCAL GOVERNMENTS

At this juncture, Mr. Rama moved to defer consideration of the first subheading on Local Governments in order to accommodate some Muslim visitors from Mindanao who had been around for sometime to observe the deliberations on the Autonomous Regions.

Mr. Nollado, however, objected on the ground that only a few sections remained of the first part of the Article and, moreover, that Messrs. Alonto, Abubakar and Bennagen, who were most concerned with the second part, were not yet in the Session Hall.

Thereupon, Mrs Rama withdrew his motion.

Mr. Nollado stated that Mr. Padilla was presenting an-amendment when the previous session was adjourned.

Thereupon, the Chair recognized Mr. Padilla.

AMENDMENT OF MR. PADILLA

On Section 11, page 2, line 23, Mr. Padilla proposed to add the words AND LIMITATIONS after "guidelines".

Explaining his amendment, Mr. Padilla called attention to the fact that the Committee had substituted "guidelines" for the word "limitations" used in the previous Constitutions. He stated that while the Commission agreed to give, or even increases local autonomy to political subdivisions, It must be careful that the power of local governments to tax may not be without limitation because the power to tax may include the power to destroy. He warned that an unlimited power of taxation without limitations by Congress could be dangerous and, instead of promoting the common will, could be resorted to by some local executives as an arbitrary means to exact more contributions by way of levies, taxes and fees to the detriment of the general public. He Stated that while he would have no objection to the word "guidelines", he would like the word limitations" be also retained.

Mr. Nollado did not accept the amendment on the ground that adding the word "limitations" to "guidelines" would unduly restrict the power of the Local Governments to tax. He explained that the provision was in response to the unanimous request of the League of Governors and City Mayors to delete the word "limitations" in view of the many limitations set forth in PD 231 which particularly deny local governments the power to tax. He observed that the dictum "the power to tax includes the power to destroy" has been misinterpreted by some lawyers. He opined, as a professor of taxation, that simply means that as long as the tax law is legal, the taxpayer cannot evade payment of taxes on the ground that the payment would render his business inutile or would result in his impoverishment.

Adverting to one recent case, Mr. Nollado pointed out that the Supreme Court, through Chief Justice Fernando, observed that this dictum of Chief Justice Marshall was overruled by Justice Frankfurter in the case of Graves V8. New York, 306, U.S. 466. He disagreed that simply stating "guidelines" would grant the local chief-executives the power to impose unnecessary taxes or taxes beyond the capacity of the taxpayer to pay because of the settled limitations recognized in all republican governments that the power to tax shall be subject to certain conditions, namely, 1) that the tax must be for a public purpose; 2) that it must be uniform within a locality; 3) that it must not

infringe upon accepted national economic guidelines; and 4) that it must not be confiscatory. He stressed that these principles are deeply imbedded in every Constitutional government. He then urged his colleagues to listen to the plea of the governors and city mayors who were unanimous in substituting the word "limitations" with "guidelines".

INQUIRY OF MR. OPLE

In reply to Mr. Ople's query on whether the addition of the word "limitations" would imply a clearer guarantee that the principles of taxation would be observed, Mr. Padilla stated that the Constitution provides that the rules of taxation shall be uniform and equitable and shall adopt a progressive system of taxation.

Mr. Padilla stressed that it is natural for the executives of local governments — governors and mayors — to exercise the power of taxation delegated to them by the Constitution and by Congress, more so, if such power is in accordance with the standards of being uniform, equitable and progressive; however, when local executives, through their municipal councils or provincial boards, are given the power of taxation without limitations, there is a danger that they would not only overtax the people but even duplicate many national internal revenue taxes that would overburden the people.

Mr. Ople then inquired whether the Committee would object to spelling out the standards of being uniform, equitable and progressive in an appropriate place in the Article on Local Government, to which Mr. Nollado replied that the Committee would be willing to entertain amendments for the purpose.

INQUIRY OF MR. BERNAS

In reply to Mr. Bernas' query if it is possible for the Committee to specify the areas of taxation where Congress could only give guidelines and the areas where Congress may impose limitations, Mr. Nollado stated that it is possible in the case of taxes provided for by the National Internal Revenue Code which local governments may impose subject to limitations set forth by law because there would be two taxing powers in such case, although there are areas where local governments would have exclusive authority like the imposition of license fees. However, he stated that it would be too much for the Committee to specify the areas of taxation where only guidelines would be required because of the many technicalities involved which could lead to unwittingly putting undue limitations upon the local governments' power to tax.

Mr. Nollado opined that guidelines may also constitute reasonable limitations.

Mr. Padilla stressed that regulatory fees which would pay for the cost of public service are perfectly in order. He pointed out, however, that there are times when local government units would impose a tax already prescribed by the National Internal Revenue Code and this, he stated, is considered double taxation, because any increase in taxes is a burden to the people.

On Mr. Nollado's suggestion to change the word "guidelines" to "reasonable limitations", Mr. Padilla accepted the proposal, stating that limitations must really be reasonable.

Mr. Nollado accepted Mr. Padilla's amendment, as amended, with the understanding, as Mr. Ople pointed out, that these limitations imposed under existing decrees are not thereby perpetuated.

Mr. Padilla stressed that his proposed amendment was based on a previous constitutional provision and not on any decree because he is one of those who does not believe in recognizing, much less constitutionalizing, the unilateral presidential decrees issued during the past regime.

Mr. Nollado restated Mr. Padilla's proposed amendment which would consist of deleting the word "guidelines"

and in lieu thereof, inserting the words REASONABLE LEMIITATIONS, which Mr. Padilla accepted with the suggestion to retain the word "guidelines" so that it would read "guidelines AND REASONABLE LIMITATIONS".

Mr. Bernas opined that the inclusion of the words "reasonable limitations" would not in any manner strengthen the taxing autonomy of local governments because it is always presumed that the limitations would be reasonable and that Congress would act with reason.

Ms. Aquino stressed that it is axiomatic in law and jurisprudence and in fact fundamental in all democratic governments that taxation is subject to limitations, namely, the requirements of public purpose, jurisdiction and uniformity. These, she stated, are safety valves which are inherent limitations in the power of taxation. She stated that the inclusion of the proposed amendment would only muddle the issues in the context of the position of Mr. Bernas.

Mr. Nollado then inquired whether it should be "guidelines" or "reasonable limitations", to which Mr. Padilla replied that Section 5 of the 1973 Constitution used the word "limitations and although he was not the proponent of said word, he stressed that this would not mean limitations on the power of Congress but more of a limitation on the power of the local units to tax. Mr. Padilla pointed out that it is significant that the former Constitution provided for limitations and any attempt to delete or substitute it would imply that there would be no more limitations on the power of the local units to tax in the sense that it might give the wrong impression that Congress may only provide for guidelines.

Mr. Bernas maintained that the limitations are already constitutional requirements aside from the limitation of political dynamics. He pointed out that the legislative authorities of local governments which would pass these laws would be subject to the pressures of their locality and this by itself is already a limitation.

Mr. Padilla argued that if the limitations apply on the power of Congress, with more reason that the same limitations should be applied on the lower political units. He restated his proposed amendment to insert. the words AND LIMITATIONS after the word "guidelines", to which Mr. Nollado replied that the Committee was withdrawing its acceptance of the exclusion of the word "reasonable".

Submitted to a vote, and with 22 Members voting in favor and 12 Members voting against, the Body approved Mr. Padilla's amendment.

AMENDMENT OF MR. SUAREZ

Mr. Suarez proposed the deletion of the last sentence of Section 8 appearing on lines 24 to 26, explaining that the first sentence of the Section would already empower each local government unit to create its own sources of revenues. Furthermore, he stated that the proposed deletion would unburden the citizens of possible taxes imposed by the different political units.

Mr. Nollado did not accept the proposed amendment on the ground that the provision sought to be deleted is consistent with the respect for the customs and traditions of the people of indigenous communities.

On Mr. Colayco's inquiry on the intent of the Committee in empowering a local government unit to collect charges and contributions which are not considered taxes, Mr. Alonto explained that the country, being a pluralistic society, is composed of different sectors with distinct customs and traditions. He cited as an example the Bangsa Moro which started organizing its government through Voluntary contributions which is an approach recognized by Islam. He stressed that there are good traditional customs of the different indigenous groups which could be given constitutional recognition.

As to what specific charges or contributions could be collected by these local units, Mr. Alonto stated that this could be in the form of voluntary contributions to fund whatever projects the local unit has for sociopolitical development.

Mr. Nollado stated that there are cooperative efforts among the members of indigenous communities which would enable the local unit to raise some sinking fund for the common benefits as dictated by their customs and traditions. He stressed that these levies have been recognized since time immemorial and the laudable purpose is for the common benefit in the spirit of cooperativism. However, he stated that in the absence of a constitutional authority, one may question the levy.

On Mr. Colayco's contention that this would make it mandatory for members of the community to contribute, Mr. Alonto pointed out that many tribes have already developed this practice not only as customary law, but as an obligatory imposition on the members of the community.

Mr. Nollado informed that this provision was copied verbatim from the UP Constitution Project draft which considered the various customs and traditions in different parts of the country, and is in line with the request of the indigenous communities.

Mr. Colayco manifested that he was not satisfied with the answer.

Mr. Rodrigo, citing a Muslim community where there are Christian residents, inquired whether a tax based on Muslim customs could also be imposed on these Christian communities, to which Mr. Alonto replied that in Islam, no one could impose his way of life on others and it is in this spirit that the Muslims would never impose such a tax on Christians residing therein.

On Mr. Rodrigo's contention that since the sentence provides that the levy would be made by the government, it may happen that the locality under such local government might not be all indigenous people, Mr. Alonto agreed that the wording of the sentence could be improved to indicate its real intent.

Mr. Alonto agreed with Mr. Rodrigo's suggestion that said provision be transferred to the Section on Autonomous Regions.

Ms. Aquino objected to the proposed deletion of the last sentence and agreed with the Committee's on to grant local governments a reasonable latitude of fiscal autonomy. She stated that the provision would just give a legal imprimatur to an already accepted practice and she suggested that this could be transferred to the Section on Autonomous Region.

Reacting thereto, Mr. Bacani remarked that it may not be proper to constitutionalize a custom which is already flourishing and in this context, said provision should not be included in the Constitution.

On the apprehension that this could be subject to possible abuse, Ms. Aquino pointed out that there are sufficient safeguards in the Constitution itself, like certain provisions in the Articles on the Bill of Rights and on the Legislative Department, to which Mr. Bacani replied that it is not a question of abuse, but whether it is necessary and proper to include such provision in the Constitution.

Mr. Bennagen agreed with the suggestion to transpose said provision to the Section on Autonomous Regions, explaining that the intent is precisely to codify existing Customary laws so that they could be integrated to strengthen the whole body of national law, in reply to which Mr. Bacani adverted to Section 4(10) on the autonomous regions which would serve the purpose mentioned by Mr. Bennagen.

Mr. Rigos noted that the proposed amendment consists of the deletion of the sentence although the Committee is willing that it be transferred to an appropriate section on the autonomous regions, to which Mr. Nollado reiterated

that the Committee is adopting the position of Mr. Alonto to have it transferred to a section on the autonomous regions.

Mr. Bennagen stated that the intent is not to bodily transpose said provision but to integrate the concept into the appropriate sections on the autonomous regions.

Mr. Bernas stated that he had no objection to the proposed transposition of the provision but he would object to the deletion because as explained by Mr. Alonto, it is a kind of tax which is not uniformly applicable, and therefore, there is a need to provide a special authorization for it so that it would not run afoul of the equal protection clause.

Mr. Suarez insisted on the deletion of the second sentence of Section 11.

In reply to Mr. Bacani's query, Mr. Nollado affirmed that the unique, distinct and exclusive charges or contributions partake of the nature of taxes.

Thereupon, Mr. Colayco suggested that the second sentence could be considered in the succeeding provisions on the autonomous regions without necessarily deleting it, in reply to which Mr. Nollado stated that if it would be transferred to the provisions on the autonomous regions, other tribes which would be covered by the provisions may not be included in the autonomous regions, thus, limiting the scope of the second sentence of Section 11.

Mr. Suarez moved for a vote on his proposed amendment.

Submitted to a vote, and with 27 Members voting in favor and 10 against, the Body approved the deletion of the second sentence of Section 11.

AMENDMENTS OF MR. DAVIDE

On Section 11, page 2, line 24, after the word "provide", as proposed by Mr. Davide and accepted by the Sponsor, the Body approved the insertion of the phrase **CONSISTENT WITH THE BASIC POLICY OF LOCAL AUTONOMY**.

Mr. Davide then proposed to amend and transfer the first sentence of Section 12 as the second sentence of Section 11, to read: **SUCH TAXES, FEES AND CHARGES SHALL ACCRUE EXCLUSIVELY TO THE LOCAL GOVERNMENT UNIT**.

The Sponsor accepted the proposed amendment.

In reply to the query of Messrs. Suarez and Rodrigo, Mr. Davide stated that the province would not be entitled to a share in the revenues that a municipality would collect and the province itself may levy and collect taxes without sharing with the municipality. He added that the national government may also impose its own national taxes but which would be shared with the local governments. However, when the local governments impose and collect taxes, the national government may not have a share therein. He stated that it would simply be a political strategy if the province would share its collection with the municipalities, to which Mr. Nollado replied that it is the practice under Presidential Decree No. 231.

Thereupon, Mr. Davide agreed with the suggestion of Mr. Nollado to change "local government unit" to **LOCAL GOVERNMENTS**, such that the sentence would read: **SUCH TAXES, FEES OR CHARGES SHALL ACCRUE EXCLUSIVELY TO THE LOCAL GOVERNMENTS**.

Mr. Davide then proposed that Section 12 would now read:

SECTION 12. LOCAL GOVERNMENT UNITS SHALL HAVE A JUST SHARE, AS DETERMINED BY

LAW, IN THE NATIONAL TAXES WHICH SHALL BE AUTOMATICALLY PERIODICALLY RELEASED TO THEM.

Mr. Nollado pointed out that the word "periodically" would be unnecessary because of the term "automatically", in reply to which Mr. Davide pointed out that if it is not periodical, it might be difficult to comply with it because the national government may be asked to release the share everyday. Mr. Nollado maintained that the word "automatically" would mean that the Budget Officer should observe certain periods of release.

Thereupon, Mr. Davide accepted the deletion of the word "periodically", such that Section 12 would read:

SECTION 12. LOCAL GOVERNMENT UNITS SHALL HAVE A SHARE, AS DETERMINED BY LAW, IN THE NATIONAL TAXES WHICH SHALL BE AUTOMATICALLY RELEASED TO THEM.

There being no objection, Section 12 was approved by the Body.

PROPOSED AMENDMENT OF MR: GUINGONA

On Section 11, page 2, line 24, after the word "autonomy" in the amendment of Mr. Davide, Mr. Guingona proposed to insert a new sentence which shall read: NO GUIDELINES MAY BE ENACTED BY CONGRESS WHICH IN ANY MANNER WOULD DIMINISH THE AUTONOMY ALREADY ENJOYED BY HIGHLY URBANIZED CITIES AND CITIES INDEPENDENT OF THE PROVINCE BY VIRTUE OF PREVIOUS CONGRESSIONAL GUIDELINES, UNLESS APPROVED BY THE MAJORITY OF THE INHABITANTS THEREOF.

The Sponsor did not accept the proposed amendment.

Mr. Guingona explained that there would be no inconsistency between a strong central government and strong local governments as agents of the national government. He opined, however, that the local government units should be given adequate power and autonomy, which would include participation in self-government and the power to create sources of revenues and impose corresponding taxes, levies and fees.

He further stated that as cities graduate from the status of component cities to highly urbanized cities, they are given greater power to create new sources of revenues and to impose taxes under the guidelines that Congress may provide. He noted that once these powers are granted to and exercised by the highly urbanized cities, the same powers should not be recalled or restricted by subsequent guidelines by Congress.

Additionally, he stated that Congress should also consider the autonomy of the smallest government unit in relation to bigger units since these small units could transform to bigger units, as shown by the report of the U.P. Public Administration Local Government Center that in 1970 some 80,000 small local units in the United States were being considered for reduction to 16,000 units.

Nevertheless, Mr. Guingona withdrew his proposed amendment.

APPROVAL OF SECTION 11, AS AMENDED

Mr. Nollado read Section 11, as amended, to wit:

SECTION 11. EACH LOCAL GOVERNMENT UNIT SHALL HAVE THE POWER TO CREATE ITS OWN SOURCES OF REVENUES AND TO LEVY TAXES, FEES AND CHARGES SUBJECT TO SUCH GUIDE LINES AND LIMITATIONS AS CONGRESS MAY PROVIDE CONSISTENT WITH THE BASIC POLICY OF LOCAL AUTONOMY. SUCH LOCAL TAXES, FEES AND CHARGES SHALL ACCRUE EXCLUSIVELY TO THE LOCAL GOVERNMENTS.

Submitted to a vote, and with 28 Members voting in favor and none against, Section 11, as amended was approved by the Body.

APPROVAL OF SECTION 12, AS AMENDED

Mr. Nollado also read Section 12, as amended, to wit:

SECTION 12. LOCAL GOVERNMENT UNITS SHALL HAVE THEIR JUST SHARE, AS DETERMINED BY LAW, IN THE NATIONAL TAXES WHICH SHALL BE AUTOMATICALLY RELEASED TO THEM.

Submitted to a vote, and with 29 Members voting in favor and none against, Section 12, as amended, was approved by the Body.

PROPOSED AMENDMENT OF MR. OPLE JOINTLY WITH MR. DAVIDE

On Section 13, page 3, line 2, after the word “areas”, Mr. Ople, jointly with Mr. Davide, proposed to insert the phrase IN THE MANNER PROVIDED BY LAW AND WITHOUT PREJUDICE TO SUCH SHARING, TAKING THE FORM OF DIRECT BENEFITS TO THE POPULATION.

Mr. Ople pointed out that in the hinterland, most municipalities have an annual income of P200,000, so that after paying the salaries of local officials and employees, nothing was left to fund any local development project. He opined that the thrust towards local autonomy would fail without innovative income generation.

Mr. Ople further explained that sharing with the national government could be in the form of shares from revenues, fees and charges levied on the utilization and development of natural resources such as mines, hydroelectric and geothermal facilities, timber, fisheries and processing industries based on indigenous raw materials

He added that sharing could also be in the form of direct benefits to the population in terms of price advantages like cheaper electric power if sourced from a local hydroelectric or geothermal facility, such as the Maria Cristina Hydroelectric Facility in Mindanao and the Tiwi Geothermal Plant in Albay.

He opined that the existing policy of slapping uniform fuel adjustment taxes to equalize rates throughout the country would have to yield to a more rational pricing policy that recognizes the entitlement of local communities to the enjoyment their comparative advantage over the God-given resources in their area.

On Mr. Alonto's query whether in the utilization and development of resources the local inhabitants in the area would also be given priority in employment, Mr. Ople replied that the broader contemplation of sharing in the proceeds of natural resources and direct benefits would include the employment of local inhabitants.

With this understanding, Mr. Alonto strongly supported the amendment.

Mr. Ople, however, explained that a hydroelectric project may need the services of personnel who possess minimum technical skills and who may not be locally available. He stressed that although his proposed amendment contemplates priority for local employment, it should be done without prejudice to the viability of the project.

At this juncture, Mr. Monsod pointed out that the new government has, in fact, adopted grid pricing rather than a national pricing formula for electricity which means that those with some natural resources, like Mindanao, where the cost of power is lower, the price of power would correspond to the cost of power generation. He added that the proposed amendment is meritorious and is, in fact, already the policy of government.

Mr. Nollado suggested a rewording of the last clause of the proposed amendment to include the phrase IN THE MANNER PROVIDED BY LAW INCLUDING SHARING WITH THE INHABITANTS BY WAY OF DIRECT BENEFITS TO THEM.

Mr. Ople accepted the amendment.

Mr. Nollado, likewise, accepted Mr. Ople's proposed amendment subject to style.

On Mr. Suarez' query as to who would be the one directing the manner by which these benefits would be extended to the inhabitants, Mr. Ople opined that it may be both Congress and the local government. He added that Congress may pass an enabling legislation that would fix certain standards and proportions of sharing but the proposed Section could also operate in a self-executory manner without benefit of legislation. He stated that the local government may also initiate a process whereby the National Power Corporation (NPC), for instance, may consider a petition of the local people for a price rebate on the basis of the new Section 13.

Mr. Ople concurred with Mr. Suarez' interpretation that the local government unit would determine how the funds would be extended by way of direct benefits to the people at the first instance but concretized in a legislation to be passed by Congress.

Thereupon, the proposed amendment of Mr. Ople, jointly with Mr. Davide, was submitted to a vote, and with 30 Members voting in favor and 1 against, the same was approved by the Body.

AMENDMENT OF MR. GUINGONA

Mr. Guingona proposed to insert EQUITABLY between “to” and “share” on line 1 of Section 13.

Mr. Nollado accepted the amendment.

Submitted to a vote, and there being no objection, the same was approved by the Body.

AMENDMENT OF MR. BENNAGEN

Mr. Bennagen proposed, on Section 13, to substitute “exploitation” with UTILIZATION.

Mr. Monsod supported the proposal because it would harmonize with the wording of the Article on National Economy and Patrimony.

Mr. Ople also supported the amendment which was, in turn, accepted by Mr. Nollado.

Submitted to a vote, and there being no objection, the same was approved by the Body.

AMENDMENT OF MR. MONSOD

Mr. Monsod proposed, on Section 13, to delete the words “to them” in the last sentence of the Section, which Mr. Nollado accepted.

AMENDMENT OF MR. DAVIDE

Mr. Davide then proposed to change Mr. Guingona's amendment to substitute “equitably” with AN EQUITABLE to harmonize it with the just share in the national taxes.

Mr. Nollado accepted the amendment.

APPROVAL OF SECTION 13, AS AMENDED

Thereupon, Mr. Nollado read Section 13, as amended to wit:

SECTION 13. LOCAL GOVERNMENTS SHALL BE ENTITLED TO AN EQUITABLE SHARE IN THE PROCEEDS OF THE UTILIZATION AND DEVELOPMENT OF THE NATIONAL WEALTH WITHIN THEIR RESPECTIVE AREAS IN THE MANNER PROVIDED BY LAW, INCLUDING THEIR SHARING WITH THE INHABITANTS BY WAY OF DIRECT BENEFITS.

Submitted to a vote, and with 31 Members voting in favor and 1 against, the same was approved by the Body.

AMENDMENT OF MR. MAAMBONG

Mr. Maambong proposed, on Section 14, to substitute “barrio” with BARANGAY, which Mr. Nollado accepted.

Submitted to a vote, and there being no objection, the same was approved by the Body.

INQUIRY OF MRS. ROSARIO BRAID

On Mrs. Rosario Braid's query whether the ecological and cultural factors should also be considered as additional criteria aside from those mentioned in Section 14, Mr. Nollado agreed that these factors should be considered and that Congress should be urged to consider their inclusion.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed, on Section 14, now denominated as Section 4, page 3, line 8, to delete “unit or”.

Mr. Maambong informed that the present Local Government Code used the phrase political unit or units”.

On Mr. Nollado's suggestion to simply retain the original phrase, Mr. Davide objected because he proposed the amendment to make it clear that the plebiscite to be conducted for the merger, creation, abolition or division of a political unit must involve all the units to be affected as it would mean loss of territory.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query as to the meaning of the phrase “boundary substantially altered” on Section 14, Mr. Nollado explained that the plebiscite and all other requirements in the matter of boundary alteration would only be needed if it is substantial in character. This implies that if it is less substantial there may be no need for the plebiscite and other requirements.

As to who would determine what is a substantial alteration, Mr. Nollado replied that it would be up to Congress to determine the necessary formulation in the Local Government Code.

On whether “substantially” could be deleted in order to avoid confusion, Mr. Nollado maintained that there is the possibility that the boundary involved may be minimal and the people from both municipalities would not object to the alteration.

PROPOSED AMENDMENT OF MR. BENGZON

Mr. Bengzon proposed on Section 1, page 2, line 10 on the Section on the Autonomous Regions to insert the phrase SUBJECT TO APPROVAL IN A PLEBISCITE BY A MAJORITY OF THE VOTERS OF THE LOCAL GOVERNMENT UNITS AFFECTED, before “there”.

INQUIRY OF MR. SUAREZ

Upon inquiry of Mr. Suarez whether the sentence on lines 26 to 28, reading: "The creation of the autonomous region shall be approved in a plebiscite by majority of the voters of the constituent units" would not solve the problem raised by the proponent, Mr. Bengzon stated that it would depend upon how the sentence would be interpreted. He observed that there would be two sets of plebiscites — the first plebiscite to determine which of the provinces within the region would want to become part of the autonomous region after which Congress would enact the organic act, and the second plebiscite to present the organic act to the people for approval. He affirmed that he was suggesting the first step.

On the matter of the second plebiscite, Mr. Suarez inquired whether this is the plebiscite contemplated in the sentence on lines 26 to 28 which shall be determined by the voters of the constituent political units who have opted to be part of the autonomous region, which Mr. Bengzon confirmed, noting, moreover, that the organic act to be ratified would be the Constitution of the autonomous region.

Mr. Bengzon, in arguing for his amendment, stated that there are a lot of Filipinos in Muslim Mindanao and the Cordilleras who have long wanted autonomy for their regions and that they should not be deprived of the right to categorically express their desire to be part of the autonomous regions. Nevertheless, he also pointed out that the others who may feel otherwise should also be given the same opportunity to express in black and white their desire not to join the autonomous region. Through this plebiscite, Mr. Bengzon contended, provinces and municipalities which shall form part of the autonomous region would have manifested categorically their desire to be included therein and those who may not wish to be part of that same region would have been given the opportunity to express their own sentiments. He noted that in view of the existence of local autonomous governments in Regions 9 and 11, the Muslims in the said regions would have no difficulty. He maintained that in this way, the Members of the Commission could not be said to have forced the issue of autonomy on the people of the affected areas just because a majority of them have expressed the desire for autonomy.

Mr. Bengzon explained that after determining that the provinces concerned wish to be part of the autonomous region, Congress shall then enact the organic act that would spell out the details on the creation of the autonomous region and that thereafter the same will be presented to the people in a plebiscite.

REMARKS OF MR. ALONTO

Mr. Alonto clarified that Section 1 is the general

Provision which merely points out and mandates Congress to organize two (2) autonomous regions — Muslim Mindanao and the Cordilleras — and that Section 2 provides the process by which Congress can organize the autonomous region in such manner that all units which would want to join the autonomous region would be consulted inasmuch as Congress should not enact an organic act without consulting the multi sectoral bodies in the said regions

He allayed the fear of Mr. Bengzon by pointing that the situation Mr. Bengzon would like to prevent had been stated in the section. He maintained that putting the phrase proposed in Section 1 would a different meaning

REMARKS OF MR. NOLLEDO

In rejecting the amendment of Mr. Bengzon, Mr. Nollado averred that it would emasculate the entire set of provisions on autonomous regions and that it would create two sets of plebiscites. He maintained that the provision on lines 26 to 28 is clear enough with respect to Section 2 inasmuch as multi-sectoral bodies for each autonomous region would have to be consulted and public hearings would be conducted after which Congress

may pass the organic act to be submitted to the people so they can determine whether the provisions contained therein will redound to their benefits. He noted that in a plebiscite to determine if the people would like to create an autonomous region, there might be no basic issue to be defined as the people may be misinformed. He added that the amendment being presented is not in accordance with what had been agreed upon in caucus.

Mr. Bengzon, in reply, stated that it is definite that the Body approved the creation of autonomous regions for Muslim Mindanao and the Cordilleras. He reasoned that the only purpose in his amendment would be to determine which among the provinces involved would wish to become part of the autonomous region and that all regions affected should be given the opportunity to express their choice. He stressed that the Commission cannot force autonomy on all regions.

REMARKS OF MR. BACANI

In response to Mr. Nollado's remarks, Mr. Bacani pointed out that Section 2 mandates Congress to enact an organic act in consultation with multi- sectoral bodies for each autonomous region which act 'would define the basic structure of government for the region. He clarified that what Mr. Bengzon was asking for, which he seconded, would be to allow the people in a particular province or 'town to exercise self-determination as to whether they would like to be included in the autonomous region. He adverted to the remarks of Mr. Alonto that in the places inhabited not only by Muslims, the people can determine whether they would want to join the autonomous region. He raised the question as to how the sentiments of the people in such places can be determined if not through a plebiscite.

PROPOSED AMENDMENT OF MR. AZCUNA

Mr. Azcuna offered an amendment which would necessitate only one plebiscite for determining both the approval of the autonomous region as well as the inclusion or non-inclusion of constituent units. He explained that this can be accomplished by adding to the last sentence of Section 2 the provision PROVIDED THAT ONLY CONSTITUENT UNITS VOTING FAVORABLY IN SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION such that the amended portion with further modifications would now read: "The creation of the autonomous region shall be EFFECTIVE WHEN approved by majority of the voters of the constituent units IN A PLEBISCITE CALLED FOR THE PURPOSE PROVIDED THAT ONLY CONSTITUENT UNITS VOTING FAVORABLY IN SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION.

Upon the Chair's inquiry, Mr. Azcuna noted that the organic act shall be submitted to the voters for a plebiscite and shall contain the territorial delimitations.

INQUIRY OF MR. BENGZON

Upon inquiry of Mr. Bengzon, Mr. Azcuna clarified that the organic act will be presented to the people in a plebiscite together with the proposed territorial delimitation on the constituent units and once accepted, only the constituent units which voted in favor of the organic act will be included in the autonomous region.

In response to the possibility raised by Mr. Bengzon that political units that may want autonomy may not agree with the delimitations and hence reject the organic act, Mr. Azcuna stated that the formulation of the organic act will be through a method of consultation with local leaders. Mr. Azcuna added that it will reflect the consensus of the regions and their inhabitants and would probably be acceptable to most, if not all, of the inhabitants therein. He explained that the basic powers are already defined in the Article and that this proposal would simplify it by having only one plebiscite to determine which among the provinces or cities favor autonomy and be part of the

autonomous region.

Mr. Bengzon noted that if the Committee is willing to accept the amendment of Mr. Azcuna, he would willingly join him as co-author.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 12:08 p.m.

RESUMPTION OF SESSION

At 12:21 p.m., the session was resumed.

Upon resumption of session, Mr. Bengzon informed the Body that he had accepted Mr. Azcuna's proposal to amend lines 26 to 28 instead of line 10. He then requested Mr. Azcuna to present the amendment.

AMENDMENT OF MR. AZCUNA JOINTLY WITH MR. BENGZON

Mr. Azcuna proposed to reword the second paragraph of Section 2, to wit:

THE CREATION OF THE AUTONOMOUS REGION SHALL BE EFFECTIVE WHEN APPROVED BY MAJORITY OF THE VOTERS OF THE CONSTITUENT UNITS IN A PLEBISCITE CALLED FOR THE PURPOSE: PROVIDED, THAT ONLY CONSTITUENT UNITS VOTING FAVORABLY IN THE SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION.

MR. DE LOS REYES' AMENDMENT TO THE AMENDMENT

Mr. de los Reyes proposed an amendment to the amendment by substituting the words "constituent units" with PROVINCE OR CITY.

Mr. Azcuna accepted the amendment to -the amendment, which Mr. Nollado likewise accepted.

INQUIRY OF MR. MONSOD

In reply to Mr. Monsod's query on the rationale for excluding municipalities as valid constituent units for the purpose of a plebiscite, Mr. de los Reyes stated that the Constitution should set a certain parameter by limiting it to province or city, without which, one could imagine the anomaly if one municipality would not be a member of the autonomous region.

On instances where certain municipalities would be outvoted in the province even if individually there was a strong majority not to be included in the autonomous region, Mr. de los Reyes opined that they should abide by the decision of the majority in the province, otherwise, allowing each municipality to have their say on the matter would defeat the very purpose for which autonomous regions are being created.

INQUIRY OF MR. BACANI

In reply to Mr. Bacani's query on whether a group of six or eleven contiguous and adjacent municipalities voting against joining the autonomous region would be considered a sizeable unit that would warrant an exemption, Mr. Azcuna pointed out that as presently worded, it would depend on the relative size of the population as against the whole province, such that if it is the majority of the province, it could turn the vote for that province although the reckoning of inclusion or exclusion from the region would be based on the voting in the province and in the cities

included in. the proposed autonomous region and not by municipalities or even groups of municipalities.

Additionally, Mr. Bengzon stated that before the plebiscite takes place, Congress shall have already enacted the organic act which presumably underwent the process of public hearings and consultations- He stressed that those municipalities which do not wish to become part of the autonomous region could always express their desire through such hearings and, if unsuccessful, could express it through the plebiscite.

INQUIRY OF MR. DAVIDE

In reply to the queries of Mr. Davide, Mr. Bengzon agreed that if a city within the prospective autonomous region would not participate or would boycott the plebiscite, such boycott would be considered rejection of its membership in the autonomous region and that an actual participation with positive rejection would also amount to a rejection. He stressed that the plebiscite, being such an important and historic moment in the country's history, should be an affirmative expression of the will of the people. He affirmed, however, that although non-participation is not really an affirmative expression in the sense that a vote against was cast, non-participation by the greater number of inhabitants in a given city would be construed as a negative vote.

Mr. Alonto, however, disagreed with the interpretation given by Mr. Bengzon on the ground that a boycott does not necessarily mean refusal to join the autonomous region but a defiance of the constituted authority of the country.

Thereupon, Mr. Bengzon signified his agreement to the interpretation of the Committee that those who would wish to vote affirmatively must vote "yes", those who do not wish to join must vote "no" and that a boycott would not be considered a negative vote.

Additionally, Mr. Bennagen expressed the apprehension among the non-Muslim and the non-Cordillera people about this inversion of the historical process wherein some kind of a reversed discrimination could emerge from the autonomy status. He stated that this has been the projection of the so called Christian-Muslim relationship in the South and lowlander highlander relationship in the North, although in one of their deliberations, it was agreed that they would abide by the principle of full equality and nondiscriminatory practices, the details of which should be worked out in the organic act to be passed by Congress.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query on whether a certain province may secede from the autonomous region ten years later, Mr. Bengzon stated that this would be the subject of an amendment to be induced by Mr. Davide.

Thereafter, the Chair submitted Mr. Azcuna's amendment to a vote, and with 36 Members voting in favor and none against, the same was approved by the Body.

SUSPENSION OF SESSION

On motion of Mr. Sarmiento, the Chair suspended the session until two-thirty in the afternoon.

It was 12:33 p.m;

RESUMPTION OF SESSION

It was 2:33 p.m., the session was resumed.

PROPOSED AMENDMENT OF MR. DE CASTRO

On Section 1 under the subheading Autonomous Regions, Mr. de Castro proposed to change the words "in Muslim Mindanao" to FOR THE MUSLIMS OF MINDANAO in order to correct the impression that Muslims are the only inhabitants of the whole Mindanao, which proposal Mr. Nollado did not accept.

Mr. de Castro explained that his amendment would clarify the intent because the sentence as worded makes it appear that the whole Mindanao is occupied by Muslims which is not true.

Mr. Ople stated that "Muslim Mindanao" as used in the provision refers to the old Moro homeland defined in the Tripoli Agreement which would be subject to the plebiscite although Congress would have the power to designate the areas of the plebiscite in consultation with the leaders of Muslim Mindanao. He pointed out that the proposed amendment would delimit the area of autonomy in such a way that it would put the whole autonomy contemplated in the provision in jeopardy.

Mr. de Castro reiterated that his proposed amendment would only seek to clarify the areas of Muslim Mindanao.

Mr. Abubakar stated that while admittedly the whole Mindanao is not inhabited predominantly by the Muslims in the Philippines, the words "Muslim Mindanao" refer to that part of Mindanao predominantly occupied by the Muslims.

On the suggested modification to MUSLIM-DOMINATED AREAS OF MINDANAO, Mr. Nollado stated that the Committee could not accept said suggestion on the ground that the bases for the grant of regional autonomy do not only include the historical, cultural, linguistic, ethnic and communal considerations but also the economic and other factors, to which Mr. de Castro replied that the present wording would indicate that the whole Mindanao is a Muslim area.

Mr. Bacani offered as a compromise the phrase IN THE PREDOMINANTLY MUSLIM AREAS OF MINDANAO so that it would refer to the area and not to predominance of the population, to which Mr. de Castro agreed.

Mr. Alonto stated that the proposed amendments being offered do not really alter the meaning of "Muslim Mindanao" because a reading of the provision with the other sections thereof indicates that only those areas whose population have common historical, cultural, linguistic, ethnic, communal, economic or other characteristics would be granted autonomy.

Mr. de Castro assured that his proposed amendment would not change the concept of Section 1 but would only clarify the intent because as worded, it would appear that the whole Mindanao is a Muslim area.

On Mr. Nollado's suggestion to delete the word "Muslim", Mr. de Castro stated that the deletion would entirely change the meaning and would pave the way for other regions to seek autonomy.

Upon request of the Chair, Mr. Bacani restated his proposed amendment, to which Mr. de Castro agreed, so that instead of "Muslim Mindanao" it should be IN THE PREDOMINANTLY MUSLIM AREAS OF MINDANAO.

Mr. Ople stated that under the limited autonomy presently existing in Mindanao, other provinces presently included in the autonomous regions might be excluded when put to the test of being predominantly Muslim areas. He pointed out that should the words "Muslim Mindanao", which had already been given a definite meaning, be not retained, the areas of the autonomy would even be more limited than what presently exists contrary to the clear desire of the Commission to provide a more meaningful, more complete and more substantial autonomy for the same areas presently covered by the autonomous regions. It is for this reason, he stated, that he was objecting

to Mr. de Castro's proposed amendment,

In reply to Mr. de Castro's queries, Mr. Ople stated that there are already autonomous regions existing in Mindanao and there is a legislative assembly known as the Sangguniang Pampook which is recognized by the present government, to which Mr. de Castro did not agree, stating that if that is so, then Muslim Mindanao would already be operating independently of the Philippines.

Mr. Ople pointed out that the autonomous regions in Mindanao are recognized by the present government.

Mr. Abubakar confirmed that there are indeed autonomous regions in Mindanao, specifically the Southern Mindanao Autonomous Region composed of Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte and Basilan with the component cities therein. He stated that there is a legislative body located in Zamboanga City headed by Speaker Sali Ututalum, Jr.

Mr. Alonto pointed out that at the start of the deliberations on the proposed Article on Local Government, he stated that there are de facto autonomous governments in Mindanao consisting of Regions IX and XII. He pointed out that in Region IX, the seat of the central government is located in Zamboanga City and this is composed of Tawi-Tawi, Sulu, Basilan, Zamboanga del Sur and Zamboanga del Norte including the cities therein while in Region XII, the autonomous region is composed of Lanao del Norte, Lanao del Sur, Maguindanao, Sultan Kudarat and North Cotabato, with the seat of government located in Cotabato City. He confirmed Mr. Ople's statement that in each region, there is an executive council as well as a legislative assembly. Furthermore, Mr. Alonto stated that these two regions were organized by virtue of PD No. 6118 as amended by No. 1843. Finally, he stated that these regions are recognized by the present government which, in fact, is already negotiating with the Moro National Liberation Front so that what the Commission is doing is giving a constitutional basis for the President to proceed with the negotiation.

Mr. Uka, on a point of information, stated that President Aquino had already appointed Mr. Ulbert Tugung as Chairman of Region IX and Mr. Zacarias Candao as Chairman of Region XII. He further stated that there is already a regional assembly in each region so that it is just a matter of putting this in the Constitution.

Mr. de Castro pointed out that if there are indeed autonomous regions in Mindanao which are recognized by the national government, then there would be no need for such a provision, a plebiscite or even an organic act to be enacted by Congress. He stressed that his amendment is only for clarity and he did not expect that it would go through a lengthy debate because he was of the impression that this matter is a *fait accompli*. He then insisted on his proposed amendment.

Mr. Ople clarified that the autonomous regions presently existing in Mindanao are already recognized by the national government although the autonomy is a very imperfect kind of autonomy and legally insufficient. It is for this reason, he stated, that initiative had been taken in order to guarantee, through the Constitution, the right to autonomy of the people embraced therein and not merely on the sufferance of any existing or future administration. He further stated that this is a right for which heroic struggles were waged not only by the present generation but also by generations in the past. Mr. Ople pointed out that the Tripoli Agreement was negotiated under the aegis of the 42-nation Islamic Conference. He raised the question as to whether the Muslims should look across the seas to a conclave of foreign governments so that their rights may be recognized by the Constitution or whether they have to depend upon foreign sympathy so that their rights could be recognized in final, constitutional and durable form.

The Chair asked that Mr. de Castro's amendment be put to a vote.

Mr. Nollado pointed out that Mr. de Castro's proposed amendment would be a retrogression because it would

concentrate the autonomous regions to the Muslim-dominated areas despite the fact that the presently constituted autonomous regions consist of Muslims and Christians who live in harmony and, love. He stated that the term "Muslim Mindanao would connote that the whole Mindanao is Muslim populated.

Thereupon, Mr. de Castro restated his amendment as amended by Mr. Bacani, to wit: THERE SHALL BE CREATED AUTONOMOUS REGIONS IN THE PREDOMINANTLY MUSLIM AREAS OF MINDANAO.

Mr. Bennagen pointed out that the term "Muslim Mindanao would be interpreted with a recognition that other ethnic groups and religious groups coexist harmoniously in the same manner that "Christian Philippines is interpreted to include other religious groups. He opined that social harmony should be encouraged in this autonomous region.

Submitted to a vote, and with 5 Members voting in favor, and 22 against, the proposed amendment was lost.

AMENDMENT OF MR. VILLACORTA JOINTLY WITH MESSRS. OPLE, BENNAGEN, UKA, ALONTO, ABUBAKAR, VILLEGAS, SARMIENTO, DAVIDE, SUAREZ AND MS. AQUINO

On Section 1 of the Autonomous Regions, page 3, line 12, Mr. Villacorta, jointly with Messrs. Ople, Bennagen, Uka, Alonto, Abubakar, Villegas, Sarmiento, Davide, Suarez and Ms. Aquino, proposed to delete the words "with common" and in lieu thereof, to substitute the words SHARING DISTINCTIVE OR UNIQUE; on line 14, to delete the words "and respecting"; and on line 15, to delete "Republic of the", so that Section 1 would read:

SECTION 1. THERE SHALL BE CREATED AUTONOMOUS REGIONS IN MUSLIM MINDANAO AND THE CORDILLERA CONSISTING OF PROVINCES, CITIES AND GEOGRAPHICAL AREAS SHARING DISTINCTIVE OR UNIQUE HISTORICAL, CULTURAL, LINGUISTICS ETHNIC, COMMUNAL, ECONOMIC OR OTHER CHARACTERISTICS WITHIN THE FRAMEWORK OF THE NATIONAL SOVEREIGNTY AND TERRITORIAL INTEGRITY OF THE PHILIPPINES.

He explained that the phrase "sharing distinctive or unique" would highlight the rationale of granting autonomy to the Cordilleras and Muslim Mindanao. He Stressed that his amendment would emphasize that regional autonomy would be granted to those regions which have distinctive and unique characteristics and to those regions which have characteristics common among the dominant national communities. fed Stated that this would not allow the idea of federalism to open local autonomy to all regions.

At this juncture, Mr. Bengzon, jointly with Mr. Ople Proposed an amendment to the amendment, on page 3, line 12, to instead delete the words starting from "geographical" up to the word "characteristic" on line 13 inclusive, and in lieu thereof, to substitute the phrase MUNICIPALITIES HAVING COMMON GEOGRAPHIC TIE, HISTORICAL AND CULTURAL AND HERITAGE ECONOMIC AND SOCIAL STRUCTURES OTHER CHARACTERISTICS.

Mr. Bengzon pointed out that former member of bad constitutional Convention Michael Mastura had explained to him that "ethnic, communal and linguistic" would already be included in "historical and cultural heritage", and the phrase "economic and social structures" would simplify the sentence with some elegance.

Mr. Villacorta accepted the amendment to his amendment, but suggested to change "having" with SHARING, and to insert AND DISTINCTIVE after the word "common", so that lines 12 and 13 would read CITIES AND MUNICIPALITIES SHARING COMMON AND DISTINCTIVE GEOGRAPHICAL TIES, HISTORICAL AND CULTURAL HERITAGE, ECONOMIC AND SOCIAL STRUCTURES AND OTHER CHARACTERISTICS, to which Mr. Bengzon agreed.

Thereupon, Mr. Nollado suggested to change the word "ties" with AREAS.

SUSPENSION OF SESSION

On motion of Mr. Alonto, the Chair suspended the session.

It was 3:30 p.m.

RESUMPTION OF SESSION

It 3:47 p.m., the session was resumed.

APPROVAL OF SECTION ON THE AUTONOMOUS REGIONS

Upon resumption of session, Mr. Bengzon restated Section 1 on the Autonomous Regions; as amended, to wit:

SECTION 1. THERE SHALL BE CREATED AUTONOMOUS REGIONS IN MUSLIM MINDANAO AND THE CORDILLERA CONSISTING OF PROVINCES CITIES AND MUNICIPALITIES AND GEOGRAPHIC AREAS SHARING COMMON AND DISTINCTIVE HISTORICAL AND CULTURAL HERITAGE, ECONOMIC AND SOCIAL STRUCTURES AND OTHER RELEVANT CHARACTERISTICS WITHIN THE FRAMEWORK OF AND RESPECTING THE NATIONAL SOVEREIGNTY AND TERRITORIAL INTEGRITY OF THE REPUBLIC OF THE PHILIPPINES.

Mr. Ople proposed that the words “and respecting” be deleted, to which the Sponsor agreed.

Thereupon, on motion of Mr. Villacorta, Messrs. Ople, Sarmiento, Bennagen, Uka, Alonto, Abubakar, Villegas, Suarez and Bengzon and Ms. Aquino were made co-authors of the amendment on Section 1 of the Autonomous Regions.

There being no objection, the Body approved Section 1, as amended.

AMENDMENT OF MR. DAVIDE

Mr. Davide proposed; on Section 14, line 11, to substitute “in” with FOR; to insert FOR between “and” and “the”; and to add an “s” in “Cordillera”.

Mr. Nollado accepted the amendment.

Submitted to a vote, and there being no objection, the same was approved by the Body.

AMENDMENT OF MR. DAVIDE AS MODIFIED BY MR. NOLLEDO

Mr. Davide proposed, on Section 14, line 14, to delete “and respecting” and to substitute the same with THIS CONSTITUTION AND SUBJECT TO THE IMPERATIVE TO PRESERVE AND ENHANCE.

Mr. Nollado, however, suggested instead to delete “subject to the imperative to preserve and enhance”, to add AS WELL AS THE before “territorial”, and delete “and” on the same line.

Mr. Davide accepted the amendment to his proposal.

Thereupon, Mr. Nollado read the section, as amended, to wit:

SECTION 14. THERE SHALL BE CREATED AUTONOMOUS REGIONS FOR MUSLIM MINDANAO AND FOR THE CORDILLERAS CONSISTING OF PROVINCES, CITIES, MUNICIPALITIES AND GEOGRAPHIC AREAS SHARING COMMON AND DISTINCTIVE HISTORICAL AND CULTURAL HERITAGE, ECONOMIC AND SOCIAL STRUCTURE AND OTHER RELEVANT CHARACTERISTICS WITHIN THE FRAMEWORK OF THIS CONSTITUTION AND THE NATIONAL SOVEREIGNTY AS

WELL AS THE TERRITORIAL INTEGRITY OF THE REPUBLIC OF THE PHILIPPINES.

Submitted to a vote, and with 28 Members voting in favor and none against, the same was approved by the Body.

PROPOSED AMENDMENT OF MR. FOZ

Mr. Foz proposed to reword Section 15, with the first paragraph thereof to read as follows:

SECTION 15. THE CONGRESS SHALL IN CONSULTATION WITH MULTI-SECTORAL BODIES IN EACH AUTONOMOUS REGION ENACT AN ORGANIC LAW DEFINING THE BASIC STRUCTURE OF THE REGIONAL GOVERNMENT. IT SHALL CONSIST OF THE REGIONAL EXECUTIVE DEPARTMENT HEADED BY AN ELECTIVE CHIEF EXECUTIVE AND A REGIONAL LEGISLATIVE ASSEMBLY. THE ORGANIC ACT SHALL PROVIDE FOR SPECIAL COURTS WITH FAMILY AND PROPERTY LAW JURISDICTION WITHIN THE REGION EXCEPT OVER ITS CHRISTIAN INHABITANTS SUBJECT TO THE APPEAL PROCEDURES PROVIDED BY NATIONAL LAW AND THE PROVISIONS OF THIS CONSTITUTION.

Mr. Nollado stated that he could not accept the proposal until after Mr. Ople shall have presented his proposed amendment on the same section. He added that “appeal procedures” is irrelevant because the section only refers to jurisdiction and, besides, the procedural rules on personal law and property law jurisdiction of this special court may be provided for in the Rules of Court or in other special rules.

In addition thereto, Mr. Bennagen pointed out that there should be another compromise description of the mixed population instead of excepting Christians from the family and property law jurisdiction.

Mr. Foz manifested his amenability to suggestions but he maintained that there should be a mention on appeal because the family and property laws that may be provided by the regional legislature may be inconsistent with national laws- and the pertinent provisions of the new Constitution.

Mr. Nollado stressed that it is the intention of the Committee that the Rules of Court as promulgated by the Supreme Court in accordance with the provisions of the Article on the Judiciary would govern. He then requested Mr. Foz to harmonize his proposal with that of Mr. Ople.

PROPOSED AMENDMENT OF MR. OPLE, JOINTLY WITH MESSRS RAMA, NOLLEDO, DAVIDE, BENNAGEN, ALONTO, VILLACORTA AND AZCUNA

Mr. Ople proposed the joint amendment on Section 15, which reads as follows:

SECTION 15. THE CONGRESS SHALL ENACT AN ORGANIC ACT FOR EACH AUTONOMOUS REGION TO BE INITIALLY DRAFTED BY A REGIONAL CONSTITUTIONAL COMMISSION TO BE NOMINATED BY MULTI-SECTORAL BODIES AND APPOINTED BY THE PRESIDENT.

THE ORGANIC ACT SHALL DEFINE THE BASIC STRUCTURE OF GOVERNMENT FOR THE REGION CONSISTING OF THE EXECUTIVE DEPARTMENT AND LEGISLATIVE ASSEMBLY BOTH ELECTIVE AND REPRESENTATIVE OF THE CONSTITUENT POLITICAL UNITS.

THE ORGANIC ACT MAY LIKEWISE PROVIDE FOR COURTS WITH PERSONAL LAW AND PROPERTY JURISDICTION CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION ON JUDICIAL POWER.

On Mr. Foz' query as to the procedure that would be followed in the enactment of the organic law, Mr. Ople explained that there would be a regional constitutional commission that would draft the organic act and once drafted this would be presented to Congress for its consideration. He added that although it would not bind

Congress in any respect, it would have a persuasive effect.

On whether the representatives of the regional constitutional commission and the people they represent would become more frustrated if Congress would simply reject their more radical ideas, Mr. Ople opined that the good faith and intelligence of the members of such commission should be presumed.

On Mr. Foz' contention that it would be more convenient to simply leave it to Congress to enact the organic act after consultations with the multi sectoral organizations in the region, Mr. Ople opined that the idea is to have the authentic participation of the regional leaders from the very beginning of the enactment process of their organic law with Congress merely introducing changes it may consider necessary.

Mr. Nollado added that Mr. Ople's amendment would not prohibit multi-sectoral consultations because even the regional constitutional commission could conduct consultations before preparing the initial draft of the organic act of the region.

Mr. Ople agreed with Mr. Suarez' observation that there are actually two legislative acts in the proposed amendment: 1) the organic act itself; and 2) the act preceding the organic act. Mr. Ople added that the act of drafting the organic act in the regional level is mainly in aid of legislation by Congress.

On whether the proposal contemplates the situation that the regional constitutional commission would be created by the Constitution, Mr. Ople stated that this should be left to Congress. He added that the power to appoint the members of the regional constitutional commission would be vested in the President.

On whether the proposed provision would have any purpose after the regional constitutional commission shall have drafted the organic law for its autonomous region, Mr. Ople explained that the principle established would apply to future applicants for regional autonomy. He added that Congress would not be barred from providing for a law that would spell out the details of the principle.

As to the effect of the organic law formulated by the members of the regional constitutional commission on Congress, Mr. Ople stated that it would have no binding effect but Congress would have to put utmost weight on it.

On the time frame for the enactment of such organic law, Mr. Ople stated that Congress would have to pass an organic law for the autonomous regions within one year from the election of its Members so they would have to ensure that steps are being taken in the regional level relative to the enactment of such organic act.

On Mr. Bacani's query whether a convention or something less formal than convening a regional Constitutional commission would be sufficient for the enactment of the organic law, Mr. Ople opined that although it could be allowed, the grant to autonomous regions of the right to participate in the drafting of the organic act for their creation would exalt them to the level of dignity that would never be attained through informal consultations alone.

On Mr. Bacani's apprehension that the people may become more frustrated if the Congress would reject the organic law drafted by their regional constitutional commission, Mr. Ople stated that by that time there would be representatives from the Cordilleras and Mindanao in Congress who would improve the level of attainability of approval of the organic act.

SUSPENSION OF SESSION

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

It was 4:18 p.m.

RESUMPTION OF SESSION

At 4:53 p.m., the session was resumed.

Upon resumption of session, Mr. Sarmiento informed the Body that Messrs. Foz and Ople had harmonized their amendment. He then requested the Committee to read the reformulated amendment.

REFORMULATED AMENDMENT TO SECTION 2

Mr. Bennagen read the reformulated amendment, to wit:

SECTION 2. THE CONGRESS SHALL ENACT AN ORGANIC ACT FOR EACH AUTONOMOUS REGION WITH THE ASSISTANCE AND PARTICIPATION OF A REGIONAL CONSULTATIVE COMMISSION. THE ORGANIC ACT SHALL DEFINE THE BASIC STRUCTURE OF GOVERNMENT FOR THE REGION CONSISTING OF THE EXECUTIVE DEPARTMENT AND LEGISLATIVE ASSEMBLY BOTH OF WHICH SHALL BE ELECTIVE AND REPRESENTATIVE OF THE CONSTITUENT POLITICAL UNITS. THE ORGANIC ACT MAY LIKEWISE PROVIDE FOR SPECIAL COURTS WITH PERSONAL, FAMILY AND PROPERTY LAW JURISDICTION CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL LAW. THE CREATION OF THE AUTONOMOUS REGION SHALL BE APPROVED IN A PLEBISCITE BY MAJORITY OF THE VOTES CAST.

THE CREATION OF THE AUTONOMOUS REGION SHALL BE EFFECTIVE WHEN APPROVED BY MAJORITY OF THE VOTES CAST OF THE CONSTITUENT UNITS IN A PLEBISCITE CALLED FOR THE PURPOSE PROVIDED THAT ONLY PROVINCES AND CITIES VOTING FAVORABLY IN SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION.

MR. PADILLA'S AMENDMENT TO THE AMENDMENT

Mr. Padilla proposed an amendment to the amendment to delete the phrase "special courts with personal, family and property law jurisdiction" on the grounds that 1) the approved draft Article on the Judiciary does not provide for these special courts although the Supreme Court is authorized to establish inferior courts; and 2) there is no need to create special courts because their functions could be taken care of by the regional and municipal trial courts. He stated that respect for the enforcement of the personal laws of the Muslims could be done within the judicial system without creating and maintaining special courts. He pointed out that the Islamic Shari'a laws would be recognized as applicable to a litigation, but should there be any conflict of laws, the ordinary courts could decide by applying the proper law and, in the absence of positive statutory law, customs could always be a source of law that would apply to any given litigation.

Mr. Padilla reiterated that while the Commission respects the Islamic law on litigations affecting the Muslims, there is no necessity for creating and maintaining special courts for the application of such law.

INQUIRY OF MR. RAMA

In reply to Mr. Rama's apprehension on the possible complication of having two sets of rules when courts would be set up in the country, Mr. Padilla stated that for procedural law, the Rules of Court would apply, but with regard to substantive law, especially on laws on marriage and divorce, the Civil Code would give way to the Islamic Shari'a Law on cases involving Muslim litigants, however, the court trying the case need not be a special court but the regional trial court, to which the law applicable could be presented for proper application.

MR. UKA'S AMENDMENT TO THE AMENDMENT

At this juncture, Mr. Uka informed that the special courts known as Shari'a Courts had been established in Muslim provinces with jurisdiction on personal and property laws. He stated that these courts were created because of the peculiar laws under Islamic jurisprudence. He recalled that during the meeting of the Committee on the Judiciary, he inquired how the Supreme Court would resolve a case on appeal from the Shari'a Court considering that there is no Muslim Supreme Court Justice. He pointed out the fact that no Muslim has been appointed to the Supreme Court since the Spanish regime.

Thereupon, he proposed an amendment to the amendment by substituting the word "may" to SHALL.

Mr. Nollado accepted the amendment

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query on whether the appointments of Shari'a Court judges were done during the Marcos regime, Mr. Uka stated that some were appointed during the past administration while some were appointed to fill the vacancies during the present administration.

Mr. Padilla pointed out that these judges could easily be appointed as regional or municipal trial judges once the special courts are abolished.

Responding thereto, Mr. Alonto stated that the organization of special courts was actually an implementation of the basic reason why the Commission is granting autonomy to these regions. He stressed that in order to be able to implement and strengthen such reason, the cultural differences between the cultural majority and the cultural minorities in this country should be considered, one of which, as far as the Muslims are concerned, is the law that governs personal, family and property relations between inhabitants in the community. He contended that the Commission cannot give reality to the acceptance of cultural differences if it does not provide for the appointment of special courts to decide such cultural differences between these cultural inhabitants in the country.

Mr. Bennagen supported the position of Mr. Alonto on the ground that the setting up of special courts would give due recognition to a viable legal system which, in the long run, would enrich the national law.

REMARKS OF MR. FOZ

Mr. Foz raised the problem of qualified judges and Muslim lawyers who would be working in these special courts considering that in one special examination conducted by the Supreme Court, 17 out of 75 examinees passed, indicating a lack of adequate preparation and knowledge of the Shari'a law, aside from being a complicated system, to which Mr. Uka replied that that was precisely the reason why the Supreme Court gave seminars and special training for those who passed the examination.

Mr. Foz stated that aside from the serious shortage of qualified personnel, it would be inconceivable for Christian lawyers to handle cases before the Shari'a Court. He also stated that it would be difficult for judges of the regular courts to act as judges of the Shari'a Courts because these judges must know Muslim law and it would take years of training in Muslim law to qualify as judges or even practice Muslim law in these special courts.

With respect to litigation between a Muslim and a Christian, Mr. Alonto stated that if this could be resolved by a national law, then said law would apply but in case both litigants are Muslims, Mr. Uka in turn, stated that this could be resolved before the Shari'a Court.

Replying to Mr. Foz, Mr. Alonto pointed out that as stated in the provision, the enactment of an organic law

would take time so that temporarily, there should be qualified personnel for these special courts.

On Mr. Uka's query relative to the status of his proposed amendment to change the word "may" to "shall", Mr. Nollado stated that the Committee had already accepted the amendment, with Mr. Alonto adding that this would mandate Congress to provide for the special courts.

Mr. Maambong informed that the codification of Muslim personal laws was done to allay the Muslims Filipinos' feeling of alienation from the country's cultural mainstream, which codification was based on Muslim customary laws and Shari'a religious laws. In this regard, he inquired whether it would be necessary to, likewise, codify Muslim criminal laws in the future.

Replying thereto, Mr. Alonto admitted that he had not read the book, *Personal Law*, authored by President Marcos, because he believed that this is part of the deception of the former President. He pointed out, however, that under the provision, the Congress is mandated to codify these customary and local laws, as well as Muslim criminal laws.

On whether there is a need for codifying personal and criminal laws in the Cordilleras, Mr. Bennagen affirmed by stating that this codification should not only involve the Cordilleras but also the other indigenous communities. He adverted to an ongoing study conducted by a team composed of lawyers and anthropologists which would seek to codify existing laws among indigenous communities as well as lowland ethnic laws in order that these could be recognized on their own terms as part of the national law.

Mr. Padilla stressed that what is needed is integration with equality but not so much emphasis on peculiarities which are accidental among the Filipino people because of the recognition of the right to religious freedom, customary law in the absence of statutory law, and the application of the Islamic law in a litigation between Muslims. He disputed the argument of Mr. Foz that it would be very hard for a judge of a regular court to decide litigations involving personal or family relations among Muslims by pointing out that as long as the issues are presented correctly and the law applicable is clearly placed in issue, then a lawyer or a good judge, even if he is not a Muslim, could properly decide the case. He pointed out that in Muslim Mindanao, enhances are that the judges would be Muslim Filipinos and there would be no need for special courts because assuming that a Christian judge is involved, if he acts with impartiality and with honesty in applying the proper Islamic Shari'a law, then there would be justice and recognition of rights.

Mr. Padilla opined that while he was not denying the fact that Muslims must have justice in accordance with their Islamic Shari'a law, there is no need for Special judges or special courts. He pointed out that in conflict of laws, the domestic courts although not fully aware of the foreign law applicable, if Proven to be applicable, should adopt the foreign law as part of the municipal law. He further pointed out that when there is conflict of laws, justice demands that the proper law, in accordance with the rules of private international law, should apply and need not be applied by a foreign judge but by a local Judge. He stated that if this sentence on special court is made part of the Constitution, the Body would be placing a priori the requirement of special courts should be left to Congress. He stressed that he is not against Muslim autonomy particularly the application in litigations among the Muslims of their proper personal law, but he opined that this applied within the judicial system.

In order to implement Mr. Padilla's suggestion, Mr. Uka, likewise, suggested that the Islamic Shari'a law be made part of the law curriculum so that lawyers would have knowledge about it as in the case of Indonesia, to which the Chair stated that such suggestion could be submitted to the Supreme Court for whatever action it may deem proper to take.

Mr. Bennagen opined that meaningful autonomy demands that the juridical process should be given full play in

the autonomous regions and to accomplish this, the setting up of special courts should be allowed to complement those other processes and structures that would be set up later on.

Mr. Rodrigo noted that under Mr. Ople's revised amendment, there is no provision on how the consultative commission would be created and constituted, to which Mr. Ople replied that under his original draft, the members therein should be nominated by multi-sectoral bodies and appointed by the President but he was prevailed upon to reduce the level of participation in drafting the organic act at regional level so that it would just be in the form of consultative commission which would be created by Congress.

On the suggestion of providing the manner by which this consultative commission would be created by Congress, Mr. Ople adverted to the clause earlier deleted which Mr. Bennagen read, to wit: WITH THE ASSISTANCE AND PARTICIPATION OF A REGIONAL CONSULTATIVE COMMISSION WHOSE MEMBERS SHALL BE COMPOSED OF MULTI-SECTORAL REPRESENTATIVES TO BE APPOINTED BY THE PRESIDENT.

Mr. Ople accepted the amendment which was, in turn, accepted by the Committee.

Mr. Bernas proposed a modification of a portion thereof so that it would read: APPOINTED BY THE PRESIDENT FROM A LIST OF NOMINEES MADE BY MULTI-SECTORAL BODIES.

As modified, Mr. Nollado restated the first sentence, to wit:

THE CONGRESS SHALL ENACT AN ORGANIC ACT FOR EACH AUTONOMOUS REGION WITH ASSISTANCE AND PARTICIPATION OF A REGIONAL CONSULTATIVE COMMISSION COMPOSED OF REPRESENTATIVES APPOINTED BY THE PRESIDENT FROM A LIST OF NOMINEES FROM MULTI-SECTORAL BODIES.

There being no objection, the Body approved the amendment.

Mr. Nollado restated the second sentence, to wit:

THE ORGANIC ACT SHALL DEFINE THE BASIC STRUCTURE OF GOVERNMENT FOR THE REGION CONSISTING OF THE EXECUTIVE DEPARTMENT AND LEGISLATIVE ASSEMBLY BOTH OF WHICH SHALL BE ELECTIVE AND REPRESENTATIVE OF THE CONSTITUENT POLITICAL UNITS.

There being no objection, the same was approved by the Body.

Mr. Nollado then restated the third sentence, as amended by Mr. Uka, to wit:

THE ORGANIC ACT SHALL LIKEWISE PROVIDE FOR SPECIAL COURTS WITH PERSONAL, FAMILY AND PROPERTY LAW JURISDICTION CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL LAW.

At this juncture, Mr. Padilla adverted to his proposed amendment to delete the entire sentence which the Committee did not accept. He asked that it be submitted to a vote.

Mr. Foz proposed that instead of deleting the sentence, it should be modified so that it would read: "The Organic Act may likewise provide THAT THE CUSTOMARY LAW ON FAMILY RELATIONS AND PROPERTY BE MADE APPLICABLE within the autonomous region . . .", which Mr. Padilla accepted.

The Committee, however, did not accept the proposed modification.

Mr. Foz explained that his amendment would leave it to Congress to find out if there is really a need to establish special courts or for the regular courts to handle cases involving customary law, to which Mr. Nollado stressed

that the provision would recognize the existence of Shari'a courts which are already functioning.

Mr. Foz pointed out that the establishment of these courts would formalize the Marcos decrees despite the fact that even without these decrees, the Muslims have been settling their disputes within their own customary ways. He opined that this should be left to the discretion of Congress to make a further study, to which Mr. Nollado responded by stating that it is not the intent of the Committee to inhibit Congress from amending or repealing these decrees or passing laws of similar nature.

In reply to Mr. de los Reyes' inquiry, Mr. Padilla affirmed that the concept of his amendment is that with the creation of the Judicial and Bar Council, those recommended and appointed as judges in Muslim Mindanao should have knowledge of Muslim laws. He stressed that a good judge could always decide with honesty the legal issues involved when presented by a good Muslim lawyer.

Mr. de los Reyes manifested his support of Mr. Padilla's amendment.

As accepted by Mr. Padilla, Mr. Foz restated his amendment to the amendment, so that it would read: "The Organic Act may provide THAT THE CUSTOMARY LAW ON FAMILY RELATIONS AND PROPERTY MAY BE MADE APPLICABLE . . ."

Mr. Alonto stated that the amendment would change the essence of the provision and pointed out that several courts had been created, like the juvenile and domestic relations courts, and there was no opposition to their creation. He stated that the Committee was merely providing for special courts in the autonomous regions.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 5:50 p.m.

RESUMPTION OF SESSION

At 6:01 p.m., the session was resumed.

RESTATEMENT OF THE AMENDMENT ON THE SECOND SENTENCE OF SECTION 2

Upon resumption of session, after consultation with Messrs. Padilla, Uka and Foz and the Committee, Mr. de los Reyes restated the second sentence of Section 2, on the Autonomous Regions, to wit: THE ORGANIC ACT SHALL LIKEWISE PROVIDE FOR A JUDICIAL SYSTEM THAT SHALL APPLY PERSONAL, FAMILY AND PROPERTY LAW CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL LAWS.

In reply to Mr. Ople's query, Mr. de los Reyes affirmed that pursuant to the Transitory Provisions, the existing courts in the autonomous regions would not be abolished but the provision would give leeway to the creation of other courts.

The Sponsor accepted the proposed amendment.

Mr. Padilla pointed out that the term "judicial system" would not only preserve existing courts but would allow the organization of more special courts. He stated that he was not agreeable to the proposed amendment because his original intention was to eliminate special courts and to let the regular trial courts, both regional and municipal, enforce and apply personal customary laws in the autonomous regions.

Mr. Nollado stated that the Committee was adopting Mr. Ople's interpretation as affirmed by Mr. de los Reyes.

And in reply to Mr. Rodrigo's query, Mr. Nollado stated that the special courts to be created in the autonomous regions would not be separate from the national judicial system, to which Mr. Ople added that the special courts would be flexible to accommodate the special needs of the autonomous regions.

Thereafter, Mr. Davide proposed to change the phrase "consistent with the provisions of this Constitution and National Law" with the phrase subject TO THE PROVISIONS OF THIS CONSTITUTION ON JUDICIAL POWER AND THE NATIONAL LAW which was accepted by the Sponsor.

Mr. Bernas maintained that "special courts" should rather be used in lieu of "judicial system" because it would already be subject to the provisions of the Constitution on judicial power, in reply to which Mr. Bennagen stated that there should be no apprehension with regard to the use of the term judicial system" because there are many systems in the national framework

But Mr. Foz maintained that the term might be interpreted to mean the creation of their own judicial System with their own trial courts, appellate courts and Supreme Court. He opined that the original provision would be a better formulation.

Mr. Ople, however, reiterated that the judicial system in the autonomous regions would still be within the national judicial system and it is special in the sense that it would accommodate the dispensation of justice as the Congress may determine consistent with the special needs of the autonomous regions and subject to the provisions of the Constitution on judicial power and national law.

At this juncture, Mr. Bengzon moved that the Body vote on whether to use "judicial system" or "special courts".

Thereupon, Mr. Padilla registered his objection to the use of either "judicial system" or "special courts". He stated that he would rather prefer the deletion of the entire sentence.

The Chair submitted the proposal of Mr. Padilla to delete the entire second sentence of Section 2 to a vote, and with 5 Members voting in favor, 25 against and one abstention, the Body approved to retain the same.

APPROVAL OF THE THIRD SENTENCE OF SECTION 2

Thereafter submitted to a vote, and with 24 members voting in favor, 4 against and one abstention, the Body approved the original second sentence section 2, which shall be the third sentence thereof, which reads

THE ORGANIC ACT SHALL LIKEWISE PROVIDE AND SPECIAL COURTS WITH PERSONAL, FAMILY AND PROPERTY LAW JURISDICTION CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL LAW.

APPROVAL OF SECOND PARAGRAPH

Mr. Nollado read the second paragraph of Section 2, to wit:

THE CREATION OF THE AUTONOMOUS REGION SHALL BE EFFECTIVE WHEN APPROVED BY MAJORITY VOTES CAST BY THE CONSTITUENT UNITS IN A PLEBISCITE CALLED FOR THE PURPOSE PROVIDED THAT ONLY PROVINCES, CITIES AND GEOGRAPHIC AREAS VOTING FAVORABLY IN SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION.

There being no objection, the second paragraph of Section 2 was approved by the Body.

APPROVAL OF THE ENTIRE SECTION 2, AS AMENDED

Thereafter, Mr. Nollado read the entire Section 2, as amended, to wit:

SECTION 2. THE CONGRESS SHALL ENACT AN ORGANIC ACT FOR EACH AUTONOMOUS REGION WITH THE ASSISTANCE AND PARTICIPATION OF THE REGIONAL CONSULTATIVE COMMISSION COMPOSED OF REPRESENTATIVES APPOINTED BY THE PRESIDENT FROM A LIST OF NOMINEES FROM MULTI-SECTORAL BODIES. THE ORGANIC ACT SHALL DEFINE THE BASIC STRUCTURE OF GOVERNMENT FOR THE REGION CONSISTING OF THE EXECUTIVE DEPARTMENT AND LEGISLATIVE ASSEMBLY, BOTH OF WHICH SHALL BE ELECTIVE AND REPRESENTATIVE OF THE CONSTITUENT POLITICAL UNITS. THE ORGANIC ACT SHALL LIKEWISE PROVIDE FOR SPECIAL COURTS WITH PERSONAL, FAMILY AND PROPERTY LAW JURISDICTION CONSISTENT WITH THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL LAW.

THE CREATION OF THE AUTONOMOUS REGION SHALL BE EFFECTIVE WHEN APPROVED BY MAJORITY OF THE VOTES CAST BY THE CONSTITUENT UNITS IN A PLEBISCITE CALLED FOR THE PURPOSE, PROVIDED THAT ONLY PROVINCES, CITIES AND GEOGRAPHIC AREAS VOTING FAVORABLY IN SAID PLEBISCITE SHALL BE INCLUDED IN THE AUTONOMOUS REGION.

Submitted to a vote, and with 31 Members voting in favor, none against and one abstention, Section 2, as amended, was approved by the Body.

REMARKS OF MR. REGALADO

Mr. Regalado adverted to Section 3 of the proposed Article on Local Governments which states that "The President of the Philippines shall exercise general supervision over autonomous regions to ensure that laws are faithfully followed" which is also the same with respect to Section 5 as stated in the Journal.

He stated that under Section 17 of the Article on the Executive, the phrase "as may be provided by law" which was supposed to be the delimitation on the power of general supervision of the President over local governments was included but the same phrase was excluded in both Sections 3 and 5.

He maintained that the phrase makes a lot of difference because the present rule is that the power of general supervision of the President under the Constitution is not self-executory, therefore there should be an implementing law as understood in the 1935 and 1973 Constitutions.

He cited the case of *Planas vs. Gil* where the Supreme Court decided that the phrase "general supervision over local governments as provided by law" was actually a compromise resulting from the conflict between the historical view which recognizes the right of local self-government and the legal theory which sanctions the possession of the State of absolute control over local governments. He added that in the case of *Villena vs. Secretary of the Interior*, the Supreme Court proceeded on the assumption that with or without a statutory provision granting the President local supervision as provided by law, he has the residual power to discipline officers of the local governments. He stressed that in the subsequent case of *Lacson vs. Roque*, the Supreme Court held that unlike control over ministries with respect to local governments, the power of general supervision of the President over local governments shall only be insofar as the same may be provided by law.

Thereupon, he inquired whether the Committee has made a turnabout by merely providing that the President, with or without a law, shall have the power of general supervision over local governments or has maintained the position that there must be an enabling law giving the President such supervisory power because there seems to be a conflict between the second sentence of Section 17 of the Article on the Executive and that of the new Section 8

in the Article on Local Government because of the presence of the phrase “as may be provided by law” in the former section and the absence of the same in the latter section.

Mr. Bernas explained that in the previous session it was decided that the power of the President should not be expanded but rather limited only insofar as ensuring that laws are faithfully executed. He added that when Section 8 was amended, there was a clarification to emphasize that local governments' autonomy from the President's hierarchy of supervisions was instituted so that the President, in the exercise of his supervisory powers, could only see to it that all laws are faithfully executed.

On Mr. Regalado's query whether the phrase “as may be provided by law” was eliminated when it is actually a safeguard for local autonomy, Mr. Bernas replied that the power of supervision is dependent upon existing laws because supervision means making sure that the laws are followed.

On Mr. Regalado's contention that the extent of supervision must be specified by law, Mr. Bernas maintained that when one speaks of autonomy, it must be related not only vis-a-vis the President but also the Legislature. He added that by eliminating the phrase “as may be provided by law” the Body is cutting the discretion of Congress to give or not to give authority to the President. He stressed that the intention was not to strengthen the President but rather to strengthen autonomy vis-a-vis the Legislature.

On whether the President has general supervisory powers because he is the head of government and not because of a law giving him such power, Mr. Nollado stated that is the intent of the committee.

At this juncture, Mr. Rodrigo informed that Section 5, now Section 7, of the proposed Article on Local Government is substantially the same as Section 17 of the Article on the Executive except for the phrase “as may be provided by law” which appears in the latter section. He added that the Body decided to remove the sentence containing the phrase “as may be provided by law” from the Article on the Executive and to transpose it to the Article on Local Government and to delete the phrase “as may be provided by law”.

In addition thereto, Ms. Aquino stated that the Body decided to adhere to the settled jurisprudence that general supervision only means the power to oversee an inferior body and it does not constitute any restraining authority on the part of the national government over the body being supervised. She stressed that the deletion of the phrase “as may be provided by law” was intended to deny Congress the power to enlarge such supervisory powers of the President.

Mr. Rodrigo affirmed that it is the sense of the Body that Section 3 under Autonomous Regions and Section 5 under the preceding provision on Local Governments would be deleted and that the second sentence of Section 17 on the Article on the Executive would be transposed to the former article minus the phrase “as may be provided by law”.

On Mr. Regalado's query whether it is the sense of the Committee that the power of general supervision by the President over local governments is no longer dependent upon any law but inheres in his position as head of the government, Mr. Nollado answered in the affirmative.

Mr. de Castro added that based on his notes of the previous session, the observations of Mr. Rodrigo are correct.

Thereupon, Mr. Nollado read Section 3 on the Autonomous Regions, as amended, to wit:

SECTION 3. THE PRESIDENT OF THE PHILIPPINES SHALL EXERCISE GENERAL SUPERVISION OVER AUTONOMOUS REGIONS TO ENSURE THAT LAWS ARE FAITHFULLY EXECUTED.

Submitted to a vote, and there being no objection, the same was approved by the Body.

At this juncture, Mr. Ople manifested that the other proponents of Section 2 were Messrs. Nollado, Foz, Monsod, Rama, Bennagen, Alonto, Villacorta Azcuna, Uka and Mrs. Muñoz Palma.

ADJOURNMENT OF SESSION

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

It was 6:39 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on August 20, 1986

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