

JOURNAL NO. 68

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Thursday, August 28, 1986

CALL TO ORDER

At 10:12 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Cirilo A. Rigos, to wit:

"Most merciful God, in whom we have our being; we thank Thee for the beauty of Thy presence in our midst. As we face the challenges of this day, take away the fear and suspicions in our hearts, the self-righteousness in our souls, the pride in our intellect. Make us sensitive to the leading of Thy Spirit, that we may be humble in times of victory, and honorable in times of defeat.

May our work today be an investment unto eternity, and may it contribute to the rebuilding of this nation we all love so dearly.

Grant us the grace to rise beyond the tumults of our age, and always to put our trust in Thee.

In Jesus' name we pray.

Amen."

ROLL CALL

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

Rosario Braid, F.

Padilla, A. B.

Calderon, J. D.

Muñoz Palma, C.

De Castro, C. M.

Rama, N. G.

Colayco, J. C.

Regalado, F. D.

Concepcion, R. R.

De Los Reyes, R. F.

Davide, H. G.

Rigos, C. A.

Foz, V. B.

Rodrigo, F. A.

Gascon, J. L. M. C.

Romulo, R. J.

Guingona, S. V. C.

Sarmiento, R. V.

Jamir, A. M. K.

Sumulong, L. M.

Monsod, C. S.

Tan, C.

Nieva, M. T. F.

Uka, L. L.

Nolledo, J. N.

Villegas, B. M.

With 26 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R.

Laurel, J.B.

Alonto, A. D.

Lerum, E.R.

Aquino, F. S.

Natividad, T.C.

Azcuna, A. S.

Quesada, M.L.M.

Bengzon, J. F. S.

Suarez, J. E.

Bennagen, P. L.

Tadeo, J.S.L.

Bernas, J. G.

Tingson, G.J.

Garcia. E. G.

Villacorta, W.V.

P.M.

Bacani, T.C. Maambong, R. E.

Messrs. Brocka and Ople were absent.

Messrs. Rosales and Treñas were sick.

READING AND APPROVAL OF THE JOURNAL

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

- By Mr. de los Reyes: On page 963, first column, paragraph 7, line 3, to substitute the phrase “is not a complex crime” after “rebellion” with CANNOT BE COMPLEXED WITH ANOTHER CRIME; and
- By Mr. Regalado: On the same page, second column, paragraph 1, line 4, to insert NOT between “rebels” and “in”.

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 635 — Constitutional Commission of 1986

Communication from the Cooperative Union of the Philippines, Inc., Room 400-G N. dela Merced (Delta) Bldg., West Avenue, Quezon City, signed by Mr. Vicente Arroyo Martires, Legal and Management Counsel, ASEAN Cooperative Organization, submitting a copy of the Resolution of the First National Cooperative Congress and the communication to President Muñoz Palma requesting the Constitutional Commission to consider the inclusion in the Constitution of a state policy on cooperatives

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 636 — Constitutional Commission of 1986

Communication from Mr. Elias Q. Tan of 309-G Tres de Abril, Victor Village, Cebu City, urging inclusion in the Constitution of a provision that shall promote the establishment of open economy or special economic zones in selected areas, prototypes of which may be set up by the private sector at no cost or liability to the State, and towards this end, the State shall ensure their full development as self-reliant communities enjoying a high degree of autonomy

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 637 — Constitutional Commission of 1986

Letter from Mr. Jorge de Ramos, President, Student Council of Asian Theological Seminary, 54 Scout Madriñan, Quezon City, suggesting a provision on “the inviolability of the separation of the Church and State”

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 638 — Constitutional Commission of 1986

Letter from the teachers and personnel (62 signatories) of Claret School of Zamboanga, urging the Constitutional Commission to consider the following: 1) the Filipino child's right to education and corresponding duty of the State to provide for the same; 2) reorientation of the Philippine educational system; 3) enlightenment the ultimate role of education; and 4) no distinction or discrimination between private or public schools

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 639 — Constitutional Commission of 1986

Communication from Ms. Rosalinda V. Tirona, Ambassador to India, transmitting copies of UN documents relating to the "Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief", which might be useful in the work of the Constitutional Commission

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 640 — Constitutional Commission of 1986

Communication from Ms. Agustina B. Carrasco, President, Senior Citizens of the Philippines, Vinzons, Camarines Norte, suggesting to include in the Constitution a provision for the upliftment of the senior citizens of the Philippines

Communication No. 641 — Constitutional Commission of 1986

Communication from Mr. Julio P. Macuja, Secretary-General, Lakas ng Kabataang Pilipino (LKP) and sixteen others proposing an Article on Education, Science, Technology, Sports, Arts and Culture for consideration by the Constitutional Commission

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 642 — Constitutional Commission of 1986

Communication from the Katipunang Manggagawang Pilipino, TUCP Training Center, TUCP-PGBA Compound, Diliman, Quezon City, signed by former MP Jeremias U. Montemayor, containing negative reactions elicited among peasant and labor groups to the draft article on social justice and hope that the defects perceived therein may be corrected

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 643 — Constitutional Commission of 1986

Communication from one thousand seven hundred forty-eight concerned citizens of Negros Occidental, declaring and manifesting their adherence to democracy and to the tenets and principles of the democratic form of government, and repudiating communism in all its forms and implications; and favoring the retention of the US Military and Naval Bases in the Philippines for a reasonable period

TO THE COMMITTEE ON PREAMBLE, NATIONAL TERRITORY AND DECLARATION OF

PRINCIPLES

Communication No. 644 — Constitutional Commission of 1986

Communication from Ms. Ester B. Sy-Quimsiam, Deputy Executive Director and Officer-in-Charge, Commission on Population, MSSD, Welfareville Compound, Mandaluyong, Metro Manila, and two thousand two hundred sixty other signatories coming mostly from the NCR and parts, of the Ilocos region, seeking amendment to Section 8 of the proposed Article on General Provisions

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 645 — Constitutional Commission of 1986

Communication from the Central Visayas Ecumenical Fellowship, 49 Mabini St., Cebu City, signed by the Chairperson of its Executive Committee, Rev. Maxwell Codillo, UCCP, and eight hundred sixty-eight other signatories, expressing opposition to Proposed Resolution No. 289, entitled: “Resolution providing in the new Constitution the teaching of religion in public elementary and secondary schools under certain conditions”

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 646 — Constitutional Commission of 1986

Communication from seven hundred fifty members of the Philippine General Council of the Assemblies of God, P.O. Box 49, Valenzuela, Metro Manila, urging the Constitutional Commission to incorporate in the Constitution the provision that the separation of the Church and the State shall be inviolable as embodied in the 1973 Constitution and as understood historically and jurisprudentially in the Philippines

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 647 — Constitutional Commission of 1986

Communication from the Mindanao Press and Radio Association, Cagayan de Oro City, signed by Mr. Gabino R. Labial, Jr., submitting a Resolution adopted by the association proposing amendments to Section 4, Article II and Section 10, Article XV of the 1973 Constitution for inclusion in the proposed Constitution

TO THE COMMITTEE ON HUMAN RESOURCES

Communication No. 648 — Constitutional Commission of 1986

Letter from former MP Renato L. Cayetano requesting disapproval or rejection of the proposed redistricting of the parliamentary district of Pateros, Taguig, and Muntinlupa into Pateros and Taguig as one district, and Muntinlupa and Las Piñas, as another

TO THE COMMITTEE ON THE LEGISLATIVE

Communication No. 649 — Constitutional Commission of 1986

Communication from the Sangguniang Bayan of Mabini, Batangas, signed by the Municipal Mayor, Basilio C. Calangi, requesting the Constitutional Commission, thru the Honorable Cecilia Muñoz Palma, to reconsider its decision on the scrapping of the death penalty because it might have an adverse effect on the ratification of the proposed Constitution

TO THE COMMITTEE ON CITIZENSHIP, BILL OF , RIGHTS, POLITICAL RIGHTS AND OBLIGATIONS AND HUMAN RIGHTS

Communication No. 650 — Constitutional Commission of 1986

Letter from Mr. Oscar N. Rivera of 131 F. Zobel Street, San Miguel Village, Makati, Metro Manila, expressing

agreement to the proposal of Commissioner Joaquin Bernas that a piecemeal submission to the people of the proposed charter be adopted to give the people wider choices in deciding major controversial issues

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 651 — Constitutional Commission of 1986

Letter from seventy-six Members of the Faculty of the University of the Philippines and Members of the Academic Community, seeking to include in the Constitution a provision obliging the State to explicitly protect the human life of the unborn from the moment of conception

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

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

On motion of Mr. Rama, there being no objection, the Body resumed consideration of Proposed Resolution No. 539 (Committee Report No. 37), entitled:

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

Mr. Rama stated that the parliamentary status would still be the period of amendments.

Thereupon, the Chair recognized Mr. Nolleto for his amendment.

AMENDMENT OF MR. NOLLEDO

Mr. Nolleto recalled that he proposed in the previous session the following Section 3 which he co-authored with Messrs. Bengzon and Tinson, to wit: CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS. He explained that Messrs. Bernas and Monsod objected to his proposed amendment and that Mr. Monsod suggested Congress should be authorized to fix the cases which shall fall within the exclusive jurisdiction of the Commission on Human Rights and it should be provided in the Transitory Provisions that until Congress shall provide otherwise, the presently constituted Commission on Human Rights shall continue to function.

Mr. Nolleto stated that the Transitory Provisions should authorize the Presidential Committee on Human Rights to continue to discharge its functions, spelling out the points to guide Congress in determining the jurisdiction of the Commission on Human Rights as follows: 1) the pertinent provisions of the Bill of Rights; 2) the pertinent provisions of the Universal Declaration of Human Rights; 3) the provisions of the International Covenant on Civil and Political Rights; and 4) the answers of Messrs. Garcia and Sarmiento to the interpellations of Mr. Bengzon on the jurisdiction of the Commission.

Mr. Sarmiento accepted the proposed amendment on behalf of the Committee.

Mr. Monsod manifested that the Committee's acceptance is on the understanding that there shall be a complementary provision in the Transitory Provisions.

MR. PADILLA'S OBSERVATION

Mr. Padilla stated that the phrase "exclusive jurisdiction" would not be compatible with the fact that the Bill of Rights should be the concern of the entire governmental machinery including the police, the law enforcement

agencies, the prosecuting arm of the government and the judiciary. Mr. Nollado explained that the phrase “exclusive jurisdiction” was used in the light of the functions of the Commission on Human Rights which are investigative and recommendatory in nature and would not do away with the enforcement in appropriate cases of civil and political rights by other agencies of the government.

However, Mr. Nollado stated that in the light of Mr. Padilla's observation, he would recommend to the Committee the deletion of the phrase “exclusive jurisdiction” to avoid confusion.

Mr. Padilla stated that what concerns him most is the arrest, prosecution, trial and conviction of the violators of human rights which the Commission could not do since it has to rely on the law enforcement agencies of the government.

On the phrase "The Congress shall provide for the cases," Mr. Padilla observed that this would amount to an imposition on Congress to specify the various violations, which need not be done because the Bill of Rights already provides for and guarantees human rights.

In reply, Mr. Nollado adverted to the queries of Mr. Bengzon on the specific cases for investigation by the Commission which, he said, provided the basis for the need to specify the cases which shall appropriately fall within the Commission's jurisdiction.

Mr. Padilla argued that following the principle of *inclusio unius, exclusio alterius*, to specify or enumerate the cases would exclude others not so specified and would limit the functions of the Commission. Mr. Nollado replied that the amendment would not preclude Congress from specifying other circumstances, other than those covered by the Universal Declaration of Human Rights or the Bill of Rights.

Mr. Padilla pointed out that the Bill of Rights already provides for individual human rights which would not need any further specification by Congress

Mr. Monsod reiterated the Committee's stand that the Commission should have very modest objectives because it has to focus on concrete and immediate matters which require immediate attention. He stated that the Committee prefers a catch-all provision to enlarge the Commission's functions should the need arise. For the purpose, he suggested the phrase, **IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION**.

On the word “exclusive”, Mr. Monsod noted that Mr. Padilla's observations were well taken.

At this juncture, Mr. Nollado informed that Mr. de los Reyes would amend his proposed amendment.

On query of Mr. Monsod, Mr. Nollado affirmed that the inclusion of the phrase **IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION** is acceptable to him after which the word “exclusive” would be deleted.

MR. DE LOS REYES' AMENDMENT TO THE AMENDMENT

Mr. de los Reyes proposed the word **AUTHORITY** in lieu of “jurisdiction” so as not to confuse it with jurisdiction of the Regional Trial Courts and Municipal Courts. He argued that “authority” would be the more appropriate term in defining the scope of the work of the Commission.

In reply thereto, Mr. Nollado observed that with the amendment of Mr. de los Reyes, his proposed amendment would read: **CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION ON HUMAN RIGHTS TO INVESTIGATE.**

In reply to the inquiry of Mr. Nollado whether the Committee would be amenable to the amendment, as amended, Mr. Sarmiento stated that Congress would take into account the priorities shall continue to function until otherwise provided recommended by the Commission.

Thereafter, Mr. Nollado accepted Mr. de los Reyes amendment to his amendment, which was, in turn, accepted by the Committee.

PROPOSED AMENDMENT OF MR. DAVIDE

To reflect the intent of the Committee, Mr. Davide proposed a new section to read: UPON RECOMMENDATION OF THE COMMISSION, CONGRESS SHALL DEFINE THE CASES OF VIOLATIONS OF HUMAN RIGHTS WHICH SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION. This, he maintained, would leave it to the Commission to determine the cases over which it may have expanded jurisdiction or authority but which should be mandated by Congress.

Mr. Monsod observed that this might create a “chicken and egg” situation inasmuch as theoretically the Commission shall not come into existence until the law has been formulated. Mr. Davide underscored that the Body shall provide that the existing Presidential Committee on Human Rights shall continue its functions as well as exercise the powers given to the Commission created by the 1986 Constitution.

SUSPENSION OF SESSION

Mr. Rama noted that the phrase “mandated by Congress” would be quite controversial. On his motion, the Chair suspended the session with the suggestion that the Members confer on the matter.

It was 10:46 a.m.

RESUMPTION OF SESSION

At 11:35 a.m., the session was resumed.

MR. DAVIDE'S MODIFIED AMENDMENT TO THE AMENDMENT

Mr. Davide proposed the following modified amendment with Mr. Nollado as the main author:, and Messrs. de los Reyes, Regalado, Bengzon, Monsod, Garcia, Sarmiento and himself as co-authors, to wit:

SECTION 3. CONGRESS MAY PROVIDE FOR OTHER CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION, TAKING INTO ACCOUNT ITS RECOMMENDATION.

Mr. Nollado accepted the amendment to his amendment on the understanding that the primary jurisdiction of the Commission on Human Rights would be found in Section 2(1) of the Committee Report and on the further understanding that it shall be provided in the Transitory Provisions that the present Presidential Committee on Human Rights shall continue to function until otherwise provided by congress.

Mr. Sarmiento accepted the amendment.

Submitted to a vote, and with 24 members voting in favor, none against and 2 abstentions, the amendment was approved by the Body.

AMENDMENT TO MR. DAVIDE'S AMENDMENT

At this juncture, Mr. Sarmiento presented the Committee's amendment to the amendment of Mr. Davide which the Body approved in the previous session, to wit:

Substitute the clause "Adopt its own rules of procedure, cite for contempt violations thereof in accordance with the Rules of Court in the Philippines" with ADOPT ITS OWN PRIORITIES AND RULES OF PROCEDURE, CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT OF THE PHILIPPINES.

Mr. Davide proposed to modify the Committee's amendment to his amendment with the words ADOPT ITS PRIORITIES, PROMULGATE ITS OWN RULES OF PROCEDURE.

Mr. Sarmiento accepted the modified amendment.

INQUIRY OF MR. DE LOS REYES

Adverting to the explanation made in the previous session that the authority of the Commission shall extend not only to violations of human rights by the military but also by private parties which shall include violations committed by those working against the government, Mr. de los Reyes inquired whether the term "priorities" would mean that the Commission, in exercising its rights to prioritize its investigations of human rights violations committed by the military, could disregard in the meanwhile, abuses committed by private parties. He stated that it was his understanding, when Mr. Ople introduced the amendment, that the purpose of placing therein the investigation of violations committed by those who rebel against the government and the military is to strike a balance between the investigation and reporting of the results of the investigation of the Commission. He pointed out that the word "priorities" could defeat the purpose by simply concentrating its investigation on violations of human rights by the military.

Replying thereto, Mr. Sarmiento stressed that it is not the intent to give exception because the Commission is tasked to investigate all forms of human rights violations committed by public officers, civilian and military authorities and private parties. He explained that the word "priorities" would leave to the Commission the decision as to what forms of violations should be first investigated, taking into account massive human rights violations which are expected to contribute to the volume of work of the Commission.

Mr. de los Reyes opined that there would be no need to state it in the Constitution because the Commission has the right to investigate all violations not on the basis of what it thinks should be prioritized, but on a first-come, first-served basis. In view thereof, he interposed an objection to the proposed amendment.

MR. BERNAS' PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Bernas stated that he is in favor of explicitly stating that the Commission could adopt its own priorities as a recognition of the fact that it could be overwhelmed with complaints. He proposed, however, to transpose the subject of priorities to the last paragraph of the Section so that it would read: "ESTABLISH ITS OWN PRIORITIES and perform such other functions as may be provided by law".

Mr. Sarmiento accepted Mr. Bernas' amendment by transposition.

REMARKS OF MR. DE CASTRO

Mr. de Castro agreed with Mr. de los Reyes' observation that the subject of priorities should not be placed in the Constitution, stating that this would preempt the members of the Commissions who, he believed, have certain priorities once appointed to that office.

In view of the objections of Messrs. de los Reyes and de Castro, Mr. Sarmiento asked that the matter be submitted to the Body.

RESTATEMENT OF THE AMENDMENT

Mr. Foz restated the last paragraph, as amended, to wit: "ESTABLISH ITS OWN PRIORITIES and perform such other duties and functions as may be provided by law".

Mr. de Castro requested that the Body vote only on the inclusion of the words ESTABLISH ITS OWN PRIORITIES and set aside the rest of the paragraph.

REMARKS OF MR. CONCEPCION

Mr. Concepcion stated that the reason for the statement of priorities is that the Commission would not want to create expectation on the part of the Sec public, which could not be fulfilled immediately. He stressed the need for the Commission to determine which type of violation deserves immediate attention regardless of the order in which complaints have been filed. He further stated that the amendment would precisely avoid creating an expectation and thereafter disillusionment on the part of the public if not every complaint could be attended to soon enough considering that this is the first time that a Constitutional Commission of this type is established for the defense, protection and promotion of human rights.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 11:50 a.m.

RESUMPTION OF SESSION

At 12:01 p.m., the session was resumed.

AMENDMENT OF MR. REGALADO

Mr. Regalado, jointly with Messrs. de Castro, de los Reyes, Davide, Natividad and Guingona, proposed an amendment to subparagraph 2 which would read as follows: "ADOPT ITS OPERATIONAL GUIDELINES, rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court of the Philippines".

Mr. Regalado explained that the use of the phrase "operational guidelines" would underscore the fact that in its operations, the proposed Commission cannot resort to discriminatory programs but enforce its policies and conduct its operations on the basis of equality and parity, without putting at a disadvantage any sector. He added that the proposed amendment took into consideration the volume of work that may be encountered by the Commission.

Submitted to a vote, and with 30 Members voting in favor, none against and two abstentions, the Body approved Mr. Regalado's proposed amendment.

AMENDMENT OF MR. BENGZON

As proposed by Mr. Bengzon, amended by Messrs. Foz and Guingona, and accepted by the Committee, the Body approved the inclusion of a second paragraph to Section 1 which reads:

THE COMMISSION SHALL BE COMPOSED OF A CHAIRMAN AND FOUR MEMBERS ALL OF WHOM SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE TERM AND OTHER QUALIFICATIONS AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW. . .

Mr. Bengzon proposed another paragraph of action 1 which would read:

THE COMMISSION SHALL ENJOY FISCAL AUTONOMY. THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

He explained that the amendment would align this proposed Commission on Human Rights with the other Constitutional Commissions and that it would further ensure its independence.

Mr. Davide stated that he introduced a similar amendment in the previous session that was modified by Mr. Maambong, to which modification he agreed. He then proposed the deletion of the first sentence on the ground that it would be a surplusage, because the autonomy actually intended is the automatic release of these appropriations.

Mr. Bengzon suggested that the Committee on Style be left to determine whether the first sentence is a surplusage or not, as long as the intent of the Body that this Commission on Human Rights would enjoy fiscal autonomy remains on record.

With that understanding, Mr. Sarmiento accepted Mr. Bengzon's proposed amendment.

At this juncture, Mr. Guingona stated that reference should not be limited to the Committee on Style because the Sponsorship Committee is likewise tasked with the same work.

Mr. Monsod agreed to retain the second sentence and leave to the Committees concerned the determination of whether they would include the first sentence.

Thereupon, Mr. Bengzon restated his amendment, as amended, to wit: THE APPROVED ANNUAL APPROPRIATIONS FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

Mr. Padilla stated that the amendment reminds him of the provisions under the Judiciary and the Constitutional Commissions. He then inquired whether it is the intention to elevate the position of this proposed Commission, which is only investigative and recommendatory, to the high dignity of a constitutional commission and the independence of the Judiciary by making a positive statement in the Constitution that its appropriation shall be released automatically and regularly. Mr. Padilla observed that the proposed amendment would complicate the provisions on Human Rights which would, in turn, complicate and make the Constitution too long. He pointed out that other bodies with quasi-judicial functions do not enjoy such kind of constitutional guarantee. In reply, Mr. Bengzon explained that the amendment merely seeks to ensure the independence of the Human Rights Commission although it would not be a constitutional commission within the contemplation of the Article on the Constitutional Commissions.

In reply to Mr. Guingona's query whether the amendment would refer only to the automatic release of funds

rather than impose a priority that might destroy the priorities of the Executive and Legislative departments, Mr. Bengzon affirmed that his proposal would only refer to automatic release.

Submitted to a vote, and with 26 Members voting in favor, 4 against, and 2 abstentions, the proposed amendment of Mr. Bengzon was approved by the Body.

AMENDMENT OF MR. DAVIDE

Thereafter, Mr. Davide proposed to add a new sentence as the last paragraph of Section 1, to wit:

UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED.

Mr. Monsod pointed out that this provision should be placed in the Transitory Provisions, to which Mr. Guingona agreed.

Mr. Davide, however, stated that similar provisions were included in the Article on National Economy and Patrimony particularly the provisions On the economic and planning agency to be created by Congress to replace the National Economic and Development Authority, and on the Central Monetary Authority which shall replace the Monetary Board.

Mr. Monsod invited attention to the fact that the National Economic and Development Authority, the Monetary Board and the Central Bank -were created by laws enacted by Congress while the Presidential Committee on Human Rights was not created by Congress, to which Mr. Davide replied that even if the Committee on Human Rights was created by the President, the Executive Order was issued by the President in the exercise of her legislative power. He further stated that his proposal would mandate that the existing Presidential Committee on Human Rights would exercise immediately upon ratification of the Constitution the very functions of the Commission to be created by Congress.

Mr. Guingona pointed out that there could also be immediate exercise of its functions even if the provision is transferred to the Transitory Provisions.

Thereupon, Mr. Davide moved that the Body first vote on the merit of his proposal before deciding on where to place it.

Mr. Davide restated his proposed amendment to be the last paragraph of Section 1, to wit:

UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED.

The Sponsor accepted the proposed amendment subject to the decision of the Body on its proper placement.

Submitted to a vote, and with 29 Members voting in favor, none against and 2 abstentions, the proposed amendment of Mr. Davide was approved by the Body subject to further decision on its proper placement.

MOTION OF MR. GUINGONA

Thereafter, Mr. Guingona moved to defer action on the question where the amendment should be placed until after the Body shall have reconsidered the Article on National Economy and Patrimony in order that similar provisions would be considered all together for transfer to the Transitory Provisions, to which Mr. Monsod replied that the institutions provided under the Article on National Economy and Patrimony should be considered

separately since they would replace bodies created by law unlike the Presidential Committee on Human Rights which was created by an Executive Order.

Thereupon, Mr. Guingona moved that the proposed amendment of Mr. Davide be transferred to the Article on Transitory Provisions.

The Chair restated the motion with the clarification that a negative vote would retain the amendment in the Article on Human Rights.

Submitted to a vote, and with 11 Members voting in favor, 16 against, and 4 abstentions, the motion was lost.

INQUIRY OF MR. DE LOS REYES

In reply to Mr. de los Reyes' query on whether it is the function of the Committee on Sponsorship to decide where to place certain provisions, Mr. Guingona stated that it is the view of some members of the Committee that it should respect the decision of the Body in plenary session but if the Body could not decide on the proper situs of the provision, the Committee may suggest the proper placement.

APPROVAL OF SECTION 1, AS AMENDED

SECTION 1. THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED A COMMISSION ON HUMAN RIGHTS. THE COMMISSION SHALL BE . COMPOSED OF ONE CHAIRMAN AND FOUR MEMBERS ALL OF WHOM SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES, AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE TERM, QUALIFICATIONS AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW.

THE APPROVED ANNUAL APPROPRIATIONS FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED.

Submitted to a vote, and with 36 Members voting in favor, none against and 1 abstention, Section 1, as amended, was approved by the Body.

MOTION TO APPROVE SECTION 2, AS AMENDED

Thereafter, Mr. Rama moved for the approval of Section 2, as amended, to wit:

SECTION 2. THE COMMISSION ON HUMAN RIGHTS SHALL HAVE THE FOLLOWING POWERS AND FUNCTIONS:

(1) INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PARTY, ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND POLITICAL RIGHTS;

(2) ADOPT ITS OPERATIONAL GUIDELINES, ITS RULES OF PROCEDURES AND CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT;

(3) PROVIDE APPROPRIATE LEGAL MEASURES FOR THE PROTECTION OF HUMAN RIGHTS OF ALL PERSONS WITHIN THE PHILIPPINES, AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD AND PROVIDE FOR PREVENTIVE MEASURES AND LEGAL AID SERVICES TO THE UNDERPRIVILEGED WHOSE HUMAN RIGHTS HAVE BEEN VIOLATED OR IN NEED OF PROTECTION;

- (4) EXERCISE VISITORIAL POWERS OVER JAILS, PRISONS, OR DETENTION FACILITIES;
- (5) ESTABLISH A CONTINUING PROGRAM OF RESEARCH, EDUCATION AND INFORMATION TO ENHANCE RESPECT FOR THE PRIMACY OF HUMAN RIGHTS;
- (6) RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS OR THEIR FAMILIES OF VIOLATIONS OF HUMAN RIGHTS;
- (7) MONITOR FOR THE PHILIPPINE GOVERNMENT'S COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS;
- (8) GRANT IMMUNITY FROM PROSECUTION TO ANY PERSON WHOSE TESTIMONY OR WHOSE POSSESSION OF DOCUMENTS OR OTHER EVIDENCE IS NECESSARY OR CONVENIENT TO DETERMINE THE TRUTH IN ANY INVESTIGATION CONDUCTED BY IT OR UNDER ITS AUTHORITY;
- (9) REQUEST THE ASSISTANCE OF ANY MINISTRY, BUREAU, OFFICE OR AGENCY IN THE PERFORMANCE OF ITS FUNCTIONS;
- (10) APPOINT ITS OFFICERS AND EMPLOYEES IN ACCORDANCE WITH LAW; AND
- (11) PERFORM SUCH OTHER DUTIES AND FUNCTIONS AS MAY BE PROVIDED BY LAW.

INQUIRY OF MR. PADILLA

Mr. Padilla inquired why Section 1 limits the violation of human rights to civil and political rights. Mr. Sarmiento affirmed that under Section 3 Congress may provide for other cases of violations of human rights that shall fall within the authority of the Commission.

Mr. Padilla stated that he could not see the wisdom of limiting human rights to civil and political rights in Section 1.

INQUIRY OF MR. BACANI

On Section 2(5), which provides for the “primacy of human rights”, in reply to Mr. Bacani's query as to what other rights over which human rights would have primacy, Mr. Garcia stated that the phrase refers to inalienable rights guaranteed by the Constitution that must be respected regardless of situations.

Mr. Bacani pointed out that the word “primacy” is relative and he was inquiring on what other rights over which human rights would be primary. He stated, for instance, that the right to assembly could not be considered a primary human right because the State can regulate such right consistent with the rights of other people.

Mr. Sarmiento, however, contended that the Article speaks of inalienable human rights which should not be compared to other rights.

Mr. Bacani pointed out that when one speaks of primacy of human rights it has to be in relation to something for example, the exigencies of development.

At this juncture, Mr. Villegas suggested that instead of using "primacy of human rights", the Committee could substitute it with ENHANCE RESPECT FOR THE INALIENABLE NATURE OF HUMAN RIGHTS.

Ms. Aquino opined that the concept of “primacy” in relation to something does not have to be adversarial for, in fact, it could be mutually supportive and reinforcing. She stressed that the Committee's position is that “primacy of human rights” does not necessarily imply comparison in a hierarchy of legal values or constitutional mandates

because in such a hierarchy human rights take preeminence over other considerations which may even support or reinforce it.

Mrs. Rosario Braid opined that perhaps what Mr. Bacani wants is a definite statement giving primacy to individual rights over collective rights.

Mr. Bacani explained that "primacy" of human rights" without any qualification whatsoever may not be a primacy at all.

Ms. Aquino stated that the Committee's basic postulate is that human rights are important, they have preeminence and in the hierarchy of values, they take prior notice.

Mr. Garcia stated that it is the sense of the Committee that human rights should have preeminence without necessarily comparing them with political, civil, social and economic rights.

Mr. Bacani maintained that when one speaks of the preeminence of something, it has to be over some other thing although the relationship between the two need not be adversarial. He stressed that when one speaks of human rights in its totality, he could not simply invoke the preeminence of a particular human right over, for example, the exigencies of national security.

At this juncture, Mr. Monsod pointed out that a parallel provision in the Article on Social Justice mandates Congress to give highest priority to the enactment of laws relative to social justice with the explanation that "highest priority" does not necessarily mean that other priorities would be excluded but that laws on social justice should first be taken up by the Congress. He added that when the Committee speaks of human rights, it simply means they should be given the highest values without necessarily meaning that other values could not be at par with them.

Mr. Bacani observed that Mr. Bernas had clearly explained "highest priority" should mean that laws concerning social justice should be among those to be first tackled by Congress but in such instance there is a particular point of reference or relationship whereas there is none in using the word "primacy".

Replying to the Chair's query on the Committee's intent in using the word "primacy", Mr. Sarmiento stated that the Committee merely wants to stress the importance of human rights and not to compare them with anything.

Mr. Bacani suggested that the Committee use instead the phrase TO PROPAGATE THE GREATEST IMPORTANCE OF HUMAN RIGHTS.

INQUIRY OF MR. SUAREZ

On Mr. Suarez' query as to how Section 1(1) would operate as against the jurisdiction of existing investigatory bodies, Mr. Sarmiento explained that the investigation would be conducted by the Commission without depriving the appropriate government agencies of their prosecution function. He added that the fiscal, on his own, could also conduct a supplementary investigation of human rights violations.

On the query whether an investigation already being conducted by the fiscal would deprive the Commission on Human Rights of jurisdiction to conduct further investigation on the human rights aspect, Mr. Sarmiento stated that primacy would be given to the investigation being conducted by the Commission. In case of conflict, he stated that violations, including civil and political rights, would be conducted by the Commission to the exclusion of other agencies of government. He added, however, that the prosecution would be conducted by the fiscals, the Ministry of Justice or other government agencies.

On Mr. Suarez' query whether the Commission on Human Rights would be divested of its right to further

investigate human rights violations if the fiscal has already filed a case in court, Mr. Sarmiento stated that in such case the Commission would be deprived of its right to conduct further investigation and all it could do is assist the fiscal in the prosecution of the case.

On the contention that this would subordinate the primary right of human violations to judicial proceedings, Mr. Sarmiento clarified that the investigation of all forms of human rights violations involving civil and political rights would be conducted by the Commission while the prosecution would be conducted by the fiscals.

In reply to Mr. Suarez' argument that it is theoretically possible that the noble motivation behind the creation of the Commission would not be effectively served the moment a case is filed in court, Mr. Sarmiento stressed that the mere fact that the Commission would only undertake the investigation of violations of human rights while the fiscal would undertake the prosecution thereof would not stifle the Commission's power to conduct such investigation.

On Mr. Suarez' query as to how the Commission could prosecute a case in accordance with its findings if the fiscal refuses to do so because of a different finding in conflict with that of the Commission, Mr. Foz explained that the Commission would handle exclusively the fact-finding aspect and refer any evidence it may gather to the fiscal's office which, in turn, would conduct the formal preliminary investigation. At this stage, Mr. Foz added that the Commission could still actively involve itself in terms of providing assistance to the aggrieved parties and if the fiscal refuses to file the case on the ground of lack of probable cause or prima facie evidence, the Commission's remedy is to appeal to the Ministry of Justice to review the fiscal's findings.

On the query whether the Commission could be strengthened so that its findings would always be considered over and above the findings of the fiscal, Mr. Foz stated that it could be done if the Body would be willing to grant it quasi-judicial functions.

At this juncture, Mr. Bengzon manifested that his interpretation of the Section is that the Commission on Human Rights would have exclusive jurisdiction on the investigation of human rights violations and, if it finds a prima facie case, it should refer the case to the fiscal's office which has no choice but to prosecute the case. However, he pointed out that from the Committee's explanation it would seem that the Commission's power to investigate is not exclusive because a complainant would have to go to it to file his complaint but at the same time he could file his complaint in the fiscal's office. He added that there could not be two agencies investigating the same case based on previous interpellations where the Members were made to understand that human rights violations would be investigated by the Commission to the exclusion of other government agencies.

Responding thereto, Mr. Foz explained that his previous statement was in reference to the ordinary interpretation of the word "investigate". He stated that the Body could strengthen the Commission's power to investigate by making it exclusive so that an investigation completed by the Commission would no longer be reviewed by the fiscal's office or the Ministry of Justice and that once the papers of the case are submitted to it by the Commission, their only duty would be to file and prosecute the case in court.

SUSPENSION OF SESSION

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

It was 1:02 p.m.

RESUMPTION OF SESSION

At 3:02 p.m., the session was resumed.

Upon resumption of session, Mr. Rama moved that Mr. Bengzon be recognized

CLARIFICATION OF MR. BENGZON

Mr. Bengzon manifested that he discussed with the Committee the interpretation of the word "investigate" in Section 2(1) and it was agreed that the term shall be construed as vesting the Commission exclusive power to investigate all violations of human rights. He stated that should the Commission find a prima facie case, the records shall be turned over to the fiscal who, in turn shall file the case in court but should the fiscal, after review, believe otherwise, the records shall automatically be elevated to the Minister of Justice who shall review the same, and, if the Minister agrees with the Commission, a special prosecutor shall be assigned to prosecute the case but should the Minister sustain the fiscal's findings, the case would be considered closed.

Mr. Sarmiento stated that some Members have expressed reservations on Mr. Bengzon's comments because the Minister of Justice may not be supportive of the Commission, thus, defeating its purpose. He stated that the Committee had formulated an interpretation to the effect that the Commission may deputize fiscals or government prosecutors for the filing of appropriate cases in court if the evidence warrants.

In reply to Mr. Bengzon's query whether the deputation of the fiscal to file the case in court would leave him no choice but to do as directed, Mr. Sarmiento answered in the affirmative. In case of disagreement by the fiscal with the Commission's findings, he stated that the Commission could deputize any competent persons to prosecute the case.

Mr. Foz offered the alternative that the Commission consult with the Minister of Justice for the assignment of another fiscal to prosecute the case.

Mr. Bengzon stated that the Minister of Justice has control and supervision over all prosecution agencies and to grant the Commission the power to deputize would be an exception to the rule. Agreeing with Mr. Bengzon's observations, Mr. Foz stated that for such exceptional cases, the Commission should be careful in deputizing fiscals and should see to it that the evidence is strong.

On whether Mr. Foz' suggestion should be considered a fallback position so that the general procedure would be for the case to be referred first to the fiscal and then to deputize any other competent person should the fiscal's finding be contrary to that of the Commission, Mr. Foz stated that the deputation would be a direct action by the Commission should the first fiscal withdraw. He added that the Commission may request the Ministry of Justice to assign a state prosecutor which is a regular practice of the Ministry as when the fiscal is accused of being bias or when the case is to be heard in far-flung areas.

Mr. Bengzon observed that the difference is that under his proposal the records will have to be reviewed by the Minister of Justice while Mr. Foz' proposal is that there is no need for the Minister of Justice to make the review. The Chair observed that under the latter proposal the Commission would become a super body, over and above the Ministry of Justice.

Mr. Regalado volunteered the information that under the 1985 Rules on Criminal Procedure, the Minister of Justice has full charge of all prosecutorial services from which the Tanodbayan acquires his authority to deputize. He observed that the Committee's position is that a prima facie finding by the Commission would no longer be a prima facie case nor a probable cause but sufficient grounds to believe that a crime had been committed. He stated that should the fiscal differ from the position of the Commission, he cannot be compelled to prosecute if he

believes that there is no prima facie case since he is a quasi-judicial officer, and to compel him to proceed with the case would gravely injure the prosecutorial system of penal justice as pointed out in the cases of *Salcedo vs. Liwag* and *Guiiao vs. Figueroa*.

In case the fiscal disagrees, Mr. Regalado stated that the complaining party could bring the matter to the Minister of Justice.

He suggested that Sections 1686 and 1687 of the Revised Administrative Code be resorted to for the deputation of special prosecutors

Mr. Sarmiento stated that the Committee is aware of such procedure but expressed apprehension that the Minister of Justice might delay the case, in reply to which Mr. Regalado suggested that the Commission should have its own special prosecutors.

Ms. Aquino expressed support for Mr. Regalado's observations by stating that there is no need to be apprehensive about the Commission's potency since it is a constitutional body with moral compulsion.

She stated that fiscals should not be deprived of their discretionary powers because it would disturb the prosecutory system.

Mr. Bengzon requested the Body to decide the matter. Mr. Foz, however, stated that the Committee is willing to subscribe to Mr. Bengzon's interpretation.

Mr. Nollado commented that under the 1985 Rules on Criminal Procedure, the fiscal does not conduct hearings for purposes of preliminary investigation. He stated that the complainant files an affidavit and affidavits of his witnesses while the respondent files his counter-affidavits, and that the fiscal propounds clarificatory questions only when there are matters to be clarified. He opined that there should be a provision that once the Commission determines the existence of a prima facie case, it could deputize any prosecutor or any competent person, depriving the fiscal of the jurisdiction to determine the existence of a prima facie case, since the Commission is a fact-finding body.

Mr. Padilla observed that the whole system of criminal procedure would be destabilized under the proposed procedure as there are instances when fiscals could refuse to prosecute. He stated that the prosecution of human rights violations cannot be vested in a commission as the prevailing system vests to the aggrieved party, the police, or any law enforcement agency the right to file the complaint, and/or for the Commission to first deputize the fiscal, which would not promote human rights but create obstacles to the speedy administration of justice.

Mr. Sarmiento reiterated the Committee's acceptance of Mr. Bengzon's interpretation but stated that the comments of Mr. Nollado compels the Committee to address the issue to the Body.

Mr. Bengzon restated the issue, adding that Mr. Padilla had raised two aspects, namely, 1) exclusivity, and 2) deputation. He suggested that the Body consider them one at a time.

Mr. Padilla manifested that the issue on exclusivity had been resolved when Mr. Nollado presented his amendment, to which Mr. Bengzon replied that he raised the issue again because he was made to understand during the interpellations that the Commission shall have exclusive jurisdiction over the investigation of human rights violations.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 3:28 p.m.

RESUMPTION OF SESSION

At 3:36 p.m., the session was resumed.

REMARKS OF MR. SARMIENTO

Upon resumption of session, Mr. Sarmiento informed that after consultation, the Committee members had agreed on the interpretation of Section 2(1) to mean that the Commission shall exclusively investigate all forms of human rights violations. He explained that should there be a prima facie case, the Commission would refer it to the fiscal who would file it, but if the fiscal refuses to file the case, it would automatically be elevated to the Ministry of Justice which, if it agrees with the Commission's findings, will assign the case to a special prosecutor it shall deputize. He added that in the event the Ministry of Justice, after evaluation of the case, disagrees with the Commission, the case would be considered terminated.

INQUIRY OF MR. DAVIDE

Mr. Davide observed that in the first statement, Mr. Sarmiento used "exclusive" to define "jurisdiction" while in the second reading of the interpretation the word was omitted. As to what would be the controlling statement, Mr. Sarmiento clarified that it would be the second and not the first statement he made.

REMARKS OF MR. NOLLEDO

Mr. Nollado maintained that the moment the Ministry of Justice decides not to file the case, considering that the Ministry is under the control of the President and the Minister is the alter ego of the President, the case would not be terminated because of the possibility of appeal to the Office of the President. He opined that it is only when the Office of the President affirms the decision of the Ministry of Justice that the case is terminated. He suggested that the Committee should qualify its statement that the moment the Ministry of Justice says there is no prima facie case, this would not preclude the complainant's right to appeal to the Office of the President.

Mr. Sarmiento agreed with Mr. Nollado's observations.

REMARKS OF THE CHAIR

The Chair called the attention of the Body to the fact that all the subsections of Section 2 had been approved either in the previous session or during the morning session. She stated that the Body would be voting on the whole Section with all its sub-sections. Thereupon, she requested Mr. Sarmiento to read Section 2 in its entirety.

REMARKS OF MR. PADILLA

Mr. Padilla maintained that the matter should be left to the Supreme Court inasmuch as it is part of the judicial system. He observed that the Commission would provide for certain rules when the Supreme Court had already promulgated rules on criminal procedure as well as the Rules of Court. He added that this had been covered by the approved Article on the Judiciary.

REQUEST OF MR. BACANI

At this juncture, Mr. Bacani requested the Committee to listen to and possibly accept the explanation of Ms. Aquino on the matter of primacy inasmuch as the Committee's explanation was not so convincing and persuasive.

EXPLANATION OF MS. AQUINO

Ms. Aquino explained that following the concept of primacy, any apparent conflict between the exigencies of the times and the people's basic human rights must be resolved according to the principle that a social organization exists to serve and protect man and that it cannot claim to serve the common good if human rights are not safeguarded.

VOTING ON SECTION 2, AS AMENDED

Thereafter, upon direction of the Chair, Mr. Sarmiento read Section 2, to wit:

SECTION 2. THE COMMISSION ON HUMAN RIGHTS SHALL HAVE THE FOLLOWING POWERS AND FUNCTIONS:

(1)

INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PARTY ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND POLITICAL RIGHTS;

(2)

ADOPT ITS OPERATIONAL GUIDELINES, RULES OF PROCEDURES AND CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT;

(3)

PROVIDE APPROPRIATE LEGAL MEASURES FOR THE PROTECTION OF HUMAN RIGHTS OF ALL PERSONS WITHIN THE PHILIPPINES AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD AND PROVIDE FOR PREVENTIVE MEASURES AND LEGAL AID SERVICES TO THE UNDERPRIVILEGED WHOSE HUMAN RIGHTS HAVE BEEN VIOLATED OR NEED PROTECTION;

(4)

EXERCISE VISITORIAL POWERS OVER JAILS, PRISONS OR DETENTION FACILITIES;

(5)

ESTABLISH A CONTINUING PROGRAM OF RESEARCH EDUCATION AND INFORMATION TO ENHANCE RESPECT FOR THE PRIMACY OF HUMAN RIGHTS;

(6)

RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS OR THEIR FAMILIES OF VIOLATIONS OF HUMAN RIGHTS;

(7)

MONITOR THE PHILIPPINE GOVERNMENT'S COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS;

(8)

GRANT IMMUNITY FROM PROSECUTION TO ANY PERSON WHOSE TESTIMONY OR WHOSE POSSESSION OF DOCUMENTS OR OTHER EVIDENCE IS NECESSARY OR CONVENIENT TO DETERMINE THE TRUTH IN ANY INVESTIGATION CONDUCTED BY IT OR UNDER ITS AUTHORITY;

(9)

REQUEST THE ASSISTANCE OF ANY MINISTRY, BUREAU, OFFICE OR AGENCY IN THE PERFORMANCE OF ITS FUNCTIONS;

(10)

APPOINT ITS OFFICERS AND EMPLOYEES IN ACCORDANCE WITH LAW; AND

(11)

PERFORM SUCH OTHER DUTIES AND FUNCTIONS AS MAY BE PROVIDED BY LAW.

Submitted to a vote, and with 31 Members voting in favor, one against and two abstentions, section 2, as amended, was approved by the Body.

CONSIDERATION OF SECTION 3

Thereupon, Mr. Sarmiento read Section 3, to wit:

CONGRESS MAY PROVIDE FOR OTHER CASES OF HUMAN RIGHTS THAT SHOULD FALL WITHIN THE AUTHORITY OF THE COMMISSION TAKING INTO ACCOUNT ITS RECOMMENDATIONS.

INQUIRY OF MR. BACANI

Mr. Bacani inquired how Section 3 would differ from the last statement of function which provides "Perform such other duties and functions as may be provided by law".

In response thereto, Mr. Sarmiento stated that the Commission would investigate all forms of human rights violations involving civil and political rights although in the future it may, as the need arises, investigate other human rights violations affecting economic, social and cultural rights which may then be covered by the Commission. He noted, moreover, that this is the reason for allowing Congress to provide for other cases of human rights violations upon the recommendation of the Commission.

As to whether this would not be covered by the aforementioned function Mr. Foz clarified that Section 3 is a more particular directive to Congress to look into the feasibility of providing for other cases of human rights violations which may also fall within the authority of the Commission to investigate. He added that the last function in Section 2 is a catch-all provision which would authorize the Commission to perform other functions which Congress may assign to it.

On Section 3, Mr. Foz opined that Section 2(11) would not be adequate to express this constitutional directive to Congress to look into the feasibility of expanding the authority of the Commission.

Mr. Bacani stated that when he voted in favor of Section 2 it was on the understanding that the last function therein would cover Section 3.

REMARKS OF MRS. ROSARIO BRAID

As a follow-up to Mr. Bacani's inquiry, Mrs. Rosario Braid informed that the previous day she withdrew her proposal to mandate Congress to expand the functions of the Commission as she was satisfied with Mr. Bernas' reply that it would be taken care of by the last provision under "other functions" which the day's Journal would bear out.

Replying thereto, Mr. Sarmiento stated that the amendment proposed by Mr. Nollado was approved by the Body.

REMARKS OF MR. NOLLEDO

Mr. Nollado observed that the primary jurisdiction of the Commission on Human Rights is contained in Section 2(1) which particularly refers to civil and political rights. He recalled that Mr. Padilla brought up the matter of social and economic rights or rights other than civil and political rights for which reason, the Article would open an avenue towards expanding the jurisdiction of the Commission on Human Rights as provided for in Section 3. He stressed that the Body would rather leave it to Congress to expand the jurisdiction of the Commission.

REMARKS OF MR. PADILLA

Reacting to the statement of Mr. Nollado, Mr. Padilla stated that it might give the wrong impression that he was satisfied with the proposed article on, human rights. He stated that the reason why he questioned Mr. Nollado was because the latter qualified "human rights" with "civil or political rights". He stated that the entire provision is superfluous with overlapping functions.

REMARKS OF MR. BACANI

Mr. Bacani stated that should Section 3 be submitted to a vote, the Members should be made to understand that it will be a surplusage inasmuch as the last provision in Section 2 already covers the provision.

In reply, Mr. Sarmiento stressed that the Body would limit the jurisdiction to civil and political rights but when the need arises the Commission can also investigate other human rights violations affecting economic, social and cultural rights.

Mr. Bacani pointed out that the last provision in Section 2 is also prospective like Section 3 of the provisions.

REMARKS OF MR. DAVIDE

Mr. Davide maintained that Section 3 is not a surplusage as it has full meaning and import. He noted that Section 2(1) provides the power to investigate violations of human rights affecting civil and political rights, while Section 2(11) refers to other duties and functions which would not, therefore, include broadening the power to investigate other cases of human rights violations. He underscored, that Section 3 seeks to broaden the power of the Commission later inasmuch as it has a very modest start.

Mr. Nollado warned that to adopt the interpretation of Mr. Bacani would unduly burden the Commission and, in effect, negate the laudable purposes for which it was established.

VOTING ON SECTION 3

Mr. Sarmiento read Section 3, as follows:

CONGRESS MAY PROVIDE FOR OTHER CASES OF HUMAN RIGHTS VIOLATIONS THAT SHOULD FALL WITHIN THE AUTHORITY OF THE COMMISSION TAKING INTO ACCOUNT ITS

RECOMMENDATIONS.

Submitted to a vote, and with 28 Members voting in favor, 3 against and 2 abstentions, Section 3 was approved by the Body.

TERMINATION OF THE PERIOD OF AMENDMENT ON THE ARTICLE ON THE COMMISSION ON HUMAN RIGHTS

On motion of Mr. Rama, there being no objection, the Body closed the period of amendments on the Article on the Commission on Human Rights.

INQUIRY OF MR. RODRIGO

Mr. Rodrigo stated that the object of his questions would be to apprise the people on what to expect and what not to expect from the provisions of the Article. He noted that the provision regarding the creation of the Commission on Human Rights is not self-implementing but calls for an implementing legislation and appropriation by Congress, as well as determination by Congress of the salaries of the Commissioners.

Mr. Sarmiento agreed that Mr. Rodrigo was correct. He also affirmed, that in the meantime that Congress has not acted, the Presidential Committee on Human Rights (PCHR) shall continue to function.

On whether the Article on Transitory Provisions would contain a proposal to give to the PCHR the powers to be given to the Commission, Mr. Sarmiento replied in the affirmative.

Mr. Rodrigo raised the possibility that Members of Congress may appropriate the money to the PCHR instead of appropriating for the new Commission which should be independent of the Office of the President. He noted that this would be a wise move on the part of Congress which would not have to pass an implementing legislation to give life to the proposed Commission but would instead strengthen the existing PCHR.

As to whether Congress would be acting in accordance with its powers and prerogatives if it makes such a decision, Mr. Sarmiento noted that the provision on the Commission on Human Rights had been approved by the Body and that the Constitution shall provide this to be an independent body. He stated that Congress would be required to create the Commission.

Mr. Rodrigo recalled that he referred to the proposed Commission as a “paper tiger”. He queried whether instead of wasting money on the Commission, it would be better to use it to strengthen the existing and proven PCHR. Mr. Sarmiento replied that the PCHR is a Presidential creation.

As to whether Congress may decide to legalize the PCHR into a real Committee by way of legislation, Mr. Sarmiento pointed out that the proposed Commission would be an independent constitutional body and that if Congress would insist on its decision, it would violate the Constitution. He underscored that the Constitution mandates Congress to create the Commission as an independent constitutional body.

Reacting thereto, Mr. Bernas stated that the understanding on the provision "until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions and shall exercise the powers conferred on the Commission" is that upon ratification of this Constitution, the present Presidential Committee on Human Rights would enjoy the status of the Commission on Human Rights created by the Constitution and would cease to be a mere creation of the President so that whatever Congress appropriates would be an appropriation for the Commission on Human Rights.

Mr. Rodrigo pointed out that the basic distinction between the Commission on Human Rights and the Presidential Committee on Human Rights is that the latter is backed by the President with all the powers of the Executive

Department behind it while the former would be independent from the President but without its own inherent powers, in reply to which Mr. Bernas maintained that upon ratification of this Constitution, the present Presidential Committee on Human Rights would cease to be dependent on the President and would become independent by virtue of the provision.

INQUIRY OF MR. REGALADO

On Mr. Bernas' remark that upon ratification of this Constitution, the Presidential Committee on Human Rights would become the Commission on Human Rights, Mr. Regalado observed that, as worded, the phrase "until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions" would leave a gap from the time of ratification to the time Congress shall have convened and passed a law. Mr. Bernas replied that upon ratification of the Constitution, the present Presidential Committee on Human Rights would attain constitutional status although its composition would continue to be the same until otherwise provided by law.

Mr. Regalado, however, pointed out that the phrase "until otherwise provided by law" qualifies the succeeding clause "shall continue to perform its functions" making the starting point doubtful because, while on one hand there is the ratification of the Constitution, on the other hand, the functions and powers of the present Presidential Committee on Human Rights could be continuous until otherwise provided by Congress. At this point, Mr. Davide observed that Mr. Regalado missed the phrase "and to exercise the functions conferred on the Commission herein created". He opined that Mr. Bernas' interpretation was correct.

Reacting thereto, Mr. Regalado stated that the copy furnished him ended with the word "Commission". Mr. Sarmiento confirmed the Body's approval of the additional words "herein created". Mr. Bacani likewise manifested that he had raised the question earlier with respect to the addition of the words "herein created".

FURTHER INQUIRY OF MR. RODRIGO

On the premise that the Presidential Committee on Human Rights would continue to function until otherwise provided by law, Mr. Rodrigo raised the possibility that Congress, instead of abolishing the Presidential Committee on Human Rights, would create by legislation the Presidential Committee on Human Rights disregarding the Commission provided for in the Constitution on the belief that the Presidential Committee on Human Rights would be more effective because it has the backing of the President. He inquired whether the Constitution could compel Congress to appropriate funds for the purpose, in reply to which Mr. Bernas took exception to the statement that even after the ratification of this Constitution, the present Presidential Committee on Human Rights would continue to be a presidential committee because, as provided, it would cease to be a presidential committee and would become independent of the President.

With respect to the appointment of the members of the Commission on Human Rights, Mr. Bernas stated that the phrase "until otherwise provided by law" has reference to the scope and extent of the powers of the present Presidential Committee on Human Rights. He agreed with the observation that once a law is enacted, the Presidential Committee on Human Rights would be an island unto itself in direct contrast to the present Presidential Committee on Human Rights which has the backing of the President. He stressed, however, that the Committee's intent is to make the Commission on Human Rights independent of the President.

In view thereof, Mr. Rodrigo made a reservation to speak against the Article on the ground that making the Commission independent of the President would weaken rather than strengthen it.

On the possibility that the President may refuse to appoint the members of the Commission on the ground that she

is contented with the present membership of the Presidential Committee on Human Rights, Mr. Bernas maintained that once the Constitution is ratified, the Presidential Committee on Human Rights would cease to exist and, therefore the President would no longer have the authority to appoint anybody to a Committee which no longer exists, otherwise, she would violate the Constitution.

Mr. Rodrigo also observed that the creation of a Commission on Human Rights would be a waste of money and would just raise the hopes of the people. He asked how the victims of human rights violations would be able to communicate with the Commission in Manila if said violations were committed elsewhere in the Philippines.

Mr. Bernas stated that it was obvious Mr. Rodrigo wanted to speak against the provision.

REMARKS OF MR. RIGOS

At this juncture, Mr. Rigos stated that his impression of the phrase “until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions” is that the Presidential Committee on Human Rights would continue to perform its function as a Presidential Committee on Human Rights and would not automatically become the Commission on Human Rights.

Reacting thereto, Mr. Bernas stated that it was Obvious that there was a variation in the understanding of the provision. He then inquired whether any Member would like to raise a motion for reconsideration.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 4:18 p.m.

RESUMPTION OF SESSION

At 4:37 p.m., the session was resumed.

MOTION TO RECONSIDER THE APPROVAL OF SECTION 1(3)

Mr. Rigos moved to reconsider the approval of Section 1(3) of the Article on the Commission on Human Rights.

Submitted to a vote, and with 31 Members voting in favor, none against and no abstention, the Body reconsidered the approval of Section 1(3).

PROPOSED AMENDMENT OF MR. REGALADO

Mr. Regalado, jointly with Messrs. Rodrigo, de los Reyes and Rigos, proposed amendments to Section 1(3) so that it would read:

“Until THIS COMMISSION IS CONSTITUTED, the existing Presidential Committee on Human Rights shall continue to EXERCISE its PRESENT functions and powers.”

The Committee accepted the proposed amendment.

INQUIRY OF MR. NOLLEDO

In reply to Mr. Nollado's inquiry, Mr. Regalado affirmed that the words “until this Commission is constituted” would mean that Congress is mandated to create the Commission within a reasonable time.

INQUIRIES OF MR DE CASTRO

On Mr. de Castro's inquiries, Mr. Regalado denied having mentioned the word "created" and explained that the word "constituted" means that when Congress passes an enabling law which includes among others the statement about qualifications, as well as the ratification, and the conjoint action of the President in appointing the Commissioners therein, from that moment on, this proposed Commission is constituted. He stressed that the word "constituted" is different from the word "created" as used in Section 1.

INQUIRY OF MR. TINGSON

On Mr. Tingson's inquiry, Mr. Bernas stated that the word "mandate" would certainly refer to the first Congress but if it does nothing about it, it would be a continuing mandate.

INQUIRIES OF MR. SUAREZ

On Mr. Suarez' inquiries, Mr. Regalado affirmed that when the Commission is constituted, it would mean its organization by virtue of the appointment by the President of its members. This, he stated, would be the consequence of the enabling legislative act. He further affirmed that the moment this Commission is constituted, it becomes operative and the present Presidential Committee on Human Rights would become *functus officio*.

As to what would happen to cases pending before the Committee, as well as the personnel and the officers therein upon its abolition, Mr. Regalado stated for the record that Congress, consistent with the standard in any congressional act whenever a new office is created in lieu of a preexisting one, should make the corresponding provision with respect to pending cases, disposition of personnel, transfer of equipment and assets and accounting of undisbursed funds.

APPROVAL OF MR. REGALADO'S AMENDMENT

Submitted to a vote, and with 35 Members voting in favor, none against and no abstention, the Body approved Mr. Regalado's proposed amendment.

DEFERMENT OF VOTING ON SECOND READING ON THE ARTICLE ON THE COMMISSION ON HUMAN RIGHTS

On motion of Mr. Rama, there being no objection, the Body deferred the voting, on Second Reading, on the proposed Article on the Commission on Human Rights until clean copies of the draft of said article shall have been furnished the Members.

CONTINUATION OF CONSIDERATION OF THE ARTICLE ON NATIONAL ECONOMY AND PATRIMONY

Pursuant to an agreement made in caucus, on motion of Mr. Bengzon, there being no objection, the Body continued the consideration, on Second Reading (Period of Amendments), of the proposed Article on National Economy and Patrimony.

Mr. Monsod clarified that the Body would take up the Committee Report to which Mr. Davide has an amendment.

AMENDMENT OF MR. DAVIDE

Mr. Davide proposed the reformulation of Section 1 to read as follows:

SECTION 1. THE STATE, SUBJECT TO THE PROVISIONS OF THIS CONSTITUTION AND

NATIONAL DEVELOPMENT POLICIES AND PROGRAMS, SHALL GUARANTEE THE RIGHTS OF CULTURAL OR TRIBAL COMMUNITIES TO THEIR ANCESTRAL LANDS TO ENSURE THEIR ECONOMIC, SOCIAL AND CULTURAL WELL-BEING. WHENEVER EXPEDIENT, CONGRESS SHALL PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS IN DETERMINING THE OWNERSHIP AND EXTENT OF THE ANCESTRAL DOMAIN.

On Mr. Bennagen's inquiry as to the reason for the reformulation of Section 1, Mr. Davide explained that with respect to the ancestral lands of tribal or cultural communities, the provisions of the Constitution and national development policies and programs should be taken into consideration, and insofar as the application of the customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain, this matter should be submitted to Congress, taking into account the possibility of codifying these customary laws. He stressed that it should be left to Congress to determine what are these customary laws to be codified and how these laws may be made applicable in the matter of determining the extent and ownership of the ancestral domain in relation to whatever may have been codified earlier.

Mr. Davide agreed with Mr. Bennagen's suggestion to delete the words "whenever expedient."

On the suggestion to include the concept of codification, Mr. Davide opined that this concept should properly belong, to the Article on General Provisions so that if there would be such proposal for codification in the said Article, the proposed amendment would be complementary.

On whether the acceptance of the amendment would be based on the understanding that the provision for codification would be included in the Article on General Provisions, Mr. Davide assured that when the Body takes up the Article, he would propose the inclusion of a provision regarding codification of the customary laws which, he believes, should be its proper place.

INQUIRIES OF MR. REGALADO

Mr. Regalado sought clarification on the intent of the clause "Congress shall provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domain" considering that ordinarily, it is the law on ownership which determines the property rights or relations arising therefrom while on the other hand, in the amendment, as worded, it is the property rights or relations which is used as the basis in determining the ownership and extent of the ancestral domain. He assumed that there must be a certain difference in the customary laws and the regular civil laws on property.

Replying thereto, Mr. Davide stated that it is for this reasons that it is left to Congress to determine the necessary exception to the general law on property relations.

Mr. Regalado asked Mr. Bennagen to cite an example of a customary law providing property rights and relations to determine the ownership and the extent of ownership considering thereof the basic fundamental rule that it is the ownership and extent thereof which determine the property rights and relations arising therefrom and consequent thereto.

In response, Mr. Bennagen stated that there is a range of customary laws governing certain types of ownership because ownership may be by individual, clan or lineage, or community. He pointed out that during the consultation, it was proposed that these should be codified and recognized in relation to existing national laws.

With respect to a work being conducted by Professor Fernandez which Mr. Regalado asked that the Members be given a rough draft thereof so that they would have an idea of these customary laws, Mr. Bennagen informed that said work is still ongoing although, in terms of genealogies, one could learn how they have cultivated certain

areas, the improvements made therein and the like.

On the promise of a certain UP lady professor that a summary of said work would be disseminated among the Members, Mr. Bennagen stated that this could be taken from the Philippine Law Journal, at least an idea of what kind of ownership rights is being referred to.

On the suggestion to use the term “indigenous communities” as used in the Article on Social Justice instead the words “cultural or tribal communities,” Mr. Davide stated that in the 1973 Constitution, these tribal groups were described as communities and not as indigenous communities, the idea being that they should not be downgraded.

Additionally, Mr. Bennagen stated that the word “indigenous” was added to refer to their being native-born in the Philippines unlike other cultural communities which may have different ethnic origins.

On the suggestion to insert the word INDIGENOUS and to delete the words “or tribal”, considering that tribal refers to small groups, Mr. Bennagen agreed for consistency, stating further that this would have obvious reference to those groups that have retained a high degree of continuity.

Mr. Davide added that Section 1 has specific reference to the indigenous communities outside the autonomous regions. He accepted Mr. Regalado's proposed amendment to the amendment.

INQUIRIES OF MR. BACANI

Mr. Bacani noted that the first sentence of Section 1 contained two concepts, namely, the concept of national development policies and programs, and the concept of the rights of cultural or tribal communities to their ancestral lands. He then inquired as to what would be the controlling concept under the proposed amendment, to which Mr. Davide replied that it would not be a question of which would be primary but his proposal would balance the interest of the cultural communities in the autonomous regions whose legislative powers would always be subject to other provisions of the Constitution.

INQUIRY OF MR. CALDERON

In reply to Mr. Calderon's query on whether the rights under the customary laws to be codified would prevail over the rights granted under the regalian doctrine, Mr. Bennagen explained that in case of conflict, the national law should prevail; however, there should be, as much as possible, balance of interests under both customary laws and the national laws. He affirmed, for instance, that mining rights under the regalian doctrine should be recognized by the tribal communities as long as there is just share and due process.

Thereupon, the Sponsor accepted the proposed amendment of Mr. Davide.

MR. MAAMBONG'S AMENDMENT TO THE AMENDMENT

Thereafter, Mr. Maambong proposed on the first line of the amendment to change “shall” to MAY, which Mr. Davide accepted in line with the previous agreement that a provision on codification of customary laws would be included in the Article on General Provisions on which the act of Congress shall be based.

The Sponsor, likewise, accepted the amendment to the amendment.

MR. DAVIDE'S FURTHER AMENDMENT TO THE AMENDMENT

Upon suggestion of Mr. Concepcion, Mr. Davide proposed to change the word “guarantee” to PROTECT.

The Sponsor accepted the amendment to the amendment.

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query on the number of indigenous communities, Mr. Bennagen stated that according to the researches made by the Commission on National Integration (CNI), the Presidential Assistance for National Minorities (PANAMIN), anthropologists Fox and Flurry, and Manahan, the cultural communities range from 100 to 130, depending on the distinctions made. He affirmed that because of the misleading number of groups which own certain priorities, Congress may provide for a general law for all indigenous communities with some specifications for the Negritos, the Mangyans and those in Mindanao. He also affirmed that the book by Professor Perfecto Fernandez on customary laws of the Philippines could be a good source for the formulation of said laws, in addition to the materials that had been distributed to the Members of the Commission regarding the ethnic laws covering the low-landers.

INQUIRY OF NATIVIDAD

In reply to Mr. Natividad's query on the effect of the protection of ancestral lands on the rights under the Torrens System and other prior rights, Mr. Bennagen stated that Torrens title and other prior rights have to be respected if they are clearly established.

On whether Baguio City could be considered an ancestral land, Mr. Bennagen pointed out that it could be an ancestral domain in relation to the whole population of Cordillera but not in relation to certain individuals or groups, in the same manner that the Philippine archipelago could be considered an ancestral land of the Filipinos but not of certain individuals or groups.

INQUIRY OF MR. SUAREZ

Furthermore, in reply to Mr. Suarez' query on the difference between the terms "ancestral land" and "ancestral domain", Mr. Bennagen explained that according to Mr. William Claver of the 1971 Constitutional Convention, ancestral lands would specifically include the use, exploitation and disposition of land while ancestral domain would cover a broader land area which would include those which are not yet occupied but which generally belong to a cultural region such as deep forests.

On Mr. Suarez' observation that state protection would extend only to the lands and not to the domain, Mr. Bennagen stated that it is precisely important to have in the General Provisions a provision on codification of the extent of ancestral domain. He stated that once determined by Congress, the ancestral domain deserves protection by the State.

Moreover, Mr. Bennagen explained that Congress would be mandated to codify the customary laws but even without the action by Congress, the State shall protect their property rights, and once they are codified, the same would be included in the national law.

He affirmed that customary laws would consider the ownership of lands of individuals, clans and communities, which would be different from the general laws on ancestral domain.

Adverting to the first sentence which recognizes the provisions on national development policies and programs, Mr. Suarez inquired on the conflict arising from the establishment of a hydroelectric plant on an ancestral land, in reply to which, Mr. Bennagen pointed out that there should be systematic consultations to relate local needs to national plans and programs in order to minimize harm to both local community and national interest.

RESTATEMENT OF MR. DAVIDE'S PROPOSED AMENDMENT, AS AMENDED

Thereafter, Mr. Villegas restated Mr. Davide's amendment, as amended, to wit:

THE STATE, SUBJECT TO THE PROVISIONS OF THIS CONSTITUTION AND NATIONAL DEVELOPMENT POLICIES AND PROGRAMS, SHALL PROTECT THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES TO THEIR ANCESTRAL LANDS TO ENSURE THEIR ECONOMIC, SOCIAL AND CULTURAL WELL-BEING, CONGRESS MAY PROVIDE FOR THE APPLICABILITY OF CUSTOMARY LAWS GOVERNING PROPERTY RIGHTS OR RELATIONS IN DETERMINING THE OWNERSHIP AND EXTENT OF THE ANCESTRAL DOMAIN.

OBSERVATION/SUGGESTION OF MR. PADILLA

Mr. Padilla observed that the second sentence of the proposed amendment would be more appropriate in the Article on Local Government considering the enumeration therein of personal and family property relations, preservation and development of cultural heritage, among others. Mr. Bennagen pointed out that the amendment would include not only lands within the autonomous regions but also those outside the autonomous regions, to which Mr. Villegas added that it would be appropriate in the Article on National Economy and Patrimony because it speaks of disposition of lands.

Mr. Davide agreed that the provisions on the autonomous regions were very specific while his proposal would include the indigenous communities outside the autonomous regions, and that it would involve the extent and ownership of ancestral domain. He added that his proposal is not concerned with local autonomy of tribal communities.

Furthermore, Mr. Bennagen stated that there are indigenous communities which belong to more than one political unit, to which Mr. Padilla replied that he was not referring to the territorial conflict and all he was saying was that the concepts of ancestral domain, property relations and cultural heritage were mentioned in the Article on Local Government.

Mr. Davide contended that if his proposal would be placed under the Article on Local Government it would appear that autonomous regions would have jurisdiction over ancestral domain outside the autonomous regions.

APPROVAL OF MR. DAVIDE'S AMENDMENT, AS AMENDED

Thereafter submitted to a vote, and with 31 Members voting in favor and none against, Mr. Davide's amendment, as amended, was approved by the Body.

Mr. Padilla manifested that he was against the second sentence of Mr. Davide's amendment, as amended.

At this juncture, Mr. Suarez suggested that the Committee on the National Economy and Patrimony take up with them some suggestions on the said Article after the session.

Mr. Villegas agreed.

RECONSIDERATION OF THE APPROVAL, ON SECOND READING, OF THE ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

On motion of Mr. Monsod, there being no objection, the Body reconsidered the approval, on Second Reading, of the Article on Accountability of Public Officers.

Thereupon, Mr. Monsod proposed to delete "or prosecute offenses in connection therewith" on Section 13, lines 3 and 4, stating that the Committee considers the phrase redundant.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 5:36 p.m.

RESUMPTION OF SESSION

At 5:40 p.m., the session was resumed.

Upon resumption of session, Mr. Davide, who was the proponent of the phrase, agreed to its deletion. Thereupon, Mr. Regalado also moved for the deletion of the phrase “coprincipals, accomplices and accessories”. stating that these terms are proper only in relation to criminal actions.

Mr. Monsod accepted the proposal so that the section as amended would read: THE RIGHT OF THE STATE TO RECOVER PROPERTIES UNLAWFULLY ACQUIRED BY PUBLIC OFFICIALS OR EMPLOYEES SHALL NOT BE BARRED BY PRESCRIPTION, LACHES OR ESTOPPEL.

Mr. Suarez stated that the elimination of the phrase "coprincipals, accomplices or accessories" would not preclude the prosecution of those who may have been intimately connected with the commission of the offense even if they are not public officials.

On Mrs. Quesada's query on the parliamentary status, Mr. de los Reyes explained that there was a motion for reconsideration of the approval of the Article on Accountability of Public Officers and that the Body was in the process of considering it to rectify some errors.

At this juncture, Mr. Azcuna suggested that in lieu of “coprincipals, accomplices and accessories” the Body should insert OR THEIR TRANSFEREES IN BAD FAITH.

Mr. Monsod accepted the proposal.

Mr. Davide objected on the ground that if the action to recover the ill-gotten wealth would be a criminal one, there cannot be any obstacle to recovery regardless of the manner of acquisition but with Mr. Azcuna's proposal, defense of good faith would be available.

Mr. Azcuna maintained that there are transferees in good faith from whom under present law even stolen goods cannot be recovered, such as goods bought in a public market. He explained that he intends the State to be able to recover the ill-gotten wealth even in the hands of private persons. He then suggested to substitute "transferees in bad faith" with ASSOCIATES which was the word used in R.A. 1379.

Mr. Nollado expressed support for Mr. Davide's stand on the ground that pursuant to Article 1505 of the New Civil Code, title would pass only if the transferor has valid title over the property. He stated that if the property is ill-gotten, the transferor would not acquire a valid title thereto. He added that applying the pertinent provisions of Article 1505, whoever is in possession of the ill-gotten wealth, whether in good faith or in bad faith, should surrender the same to the government.

Mr. Regalado also supported the opinions of Messrs. Davide and Nollado and added that the Body should not make permutations in the constitutional provision since the law would deal with specific cases. He added that the courts should appreciate specific defenses exclusive of the question of the statute on limitations or prescription because this is a constitutional provision which cannot be subject to a condition.

Mr. Azcuna stated that he would withdraw his proposal provided that it is made clear that the prescription would not run against a private person who has acquired ill-gotten wealth.

Mr. Padilla explained that an owner who is deprived of his property by an unlawful act has a superior right to recover it from the transferee even if the latter acquired it in good faith, the only exceptions being those bought in public markets and auctions because even the State does not warrant title over them.

Mr. Azcuna reconsidered his motion to withdraw and adopted the view of Mr. Padilla.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 5:56 p.m.

RESUMPTION OF SESSION

At 5:58 p.m., the session was resumed.

Thereupon, Mr. Monsod suggested that the amendment should read: FROM THEM OR FROM THEIR TRANSFEREES.

Mr. Azcuna accepted the proposal.

In reply to Mr. Maambong's query, Mr. Monsod affirmed that what is covered in the proposal is imprescriptibility of civil and not criminal actions.

ANNOUNCEMENT OF MR. BENGZON

Mr. Bengzon stated that since the Committee on after adjournment, its decision-would be formally presented to the Body in the next session.

He also announced that the Body shall continue consideration of the Article on National Economy and Patrimony, to be followed in the afternoon by the periods of sponsorship and interpellations on the Article on Human Resources.

APPROVAL ON SECOND READING OF THE ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

The Chair stated that in view of the reconsideration of certain sections on the Article on Accountability of Public Officers, the whole Article should be approved by the Body on Second Reading.

Thereupon, submitted to a vote, and with 33 Members voting in favor and 1 against, the Body approved, on Second Reading, the Article on Accountability of Public Officers.

ADJOURNMENT OF SESSION

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

It was 6:04 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on August 29, 1986

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