

R.C.C. NO. 33

VOL. I, July 18, 1986

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/841c1847be83/>

Friday, July 18, 1986

OPENING OF SESSION

At 9:36 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Rustico F. de los Reyes, Jr.

Everybody remained standing for the Prayer.

PRAYER

MR. DE LOS REYES: Lord, we have here a gathering of women and men given the awesome task of writing a new constitution that will best serve the interests of our country now and in the years to come. We have had, so far, three Constitutions before, drafted by patriotic and brilliant Filipinos, who had invoked Your enlightenment and guidance. We are certain that they tried not to fail You and their people and that You had not denied them Your Divine Wisdom. But people are people, Almighty One, and their creations proved that only You are capable of perfection.

Our faith in You, Almighty Father, gives us the courage to hope that while perfection cannot be ours Your wisdom will enable us to approximate the perfect Constitution needed by our country.

Your wisdom is better than all the riches of the world. We pray that You cleanse our minds and hearts of greed and selfishness. Your wisdom is the wellspring of an insight that can only come from You. We pray that You open our minds to receive Your counsel.

Lord Almighty, the events of the recent past in our country have left bitterness and deep hate in many of our people. Purge these bitterness and hate from their hearts because as You have said, only those who are pure in heart can ever hope to receive You.

We cannot hope to accomplish anything without You, Great Architect of the universe, Creator of heaven and earth. We pray — HELP US and stay with us every moment of the day and night that we spend in the performance of our sacred task. And when our work is done, Almighty One, breathe life into our new Constitution so that when we look back to this time, it will be not only with pride, but with profound gratitude to You who made it all possible.

We give Thee thanks, Almighty God, for all Your blessings. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present[*] Monsod Present

Alonto Present* Natividad Present[*]

Aquino Present Nieva Present*

Azcuna Present[*] Nollado Present

Bacani Present Ople Present[*]

Bengzon Present Padilla Present

Bennagen Present Quesada Present[*]

Bernas Present Rama Present

Rosario Braid Present Regalado Present

Brocka Present[*] Reyes de los Present

Calderon Present Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present

Concepcion Present Rosales Present

Davide Present Sarmiento Present

Foz Present[*] Suarez Present

Garcia Present[*] Sumulong Present

Gascon Present[*] Tadeo Present

Guingona Present Tan Present

Jamir Present Tingson Present

Laurel Present[*] Treñas Present

Lerum Present[*] Uka Present

Maambong Present[*] Villacorta Present

Commissioner Villegas is on official mission.

The President is present.

The roll call shows 33 Members responded to the call.

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

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that we dispense with the reading of the Journal of the previous session.

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

MR. CALDERON: Madam President, I move for the approval of the Journal of the previous session.

MR. DE LOS REYES: Madam President, just a slight correction on page 12, last paragraph.

THE PRESIDENT: Commissioner de los Reyes may proceed.

MR. DE LOS REYES: The sentence which starts with: "On Mr. de los Reyes' suggestion that instead of abolishing the death penalty through the Constitution" should be changed. Because I am one of the authors for the abolition of the death penalty, I propose to change the words "instead of" to HE IS FOR, so that the corrected sentence should read: 'On Mr. de los Reyes' suggestion that HE IS FOR abolishing the death penalty through the Constitution, there should be a provision to allow future legislatures . . ."

That is all.

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

Let the proper correction be made.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I now move That we approve the Journal of the previous session, as corrected.

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

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

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

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

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

COMMUNICATIONS

Resolution of the Knight of Columbus Council 8134, Cotabato City, on the renegotiation and/or implementation of the Tripoli Agreement suggesting that should any negotiation be held, it should be free from foreign intervention.

(Communication No. 228 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from Ms. Erna-Leah C. Orante of 9 Zone 5, Dayangdang, Naga City, suggesting provisions to stop the

improper use of prime agricultural lands for residential, commercial and industrial purposes.

(Communication No. 229 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from Mr. R.A.D. Baron of the United Christian Community Organization, UNICO, Manila, proposing a provision in the bill of rights on the right to bear arms.

(Communication No. 230 — Constitutional Commission of 1986)

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

Letter from the Integrated Bar of the Philippines signed by Mr. Vicente D. Millora, forwarding proposals of the Council for the Welfare of Children underscoring the need for principles or policies protecting the rights of children, youth and mothers.

(Communication No. 231 — Constitutional Commission of 1986)

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

Letter from Mr. Jose L. Moya of 17 Sunset Drive, Horseshoe Village, Quezon City, enclosing a paper, entitled: "A Memorandum to the Constitutional Commission on the Essentials of Good Courts and Crime Prevention."

(Communication No. 232 — Constitutional Commission of 1986)

To the Committee on the Judiciary.

Letter from the Honorable Commissioner Ponciano L. Bennagen, transmitting a resolution of the Mountain Province Agricultural Consultation for Con-Com to consider the indigenous Igorot concepts on land.

(Communication No. 233 — Constitutional Commission

To the Committee on General Provisions.

Communication from Mr. Fulgencio S. Factoran, Jr., Deputy Executive Secretary, transmitting a letter of Mr. Dodong Proculo Samson of 166 Palaw Hills, Larena, Siquijor, suggesting a provision designating the two-meter radius around the flagpole of municipal and city halls as a place where any citizen may denounce graft and corruption and be immune from arrest.

(Communication No. 234 — Constitutional Commission of 1986)

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

Letter from the Honorable Commissioner Ponciano L. Bennagen, transmitting resolutions from the National Association of Retirees, Bontoc, Mountain Province, proposing automatic increase of monthly pensions of retirees and the adoption of the jury system in our courts of law.

(Communication No. 235 — Constitutional Commission of 1986)

To the Committee on Social Justice.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED

RESOLUTION NO. 486

(Article on the Bill of Rights)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA: Madam President, I move that we continue the consideration of Proposed Resolution No. 486.

We are still in the period of amendments.

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

The honorable Chairman and members of the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights are invited to come forward.

MR. RAMA: Madam President, I ask that the Chairman of the Steering Committee be recognized for some important information.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, in the past, the Committee on the Executive submitted partial committee reports: namely, Committee Report Nos. 5, 6, 8, 9 and 11. The consolidated report of the Committee on the Executive has already been submitted; therefore, in order to avoid any confusion in the minds of the Commissioners and the cluttering of the calendar, I would like to move that these partial committee reports be taken out of the calendar because they are already included in the consolidated report. One partial committee report is also for the Committee on the General Provisions. Both Committees have already submitted their consolidated report.

THE PRESIDENT: What is the number of the consolidated report of the Committee on the Executive?

MR. BENGZON: The consolidated report of the Committee on the Executive is Committee Report No. 26, which is already included in the Business for the Day.

THE PRESIDENT: How about the committee report on the General Provisions, what is the number?

MR. BENGZON: It is Committee Report No. 31. Committee Report No. 15 has already been consolidated with Committee Report No. 31. So, I move that Committee Report No. 15 be removed from the Calendar of Business.

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

Let the corresponding adjustments be made.

MR. BENGZON: Thank you, Madam President.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Romulo be recognized to present an amendment.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: Madam President, I have an amendment on Section 1, line 10, which is both by way of substitution and transposition. I propose to delete the sentence "The right to life extends to the fertilized ovum," and in lieu thereof place a new sentence: THE STATE SHALL PROTECT HUMAN LIFE FROM THE MOMENT OF CONCEPTION.

I suggest that this be adopted and transferred either to the Article on the Declaration of Principles or to that on Human Resources.

The reasons for my amendment are as follows: First, I do not believe this original sentence belongs to the Article on the Bill of Rights. It is not only jarring but also contradictory to the main purpose of a bill of rights. The Bill of Rights is supposed to protect the individual from the state and the minority from the majority. This original proposal impinges on the right of minorities who do not believe in this Catholic concept. Thus I think it is less objectionable and will accomplish the same purpose, if we transpose it to another article in the way that I have suggested.

So again, Madam President, I will read my proposed amendment: THE STATE SHALL PROTECT HUMAN LIFE FROM THE MOMENT OF CONCEPTION.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Will the distinguished sponsor accept an amendment to the amendment.

MR. ROMULO: With pleasure.

THE PRESIDENT: Commissioner Davide may proceed.

MR. DAVIDE: The proposed amendment would read as follows: THE STATE ACKNOWLEDGES AND SHALL PROTECT THE RIGHT TO LIFE OF THE HUMAN EMBRYO FROM THE FIRST MOMENT OF ITS CONCEPTION.

MR. ROMULO: I regret I cannot accept. I do not like the phrase "the right to life," because my thinking is that only a person can be granted that right, and if we grant the embryo the right to life, it must be a person. And, if it is a person, what are the other consequences of that interpretation?

MR. SUAREZ: Parliamentary inquiry, Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

I am addressing the inquiry to Commissioner Romulo. The Commissioner is proposing that this particular sentence be transposed to another portion of the draft.

MR. ROMULO: Yes, as an amendment.

MR. SUAREZ: So there are practically two things that have to be accomplished: (1) we have to decide whether or not we will agree to transpose this portion; and (2) we have to discuss the merit of the Commissioner's proposal as proposed to be amended by Commissioner Davide.

MR. ROMULO: That is correct.

MR. SUAREZ: May I suggest that we decide the first step to be taken, which is to delete this sentence "The right to life extends to the fertilized ovum," insofar as Section 1 of the proposed Article is concerned. We are now practically debating on the merit of the transposed portion.

MR. ROMULO: Yes, I realize the procedural problem.

MR. SUAREZ: Thank you.

MR. ROMULO: I would agree with Commissioner Suarez' proposal, provided the deletion will be accompanied by a suggested transposition.

MR. SUAREZ: I have no objection to the deletion. As a matter of fact, I was going to move for its deletion, but the fact that we are already discussing the merit of the transposed provision is somewhat not in order.

Thank you.

THE PRESIDENT: May we hear the reaction of the Committee?

FR. BERNAS: May I speak for the Committee and let any Committee member object if I am wrong. I personally would like to lay the ovum to rest (Laughter) and I would be willing to accept the deletion of this line on the understanding that later we will consider the proposal of Commissioner Romulo. I think I have expressed the sentiments of the Committee as far as that sentence is concerned.

THE PRESIDENT: In other words, just to clarify: the position of the Committee is it offers no objection to its deletion.

FR. BERNAS: Yes, provided it will be considered later on. We are not binding any other committee, but certainly it will be considered later in another article.

FR. BERNAS: That is perfectly acceptable.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA. I ask that Commissioner Aquino be recognized.

THE PRESIDENT: Is it on the same subject?

MR. RAMA: It is on the same subject and section.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Madam President, I was also intending to move for the deletion of the same sentence in Section 1, but if the Committee has already accepted the amendment, then my amendment may not be necessary.

VOTING

THE PRESIDENT: So, we will put to a vote the proposed amendment of Commissioner Romulo to delete line 10 of Section 1 and that the same be considered in another part of the draft of the Constitution.

Those in favor of this particular amendment will please raise their hand. (All Members raised their hand.)

Those against will please raise their hand. (No Member raised his hand.)

The results show 30 votes in favor and none against; the amendment is approved.

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

THE PRESIDENT: Commissioner Treñas is recognized.

MR. TREÑAS: Madam President and members of the Committee, on Section 2, lines 11 to 12, I propose to add the clause AS DETERMINED BY THE PROPER COURT after the word "compensation," so, it will read as follows: "Private property shall not be taken for public use without just compensation AS DETERMINED BY THE PROPER COURT."

The purpose of this amendment is that while it is true that an expropriation proceeding is a judicial proceeding, nevertheless, because of the existence of a certain presidential decree regarding the interpretation of "just compensation," courts have invariably followed that presidential decree. While yesterday, Commissioner Bernas stated that that presidential decree is unconstitutional, nevertheless, I do not believe so, and if the Commissioner can point at a specific provision which violates the Constitution, I would be willing to withdraw my proposed amendment.

The point is, that decree is merely an interpretation of the phrase "just compensation." The purpose of my amendment is to allow a strictly judicial proceeding in the determination of just compensation in an expropriation case. This would make matters clearer. Due to the existence of that presidential decree, a lot of Filipinos have suffered; their properties have been expropriated and they were paid only according to the amounts in their tax declarations.

FR. BERNAS: Madam President, let me just say one thing. I did not say that that presidential decree is unconstitutional. All I said was that the definition of the term "just compensation" as contained in that presidential decree, is only prima facie and it is always subject to review by the court. So, in essence, we are in agreement.

As far as the Commissioner's proposed amendment is concerned, I do not disagree with the meaning he puts into it. I would just leave the matter to the body.

MR. RODRIGO: Madam President, I think the amendment is to add the clause "AS DETERMINED BY THE PROPER COURT." The provision as proposed by the Committee is just an exact reiteration of the same provision in both the 1935 and 1973 Constitutions.

Section 2, as amended, reads: "Private property shall not be taken for public use without just compensation AS DETERMINED BY THE PROPER COURT." Suppose there is an agreement between the owner and the government on the compensation, and that is not determined by the court, then this provision might forfeit the private negotiation between the government and the owner of the property.

I think this provision, without the amendment, is good enough. This has been a satisfactory provision in the 1935 and 1973 Constitutions. So, may I suggest that we leave the matter alone.

MR. TREÑAS: May I answer, Madam President? Certainly, if there is an agreement between the parties — the state expropriating the property and the person whose property is sought to be expropriated — there is no more need for an expropriation proceeding and the provision of Section 2 will no longer apply.

MR. RODRIGO: Section 2 does not speak of expropriation proceedings yet; it just says, "Private property shall not be taken for public use without just compensation."

MR. TREÑAS: But the effect is that once we take private property, there will be an expropriation proceeding.

MR. RODRIGO: That is, if there is no amicable settlement; but if there is an understanding or a meeting of the minds regarding the compensation for the property, then there is no need for an expropriation proceeding.

THE PRESIDENT: Is Commissioner Rodrigo objecting to the proposed amendment?

MR. RODRIGO: Yes.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: The Committee would prefer to leave the provision as it is. The point raised by Commissioner Treñas is adequately covered by the understanding of the meaning of the phrase "just compensation" in jurisprudence.

So, we submit it to the body for a vote.

THE PRESIDENT: Does Commissioner Treñas insist on his amendment?

MR. TREÑAS: Precisely. The purpose of my amendment is, in case there is a disagreement between the two parties the matter of "just compensation" should be decided by the Supreme Court. I just want to clarify the purpose of Section 2, which is the proper interpretation and application of the phrase, especially with the existence of that presidential decree limiting its interpretation to the assessed value which has been invariably followed by all the courts. Unless we make a clearer provision, certainly the practice will continue.

May I request a vote on my amendment?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: Before we vote, I believe the purpose of this proposed amendment is to leave the determination of "just compensation" to the proper court if the parties do not agree on the amount. This is due to the claim of many that presidential decrees form part of the law of the land, and the decree we are talking about provides that "just compensation" is limited to the declaration of the owner or of the assessor of the value of the property, whichever is lower. Since that interpretation remains, I believe the amendment is a clear and reasonable proposal. To obviate the objection of Commissioner Rodrigo, if the distinguished sponsor would agree to my amendment, I propose that on Section 2, lines 11 to 12, page 1, after the word "compensation" and the period (.), add the following: IN CASE OF DISAGREEMENT AS TO THE AMOUNT OF JUST COMPENSATION, THE ISSUE SHALL BE DETERMINED BY THE PROPER COURT.

THE PRESIDENT: Does Commissioner Treñas accept?

Will the Vice-President read the whole section again as proposed?

MR. PADILLA: The whole Section 2 will now read as follows: "Private property shall not be taken for public use without just compensation. IN CASE OF DISAGREEMENT AS TO THE AMOUNT OF JUST COMPENSATION, THE ISSUE SHALL BE DETERMINED BY THE PROPER COURT."

FR. BERNAS: Madam President, before we vote, may I just say that as formulated, the amendment becomes even more unnecessary.

VOTING

THE PRESIDENT: Shall we then proceed to a vote?

Those in favor of the proposed amendment submitted by Commissioners Treñas and Padilla will please raise their hand. (Few Members raised their hand.)

Those against will please raise their hand. (Several Members raised their hand.)

The results show 8 votes in favor and 17 against; the amendment is lost.

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

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: On page 2, Section 4, line 4, between the words "court" and "when," I propose to reinstate the word OR so that this sentence will read: "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court OR when public safety or order requires otherwise."

May I explain?

THE PRESIDENT: Commissioner Rodrigo may proceed.

MR. RODRIGO: In both the 1935 and the 1973 Constitutions, the word "or" appears in that particular Section 4.

We must not hamper the activities of the intelligence service of our government. This is especially true now that there are threats to the stability of the government; for example, there is the criticism on why the Armed Forces seemed not to have known beforehand about the aborted coup d' hotel that happened a few Sundays ago. So, if that word "or" is eliminated, then it will hamper, it will tie the hands of the intelligence service of the Armed Forces, because before it can open any correspondence or before it can tap a telephone call, let us say from Hawaii to Manila, it will have to secure a prior order from the court. While I myself would want all my communications and correspondence absolutely untampered with, the need for preserving public safety, security of the state and stability of the government especially these days when there are threats, schemes and plots against the government, should not be hampered. We should not tie the hands of our intelligence service. So I would be willing to subordinate my personal privacy to public safety.

THE PRESIDENT: May we know the position of the Committee?

FR. BERNAS: The Committee would like to leave the matter as it is. It is correct to say that the word "or" is found both in the 1935 and 1973 Constitutions, but one important difference between the two is the second paragraph of Section 4 (same Article) of the 1973 Constitution which states:

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

That is an added precaution for the protection of citizens precisely when governments tend to be abusive. So, if we add OR and leave to the government the general discretion to decide when public safety or order requires it, like when to allow wiretapping and so forth, then this can be rather oppressive and can be a source of great abuse against the citizenry. As to the matter of national security, I think these matters can be handled by more advance systems of surveillance which can be done under the present state of communications science. So, with this point, the position of the Committee is to leave the matter to the body for decision.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, I would like to say something before we put the matter to a vote.

Under the 1935 Constitution the word "or" also appears, meaning, that this intrusion into the privacy of communications, say by wiretapping or by interception of mail matter, could be made with or without an order of the court when public safety or order requires it. I do not think there would be any abuse, because while under the 1935 Constitution the word "or" appeared, there were enough safeguards. In 1965, the Congress passed RA 4200 which requires a court order even in matters involving public order and safety. Wiretapping was allowed, with sufficient safeguards, but only in certain cases including treason, rebellion, inciting to rebellion, sedition or espionage. Under this law, while the government could have proceeded without a court order, RA 4200, nevertheless, required such a court order, which was not violative of the Constitution, and with sufficient safeguards. The application for a court order was just like an application for the issuance of a search warrant. The corresponding documents were required to be presented and personally examined by the judge and all communications thus intercepted had to be deposited in court within 24 hours with the proper certification. Failure to follow this would make the intercepted document, say, a tape-recorded evidence or mail matter,

inadmissible as evidence in court. Making this requirement for a court order, in all instances, does not consider that remote possibility of an urgent need for intrusion into the privacy of communication,. thus hamstringing the government. Yet, as I pointed out, despite the alternative word "or" in the 1935 Constitution the old Congress still provided the corresponding protection just the same. So, I am for maintaining the provision in the 1935 Constitution which gives the alternative "or" to be resorted to only in extreme cases.

MR. RAMA: Madam President, I ask that Commissioner Suarez be recognized to interpellate the proponent.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will Commissioner Rodrigo answer a few questions for clarification?

MR. ROMULO: Very gladly.

MR. SUAREZ: The Commissioner is suggesting that there should be two methods here: First, upon lawful order of the court; and, second, when public safety and order require otherwise, because that was provided both in the 1935 and 1973 Constitutions. I think the reason is not only because that was provided in both Constitutions, but also because it is a wise provision.

MR. RODRIGO: Thank you.

MR. SUAREZ: The Commissioner is, of course, aware of the fact that when he speaks of communications and correspondence, substantially, he is referring to letters and messages.

MR. RODRIGO: Yes, to letters, wireless telegrams and messages.

MR. SUAREZ: And the couriers of these letters and messages, whether wireless or through the wires, are usually agencies of the government?

MR. RODRIGO: There are some private wireless telegraph companies like the RCA.

MR. SUAREZ: But with respect to delivery of letters, that is essentially a government function.

MR. RODRIGO: There are some private firms which are in the business of delivering letters.

MR. SUAREZ: Principally, that occurs only within Metro Manila; but in the rural areas, the letters are usually carried through the Post Office which is a government entity.

MR. RODRIGO: Yes.

MR. SUAREZ: Therefore, it is well within the hands of the government to take advantage of the constitutional provision securing or guaranteeing privacy of communications and correspondence.

MR. RODRIGO: Yes, if it is within the power of the government, it can be abused . . .

MR. SUAREZ: And under the guise of public safety and order, the government can very well open, for instance, the Commissioner's correspondence addressed to his clients in the rural areas.

MR. RODRIGO: But there is that piece of legislation mentioned by Commissioner Regalado precisely to safeguard that right and to prevent the abuses of the government. But if we remove that word "or," even the legislature will be prevented from enacting laws safeguarding the rare cases, but with safeguards, when the government can look into private communications for public safety and national security.

MR. SUAREZ: Does not the Commissioner believe that the privacy of communications must be preserved as a

sacred principle in the Constitution and that if that is violated, it may inflict great harm upon private citizens, like the Commissioner and myself?

MR. RODRIGO: Yes, but over and above our private interest is the security of the state.

MR. SUAREZ: Can the state save me?

MR. RODRIGO: We have to sacrifice certain personal conveniences for our national security.

MR. SUAREZ: Can the state not go to court and secure a lawful order?

MR. RODRIGO: It will take time. During the period of interpellations, I gave as an example that coup d' hotel, which happened so fast. Suppose the army command suspected that some officers of the army were plotting and communicating with each other by the telephone, and the Army Intelligence Service wanted to listen in order to know what the plot was about. Suppose there was also a telephone call from Honolulu to Manila, which they consider serious. If the authorities chose to go to court to get a lawful order, then it would have taken time and would have been ineffective.

MR. SUAREZ: Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: Does Commissioner Rodrigo insist on a vote?

MR. RODRIGO: Yes.

SUSPENSION OF SESSION

THE PRESIDENT: Before we take the vote, the Chair suspends the session.

It was 10:22 a.m.

RESUMPTION OF SESSION

At 10:38 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

Will Commissioner Rodrigo please restate his proposed amendment to Section 4.

MR. RODRIGO: On page 2, line 4, between the words "court" and "when," add the word OR, so that it will read: "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court OR when public safety or order requires otherwise."

VOTING

THE PRESIDENT: We will put Commissioner Rodrigo's proposed amendment to a vote.

Those in favor of the proposed amendment will please raise their hand. (Several Members raised their hand.)

Those against will please raise their hand. (Few Members raised their hand.)

The results show 24 votes in favor and 11 votes against; the amendment is approved.

The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

Still on page 2, Section 4, paragraph 1, line 4, place a comma (,) after the word "court," and on line 5, add the words AS PRESCRIBED BY LAW after "otherwise."

THE PRESIDENT: What does the Committee say?

FR. BERNAS: I accept the amendment.

THE PRESIDENT: The Committee accepts.

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

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

THE PRESIDENT: Commissioner Nollado is recognized.

MR. NOLLEDO: Thank you, Madam President.

I propose to add a new provision after Section 9, and should this provision be approved, the Committee has to renumber it as Section 10 in the original report. The proposed provision reads: SECTION 10. FOREIGNERS PERSECUTED BECAUSE OF THEIR STRUGGLE IN DEFENSE OF HUMAN RIGHTS IN THE LIBERATION OF THEIR COUNTRY SHALL BE GIVEN ASYLUM IN THE PHILIPPINES AND THEIR EXTRADITION SHALL NOT BE ALLOWED.

Before the Committee decides whether or not to accept, may I explain this proposal?

THE PRESIDENT: The Commissioner has five minutes.

MR. NOLLEDO: Thank you.

I would like to read before this honorable Commission similar provisions in other constitutions.

In the Constitution of the Federal Republic of Germany, Article XVI, subsection (2) states:

No German may be extradited to a foreign country. The politically persecuted shall enjoy the right of asylum.

In the Constitution of Italy, Article X provides:

The foreigner who is denied in his own country the effective exercise of democratic freedom provided for by the Italian Constitution has a right to asylum in the territory of the Republic in accordance with the provisions of law. Extradition of foreigners for political offenses shall not be granted.

In the Constitution of Mexico, Article XV provides:

No treaty shall be authorized for the extradition of political offenders or of offenders of the common order who have been slaves in the country where the offense was committed, nor shall any agreement or treaty be entered into which restricts or modifies the guarantees and rights which this Constitution grants to the individual and to the citizen.

Madam President, the purpose of this new provision proposed to be Section 10 is to show our solidarity with freedom fighters who were persecuted in their countries and denied the basic freedoms guaranteed by our Bill of Rights.

Senator Lorenzo Tañada, true lover of liberty and staunch defender of human rights, sent us a letter urging the Members of this Constitutional Commission to embody this provision in our Bill of Rights. By approving this

provision, we manifest our firm belief that the freedoms guaranteed by our Bill of Rights are universal in nature and that we condemn violations of human rights everywhere in the world. Commissioners Francisco "Soc" Rodrigo, Napoleon Rama, Jose Calderon and I were political victims of the repressive regime of Mr. Marcos. We have actually experienced how bitter it is to be denied the freedoms we used to enjoy. Our hearts now beat for freedom fighters everywhere in the world, and so I say to my dear colleagues in the Commission "Let your hearts beat for them also."

Thank you.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Honorable Nolleto mentioned the provisions existing in the German Constitution regarding the right of asylum.

May I call his attention to Article 13, paragraph (2) of the Universal Declaration of Human Rights, which reads: "Everyone has the right to leave any country, including his own, and to return to his country."

Did the Commissioner take this into account in submitting his proposal to enjoy the right of asylum?

MR. NOLLEDO: No, but I have a working knowledge of the Universal Declaration of Human Rights, where our country is a party.

MR. SUAREZ: Thank you.

Let me call the Commissioner's attention more particularly to paragraph 1 of Article 14 of the same Universal Declaration of Human Rights, which reads: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

Does this harmonize with what the Commissioner has in mind?

MR. NOLLEDO: Yes.

MR. SUAREZ: But there is this qualification — because we want to be reasonable in the exercise of the right of asylum — as reflected in paragraph 2 of Article 14 of the Universal Declaration of Human Rights which reads:

This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

Would the Commissioner accept, at the proper time, an amendment to his amendment in order to exclude this crime regarding prosecutions genuinely arising from nonpolitical crimes, such as murder?

MR. NOLLEDO: I think the Commissioner, being a lawyer, is aware that even without any treaty, it is a basic principle in public international law that the right of asylum refers only to political offenses. He will notice that in my proposal I used the words: PERSECUTED BECAUSE OF THEIR STRUGGLE IN DEFENSE OF HUMAN RIGHTS IN THE LIBERATION OF THEIR COUNTRY, which sufficiently refer to political offenses.

MR. SUAREZ: Thank you.

With that clarification, I would not press an amendment to the Commissioner's amendment.

MR. NOLLEDO: Thank you.

MR.. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Thank you very much.

Will the distinguished Commissioner yield to a question or two on the point of asylum?

MR. NOLLEDO: Very gladly.

MR. OPLE: Being a person of such distinguished erudition, would the Commissioner recall the events sometime in the early 1960's during the administration of President Macapagal, when the leader of the Brunei revolt, Azahari, was accorded the hospitality of the Philippines?

MR. NOLLEDO: Yes.

MR. OPLE: He might also recall that there was a failed revolution in Brunei against the Sultanate and this took place against the broader backdrop of the tensions between Indonesia and the Philippines on one hand, and Malaysia, on the other, and that Azahari became the focus of international attention while staying here, causing very deep resentment both in Brunei and in Malaysia but equally causing jubilation in Indonesia. Would this amendment presented by the distinguished Commissioner legitimize in the future the extension of Philippine hospitality to leaders of failed revolutions whose asylum in the Philippines would be capable of arousing indignation and, perhaps, reprisals in friendly countries in the region?

MR. NOLLEDO: I think the possibility of reprisals should be considered incidental and unimportant in relation to the constitutional mandate upon the President of the country to grant the right of asylum to such kind of foreigners assuming and admitting that they are guilty of struggle in defense of human rights in the liberation of their country.

MR. OPLE: The Commissioner is also undoubtedly aware that in Indonesia there is an unwritten policy of the government of President Suharto that religious leaders of the Islamic faith — and, of course, 95 percent of about 200 million Indonesians belong to the faith — should refrain from causing any excitement about the Mindanao question as an act of superb cooperation with the Philippine Government. I was just beginning to imagine the implications on our bilateral relations with Indonesia if, let us say, the survivors of the Partai Komunis, Indonesia, the new heir to Mr. Aidit who is the old leader of the PKI, applied for asylum in the Philippines under this proposed amendment. Would they be eligible for our hospitality even to the point that we might invite reprisals from such a highly cooperative, friendly government in Jakarta?

MR. NOLLEDO: As long as those who are seeking asylum are freedom fighters, I think, our President should not hesitate to apply even the provisions of the Universal Declaration of Human Rights. Even without this, the President may be bound by those provisions in giving protection to freedom fighters to show to all and sundry, to the entire world, that we also value our own freedoms which are violated in foreign countries.

MR. OPLE: I am not opposed to the resolution of Commissioner Nollado, but it is the responsibility of the Constitutional Commission to look into the possibility of serious consequences arising from our actions here. Would the Commissioner, right now or later consider some flexibility for the Philippine government in the implementation of this policy, whether pertaining to the legislature or to the office of the President which executes foreign policies?

MR. NOLLEDO: I will consider. The Commissioner, for example, may place there, "under the conditions laid down by law." He can present an amendment, but I have to consult my coauthor, Commissioner Edmundo Garcia, as a matter of courtesy, if he is amenable to it.

MR. OPLE: Thank you very much, those are the points I wanted to raise.

Thank you, Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Thank you, Madam President.

Just a short observation. I agree with the proposal but I wonder if the Bill of Rights is the proper place for it.

The Bill of Rights refers to prevention of abuses of the government against people's rights. The statements are usually in the negative. I do not know, if this proposal is not better placed in the Declaration of Principles.

MR. NOLLEDO: A similar provision appears in the Bill of Rights of other constitutions of the world. The Commissioner will notice that I placed this as Section 10 after the provisions on freedoms of our citizens. The purpose here is to show that while we value our freedoms here, we also value the freedoms of other freedom-loving countries.

MR. RODRIGO: What country, for example, has it in the Bill of Rights? It is possible that this is in the Constitution of other countries but not in the Bill of Rights but in the Declaration of Principles.

MR. NOLLEDO: The Federal Republic of Germany, Italy and Mexico.

MR. RODRIGO: My concept of the Bill of Rights is to protect the rights of those who reside in the Philippines but not of the few who might land on our shores and seek asylum.

Thank you very much.

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Will the distinguished Commissioner yield to a few questions?

MR. NOLLEDO: Very gladly.

MR. AZCUNA: The honorable Commissioner is, therefore, proposing the right of asylum to be given to all who would like to seek shelter in the Philippines from political persecution in their country. Is that correct?

MR. NOLLEDO: Yes, that is correct.

MR. AZCUNA: Would this asylum consist in giving temporary shelter like the one in the Commissioner's home province of Palawan, or would it include the right of becoming part of our society including the right to education and to work?

MR. NOLLEDO: No. It contemplates temporary shelter.

MR. AZCUNA: And once we provide temporary shelter until such time as other states may receive them permanently, we will have satisfied the right of asylum as contemplated in this provision?

MR. NOLLEDO: Yes.

MR. AZCUNA: I see. Is there no limitation on reciprocity in this provision? Would it be accorded to all regardless of whether or not the countries from where they come would accord it to Filipinos under similar circumstances?

MR. NOLLEDO: In that case, I would qualify my answer because while I generally agree with the application of the principle of reciprocity, naturally it will be nullified by the President of the foreign country to which the

foreigner belongs, if he is a dictator. So, if we adopt the principle of reciprocity in this case, then we also nullify this provision.

MR. AZCUNA: And, lastly, this would, in effect, also constitutionalize the rule of international law that we should not carry back refugees to the borders or return them to their shores where such refugees are in danger of their lives — the principle of nonrefoulement.

MR. NOLLEDO: Yes.

MR. AZCUNA: Thank you.

MR. NOLLEDO: The Commissioner's interpellations strengthened my proposal.

MR. ROMULO: Madam President, just a brief observation, if I may.

THE PRESIDENT: Commissioner Romulo may proceed.

MR. ROMULO: Firstly, whether someone is a freedom fighter or not in his own country is never a black-and-white question. Secondly, I am appalled by the suggestion that someone seeking asylum will override the national interest.

Thank you.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Thank you.

Would the proponent please yield to a few questions?

I take no issue with the merits of the right of asylum, but I would have difficulty in accepting the proponent's proposal of placing it in the Bill of Rights. Would he be agreeable to considering it in some other pertinent provisions of the Constitution and that the deliberations on the merits of his proposal might as well be undertaken thereat?

MR. NOLLEDO: As far as I am concerned, this should really appear in the Bill of Rights but Commissioner Garcia has something to say.

MR. GARCIA: I believe that this proposal could very well be placed in the Declaration of Principles, if it is an important and universally accepted principle of international law.

MS. AQUINO: Thank you.

MR. NOLLEDO: In that case, we will defer action on this, and I will present it to the Committee on Preamble, National Territory, and Declaration of Principles. Madam President, if there is no anterior amendment, I would like to present another amendment.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Just to clarify. Do I understand that Commissioner Nolleddo's proposed amendment is being withdrawn for the time being?

MR. NOLLEDO: Yes, Madam President, because my coauthor states that this should appear in the Declaration of Principles and I yield to him.

THE PRESIDENT: So, the same is withdrawn for the time being.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I understand from Commissioner Nolleto that he is withdrawing that amendment in the meantime for possible transfer to the Declaration of Principles but I consider it timely at this point in time, considering that he was mentioning the Universal Declaration of Human Rights, to clarify this point. If the Commissioner is willing to yield to a few questions, I think we should enrich our record as far as this matter is concerned.

MR. NOLLEDO: Gladly.

MR. MAAMBONG: To clarify this Universal Declaration of Human Rights which I myself am not very clear about, let me read to the body page 124 of a book of the UP Law Center entitled: The New Constitution and Human Rights, afterwards I want to find out from the Commissioner, if this is still true in the present setting:

The Universal Declaration of Human Rights is not a treaty but a resolution approved by the General Assembly on December 10, 1948. As such, it imposes no legal obligations on member States; it merely serves as a "common standard of achievement for all peoples and all nations" in promoting respect for, and observance of human rights and fundamental freedoms. The Philippines, as one of the 51 founding members of the United Nations that helped to draft the Charter in San Francisco, as a member of the Commission on Human Rights that drafted the Universal Declaration itself, and as one of the 48 members of the General Assembly that voted to adopt the Declaration, has a special moral obligation to observe the precepts embodied in that historic document. The moral force of the Declaration is considerably enhanced by the fact that it was adopted unanimously, without a dissenting vote. It should, therefore, be regarded as an authoritative interpretation of the Charter and to the extent that the Declaration makes the intent and meaning of the Charter's human rights provisions more precise, it strengthens the obligations assumed by member States.

I will continue with one paragraph which is my primary concern, and it reads:

In 1951, it was decided to have two Covenants instead of one — a Covenant on Civil and Political Rights and a Covenant on Economic, Social and Cultural Rights, but on the understanding that the two Covenants would be simultaneously submitted for approval. The General Assembly started consideration of the two Covenants in 1955 and adopted both of them as well as an Optional Protocol to the Covenant on Civil and Political Rights, in 1966. The Philippines ratified the Covenant on Economic, Social and Cultural Rights in 1974, but it has so far not ratified the Covenant on Civil and Political Rights. The obvious explanation is that while the martial law regime would have no difficulty in complying with the obligations of the Covenant on Economic, Social and Cultural Rights, it would not be able to accept the obligations of the Covenant on Civil and Political Rights, the effectivity of which it would not have the power to suspend even as it has suspended that of the Bill of Rights of the Philippine Constitution. It is presumed that the Philippines will ratify the Covenant on Civil and Political Rights as soon as martial rule comes to an end.

My first question: To the Commissioner's knowledge, up to the present time, has the Philippines not ratified his Covenant on Civil and Political Rights?

MR. NOLLEDO: I am not aware.

MR. SARMIENTO: It has been ratified.

MR. GUINGONA: Point of order, Madam President.

THE PRESIDENT: The proposed amendment of Commissioner Nollado has already been withdrawn and has been scheduled to be discussed at some other future time. Therefore, there is no need for the body to proceed in discussing this matter.

MR. MAAMBONG: Thank you, Madam President.

MR. GUINGONA: May I ask for the ruling of the Chair? With due respect to the distinguished Commissioner, I think the discussions on this matter can be resumed when we take up the Article on the Declaration of Principles.

THE PRESIDENT: That is understood, Commissioner Guingona.

MR. GUINGONA: Yes, thank you.

MR. NOLLEDO: Madam President.

THE PRESIDENT: Yes, Commissioner Nollado is recognized.

MR. NOLLEDO: Unless there is an anterior amendment, I would like to present another amendment.

FR. BERNAS: Madam President.

THE PRESIDENT: The Chairman of the sponsoring Committee is recognized.

FR. BERNAS: Madam President, there is a special request that we move to Section 21 which is of special interest to Commissioner Sarmiento. Because of the death of his father, he will have to leave the hall in a short while.

THE PRESIDENT: Commissioner Nollado will please give way.

MR. NOLLEDO: Yes, thank you, Madam President.

THE PRESIDENT: Commissioner Sarmiento may now proceed.

FR. BERNAS: In case there is any amendment proposed to Sections 21 and 22, we would request that they be considered while Commissioner Sarmiento is still here. He will leave the hall for the funeral of his father.

MS. NIEVA: Madam President.

MR. TINGSON: Madam President, I have amendments.

THE PRESIDENT: Commissioner Nieva is recognized.

MS. NIEVA: Commissioner Tingson has already registered his amendment to Section 21.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, on Section 21, lines 12 to 14, on page 4, I propose to delete the second sentence which reads: "If the person cannot afford the services of counsel, he must be provided with one who is competent and independent.

I would like to have that deleted because Section 24 already states: "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

We should eliminate that sentence in order for our Constitution to be less wordy. Madam President, the description here of "counsel" — one who is competent and independent — does not seem appropriate in a Constitution. We need not describe what a counsel is. Besides, the first sentence in Section 21 is very clear already: "It shall be the duty of every official investigating the commission of an offense to inform the person under investigation of his rights to remain silent and to have counsel.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: Madam President, this provision is inserted here largely through the persuasive arguments of those who have been engaged in human rights cases for the strengthening of the position of those who are victims of human rights violations. So, it strengthens the provision and, for that reason, the Committee does not accept the amendment.

THE PRESIDENT: The Committee does not accept the amendment.

MR. SARMIENTO: May I just make a brief addition to the explanation made by Commissioner Bernas.

MR. TINGSON: Yes.

MR. SARMIENTO: This provision is based on our experience in handling human rights cases. I could mention one example — the case of Carl Gaspar. Of course, there are other cases. Carl Gaspar was given a counsel, who was their own, by the military. He was asking for one particular lawyer, but the military refused to provide him the assistance of that lawyer. Instead, the military gave Carl Gaspar while in detention a lawyer who was their own; who was not independent, who was not competent, who simply followed the wishes of the military.

So, based on that experience and other experiences encountered during the past regime, we have asked the Committee for the inclusion of this provision.

MR. TINGSON: Is that not an exception to the general rule, and must we always mention in the Constitution a detailed explanation like that? I am referring to the phrase "one who is competent and independent." It seems to me that it does not need to be spelled out in the Constitution.

The fact that he is given counsel means it is understood that that counsel is competent and independent, otherwise the other provisions of a similar nature would also insist on stating what should be in describing whatever is given to a particular right.

MR. SARMIENTO: If we will not place the words "competent and independent" and simply state "If the person cannot afford the services of a counsel, he must be provided with one," then this will be subject to abuse. The military or other law-enforcement officers may simply say: "We are not mandated to provide you with competent and independent counsel, just provide you with one as the Constitution states."

It is to prevent that abuse that we are stating clearly and in specific terms the words "competent and independent."
"

MR. REGALADO: Madam President, may I propose a compromise for this impasse.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: The Honorable Tingson objects to the description of an independent and competent counsel. I personally find that also a little inadequate, even if it is there because the counsel may be competent, he may be independent, but he may not perform his duties.

As early as the case of *US vs. Gimeno*, which is in Volume I of the Philippine Reports, and a plethora of decisions thereafter, the Supreme Court stated that the right to counsel means the right to an effective counsel. The word "effective" there embraces independence of mind, integrity and one who will work for the rights of his clients.

So, may I suggest, if the Committee would agree, instead of having this line which Commissioner Tingson finds to be a little out of place in a constitution, that perhaps after the first sentence on line 12 we can just say ". . . and to have EFFECTIVE counsel." That is the way the Supreme Court has always described the meaning of the right

to counsel. That already includes independence of mind and integrity. He may have integrity and independence, and yet if he does not move, he is not an effective counsel.

MR. TINGSON: I accept the observation, Madam President.

If that is an amendment to my amendment, then I accept it.

MR. REGALADO: ". . . and to have EFFECTIVE counsel" and then we delete that second sentence which we find out of place in a constitution.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: May I propose an amendment to the amendment being introduced by Commissioner Regalado. On line 12, I propose the addition of the phrase OF HIS OWN CHOICE so that the line would read: ". . . to have EFFECTIVE counsel OF HIS OWN CHOICE."

This would effectively approximate the essence of the sentence on lines 12 to 14.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes to afford opportunity to the Commissioner to confer.

It was 11:15 a.m.

RESUMPTION OF SESSION

At 11:20 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MS. NIEVA: Commissioner Tingson is now ready for his amended amendment.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: The three Commissioners, including this Representation, have agreed that Section 21, line 9, would read: "It shall be the duty of every official investigating the commission of an offense to inform the person under investigation of his rights to remain silent and to have counsel PREFERABLY OF HIS CHOICE. These rights cannot be waived except in writing and in the presence of counsel."

THE PRESIDENT: Commissioner Sarmiento is recognized.

MR. SARMIENTO: May I be allowed to make my comments? I conferred with some of our fellow Commissioners, after the Gentleman conferred with me. I would like to express my reservations on that proposal.

One who is in detention is subjected to mental torture, harassment and anything. Under that situation, that detainee cannot think clearly and independently. We have many cases of detainees who, because of prolonged tension, could not think clearly and independently. If we state "PREFERABLY OF HIS OWN CHOICE," the detainee could not make an independent choice because of the prison conditions under an atmosphere of coercion and harassment. So, with due respect to the Gentleman's suggestion, I will still maintain the words "competent and independent." These words were extracted from bitter and painful experiences, using the words of Commissioner Nollado. I still appeal to the Commissioners to maintain the words "competent and independent."

Another thing, it is possible that the detainee might request for a very good counsel, a member of a prestigious law firm. But if the detainee is in Davao or in a very remote area of Baler, Aurora, I think the counsel would

refuse. So, I still would request for the retention of the words "competent and independent."

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: I would like to offer my objection to the general statement of Commissioner Sarmiento — that a detained person is under harassment, under very bad treatment, and that he cannot think. This is an accusation to all police agencies and to all people conducting the investigations. I do not believe that in the questioning of suspects our police agencies nor the armed forces have such suspects under extreme harassment or torture. I regret to oppose the Gentleman's statement on the matter because it is a general accusation to our police agencies who are, in fact, offering their lives in the performance of their duties.

MR. SARMIENTO: May I be allowed to make a brief rejoinder? I think my best evidence would be Commissioner Nollado who was a victim of repression during the Marcos regime. Commissioner Nollado would be willing to reply to that briefly.

MR. DE CASTRO: There may be instances of this harassment under the past regime. But the general accusation on our law enforcement agencies would be very unfair because our law enforcement agencies even offer their lives everyday in the performance of their duties. It is not correct to accuse them in a general manner that they harass and torture and give all the punishments that can be given to persons who are detained. My stand here is to protect the integrity of police agencies, not only in exceptional cases, during the past regime.

Thank you, Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, may I just say one word and then I will be through.

This is no big deal to me because I am in favor of the phrase "competent and independent counsel." I just do not like the idea of insinuating that there are incompetent and nonindependent lawyers because all lawyers are supposed to take the lawyer's oath just like doctors. Therefore, they are supposed to be competent and independent. Besides, in answer to Commissioner Sarmiento, when a prisoner is not capable of selecting his own counsel, he always has his family, his relatives and friends who will help him select a counsel preferably of his and their choice.

I will now ask for a vote, Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: May I be clarified on the status of the amendment being proposed by Commissioner Tingson. Is he withdrawing his amendment?

THE PRESIDENT: No, he is not. I have not heard him withdraw. He is explaining his amendment. Is Commissioner Tingson withdrawing?

MR. TINGSON: Madam President, I just do not want to be misunderstood. I want competence and I want independence, but if the Commissioner would improve my amendment, I will go along for a vote.

THE PRESIDENT: What is the pleasure of Commissioner Aquino?

SUSPENSION OF SESSION

MS. AQUINO: Madam President, may I request a suspension of the session.

THE PRESIDENT: The session is suspended.

It was 11:27a.m.

RESUMPTION OF SESSION

At 11:31 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Acting Floor Leader is recognized.

MS. NIEVA: Commissioner Tingson seeks recognition, Madam President.

MR. TINGSON: Madam President, we are sorry for taking a little more time than it should really take, but we have decided on the following, which has received the sympathy of the Committee: "It shall be the duty of every official investigating the commission of an offense to inform the person under investigation of his rights to remain silent and to have COMPETENT AND INDEPENDENT counsel PREFERABLY OF HIS OWN CHOICE. These rights cannot be waived except in writing and in the presence of counsel." The rest of the sentence on lines 13 and 14 are deleted.

THE PRESIDENT: Is this acceptable to the Committee?

FR. BERNAS: No, we would not accept the deletion of the phrase "If the person cannot afford the services of counsel, he must be provided with one."

THE PRESIDENT: A period after that?

FR. BERNAS: Yes, Madam President, provided the other insertions are put as suggested.

MR. TINGSON: Then, will the Gentleman accept our putting the word FREE before "counsel," so that the line will read: "FREE, COMPETENT AND INDEPENDENT counsel PREFERABLY OF HIS OWN CHOICE"?

FR. BERNAS: What we would like to emphasize here is the obligation on the part of the state to provide him with one. It is true that it is a free counsel, but we would like to emphasize the phrase "he must be provided with one." The state has the duty to provide a person with one.

MR. TINGSON: I would like to add that under the Rules of Court, in criminal procedure, this is one of the duties of the court — to provide him with one.

MS. AQUINO: Madam President.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: I would address the reluctance of Father Bernas and Commissioner Sarmiento by saying that in the amended version, as proposed by Commissioner Tingson, it does not distinguish between a party counsel and a counsel de officio. It is considered that the state has the duty to provide a litigant his own counsel. But with this new amendment, it does not distinguish between de parte and de officio counsel, though it even ensures that he shall be entitled to a counsel. Likewise, the amendment of incorporating "PREFERABLY OF HIS OWN CHOICE" reasserts that the freedom to choose and the freedom to refuse belong first to the detainee. If the intention is to give muscle to the duty of the state, maybe the amendment rightfully belongs to Section 24.

FR. BERNAS: Madam President, I think we have adequately discussed this. May I suggest that we vote on this now and do it one by one?

As far as the Committee is concerned, we are accepting the modification on line 12, to read: "to remain silent and

to have COMPETENT AND INDEPENDENT counsel PREFERABLY OF HIS OWN CHOICE." But we oppose the deletion of the next sentence: "If the person cannot afford the services of counsel, he must be provided with one." We oppose the total deletion of this sentence.

THE PRESIDENT: So, to make it clear, the first portion of the amendment has been accepted by the Committee.

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

FR. BERNAS: As to the next sentence, we are willing to amend this to read: "If a person cannot afford the services of counsel, he must be provided with one." We oppose the deletion of this provision.

THE PRESIDENT: In other words, the words "who is competent and independent" will be necessarily deleted.

FR. BERNAS: Yes, because they are already in the previous sentence.

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

Is there any other amendment on Section 21?

MS. NIEVA: Commissioner Treñas is seeking recognition.

THE PRESIDENT: Commissioner Treñas is recognized.

MR. TREÑAS: Madam President, members of the Committee, may I propose an amendment on the same Section 21, lines 19 to 21, for the purpose of clarification? I quote this particular paragraph: "Any confession or admission obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." I then propose to add the phrase AGAINST THE PARTY WHOSE RIGHTS WERE VIOLATED.

The purpose of the amendment is just to clarify because reading this particular paragraph does not seem to allow any exception. So, the purpose here is that the confession secured in violation of this section can still be admissible against the person who violated the right.

THE PRESIDENT: So, will the Gentleman please state his amendment again?

MR. TREÑAS: It will read: AGAINST THE PARTY WHOSE RIGHTS WERE VIOLATED. Therefore, the confession is inadmissible insofar as the proceedings against the party whose rights were violated are concerned, but admissible against the person who violated the right. That is only the purpose there.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Will the Gentleman yield to one or two questions?

MR. TREÑAS: Certainly.

MR. SUAREZ: Let us say Juan de la Cruz, in his admission or confession, implicates 10 persons. Under the Gentleman's proposal, that confession or admission may not be admissible against the confessor or the one making the admission but can be utilized as evidence against those other 10 persons implicated in that confession. Is that the thrust of his proposal?

MR. TREÑAS: Certainly, it cannot be utilized against the 10 persons implicated because that is against the rule of evidence of res inter alios acta. Unless the qualifications or requisites for admissibility against other persons are proved, the confession cannot be admissible. We have a general principle in evidence that confession or

admission is admissible only against the party who made the confession or admission and not against third persons.

MR. SUAREZ: We do respect the proposed addition, but that is what we are precisely trying to avoid.

MR. TREÑAS: But you must prove their conspiracy, that he was part of the scheme.

MR. SUAREZ: But that could be a fabricated confession in order to implicate the alleged coconspirators.

MR. TREÑAS: Precisely, the purpose of my proposed amendment is to limit it because the rule says it is not admissible in any proceeding.

MR. SUAREZ: Does not the Gentleman believe that, as stated, it is adequate, sufficient and will not unnecessarily complicate the situation?

MR. TREÑAS: Precisely, my purpose is to make it not admissible against the party whose right was violated, but could be admissible against the person who violated his right.

MR. SUAREZ: As I said, the consequences are rather horrible from the point of view of those who would be implicated unnecessarily.

MR. TREÑAS: Precisely, insofar as those persons are concerned, we have the rules on evidence protecting them.

MR. SUAREZ: Would the Gentleman not consider withdrawing his proposal so as not to complicate the situation? I find this particular provision already adequate, Madam President.

Thank you.

THE PRESIDENT: May we hear from the Committee first.

FR. BERNAS: Madam President, in the light of the objections that have been raised, the Committee would leave this issue to the body for discussion.

MR. PADILLA: Madam President.

THE PRESIDENT: The Vice-President is recognized.

MR. PADILLA: Could we just say, "shall be inadmissible IN EVIDENCE AGAINST HIM" and eliminate "for any purpose in any proceeding"?

Under the Rules on Evidence, Rule 130, Section 22, any act, declaration or omission of a party as to irrelevant facts may be taken in evidence against him. Under the same rule, Section 25 on admission of a third party, that is not admissible against others unless it would fall under the exceptions on conspiracy, privity and holding title of a predecessor.

In other words, one who makes an admission or a confession is only admissible against him. If he implicates others, that is not admissible to the others because as correctly stated by Commissioner Treñas, that would violate the rule of *res inter alios acta* except for a few exceptions.

So, to make it simple and to follow the language of the Rules of Court, we just say, "Any confession or admission obtained in violation of this section" — I do not know why "the preceding section" is mentioned; that is against self-incrimination — "shall be inadmissible IN EVIDENCE AGAINST HIM." We are referring to the person whose confession has been extracted by force, violence, threat, intimidation. I was going to ask why they eliminated what already appears, "or in any other means which vitiate the free will." But that is another matter, Madam President.

FR. BERNAS: Madam President, in the light of the explanation given by Commissioner Treñas regarding the admissibility of evidence with respect to other parties that will be governed by existing rules on evidence, then the amendment seems unnecessary.

THE PRESIDENT: How about the suggestion. of Commissioner Padilla?

FR. BERNAS: I think it is also unnecessary in the light of the explanation already given — that if we are seeking to protect the person who made the confession or who made the admission and whose rights were violated, by this provision, as far as the usefulness of the evidence is concerned with respect to others, it is already governed by the Rules on Evidence. At least that is the way I see Commissioner Treñas' explanation, in which case, this addition is really not necessary.

MR. PADILLA: It is preferably clearer and necessary to clarify that it is only inadmissible against the person whose confession was extracted by force.

THE PRESIDENT: Does Commissioner Treñas insist on his proposed amendment or shall we submit it to a vote?

MR. AZCUNA: Madam President.

THE PRESIDENT: Commissioner Azcuna is recognized.

MR. AZCUNA: Would Commissioner Treñas consider an amendment to his amendment to clarify this, and to read as follows: "Any confession or admission obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding EXCEPT TO PUNISH ANY VIOLATION OF THIS SECTION AS MAY BE PROVIDED BY LAW."

THE PRESIDENT: What does Commissioner Treñas say?

MR. TREÑAS: I feel it may still complicate the section. However, I accept the amendment proposed by Commissioner Padilla in the sense that it is simpler, and it may give the proper meaning to the Article. I still request a vote, if it is not accepted by the Committee. At any rate, the purpose here is only to clarify this section.

FR. BERNAS: Madam President, we submit it to a vote.

MR. TREÑAS: May I just repeat my amendment because my fellow Commissioners are asking for the amendment.

THE PRESIDENT: The Gentleman may proceed.

MR. TREÑAS: "Any confession or admission obtained in violation of this or the preceding section shall be inadmissible AGAINST HIM."

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Treñas and Commissioner Padilla, please raise their hand. (Several Members raised their hand.)

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

The results show 20 votes in favor and 17 against; the amendment is approved.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: This will affect lines 22 and 23, Section 21. This is an amendment by substitution. The substitute

amendment will read as follows: PENAL AND CIVIL SANCTIONS FOR VIOLATIONS OF THE SECTION SHALL BE IMPOSED BY LAW.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: I think I understand what is meant, but the language — "IMPOSED BY LAW" — seems to me a bill of attainder. May I amend it to read: "SHALL BE PROVIDED BY LAW."

MR. DAVIDE: I agree, Madam President.

FR. BERNAS: "PENAL AND CIVIL SANCTIONS FOR VIOLATIONS OF THIS SECTION SHALL BE PROVIDED BY LAW." I think the amendment is acceptable.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: We would like to seek clarification of the definition of "CIVIL SANCTIONS." What exactly does the Gentleman have in mind?

MR. DAVIDE: This would include the imposition of damages — moral, exemplary and others — as well as administrative penalties on the violator.

MR. SUAREZ: That is independent of the compensation for a rehabilitation of victims provided under the succeeding paragraph.

MR. DAVIDE: That would be entirely different, Madam President.

MR. SUAREZ: Thank you.

MR. PADILLA: Madam President.

THE PRESIDENT: Yes, Commissioner Padilla is recognized.

MR. PADILLA: My personal reaction is that this sentence should not appear in the Bill of Rights. It may be provided in some other provision, say, on Social Justice or Human Resources, but not in the Bill of Rights.

THE PRESIDENT: Is that all? Are we ready to vote?

FR. BERNAS: Madam President, just one word. Since this matter is intimately related with the rest of Section 21, although, strictly speaking, it does not belong to the Bill of Rights, it is better placed here in order to establish the connection between the two.

THE PRESIDENT: Let us submit it then to a vote.

As many as are in favor of the proposed amendment, please raise their hand.

FR. BERNAS: Madam President, what are we voting on? Are we voting on the Davide amendment?

THE PRESIDENT: The Davide amendment which has been accepted by the Committee.

FR. BERNAS: What are we voting on then, on the deletion?

THE PRESIDENT: On the amendment by substitution. Will Commissioner Davide please repeat his amendment.

MR. DAVIDE: In lieu of the wordings found on lines 22 and 23 which read: "The Legislature shall enact a law punishing any violation of this section," the following is sought to replace the same: "PENAL AND CIVIL

SANCTIONS FOR VIOLATIONS OF THIS SECTION SHALL BE PROVIDED BY LAW."

VOTING

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

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

The results show 26 votes in favor and 3 against; the amendment is approved.

MS. NIEVA: Commissioner de los Reyes has made a reservation to speak.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, on lines 17 and 18, I propose that after the word "Secret," we put a comma (,) then insert the word SOLITARY; delete the words "detention places and" and then insert the word OR before the word "incomunicado." After "incomunicado," insert AND OTHER SIMILAR FORMS OF so that the sentence will read: "Secret, SOLITARY OR incomunicado AND OTHER SIMILAR FORMS OF detentions are prohibited." That is my first amendment.

THE PRESIDENT: What does the Committee say?

MR. SARMIENTO: We will have a redundancy, if we use "Secret, SOLITARY OR incomunicado. . ."; "incomunicado" already refers to secret and solitary detentions.

MR. DE LOS REYES: But that is in the original proposal: "Secret detention places and incomunicado . . ." and that is more redundant. Detentions already embrace places. Precisely I am trying to avoid the redundancy of the word "detentions."

FR. BERNAS: I think the amendment eliminates "Secret detention places."

MR. DE LOS REYES: It is already embraced within the word "detentions."

FR. BERNAS: No, the detention place might be known but the detention itself could be secret, like safehouses, for instance. We do not know where they are but one could also be secretly detained in a municipal jail and nobody will know he is there.

MR. DE LOS REYES: That already covers secret safehouses because they are secret. But why specify detention?

FR. BERNAS: But the Gentleman eliminated the word "places."

MR. DE LOS REYES: The word "places" is already embraced in the word "detention." Detention is a place. We cannot detain anybody except in a place.

FR. BERNAS: Yes, and the place could either be known or secret.

MR. DE LOS REYES: Correct. So, a secret detention — secret, solitary or incomunicado or other similar forms of detentions — is prohibited. That already includes safehouses because we have to word the Constitution in a manner that partakes of the nature of a constitution and not of an ordinary legislation.

FR. BERNAS: Yes, to word it to the extent that it eliminates "secret detention places," which has a definite meaning. It is the place itself that is secret, not just the fact of detention. We oppose the amendment.

MR. DAVIDE: Madam President.

THE PRESIDENT: Yes, Commissioner Davide is recognized.

MR. DAVIDE: Would the distinguished proponent accept an amendment?

MR. DE LOS REYES: Let us hear the amendment to the amendment.

MR. DAVIDE: The proposed amendment will now read as follows: "Secret detention places, SOLITARY, incommunicado, OR OTHER SIMILAR FORMS OF detentions are prohibited."

MR. DE LOS REYES: In view of the tenacity of the Gentleman's opposition for the elimination of the word "detention places," I accept the amendment.

FR. BERNAS: The amendment of Commissioner Davide, as far as we are concerned, is acceptable because precisely it preserves "detention places."

THE PRESIDENT: The amendment has been accepted.

MR. DAVIDE: So, for the record, I will repeat the proposed amendment.

THE PRESIDENT: Yes, please.

MR. DAVIDE: "Secret detention places, SOLITARY, incommunicado, OR OTHER SIMILAR FORMS OF detentions are prohibited."

THE PRESIDENT: This has been accepted by the Committee.

MR. DAVIDE: I think it should be "detention" only. So, it will read again: "Secret detention places, SOLITARY, incommunicado, OR OTHER SIMILAR FORMS OF detention are prohibited."

MR. NATIVIDAD: Madam President, one clarification only.

THE PRESIDENT: Commissioner Natividad is recognized.

MR. NATIVIDAD: Solitary confinement has a significance in penology, aside from the violation of human rights. In prison when somebody runs amuck or endangers the staff, he is put in solitary confinement.

The United States Supreme Court rules that solitary confinement may be done to protect the staff and other prisoners, but not exceeding 15 days. That is the jurisprudence being followed there. But they do not remove solitary confinement. What is prohibited is the maltreatment during solitary confinement and extensive solitary confinement. But suppose there is a riot in the prisons, to save the lives of prisoners and staff, the amucks are separated from the rest of the inmates. I am just clarifying it.

I do not believe solitary confinement should be prohibited because in case of riots and disorders in prison, that word "SOLITARY" has a significance in penology.

MR. DAVIDE: Madam President, I think we have to distinguish between Section 21 and Section 22.

In Section 22, solitary confinement may be allowed in the execution of a sentence. But Section 21 pre-supposes a situation where there is no conviction yet. He is still presumed to be innocent.

MR. NATIVIDAD: I am glad about that, so that in case somebody checks the record of these debates, we are certain that what we are prescribing are the safehouses and the solitary confinements, not the solitary confinements necessary to save lives in case of a riot.

MR. DAVIDE: That may be taken up when amendments are introduced to Section 22, not to 21, where you have a detained person who is still presumed to be innocent because he had not even undergone trial in court.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, my observation is regarding the use of the phrase "AND OTHER SIMILAR FORMS OF detention."

"Incommunicado" and "solitary" have a specific meaning. Why enlarge that by saying, "AND OTHER SIMILAR FORMS OF detention"?

MR. DAVIDE: No, it is not "AND OTHER."

MR. RODRIGO: What detention is similar to incommunicado? What detention is similar to solitary? It is either incommunicado or not incommunicado. It is either solitary or not solitary. But what is the meaning of "AND OTHER SIMILAR FORMS OF detention"? Will the Gentleman give an example?

MR. DAVIDE: May I be allowed to explain?

In the first place, we did not use the word "AND." It is "OR OTHER SIMILAR FORMS."

The military or the police may be very imaginative and creative. They can think of several ways of violating or circumventing a particular prohibition.

So, we are now looking toward the future, the possibility of another creation of a form similar to incommunicado or secret detention. Science is always in progress and they might think of other modes of detention later.

MR. RODRIGO: Let us use our imagination also like the police. What would then be similar to incommunicado detention?

MR. GARCIA: May I answer that?

MR. RODRIGO: Yes.

MR. GARCIA: Sensory deprivation.

MR. RODRIGO: How is that?

MR. GARCIA: In Colombia I remember seeing people blindfolded for days until they no longer have any sensory perception of what is going on around.

MR. RODRIGO: So the Gentleman agrees to the amendment. But in the committee report, there is no such phrase "AND OTHER SIMILAR FORMS OF detention." I would be commending the Committee as a matter of fact.

MR. GARCIA: I think it is a good amendment.

MR. RODRIGO: The Committee thinks it is a good amendment.

MR. DE LOS REYES: Madam President, another amendment.

THE PRESIDENT: Let us go back. This was originally the amendment of Commissioner de los Reyes, then amended by Commissioner Davide, which amendment to the amendment was accepted by the Committee.

Is there any objection?

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: I have no objection to the substance, but I object to putting it in the Bill of Rights.

VOTING

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

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

The results show 38 votes in favor and none against; the amendment is approved.

MR. DE LOS REYES: Madam President.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: My amendment is still on Section 21. With the acceptance of this amendment, I move that the sentence which has just been approved be transferred to another section because it seems to be out of place in this section which refers to "obtaining confession." In other words, the sentence "No force, violence, threat or intimidation shall be used against him" should be followed by ANY CONFESSION OR ADMISSION OBTAINED IN VIOLATION OF THIS OR THE PRECEDING SECTION SHALL BE INADMISSIBLE AGAINST HIM because the words "Secret detention" which we have approved seems to disrupt the flow of the letter and spirit of the provision.

THE PRESIDENT: So, where would the Gentleman place that sentence of "secret detention places," et cetera?

MR. DE LOS REYES: I intend to introduce another section between lines 23 and 24 which will read: NO PERSON SHALL BE SUBJECTED TO TORTURE OR TO CRUEL, DEGRADING OR INHUMAN TREATMENT, then "Secret detention places, solitary, incommunicado or similar forms of detention are prohibited."

MR. RODRIGO: That is where that should be placed.

MR. DE LOS REYES: No, Section 22 refers to punishment after conviction, but this refers to the inhuman condition before conviction while the prisoner is under investigation or detention, the one which I am introducing.

THE PRESIDENT: Can that be just a separate paragraph?

MR. DE LOS REYES: Precisely, I was saying that between lines 23 and 24, I will introduce a new section which reads: NO PERSON SHALL BE SUBJECTED TO TORTURE OR TO CRUEL, DEGRADING OR INHUMAN TREATMENT. This will be followed by the one we have just approved.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: May I suggest that it should be inserted after "prohibited."

MR. DE LOS REYES: How?

MR. DAVIDE: It will read: NOR SHALL ANY CRUEL, INHUMAN OR DEGRADING TREATMENT BE INFLICTED.

THE PRESIDENT: Would that be a substitution of Section 22?

MR. DAVIDE: No, still Section 21, because the proposal is under Section 21. So, it should be linked to what was just approved. There is a prohibition in the manner of detention and it should be followed by how the accused or the detained individual must be treated, instead of putting it as another section.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 12:10 p.m.

RESUMPTION OF SESSION

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

THE PRESIDENT: The session is resumed.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: The Committee is accepting the following modification: On line 15 towards the end, after the word "counsel" and the period (.), start a new paragraph to read: "No TORTURE, force, violence, threat . . ."

In other words, we add TORTURE after "No" and this is made a new paragraph for emphasis.

MR. DE LOS REYES: I accept the amendment to my amendment.

THE PRESIDENT: Is that a paragraph?

FR. BERNAS: That is a paragraph.

THE PRESIDENT: How about the secret detention places?

FR. BERNAS: They go together.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Before we go to the suggestion of Honorable Bernas, I would like to amend lines 15 to 17 by putting in what the 1973 Constitution states:

No force, violence, threat, intimidation, or any other means which vitiates, the free will shall be used against him.

My reason is that other means which vitiates the free will of the detainee may be used outside of the enumeration. So, I feel that the provision in the 1973 Constitution is more embracing than a mere narration of force, violence, threat and/or intimidation. So, lines 15 to 17 will read: "No force, violence, threat, intimidation OR ANY OTHER MEANS WHICH VITIATES THE FREE WILL shall be used against him."

FR. BERNAS: The additional "OR ANY OTHER MEANS WHICH VITIATES THE FREE WILL" is acceptable but we would also like to add TORTURE.

MR. DE CASTRO: The amendment is accepted.

THE PRESIDENT: Will Commissioner Bernas please read the sentence with all the amendments.

FR. BERNAS: "No TORTURE, force, violence, threat, intimidation OR ANY OTHER MEANS WHICH VITIATES THE FREE WILL shall be used against him."

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

How about the sentence on secret detention places?

FR. BERNAS: It remains.

THE PRESIDENT: So, there is no other amendment to Section 21.

MR. DE LOS REYES: One last minor amendment, Madam President.

THE PRESIDENT: The Gentleman may proceed.

MR. DE LOS REYES: The approved Davide amendment reads: "Penal and civil sanctions or violation of this section shall be provided by law."

With the permission of Commissioner Davide, my amendment is: "Penal and civil sanctions or violation of this section AS WELL AS COMPENSATION FOR AND REHABILITATION OF VICTIMS OF TORTURES OR SIMILAR PRACTICES, AND OF THEIR FAMILIES, shall be provided by law."

FR. BERNAS: The amendment is accepted.

MR. SUAREZ: Point of clarification, Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: When the Committee speaks of victims of tortures or similar practices, who would be the offenders or perpetrators of these? Is it limited to government or public officials and not to private individuals?

Is that the meaning of this provision?

FR. BERNAS: Yes.

MR. SUAREZ: Thank you, Madam President.

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

MR. PADILLA: Madam President.

THE PRESIDENT: The Vice-President is recognized.

MR. PADILLA: I had a proposal during my interpellations on the Article on the Bill of Rights yesterday, which the Committee said it would be willing to consider; that is, I am objecting to Section 21 which states: "It shall be the duty of every official investigating . . ." This is the Bill of Rights. So, we should not stress the duty of officials but rather stress the rights of the persons arrested or detained under custodial investigation.

With the permission of the Committee, I believe that the statement in the 1973 Constitution is preferable and more in accordance with the Bill of Rights. The section as appearing in the 1973 Constitution states:

Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right.

It has the same substance, Madam President, but instead of stressing the duty of the investigating official, we stress the right of the person arrested or detained.

MR. COLAYCO: I would like to comment on that because I was the one responsible for this change. We had that statement on the right of the accused in the 1935 Constitution. We found from experience that this was ignored probably because of the ignorance of the persons or officials who were supposed to honor that. So, we felt that by making it a duty on the part of the investigator to inform the accused or suspect of his rights, we made it a more explicit, emphatic statement of the right of the accused. As the Gentleman said, the substance is there but the form of stating the right became a positive obligation.

MR. PADILLA: When we speak of a right — and the provision in the 1973 Constitution is clear when it stated: "shall have the right" — necessarily, if the detainee or the arrested person has a right, that imposes a duty on the official to inform him of that right of the detainee to remain silent and to have counsel. Right and duty are correlative — when one person has a right, there must be a corresponding duty on another.

What I am proposing is that as this is the Bill of Rights, therefore, we must stress the rights. When we say, "shall have the right," that is mandatory.

MR. COLAYCO: That is not how the peace enforcement officers understand it. May we ask that the matter be subjected to a vote.

MS. AQUINO: Madam President.

THE PRESIDENT: Yes, Commissioner Aquino is recognized.

MS. AQUINO: Supplementary to the point raised by the Vice-President, it is my apprehension that the way it is formulated would be susceptible of a possible loophole. For example, in terms of personalizing duty, it is susceptible to a possible defense — I am not the person who has the duty, so the positive obligation is not on me.

I would conform more with the position of the Vice- President that a positive statement of a right necessarily carries with it the duty. I would point to the consequences of personalizing this duty.

MR. COLAYCO: The trouble is that citizens have many rights which are ignored by the government. So we felt that there was a necessity of emphasizing more the duty than the right. That is why since we made it a duty, we imposed the corresponding sanction.

MS. AQUINO: In that case, it would be more of an educational problem rather than anything else.

MR. COLAYCO: The Committee would rather that this be voted upon.

THE PRESIDENT: May the Chair be informed if the Vice-President was proposing an amendment or just making an observation?

MR. PADILLA: No, I am making the suggestion and proposing an amendment to adopt the language of the 1973 Constitution, with a little modification, to read as follows: "ANY PERSON UNDER INVESTIGATION FOR THE commission of an offense SHALL HAVE THE RIGHT TO BE INFORMED of his rights to remain silent and to have counsel." That would take the place of the first sentence of Section 21, lines 9 to 12.

THE PRESIDENT: Is that accepted by the Committee?

FR. BERNAS: The Committee, as explained by Commissioner Colayco, does not accept it.

VOTING

THE PRESIDENT: We shall then put it to a vote.

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

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

The results show 22 votes in favor and 14 against; the amendment is approved.

MR. RODRIGO: Madam President, with the approval of that amendment, the rest of the section will have to be reworded. I suppose the Style Committee can take care of that later.

THE PRESIDENT: The Acting Floor Leader is recognized.

MS. NIEVA: I would like to call on Commissioner Monsod.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I am sure there is going to be a lot of discussions on Section 22. May I suggest that we suspend the session for lunch and continue after?

FR. BERNAS: Madam President, I am in favor of lunch also, but to facilitate the discussion of amendments on Section 22, if at all possible, may I request those who intend to propose amendments to let us know in writing what the amendments are so we can, if possible, consolidate them ahead of time.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: I am willing to state my amendment and reasons therefor.

THE PRESIDENT: When we resume our session after lunch.

MR. MONSOD: That is accepted.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for our lunch break.

It was 12:28 p.m.

RESUMPTION OF SESSION

At 2:47 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. RAMA: We will take up the continuation of the period of amendments on the Bill of Rights.

May I now call on the sponsor, and may I ask that Commissioner Monsod be recognized to continue his amendment?

THE PRESIDENT: The members of the Committee will kindly join Commissioner Bernas.

Commissioner Monsod is recognized.

MR. MONSOD: I would like to propose an amendment to Section 22 on line 29, after the word "inflicted," change the period (.) to a comma (,) and add the following: UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES, THE NATIONAL ASSEMBLY PROVIDES OTHERWISE.

THE PRESIDENT: That would be referring to the death penalty?

MR. MONSOD: Yes.

THE PRESIDENT: Is the Committee ready to give its position on this proposed amendment?

MR. RODRIGO: Madam President, may we hear the amendment again?

MR. MONSOD: May I repeat with a minor modification. On line 29, after the word "inflicted," change the period (.) to a comma (,) and add the following: UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES, THE NATIONAL ASSEMBLY IMPOSES THE DEATH PENALTY. If we do not specifically mention "death penalty," it might refer to the entire enumeration.

MR. ROMULO: I would like to briefly support the amendment, Madam President.

THE PRESIDENT: Yes, Commissioner Romulo is recognized.

MR. ROMULO: Thank you.

I would like to support it by giving the example of California. California had abolished the death penalty but the people, by initiative, returned the death penalty just last May, and the Supreme Court of California somehow found a technicality to declare the initiative unconstitutional. So, the people of California filed a recall against four of the Justices of the California Supreme Court — that case is pending and I do not know its outcome. But that is just to illustrate that at some point the people, as a rule, should govern in this matter. They may wish to return the "death penalty." That is why I support the Monsod amendment.

MR. SUAREZ: Madam President, may I be recognized for a few interpellations?

THE PRESIDENT: The Floor Leader is recognized.

MR. SUAREZ: Thank you.

I think the Honorable Monsod is still busy conferring.

MR. MONSOD: Excuse me, I am sorry.

MR. SUAREZ: The Gentleman may finish his conference with the Honorable Rodrigo; I am willing to wait.

MR. MONSOD: Yes, Madam President.

MR. SUAREZ: The Gentleman advisedly used the words "heinous crimes", whatever is the pronunciation. Will the Gentleman give examples of "heinous crimes"? For example, would the head of an organized syndicate in dope distribution or dope smuggling fall within the qualification of a heinous offender such as to preclude the application of the principle of abolition of death penalty?

MR. MONSOD: Yes, Madam President. That is one of the possible crimes that would qualify for a heinous crime. Another would be organized murder. In other words, yesterday there were many arguments for and against, and they all had merit. But in the contemporary society, we recognize the sacredness of human life and — I think it was Honorable Laurel who said this yesterday — it is only God who gives and takes life. However, the voice of the people is also the voice of God, and we cannot presume to have the wisdom of the ages. Therefore, it is entirely possible in the future that circumstances may arise which we should not preclude today. We know that this is a very difficult question. The fact that the arguments yesterday were quite impassioned and meritorious merely tell us that this is far from a well-settled issue. At least in my personal opinion, we would like the death penalty to be abolished. However; in the future we should allow the National Assembly, in its wisdom and as representatives of the people, to still impose the death penalty for the common good, in specific cases.

MR. SUAREZ: Thank you.

I would like to pursue some more the Gentleman's definition of "heinous crimes." Would the brutal murder of a rape victim be considered as falling within that classification?

MR. MONSOD: Madam President, yes, particularly, if it is a person in authority. He would, therefore, add as an

aggravating circumstance to the crime the abuse of his position in authority.

MR. SUAREZ: Thank you.

FR. BERNAS: Madam President, just a few clarificatory questions.

THE PRESIDENT: Yes, Commissioner Bernas is recognized.

FR. BERNAS: Is it the purpose of the proponent that upon the adoption of this provision of this Constitution, existing death penalties in the statute books are to be abolished?

MR. MONSOD: The death penalty would be abolished upon the ratification of the Constitution, and I am not proposing, for example, that the next sentence be deleted because a favorable law that is passed should benefit those that now have a death penalty on their head. If the National Assembly so decides to reimpose it in specific cases, then it is prospective.

FR. BERNAS: So, the Gentleman says that he is not asking for the deletion of lines 29 to 30 on the death penalty? Is that correct?

MR. MONSOD: No, I am not asking for its deletion.

MR. RAMA: Madam President.

THE PRESIDENT: Yes, the Floor Leader is recognized.

MR. RAMA: Commissioner Natividad would like to speak.

THE PRESIDENT: Commissioner Natividad will please proceed.

MR. NATIVIDAD: Thank you, Madam President.

May I ask the proponent of the amendment just a few questions? Are we going to impose the death penalty for a heinous crime, if we have agreed on a concept of heinous crimes, is that correct?

MR. MONSOD: We are giving the National Assembly that power.

MR. NATIVIDAD: But the concept is, because of a heinous crime, the death penalty is going to be imposed. That is correct, is it not?

MR. MONSOD: It will apply to a heinous crime.

MR. NATIVIDAD: Yes, but because of a heinous crime, the death penalty is being imposed, but the death penalty is a heinous crime. To many, this is the perception.

We have just banned torture and when we ban torture, I think we should consider the fact that death or execution is the highest form of torture. If we disagree and we are outraged by torture, I think we will have to consider death as more outrageous than torture, because torture is even less than death. I am just expressing my point of view because the ultimate torture is the total extinction of human personality, and that is the ultimate in torture. When we say we are punished with death because of a heinous crime, the penalty is another heinous crime, to my mind.

Before, I was an advocate of the death penalty because of my career in law enforcement. As a Congressman, I wrote the Dangerous Drugs Act, and I placed in that law that anyone manufacturing heroin should be punished with the death penalty, and indeed there was somebody who got the death penalty. The purpose of that death penalty, Madam President, is to serve as a deterrent of drug addiction. From the time the offender was executed up to this day, instead of being deterred in the commission of drug addiction or caught in crimes, violators

increased by the hundredfold, by the thousandfold to the extent that there is an entire command in the Constabulary to deal with drug addiction.

I would like to say that 150 years ago, today, to be exact, 200 offenses were punishable by death in England, in order to bring home the point that death penalty is supposed to be a deterrent. But in the books, when a pickpocket — because pickpockets then were punished by the death penalty — was being hanged, the audience watching the hanging were being snitched. That is how far the deterrents of death penalty had gone.

MR. MONSOD: Madam President, I believe the arguments for and against were discussed very thoroughly yesterday, including those of the Commissioner, and we do not want to revive all the arguments at this time. I think all of us have had time to reflect on this issue, and there is no conclusion that it is a heinous crime or that it can be the most heinous crime of all. All we are saying is, we would agree that, as of today, it should be abolished, precisely because, at least in my mind, there is a preponderance of reasons at this time to abolish it. But what we are saying, is, perhaps, we should not completely foreclose the possibility that the conditions and the situations might change for very specific reasons.

MR. RODRIGO: Madam President, I propose an amendment to the amendment.

THE PRESIDENT: Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO: The amendment to the amendment is as follows: On line 28 after the word "punishment," delete the comma (,), insert the word INFLICTED to be followed by a period (.) and delete the rest of the section so that Section 22 will read: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment INFLICTED."

May I give the reasons to my amendment to the amendment?

THE PRESIDENT: The Commissioner will please proceed.

MR. RODRIGO: Madam President, it was rightly stated by the sponsor, Commissioner Bernas, that the issue here is whether or not we should provide this matter in the Constitution or leave it to the discretion of our legislature. Arguments pro and con have been given — there were arguments in favor of the death penalty, and arguments in favor of abolishing death penalty. But my stand is, we should leave this to the discretion of the legislature.

The proposed amendment is halfhearted. It is awkward because we will, in effect, repeal by our Constitution a piece of legislation and after repealing this piece of legislation, tell the legislature that we have repealed the law and that the legislature can go ahead and enact it again. I think this is not worthy of a constitutional body like ours. If we will leave the matter of the death penalty to the legislature, let us leave it completely to the discretion of the legislature, but let us not have this half-baked provision. We have many provisions in the Revised Penal Code imposing the death penalty. We will now revoke or repeal these pieces of legislation by means of the Constitution, but at the same time say that it is up to the legislature to impose this again.

Madam President, as I said, all the arguments have already been given. I just want to say something on the statement of the Catholic Bishops' Conference of the Philippines on death penalty, which was mentioned here. I do not have a copy of it but I remember having read this some time ago. That statement was made in connection with the proposed bill at the Batasan. It was not in connection with a constitutional provision; it was in connection with a bill, an ordinary proposed statute at the Batasan. If I remember right, the substance of that statement was this: They said that the Church does not have an official stand on whether it is against or in favor of the death penalty. As a matter of fact, one thing I remember is the statement that the two St. Thomases were not in agreement. St. Thomas Aquinas, I think, was in favor of the death penalty; St. Thomas Moore was against it. And

if I also remember right, there were some Popes who were in favor of the death penalty and some Popes who were against. But the substance of the statement was that, considering the circumstances of the times, the Bishops believed that a legislation abolishing the death penalty was timely, but not that the Bishops based their recommendation on the nature, the temper of the times. The temper and condition of the times change, Madam President, and so, I think we should leave this matter to the legislature to enact statutes depending on the changing needs of the times. Let us entrust this completely to the legislature composed of representatives elected by the people.

I do not say that we are not competent. But we have to admit the fact that we are not elected by the people, and if we are going to entrust this to the legislature, let us not be half-baked nor halfhearted about it. Let us entrust it to the legislature 100 percent.

Thank you very much, Madam President.

BISHOP BACANI: Madam President, may I just reply briefly to what Commissioner Rodrigo said.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: Madam President, I just like to say something regarding the intervention of the Catholic Bishops' Conference of the Philippines in the Batasang Pambansa in 1979, the tenor of which is this: Yes, it was correctly put that they proposed the abolition of the death penalty, considering the moral development that we have reached at present, the culture of our people and the tenor of the times. But we are not alone in that. The entire American Episcopate also moved for the abolition of the death penalty. That is why, I think the formulation of Commissioner Monsod would be more in accordance with such a stand. I just like to bring that before the body.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I would like to ask that Commissioner Regalado be recognized.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President.

MR. MONSOD: Madam President, I believe I have to respond to the proposal to amend the amendment.

THE PRESIDENT: Yes. In fact, the Chair, first, would like to know from the proponent, Commissioner Monsod, if he accepts the proposed amendment of Commissioner Rodrigo.

MR. MONSOD: Madam President, I regret I cannot accept the amendment to my amendment. I suggest that we vote first on the proposal of Commissioner Rodrigo which, in effect, is an amendment by deletion, because if his proposal is carried, my amendment becomes academic. If his proposal is lost, then we can reconsider and go back to my amendment.

THE PRESIDENT: What does Commissioner Regalado say?

MR. REGALADO: May I be permitted, Madam President, to give some further arguments in support of the amendment of Commissioner Rodrigo, which yesterday for lack of material time I was not able to present, plus the statistical data in support thereof.

THE PRESIDENT: The Commissioner may proceed.

MR. REGALADO: I have already given my reasons, but I am aware that there are a number of us here in the

Commission who, not being lawyers, may not have adequately appreciated what I stated yesterday when I said that there are those who fear that capital punishment, if maintained is irrevocable. I say that fear is unfounded because there are enough safeguards. I did not elaborate on that yesterday but I will do so now just for clarification.

There are enough procedural safeguards in our law, against an unjust or an improvident imposition of the death penalty. Procedurally, the accused always enjoys the presumption of innocence. Second, he is always entitled to a counsel de officio, both in the trial and in the appellate stages, and the court does not just appoint a run-of-the-mill lawyer as counsel de officio. Third, in the imposition of the death penalty, the court still requires that evidence be presented; although the accused has pleaded guilty. The court still requires the prosecution to introduce sufficient evidence beyond reasonable doubt to justify the imposition of the death penalty. Fourth, there is automatic review of the death penalty imposed by the trial courts.

Substantive safeguards are also provided by law. The death penalty cannot be imposed if the accused at the time of the imposition of the death sentence is over 70 years of age. As of now, the vote of 10 justices of the Supreme Court is required and, if it cannot be obtained, life imprisonment or reclusion perpetua shall be the penalty; a minor below 18 at the time of the commission of the offense cannot be punished with the death penalty unlike what happened in Malaysia or what we have read about that 16-year-old girl in the United States. In the Philippines, no minor below 18 years of age can ever be imposed the death penalty because he is entitled to a privileged mitigating circumstance which lowers the penalty by one or two degrees or even more.

Secondly, even if the Supreme Court itself imposes the death penalty, the death penalty cannot be carried out permanently, first, if the accused is over 70 years of age at the time the sentence is to be carried out, and second, where the President grants amnesty, pardon or commutation. Of course, there are other instances where a woman, on whom the death penalty was imposed, cannot be executed until after the lapse of three years from the finality of the judgment. A woman while pregnant can never be executed and as long as she manages to get pregnant, she will forever not be executed. Third, if the accused is insane at the time the death penalty is to be carried out, again the death penalty cannot be executed. Fourth, it is not correct to assume that because the Supreme Court imposed the death penalty, execution immediately follows. No. The records of the case will have to be remanded to the court a quo or the court of origin and such trial court, for valid reasons, can order that the death penalty should not be carried out in the meantime.

In the case of the Director of Prisons vs. the Judge of the Court of First Instance of Cavite, it was held that although the Supreme Court had already affirmed the death sentence and remanded the records to the trial court for the issuance of the mittimus, the trial court had the power to suspend the carrying out of the death sentence in order to conserve the legal rights of the accused, or whenever there is a question about the identity of the accused, or to grant him the opportunity to seek executive clemency. This is, as I have said, aside from the power of the President to grant reprieves, commutations or pardons.

I checked the records yesterday about the cases decided by the Supreme Court involving the capital punishment. From 1972 up to March 25, 1985, the record discloses that the Supreme Court passed upon 515 cases. The number of accused involved therein who were given the death penalty by the trial court totalled 794. In the Supreme Court, the number of affirmations involve 226 persons or 28 percent of those who were convicted by the trial court. Also, of the total number of 794 persons sentenced to death by the trial court, the Supreme Court modified the death sentences and lowered them to lesser penalties to the benefit of 548 of the accused. In other words, in 69 percent of the cases where the accused was sentenced to death by the trial courts, the Supreme Court lowered the penalty to either reclusion perpetua or reclusion temporal and, in some instances, prison mayor. The number of accused who were acquitted despite the death sentence imposed by the trial court was 75.

So, this goes to show that the imposition of capital punishment goes through all the stages of screening and processing to avoid the possibility of error. Why are those who seek the abolition of the death penalty so much in mortal fear of the possibility of error? We are only human. I remember Commissioner Ople at one time stated that those who voted for the waiver of the claim over Sabah are not less patriotic than those who insisted on maintaining the claim. Along this same vein but without the benefit of this rhetorical flourish and the inevitable body English, I will also say that those of us who stand for the retention of the death penalty are not as bloodthirsty as the abolitionists would picture us to be.

FR. BERNAS: Madam President.

THE PRESIDENT: Commissioner Bernas is recognized.

FR. BERNAS: Madam President, I am very happy about the intervention made by Commissioner Regalado because it shows the tremendous reluctance of Philippine society to impose the death penalty. The reluctance is so grave that so many obstacles are put up against the execution of the death penalty and judges agonize whether they have to impose a death penalty or not. Legislators have made it more difficult for the death penalty to be imposed. Thus, this total abolition of the death penalty by the Constitution facilitates a everything for the judges and for the legislators. It removes the agonizing process of having to decide whether the death penalty should be imposed by them or not.

MR. NATIVIDAD: Madam President, just a short rejoinder.

MR. RAMA: Madam President, the issue was interminably discussed yesterday. Since we have some affair this afternoon, I move that we take a vote on the amendment of Senator Rodrigo.

THE PRESIDENT: The Chair just wants to be clarified. The thrust of the proposed amendment of Commissioner Rodrigo is that the issue be left to the legislature rather than it be included in the Constitution. Is that correct?

MR. RODRIGO: Completely, because the amendment which I seek to amend also gives power to the legislature, but halfway. In my case, I would like to leave it to the legislature completely and not halfway.

I think some Members arrived late, so, I will restate my amendment. On page 4, Section 22, line 28, I propose to remove the comma (,) after the word "punishment" and to insert the word INFLICTED followed by a period (.) and then to delete the rest of the section. The amended phrase will read: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment INFLICTED."

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Rodrigo, please raise their hand. (Few Members raised their hand.)

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

The results show 18 votes in favor and 19 votes against; the amendment is lost.

NOMINAL VOTING

MR. RODRIGO: Madam President, in order to be very sure, I ask for a nominal voting. Since it is a very close vote, I move for a nominal voting but without the explanation of votes anymore.

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

Nominal voting on the proposed amendment of Commissioner Rodrigo is, therefore, in order.

The Secretary-General will read the amendment.

THE SECRETARY-GENERAL: Section 22 will read as follows: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment INFLICTED."

FIRST ROLL CALL

THE PRESIDENT: The body will now vote on the amendment, and the Secretary-General will call the roll.

THE SECRETARY-GENERAL, reading:

Abubakar No Jamir Yes

Alonto Laurel No

Aquino No Lerum No

Azcuna Yes Maambong No

Bacani No Monsod No

Bengzon

Yes Natividad No

Bennagen Nieva Yes

Bernas No Nollado No

Rosario Braid No Ople No

Brocka No Padilla No

Calderon

Quesada No

Castro de Yes Rama Yes

Colayco Regalado Yes

Concepcion Abstain Reyes de los No

Davide No Rigos Yes

Foz No Rodrigo Yes

Garcia No Romulo Yes

Gascon No Rosales

Guingona Yes Sarmiento

We have a letter here. Commissioner Sarmiento's vote is no for the death penalty

Suarez Treñas Yes

Sumulong Yes Uka Yes

Tadeo Villacorta

Tan No Villegas

Tingson Yes

THE PRESIDENT: I want to cast my vote. I am voting yes.

SECOND ROLL CALL

THE PRESIDENT: The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Alonto Colayco

Bennagen Rosales

Calderon Suarez

MR. SUAREZ: Madam President, my vote is no.

THE SECRETARY-GENERAL, reading:

Tadeo Villegas

Villacorta

THE PRESIDENT: The results show 17 votes in favor, 22 against and 1 abstention; the amendment is lost.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: There is a pending motion by Commissioner Monsod.

MR. MONSOD: Madam President.

THE PRESIDENT: Will Commissioner Monsod repeat his amendment.

MR. MONSOD: Madam President, my amendment is to add after the word "inflicted" on line 29 the clause UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES THE NATIONAL ASSEMBLY PROVIDES FOR THE DEATH PENALTY.

THE PRESIDENT: What is the position of the Committee on this proposed amendment of Commissioner Monsod?

FR. BERNAS: We will put the amendment to a vote.

MS. ROSARIO BRAID: Yes, Madam President.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

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

THE PRESIDENT: The Gentleman will please proceed.

MR. DE CASTRO: The proponent's amendment is a comma (,) after "inflicted" on line 29 to be followed by the clause "UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES THE NATIONAL

ASSEMBLY PROVIDES FOR THE DEATH PENALTY." In this proposed amendment, there will still be a need for the National Assembly to pass a law providing the death penalty. Is that correct?

MR. MONSOD: Yes.

MR. DE CASTRO: What happens to those awaiting execution, having already the death penalty on their heads, but there is no law yet passed by the National Assembly?

MR. MONSOD: Then the next sentence would apply: "Death penalty already imposed shall be commuted to reclusion perpetua."

MR. DE CASTRO: Thank you.

What happens if the National Assembly does not pass any law concerning death penalty, such as on heinous crimes?

MR. MONSOD: Then there is no death penalty.

MR. DE CASTRO: That is the effect of the amendment?

MR. MONSOD: Yes.

MR. DE CASTRO: Thank you.

MR. BENGZON: I also have a question, Madam President.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: If the amendment of Commissioner Monsod is passed, the death penalties already imposed will be commuted to reclusion perpetua, will it not?

MR. MONSOD: Yes.

MR. BENGZON: And then, supposing Congress passes a law imposing the death penalty on those very same crimes committed by those that were convicted of the death penalty which penalty has been commuted to reclusion perpetua, will they go back?

MR. MONSOD: No.

MR. BENGZON: Not anymore?

MR. MONSOD: Any new law passed by the National Assembly would be prospective in character.

MR. BENGZON: Thank you.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I ask Commissioner Monsod about this second sentence, "Death penalty already imposed shall be commuted to reclusion perpetua."

When we say commuted to reclusion perpetua, I think we refer to the power of the President to effect commutations because only the President can commute sentences already final and imposed by the courts. Is that correct?

MR. MONSOD: Madam President, I am not the proponent of that sentence. Perhaps the Committee should

answer that.

MR. REGALADO: That was the answer of the Gentleman in response to the inquiry of Commissioner Bengzon.

MR. MONSOD: My answer is reflective of what the Committee had answered before. And since that has not been changed, I suppose the answer would be the same. But if the Committee would like to answer it in more detail, perhaps it should be the one to answer that.

MR. REGALADO: No, my position is this. This appears to be a mandatory commutation and we know that commutations can be made only by the President.

FR. BERNAS: The intention of the provision here is, upon the ratification of this Constitution, the death penalty already imposed is automatically — without need for any action by the President — commuted.

MR. REGALADO: Yes, because the wording here is: "Death penalty already imposed shall be commuted to reclusion perpetua" The power of commutation is a presidential prerogative.

FR. BERNAS: Or we can say "ARE HEREBY commuted," if that is clearer. But that is the intention.

MR. REGALADO: Does the Commissioner mean "are hereby reduced"?

FR. BERNAS: Commuted to the death penalty.

MR. REGALADO: It "shall be REDUCED to reclusion perpetua"?

FR. BERNAS: To reclusion perpetua, yes.

MR. REGALADO: Maybe the Commissioner should eliminate the word "commute" because we are invading the presidential prerogative.

THE PRESIDENT: Is the Gentleman proposing an amendment to the amendment?

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Just one clarificatory question.

On the assumption that this proposed amendment will be granted, what would happen to the laws which presently punish certain penal offenses by death, because those laws may have to be repealed later by the National Assembly? But as of this moment, there are so many penal offenses which are punishable by death. What would be the effect of the grant of these amendments?

FR. BERNAS: The effect is the abolition of the death penalty from those statutes — only the death penalty. The statute is not abolished, but the penalty is abolished.

MR. MAAMBONG: That is what I am worried about, because the statutes, especially in the General Criminal Law, which is the Revised Penal Code, do not necessarily punish directly with death. Sometimes it has a range of reclusion temporal to death or reclusion perpetua to death. And what would be the effect on the judges; for example, if the range is reclusion temporal to death and he can no longer impose the death penalty? He will have difficulty in commuting the degrees.

Could the Committee enlighten us on how the judge will look at the specific situation.

FR. BERNAS: I grant that the judges will have difficulty, but I suppose that the judges will be equal to their tasks. The only thing is, if there is a range, the range cannot go as far as death.

MR. MAAMBONG: In the same proposed amendment, the national legislature, for compelling reasons, may pass a law imposing death. In the present configuration of our laws which punish with death, could we not interpret it in this manner — that since the death penalty is imposed at present on those penal offenses, then the intent of the legislature previously made in the formulation of those laws remains and those laws will remain with the penalty of death because of the compelling reasons then in the mind of the legislators?

FR. BERNAS: The sense of this proposal is that upon the ratification of this Constitution, the legislature, if it wants to reimpose the death penalty, must repeat the act. In other words, the penalty disappears and there is need of a new act of the legislature to put it back.

MR. MAAMBONG: Could we put it more simply, Madam President? Could we say that once this amendment is accepted, all penal offenses punishable by death will no longer carry the death penalty?

FR. BERNAS: That is correct.

MR. MAAMBONG: Unless it is reenacted by the legislature, would that be a correct statement?

FR. BERNAS: I suppose that is now addressed to the amendment and Commissioner Monsod will probably answer.

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

MR. RAMA: Madam President, I ask that Commissioner Tingson be recognized for one question.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: Madam President, my question is on the metaphysical, moral aspect. In the Book of Exodus, Chapter 20, we read: "Thou shalt not kill." Is it because we, belonging to the Christian dispensation and grace, believe that God gives life and only God can take away that life?

MR. MONSOD: Yes, I believe I mentioned that earlier, Madam President.

MR. TINGSON: I am sorry I missed that. And so, why should the Gentleman make exception even though how heinous the crime may be? God is still a forgiving God, and God would not take away the life of even the most despicable criminal in the world.

MR. MONSOD: I am not a theologian but I believe that even natural laws and moral laws admit of certain exceptions, and this would be the people acting in the name of God.

MR. TINGSON: Thank you, Commissioner.

MR. RAMA: Madam President, may I move that we take a vote on the amendment of Commissioner Monsod.

MR. REGALADO: Before we take a vote, Madam President, may I just ask a follow-up question by way of clarifying the point raised by Commissioner Maambong.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Commissioner Maambong was contemplating on the situation where, if this amendment is eventually enshrined in the Constitution, there will be a need later for congressional action. I am more concerned about the period of the interregnum. Let us take the case, for instance, of the more common crime involving capital punishment — the crime of murder. The penalty for the crime of murder is reclusion temporal, in its maximum period to death — in other words, a range of 17 years, four months and one day to 20 years up to the death penalty. The Revised Penal Code specifically provides what should be, in such a situation, the maximum

period, the medium period and the minimum period. Under the present state of the law, the minimum period is 17 years, four months and one day to 20 years; the medium period is life imprisonment or reclusion perpetua; the maximum period is death. We take away the death penalty and here is an accused charged with the crime of murder. There are no mitigating circumstances; there is no aggravating circumstance, and, therefore, he should get the medium period. What would now be the medium period during the interregnum until Congress shall have provided a law which would implement this new provision?

FR. BERNAS: We admit that the abolition of the death penalty creates a problem for judges and legislators; but I am sure they will be equal to the problem.

MR. REGALADO: I have no quarrel about that but we will have to await creation of a legislature. Perhaps, the elections will be in the month of May. Perhaps, they will get around to passing that enabling law accommodating these changes a few years later. During that interregnum, what law will be applied?

FR. BERNAS: Certainly, the penalties lower than death remain.

MR. REGALADO: That would be reclusion perpetua. But the range of the penalty for murder consists of three periods. The maximum period of reclusion temporal under the Resent status is the minimum period for the penalty for murder. The medium period is reclusion perpetua. The maximum period is death. If we now remove the death penalty, we will, therefore, have a range of penalty of 17 years, 4 months and 1 day to 20 years of reclusion temporal up to reclusion perpetua. You cannot divide reclusion perpetua into two. While it has a duration of 30 years, it is an indivisible penalty. Where do we get the medium period now until such time that Congress gets around to accommodate this amendment?

FR. BERNAS: As I said, this is a matter which lawyers can argue with judges about. All we are saying is, the judges cannot impose the death penalty.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I think the Committee can suggest a transitory provision for this. We will have no quarrel about this, if there is a corresponding transitory provision.

MR. MONSOD: Madam President, before the vote, may I just mention an oversight — that this amendment is a consolidation of the proposals of Commissioners de los Reyes, Suarez and this Representation.

VOTING

THE PRESIDENT: The body will proceed to vote on .this proposed amendment of Commissioners Monsod, Suarez and de los Reyes. The Chair believes that the amendment is clear enough and there is no need to repeat the same.

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

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

The results show 23 votes in favor and 12 votes against; the amendment is approved.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Ople is recognized.

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

I speak in behalf of several proponents of this proposed amendment; namely, Commissioners Ricardo Romulo, Wilfrido Villacorta, Edmundo Garcia, Lino Brocka, Regalado Maambong, Rustico de los Reyes, Cirilo Rigos and Teodulo Natividad.

We suggest a new section immediately following Section 22, the one that abolishes the death penalty with amendments, as amended, to read as follows: IN THE CASE OF GRAVE ABUSE COMMITTED AGAINST THE RIGHT TO LIFE WHETHER BY MEMBERS OF THE MILITARY OR POLICE OR THEIR ADVERSARY, THE PRINCIPLE OF COMMAND RESPONSIBILITY SHALL APPLY AND THE STATE MUST COMPENSATE THE VICTIMS.

May I give a brief explanation of the reason behind this proposal, Madam President.

THE PRESIDENT: Commissioner Ople has five minutes.

MR. OPLE: Thank you.

We are right now engaged in a very historic deliberation of the abolition of the death penalty. But there are more eminent forms of the death penalty experienced in the lives of millions of our people today for whom, probably, even this momentous subject of the abolition will be one of mere academic interest. The threats to their lives, in many embattled areas of the country, are very real in the form of institutionalized brutality, whether this comes from the military or their adversaries in the field. The people can see a larger and overriding issue in terms of the perceived threats to human life that now hover like a spectre over millions of our countrymen, especially in areas contested by rival armed forces. Even the spectacle of mass disappearances, "salvagings" and extrajudicial executions has become so routine as no longer to excite the public. Both the military and the rebels they have to contend with, for these are known to have resorted to such crimes under the pressure of their respective circumstances.

There is a great clamor, Madam President, for the Constitutional Commission to address this issue, which is also endemic, to much of the Third World with their alternating police states and democratic regimes. And may I tell this Commission that such abuses against human lives of the ordinary citizens occur because the troops who commit them are convinced that this is an approach sanctioned by their respective superiors or is part of an unwritten policy. The pressure of legal reform must, therefore, be directed to the officers who command these troops — in the case of the AFP, the appropriate levels in the chain of command; in the case of the NPA, the commanders under the military department and even the central committee of the CPP. Such a provision in the Bill of Rights would insert a solid protection between the sword of the State and the people who are exposed to conditions of political terror especially in areas contested by rival arms.

This will also be the first time, Madam President, if the Committee and the Commission decide to adopt this amendment, that the responsibility of the armed rebels or of their commanders is acknowledged on the same plane as their AFP or government counterparts where their own men resort to systematic killings and other forms of mass terror. Their legal accountability cannot be excused on the basis of revolutionary exigencies alone. The victims and the State can run after them when times become more propitious. And such a provision will also provide a basis of legal symmetry in the approach of the Presidential Commission on Human Rights to human rights violations, regardless of who commits them instead of permitting a situation now much criticized where only brutalities committed by the government are subject to inquiry, and brutalities outside the purview of the government and of the courts are, in effect, allowed to remain unexamined.

And so, Madam President, we would like to seek the kind consideration of the Committee and of the Commission for this amendment.

MR. BENGZON: May I ask a question, Madam President?

THE PRESIDENT: Yes, Commissioner Bengzon is recognized.

MR. BENGZON: Madam President, those victims of the adversary forces of the military or the police I suppose mean the rebels, NPAs, etc.

MR. OPLE: They can pertain to the NPA, the Moro National Liberation Front and its various subdivisions, or even to the Lost Command of Colonel Rodrigo Mora.

MR. BENGZON: The proponent would make the Philippine government pay or compensate the families of the victims of these people also. Is that the intention?

MR. OPLE: Yes, Madam President, to maintain the symmetry that we are concerned to build into this amendment. Why should the Philippine government be made to pay compensation to the victims of NPA atrocities, intended or unintended atrocities? Is that the burden of the question?

MR. BENGZON: Yes, I am asking whether the Philippine government will be made to pay the families of the victims of these atrocities and killings of the NPA and related agencies.

MR. OPLE: But does the Commissioner see nothing unusual in asking that the state compensate the victims of AFP brutalities?

MR. BENGZON: Because they are agencies of the government; they represent the government. But what I cannot understand, if it is the intention of this amendment, is to also make the state pay the families of the victims of the adversaries.

MR. OPLE: Yes, I must admit some difficulty in justifying state compensation for the victims of non-governmental institutionalized brutality, except that perhaps we can go back to the fundamental question of the responsibility of the state for the protection of life and property, which in this case has not been extended to the victims. That is the reason they were killed- there was no shield of state protection. At some point, a great negligence occurred on the part of the state, so that these people are left bereft without the means of state protection.

MR. BENGZON: But that argument limps, Madam President, because we cannot just summarily accuse the government of negligence in the protection of the life, limb and properties of its citizens because it is the intendment and the intention of these forces; it is part of their tactic to harm the citizens of this country, to overthrow the government. They do not care whether they kill citizens, civilians, military.

MR. OPLE: Madam President, I think what it all adds up to is that the state, according to any constitution, is responsible for the protection of its own citizens, and that is the reason why the citizens pay taxes, looking to fundamental protection of this nature. And when it is withdrawn or it ceases to be extended, are we going to excuse the state for this default of a major responsibility to its citizens under a constitution?

Anyway, Madam President, this is subject to the availability of funds, both ways.

MR. BENGZON: It is the principle of the whole thing, Madam President. It is really quite unjust and unfair to make the state liable for the victims of the adversaries, the very adversaries of the state. I do not know how we are going to treat this; perhaps those who are the victims of the military or the police, yes, I will agree. But for those who are the victims of the adversaries of the state itself, it is really quite unfair.

MR. GUINGONA: Madam President.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: May I ask the honorable proponent whether the use of presumption could be assumed to mean disputable and not conclusive?

MR. OPLE: Yes. In this case, Madam President, may I call the attention of Commissioner Guingona to the fact that there has been some slight change in the text.

MR. GUINGONA: I see.

MR. OPLE: We no longer speak of presumption of responsibility but of the application of the principle of command responsibility because of some legal advice that had been furnished the sponsors, especially from Commissioner Romulo, to the effect that the principle of command responsibility is already supported by the accumulated military rules and regulations and administrative, if not legal, jurisprudence pertaining to the application of command responsibility in situations contemplated by this proposed amendment.

MR. GUINGONA: Thank you.

Would the honorable Commissioner accept the amendment to remove the period (.) after "victims" and add: OF GOVERNMENT FORCES OR OF MILITARY OR POLICE FORCES OF THE GOVERNMENT.

MR. OPLE: So that, in effect, the Gentleman will remove the obligation of compensation to the victims of nongovernmental forces?

MR. GUINGONA: Of the adversary forces.

MR. OPLE: Adversary forces.

MR. GUINGONA: Yes, this is an amendment to the amendment, Madam President.

MR. OPLE: We will, therefore, leave completely uncompensated the victims of nongovernmental institutionalized brutalities.

MR. GUINGONA: Yes, Madam President, under my proposed amendment to the amendment of the Commissioner.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended.

It was 3:56 p.m.

RESUMPTION OF SESSION

At 4:05 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, I am presenting a reworded amendment to the amendment of

Commissioner Ople, and my amendment to his amendment will be as follows: IN THE CASE OF GRAVE ABUSES COMMITTED AGAINST THE RIGHT TO LIFE BY MEMBERS OF THE MILITARY OR POLICE FORCES OR THEIR ADVERSARY, THE PRESUMPTION OF COMMAND RESPONSIBILITY SHALL APPLY, AND THE STATE MUST COMPENSATE THE VICTIMS OF GOVERNMENT FORCES. May I just clarify, Madam President, that the use of the word "presumption" here is meant to be disputable presumption.

THE PRESIDENT: May the Chair be clarified on the last sentence?

MR. GUINGONA: I will restate the proposed amendment, Madam President.

THE PRESIDENT: The Gentleman will proceed.

MR. GUINGONA: IN THE CASE OF GRAVE ABUSES COMMITTED AGAINST THE RIGHT TO LIFE BY MEMBERS OF THE MILITARY OR POLICE FORCES OR THEIR ADVERSARY, THE PRESUMPTION OF COMMAND RESPONSIBILITY SHALL APPLY, AND THE STATE MUST COMPENSATE THE VICTIMS OF GOVERNMENT FORCES.

Will the honorable Commissioner accept the amendment?

THE PRESIDENT: Is that acceptable?

MR. OPLE: The amendment is accepted, Madam President. May I also note that Commissioners Bengzon and Regalado contributed to this amendment and, therefore, they have become coauthors, together with Commissioner Guingona.

MR. PADILLA: Madam President, I wonder why we are already in the period of amendments.

THE PRESIDENT: We are in the period of amendments.

MR. PADILLA: Why are we in the period of amendments when there has been no interpellation and debate? Precisely, I want to speak against this proposed amendment because this is contrary to old principles of criminal law.

THE PRESIDENT: So, Commissioner Padilla is seeking recognition to speak against the Ople, et al amendment.

Commissioner Padilla is recognized.

MR. PADILLA: Madam President, I do not know about presumption or the principle of command responsibility. I do not know whether that is recognized under military law, but I am certain that under the Revised Penal Code, we do not recognize criminal liability based on so-called command responsibility unless that command responsibility would fall under Article 17 as to who are the principals — those who directly force or induce others to commit the crime. "Responsibility" under the Penal Code would refer to the principals, accomplices and accessories as enumerated under Article 16. Article 17 provides for three kinds of principals: by direct participation, by direct inducement and by indispensable cooperation. Should there be conspiracy among several accused and such conspiracy is established, then there will be collective responsibility, otherwise, there is only individual or separate responsibility.

Madam President, compensation would be in the nature of a civil liability. Under the Penal Code, a person criminally liable is also civilly liable, but the person who is liable civilly is the person who is accused and convicted as principal. Here we make the state compensate, but the state is not the accused. Maybe higher officers in the military, if they are specifically charged and are convicted, will be civilly liable, but not the state for the crimes committed by others even if they are public officers.

Moreover, this speaks of flagrant and systematic abuses. Today this really amounts to crimes against persons, particularly murder. What about other crimes of the Penal Code like rape, crime against chastity, or kidnapping with ransom, crime against personal liberty and security? Will this be limited only to abuses against life? It is not even clear whether the victim has actually died as a consequence or as a causal effect of the criminal acts of the accused.

With regard to presumption, there are legal presumptions in law, but they must be based on facts from which the law infers or deduces a legal presumption. There can be no presumption of liability because that would be contrary to the presumption of innocence.

And so, Madam President, I believe that this proposed new section should not be included, even if it be amended by corrective or perfectionary suggestions because it violates the fundamental principles of criminal responsibility and civil liability under the Penal Code.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro seeks recognition.

MR. DE CASTRO: Thank you.

May I ask the proponent of this provision some questions, please.

MR. OPLE: Very gladly, Madam President.

MR. DE CASTRO: What does the Gentleman mean by command responsibility when he speaks of command responsibility for those in higher authority?

MR. RODRIGO: Parliamentary inquiry, Madam President.

THE PRESIDENT: Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO: What are we discussing now? Is it the original proposed amendment to the amendment as amended?

THE PRESIDENT: The amendment of Commissioner Guingona has been accepted by Commissioner Ople. That is what the Chair understands.

MR. RODRIGO: Which are we discussing now? Is it the amendment of Commissioner Ople, as amended, as agreed upon by the three Commissioners? I just want to ask questions also, and I want to know what the basis of my questions will be. Is it the original or the original as amended?

MR. OPLE: Madam President, we are now discussing the original as amended, and may I restate it in its latest permutation as a result of the consultations on the floor: IN THE CASE OF GRAVE ABUSES COMMITTED AGAINST THE RIGHT TO LIFE BY MEMBERS OF THE MILITARY OR POLICE FORCES AND THEIR ADVERSARY, THERE SHALL BE A PRESUMPTION OF RESPONSIBILITY FOR THOSE IN HIGHER AUTHORITY AND THE STATE MUST COMPENSATE THE VICTIMS OF THE GOVERNMENT FORCES.

MR. DE CASTRO: So, that will be the basis of our discussion.

MR. RODRIGO: So the command responsibility is not there anymore.

THE PRESIDENT: Is that satisfactory?

MR. OPLE: Yes, it has disappeared in the latest permutation, Madam President.

MR. DE CASTRO: May I continue, Madam President?

THE PRESIDENT: Yes, Commissioner de Castro may continue.

MR. DE CASTRO: As I read it, there shall be a presumption of responsibility for those in higher authority. Is that correct?

MR. OPLE: Yes, Madam President.

MR. DE CASTRO: This refers to the apparent abuses of the military and police forces, and responsibility for those in higher authority. How high will the authority be which will responsible for the abuses?

MR. OPLE: Madam President, this will depend on the available evidence, and this is a disputable presumption which means that the higher authority can overthrow it by demonstrating lack of responsibility.

MR. DE CASTRO: Then, if that is so, nobody will be responsible to compensate the victims because the higher authority may refuse to accept responsibility. Is that right?

MR. OPLE: They can overthrow the presumption of responsibility. May I, in this regard, recall the recent Escalante massacre. There was a board of inquiry created. A minority in that board held the Chief of Staff of the Armed Forces of the Philippines responsible.

MR. DE CASTRO: "Under command responsibility," said the board, I read it in the newspaper.

MR. OPLE: Yes, but the majority held that General Ramos was not responsible. And I think there is enough administrative jurisprudence in the military organization, if not in other responsible bodies of the government to support this line about the presumption of responsibility for those in higher authority to which we refer in this proposed amendment.

MR. DE CASTRO: With regard to the Escalante incident, the report of the minority as I read it in the paper — I did not read the whole case — was that General Ramos was responsible under the theory of command responsibility. Am I correct? That was the report of the members of the minority group then.

My question is, what is command responsibility? This is apparently being used for military reasons, and even in military books, we do not read about command responsibility. The military books state something like this: "The commander is responsible for what his unit does or fails to do." That is why when the amendment here speaks of command responsibility for those in higher authority, I will presume this will refer even to the President because the President is the Commander-in-Chief of the Armed Forces and the police.

MR. OPLE: The word "command" preceding "responsibility" has already been eliminated Madam President.

MR. DE CASTRO: So that in the last statement, if the higher authority will not accept responsibility, there will be no compensation for the victims. Am I correct?

MR. OPLE: I am afraid it is not so, Madam President, because according to this proposed amendment, the state must compensate the victims of the government forces, and the state is, presumably, distinct and apart from the higher authority.

MR. DE CASTRO: The state shall compensate the victims only, according to the proposition here, if the higher authority accepts the responsibility. There shall be a presumption of responsibility for those in higher authority. Only then shall the state be responsible to compensate the victims. Am I right in my interpretation, Madam President?

MR. OPLE: If we put a comma (,) after AUTHORITY, I think that will be sufficient notice of the separateness of

the last cause.

MR. DE CASTRO: Thank you, Madam President.

MR. OPLE: Thank you.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Just a few questions, Madam President.

Does the proponent not believe that this is more appropriately included in the Declaration of Principles than in the Bill of Rights?

MR. OPLE: Madam President, we feel strongly that the proper, logical and necessary place for this is in the Bill of Rights, immediately following Section 22 which precisely exalts to a paramount level the value of human life by abolishing the death penalty under certain exceptions.

MR. RODRIGO: That is all right. This presumption of command responsibility will be made to apply both to the military or police and their adversary. Is that correct? Is this not unfair to the military since it is very easy to identify the commanders in the military or police, while it is very difficult, almost impossible, at times, to identify the commanders of the adversary?

MR. OPLE: Madam President, I cannot agree more with this astute observation of Commissioner Rodrigo. We have to admit that at this time, the courts of the Philippines, as well as the administrative authorities, can have no direct access, let us say, to rebel forces that commit the brutalities covered by this section. But there will be a more propitious time and they can be accessed to our courts. In the meantime, the constitutional right of those aggrieved, the victims or their heirs and their families will remain intact. And this is also a strong notice, Madam President, to the commanders on the other side that the Constitution is not insensitive to the violations that they themselves will commit under this amendment except that because of the existing exigencies they cannot yet be directly accessed through our courts.

MR. RODRIGO: One of the provisions of the Bill of Rights, as a matter of fact, is the guarantee of equal protection of the laws. Considering that we have admitted that the treatment here of the commander of the army would not be the same, in effect, as the commander of the adversary, would this not be inconsistent with the provision on equal protection of the laws? They are not equal with regard to the commander of the military or police vis-a-vis the commander of the adversary.

MR. OPLE: In the original version, there was a complete symmetry of responsibility, Madam President. I can agree with Commissioner Rodrigo that as now reformulated through the importuning of various Members of the Commission on the floor, it looks like that symmetry has been disturbed. And so, in order to restore that symmetry, what does the Commissioner propose?

MR. RODRIGO: I have no proposal. I am just pointing out certain matters.

MR. OPLE: Maybe, we can rephrase it this way: IN THE CASE OF GRAVE ABUSES COMMITTED AGAINST THE RIGHT TO LIFE BY MEMBERS OF THE MILITARY OR POLICE FORCES OR THEIR ADVERSARY, THERE SHALL BE A PRESUMPTION OF RESPONSIBILITY FOR THOSE IN HIGHER AUTHORITY. THE STATE MUST COMPENSATE THE VICTIMS OF THE GOVERNMENT FORCES.

MR. RODRIGO: I have one last question, Madam President. Who will decide who are the victims to be compensated? Which agency of the government will decide?

MR. OPLE: We refer to the higher courts without prejudice to the administrative agencies of the government taking part.

MR. RODRIGO: So, the victims will have to file a complaint in court. Will it be a civil complaint?

MR. OPLE: Or the state can represent them in court.

MR. RODRIGO: But the state will be the one to pay. Why will the state file the case when it is the one that will be made to pay?

MR. OPLE: Because these are crimes now against the Constitution and, although the state can be in the role of a benevolent father capable of protecting its children, it has another responsibility of standing as a bulwark of justice and protection for the rights of the people.

MR. RODRIGO: There are other speakers waiting, so thank you very much, Madam President.

MR. OPLE: Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Davide be recognized to speak against the proposed amendment.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President. I will speak against this proposal very briefly.

While the objective is ideal, the ramifications are appalling because, first, it infringes upon the well-settled principle of nonsuability of the state. If we approve this proposal, our courts will be filled with cases demanding compensation from the state and, therefore, they will not be able to attend to vital functions of government.

Second, the proposal will enthrone a presumption of guilt which, therefore, runs counter to the sacred right which is also enshrined in the Bill of Rights — the presumption of innocence.

Third, we, in effect, would punish the state and its forces for protecting the people against atrocities committed by adversary forces and, in effect, reward the adversary forces for acts committed against the state. Under the proposal on deaths of adversary forces or their supporters in case of rebellion or insurrection, the state shall now be under obligation to compensate for them. In short, the state will now compensate the very persons who seek to overthrow the government. Because we allow compensation only for the victims of government forces — who are usually the adversary forces or their supporters — for the death of a rebel or for those who fight the government to overthrow it in cases of invasion or insurrection, they can later on claim compensation from the state.

Finally, the recognition of command responsibility as correctly pointed out by Commissioner de Castro can go up to the President being the Commander-in-Chief of the Armed Forces of the Philippines.

Suppose all of these were committed in times of invasion and insurrection where there was a prior proclamation of martial law with the concurrence of the legislature, therefore, the legislature would also be responsible for that. So, for all the deaths and abuses against life occurring during such times, even the Members of the National Assembly are responsible for it because they imposed martial law.

Madam President, while the objective is really very good, it will endanger the stability of the state and society.

MR. RAMA: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Madam President, I believe the Members of this Commission are all concerned about human rights, but we can put one safeguard on top of another. Every little thing we are trying to cover until what we have created is a ponderous Constitution that is not only pro-human rights but anti-state. I have to speak against this, Madam President. Besides, as formulated, all victims — whether of "lost commands" of insurgents or even of plain bandits — can claim that they are victims of government forces. So, there is no balance here. This will destabilize our country; there will be suits and all kinds of claims; and there is no way by which we can really arrive at the truth.

Thank you, Madam President.

MR. RAMA: Madam President, there is a clamor that we vote on this amendment.

MR. OPLE: Madam President.

THE PRESIDENT: We have not yet heard from the Committee.

FR. BERNAS: The Committee submits this to resolution by the body.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: May I request a minute for a brief rejoinder to the arguments of those who have spoken against this proposed amendment.

The Bill of Rights, as we know and as many other countries know it today, has largely been unchanged in its general frame from 1791 when the first set of amendments to the American Constitution was ratified by the American people. It was a bill of rights intended mainly to shield the generation of Americans and their posterity from possibilities of abuse in the conditions of that society which has now become the most prosperous on the face of the earth. But in the Bill of Rights, when today we are privileged to draft a Constitution for the Filipino people, we cannot be insensitive to the palpable realities of our own time. And as I said earlier, although the death penalty is abolished under this new draft Constitution, there are grosser forms of death penalty that are being experienced by many thousands of our people in the countryside — extrajudicial dealings, like salvagings and massacres. And if we do not take cognizance of these realities in this Constitutional Commission, I am afraid we are not living up to our historic mission. Moreover, Madam President, the concern about the determination of the truth, the abuse of the presumption of responsibility, the compensation for victims, all of these will be subject to standards of rigor that the future legislature will establish under this Constitution. We cannot settle all foreseen consequences right here on this floor. But with this amendment, we, as I said in the beginning, will insert a shield of protection between the sword of the state which sometimes goes amuck and the right to life of many thousands of our people who experience this menace, so that when they go to bed at night, they know they will wake up in the morning. This is a shield of protection for them, Madam President.

MR. SUAREZ: Madam President.

MR. RAMA: Madam President, I move that we vote on the amendment of Commissioner Ople.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the proponent accept an amendment to his proposed amendment?

MR. OPLE: May I hear the amendment, Madam President?

MR. SUAREZ: The amendment is to delete the first sentence of the proposed amendment, so that the proposed amendment, as amended, will now read: THE STATE SHALL COMPENSATE THE VICTIMS OF MILITARY ATROCITIES IN THE MANNER PROVIDED BY LAW.

MR. OPLE: I am afraid I cannot accept the proposed amendment to the amendment, Madam President.

MR. SUAREZ: We will not insist on the amendment to the amendment.

Thank you.

THE PRESIDENT: So we can now proceed to the voting.

Will the Secretary-General or Commissioner Ople restate the proposed amendment.

MR. OPLE: I might be in a better position to comply, Madam President.

THE PRESIDENT: Yes, please proceed, Commissioner Ople.

MR. OPLE: The proposed amendment would read: IN THE CASE OF GRAVE ABUSES COMMITTED AGAINST THE RIGHT TO LIFE BY MEMBERS OF THE MILITARY OR POLICE FORCES OR THEIR ADVERSARY, THERE SHALL BE A PRESUMPTION OF RESPONSIBILITY FOR THOSE IN HIGHER AUTHORITY. THE STATE MUST COMPENSATE THE VICTIMS OF THE GOVERNMENT FORCES.

VOTING

THE PRESIDENT: As many as are in favor of the proposed amendment, please raise their hand. (Few Members raised their hand.)

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

The results show 9 votes in favor and 22 against; the amendment is lost.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Rosario Braid be recognized.

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, I have three anterior amendments. The first one is on Section 22, page 4, line 30, which is the substitution of the words "reclusion perpetua" to LIFE IMPRISONMENT. For laymen like me and others, perhaps this is more understood, more readable.

THE PRESIDENT: The amendment seeks to change the words "reclusion perpetua" to LIFE IMPRISONMENT.

MS. ROSARIO BRAID: Yes, to LIFE IMPRISONMENT, so it shall read: "shall be commuted to LIFE IMPRISONMENT."

THE PRESIDENT: What does the Committee say?

FR. BERNAS: Since the Constitution is a legal document, the Committee prefers to use the technical term "reclusion perpetua." It is well understood in Philippine jurisprudence.

THE PRESIDENT: Does Commissioner Rosario Braid insist on her amendment?

MS. ROSARIO BRAID: I will not insist on my amendment.

May I propose amendments to Sections 6 and 9, page 2, lines 13 to 18 and lines 28 to 30. The background of these proposals by myself and Commissioner Foz is that during the past decade these claims of individuals to certain social and economic rights have crystallized in more specific charters based on the Universal Declaration of Human Rights, such as the Mass Media Declaration and the New International Information Order which have embodied the right of people to communicate or to initiate communications, the right to vitally needed information and to information on basic needs. So our proposal would amend Section 6 to read as follows: "The right of the people to ADEQUATE AND BALANCED information on BASIC NEEDS shall be recognized."

I introduce here the concept of adequate and balanced information on basic needs. By the way, I introduced amendments this morning that would be found in Section 6. Also, I propose to add a new line after "law," which reads: THE RIGHT TO COMMUNICATE SHALL BE PROTECTED AT ALL TIMES.

THE PRESIDENT: Shall we deal with the first amendment on Section 6? May we have the reaction of the Committee?

FR. BERNAS: The Committee prefers to keep the provision as it is: "The right of the people to information on matters of public concern shall be recognized." The proposed amendment uses the expression "ADEQUATE AND BALANCED information on BASIC NEEDS," which is very difficult to define. So we prefer not to accept that and besides, these matters are already covered by the broad expression "matters of public concern. "

MS. ROSARIO BRAID: Madam President, I request that this be put to a vote.

FR. BERNAS: Yes, Madam President.

VOTING

THE PRESIDENT: Are we now ready to vote on this proposed amendment, copies of which have been distributed, I understand, to all the Commissioners?

As many as are in favor of the proposed amendment of Commissioners Rosario Braid and Foz on Section 6, please raise their hand. (Few Members raised their hand.)

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

The results show 7 votes in favor and 17 against, the proposed amendment on Section 6 is lost.

MR. RAMA: Madam President.

THE PRESIDENT: There is another amendment by Commissioner Rosario Braid.

MS. ROSARIO BRAID: The amendment is on Section 9, and the background of this is that we would like to give the people the basic rights.

MR. FOZ: Madam President, with the permission of the proponent of the amendment, actually, it is my proposal, so I would like to be given the right to explain the proposed amendment.

MS. ROSARIO BRAID: I will leave the first part of the amendment to Commissioner Foz.

MR. FOZ: The existing provision of Section 9 states:

No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to

assemble and petition the government for redress of grievances.

We propose to amend this by rewriting the provision in this manner: THE RIGHT OF THE PEOPLE TO ENJOY FREEDOM OF SPEECH AND PRESS AND TO PEACEABLY ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES SHALL NOT BE ABRIDGED. May I explain, Madam President?

THE PRESIDENT: The Commissioner will please proceed. He has five minutes.

MR. FOZ: The amendment seeks to reorient our traditional provision on press freedom and the right of expression. It makes for a more realistic phraseology to reflect the truth that it is not an absolute freedom just like all the civil rights under our Bill of Rights. But the more important thing, Madam President, is the emphasis on the word "people" which is not found in the traditional provision on freedom of expression and of the press. Under our amendment, individuals and groups may exercise the freedom of expression and of the press, but such assertion of the freedom must have the common good or the interest of the community as the ultimate end or objective. It emphasizes that press freedom belongs not only to the publishers, the owners or editors of the newspapers or the managers or the owners of other forms of mass media, but also more importantly to the people and the community.

The important implication of the amendment, therefore, is that there must be a responsible exercise of the freedom — that this freedom is not a value or an end by itself, but that more importantly it has a social dimension. It also means that the people must be given access to all forms of media, which necessarily and clearly implies, among others, that not only must there be no precensorship or prior restraint by government, but there must also be no precensorship by the press itself in the free exchange of ideas and comments in the press so necessary in our democratic society.

The reorientation is a response to developments in the last few years in the press.

The age of romanticism in the press is long past. The press no longer refers to newspapers alone but also to other forms of media such as television, radio and others. It has metamorphosed into business, even big business, dependent on advertising and sometimes or oftentimes on the patronage of political and economic quarters, if not on their active participation and ownership resulting in the monopoly of media. Competing novel and unpopular ideas should be assured of a forum. Unorthodox views, which have no claim on broadcast time or newspaper space as a matter of right, are in a poor position to compete with those aired or printed as a matter of grace.

Madam President, the proposed amendment means that we shall wean away our provision from the American formulation without, however, preventing us from availing of the various interpretations given by U.S. decisions which keep on changing over the years. It is our hope that our own courts will try to discern, on its own, the meaning and extent of the free expression and press provision of our Constitution and will not be slavish to American interpretations.

Thank you, Madam President.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: Madam President, the Committee does not accept the amendment.

It is the position of the Committee that absolutely nothing that is sought to be protected by the amendment is not already protected by the present provision.

The present provision is a provision found in the 1935 and 1973 Constitutions. It has been a subject of extensive jurisprudence explaining what it means, what its limitations are. Certainly, it does not suggest that freedom is

absolute. Certainly, it prohibits prior restraints. Certainly, it prohibits subsequent punishment. There is really nothing in the proposed amendment which reflects anything that is not already reflected in the old provision. In the explanation of Commissioner Foz, he said that his formulation suggests that freedom is a social responsibility, but there is nothing in his provision which explicitly says more than what is already said in the old provision. And when we speak of the right of the people, we are actually cutting down the rights guaranteed by this provision because people are human persons. By limiting that protection to the right of the people, we are removing the protection for corporate entities like publishers, publishing companies, newspaper companies, and so forth. Because of all these and because the new formulation really adds nothing and, in fact, debilitates the old provision, the Committee does not accept the amendment.

MR. FOZ: May I respond to what Father Bernas has said.

THE PRESIDENT: The Commissioner may proceed.

MR. FOZ: Precisely, the intention of including the word "people" is to give the provision on freedom of expression and of the press a social dimension. We know very well that this freedom is, in the first instance, exercised by editors, publishers and owners of print and broadcast media. But in exercising this freedom, there is the general tendency to think that it is a freedom of the editors, publishers and managers of print and broadcast media. We are trying here to emphasize and drive home the point that the exercise of freedom should have a relation to the common good. This is a reminder to them that whenever they write or express an opinion, it is to be so expressed so that the public good is achieved in the end. That is the purpose of putting emphasis on the word "people" in this provision which does not appear in the traditional provision on freedom of the press and of expression.

Thank you, Madam President.

MS. ROSARIO BRAID: Madam President.

THE PRESIDENT: Yes, Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: May I be allowed also to add to that. Commissioner Foz has explained the first part of the amendment and the second part of that amendment follows that first sentence, which says: THE STATE SHALL PROTECT THIS FREEDOM THROUGH THE ESTABLISHMENT OF STRUCTURES THAT ENABLE ACCESS TO INFORMATION WHICH PROMOTES SOCIAL AND POLITICAL PARTICIPATION. I admit that during the past years, freedom of the press and of expression were enjoyed only by a few, by those who had access to information and knowledge. This concept of freedom has come out of the liberal democracies where there was very little information disparity between the center and the periphery. But in developing countries like the Philippines where 70 percent of the people have little access to knowledge and information, there is little social and political awareness. Many are not able to exercise this freedom to the maximum. So I submit that the state should protect the right to freedom of information by building the necessary structures to enable the people to truly participate.

The old traditional concept of freedom did not help the majority of our people. It was enjoyed by a few who have access to information. Our amendment is to locate freedom in a different context, in the social context of the developing country like the Philippines. So, I request that this proposal be submitted to the body.

THE PRESIDENT: What is the position of the Committee with respect to the second part of the amendment?

FR. BERNAS: The Committee does not accept the second part of the amendment either.

MR. FOZ: I suggest that we vote first on the first part of the amendment which I presented, and then we proceed

to the second part of it.

MR. PADILLA: Madam President, may I be permitted to say a few words?

THE PRESIDENT: Yes, Commissioner Padilla is recognized.

MR. PADILLA: I would like to say that the present provision, which states: "No law shall be passed abridging the freedom of speech, or of the press . . ." is expressed in the negative, which is stronger than a positive statement that there be a guarantee of the right to freedom of speech and of the press. The negative phrase "No law" is not only prohibitive but also more emphatic than a positive statement of the same concept. For example, under Section 1, it says: "No person shall be deprived of life, liberty or property without due process of law." That, Madam President, is stronger than "Every person is entitled to life, liberty and property."

With regard to the mention of the people, the present provision mentions the people but only in relation, specifically, to the right to peaceably assemble and petition for redress of grievances. There is no mention of the people in the first part because, as stated by Commissioner Bernas, that is not only limited to the people; it is very extensive. What I want to stress is that the present provision better expresses, with more emphasis, the right or the freedom of speech and of the press.

THE PRESIDENT: We will then proceed to vote on the first part of the amendment as proposed by Commissioner Foz.

Those in favor of the proposed amendment of Commissioner Foz, please raise their hand.

MR. LAUREL: Madam President, I would like to say that there is no need of dividing the two proposals read by the two coauthors.

THE PRESIDENT: That is the request of Commissioner Foz and, therefore, we will agree to it.

MR. LAUREL: I think there seems to be no disagreement among all the Members of this body regarding the motives of the two coauthors. Actually, I agree with everything that they said, but it so only happens that what they seek is already here in the provision. There is nothing to add to it. As a matter of fact, it is well-understood not only in American jurisprudence but also in Philippine jurisprudence. So what they want is already here and the language has been so interpreted and so emphasized in court rulings. I do not think there can be any misunderstanding as to what the provision reads. As a matter of fact, I like it very much when our distinguished friend and colleague, Commissioner Foz, referred to traditional provisions and also to what is known in political law as freedom of expression which refers, in brief, to all that is provided for freedom of speech and of the press and the right of the people to peaceably assemble and petition the government for redress of grievances. Everything that he said, we all agree with. That is so because there is nothing that we already understand from the original provision that is not understood by everyone else, and I do not see any reason why there should be any changes.

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

I believe it is not wise to vote separately on these two sentences, because if the first sentence loses and the second sentence wins, the second sentence refers to the freedoms which are contained in the first sentence, so the second sentence cannot stand. I suggest that we vote on the whole proposed amendment.

MR. FOZ: Madam President.

THE PRESIDENT: Yes, what is the pleasure of Commissioner Foz?

MR. FOZ: In response to what has been said, I still insist that the first amendment be treated separately.

VOTING

THE PRESIDENT: All right. The Chair rules in favor of Commissioner Foz.

As many as are in favor of the first part of the amendment to Section 9, please raise their hand. (Few Members raised their hand.)

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

The results show 10 votes in favor and 15 against; the amendment is lost.

Let us proceed to vote on the second part of the proposed amendment, that of Commissioner Rosario Braid.

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

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

The results show 11 votes in favor and 17 against; the proposed amendment is lost.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, I would like to propose an amendment, by addition, on Section 6, on the second sentence which states:

. . . access to official records and to documents and papers pertaining to official acts, transactions, or decisions. The amendment is to add after "decisions" the phrase: AS WELL AS GOVERNMENT RESEARCH DATA USED AS BASIS FOR POLICY DEVELOPMENT.

FR. BERNAS: The Committee accepts the amendment.

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

THE PRESIDENT: The Committee has accepted the amendment. Will the Commissioner kindly restate the amendment?

MR. VILLACORTA: Yes, Madam President. It is: AS WELL AS GOVERNMENT RESEARCH DATA USED AS BASIS FOR POLICY DEVELOPMENT.

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

MR. RAMA: Madam President, I ask that Commissioner de los Reyes be recognized for some amendments.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: My proposed amendment, Madam President, is to delete Section 10, that reads: "No law granting a title of royalty or nobility shall be enacted," because it is out of place in the Bill of Rights. It should be relocated to the provisions on the Legislature or on the General Provisions. Therefore, it should be deleted from

the enumeration of the Bill of Rights, which is in accordance with the observation of Commissioner Jose B. Laurel, Jr. on the matter.

THE PRESIDENT: May we have the reaction of the Committee.

FR. BERNAS: We have no objection to transferring that provision to the General Provisions, which speaks of our republican form of government.

MR. DE LOS REYES: Thank you.

THE PRESIDENT: The Committee has accepted the amendment. Is there any objection to the proposed deletion of Section 10? (Silence) The Chair hears none; the motion is approved.

MR. DE LOS REYES: Is the Committee ready to entertain an amendment on Section 17?

MR. GUINGONA: Madam President, I have an anterior amendment on Section 16, page 3.

THE PRESIDENT: Section 16, page 3.

MR. LERUM: Madam President, anterior amendment.

THE PRESIDENT: Commissioner Lerum is recognized.

MR. LERUM: My amendment is on Section 7, page 2, line 19, which is to insert between the words "people" and "to" the following: WHETHER EMPLOYED BY THE STATE OR PRIVATE ESTABLISHMENTS. In other words, the section will now read as follows: "The right of the people WHETHER EMPLOYED BY THE STATE OR PRIVATE ESTABLISHMENTS to form associations, unions, or societies for purposes not contrary to law shall not be abridged." May I explain, Madam President.

MR. RODRIGO: Madam President, I would like to make a comment on that. The way it is worded now, this right belongs to all people, whether employed or not. But if we modify it to people whether employed by the government or private establishments, we limit it to people employed. How about the unemployed, the children?

MR. LERUM: I understand that, Madam President that is why I request that I be allowed to explain the amendment.

THE PRESIDENT: The Commissioner has five minutes to explain his proposed amendment.

MR. LERUM: Under the 1935 Bill of Rights, the right to form associations is granted to all persons whether or not they are employed in the government. Under that provision, we allow unions in the government, in government-owned and controlled corporations and in other industries in the private sector, such as the Philippine Government Employees' Association, unions in the GSIS, the SSS, the DBP and other government-owned and controlled corporations. Also, we have unions of supervisory employees and of security guards. But what is tragic about this is that after the 1973 Constitution was approved and in spite of an express recognition of the right to organize in P.D. No. 442, known as the Labor Code, the right of government workers, supervisory employees and security guards to form unions was abolished.

And we have been fighting against this abolition. In every tripartite conference attended by the government, management and workers, we have always been insisting on the return of these rights. However, both the government and employers opposed our proposal, so nothing came out of this until this week when we approved a provision which states:

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

We are afraid that without any corresponding provision covering the private sector, the security guards, the supervisory employees or majority employees will still be excluded, and that is the purpose of this amendment.

I will be very glad to accept any kind of wording as long as it will amount to absolute recognition of private sector employees, without exception, to organize.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: Certainly, the sense is very acceptable, but the point raised by Commissioner Rodrigo is well-taken. Perhaps, we can lengthen this a little bit more to read: "The right of the people WHETHER UNEMPLOYED OR EMPLOYED BY STATE OR PRIVATE ESTABLISHMENTS."

I want to avoid also the possibility of having this interpreted as applicable only to the employed.

MR. DE LOS REYES: Will the proponent accept an amendment to the amendment, Madam President?

MR. LERUM: Yes, as long as it will carry the idea that the right of the employees in the private sector is recognized.

MR. DE LOS REYES: The amendment is to insert the phrase INCLUDING THOSE EMPLOYED IN GOVERNMENT AND PRIVATE FIRMS, so the section shall read: "The right of the people INCLUDING THOSE EMPLOYED IN GOVERNMENT AND PRIVATE FIRMS to form associations, unions . . ."

MR. LERUM: I think using the word "INCLUDING" will improve the provision.

THE PRESIDENT: Is that accepted by Commissioner Lerum?

MR. LERUM: I accept, Madam President.

MR. RODRIGO: Is Commissioner Foz here? Because if I remember right, there is a provision in the Civil Service to that effect, the right to self-organization.

MR. FOZ: Yes, there is in the Civil Service.

MR. LERUM: Madam President, I am willing to accept any kind of amendment as long as the right of the people in the private sector is recognized, because under two provisions of P.D. No. 442, the Labor Code, this was denied. Unless we have an express provision in our Constitution, I am afraid we still have to go to the Supreme Court to declare these provisions of the Labor Code illegal. I will be very grateful to anyone who changes such provisions.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended to afford the parties time to reconcile their differences.

It was 5:13 p.m.

RESUMPTION OF SESSION

At 5:29 p.m., the session was resumed with the Honorable Jose F.S. Bengzon, Jr. presiding.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed. The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Lerum be recognized to continue his amendment.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Lerum is recognized.

MR. LERUM.: Mr. Presiding Officer, after a consultation with several Members of this Commission, my amendment will now read as follows: "The right of the people INCLUDING THOSE EMPLOYED IN THE

PUBLIC AND PRIVATE SECTORS to form associations, unions, or societies for purposes not contrary to law shall not be abridged." In proposing that amendment I ask to make of record that I want the following provisions of the Labor Code to be automatically abolished, which read:

ARTICLE 245. Security guards and other personnel employed for the protection and security of the person, properties and premises of the employers shall not be eligible for membership in a labor organization.

ARTICLE 246. Managerial employees are not eligible to join, assist, and form any labor organization.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: The Committee accepts.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment, as amended. Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved. The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer. I ask that Commissioner Guingona be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Guingona is recognized.

MR. GUINGONA: Mr. Presiding Officer, I would like to propose the following amendment by addition, so that Section 16 will now read in full: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. THE NATIONAL ASSEMBLY OR CONGRESS SHALL FIX BY LAW THE PERIOD WITHIN WHICH DECISIONS OF QUASI-JUDICIAL OR ADMINISTRATIVE BODIES MUST BE DECIDED OR RESOLVED FROM THE DATE OF SUBMISSION."

Mr. Presiding Officer, may I explain that this will be complementary to the provision in the Article on the Judiciary that we approved.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Before Commissioner de Castro proceeds, may we have the answer of the Committee first.

FR. BERNAS: The Committee would like to hear some discussion on this.

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

MR. DE CASTRO: The time limit for decisions of quasi-judicial bodies, particularly the constitutional commissions, like the Civil Service Commission, the Commission on Audit and the Commission on Elections, have been fixed in the Common Provisions, that they shall decide their cases within 60 days from submission thereof. So I think there is no need for the National Assembly to pass a law which limits such period within which decisions on their cases should be made.

MR. GUINGONA: Mr. Presiding Officer, the quasi-judicial and administrative bodies we are contemplating include not only the constitutional commissions. In fact, there are other quasi-judicial or administrative bodies, and insofar as these are concerned, there is no fixed mandatory period for rendering decision. We are proposing that the legislature be mandated to fix the period by law.

THE PRESIDING OFFICER (Mr. Bengzon): In other words, the Commissioner's amendment covers only those bodies which do not have fixed period within which to decide their cases.

MR. GUINGONA: In the Constitution, yes, Mr. Presiding Officer.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. REGALADO: Just a point of information. In the Article on the Judiciary, there is a provision that the rules of quasi-judicial bodies shall be approved by the Supreme Court and shall remain effective unless disapproved by the Supreme Court. So it will be for the Supreme Court to see to it that that provision regarding the period within which resolutions or decisions shall be handed down shall be incorporated in the rules of these other quasi-judicial bodies other than the constitutional commissions.

THE PRESIDING OFFICER (Mr. Bengzon): In other words, the Commissioner is saying that it is not necessary to put it in the Constitution. Is that the import of Commissioner Regalado's statement?

MR. REGALADO: It is not necessary, Mr. Presiding Officer, because of the provision in the Article on the Judiciary.

FR. BERNAS: Mr. Presiding Officer, I do not think all quasi-judicial or administrative bodies are covered by the provisions contained in the Constitution. I am thinking of quasi-judicial and administrative bodies for which the period for making a decision may not be contained in the Constitution, both those existing now or those that may be created in the future.

THE PRESIDING OFFICER (Mr. Bengzon): I think the Commissioners have been well-enlightened enough as to the rationale of the proposed amendment. Let us now vote on this. What does the Committee say before we go to a vote?

FR. BERNAS: Especially in the light of the remark of Commissioner Regalado, we leave the matter to the body.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): Those in favor of the amendment proposed by Commissioner Guingona, please raise their hand. (Few Members raised their hand.)

Those against, please raise their hand. (Several Members raised their hand.)

The results show 2 votes in favor and 27 against; the amendment is lost.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, for a clarificatory question, I ask that Commissioner Quesada be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Quesada is recognized.

MS. QUESADA: Mr. Presiding Officer, I would like to ask the Committee on Section 16, page 3, which states:

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. Do these cases also include administrative cases?

FR. BERNAS: Yes.

MS. QUESADA: The reason I ask is that many government employees have not been able to invoke this particular provision of the Bill of Rights. And there are many pending administrative cases brought in against employees or officials which have remained undisposed of. So I am glad that this would have reference to these particular cases. Thank you.

FR. BERNAS: Thank you very much.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA.: Mr. Presiding Officer, I ask that Commissioner Padilla be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Padilla is recognized.

MR. PADILLA: Mr. Presiding Officer, I refer to Section 18 on the right to bail.

MR. DE LOS REYES: Anterior amendment, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): There is an anterior amendment by Commissioner de los Reyes.

MR. DE LOS REYES: I have two amendments on Section 17, which reads: "No person shall be held to answer for a criminal offense without due process of law." The first amendment is to delete Section 17 because it is self-delimiting inasmuch as it is already covered by Section 1, which reads:

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

In other words, while Section 17 is limited to criminal offense and to substantial due process, Section 1 is all-embracing in that it includes all rights, criminal offense, and substantive and procedural due process.

THE PRESIDING OFFICER (Mr. Bengzon): What is the alternative amendment?

MR. DE LOS REYES: If the Committee is not inclined to delete this section because it is present in the 1935 and 1973 Constitutions, the alternative amendment is to transpose it to Section 19 as the beginning of its sentence because it is more related to what is contained in that whole section.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: As far as the deletion is concerned, first of all, let me say that I am in agreement with Commissioner de los Reyes that this matter is adequately covered by Section 1. However, I do not think it is timely to delete this now because we have just experienced a period when there was very little respect for due process in criminal proceedings. For us now to delete this might give the message to the people that we are reducing their rights. So it is not a question of substance but of timeliness. I think it is not timely. As far as the other proposed amendment is concerned, if it is just a question of transposition, I think that can be easily handled.

THE PRESIDING OFFICER (Mr. Bengzon): Does the sponsor mean the Committee accepts the second amendment?

FR. BERNAS: May I know where it is transposed?

MR. DE LOS REYES: It will be transposed to Section 19 as the opening sentence thereof, and I quote:

No person shall be held to answer for a criminal offense without due process of law. In all criminal prosecutions, the accused shall be presumed innocent.

The reason for this is that those are all matters which pertain to procedural due process.

FR. BERNAS: If there is no objection from any member of the Committee, I accept it.

MR. DE LOS REYES: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment.

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

Section 17 is transposed as the first sentence of Section 19.

MR. TADEO: Mr. Presiding Officer, anterior amendment on Section 5, page 2, line 11. Iminumungkahi kong alisin iyong mga salitang nagmumula sa "or" upang maiwasan natin ang walang pakundangang paglabag sa liberty of abode sa ngalan ng national security at pagsasagawa ng "hamletting" ng kung sinu-sino na lamang. Kapag inalis ito, maisasagawa lamang ang "hamletting" upon lawful order of the court. Inuulit ko na alisin natin ang mga salitang nagmumula sa "or" pagkatapos ng "court."

THE PRESIDING OFFICER (Mr. Bengzon): Puwede po bang basahin ng Commissioner ang buong probisyon?

MR. TADEO: Ang Section 5 ay nagsasaad ng sumusunod:

The liberty of abode and of changing the same and of travel, within the limits prescribed by law, shall not be impaired except upon lawful order of the court.

Iminumungkahi kong alisin iyong "or when necessary in the interest of national security, public safety, or public health."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: The Committee would like to hear discussion on this and preparatory to that, let me read the provision of the 1935 Constitution. This provision we have now is a provision of the 1973 Constitution. The 1935 Constitution simply says:

The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: Aside from that, this includes the right to travel.

FR. BERNAS: Yes.

MR. RODRIGO: And there are cases when passports may not be granted or passports already granted may be canceled. If the amendment is approved, then passports may not be canceled unless it is ordered by the court. Is that the intention? The proponent is really worried about changing of abode when he mentioned "hamletting."

FR. BERNAS: Yes.

MR. RODRIGO: But another right is involved here and that is to travel.

SUSPENSION OF SESSION

FR. BERNAS: Mr. Presiding Officer, may I request a suspension so that we can separate the liberty of abode and of changing the same from the right to travel, because they may necessitate different provisions.

THE PRESIDING OFFICER (Mr. Bengzon): The session is suspended.

It was 5:45 p.m.

RESUMPTION OF SESSION

At 5:48 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Bengzon): The session is resumed.

Commissioner Bernas is recognized.

FR. BERNAS: The proposal is amended to read: "The liberty of abode and of changing the same within the limits prescribed by law, shall not be impaired except upon lawful order of the court. NEITHER SHALL THE RIGHT TO TRAVEL BE IMPAIRED EXCEPT IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY, OR PUBLIC HEALTH AS MAY BE PROVIDED BY LAW."

THE PRESIDING OFFICER (Mr. Bengzon): The Committee has accepted the amendment, as amended.

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

The Floor Leader is recognized.

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

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Padilla is recognized.

MR. PADILLA: Mr. Presiding Officer, I refer to the right to bail on Section 18, page 3, lines 21 to 24. With the expectation that capital punishment would be abolished, the Committee deleted the clause "except those charged with capital offense when evidence of guilt is strong." This is the phrase that has been in the 1935 and 1973 Constitutions. There is a difference between capital punishment and capital offense; they are not identical. Of course, capital offense as defined in Rule 114, Section 4, of the 1985 Rules on Criminal Procedure reads:

A capital offense, as the term is used in this Rule, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death.

Assuming that the Congress or the National Assembly will not reinstate capital punishment, if this clause appearing in the former Constitutions is likewise not re-instated, every accused person before conviction will be entitled to bail, even if he is charged with a capital offense. For example, murder is punishable by reclusion temporal in its maximum period, reclusion perpetua to death; treason, by reclusion temporal, reclusion perpetua to death; and parricide, by reclusion perpetua to death. So even if death penalty is not imposed, these and other offenses are considered capital offenses. It is true that under the Revised Penal Code, the maximum of the prescribed penalty is death, but the actual penalty imposed by the court, especially if the mitigating circumstance is attendant, is the minimum period of the penalty. So in murder, assuming, for example, the qualifying circumstance of treachery, the accused may be convicted of murder but the lower penalty is imposed in its minimum period which is reclusion temporal in its maximum period.

I do not believe the intention of the Committee was to allow all these persons accused of these capital offenses — where the death penalty may be imposed but which in many cases is not imposed even by the court because of some mitigating circumstances — before conviction the right to bail. So my amendment is to restore that clause so that a person accused of rape, murder, treason, kidnapping with ransom, robbery, homicide, etc., where the evidence of guilt is strong may be denied by the court the right to bail. Of course, it is upon the prosecution to prove because it has the burden of proof that the evidence of guilt is strong. I am afraid that if this clause is not reinstated, it would mean that all persons accused no matter how grave the felony is will be entitled to bail as a matter of right.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: My understanding of the intention of the Committee is that with the abolition of the death penalty, the category of capital offense disappears. Also, the intention of the Committee is to make bail by sufficient securities available to all types of crimes.

MR. PADILLA: I think the inaccuracy, if not error, in that intention of the Committee is to identify capital offense with capital punishment, which are not identical.

FR. BERNAS: But if an offense is no longer punishable by death, it ceases to be a capital offense.

MR. PADILLA.: That is not correct because a capital offense may be punishable by death. But even if it is not punishable by death, if the penalty is reclusion perpetua or even reclusion temporal in its maximum period, it is still a capital offense. In other words, capital offense is not synonymous nor identical with capital punishment.

FR. BERNAS: We submit the matter to a vote by the Commission.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Just a matter of clarification. Does the Chair understand that the interpretation of Commissioner Padilla is that if this particular provision is approved all offenses are bilabial? Is that correct?

FR. BERNAS: Yes, that is the intention.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. REGALADO: Will Commissioner Padilla consider this amendment to his proposed amendment? But before I state it, may I explain.

It would appear that with the abolition of the death penalty the highest penalty that can be imposed will only be reclusion perpetua. Under the contemplation here, even a confessed murderer will be allowed bail. Let us consider a scenario where a person charged with murder knows that the impossible penalty is reclusion perpetua. Upon being charged in court, he posts bail and swears that he will get even with the family of his victim for charging him in court. Since he is a man of his word, one week later he goes back and kills another member of the family. Again, he is haled into court, posts bail, and so forth, and so on. Would that have been the intention of the Committee that this person who has shown that degree of moral perversity and depravity can still be allowed to roam free under a bail of generally now P50,000, which is the bail for offenses punishable by reclusion perpetua?

FR. BERNAS: It is not the intention of the Committee to fix the bail at P50,000 because the meaning of sufficient sureties will be changed by legislation.

MR. REGALADO: We have a provision that excessive bail shall not be required, which has been in the Constitution since 1935 and up to now. The then Department of Justice, pursuant to that provision that no excessive bail shall be required and also considering the interests of society, generally puts it at P50,000, but let us forget about the bail. I now go back to the situation where a person is known to have harbored criminal intent, and actually it has been demonstrated that he had really carried out such a criminal intent and was still going to again carry out that criminal intent. Should he be permitted to roam free? I propose, therefore, an amendment to the amendment to avoid a discussion on the meaning of capital offense and capital penalty to read as follows: ALL PERSONS EXCEPT THOSE CHARGED WITH OFFENSES PUNISHABLE BY reclusion perpetua WHEN EVIDENCE OF GUILT IS STRONG SHALL, BEFORE CONVICTION, BE BILABIAL. In other words, in effect, we are just substituting offenses punishable by reclusion perpetua for offenses punishable by death, because this is not improbable. Jurisprudence shows that there are people who are repeater-killers. There are people who are not only recidivists in the crime of murder but are habitual delinquents. The mad-dog killers of the United States are also replicated in the Philippines. Shall we permit them to be free on bail despite the danger to society, or to rape and then go out of detention under bail, which can easily be procured through sufficient sureties, because we cannot also require cash bail bond? What is P50,000 or P100,000? He merely pays a 5-percent premium for a surety bail bond.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: Will the Commissioner please restate his amendment?

MR. REGALADO: My proposed amendment is to add the phrase: ALL PERSONS EXCEPT THOSE CHARGED WITH OFFENSES PUNISHABLE BY reclusion perpetua WHEN EVIDENCE OF GUILT IS STRONG SHALL, BEFORE CONVICTION, BE BAILABLE, which is at least for the protection of society against moral perverts.

FR. BERNAS: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: Although I am inclined to accept the proposed amendment, I guess the original proponent should be the one to accept it because it is an amendment to his amendment.

MR. REGALADO: Yes. My amendment is the effect of the discussion over the distinction between a capital offense and a capital punishment, which is actually true in American jurisprudence. Here in the Philippines, we seem to equate the meaning of a capital offense with an offense punishable by death. That is as it is in the Rules of Criminal Procedure which, of course, will be affected by this.

So to avoid a possible uncertainty as to what we really mean, I proposed this exception of offenses punishable by reclusion perpetua.

MR. PADILLA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): What does Commissioner Padilla say?

MR. PADILLA: Mr. Presiding Officer, I fully agree with the idea proposed by Commissioner Regalado. My only problem is that if we limit it to reclusion perpetua, persons charged with murder may still claim the right to bail, even when the evidence of guilt is strong, because he will say that murder is punishable not by reclusion perpetua but by reclusion temporal in its maximum period to death. The same way, in treason, the penalty is reclusion temporal to death. That is the only problem, otherwise, I would accept the amendment. But if I do then I am afraid that some of these accused might commit the same offense again especially those contemplated in the proposed amendment to the amendment — for example, a fellow commits murder, then he is released on bail; he commits another murder, he is released on bail again, because he might say "My penalty is not reclusion perpetua." It may only be reclusion temporal or reclusion temporal in its maximum period.

MR. REGALADO: May I say something?

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner Regalado is recognized.

MR. PADILLA: That is the only thing that I am worried about; otherwise, I would agree with Commissioner Regalado.

THE PRESIDING OFFICER (Mr. Bengzon): Can Commissioner Regalado plug that loophole?

MR. REGALADO: Actually, as of now, the penalty for murder is reclusion temporal in its maximum period to death. It could be reclusion temporal in its maximum period, if he has a mitigating circumstance and no aggravating circumstance; or it could be reclusion perpetua, if he has neither mitigating nor aggravating circumstances. But the words used are "which may be punishable by reclusion perpetua."

In other words, that does not rule out a range of penalty, the maximum of which is reclusion perpetua, as it is now with the amendment. Offenses which may be punishable by reclusion perpetua will cover the situation of a range of penalty. Let us say, Congress later makes a law to comply with the three periods in a degree. The penalty for

murder will now be reclusion temporal to reclusion perpetua. Therefore, a penalty of three periods, with prison mayor as the minimum, reclusion temporal as the medium and reclusion perpetua as the maximum may be provided.

MR. MAAMBONG: Mr. Presiding Officer.

MR. PADILLA: Mr. Presiding Officer, under the phrase "which may be punishable by reclusion perpetua, I accept the amendment to my amendment.

MR. MAAMBONG: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: In line with the suggestion of the Chair to plug the loophole, I was about to suggest to Commissioners Regalado and Padilla, if we could use the term "impossible penalty" of reclusion perpetua.

THE PRESIDING OFFICER (Mr. Bengzon): The suggestion of Commissioner Regalado covers that contingency which has already been accepted by Commissioner Padilla.

MR. PADILLA: The word "punishable," I think, would be more accurate than "impossible" because when one says "punishable," that is the penalty prescribed by law; when one says "impossible," that is the penalty that may be imposed by the court, and we usually follow the penalty that is prescribed by law.

MR. DAVIDE: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Can we hear the comment of the Committee before recognizing Commissioner Davide?

FR. BERNAS: The Committee would like to accept the amendment, as amended, by Commissioner Regalado.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Davide?

MR. DAVIDE: We have just approved the section on the abolition of the death penalty, but we left it to the National Assembly to reimpose it in certain cases. What will now happen? If there will be a law which might be enacted later restoring the death penalty in certain cases, would it be an exception to this proposed amendment?

FR. BERNAS: My understanding of the amendment is that the penalty at any rate will be a range which would include reclusion perpetua, so that even if the maximum will be death . . .

MR. DAVIDE: So, with the understanding that if, in the event that the National Assembly will enact a law restoring the death penalty, it is with more reason that that particular offense to which a penalty of death is imposed should not be bilabial except when the evidence is not strong.

FR. BERNAS: Yes.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Azcuna is recognized.

MR. AZCUNA: Mr. Presiding Officer, I would like to suggest that instead of using "reclusion perpetua," because really, heinous crimes which later on may be punishable by death will become bilabial, why do we not say EXCEPT THOSE OFFENSES PUNISHABLE WITH THE HIGHEST PENALTY because then, it would include reclusion perpetua, if we do not have death penalty; but if we do have death penalty, then it will include death penalty. Heinous crimes might be provided with a single penalty of death, in which case, it will be bilabial because it is not punishable with reclusion perpetua regardless of what we say here. It is very clear; there is no need of interpretation.

THE PRESIDING OFFICER (Mr. Bengzon): Is that acceptable to Commissioners Regalado and Padilla?

MR. REGALADO: Actually, the words "heinous crimes" appear in Section 22, not in the report under consideration but the section with amendment: "or the death penalty inflicted UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES, THE NATIONAL ASSEMBLY PROVIDES FOR THE DEATH PENALTY." So, if any amendment were to be made, it should be here in Section 22.

MR. AZCUNA: Yes, but supposing that happens, that provision on bail will be faulty because then it will make offenses that are punishable by a single death penalty bilabial because it is not punishable by reclusion perpetua.

MR. REGALADO: In other words, the Commissioner contemplates a situation where Congress may eventually restore the death penalty.

FR. BERNAS: Yes.

MR. AZCUNA: That is right. So, we should word it such that it will read: EXCEPT OFFENSES PUNISHABLE WITH THE HIGHEST PENALTY.

FR. BERNAS: But what the Commissioner contemplates is a situation where Congress prescribes a single impossible penalty.

MR. AZCUNA: Yes, death for a heinous crime and then there is no range.

FR. BERNAS: So, in that case, the situations contemplated by Commissioner Regalado would be bilabial.

MR. AZCUNA: Would be bailable?

FR. BERNAS: Would become bailable in case we have a crime punishable by a single death penalty.

MR. AZCUNA: Yes, that is right; it would be bailable. So, the most heinous crime would be bilabial whereas a lower crime would not be bailable, because a lower crime might be punishable by reclusion perpetua only, whereas a crime punishable with a single penalty of death would be bilabial because it is not within the exception.

FR. BERNAS: But I think from the logic of the proposal — the explanation requested by Commissioner Davide — even if the crime were to be given a single impossible penalty, that crime would be nonbailable.

MR. AZCUNA: But the life of the law has not been logic; it has been experience. I would prefer to make it clear.

FR. BERNAS: Except that the Commissioner reduced the scope of the nonbailability. He could reduce the scope of nonbailability to that crime.

MR. AZCUNA: Which includes the highest penalty.

THE PRESIDING OFFICER (Mr. Bengzon): Would Commissioner Azcuna insist on that amendment or would he be satisfied with the explanation?

MR. AZCUNA: I would leave it to the Committee. I just want to bring up the point.

MR. PADILLA: Mr. Presiding Officer, I just want to say that I am not happy with the word "heinous."

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Padilla, we are now discussing that particular portion with respect to bail. The word "heinous" will be on Section 22.

MR. PADILLA: Yes. Precisely, the proposed amendment has something to say about heinous crimes.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Azcuna is not insisting on that amendment.

MR. PADILLA: I just like to say that in the Revised Penal Code, the crimes are classified into grave, less grave and light. Maybe we can say "most grave" but not "heinous." That is not found in the Revised Penal Code.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: I think this burden will fall on my committee, the Committee on Style. And so, I just want to ask: When we say a crime is punishable by death, does that not mean that it can be punished also by lower penalties but it can be punished by death? There is a difference between saying a crime is punished with death, which means it is only death, and it is punishable by death, which means it can be punished by death but it can also be punished by reclusion perpetua or reclusion temporal. Is that not right?

FR. BERNAS: That is my understanding.

MR. RODRIGO: Thank you.

MR. AZCUNA: Mr. Presiding Officer, just a comment on that. That is not necessarily so, Mr. Presiding Officer. In Malaysia, for trafficking in drugs, they have a single mandatory penalty of death, regardless of mitigating circumstances. The only penalty is death, if the accused is found guilty. So, it is possible that in the future, our National Assembly may adopt that form of penalty.

THE PRESIDING OFFICER (Mr. Bengzon): I think we are ready to vote on the amendment. Can Commissioner Regalado restate the amendment? Or can Commissioner Padilla please restate his amendment, as amended by Commissioner Regalado?

MR. PADILLA: We request Commissioner Regalado to restate his amendment because he inserted his amendment which I have accepted.

MR. REGALADO: Section 18 would read as follows: "All persons, EXCEPT THOSE CHARGED WITH OFFENSES WHICH MAY BE PUNISHABLE BY reclusion perpetua WHEN THE EVIDENCE OF GUILT IS STRONG, SHALL, before conviction, be bailable by sufficient sureties . . ."

FR. BERNAS: The Committee accepts the amendment, as amended.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.

The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I ask that Commissioner Nolleto be recognized.

MR. SUAREZ: Mr. Presiding Officer, a point of clarification only on the section which we have just approved. I refer to Section 18 on the phrase "or may be released on recognizance as may be provided by law."

May we ask the distinguished sponsors if this matter of release on recognizance contemplates a situation where an offense is punishable by reclusion perpetua but the evidence of guilt is not strong and the offender may be entitled to release on recognizance in the manner provided by law?

FR. BERNAS: Precisely, we put "as may be provided by law" because we would like the legislature to determine when recognizance is an adequate substitute for bail.

MR. SUAREZ: So, as contemplated by the sponsors, it does not preclude that . . .

FR. BERNAS: It does not.

MR. SUAREZ: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): May the Chair ask the Floor Leader how many more Commissioners would wish to propose amendments?

MR. RAMA: There are three more.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Nolleto is recognized.

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

My amendment is an addition to the original Section 17 which now forms part of Section 19 by reason of an amendment of Commissioner de los Reyes. This proposed amendment is coauthored by Commissioners Teresa Nieva and Chito Gascon. The Committee rejected this amendment which is covered by Resolution No. 191 on the ground that it was already covered by due process.

To my mind, due process has two parts: the procedural due process which talks of jurisdiction, previous notice, hearing and judgment, while the second part is substantive due process which talks of a valid law. And so, the proposed amendment has no direct relevance to due process and cannot be categorized as involving and, therefore, covered by due process. This amendment assumes that one who espouses certain political beliefs and aspires for realization thereof must do so through peaceful and lawful means.

Before I read the proposed amendment, I would like to state that there is a similar provision in the Constitution of France which reads as follows: "No man is to be interfered with because of his opinions, provided his avowal of them does not disturb public order as established by law."

My amendment will be relevant if we adopt the provision in the report of the Committee on the Legislative that the declaration of martial law will not suspend the operation and application of the Constitution, and this amendment will fully uphold the freedom that should be guaranteed to every citizen in a democratic society. The amendment, Mr. Presiding Officer, reads as follows: "No person shall be held to answer for a criminal offense without due process of law NOR SHALL ANY PERSON BE DETAINED MERELY BY REASON OF HIS POLITICAL BELIEFS AND ASPIRATIONS."

THE PRESIDING OFFICER. (Mr. Bengzon): What does the Committee say?

FR. BERNAS: Again, if I may speak for the Committee, the subject of the amendment in my judgment is covered 1) by the due process clause; 2) by Section 9 which provides for freedom of speech and freedom of expression; and in spite of all these, he is still detained, then he can avail of the privilege of the writ of habeas corpus which in every instance gives the person the right of immediate liberty because the philosophy of our entire Constitution is that the government can act only if it has authority to act. If the government cannot point to any law which authorizes the detention, then the detention can be lifted by appeal to the privilege of the writ of habeas corpus. So that if any attempt is made by the government to pass a law saying that persons may be detained merely by reason of their political beliefs and aspirations, such a law would clearly be unconstitutional and a violation of the due process clause and of Section 9.

So, in my own personal judgment, not necessarily speaking for the Committee, this matter is adequately covered by our Bill of Rights. And if this was violated in the past, it was more because of the circumstances of the past, and I think the remedies will be adequately provided for also in the delineation of the scope of the power to impose martial law and the power to suspend the privilege of the writ of habeas corpus and the consequences thereof.

THE PRESIDING OFFICER (Mr. Bengzon): Would Commissioner Nolleto insist on his amendment?

MR. NOLLEDO: Mr. Presiding Officer, may I answer only for one minute. I do not believe that this is covered by

due process as I already stated. If we were to say that it is covered already by the freedom of the press, then I would like to mention here that the purpose of the provision is preventive in nature. There are times that because of some political beliefs that one espouses in peaceful or through lawful means, he is unjustly detained and when one goes; to the Supreme Court for a writ of habeas corpus it takes a lot of time for the Supreme Court to decide even if there is a provision on the period during which the Supreme Court may decide in order to dispose of the case. And so, if the Committee does not mind, Mr. Presiding Officer, I would like to submit this to the body for decision, and I will abide.

FR. BERNAS: We submit the matter for decision by the body.

MR. NOLLEDO: The amendment is an addition to the former Section 17 which now forms part of Section 19, and it reads: "No person shall be held to answer for a criminal offense without due process of law NOR SHALL ANY PERSON BE DETAINED MERELY BY REASON OF HIS POLITICAL BELIEFS AND ASPIRATIONS."

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the amendment, please raise their hand. (Several Members raised their hand.)

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

The results show 19 votes in favor and 10 against; the amendment is approved.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

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

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Brocka is recognized.

MR. BROCKA: This is a very minor amendment, Mr. Presiding Officer. On Section 9, page 2, line 29, it says: "No law shall be passed abridging the freedom of speech." I would like to recommend to the Committee the change of the word "speech" to EXPRESSION; or if not, add the words AND EXPRESSION after the word "speech," because it is more expansive, it has a wider scope, and it would refer to means of expression other than speech.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: "Expression" is more broad than speech. We accept it.

MR. BROCKA: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Is it accepted?

FR. BERNAS: Yes.

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

FR. BERNAS: So, that provision will now read: "No law shall be passed abridging the freedom of speech, expression or of the press . . ."

MR. RAMA: I ask that Commissioner de los Reyes be recognized for the last amendment.

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

MR. DE LOS REYES: On Section 18, line 23, after the period (.) and before "Excessive," insert the following sentence: THIS RIGHT SHALL NOT BE AFFECTED BY THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: As far as the Committee is concerned, I am just debating whether it should be here or in Section 15.

MR. DE LOS REYES: That is for the Committee on Style to decide. So long as the concept is admitted, I will be satisfied.

FR. BERNAS: As a matter of fact, it is also in the provision on the executive department.

MR. DE LOS REYES: So, the concept is accepted.

FR. BERNAS: Yes.

MR. DE LOS REYES: Subject to style.

FR. BERNAS: Could the Commissioner read his proposed amendment?

MR. DE LOS REYES: After the period (.) and before the word "Excessive," add: THIS RIGHT SHALL NOT BE AFFECTED BY THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: Suppose we say: THE RIGHT TO BAIL.

MR. DE LOS REYES: All right.

FR. BERNAS: The phrase "SHALL NOT BE AFFECTED" is rather weak.

MR. DE LOS REYES: How about SHALL NOT BE DENIED?

FR. BERNAS: I suggest it will be: SHALL NOT BE IMPAIRED EVEN WHEN THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IS SUSPENDED.

MR. DE LOS REYES: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): Could Commissioner Bernas read it now?

FR. BERNAS: It will read: THE RIGHT TO BAIL SHALL NOT BE IMPAIRED EVEN WHEN THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IS SUSPENDED.

MR. RODRIGO: Mr. Presiding Officer, may I ask a question?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Rodrigo is recognized.

MR. RODRIGO: Is that not understood? The suspension of the writ of habeas corpus refers to an entirely different thing. It is understood that it does not affect the right to bail. All that is affected is, if one is arrested, one can go to the court and ask that the body be produced.

FR. BERNAS: There is jurisprudence during martial law which says that the suspension of the writ of habeas corpus also suspends the right to bail.

MR. RODRIGO: Is that so?

FR. BERNAS: Yes. I mean, I disagree with that Supreme Court ruling, but it is there.

MR. RODRIGO. Thank you.

MR. DE LOS REYES: Another amendment, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Wait a minute. Is there any objection to that amendment?

MR. DE CASTRO: Mr. Presiding Officer, please.

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

MR. DE CASTRO: When the writ of habeas corpus is suspended, the person arrested sometimes is not charged. Therefore, there is nothing to bail. For example, during the time of President Quirino, when we were at the height of the Huk campaign, the privilege of the writ of habeas corpus was suspended. All those people whom we suspect to be participating in the rebellion or in the sedition were imprisoned, but they were not charged. So, there is nothing to bail. Therefore, the right to bail will not be effective.

FR. BERNAS: I think that is a very good point, Mr. Presiding Officer. The remedy for this is to narrow the scope of the writ of habeas corpus, and this has been done in the provisions of the Article on the Executive where the suspension of the writ of habeas corpus will apply only to offenses . May I appeal to Commissioner Regalado? What was the scope of the suspension of the writ under the executive department?

MR. MAAMBONG: May I help?

FR. BERNAS: Yes.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: I might as well read the provision which is now embodied in Committee Report No. 26. It says:

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

FR. BERNAS: There is another sentence there which says that the privilege of the writ may be . . .

MR. REGALADO: There is still some more.

MR. MAAMBONG: Yes. May I continue, Mr. Presiding Officer:

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

FR. BERNAS: There is another.

MR. REGALADO: There are still four more paragraphs.

FR. BERNAS: The one about the right to bail.

MR. MAAMBONG: Yes.

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

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Yes, Commissioner de Castro is recognized.

MR. DE CASTRO: That is a recommendation by the Committee on the Executive to which I have some reservations, particularly on the proclamation of martial law and the suspension of the writ of habeas corpus. Until such time that that provision is passed by this body, I think my comments on the suspension of the writ of habeas corpus relative to debates are still valid.

FR. BERNAS: I think the comments are valid, yes.

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): The body will now vote. As many as are in favor of the amendment proposed by Commissioner de los Reyes, as corrected by the Committee, please raise their hand. (Several Members raised their hand.)

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

MR. DE CASTRO: Mr. Presiding Officer, just a comment.

THE PRESIDING OFFICER (Mr. Bengzon): May I just announce the results first?

The results show 33 votes in favor and 2 against; the amendment, as amended, is approved.

Commissioner de Castro is recognized.

MR. DE CASTRO: Just a comment, please. What happens if in the suspension of the writ of habeas corpus a person is arrested without any charge?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Bernas is recognized.

FR. BERNAS: In a situation like that, since the privilege of the writ is not available and bail is not available either because there is no charge, then the person has to stay in jail.

MR. DE CASTRO: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA.: Commissioner Rustico de los Reyes is not yet through with his amendment.

MR. DE LOS REYES: My amendment is on Section 19.

What is the statement of Commissioner Padilla?

MR. PADILLA: Anterior amendment on Section 15.

THE PRESIDING OFFICER (Mr. Bengzon): Does Commissioner de los Reyes still have an amendment?

MR. DE LOS REYES: On Section 19, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): How about Commissioner Padilla?

MR. PADILLA: Section 15.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Padilla is recognized for an anterior amendment.

MR. PADILLA: In my interpellations on Section 15, I noticed that the phrase "or imminent danger thereof" was deleted or eliminated and the explanation of the Committee through Commissioner Bernas was that it contemplates only actual invasion and rebellion. Considering that the power or authority of the President as Commander-in-Chief in suspending the privilege of the writ of habeas corpus will be limited under the executive department to not more than 60 days with the concurrence of Congress and then subject to review by the Supreme Court, will the Committee consider to reinsert the phrase "or imminent danger thereof," as in the provision on the writ of habeas corpus? Commissioner Bernas has said that it can be introduced and considered either by the Committee or by the body, so that it will read: "The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion OR IMMINENT DANGER THEREOF when the public safety requires it."

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: Let me just say that when the Committee decided to remove that, it was for the reason that the phrase "OR IMMINENT DANGER THEREOF" could cover a multitude of sins and could be a source of a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. So, we submit it to the body for a vote.

MR. PADILLA: I would just like to state that the term OR IMMINENT DANGER THEREOF appears in the 1935 and 1973 Constitutions and it has not even resulted in a multitude of sins, temptations nor confusion.

THE PRESIDING OFFICER (Mr. Bengzon): Will Commissioner de Castro speak in favor of the amendment?

MR. DE CASTRO: I am in favor of the amendment.

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

MR. DE CASTRO: Section 15 speaks of actual rebellion and actual invasion, if we eliminate "OR IMMINENT DANGER THEREOF." When there is already actual invasion or rebellion, the President no longer suspends the privilege of the writ of habeas corpus because we already have actual shooting. There is nothing more to be remedied by the Chief Executive. But when we put the words "OR IMMINENT DANGER THEREOF," perhaps they are still assembling; they are still preparing for their departure or their provisions for immediate rebellion. The Chief Executive then has the power to suspend the writ of habeas corpus, but with the situation I mentioned there is nothing more to suspend.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Regalado is recognized.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. REGALADO: I yield to the Floor Leader.

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

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Concepcion is recognized.

MR. CONCEPCION: The elimination of the phrase "IN CASE OF IMMINENT DANGER THEREOF" is due to

the fact that the President may call the Armed Forces to prevent or suppress invasion, rebellion or insurrection. That dispenses with the need of suspending the privilege of the writ of habeas corpus. References have been made to the 1935 and 1973 Constitutions. The 1935 Constitution was based on the provisions of the Jones Law of 1916 and the Philippine Bill of 1902 which granted the American Governor General, as representative of the government of the United States, the right to avail of the suspension of the privilege of the writ of habeas corpus or the proclamation of martial law in the event of imminent danger. And President Quezon, when the 1935 Constitution was in the process of being drafted, claimed that he should not be denied a right given to the American Governor General as if he were less than the American Governor General. But he overlooked the fact that under the Jones Law and the Philippine Bill of 1902, we were colonies of the United States, so the Governor General was given an authority, on behalf of the sovereign, over the territory under the sovereignty of the United States. Now, there is no more reason for the inclusion of the phrase "OR IMMINENT DANGER THEREOF" in connection with the writ of habeas corpus. As a matter of fact, the very Constitution of the United States does not mention "imminent danger." In lieu of that, there is a provision on the authority of the President as Commander-in-Chief to call the Armed Forces to prevent or suppress rebellion or invasion and, therefore, "imminent danger" is already included there.

MR. OPLE.: Will Commissioner Concepcion be kind enough to yield to a question?

MR. CONCEPCION: Gladly.

MR. OPLE: I want to thank him for giving us a brief historical narration of the genesis of this controverted phrase, now deleted "OR IMMINENT DANGER THEREOF." But I would like to imagine a situation. It is not hypothetical; it is partly historical in terms of what happened in the Second World War. President Quezon, the President of the Philippines then, knew that on the basis of intelligence reports from the American government there was a war brewing in Asia and in the Pacific. That is the historical part. The hypothetical part is: Suppose President Quezon at that time knew that Japanese transport troops had just left Tokyo or Okinawa for the Philippines for three or four days travel on an invasion of the Philippines. Let us assume that there were several thousands of Japanese scattered in the Philippines, especially in pivotal areas like Manila and Davao, and then his Chief of Staff proposed that potentially hostile elements within the Philippines ought to be immobilized in some way or another which could require the suspension of the privilege of writ of habeas corpus. In this example, let us say, the Japanese elements in the Philippines are immobilized, some of whom were undoubtedly spies but a good number of whom had become Filipino citizens and who, therefore, could not be accessible through this form of immobilization except through a suspension of the privilege of the writ of habeas corpus, especially in areas like Mindanao. One could vary the analogy and change the most populous nation throughout the North, which in contemporary terms could be a more likely invader or aggressor and there are so many of their countrymen, although a good number have already been naturalized — and we were talking about the dangers of dual allegiance in a previous session — will this mean that where there is an imminent danger of invasion, the recourse to the suspension of the privilege of the writ of habeas corpus, as a means of immobilizing potential internal enemies, would be denied to the President of the Philippines?

MR. CONCEPCION: My question is this: Were there many Japanese naturalized in the Philippines at that time? I do not believe so. I think Commissioner Ople made a supposition.

MR. OPLE: Yes.

MR. CONCEPCION: Which is not based upon a fact.

MR. OPLE: Yes. I said that in contemporary terms, we could have a repetition of this from the most populous neighbor that we have. And it is a fact that about half a million of them are naturalized Filipinos now. Do we wait

for the troops to land before the remedy of a suspension of the privilege of the writ can be activated by the President of the Philippines?

MR. CONCEPCION: That is why I oppose the liberalization of the naturalization law. In other words, we speak of the danger, the doors of which I was trying to close. Now, we open it; who is to blame?

MR. OPLE: That is why I am trying to distribute blame or credit, Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Is Commissioner Ople proposing or speaking in favor of the amendment?

MR. OPLE: I wanted to bring out certain possibilities that have a great deal of plausibility and which pertain to the survival of a country under imminent danger of invasion.

THE PRESIDING OFFICER (Mr. Bengzon): The Chair takes it then that he is in favor of the amendment proposed by Commissioner Padilla.

MR. OPLE: Yes, Mr. Presiding Officer.

MR. DE CASTRO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Will Commissioner de Castro speak in favor of the amendment of Commissioner Padilla?

MR. DE CASTRO: Just to strengthen the hypothesis of Commissioner Ople, it is not a hypothesis. It happened during the last war when we had Japanese bazaars, hardwares and photographers all over our country. And we know then that these people were suspected as agents of the Japanese, as in fact they were. But the President of the Philippines failed, despite the imminent danger thereof, to suspend the privilege of the writ of habeas corpus such that we began arresting the Japanese agents only when the Japanese began landing in the Lingayen Gulf.

So, it was there; it was not used at the time that it was needed. How much more if it is not there?

Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): I believe that the issue has been amply discussed; the body should be ready to vote.

MR. BROCKA: Mr. Presiding Officer, just one moment.

THE PRESIDING OFFICER (Mr. Bengzon): Just one observation. Commissioner Brocka is recognized.

MR. BROCKA: This is in disagreement with what has been said, particularly to what Commissioner de Castro said; not so much a disagreement, but on the other hand, the abuse of the phrase "OR IMMINENT DANGER THEREOF" can be done also like in the past administration. It would be so easy for a President who wants to remain in power to stage rebellions and bombings and make it appear that there is an imminent danger. I just want to bring that up also.

MR. REGALADO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): I think we have discussed the issue enough.

MR. REGALADO: The Chair recognized me earlier, but I yielded to Commissioner Concepcion; and I just want to make this point because I am a little confused. We seem to be in a reverse situation now. In the 1935 Constitution, the phrase "OR IMMINENT DANGER THEREOF" did not appear in the Bill of Rights. It was, however, in the Article on the Executive. Now, in our draft Article, the phrase was eliminated in the Article on the

Executive. But now, we seek to restore it in the Article on the Bill of Rights which is the exact opposite. We have already given the reasons why "OR IMMINENT DANGER THEREOF" was eliminated in the draft Article on the Executive. However, the point that was raised here is the matter of invasion. The hypothesis is that we would still have to wait for the invaders to overrun our shores before we can suspend the privilege of the writ of habeas corpus. If I recall my public international law, especially The Hague Convention on the laws of war, an invasion does not necessarily require a physical invasion of the shores of a foreign country. The start of a belligerent act directed towards the objective of invasion is already actual invasion. It is not to be used in a very literal sense under the Articles of The Hague Convention. The scenario that was described was that planes and vessels had already left those foreign countries on the way to attack the Philippines; from the moment they left that was already a belligerent act. That was already the start of the invasion in the country, not the physical sense of actually overrunning the country through force.

MR. PADILLA: May I just say one sentence, Mr. Presiding Officer?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Padilla is recognized for a final statement on his amendment, considering that that is his amendment.

MR. PADILLA: It has been said that under the Article on the Executive, the President has the power to call whenever necessary such Armed Forces to prevent or suppress lawless violence, invasion, insurrection or rebellion. That provision appears in the 1935 Constitution as well as in the 1973 Constitution. But despite that power to call on the Armed Forces to suppress lawless violence, both Constitutions still inserted the following: "In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it . . .," and after this the power arises to suspend the privilege of the writ of habeas corpus or to declare martial law.

With regard to the dangers that have been mentioned, of course, the former regime abused this provision, overabused its power. But with the limitations now under the executive department, wherein the duration of martial law is for only 60 days and still with the concurrence of Congress and with the review by the Supreme Court and suspension will not affect the right to bail, the dangers of abuse are very small compared to the dangers of actual invasion or rebellion before the President may declare the suspension of the privilege of the writ of habeas corpus.

THE PRESIDING OFFICER (Mr. Bengzon): I think the various distinctions have been amply explained. The body should be ready to vote by now. Could Commissioner Padilla restate his amendment?

MR. PADILLA: The amendment is just to insert the omitted phrase OR IMMINENT DANGER THEREOF after "rebellion" and before the phrase "when the public safety requires it."

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the amendment, please raise their hand. (Few Members raised their hand.)

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

The results show 16 votes in favor and 20 against; the amendment is lost.

Mr. Floor Leader, how many more?

MR. RAMA: There is only one more who will present an amendment on two clarificatory questions from two Commissioners.

THE PRESIDING OFFICER (Mr. Bengzon): Who do we recognize now?

MR. PADILLA: I would ask that Commissioner de los Reyes be recognized.

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

MR. DE LOS REYES: On Section 19, page 4, line 6, after the period (.) in the word "unjustifiable," I propose to insert the following: OR WHEN HE HAS WAIVED IN WRITING HIS PRESENCE.

THE PRESIDING OFFICER (Mr. Bengzon): What line?

MR. DE LOS REYES: Line 6, page 4. After the word "unjustifiable" delete the period (.) and then add the words OR WHEN HE HAS WAIVED IN WRITING HIS PRESENCE.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

MR. SUAREZ: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Bengzon): Can we wait for the comment of the Committee?

FR. BERNAS: I am not sure if this will be acceptable because there is no assurance. The individual is not there.

THE PRESIDING OFFICER (Mr. Bengzon): Could Commissioner Bernas speak louder please?

FR. BERNAS: If the individual is not there, what assurance do we have that the waiver, even if in writing, is freely done?

MR. DE LOS REYES: No. He should be present during the arraignment. That is a requirement according to the first sentence. Then, during the trial proper, for example, if the individual wants a speedy trial but he cannot attend it because he is sick, he is in the hospital, the trial may proceed even in his absence when he has waived in writing his presence. The way it is worded now, it is as if the trial can only proceed when the failure of the individual to appear is unjustifiable. The proposal is that the trial may proceed even when the appearance is justifiable provided there is a waiver in writing.

MR. SUAREZ: Mr. Presiding Officer, may we volunteer the information to Commissioner de los Reyes that that is already provided under our Rules of Court. In other words, one can waive his continued appearance as an accused after he shall have been arraigned, and he can do this waiver by submitting it in writing. So, I do not feel there is any necessity to include that as a constitutional provision.

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

MR. DE LOS REYES: Yes, Mr. Presiding Officer. I am aware that there is such a provision in the Rules of Court, but there are judges who for one reason or another, when the accused fails to appear, orders the confiscation of the bail bond even if the accused has already waived his presence in writing, and there is nothing in the Rules of Court about that.

MR. COLAYCO: May I answer that?

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Colayco is recognized.

MR. COLAYCO: The practice in the trial court is that if the presence of the accused is necessary for his identification, then even if he waives, the court may still order him to appear.

MR. DE LOS REYES: Correct.

MR. COLAYCO: So, I do not really see that that is necessary. What the court will require is for him to appear, notwithstanding his waiver if his presence is necessary so that he can be identified as the accused. As we all

know, the identification of the accused is indispensable.

MR. DE LOS REYES: Yes. But in trials before the Sandiganbayan, the Sandiganbayan also makes it of record that the accused is waiving his identification. And in that manner, he is allowed to waive his presence provided it is in writing. So, do I get it from the Committee that it means that the accused may wave in writing his presence although this is not stated in this provision? I just want to place it on record if that is the sense.

MR. COLAYCO: Will the Commissioner please repeat that again?

MR. DE LOS REYES: Is it the sense of the Committee that there is no need for my amendment because it is understood that the accused can waive in writing his presence in court, except for purposes of identification, during the arraignment and, of course, during the promulgation of judgment?

MR. COLAYCO: Yes.

MR. DE LOS REYES: That is the reason why it will not be accepted; it is already understood. I will not insist on my amendment so long as it is on record that that is the intent.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: Clarificatory question, Mr. Presiding Officer.

MR. DE LOS REYES: I have one last amendment which is the addition of another section which will also provide protection to victims of crimes. I filed Proposed Resolution No. 160 but I realized that it was quite long, and so, the decision of the Committee is to treat it as proper for ordinary legislation. So, in order to make it more proper for the Constitution, I have endeavored to capsulize it as follows: VICTIMS OF CRIMES AND THEIR RELATIVES ARE ENTITLED TO A SPEEDY INVESTIGATION AND SOLUTION OF THE CRIMES COMMITTED AGAINST THEM AND AN EXPEDITIOUS PROSECUTION OF THE CRIMINAL OFFENDERS. THEY SHALL HAVE THE RIGHT TO POLICE PROTECTION AGAINST THREAT TO THEIR LIVES AND SAFETY AT GOVERNMENT EXPENSE.

My reasons are as follows: It has been observed by most people, especially my constituents with whom I have been in close touch, that the Bill of Rights seems to be loaded in favor of the accused without concomitant protection to the victims, thereby creating the impression that we are overconcerned in protecting lawlessness rather than protecting people who are law-abiding and God-fearing but are unfortunate victims of crimes. Most of my constituents who happened to be victims of crimes have hinted that if this is the way we treat them, considering the lopsided treatment in favor of the accused, they might as well campaign against the ratification of this Constitution. I respectfully submit that this provision could provide the balance between the rights of the accused and the victims especially considering the many amendments we have incorporated favoring the accused. The theory that the state protects the victims by the very nature of their relationship is more fantasy than realism, especially when the offenders themselves are agents of the state.

So, if I may repeat my proposal, it reads as follows: VICTIMS OF CRIMES AND THEIR RELATIVES ARE ENTITLED TO A SPEEDY INVESTIGATION AND SOLUTION OF THE CRIMES COMMITTED AGAINST THEM AND AN EXPEDITIOUS PROSECUTION OF THE CRIMINAL OFFENDERS. THEY SHALL HAVE THE RIGHT TO POLICE PROTECTION AGAINST THREAT TO THEIR LIVES AND SAFETY AT GOVERNMENT EXPENSE. This is subject to restyling but the concept is what I have said.

THE PRESIDING OFFICER (Mr. Bengzon): What does the Committee say?

FR. BERNAS: First of all, as far as speedy disposition is concerned, I would like to call the attention of the Commissioner to Section 16 and this includes the accused: "All persons shall have the right to a speedy

disposition of their cases before all judicial, quasi-judicial, or administrative bodies." So, as far as the speedy disposition of cases is concerned, that section applies not just to the accused but even to the victims.

MR. DE LOS REYES: But in Section 19, it is specifically stated that in all criminal prosecutions, the accused has the right to have a speedy, impartial and public trial, thereby creating the impression that it is as if it is only the accused who is entitled to a speedy trial. As a matter of fact, in court cases, the judge will ask: "Do you agree to a postponement, Mr. Accused? You are entitled to a speedy trial." And the accused says, "Oh, never mind, I will waive my right to a speedy trial. I agree to a postponement." This affects the offended parties who cannot invoke the same right. That is in actual practice.

FR. BERNAS: Precisely, the complainant can also appeal to Section 16.

MR. DE LOS REYES: But I think there is nothing wrong in emphasizing that the complainant has a concomitant right to speedy investigation and expeditious prosecution of his criminal case.

FR. BERNAS: We leave the matter to the body.

MR. DE LOS REYES: Thank you.

MR. RODRIGO: Before we vote, I would like to ask a question. He says that complainants will be entitled to police protection. Does the Gentleman believe that we will have enough policemen to protect all the complainants in criminal cases?

MR. DE LOS REYES: No, that is making the provision very absurd; it does not mean that all complainants will seek police protection.

MR. RODRIGO: But if they have the right, what about the Bill of Rights, if that is a right they can demand?

VOTING

THE PRESIDING OFFICER (Mr. Bengzon): I think we can now vote. As many as are in favor of the proposed amendment, please raise their hand. (Few Members raised their hand.)

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

The results show 12 votes in favor and 19 against; the amendment is lost.

MR. TINGSON: Mr. Presiding Officer, may I just ask the Committee one question?

THE PRESIDING OFFICER (Mr. Bengzon): In connection with what?

MR. TINGSON: With Section 23.

THE PRESIDING OFFICER (Mr. Bengzon): Is it just a question?

MR. TINGSON: Just a question. Inasmuch as we will have to explain to the people when we campaign for ratification of this Constitution, will the Committee just please explain to me Section 23 which reads:

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

Is that second act not referring to the same offense?

FR. BERNAS: That is a good question, Mr. Presiding Officer. Section 23 speaks of two kinds of double jeopardy. The first kind is a double prosecution for the same offense. The second kind of double jeopardy does not require that the second jeopardy be for the same offense. The second sentence says: "If an act is punished by a law and an

ordinance." An act can be a violation of both a statute and an ordinance. If by that single act, he committed two offenses, one against a statute and another against the ordinance, if he has already been made to answer for either, then he cannot be made to answer for the other even if the other is a different offense but arising from the same act.

MR. TINGSON: Now I know what to tell the people of Negros Occidental when I campaign for the ratification of this Constitution.

THE PRESIDING OFFICER (Mr. Bengzon): Thank you very much.

The Floor Leader is recognized.

MR. RAMA: For a clarificatory question, I ask that Commissioner Maambong be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Maambong is recognized.

MR. MAAMBONG: Mr. Presiding Officer, the clarification being sought or the amendment which may be proposed, if it becomes necessary, reflects the concern of Commissioners Natividad, Ople, de los Reyes and myself, regarding our Proposed Resolution No. 482 which gives meaning and substance to the constitutional provision against cruel or unusual punishment. I do not wish to be expansive about it. I will try to stick to my time limit, but I find this rather emotional on my part because, as a practicing lawyer, I have been going in and out of jails. As a lawyer, of course, I would like to call the attention of the Committee to certain things which they already know, that it has been established by courts of modern nations that the concept of cruel or unusual punishment is not limited to instances in which a particular inmate or pretrial prisoner is subjected to a punishment directed to him as an individual, such as corporal punishment or torture, confinement in isolation or in large numbers, in open barracks or uncompensated labor, among other forms. Confinement itself within a given institution may amount to cruel or unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people. It must be understood that the life, safety and health of human beings, to say nothing of their dignity, are at stake. Although inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions.

THE PRESIDING OFFICER (Mr. Bengzon): Is it possible for us to just incorporate the Explanatory Note of Commissioner Maambong in the Record and proceed with his amendment?

MR. MAAMBONG: Just one sentence, Mr. Presiding Officer, so that my train of thought will not be destroyed, if I may.

Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of sub-standard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions. I may not have to present any amendment but I will ask some clarifications from the Committee. For example, in the case of the words "cruel, degrading or inhuman punishment," my question is: Does this cover convicted inmates and pretrial detainees? That is the first question.

FR. BERNAS: This is a matter which I discussed with Commissioner Natividad. I think the Gentleman has similar ideas on this. I tried to explain to him that the problem he envisions is different from the problem being treated here. In Section 22, we are talking of a proposed, if it becomes necessary, reflects the concern punishment that is contained in a statute which, if as described in the statute is considered to be degrading or inhuman

punishment, invalidates the statute itself. But the problem that was discussed with me by Commissioner Natividad is the situation where a person is convicted under a valid statute or is accused under a valid statute and, therefore, detained but is confined under degrading and inhuman circumstances. I suggested to him that that will be treated not together with this, because this section has a different purpose, but as a different provision as a remedy for individuals who are detained legally but are being treated in an inhuman way.

MR. MAAMBONG: Are we saying that when a person is convicted under a valid statute and he is inside the jail because of the conviction out of that valid statute when he is treated in an inhuman and degrading manner, we have no remedy at all under Section 22?

FR. BERNAS: My understanding is that this is not the protection he can appeal to. That is why I was asking Commissioner Natividad that if he wants a protection for that, to please formulate something else.

MR. MAAMBONG: All right, then.

The second question would be: The words "cruel, degrading or inhuman punishment" do not cover the situation that we contemplate of substandard or out-moded penal facilities and degrading and unsanitary conditions inside the jail.

FR. BERNAS: Yes, we are referring to cruel, degrading or inhuman punishments which are prescribed in the statute itself. We cannot conceive a situation that the statute would prescribe that. The problem that the Gentleman contemplates again, I think, is about a person who is held under a valid statute but is treated cruelly and inhumanly in a degrading manner. So, we ask for a different remedy for him.

MR. MAAMBONG: Considering that our proposed amendment is very long, I will now propose an amendment by addition after the word "inflicted" on line 29 of Section 22, page 4, which would be very short. It only says: RELIEFS FOR VIOLATIONS OF THIS SECTION SHALL BE PROVIDED BY LAW.

Let me explain that in the previous section, we already approved the sentence which says: "Penal and civil sanctions for violation of this section as well as . . . shall be provided by law." Perhaps, if the Committee will consider it as a parallel provision akin to Section 21 and insert the short amendment that I have just stated, that could satisfy us immensely.

FR. BERNAS: I think the proposal will not give the relief that the Gentleman wants because if there is a violation of this section, the relief that is needed really is an invalidation of the conviction or of the detention because the law under which he is being held is invalid. Perhaps, we could discuss this sometime in the future.

MR. MAAMBONG: Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase which would satisfy the requirements that we have presented, considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help. Would that be all right?

FR. BERNAS: Yes. And I thought the Gentleman already has the formula which we can discuss.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. MAAMBONG: So, we reserve our right to insert something here in coordination with the Committee.

Thank you very much.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized. Do we still have another

amendment?

MR. RAMA: For the last clarificatory question, I ask that Commissioner Suarez be recognized.

THE PRESIDING OFFICER (Mr. Bengzon): Commissioner Suarez is recognized.

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

I just want to make it crystal clear that when we are referring to Section 15 regarding the suspension of this priceless privilege of the writ of habeas corpus, the same is subject to the conditions, limitations and requirements provided for in the Article on the Executive. I just want to make that clear, Mr. Presiding Officer.

FR. BERNAS: Yes, Mr. Presiding Officer. The two go together.

MR. SUAREZ: That is for purposes of the record.

FR. BERNAS: Yes.

MR. SUAREZ: Thank you.

THE PRESIDING OFFICER (Mr. Bengzon): The Floor Leader is recognized.

MR. RAMA: Mr. Presiding Officer, I move that we close the period of amendments on the Article on the Bill of Rights.

THE PRESIDING OFFICER (Mr. Bengzon): Is there any objection to the closure of the period of amendments subject to the reservation made by Commissioner Maambong? (Silence) The Chair hears none; the motion is approved. The Floor Leader is recognized.

MR. RAMA: I move that we proceed to the voting on Second Reading on the Article on the Bill of Rights, subject to the amendment that will be presented later by Commissioner Maambong.

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

The Secretary-General will please read the title of the resolution before we vote.

THE SECRETARY-GENERAL: Proposed Resolution No. 486, entitled:

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

APPROVAL OF PROPOSED RESOLUTION NO. 486 ON SECOND READING

(Article on the Bill of Rights)

THE PRESIDING OFFICER (Mr. Bengzon): As many as are in favor of the proposed resolution, as amended, please raise their hand. (All Members raised their hand.)

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

The results show 35 votes in favor and no vote against.

Proposed Resolution No. 486 on the Article on the Bill of Rights is approved, as amended, on Second Reading. (Applause)

The Floor Leader is recognized.

ADJOURNMENT OF SESSION

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

THE PRESIDING OFFICER (Mr. Bengzon): Before we adjourn, tomorrow we will take up Committee Report No. 30 on the Article on Suffrage.

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

It was 7:20 p.m.

[*] Appeared after the roll call.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.