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Saturday, July 26, 1986

OPENING OF SESSION

At 9:44 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 Lorenzo M. Sumulong.

Everybody remained standing for the Prayer.

PRAYER

MR. SUMULONG: Heavenly Father, everytime we come here to perform the task assigned to us of writing a new Constitution for our people, we begin with a prayer. We decided to do this because the task entrusted to us is a difficult and most exacting task. The document we are framing is not intended to meet and provide solutions to passing problems and momentary difficulties. We are here to frame a fundamental law that our people can use not just for a year, not just for a decade, not just for a generation, but for all times.

To produce such a charter for our people, Heavenly Father, we need Your help. Pour unto us the power of the Holy Spirit so that we may have the strength, the perseverance, and the determination to wash away pride or prejudice from our hearts and minds so that the light of truth and reason and unalloyed love of country, rather than the darkness of preconceived ideas and theories, will be the controlling factors to guide us in the discharge of the grave responsibility that has been placed on our shoulders.

Heavenly Father, we are mortals; we are human beings with feet of clay; we have our own views and our own philosophies, depending on the heredity and environment which have influenced our lives. Thus, we oftentimes see the same subject in different lights. It is unavoidable that there should be a clash of ideas amongst us, and I, for one, welcome this clash of ideas if done openly rather than clandestinely, for letting off steam is a good safety valve to prevent violent explosions.

Heavenly Father, we thank Thee for keeping us united despite diversification in our views every now and then. Pray, O Lord, that whenever we agree to disagree, we take it as a sign of the restoration of our freedom of expression — for as Voltaire said, "I do not agree with a word of what you say, but I will fight to the death your right to say it." So that when we agree to disagree, we are not weakening our unity, but rather we are strengthening the unity in our diversity.

Heavenly Father, we beseech Your continued guidance and assistance. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present[*] Natividad Present[*]

Alonto Present[*] Nieva Present

Aquino Present[*] Nollado Present

Azcuna Absent Ople Present[*]

Bacani Present Padilla Present

Bengzon Present Quesada Present[*]

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present Reyes de los Present

Brocka Present Rigos Present

Calderon Present Rodrigo Present

Castro de Present Romulo Present

Colayco Present Rosales Absent

Concepcion Present Sarmiento Present

Davide Present Suarez Present

Foz

Present[*] Sumulong Present

Garcia Present[*] Tadeo Present

Gascon Absent Tan Present

Guingona Present Tingson Absent

Jamir Present Treñas Present

Laurel Present[*] Uka Present[*]

Lerum Present[*] Villacorta Present[*]

Maambong Present Villegas Present

Monsod Present

The President is present.

The roll call shows 32 Members responded to the call.

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

MR. CALDERON: Madam President, 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.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve 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 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 references:

COMMUNICATIONS

Letter from Mr. Manuel A. Sanico of 4107 Corregidor-Pitogo, Makati, Metro Manila, proposing the adoption of Filipino as our national language.

(Communication No. 330 — Constitutional Commission of 1986)

To the Committee on Human Resources.

Letter from Mr. Manuel A. Sanico of 4107 Corregidor-Pitogo, Makati, Metro Manila, proposing the creation of a "Veterans Affairs Commission."

(Communication No. 331 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Communication from Mr. Eufemio C. Salera, District Commander, Veterans Federation of the Philippines, Zamboanga del Sur Chapter, Pagadian City, submitting a consolidated report of veterans' petitions.

(Communication No. 332 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Mr. Teofilo B. Cruzat of Poblacion, Catanauan, Quezon, proposing a provision in the new Constitution requiring all candidates for elective positions to secure clearances before filing their certificates of candidacy.

(Communication No. 333 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Communication from Mr. Ignacio C. Badeo, a sidewalk vendor of 864 R. Papa St., Sampaloc, Manila, proposing that Philippine Presidents be awarded an end-term bonus of P10 million if they have rendered an untarnished 6-year term.

(Communication No. 334 — Constitutional Commission of 1986)

To the Committee on the Executive.

Communication from Mr. Prudencio S. Serrano of 784 Don M. Marcos Avenue, Mati, Davao Oriental, submitting various proposals for the consideration of the Constitutional Commission.

(Communication No. 335 — Constitutional Commission of 1986)

To the Steering Committee.

Communication from Nur-Hussein A. Ututalum, Al Hadj, Speaker, Batasang Pampook, Autonomous Region IX, Zamboanga City, transmitting, for consideration by the Constitutional Commission of 1986, Resolution No. 117, entitled: RESOLUTION RESPECTFULLY REQUESTING THE CONSTITUTIONAL COMMISSION TO GRANT POLITICAL RIGHT OF SUFFRAGE TO ILLITERATES.

(Communication No. 336 — Constitutional Commission of 1986)

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

Communication from Mr. Ambrosio C. Sumalbag, Chairman, LAYA Community, Inc. of 740 CBCP Gen. Luna St., Intramuros, Manila, proposing a provision in the Bill of Rights that prisoners who have lawfully and fully served their sentence will enjoy full restoration of their civil rights.

(Communication No. 337 — Constitutional Commission of 1986)

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

Communication from the National Secretariat of Social Action (NASSA), Justice and Peace of the Catholic Bishops' Conference of the Philippines, proposing the abrogation of the Military Bases Agreement between the United States and the Philippines, genuine land reform, and rights of indigenous people, among others.

(Communication No. 338 — Constitutional Commission of 1986)

To the Steering Committee.

Position paper submitted by Mr. Arturo M. Erasmo of Purok Sweet Rose, Dumagok Fishing Village, Pagadian City, recommending the adoption of measures that will reduce the incidence of poverty in urban and rural areas and promote further utilization of the country's human and natural resources, among others.

(Communication No. 339 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Position paper, submitted by Promotion of Church People's Right, Zamboanga del Sur Chapter, Pagadian City, signed by thirty-two (32) people, suggesting among others the removal of U.S. bases in the Philippines, institution of a genuine land reform program, nationalization and Filipinization of existing industries, and reexamination of the Tripoli Agreement.

(Communication No. 340 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Crescencio A. Yaco, Chairman, Center for Solidarity Tourism, c/o PR Desk, Sociology Department, Asian Social Institute, 1518 Leon Guinto Street, Malate, Manila, submitting a resolution urging the Constitutional Commission to incorporate in the Constitution provisions on the enjoyment of travel and tourism and state support for the development and promotion of indigenous tourism programs.

(Communication No. 341 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Messrs. Jerry B. Beo, Provincial Chairman, League of Filipino Students, and Teofilo Isorena, Jr., Provincial Chairman, Kabataan Para sa Demokrasya at Nasyonalismo, expressing strong objection to the following proposals of the so-called "cause-oriented" group: (1) retention of the U.S. military bases or their transfer to Catanduanes, (2) retention of the capital punishment, and (3) annual psychiatric examinations for all government and military men.

(Communication No. 342 — Constitutional Commission of 1986) To the Steering Committee.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF C.R. NO. 17

(Article on Accountability of Public Officers)

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: I move that we consider Committee Report No. 17 as reported out by the Committee on Accountability of Public Officers.

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

Consideration of Committee Report No. 17 is now in order. With the permission of the body, the Secretary-General will read only the title of the committee report without prejudice to inserting in the Record the whole text thereof.

THE SECRETARY-GENERAL: Committee Report No. 17, entitled:

RESOLUTION PROPOSING TO INCORPORATE IN THE 1986 CONSTITUTION AN ARTICLE ON
ACCOUNTABILITY OF PUBLIC OFFICERS.

(The following is the whole text of the resolution per C .R. No. 17.)

COMMITTEE REPORT NO. 17

(As amended and consolidated by the Committee
on Accountability of Public Officers)

RESOLUTION PROPOSING TO INCORPORATE IN THE 1986 CONSTITUTION AN ARTICLE ON
ACCOUNTABILITY OF PUBLIC OFFICERS

Resolved, as it is hereby resolved by the Constitutional Commission in session assembled, To incorporate in the 1986 Constitution an article:

Article _____

ACCOUNTABILITY OF PUBLIC OFFICERS

SECTION 1. Public office is a public trust. Public officers and employees shall be accountable to the people, serve them with utmost fidelity, integrity and efficiency, act with justice and lead modest lives.

SECTION 2. The President, the Vice-President, Members of the Supreme Court, the Members of the Constitutional Commissions and the Ombudsman may be removed from office on impeachment for and conviction of, culpable violation of the constitution, treason, bribery, other high crimes, graft and corruption or

betrayal of public trust.

SECTION 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any of its members or by a citizen which shall be referred to the proper committee of the House for investigation and report. A vote of the majority of all the members of the House is necessary to initiate impeachment proceedings.

(3) However, when the complaint is signed and verified by a majority of the members of the House, the same shall constitute the Articles of Impeachment and the trial by the Senate shall forthwith proceed.

(4) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(5) The Senate shall have the sole power to try all impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(6) Judgment in cases of impeachment shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

SECTION 4. The Sandiganbayan, created pursuant to the mandate of Section 5 of Article XIII of the 1973 Constitution, shall hereafter be known as the Anti-Graft Court. It shall continue to function and exercise its jurisdiction as provided by law.

SECTION 5. The Tanodbayan, created pursuant to the mandate of Section 6 of Article XIII of the 1973 Constitution, shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.

SECTION 6. There is hereby created the independent office of the Ombudsman, composed of the Ombudsman, one over-all Deputy, and one Deputy each for Luzon, Visayas and Mindanao.

SECTION 7. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter, without any confirmation. All vacancies shall be filled within three months after they occur.

SECTION 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, at least forty years old, with a college degree, or a member of the Philippine Bar. The Ombudsman must have been engaged in the practice of law for at least ten years.

During their tenure, they shall not engage in the practice of any profession.

SECTION 9. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment.

SECTION 10. The Ombudsman shall have the rank of a Chairman of a Constitutional Commission, and shall receive the same salary, which shall not be decreased during his term of office. A Deputy of the Ombudsman shall have the rank of a Commissioner of a Constitutional Commission and his salary shall not be decreased during his term of office.

SECTION 11. The Ombudsman and his Deputies, as champions of the people, shall act promptly on the

complaints filed, in any form or manner, against public officials or employees of the government, including government-owned corporations, agencies or instrumentalities, and shall notify the complainants of the action taken and the results thereof.

SECTION 12. The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) To direct, upon complaint or at its own instance, any public official or employee of the government, as well as of any government-owned corporation or institution, to perform and expedite any act or duty required of him by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
- (2) To direct the officer concerned to take appropriate action against a public official or employee at fault, and to recommend his removal, suspension, demotion, fine, censure or prosecution, and to see to the compliance of the directive;
- (3) To direct the officer concerned to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement of public funds, and report any irregularity to the Commission on Audit for appropriate action;
- (4) To request any government agency for assistance and information necessary to the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
- (5) To publicize, when circumstances so warrant, matters covered by its investigation;
- (6) To exercise such powers or perform such functions or duties as may be provided by law.

SECTION 13. The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription.

SECTION 14. No loan, guaranty or other form of financial accommodation for any business purpose may be granted by any government-owned or controlled bank or financial institution to any public official, or to any firm or entity in which he has substantial interest, during his tenure.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Just for the record. Are we postponing consideration of the Committee Report on the Legislative?

THE PRESIDENT: Yes. It was decided yesterday that we will continue the consideration on Monday.

MR MAAMBONG: Thank you, Madam President.

MR MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

SPONSORSHIP SPEECH OF COMMISSIONER MONSOD

MR. MONSOD: Madam President, the Committee on Accountability of Public Officers is respectfully submitting its proposed Article in the Constitution, and we would just want to make a few remarks on the articles and sections that we have included.

"SECTION 1. Public office is a public trust." — We have amended the 1973 provision in order to incorporate the resolution of Commissioner Tadeo to invest public office with more than just the normal requirements of fidelity, integrity and efficiency, but also as an example of modest lives or simplified lifestyle.

With respect to the section on impeachment, we would like the honorable Commissioners to note the inclusion of the Ombudsman among the offices that are subject to impeachment, and the addition of betrayal of public trust as a ground for impeachment. This is derived from a resolution of Commissioner de los Reyes. In the section on the procedure for impeachment, we were benefitted by the suggestions and advice of the honorable President of the Commission. The principal author of this section is Commissioner Romulo. What we seek to institute here is a more liberal interpretation of the impeachment procedures in order to avoid, for example, the deadlock which happened in the last Batasan. While incorporating the procedures arising from the bicameral nature of the future legislation, the body will note that we provided here that a majority of the Members of the House can initiate impeachment upon vote. But what is important is that any Member of the House or any citizen can file a verified complaint. We used the majority rule of the House, although in 1973 the provision was for 20 percent of the Members of the National Assembly. In that case since it was unicameral, the trying body was also the National Assembly.

In the 1935 Constitution, the rule was two-thirds of the House may initiate impeachment proceedings and three-fourths of the Senate shall convict. However, in our proposal, majority of the Members of the House may initiate and two-thirds of the Senate shall convict. This is one section on which we would like to consult with the Members of this body. This is a very important provision, and we would be advised by the consultations and wisdom of this body with respect to this provision, particularly on the numbers and vote necessary to initiate, to try or to convict.

With respect to the Sandiganbayan and the Tanod-bayan, the Committee decided to make a distinction between the purely prosecutory function of the Tanod-bayan and the function of a pure Ombudsman who will use the prestige and persuasive powers of his office. To call the attention of government officials to any impropriety, misconduct or injustice, we conceive, the Ombudsman as a champion of the citizens. As part of the sponsorship presentation, we would like to ask Vice-Chairman Colayco of the Committee, who is the main author of this section, to give us a few words on the ideas of the Committee in this regard, as well as Commissioner Nollado who also has contributed his ideas in the framing of this section. The concept of the Ombudsman here is admittedly a little bit different from the 1973 concept. But I will leave that to Commissioner Colayco to explain later. With respect to the section on the right of the State to recover properties unlawfully acquired — Section 13, page 5 — this is based mainly on the resolution of Commissioner Nollado, with the assistance of Commissioner Azcuna in its formulation. The idea here is to address ourselves to the problem that those who have unlawfully benefitted from the acquisition of public property over the years, through technicalities or practice, have gained immunity and that, therefore, the right of the people to recover should be respected. With that, I would now like to call on Commissioner Colayco to give us his remarks regarding our concept of the Ombudsman.

THE PRESIDENT: Commissioner Colayco is recognized.

SPONSORSHIP SPEECH OF COMMISSIONER COLAYCO

MR. COLAYCO: Thank you, Madam President. The Committee is proposing the creation of an office which can act in a quick, inexpensive and effective manner on complaints against the administrative inaction, abuse and arbitrariness of government officials and employees in dealing with the people. Under the present Rules, the available remedies are time-consuming and entail expenses beyond the means of many persons with legitimate grounds to complain. On this point, I would like to read a portion of the book prepared by a well-known authority on the Ombudsman and who is a professor at Columbia University. He says:

An important feature of the Ombudsman office is that, because of the simple and cheap way in which complaints are handled, many minor complaints can be satisfied; though important to the complainant, they would not be worth the cost of an elaborate court procedure.

This is the most common situation which confronts most of our economically disadvantaged people. Excuse me for citing a few personal experiences in this regard. Many a time, people have come to me complaining about the refusal or at least inability, much worse, the imposition of material consideration before they can act. I remember very well a lady from Batangas who came to see me in my office a few years back complaining that she had applied for the issuance of a birth certificate of her son who had applied for service in the U.S. Navy. This was one last requirement she could not comply with because she was made to return for more than three weeks, and everytime the lady would go back, the answer was that they could not find the record. Fortunately, I had some acquaintances in the office of Mayor Bagatsing and after calling up one of his executive secretaries, the certificate of birth was issued in less than one hour after the call. This is one of the many instances when poor illiterate people feel that the government does not care.

It is true that the office of the Tanodbayan has jurisdiction over these simple matters, so we requested Justice Gonzalez to give us his opinion on this, and he said: "How can I attend to these minor matters when I am swamped with investigative and prosecutory duties?" The Justice even suggested that it might be advisable to re-create an honest-to-goodness office of the Ombudsman which the 1971 Constitutional Convention tried to create. I would like to read a portion of the report of the Committee which submitted this proposal to the then Constitutional Convention. By the way, during the 1971 Convention, 27 resolutions were filed for the creation of the office of the Ombudsman and the thrust behind these resolutions was stated very eloquently in this passage of the report. After saying that it is the duty of the State to provide a system whereby poor people can have easy access for their petty grievances, the report said:

What we find, however, is a system characterized by the supremacy of the powerful and the wealthy; respect for the dignity and personality of the elite, the ruling feudal master, and superabundance of opportunity for the oppression of the weak, the poor and the "unconnected."

Present reliefs for the protection of citizen's rights are expensive, cumbersome, circuitous and usually available only to the rich and the powerful. Government is plagued by graft and corruption, callous indifference and gross inefficiency, political meddling, immorality, compartmentalization of justice and bankruptcy in national and local leadership. The helpless disillusioned citizen may not bear more, already he has raised his voice in protest and defiance. Because this voice has not reached an official ear, he registers his protest in the streets. Disillusion turns into antagonism and antagonism to bitterness towards the government and the people in the government. The people's faith in our institutions now hangs by a slim thread and is being stretched to the breaking point.

This in fine is the collective plaint of 27 resolutions submitted to this Convention and referred to the Committee seeking the establishment of a constitutional office with two definite objectives, namely: One, the promotion of higher efficiency and justice in the administration of the laws; and, two, the protection of the constitutional rights of the people by securing the right of the citizens to petition the government for redress of grievances.

So, what happened to this beautiful proposal? What came out of it is Presidential Decree No. 1630, creating the Office of the Tanodbayan. There was, therefore, a failure to implement this specific, explicit proposal to create a body that would act as guardian and protector of the rights especially of the underprivileged. Therefore, we have proposed as briefly as possible in our resolution an office which will not require any formal condition for the filing of a complaint. Under our proposal, a person can file a complaint even, by telephone and without much ado, the office of the Ombudsman is under obligation to see to it that the complaint is acted upon, not merely attended to but acted upon. Even in the United States, in the Nassau County, the Ombudsman merely picks up the telephone and calls up the errant employee. If the employee admits that there was reason behind the complaint, he is told to do what the complainant wanted him to do without much ado. And then that is followed up by the corresponding report to the department of the government which has supervision over the employee at fault, with

the proper recommendation.

Under this proposal, the main thrust is remedial action, not the usual one where the poor complainant is told: "Maghanda ka muna ng affidavit," but he is not even helped in that. So, the complainant, if he is illiterate or poor, is turned off. He says: "Ni wala akong kilalang abogado. Wala akong ibabayad sa abogado." This is the situation which the Committee is proposing to remedy. One of the most common complaints which I have received myself is the inaction of many judges. They would come to me saying: "Sir, kilala ba ninyo si gano'ng judge? Eh, matagal na po iyong aming asunto, wala pa hanggang ngayon." If I know the judge, I could do it; if I do not know him, I could do it through another judge who could do it. This role can be very well filled by the Ombudsman whose office we are proposing to create. But that is on the minor level.

Under our proposal, the Ombudsman is empowered to investigate, to inquire into and to demand the production of documents involving transactions and contracts of the government where disbursement of public funds is reported. We read almost everyday of how certain buildings have been constructed improperly and of many other irregularities which are merely reported but which nobody in the government dares or bothers to look into. That role which should have been performed by our own Tanodbayan is not attended to because the Tanodbayan is swamped with work — this was confessed to us during our hearing. The main thrust is action; the disciplinary or punitive remedy is secondary. On a higher level then, the Ombudsman is going to be the eyes and ears of the people. Where administrative action demanded is not forthcoming because under our rules the Ombudsman is required to ask the government official concerned to impose the disciplinary action on the employee at fault and to follow it up and to see to it that it is complied with, he is authorized to make public the nature of the complaint and the inaction of the official concerned, because generally, public officials are afraid of publicity. This measure is commonly followed in the European system of Ombudsman, as well as in the United States.

To give the Ombudsman stature and a certain clout, we are proposing that he be given the status, the role or the rank of a chairman of a constitutional commission, as well as the same salary. If we are going to create an office which will have a lower rank than this, not even an ordinary employee of the government will bother to obey him. Second, to free him from political pressure, the Ombudsman cannot be removed except by impeachment. We hope that with the help of this body, we will receive better and more practical ideas. But we certainly appeal to the Members not to fail our people.

In 1950, for instance, President Quirino created the Integrity Board in an attempt to formalize the procedure for executive direction and control of the bureaucracy. This Board lasted only for six months. When President Magsaysay took over the reins of government in 1953, he created the Presidential Complaints and Action Committee. The primary purpose of this Committee was to expedite action on complaints received by the Office of the President against the manner in which the officials of the executive departments and offices were performing the duties entrusted to them by law, or against their acts, conduct or behavior. So we can see that as early as the time of President Magsaysay, the President already saw the necessity of the Ombudsman as we are now proposing. But again politics came in — this office did not last long. Two months after President Magsaysay's death, the office was abolished.

Next, President Garcia created his own Presidential Committee on Administration, Performance and Efficiency. Again this office did not last long and was replaced by the Presidential Agency on Reforms and Government Operations or PARGO under the regime of President Marcos. Although these programs were good per se, especially the program of President Magsaysay, the new President discarded it — this is a political block. The incoming President generally tends to discard the policies and the programs of the previous President. The intention, therefore, of our proposal is to constitutionalize the office so that it cannot be touched by the Presidents as they come and go.

This is a very brief summary of our plan; we beg the Commission to give this very careful attention and consideration. Let us not fail our common masses again, as we have failed them in the past.

Thank you.

MR. MONSOD: Madam President, may I ask Commissioner Nollado to give his remarks.

THE PRESIDENT: Commissioner Nollado is recognized.

SPONSORSHIP REMARKS OF COMMISSIONER NOLLEDO

MR. NOLLEDO: Thank you, Madam President. I would like to talk briefly on the creation of the Ombudsman because I am the author of Resolution No. 280, entitled: "RESOLUTION TO STRENGTHEN INVIGORATE AND CONSTITUTIONALIZE THE OMBUDSMAN KNOWN AS THE TANODBAYAN." I would like to talk also in support of my Resolution No. 61 which the Committee incorporated in its report, and which states in essence that the right of the government to forfeit ill-gotten wealth of public officials shall not prescribe.

Madam President, the creation of an Ombudsman which is a proposal, in the words of Commissioner Romulo, "worth dying for," is in answer to the crying need of our people for an honest and responsive government. The office of the Ombudsman as proposed by the Committee on Accountability of Public Officers, ably headed by Commissioner Monsod, is really an institution primarily for the citizen as against the malpractices and corruption in the government. As an official critic, the Ombudsman will study the law, the procedure and practice in the government, and make appropriate recommendations for a more systematic operation of the governmental machinery, free from bureaucratic inconveniences. As a mobilizer, the Ombudsman will see to it that there be a steady flow of services to the individual consumers of government. And as a watchdog, the Ombudsman will look after the general, as well as specific, performance of all government officials and employees so that the law may not be administered with an evil eye or an uneven hand.

The graft and corruption at all levels of our government is to be deplored, Madam President. Our public officers act as if they are the masters when they are really the servants of the people. The "lagay" system has been condemnably institutionalized in all government offices, including the courts. The day will come, Madam President, when our people will accept corruption as a way of life and will lose their will to fight this corruption, thus resulting in the total decay of our national character and the imminent collapse of our national conscience. The effects of this situation are terrible to contemplate because there would emerge again a system of dictatorship to contain the chaos, widespread dissatisfaction, indifference and anarchy that are the effects of insensitiveness of government to the rightful demands of the people. The emergence of totalitarianism in China, in many countries in South America and other places in the world could easily be traced to unrestricted corrupt ways of government officials.

And so, Madam President, let our Ombudsman, called the eyes and ears of the people, the super lawyer-for-free of the oppressed and the downtrodden, raise a new hope in our people who must be given the reassurance that the government really cares for them. Along with the creation of the office of Ombudsman, I feel grateful to our Committee for embodying substantially my resolution providing that the right of the State to recover properties unlawfully acquired by public officials or employees shall not prescribe. This is a provision designed to enable the government to forfeit ill-gotten wealth of public officers, regardless of the lapse of time.

Madam President, we hear of public officers who believe in the Avelino question of "What are we in power for?" and in the Perez question of "What is wrong with the government officials providing for their future?" and who, after several years in service, find themselves graduating from "pauperism" to "millionairism." They live in palatial homes, ride in high-class automobiles, hold extravagant parties, go abroad and wear expensive jewelries

in utter disregard of the basic rules of decency and honor. Madam President, granting the State the constitutional, imprescriptible right to forfeit ill-gotten wealth of erring public officers is, to my mind, a highly significant reform in public service.

Thank you, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May I just close this presentation by saying that in reflecting and trying to put these sections together we realized that there are no one-time solutions to many of our problems, that good government is the cumulative effect of many safeguards within the Constitution, and it is our modest opinion that the concept of the Ombudsman, as presently formulated, will make a contribution towards that end.

Madam President, the Committee now puts itself at the disposal of the Commission for interpellation.

MR. RODRIGO: Madam President.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Will the Committee yield to a few questions?

MR. MONSOD: Yes, Madam President.

MR. RODRIGO: I notice that the proposed provisions on the Ombudsman retain the Tanodbayan, and there seems to be an overlapping in the functions of the Tanodbayan and the Ombudsman. What is the clear-cut dividing line between the functions of the Ombudsman and the Tanodbayan, so that our people will know when to go to the Tanodbayan and when to go to the Ombudsman?

MR. MONSOD: Madam President, essentially, the difference lies in one being a prosecutory arm and the other a champion of the citizen who is not bound by legal technicalities or legal forms, but I would like to ask Commissioner Nolleto to explain this in detail.

MR. NOLLEDO: If we go over the provisions of P.D. No. 1607, which amended P.D. No. 1487, creating the Office of the Tanodbayan, also called by Mr. Marcos as Ombudsman, there are two parts in the functions of the Tanodbayan: First, to act as prosecutor of anti-graft cases, and to entertain complaints from the public. The second part constitutes the basic function of the Ombudsman. And if we turn to page 3 of the report of the Committee, Section 5 provides, and I quote:

The Tanodbayan, created pursuant to the mandate of Section 6 of Article XIII of the 1973 Constitution, shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.

This means that we are removing the second part of the functions of the Tanodbayan and vesting the same in the office of the Ombudsman; and, therefore, the Tanodbayan shall continue to discharge his functions under the first part merely as prosecutor, like a fiscal, of anti-graft cases which are filed with the Anti-Graft Court.

MR. RODRIGO: So, the Ombudsman cannot prosecute?

MR. NOLLEDO: No, he cannot. He can refer the cases that should be prosecuted to the appropriate official — he may be the Tanodbayan or he may be the ordinary fiscal.

MR. RODRIGO: Has the Ombudsman any power to compel the prosecuting arm to prosecute or can he only

recommend?

MR. NOLLEDO: He can direct.

MR. RODRIGO: Can he command?

MR. NOLLEDO: That is equivalent to commanding the fiscal if the fiscal refuses to file the case. And then in that case, if the fiscal refuses, then there are available remedies. He may appeal to the Ministry of Justice.

MR. RODRIGO: Can the Ombudsman act on his own?

MR. NOLLEDO: Yes, even without a complaint.

MR. RODRIGO: If the fiscal refuses to file the information, can the Ombudsman file the information?

MR. NOLLEDO: No. I understand he will appeal to the Ministry of Justice and the Ministry of Justice will correspondingly decide on the appeal. If the Ministry of Justice, for example, upholds the Ombudsman, there is no question about that. But if the Ministry of Justice does not uphold him, the Ombudsman perhaps, based on the presidential form of government, may appeal to the President. And the President, where the Minister of Justice is merely his alter ego, may overrule the Minister of Justice.

MR. RODRIGO: An ordinary citizen now can do that. He goes to the fiscal; the fiscal does not want to listen to him or to prosecute, so he goes to the Minister of Justice. And if the Minister of Justice does not want to act, he can appeal to the President. So, what is the use of the Ombudsman then?

MR. COLAYCO: Madam President, of course, he can do that if he has his own lawyer, and he can afford it. But the main thrust of this office is precisely for the Ombudsman to take over after the complainant has filed his complaint.

MR. RODRIGO: May I beg the Gentleman's pardon?

MR. COLAYCO: All that the complainant has to do is to file his complaint and the Ombudsman will do the rest. For instance, there may be a case where another government office could properly attend to the complaint. Now under this provision, he will not tell the complainant, "Pumunta ka doon, puwedeng gawin 'yan." No. The Ombudsman must act on his own. And if he thinks that the other office can do it better, he has to take the steps himself to refer the case there and follow it up. The reason why our common people are turned off is that they are not attended to. That is the main point.

MR. RODRIGO: How can we be sure that the Ombudsman will attend to these people? Kung pinababayaan noong fiscal, paano nating masisiguro na hindi pababayaan ng Ombudsman?

MR. COLAYCO: That is a good question, but then that is why we have to choose the right people.

MR. RODRIGO: We try to choose the right people for fiscals and all that.

MR. COLAYCO: We are humans and judges fail in their duties.

MR. RODRIGO: What I am driving at is, we might be providing for a useless appendage.

MR. COLAYCO: No, I do not think so because the appointment will be made by the Judicial and Bar Council which we already have.

MR. RODRIGO: That is another point I want to raise. Why should the appointment be done by the Judicial and Bar Council or through its recommendation? That is done only to the members of the Supreme Court, while the members of the Constitutional Commissions are appointed by the President with the confirmation of the

Commission on Appointments. Why should we rank the Ombudsman with the Justices, of the Supreme Court?

MR COLAYCO: Let me correct the Gentleman's impression. The Judicial and Bar Council will choose all the members of the judiciary, from the Supreme Court down to the lowest level.

MR. RODRIGO: Yes, and the judges. But then the Judicial and Bar Council has nothing to do with the appointment of the members of the Constitutional Commissions. The Gentleman also stated that the Ombudsman will have the rank of a chairman of a Constitutional Commission and the members will also have the rank of the members of the Constitutional Commissions.

But then we have already approved the report on the Constitutional Commissions, and the chairman and the members of the Constitutional Commissions do not go through the Judicial and Bar Council; they are just appointed by the President with the confirmation of the Commission on Appointments. Why do we segregate the Ombudsman from the Constitutional Commissions?

MR. NOLLEDO: Madam President, I think the purpose is very basic and obvious: to maintain the independence of the Ombudsman. If we will allow the Commission on Appointments to interfere in the appointment of an Ombudsman, knowing how politicians are, they can appoint their men, perhaps their followers, to be Ombudsman. And, therefore, the Ombudsman will be subjected to possible future interference from these politicians.

MR RODRIGO: If the intention is to maintain the independence of the Ombudsman, with more reason do we want to maintain the independence of the Constitutional Commissions — the Commission on Elections or the COMELEC; the Commission on Audit or the COA; and the Civil Service Commission — and we have already acted on it.

Why is it that in the case of the Ombudsman, the sponsor would want to rank them with judges and segregate them from the Constitutional Commissions — the COMELEC, COA, Civil Service — whose members are appointed by the President with the confirmation of the Commission on Appointments? The sponsor wants to make a class out of the Ombudsman.

MR. MONSOD: Madam President, there is a distinction between the qualifications required of an Ombudsman and the qualifications required of the members of the Constitutional Commissions. In the case of the Commission on Civil Service, the members are people who have experience in public administration; in the case of the Commission on Audit, they could be people with auditing experience and certified public accountants; and in the case of the Commission on Elections, they could be people with a college degree who are not necessarily lawyers.

In the case of the Constitutional Commissions, it might not be proper to have the prescreening done by the Judicial and Bar Council because the reach of the nominees goes beyond experience in law. In the case of the qualifications of the Ombudsman, the proposal is that they be members of the bar and, therefore, we made the presumption — rightly or wrongly — that perhaps the Judicial and Bar Council would be an appropriate prescreening body as far as looking for the right man for the job is concerned.

MR. RODRIGO: Does the Committee feel very strongly about this stand?

MR. COLAYCO: I was going to say that. I think the Committee, as I announced earlier, is open to suggestions.

MR. RODRIGO: Thank you.

MR. COLAYCO: Yes, because what we want is that this body be created, and so, we are inviting suggestions because this is something new to us.

MR. MONSOD: May I just go back to another comment the Gentleman made earlier on the lack of prosecutory functions of the Ombudsman. We discussed this in the Committee and I will admit that the distinction is not clear-cut. However, one of the concepts of the Ombudsman is his ability to persuade reforms, and we felt that perhaps, giving him a prosecutory function might be a bit contradictory with that function because it is better if he attains it through goodwill. However, we also wanted to invest in the event that public officials are not responsive by investing him with certain powers he can resort to in order to see to it that the omission or the act is rectified. For example, he may direct the proper officials to do so. Another power that he has which depends a lot on his prestige is his ability to publicize a wrong or an injustice, because then you have public opinion operating against the erring public official.

MR. RODRIGO: So, the Ombudsman does not have a prosecutory function nor punitive powers.

MR. COLAYCO: None.

MR. RODRIGO: All that he relies upon is his persuasive power.

MR. COLAYCO: Yes. Persuasive power plus the ability to require that the proper legal steps be taken to compel the officer to comply.

MR. RODRIGO: Yes, but what is meant by "required" is that the Ombudsman cannot compel.

MR. COLAYCO: We must distinguish this.

MR. RODRIGO: Can the Ombudsman compel a fiscal so file . . .

MR. COLAYCO: Not to file but to investigate. That is a duty which is compellable by mandamus, and the Ombudsman will be empowered to do that.

MR. RODRIGO: To file a mandamus case?

MR. COLAYCO: Yes, to compel him to investigate.

MR. RODRIGO: But on his own power, the Ombudsman cannot compel; he has to go to court. If the fiscal does not want it done, he has to go to court to file.

MR. COLAYCO: But that can be easily inserted among the powers. That is our idea. We would like to receive fresh ideas.

MR. RODRIGO: Let us go back to the division between the powers of the Tanodbayan and the Ombudsman which says that:

The Tanodbayan . . . shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.

The powers of the Ombudsman are enumerated in Section 12.

MR. COLAYCO: They are not exclusive.

MR. RODRIGO: So, these powers can also be exercised by the Tanodbayan?

MR. COLAYCO: No, I was saying that the powers enumerated here for the Ombudsman are not exclusive.

MR. RODRIGO: Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislature may vest him with powers taken away from the Tanodbayan, may it not?

MR. COLAYCO: Yes.

MR. MONSOD: Yes.

MR. RODRIGO: And it is possible that pretty soon the Tanodbayan will be a useless appendage and will lose all his powers.

MR. COLAYCO: No. I am afraid the Gentleman has the wrong perception of the system. We are leaving to the Tanodbayan the continuance of his functions and the exercise of the jurisdiction given to him pursuant to . . .

MR. RODRIGO: Law.

MR COLAYCO: No. Pursuant first to the Constitution and the law which mandated the creation of the office.

MR. RODRIGO: Madam President, Section 5 reads: "The Tanodbayan shall continue to function and exercise its powers as provided by law."

MR. COLAYCO: That is correct, because it is under P.D. No. 1630.

MR. RODRIGO: So, if it is provided by law, it can be taken away by law, I suppose.

MR. COLAYCO: That is correct.

MR. RODRIGO: And precisely, Section 12 (6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." The sponsors admitted that the legislature later on might remove some powers from the Tanodbayan and transfer these to the Ombudsman.

MR. COLAYCO: Madam President, that is correct.

MR. MONSOD: Madam President, perhaps, it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, the Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO: Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD: I agree with the Commissioner.

MR. RODRIGO: Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD: Yes. because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law — the last one, P.D. No. 1630 — did not follow the main thrust; instead it created the Tabodbayan.

MR. RODRIGO: Another question, Madam President. This office will be composed of five members. Will they all come from Manila?

MR. MONSOD: No, please read further.

MR. RODRIGO: Does the office of the Ombudsman have to act as a body?

MR. COLAYCO: It can act both as a body and along, because the head of the office is the Ombudsman himself.

MR. RODRIGO: Let us say that one Ombudsman comes from Mindanao. What I know is that this Ombudsman should be appointed but will have his office in Manila.

MR. COLAYCO: No, Madam President.

MR. RODRIGO: Does the Ombudsman have to be in Mindanao?

MR. COLAYCO: Yes, that is correct.

MR. RODRIGO: How about somebody from Sulu or Zamboanga who wants to complain?

MR. COLAYCO: Unless we make a start, when can we begin to comply and fulfill the needs of our people? Unfortunately, we know that there are many of us who need this. Of course, we cannot say from the very start that there will be five Deputy Ombudsmen for Mindanao alone.

MR. RODRIGO: No, I did not say that. It says here there will be five, one Ombudsman and four members.

MR. COLAYCO: For a start.

MR. RODRIGO: Yes. I just want to get right to the point. There are five members, and we have 54 million Filipinos, who all want to complain. Will the Ombudsmen be accessible to all, especially the poor people in the barrios who are the ones supposed to be benefited by this provision? How can they make themselves available?

MR. MONSOD: Madam President, the intention of the provision is that there will be an office of the Ombudsman, not that there will be only five people in that office. I think we prefaced our presentation with the qualification that there are no one-time solutions to all the problems. But we would like to institute one office that could be an answer to some of the problems of our countrymen. This is certainly not a solution to all the complaints of 55 million Filipinos. If we use that argument, then why institute offices that are not located in each and every barrio? Why have courts only in certain areas? Why not in each and every barangay?

I think our position is that, as Commissioner Colayco said, we want to give the concept a chance because it could be a vehicle for our people to correct injustices and misconduct and impropriety.

MR. RODRIGO: Madam President, my question is, will this Ombudsmen have a representative in every municipality, like there is a court in every municipality and city in the Philippines, so that the office will be accessible to the people who want to complain?

MR. MONSOD: Madam President, it is possible in time as the concept is developed, refined and accepted by the people, like in other countries where they have set up different types of Ombudsman — there is an Ombudsman for the military affairs; an Ombudsman for the youth and so on. But then this becomes a complicated and comprehensive view which can be handled subsequently by Congress.

MR. RODRIGO: Thank you.

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

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President.

I have a series of questions here, some for clarification, some for the cogitative and reading pleasure of the members of the Committee over a happy weekend, without prejudice later to proposing amendments at the proper stage.

First, this is with respect to Section 2, on the grounds for impeachment, and I quote:

. . . culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of public trust.

Just for the record, what would the Committee envision as a betrayal of the public trust which is not otherwise covered by the other terms antecedent thereto?

MR. ROMULO: I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.

MR. REGALADO: Thank you.

MR. MONSOD: Madam President, may I ask Commissioner de los Reyes to perhaps add to those remarks.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term "betrayal of public trust," as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.

Thank you.

MR. ROMULO: If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man; so if he does anything that obstructs justice, it could be construed as a betrayal of the public trust.

Thank you.

MR. NOLLEDO: In pursuing that statement of Commissioner Romulo, Madam President, we will notice that in the presidential oath of then President Marcos, he stated that he will do justice to every man. If he appoints a Minister of Justice and orders him to issue or to prepare repressive decrees denying justice to a common man without the President being held liable, I think this act will not fall near the category of treason, nor will it fall under bribery nor other high crimes, neither will it fall under graft and corruption. And so when the President tolerates violations of human rights through the repressive decrees authored by his Minister of Justice, the President betrays the public trust.

MR. REGALADO: On Section 3 (2), of course, without prejudice later to our discussing what should be the required number of votes for the filing of the articles of impeachment for which under the 1935 Constitution, a two-thirds vote was required and under the 1973 Constitution, a one-fifth vote was required, perhaps later we may

come to a happy compromise. But I notice the first sentence of Section 3 (2) says:

A verified complaint for impeachment may be filed by any of its Members or by a citizen which shall be referred to the proper committee of the House for investigation and report.

I suggest that the Committee should also consider within what time that report should be submitted because it could be frozen in the Committee.

MR. ROMULO: Yes, Madam President.

MR. REGALADO: This is with respect to Section 4, regarding the Sandiganbayan, otherwise known as the Anti-Graft Court. It has been noted in the proposed resolution that it shall continue to function and exercise its jurisdiction as provided by law. If I am not mistaken, the law referred to is P.D. No. 1606 and this law, insofar as the Sandiganbayan justices are concerned, appears to be an anachronism in itself in the matter of their removal by impeachment. Under the present state of the law, the presiding justice of the Sandiganbayan has the rank of a presiding justice of the Intermediate Appellate Court and the associate justices of the Sandiganbayan have the rank of associate justices of the Intermediate Appellate Court. Yet the anachronism is this: While the members of the Sandiganbayan are, and the Sandiganbayan itself is, a part of the judicial department, these justices can be removed only by impeachment. If Section 4 says that the Sandiganbayan shall continue to function and exercise its jurisdiction as provided by law, then it would appear that these justices can be removed only by impeachment because of the statutory provision under P.D. No. 1606, and yet, they are not among those mentioned as the impeachable officials under the preceding Section 2. Does the Committee intend to continue the state of things wherein these justices of a special court can be removed only by impeachment, whereas their counterparts in the Intermediate Appellate Court can be removed not necessarily by impeachment? I ask the Committee to look into that.

MR. NOLLEDO: I would like to say something in connection with the Commissioner's last statement.

MR. REGALADO: My question is: Under Section 4, can the justices of the Sandiganbayan be removed only by impeachment as is the present state of the law?

MR. NOLLEDO: What law is that, before I answer the Commissioner's question?

MR. REGALADO: If I am not mistaken, it is P.D. No. 1606.

MR. NOLLEDO: In that case, assuming that we give that P.D. No. 1606 a category of the law, if that law is repealed by the legislature, the basis will be lost, meaning, the provision on whether or not they are removable by impeachment will also be correspondingly repealed. So I do not see any anachronism involved in the situation because the provision authorizing impeachment is not a constitutional provision, but a mere statutory provision. And when it is a statutory provision, it can be repealed.

MR. REGALADO: When I said the provision is an anachronism, I am referring to the present state of the law. But if the Commissioner will agree that this provision be eliminated, then the anachronism will not exist.

MR. MONSOD: For the information of the Commissioner, we were addressing ourselves here to the continuity of the institution, and we would welcome any suggestions or amendments at the proper time.

MR. REGALADO: Yes, that is why I said that this is without prejudice to an amendment, so that the Committee can enjoy its weekend going over these provisions. I think we should clarify Section 8 a little more, because it says:

The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, at least forty years old, with a

college degree, or a member of the Philippine Bar.

Unless otherwise recast, it would appear that the Ombudsman himself need not be a member of the Philippine Bar, but with only a college degree.

MR. MONSOD: I believe there might have been a typographical error here and, again, an amendment would be in order.

MR. REGALADO: Yes, thank you.

On Section 10, regarding the Ombudsman, there has been concern aired by Commissioner Rodrigo about who will see to it that the Ombudsman will perform his duties because he is something like a guardian of the government. This recalls the statement of Juvenal that while the Ombudsman is the guardian of the people, "Quis custodiet ipsos custodies," who will guard the guardians? I understand here that the Ombudsman who has the rank of a chairman of a constitutional commission is also removable only by impeachment.

MR. ROMULO: That is the intention, Madam President.

MR. REGALADO: Only the Ombudsman?

MR. MONSOD: Only the Ombudsman.

MR. REGALADO: So not his deputies, because I am concerned with the phrase "have the rank of." We know, for instance, that the City Fiscal of Manila has the rank of a justice of the Intermediate Appellate Court, and yet he is not a part of the judiciary. So I think we should clarify that also and read our discussions into the Record for purposes of the Commission and the Committee

MR. ROMULO: Yes. If I may just comment: the Ombudsman in this provision is a rank in itself really. That is how we look at it. But for purposes of government classification and salary, we thought we have to give him a recognizable or an existing rank as a point of reference more than anything else.

MR. REGALADO: Yes, but my concern is whether or not he is removable only by impeachment, because Section 2 enumerates the impeachable officials, and it does not mention public officers with the rank of constitutional commissioners.

MR. ROMULO: But we do mention them as the Ombudsman is mentioned in that enumeration. We use the word "Ombudsman" because we would like it to be his title; we do not want him called "Chairman" or "Justice." We want him called Ombudsman.

MR. REGALADO: In connection also with that concern of Commissioner Rodrigo regarding the Ombudsman being merely a duplication, I have here the records of the former Ombudsman to show that one of the reasons he could not function in his administrative or recommendatory capacity was the number of cases for prosecution which took almost all his time. So I believe that there should really be an Ombudsman to take care of the recommendatory, policy-determining, policy-suggesting or administrative aspect of his position. The whole task of prosecution should be left to a regular Tanodbayan.

One more thing, and I think the Commissioner should look into this: In the Committee on Constitutional Commissions and Agencies where the Chairman and I enjoy each other's company, there has been submitted Proposed Resolution No. 365 which seeks to constitutionalize a Commission on Human Rights with investigatory, reportorial and recommendatory powers insofar as violations of human rights are concerned. Would the Commissioner consider the possibility of having these functions of the proposed constitutional Commission on Human Rights ingrafted into the functions of the Ombudsman so that there will be no need to create another

constitutional commission only for that purpose? But if these functions are taken over by the Ombudsman who himself is a constitutional officer, then, possibly, it will not only be economical for the government but it will result in nonduplication of the same investigatory, recommendatory and reportorial functions because these are limited under this proposed resolution to human rights violations. I think those functions should properly be absorbed by the Ombudsman because, after all, his functions cover all governmental institutions.

MR. MONSOD: Madam President, the Chairman of the Committee on Constitutional Commissions and Agencies is not here, but I am a member of that Committee and we would like to tell the body that the Chairman and the members have accepted the idea of setting up a Commission on Human Rights because the violation of human rights is a very special problem in our country, and the Ombudsman really has a wide enough area of activities already. I think we should look at the Ombudsman not only as somebody who looks into offenses or crimes but also into government inefficiency, impropriety and misconduct that may not really amount to crime. And by definition that is already quite a wide and broad range of functions.

MR. REGALADO: Madam President, I am the Chairman of the Subcommittee on Proposed Additional Constitutional Commissions in the same Committee, but I was never consulted on this matter. That is why when I went over this proposed resolution which seeks to create a new and additional constitutional commission, that was the first time I went over the proposed functions of that Commission on Human Rights and I had toyed with the idea that possibly they could be placed also under the duties and functions of the Ombudsman.

MR. MONSOD: Madam President, I was informed by the Chairman that he is sorry if the same views have not been shared with the Commissioner. Perhaps, it is a tentative conclusion on his part, and I am sure that that can be ironed out over the weekend.

MR. REGALADO: Yes, because I got my copy of that proposed resolution only yesterday, although I am the Chairman of the Subcommittee on Proposed Additional Commissions.

Thank you.

MR. SARMIENTO: Madam President, this Member is now the Acting Floor Leader by substitution.

Madam President, may I ask that the honorable Commissioner from Pangasinan, Commissioner Bengzon, be recognized. Also, I ask the interpellators to limit their comments and interpellations to only five minutes.

Thank you.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Thank you.

On Section 1, line 10, what does the phrase "lead modest lives" really mean? Suppose a public official, by nature, is moneyed, can he not live according to the standard of living that he is used to? I mean he is not really flaunting. For example, he has been riding in a Rolls Royce and he really can afford it, but just because he is a public official, would we want him to ride in a Toyota? Is that what this phrase means?

MR. ROMULO: No, I think the Commissioner said it himself, not to flaunt, not for conspicuous consumption. Even the Civil Code has a provision regarding this during times of economic distress, and we want to emphasize that. Actually, in his official capacity, we may want him to ride in a Toyota, as a matter of example. When he goes out on his own, he may ride in his Rolls Royce, but for his official functions, there is no harm in riding in a Toyota.

MR. MONSOD: Madam President, perhaps it would also be good for us to hear from Commissioner Tadeo, the

proponent of this resolution accepted by the Committee.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Ang ibig naming sabihin dito ay 'yung "living within your means." Nang malaman ko na ang suweldo ni Presidente Cory Aquino ay P8,333, ang sabi ko ay hindi sapat iyon para makabili ng isang Mercedes Benz, bagamat may mga simpleng kapitan na nakatira sa mga malalaking mansyon sa Forbes Park at may kotse pa ang mga anak gayong ang liit ng suweldo nila.

Kaya ko ito ipinasok ay napakahalaga nitong accountability of public officers. Sa pagsusuri sa ating lipunan, tatlo ang nakitang suliranin: una, ang imperialism; pangalawa, ang bureaucrat capitalism at ang pangatlo, ang feudalism. Ang ibig sabihin ng bureaucrat capitalism ay ang pagpapayaman sa tungkulin at ang pagpapatakbo sa pamahalaan bilang isang negosyo. Sa pagsusuri ng UP College of Public Administration, noong panahon ng diktadura, ang graft and corruption ay umaabot sa P20 billion bawat taon. Napakagrabe po nito, P20 billion per annum. Kaya dito sa provision on the accountability of public officers, sa pangalawang ugat, baka sakaling malunasan natin. Kaya ko nilagyan ang Section 1 ng "lead modest lives" ay sa kadahilanang noong makita ko iyong suweldo ni Presidente Cory Aquino, ako ay nagtaka kung bakit 'yung ibang mga officials na may mas mababang suweldo ay nakatira sa mga mansyon, mayroong Mercedes Benz at ang mga anak ay tig-iisa ng kotse. Ang punto ko lang ay ganito: kung gaano ang kinikita ng isang official ay iyon lang ang siyang dapat makita sa pamamagitan ng simpleng pamumuhay.

MR. MONSOD: Thank you.

MR. BENGZON: That changes the interpretation, because if a public official is earning P8,000 a year but is moneyed on his own, must he live within that P8,000 a year? That is precisely my question.

SR. TAN: I think there is a little difference. It is the recognizable excess after he got into office. So if he was very rich before and he still is rich, it is all right, just like President Cory Aquino. But if there is a recognizable excess like the cronies, 'yung mga biglang-yaman, that is a different story.

MR. BENGZON: That is precisely why I wanted that interpretation entered into the Record so that we will not have any misunderstanding. The proper word would probably be "exemplary" instead of "modest" and we will make the proper amendment at the proper time.

My question on page 3 regarding the Ombudsman being a member of the Philippine Bar has been asked by Commissioner Regalado.

So I will proceed to page 4, line 18 which states: "government-owned corporations." So we are excluding complaints against officials of government-controlled corporations like, for example, Manila Gas which is 60 percent government-owned and 40 percent privately owned.

MR. COLAYCO: We will welcome these amendments at the proper time.

MR. BENGZON: But what is the intention? Does the Committee intend to exclude complaints against officials of these companies?

MR. MONSOD: No, Madam President. The intention is not to exclude them. We thank the Commissioner for pointing that out.

MR. BENGZON: Apropos of the points raised by Commissioner Rodrigo, in all of these enumerated functions of the Ombudsman, am I correct in saying that the Ombudsman is a troubleshooter and some kind of a "sumbongero" for the people?

MR. ROMULO: Yes, he is a busybody.

MR. BENGZON: Thank you.

MR. SARMIENTO: Madam President, I ask that the honorable Commissioner Maambong be recognized to speak for five minutes.

THE PRESIDENT: Commissioner Maambong is recognized.

MR MAAMBONG: Thank you.

Considering that the Acting Floor Leader said that I will speak for five minutes, I will now manifest my intention that after my time I might have to ask for an extension of just a few minutes because I feel that there are very important matters that I have to discuss with the Committee.

First of all, I will not repeat the concerns of Commissioners Rodrigo and Bengzon about the creation of the Ombudsman. I would just like to indicate for the record my objection to this creation considering the following: I have made a comparative study between the Sandiganbayan, the Tanodbayan and the Ombudsman.

As far as powers are concerned, the Sandiganbayan is a court of law. It is created not directly by the Constitution but by P.D. No. 1606 by virtue of the mandate of the Constitution. We will notice that the Sandiganbayan as a court of law, according to Section 1 of P.D. No. 1606, has the same level as the Intermediate Appellate Court with all the inherent powers of a court of justice. And yet in the present formulation of impeachable officers, the Committee failed to indicate whether its members or justices are impeachable or not, in spite of the fact that in the same Section 1 of P.D. No. 1606, it is clearly indicated that the justices of the Sandiganbayan are impeachable officers. Incidentally on this note, I would like to recall that when we filed a petition before the Supreme Court in the case of Rufino Nuñez vs. Sandiganbayan and the Republic of the Philippines, which incidentally we lost, we questioned the mention of justices of the Sandiganbayan as impeachable officers because they have never been indicated as such in the Constitution.

Compared to the Tanodbayan, while the Sandiganbayan is a court of law, the Tanodbayan is a prosecutory body. When we go down the line to the Ombudsman, what is it under the present configuration of the proposal? Its power is only recommendatory; it directs people to do something, nothing more. As far as I am concerned, the Ombudsman under the present proposal is inutile as far as powers are concerned. On the other hand, it is mentioned that it has the duty to act promptly on complaints. And I would like to agree with Commissioner Bengzon on this point. So I would repeat that its power is only recommendatory; it only directs, nothing more. Of course, there is that phrase in the proposal which says: "and perform other functions and duties as may be provided by law."

Second point: As far as impeachability of officers is concerned, in the present configuration of the proposal, as I said, the Sandiganbayan justices do not appear to be impeachable, although under Section 1 of P.D. No. 1606 they are supposed to be impeachable. As far as the Tanodbayan justices are concerned, they are not included among the impeachable officers. As regards the Ombudsman and his deputies, the proposal says they are impeachable. Here is a body which is only recommendatory, not a court of law, nor even a prosecutory body and yet, we consider its members impeachable officers.

Third point: The Sandiganbayan is created by a mandate of the Constitution. That is why we have P.D. No. 1606 amending P.D. No. 1486. In the case of the Tanodbayan, it is also created by a mandate of the Constitution. That is why we have P.D. No. 1607 amending P.D. No. 1487. In the case of the Ombudsman, the proposal now is to create this directly on the level of a constitutional commission. And yet — I will refer back to its power — it is only

recommendatory and directory.

Let us go to the fourth classification as to their immunities. The Sandiganbayan justices do not have immunities under P.D. No. 1606. In the case of the Tanodbayan justices, however, Section 20 of P.D. No. 1607 clearly indicates their immunities which incidentally are the very same immunities which had been copied almost verbatim in the case of the executive order granting powers to the Presidential Commission on Good Government. In the case of the Ombudsman and his deputies, there is no mention that they are immune from civil prosecution.

So we have a situation where a court of law has no immunities. We have a prosecutory arm in the Tanodbayan which has immunities and we have the Ombudsman which has none.

I would like the Committee to please consider these things because I understand from the Chairman that the Committee will think about this during this weekend.

I will now go to the more important point, I have already reached my time.

MR. NOLLEDO: May we have the questions?

MR. MAAMBONG: Yes, Madam President.

MR. NOLLEDO: Does the Commissioner have questions to ask of the Committee?

MR. MAAMBONG: I have questions on the next matter which I will discuss, and I now move, Madam President, that I be given a time extension of a few minutes, if it is all right with the body.

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

MR. MAAMBONG: Thank you.

I will now concern myself with the statement of the Chairman that this impeachment proceeding is very important in the light of the previous happenings in this country. I would like to believe that he was referring to the impeachment case filed against the former President which was covered by Resolution No. 644.

My questions will be directed to this point in order that in the future we will not have difficulties. I will not ask on the procedural aspect. I understand Commissioner Davide will take care of that. I am more concerned about the nature of the impeachment proceedings on which we, members of the Committee on Justice and Good Government that took cognizance of that impeachment proceeding against the former President, really had a lot of difficulty.

We have now in the present proposal the following grounds for impeachment: culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of trust. I think we have no problem in the case of treason and bribery because these are all covered by law. I do not think we have also any problem in the case of graft and corruption because it is covered by RA 1319, which was promulgated on August 17, 1960. We will now concern ourselves with the interpretation of the phrases "other high crimes" and "betrayal of trust." I will start by asking the Committee this question: What is really the thinking of the Committee as far as impeachment proceedings are concerned? Are impeachment proceedings criminal in nature or not? In order to answer this very clearly, I would like to indicate the following: In the case of *State v. Lersé*, 70 Nebraska 92, which is a United States case, the Supreme Court ruled that the proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal and is governed by rules of law applicable to criminal prosecution. On the other hand, I would like to indicate this to the Committee that in the case of official misconduct, we have here statements which I think the Committee should comment on. Official misconduct is supposed to fall into three categories: One, exceeding the constitutional bounds of the powers of the

office in derogation of the powers of another branch of government; two, behaving in a manner grossly incompatible with the proper function and purpose of the office; and, three, employing the power of the office for an improper purpose or personal gain.

The provision which we have here says:

. . . impeachment and the criminal law serve fundamentally different purposes. Impeachment is the first step in a remedial process. The purpose is not personal punishment. Its function is primarily to maintain constitutional government. The general applicability of the criminal law also makes it inappropriate as the standard. In an impeachment proceeding, a President is called to account for abusing powers which only a President possesses. Impeachable conduct may include the serious failure to discharge the affirmative duties imposed on the President by the Constitution. Unlike a criminal case, the cause for removal may be based on his entire course of conduct in office. It may be a course of conduct more than individual acts that has a tendency to subvert constitutional government. (Power of Impeachment — Guide to Congress, p. 149)

For purposes of proper elucidation, what is the thinking now of the Committee as far as this impeachment procedure is concerned? Is this a criminal proceeding? If so, we have to use the principle of criminal law.

MR. ROMULO: Yes. Firstly, we agree with the quotation that the Commissioner has just read. Insofar as we are concerned, the procedure is analogous to a criminal trial but it is not a criminal prosecution per se. The goal of an impeachment is merely to remove the fellow from office for the crimes indicated. However, Section 3 (6) of this proposed Article itself — and this is really very close to the provision of the 1935 Constitution — says:

Judgment in cases of impeachment shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

In essence, I think that answers the Commissioner's question. He is then subject to a separate prosecution, whether civilly or criminally, for the acts that he had committed.

MR. MAAMBONG: May I proceed now to two very short questions considering that we have already identified the problem and the answer is that it is not a purely criminal prosecution in terms of procedure. We have here a statement in the book of Simpson which reads:

A person subject to impeachment by Congress is entitled to due process of law although presently there is little judicial authority. It can be suggested that he is also entitled to his privilege against self-incrimination, right to counsel, right to be informed of the nature and the cause of the accusation against him, and the right to be confronted with adversary witnesses. (Treaties on Federal Impeachment, p. 27)

Would this statement be applicable to an impeachment proceeding?

MR. ROMULO: As the provisions now read, I think the Senate, as well as the House, will set up its own rules. I do not know whether or not we have to adhere to that because what the Commissioner has read, strictly speaking, is a criminal proceeding. But the President like any citizen is entitled to the bill of rights, like confrontation of witnesses, notice of the charges and so on. I think those are fundamental and he is entitled to them.

MR. MAAMBONG: Let us go to a bottom-line question then. When the Senate acting as a body will now try the impeachment case, will it conduct the proceeding using principles of criminal procedure?

MR. ROMULO: I do not think, strictly speaking, that it need be criminal procedures. The important thing, I believe, is that the involved party should know the charges. He must have the opportunity to answer the charges and the proceedings must be, in total, fair and impartial. I do not think we have to go to the minutiae of a criminal

proceeding because that is not the intention. This is not a criminal proceeding per se.

MR. MAAMBONG: In the matter of presentation, for example, of evidence, when it comes to treason and bribery, would the rules on criminal procedure be applied, considering that I am now particularizing on the ground which is punishable by the Revised Penal Code, like treason or bribery?

MR. ROMULO: Yes, but we will notice that, strictly speaking, for the crime of treason under the Revised Penal Code, he is answerable for that crime somewhere else. So my conclusion is that obviously, it is in the criminal court where we will apply all the minutiae of evidence and proceedings and all these due processes. But we can be more liberal when it comes to the impeachment proceedings, for instance, in the Senate, because we are after the removal of that fellow, and conviction in that case really amounts to his removal from office. The courts of justice will take care of the criminal and civil aspects.

MR. MAAMBONG: Last point, just to enrich our records. I would like the Committee to comment on this quotation from Philippine Constitution by Former Chief Justice Fernando, wherein he said:

In the United States Constitution, the term is high crime and misdemeanors. The Philippine Constitution speaks only of high crimes. There is support for the view that while there need not be a showing of the criminal character of the act imputed, it must be of sufficient seriousness as to justify the belief that there was a grave violation of the trust imposed on the official sought to be impeached. (pp. 460-461)

Would the Committee agree to this statement?

MR. ROMULO: Yes. Let me say that essentially, impeachment is a political act.

MR. MAAMBONG: Yes. I will also quote the report of the General Committee on the impeachment of President Quirino, Volume IV, Congressional Records, House of Representatives, 1553:

High crimes refer to those offenses which, like treason and bribery, are indictable offenses and are of such enormous gravity that they strike at the very life or orderly working of the government.

Would the Committee agree to this?

MR. ROMULO: Yes, of course, especially if the President is involved.

MR. MAAMBONG: Finally, I will again refer to the committee report on the impeachment of President Quirino on the phrase "culpable violation of the Constitution," and I quote:

Culpable violation of the Constitution means willful and intentional violation of the Constitution and not violation committed unintentionally or involuntarily or in good faith or thru an honest mistake of judgment.

Would the Committee agree?

MR. ROMULO: Yes, we agree with that.

MR. MAAMBONG: And this is really the final quotation which I would like the Committee to comment on. Chief Justice Fernando also said:

Culpable violation implies deliberate intent, perhaps even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands.

Could this be an agreeable interpretation to the Committee?

MR. ROMULO: Yes, subject to exception, such as the last administrator we had.

MR. MAAMBONG: The Commissioner has been very kind.

Thank you very much. Thank you, Madam President.

MR. NOLLEDO: Madam President, before the Acting

Floor Leader calls for the next interpellator, I would like to make a comment on the statements of Commissioners Rodrigo and Maambong that the function of the Ombudsman is merely recommendatory and that the office may constitute as a useless appendage in the government . . .

Suppose a common tao goes to a public office and he is not attended to, so he complains to the chief of the division. The usual happening is that there is indifference. He feels aggrieved, he goes home and he does not pursue his case anymore. He does not know where to go. So he goes to the Ombudsman, and the Ombudsman assists him by being his lawyer for free. In this case, does the Commissioner think we are not doing service to our people by giving him a lawyer for free to champion his cause in order that possible abuse on the part of government officials may be minimized, if not eradicated?

I would like the body to know that it is not exactly true to state that the basic function of the Ombudsman is recommendatory. If we look on page 4, Section 12, one of the functions of the Ombudsman is:

To direct, upon complaint or at its own instance, any public official or employee of the government, as well as of any government-owned corporation or institution, to perform and expedite any act or duty required of him by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

Many of the valid complaints of the common tao who go to public offices are not publicized: no one assists them, so they just leave the government offices in utter exasperation. But when the public officers know that there is an office of the Ombudsman that will champion his cause, government officials will also be careful in mistreating the common tao. They know that their actions can be publicized. They know that the Ombudsman can recommend their removal. They know that the Ombudsman will direct them to perform their duties. And when they do not perform their duties, they will be investigated. These are factors that should be considered to deter public officials from discharging their duties with inefficiency.

Thank you, Madam President.

MR. SARMIENTO: Madam President, I ask that the honorable Commissioner Hilario G. Davide be recognized.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Thank you, Madam President.

Will the Committee yield to some clarificatory questions?

MR. NOLLEDO: Gladly.

MR. DAVIDE: On impeachment, the Committee has now added as another ground the betrayal of public trust. Would not the Committee consider culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption as included in the phrase "betrayal of public trust"?

MR. NOLLEDO: I think they are, if we will stretch the meaning of "betrayal of public trust."

MR. DAVIDE: Yes. If all these — culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption — are already included in the phrase "betrayal of public trust," can we not just, therefore, limit the ground for impeachment to betrayal of public trust?

MR. NOLLEDO: As I said, the violation of an oath of office does not necessarily constitute any of the foregoing instances.

MR. DAVIDE: Yes, precisely. A violation of an oath of office is itself a violation of the Constitution because a public official's oath is in the Constitution.

MR. NOLLEDO: The provision says that the violation must be culpable. Suppose it is not culpable, it will not be categorized as such, but it is serious enough to justify the impeachment proceedings?

MR. DAVIDE: In any case, even the violation of the Constitution is betrayal of trust.

MR. NOLLEDO: That is the reason we put betrayal of trust in order to remedy the loophole that will be created in view of the use of the word "culpable."

MR. DAVIDE: The idea then of the proposal is really to relax impeachment as a ground for the removal of the President.

MR. NOLLEDO: I think the Commissioner is right, Madam President.

MR. DAVIDE: If that is so, since even culpable violation of the Constitution is already included in the betrayal of public trust, why can we not just limit the ground to mere betrayal of public trust?

MR. DAVIDE: So the thrust of the report is really to relax impeachment as a process. I notice, however, that the proposal now requires a majority vote of all the members of the House to initiate impeachment, while the present constitutional provision requires only a vote of one-fifth of the Members. The provision of the 1935 Constitution is also one-fifth vote of the Members. Why did we increase it to a majority vote of all the Members, if the idea is to relax impeachment? Does not the Committee realize that we will now have a House of Representatives with a membership of 250? A majority of the membership will be 126, yet one-fifth would only be 50. So if we are going to relax impeachment, we should retain the one-fifth requirement to initiate impeachment and, perhaps, even reduce the requirement for conviction.

MR. MONSOD: If we will recall, during the sponsorship, we precisely said that this is a matter that we would like very much to be discussed on the floor, because there is a very delicate balancing here of the right to demand accountability with the right of the government to a certain amount of stability and freedom from harassment.

MR. NOLLEDO: That is correct.

MR. MONSOD: And we would like very much to be advised by the body on this. We were looking at the past where, in the 1973 Constitution, a vote of 20 percent of the membership of the House and, in the 1935 Constitution, a vote of two-thirds of the membership of the House were required to initiate impeachment proceedings.

MR. DAVIDE: That is for conviction, but not for initiation. Initiation of impeachment proceedings still requires a vote of one-fifth of the membership of the House under the 1935 Constitution.

MR. MONSOD: A two-thirds vote of the membership of the House is required to initiate proceedings.

MR. DAVIDE: No, for initiation of impeachment proceedings, only one-fifth vote of the membership of the House is required; for conviction, a two-thirds vote of the membership is required.

MR. MONSOD: For conviction, it is a three-fourths vote of the Senate, Madam President.

MR. DAVIDE: I see.

MR. ROMULO: No, it is two-thirds vote.

MR. DAVIDE: Here we now recognize the right of every citizen and a Member of the Lower House to file a complaint. However, the proposal would require a referral of the complaint to a committee. Would it not make the process rigorous because the committee can kill the proposal? Suppose the committee now votes against the impeachment complaint, may one-fifth or a majority of the Members of the National Assembly overturn that rejection by the committee.

MR. ROMULO: Yes, Madam President. These are the points that we would like to be discussed.

MR. DAVIDE: However, if we will allow one-fifth of the membership of the legislature to overturn a report of the committee, we have here Section 3 (4) which reads:

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

So, necessarily, under this particular subsection, we will, in effect, disallow one-fifth of the Members of the National Assembly to revive an impeachment move by an individual or an ordinary Member.

MR. ROMULO: Yes. May I say that Section 3 (4) is there to look towards the possibility of a very liberal impeachment proceeding. Second, we were ourselves struggling with that problem where we are faced with just a verified complaint rather than the signatures of one-fifth, or whatever it is we decide, of the Members of the House. So whether to put a period for the Committee to report, whether we should not allow the Committee to overrule a mere verified complaint, are some of the questions we would like to be discussed.

MR. DAVIDE: We can probably overrule a rejection by the Committee by providing that it can be over-turned by, say, one-half or a majority, or one-fifth of the members of the legislature, and that such over-turning will not amount to a refiling which is prohibited under Section 3 (4).

Another point, Madam President. May the Committee, taking into account evidence obtained in the course of the investigation of a charge for impeachment, add other grounds for impeachment?

MR. ROMULO: That is not prohibited per se in our proposal, and again we are willing to consider that.

MR. DAVIDE: Another question. Suppose the committee's report is a rejection, under the proposal it is not very clear whether the overturning of that report can be done by the legislature. Does it mean that such a report shall have to be archived if it is a rejection?

MR. ROMULO: Yes.

MR. DAVIDE: In other words, no Member of the Lower House can even comment on the report?

MR. ROMULO: That is not contemplated here.

MR. DAVIDE: What could be the nature of the evidence which the Committee would require? Would it be mere preponderance of evidence, just like in the fiscal's office? Thus, if it believes that there is reasonable ground to believe that a probable cause exists, the committee must have to make a report for the articles of impeachment?

MR. ROMULO: We did not go into that precisely because it would then partake too much of a criminal proceeding. As I said, we believe this is a political act more than anything else.

MR. DAVIDE: While it may not necessarily be a criminal proceeding, does not the Committee believe that we have to give some guidelines to the committee because it can just kill any proposal for that matter?

MR. ROMULO: Yes. There are two ways of handling that, either we put it specifically in this provision or we put it in the Journal for the guidance of the House when it establishes its rules.

MR. DAVIDE: When an impeachment charge is, as recommended by the Committee, signed by a majority of all the members of the House, should it always be in the nature of a complaint which must be verified, or is it enough that it is in the nature of a resolution?

MR. ROMULO: No, in our thinking it should be under oath.

MR. DAVIDE: Must all of the signatories swear to the oath, or would only one of them be enough?

MR. ROMULO: No, in Section 3 (3) that would be all of them, as distinguished from Section 2 (2) where only one Member can sign.

MR. DAVIDE: All of them must have to swear to the oath.

Under the impeachment rules of the Interim Batasang Pambansa, an impeachment charge may be filed by a Member of the Batasan either by a verified complaint or an ordinary resolution, and must forthwith be calendared within three session days from its filing. It would not even require a certification by the Speaker as to its correctness in form. But in the matter now of a complaint filed by an ordinary citizen, would it be immediately calendared also, or shall it pass the Speaker for him to determine the correctness in form of the complaint?

MR. ROMULO: We leave that to the procedures of the House.

MR. DAVIDE: And, finally, for convicting a person for impeachment, would proof beyond reasonable doubt be required?

MR. ROMULO: Again, since this is not a criminal proceeding, I would not think so.

MR. DAVIDE: If a President or anybody else who is impeachable is prosecuted in an impeachment proceeding for graft and corrupt practices and is convicted, would such a conviction not bar a succeeding criminal prosecution in court for graft and corruption or for the same offense?

MR. ROMULO: Absolutely it would not bar a succeeding criminal prosecution in court for the same offense because the provision of Section 6 is very clear.

MR. DAVIDE: So it would not bar a succeeding prosecution in court.

But would that decision of the Senate convicting him for graft and corruption be an admissible evidence to prove the crime in court for the same offense, or should it be considered as not admissible because otherwise it might unduly influence the judge?

MR. ROMULO: I should think it would be admissible but subject to the quantum of evidence that the particular charge in court would normally require under our rules on evidence.

MR. ROMULO: No. That would not be permitted in a regular court of justice.

MR. DAVIDE: I notice in the report and from the answers during the period of interpellations that the Ombudsman would have no right to conduct investigations.

MR. NOLLEDO: No, that is not true.

MR. ROMULO: The Ombudsman has the right to conduct investigations.

MR. DAVIDE: So, it can conduct investigations.

MR. NOLLEDO: It can conduct investigations but it cannot prosecute before a court of justice.

MR. COLAYCO: At the inception, no. I mean when a complaint is filed, from the inception of the complaint he can already act because it is a question of finding out from the person being complained about whether or not the complaint is valid. It is a very simple procedure.

MR. DAVIDE: In other words, to determine whether the complaint is valid or not, necessarily he has to conduct an investigation.

MR. COLAYCO: Afterwards, yes.

MR. DAVIDE: Under Section 12 (2), we empower the Ombudsman to direct the officer concerned to take appropriate action against a public official or employee at fault, and to recommend his removal, suspension, demotion, fine, censure or prosecution, and to see to the compliance of the directive. My first question is with regard to the recommendation for removal. Does it mean that the offending public official or employee may be deprived of due process because there is already a recommendation for removal?

MR. COLAYCO: Of course not.

MR. DAVIDE: And since he is to see the compliance of the directive, which is to recommend his removal, etc., what if the person to whom the directive is addressed will not comply with it?

MR. COLAYCO: There are always administrative remedies against that.

MR. DAVIDE: Could the offending party be prosecuted then for disobedience?

MR. COLAYCO: Yes, as the case may be and as the regulations of the civil service so require.

MR. DAVIDE: So, in effect, we will have a superbody in this case which can be even more powerful than any other administrative body.

MR. COLAYCO: More or less that is the intention.

MR. MONSOD: Except that we do not precisely give him the prosecutory functions in order to have some balance here, and we do not precisely want him to be a supergovernment overseer.

MR. DAVIDE: That is exactly the reason I am afraid it might be a superbody because it does not have by itself the prosecutory power, so it will necessarily recommend to the fiscal's office the prosecution of an individual. But we know for a fact that the fiscal's office cannot just immediately file the case. It will have to conduct the preliminary investigation and decide for itself whether there is a reasonable ground to believe that a case may be filed.

MR. COLAYCO: The Commissioner is correct.

MR. DAVIDE: So if the fiscal's office believes that there is really no basis to the recommendation, yet it will be at the mercy of the Ombudsman because the Ombudsman will now prosecute him for disobeying the recommendation of the directive.

MR. COLAYCO: No; the Commissioner is wrong there. The Ombudsman can only order the investigation, that is all.

MR. DAVIDE: I see.

MR. COLAYCO: He cannot overrule.

MR. NOLLEDO: Yes.

MR. DAVIDE: There is the danger of duplication of functions because the Ombudsman will investigate and the result may be forwarded to the fiscal's office. The fiscal's office will then review it before filing the case. So two bodies will have to investigate before the same matter reaches the court.

MR. NOLLEDO: Why not? It will lessen the burden of the fiscal. We will notice that under the law on criminal investigation, as now embodied in the 1985 Law on Criminal Procedure, mere affidavits on the part of the respondents would suffice for the fiscal to determine whether or not there is a prima facie case. And it is only when the fiscal needs clarification that he may propound questions to the parties before the case. If the Ombudsman had done his duty, we cannot deny that this will lessen to a considerable degree the burden of the fiscal and, thus, expedite the appropriate action.

MR. DAVIDE: It will multiply the burden of the fiscal because two agencies will have to conduct the investigation. In other words, it will result in duplication of functions.

MR. NOLLEDO: I do not think so.

MR. DAVIDE: That is all, Madam President.

Thank you very much.

THE PRESIDENT: The Acting Floor Leader is recognized.

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

MR. MONSOD: Madam President.

THE PRESIDENT: What is the pleasure of Commissioner Monsod?

MR. MONSOD: Madam President, we have one additional explanation. May we just ask Commissioner Romulo address himself to a point raised by Commissioner Davide?

MR. SARMIENTO: May I ask, Madam President, that Commissioner Romulo be recognized.

THE PRESIDENT: Commissioner Romulo is recognized.

MR. ROMULO: We would just like to observe that actually there will not be a total duplication of functions because the fiscal is not allowed to investigate motu proprio, that is, by himself; whereas the Ombudsman, precisely, as I said, is a busybody, so he can initiate investigations on his own. So, from that point of view, there is a division of functions.

THE PRESIDENT: Commissioner Villacorta is recognized.

MR. VILLACORTA: Madam President, I would just like to ask the Committee three questions.

On Section 3, page 2, lines 12 to 14, the last paragraph reads as follows: "No impeachment proceedings shall be initiated against the same official more than once within a period of one year." Does this mean that even if an evidence is discovered to support another charge or ground for impeachment, a second or subsequent proceeding cannot be initiated against the same official within a period of one year? In other words, one year has to elapse before a second or subsequent charge or proceeding can be initiated. The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?

MR. ROMULO: Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.

MR. VILLACORTA: Thank you, Madam President. I have another question. I would like to know why of all the provisions we have discussed, Section 5, lines 7 to 12, has to refer to a particular provision in the 1973 Constitution. May I repeat that? Section 5, page 3, lines 7 to 12.

MR. ROMULO: Yes.

MR. VILLACORTA: I would like to know why this section has to refer to a particular provision in the 1973 Constitution, instead of just repeating the desired 1973 provisions as was done in other articles that we have approved.

MR. ROMULO: Yes, it is a shorthand way of identifying exactly who this Tanodbayan is. It is a point of reference, more than anything else.

MR. VILLACORTA: Yes, because, as I have observed in the other articles that we have approved and are still considering whenever we would like to use provisions in the previous Constitutions, we would simply repeat the wording rather than refer to these provisions. Referring to these provisions would confuse the user of the Constitution.

MR. MONSOD: Madam President, that is an alternative that we can consider. But if we mention only the phrase to repeat the words in the 1973 Constitution, we realize that we would have to have a separate provision in the Transitory Provisions and we were trying to consolidate it here. But we would be open to amendments or suggestions in that regard.

MR. VILLACORTA: Thank you very much.

I am also wondering why P.D. No. 1630 was referred to, if I am not mistaken, by Honorable Colayco and Nollado as a basis of the powers of the Tanodbayan as provided by law. Would it not be hazardous to anchor the constitutional powers of the Tanodbayan from a decree of a discredited regime considering that the decrees of Mr. Marcos may all be repealed one day?

MR. COLAYCO: We were referring to an established agency of the government already. And the intent of the Committee is merely to make a plain statement that it is its intention to retain the agency as it was functioning before the new Constitution is written.

MR. VILLACORTA: I find it hazardous because we seem to be enshrining the decrees of Mr. Marcos, and even the immunities contained in those decrees.

MR. COLAYCO: Some of those decrees are all right, I think.

MR. VILLACORTA: Yes, but should this Constitution be confined to certain decrees? We are not referring only to the decrees of Mr. Marcos. But should we be bound by the executive orders of certain previous presidents?

MR. COLAYCO: With reference to Sections 4 and 5, as I said, the intention of the Committee is to make a statement retaining the Sandiganbayan and the Tanodbayan. Since these two agencies are functioning under the laws mandated by the original Constitution, short of requiring another piece of legislation to allow them to continue as before and to avoid complications, we thought it is a misinformation to simply refer to them as functioning and exercising their jurisdiction as provided under the law which established them.

MR. VILLACORTA: If that is so, may I submit my humble suggestion to the Committee that we just state this in the manner that we desire, without reference to these decrees because of the dangers inherent in doing so. But I understand from the discussions that that is the intent of the Committee, that the records of our deliberations be consulted in the future.

MR. MONSOD: Madam President, there are some realities that we cannot wish out of existence. The fact is that the Tanodbayan and the Sandiganbayan have been created pursuant to the mandate of the Constitution and the enabling acts were decrees. We have mentioned here in this Constitution that the reference is only to the particular section of the Constitution, and there are laws or decrees that enable this particular provision to be implemented. We were concerned about creating confusion, ambiguity or a vacuum because these institutions are in place. We even mentioned them here; and, in any case, they have to be mentioned in the Transitory Provisions.

MR. VILLACORTA: Thank you. I do not want to belabor that point.

One last matter with respect to the use of the words "betrayal of trust" as embodying a ground for impeachment that has been raised by the Honorable Regalado. I am not a lawyer so I can anticipate the difficulties that a layman may encounter in understanding this provision and also the possible abuses that the legislature can commit in interpreting this phrase. It is to be noted that this ground was also suggested in the 1971 Constitutional Convention. A review of the Journals of that Convention will show that it was not included; it was construed as encompassing acts which are just short of being criminal but which constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism and gross abuse of discretionary powers. I understand from the earlier discussions that these constitute violations of the oath of office, and I also heard the Honorable Davide say that even the criminal acts that were enumerated in the earlier 1973 provision on this matter constitute betrayal of public trust as well. In order to avoid confusion, would it not be clearer to stick to the wording of Section 2 which reads: "may be removed from office on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, and other high crimes, graft and corruption or VIOLATION OF HIS OATH OF OFFICE," because if betrayal of public trust encompasses the earlier acts that were enumerated, then it would behoove us to be equally clear about this last provision or phrase.

MR. NOLLEDO: I agree with the Commissioner that there were a lot of resolutions in the 1971 Constitutional Convention making betrayal of public trust as one of the grounds for impeachment, and the Commissioner knows already what happened in the Convention. Marcos was very afraid of the term "betrayal of public trust" because at that time, he was already guilty of violating that expression. And so, the Marcos boys did not like that to be placed in the 1971 Constitutional Convention. I think we will miss a golden opportunity if we fail to adopt the words "betrayal of public trust" in the 1986 Constitution. But I would like him to know that we are amenable to any possible amendment. Besides, I think plain error of judgment, where circumstances may indicate that there is good faith, to my mind, will not constitute betrayal of public trust if that statement will allay the fears of difficulty in interpreting the term.

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

MR. SUAREZ: I thank Commissioner Villacorta.

Madam President, may I ask that Commissioner Roberto Concepcion be recognized.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Madam President.

I am not so sure if I am clear about the distinction between the Tanodbayan and the Ombudsman. The 1973

Constitution mentioned Tanodbayan. It seems the plan now is to create two separate offices, and I am trying to project in my mind the role of one as distinguished from the other.

I had the perception that the Ombudsman, as the office is known in Sweden, performs what Commissioner Romulo mentioned in a very flattering language as a "busybody." My impression is that an Ombudsman is some sort of an overseer, not in a sense that it exercises supervisory authority, but that it has the power and duty to take measures to assure himself that the offices of the government assigned to him function as efficiently as possible. Of course, there is an Ombudsman for the executive department; there is one for the legislative department; I think there is an Ombudsman for something like human rights and for military affairs. In the exercise of that function, it has the power and the duty to find out what is going on in all these offices and, of course, to recommend some modifications in the practices in these offices, particularly those which do not entail graft and corruption but may lead later on to greater problems. So, at least, the report of the Ombudsman from Sweden indicates that some employees are dismissed; some are merely warned; the attention of the head of the office is sometimes called to some practices or deficiencies or irregularities in the operation of the office. Perhaps, it would help the Commission to envisage the role, because I notice that is the question — whether the function is purely recommendatory or they have the power to prosecute. I think that in Sweden, generally, ordinary crimes are referred to the ordinary prosecutory branches. Sometimes, only administrative action is needed while a recommendation is made to that effect.

I am not aware whether or not any of these officials to whom the Ombudsman has referred a number of cases have overruled the Ombudsman in the sense that the pronouncements of the Ombudsman carry great weight. The institution has existed in Sweden for over one-and-a-half centuries, I think, since 1815. It is an institution originally established to play the role of the king in a way; that is, to assure the king that the offices of the government are properly run, to make suggestions or point out or call attention to certain practices that are irregular or improper and the improvements that can be introduced in the operation of the offices and what administrative action should be taken against some officials, including their dismissal.

And so, I hope the Committee will give us, at least, an explanation as to the main difference between the one and the other. At least, under the proposed draft of the Committee, there will be two separate offices. It would seem that the Tanodbayan is higher than the Ombudsman, yet there is no constitutional guarantee. I think the right of impeachment exists as to the Ombudsman, not against the Tanodbayan. And so, in a way, that might be a misconception among the Members of the Commission.

Thank you, Madam President.

MR. SARMIENTO: Madam President.

MR. COLAYCO: Madam President.

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: We would like to thank Commissioner Concepcion for his very pertinent remarks. However, I would like to add that there are really significant variations even among the Scandinavian countries which follow the system. As the Commissioner pointed out, Sweden has no fewer than three of the so-called guardians of the law. And in the three Scandinavian countries, except Finland, they have no power to overturn administrative or judicial decisions. But in Finland, they have. So, while the system that we are proposing is definitely not perfect — and for this reason we are welcoming constructive suggestions — we have tried to adopt those features which we believe will be adoptable, necessary and practicable in the Philippines. We will repeat, we have an open mind on this and we welcome good suggestions.

MR. MONSOD: May I just add a comment. We would like the system to evolve. We know that the effectiveness of this kind of a system depends on the performance of those who are appointed in that office and how the citizens would respond to it. So, we hope that this is a seed that will evolve into something like the traditions in Sweden. And what we wanted to avoid was what happened in 1973 where it was purely relegated as a special prosecutor, and its true task was forgotten.

MR. CONCEPCION: My first problem is to distinguish the Tanodbayan from the Ombudsman.

MR. NOLLEDO: Madam President, I answered a similar question a few minutes ago. One will notice that in Section 5, page 3 of the report, the sentence reads: "The Tanodbayan created pursuant . . .," and then we jump to line 10 and the last words read: "except those conferred on the Office of the Ombudsman created under this Constitution." In other words, we separated the duties of the Ombudsman from the duties of the Tanodbayan, and we are asking now the Tanodbayan merely to exercise prosecutory duties. And so, Section 5, lines 10 and 12, will expressly state that the Ombudsman is now separate and apart from that of the Tanodbayan.

MR. CONCEPCION: If the Ombudsman performs a prosecutory function, what is the function of the Tanodbayan?

MR. NOLLEDO: The function is merely to prosecute.

MR. CONCEPCION: How is that?

MR. NOLLEDO: To prosecute, like a fiscal.

MR. CONCEPCION: The Tanodbayan will prosecute?

MR. NOLLEDO: Yes, it will prosecute anti-graft cases.

MR. CONCEPCION: The Ombudsman?

MR. NOLLEDO: He exercises the duties of . . .

MR. COLAYCO: Let us clarify that. Under our proposal, the Ombudsman does not have any prosecutorial powers.

MR. CONCEPCION: And the Tanodbayan is the prosecutor?

MR. COLAYCO: Yes, Madam President.

MR. CONCEPCION: Thank you.

SUSPENSION OF SESSION

MR. SARMIENTO: Madam President, I move for a suspension of the session until one-thirty this afternoon.

THE PRESIDENT: The session is suspended until one-thirty this afternoon.

It was 12:16 p.m.

RESUMPTION OF SESSION

At 1:38 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Acting Floor Leader is recognized.

PERIOD OF AMENDMENTS

MR. SARMIENTO: Madam President, may I respectfully move that we proceed to the period of amendments, and in order to expedite the proceedings, any Member could present his amendment after a brief interpellation.

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

In other words, if a Commissioner has an amendment, he can already proceed after his brief interpellation to this proposed amendment.

MR. SARMIENTO: Yes, Madam President. And may I ask that Commissioner Guingona be recognized?

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Madam President, I would like to inquire because some of my points are just clarificatory and I am not sure whether I would propose amendments or not; does this mean that I am precluded from suggesting amendments later?

MR. SARMIENTO: May we suggest that the Commissioner make his amendments now including his interpellations?

MR. GUINGONA: I will not be in a position to propose all my amendments. I wanted to get a clarification first.

THE PRESIDENT: So, we will decide that when we reach that particular matter.

MR. GUINGONA: Thank you, Madam President.

MR. RODRIGO: Madam President, may I make a comment? I have no objection that we proceed to the period of amendments now. However, I do not think we should close the period of amendments this afternoon if the Members present are as many or as few as they are now, because those who are absent might want to submit some amendments.

THE PRESIDENT: Commissioner Rodrigo, we cannot always be waiting for all the Members to be present; otherwise, we will not be able to do any business here in this Commission. But one thing, the intent of the Floor Leader is that, if there is a Commissioner who already has an amendment, he can make use of his time and interpellate and introduce his amendment.

MR. RODRIGO: I have no objection to that, as I said.

Thank you very much.

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you.

My first question concerns the matter of the additional ground for impeachment which is betrayal of trust. I presume that the Members are aware of the UP Law Center Constitutional Project which made mention of this additional ground for impeachment, to wit:

Acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers.

Does the Committee accept this definition?

MR. MONSOD: If the Commissioner will recall, that was covered already this morning.

MR. GUINGONA: I know. But the reference was to the proceedings in the Constitutional Convention; I am now referring to the UP Law Center Constitutional Project.

MR. ROMULO: We accept.

MR. GUINGONA: There are additional grounds for impeachment mentioned in the 1970 Revision Project aside from those that I have just mentioned. They added "profanity, obscenity, habitual drunkenness while performing official duty." Would the sponsor agree?

MR. ROMULO: No, we do not agree to that.

MR. GUINGONA: Thank you. In the 1986 UP proposal which the sponsor said he is aware of, there is this statement referring to the addition of the words "betrayal of trust," which reads: "such an overreaching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature." Would the sponsor agree to this?

MR. ROMULO: In view of the clarification already read into the Record, we believe that that is sufficient to guide the future Congress.

MR. GUINGONA: Would it not be better to add the word GROSS to the words "betrayal of trust" to make the statement less broad?

MR. ROMULO: If the Commissioner will submit that as an amendment, we will consider it.

MR. GUINGONA: Actually, I presented a proposed resolution which contained an additional ground for impeachment. I recalled that the Honorable Nollado, in response to an interpellation, said that I gave as an example an instance where the President orders the Minister of Justice to perform acts that would violate human rights. My proposed additional ground for impeachment which has been submitted to the Committee is: WHEN THERE IS A NATIONAL FAILURE OF JUSTICE EVIDENCED BY GROSS VIOLATIONS OF HUMAN RIGHTS. In other words, I am not contemplating an instance where there is an act performed by the President. Here, I am contemplating an inaction on the part of the President which would result in gross violation of human rights. Perhaps, this would sort of supplement the concept which was proposed by Commissioner Ople regarding command responsibility especially when the violation of human rights is perpetrated by the Armed Forces because the President is the Commander-in-Chief. Would the Committee be willing to consider an amendment by adding this ground which I have proposed?

MR. ROMULO: We believe that would be comprehended in the phrase "betrayal of trust."

MR. GUINGONA: I see. So it is understood that the betrayal of trust would include inaction on the part of the President which will result in a failure of justice as evidenced by gross violation of human rights.

MR. MONSOD While it is his duty to act, I believe that we can really make a thorough enumeration of everything that we have in mind. But, perhaps, the guideline that we already have in the Record would be sufficient.

MR. GUINGONA Yes. I just wanted to read into the Record this particular ground to make sure that the understanding of the Committee is that this is included in the concept of betrayal of trust.

The second matter concerns impeachment: With respect to this, specifically adjudication in case of impeachment because, as we will note, there are two classes of officials that are subject to impeachment, elective officials and appointive officials. I was wondering whether or not the Committee has considered a situation where the President is not only a member of a political party but the titular head of that party and an overwhelming majority of the Members of the Senate belong to the same party and even if some of the Senators would be willing to cross party lines, it would be almost an impossibility to secure conviction. As I told our Acting Floor Leader, I have no definite amendment as of now, although someone was saying, "Reduce the number of votes required of the majority to convict." And another one said, "Why not let the impeachment proceedings of an elective official be

adjudicated by the Supreme Court?" Of course, others say that we will expose the Supreme Court to political reactions, but I think we are already exposing the Supreme Court to political reactions with the provisions in the Article on the Executive, by making them the sole judge of all elections and the terms and qualifications of the President and the Vice-President. Perhaps, this could be a solution. I do not know if I have enough time, but I know of at least 15 countries where impeachment proceedings are actually adjudicated by courts and not by the legislative department. May I just read very briefly into the Record some statements made regarding this matter as contained in the 1971 Constitutional Revision Project. It says: "Ideally, the prosecution and trial of public officials, no matter how highly placed, should be in the hands of an objective, non-political and highly qualified judicial tribunal." Such a procedure, however, requires a strong awareness of constitutionalism and a general acceptance in the country of the rule of law over the rule of personalities. And in support of this, they added the following:

Under the present system, the power to impeach and to try impeachment cases is vested in public officials who are highly responsive to political and partisan influences.

If impeachment is a political device, we could perhaps say that it partakes also of the nature of a legal proceeding or a legal device. It is ineffective as against political officials. It is almost impossible to impeach a President. Finally, a pertinent observation is that a removal on illegal grounds should be determined by a body less susceptible to political consideration such as a constitutional court of impeachment.

I have two more very short questions, Madam President. One is the matter on the Ombudsman. We have adopted this, but this was derived from Scandinavian countries specifically Sweden. I think I mentioned here before that according to Justice Roberts of the U.S. Supreme Court, the Constitution should be written in words that can be understood by the people. I do not think "Ombudsman" can be understood by our people, and I thought, maybe — and again I have no amendment to offer — we should use either a Filipino word or an English word. A Filipino word may be "Bantay Bayan" as suggested by our Acting Floor Leader and in English, it could be "Vigilantes of the People," as suggested by the late Dr. Salvador Araneta, a distinguished member of the Constitutional Convention. Of course, I leave that to the wisdom of my other colleagues and the members of the Committee to think of another name, but I strongly suggest that we do not use the word "Ombudsman" which is not in our own language. We only have two official languages: English and Filipino.

And the last item, Madam President, if I may, concerns the matter suggested by the Honorable Tadeo which is modest living. Since we are allowing, in this report, that even citizens can file a complaint, we should give the citizens or even the government a basis to determine whether or not a person is living beyond his means. I do not know if there is a provision in other articles on this matter. If there is none, maybe we should suggest that at least these impeachable officers should present or file or submit their statement of assets and liabilities upon assumption of office so that we would be guided. Although my personal view is that even if a person has P50 million, it would not justify him to use Rolls Royce, considering the economic conditions of our people today.

I thank the sponsor; thank you, Madam President.

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

THE PRESIDENT: Commissioner Treñas is recognized.

MR. TREÑAS: Madam President, may I just ask a few questions of the Committee for clarification.

According to Section 3, subparagraph 2, after a complaint for impeachment is filed, it is referred to the proper committee of the House for investigation and report. My question now is: If after the investigation and report, notwithstanding the overwhelming evidence in support of the complaint for impeachment and taking into account

political considerations, especially if it is an impeachment against the President and the House is controlled by his party, and necessarily the committee also, it is dismissed, the complaint is already denied; am I right?

MR. ROMULO: Yes, that is right.

MR. TREÑAS: Will the person who filed the impeachment have any remedy in view of the overwhelming evidence and the fact that the committee acted in a capricious and whimsical manner?

MR. ROMULO: Under this proposal, the answer must be "no" that is why I think Commissioner Davide has some amendments in mind to cure these gaps in the procedure.

MR. TREÑAS: May it not be subject of a judicial review?

MR. ROMULO: As the Commissioner knows, in the definition of judicial power, one might be able to secure a review by certiorari, but that is not an expeditious remedy. So, we are open to suggestions.

MR. TREÑAS: Just one last point, and I am just echoing the concern of Commissioner Villacorta insofar as Section 5 of the 1973 Constitution regarding the Tanodbayan is concerned. May I suggest a proper amendment, either by the Committee itself, that we do not dignify the 1973 Constitution, especially since a great majority of the people, including six of the 10 Justices, said that it was not validly ratified.

Thank you very much.

MR. MONSOD: We would be very happy to accept or work with the Commissioner on the appropriate amendments.

SUSPENSION OF SESSION

MR. SARMIENTO: Madam President, my list shows that there are still 19 interpellators or 19 who wish to propose amendments. May I respectfully move for the suspension of the session so that these Commissioners can approach the members of the Committee and propose their amendments.

THE PRESIDENT: The session is suspended.

It was 1:56 p.m.

RESUMPTION OF SESSION

At 2:41 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

The Acting Floor Leader is recognized.

MR. SARMIENTO: Madam President, may I respectfully move that we continue the period of amendments.

THE PRESIDENT: Is there any objection? (Silence)

The Chair hears none; the motion is approved.

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

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

May I respectfully propose that the word "Ombudsman" be substituted with the words BANTAY BAYAN in all the pertinent portions of the Article presented by the Committee.

MR. RODRIGO: Madam President, an anterior amendment.

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: My amendment is to delete the word "Ombudsman" and all the provisions creating the Ombudsman so that there will be no necessity of changing the name.

THE PRESIDENT: What is the reaction of the Committee to the proposed amendment of Commissioner Rodrigo?

MR. MONSOD: We regret that we cannot accept the amendment for the reasons, I believe, already stated by the members of the Committee.

MR. RODRIGO: May I explain my amendment?

THE PRESIDENT: Please proceed.

MR. RODRIGO: I want to state first my amendment. On page 1, lines 13 to 14, after the words "Constitutional Commissions," delete the words "and the Ombudsman." So that Section 2 would read: "The President, the Vice-President, Members of the Supreme Court, the Members of the Constitutional Commissions may be removed from office . . . BY IMPEACHMENT."

On page 3, lines 10 to 12, after the word "law," delete the words "except those conferred on the office of the Ombudsman created under this Constitution." So, Section 5 will read: "The Tanodbayan, created pursuant to the mandate of Section 6 of Article XIII of the 1973 Constitution, shall continue to function and exercise its powers as provided by law." And then, delete all the rest of the lines on pages 3, 4 and up to line 22 of page 5 until the words "provided by law."

Madam President, may I now proceed?

THE PRESIDENT: Please proceed.

MR. RODRIGO: Madam President, we now have an Ombudsman. As a matter of fact, this very committee report provides for an Ombudsman in Section 5, which reads:

The Tanodbayan, created pursuant to the mandate of Section 6 of Article XIII of the 1973 Constitution, shall continue to function and exercise its powers as provided by law.

The Tanodbayan is an Ombudsman. This was the intention of the 1973 Constitution. And may I read Article XIII, Section 6 which was referred to in this report:

SECTION 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

So, we have the Ombudsman and it is an Ombudsman with teeth. It is an Ombudsman that is vested with power to prosecute. And now, we will add another Ombudsman, a toothless Ombudsman; it can be expensive but a useless appendage.

Madam President, during the interpellations, it was admitted that the Ombudsman which we plan to create may direct. Then, upon questioning on what the proposed Ombudsman can do in case its direction is not complied with, they said nothing; it can just appeal to other offices. So, it is very clear that the proposed Ombudsman may

not prosecute, punish or compel. It has no coercive power. As was stated by one of the members of the Committee, it only plays a persuasive function. What is the use of creating an office and spending millions of pesos of the people's money in which it will only have persuasive functions? It is very clear that it has no power to compel. It can have no coercive function. Why? Because this office is independent from the President. And the President is the Executive; he is the one who has control over the civilian offices and the army that can compel compliance with directives. What is more, the way I see the concept of the Ombudsman, it will not perform the services expected of that office. It will consist of one man, the Chairman, and four members — one for Mindanao, one for the Visayas, one for Luzon and one nationwide. It does not say that it will have branches in every province and municipality, much less in every barrio. And yet, the purpose of this proposed Ombudsman is so that the people, especially the poor and underprivileged, will have a place to air their complaints against government officials who fail to perform their function. But where will the people go? There will be one Ombudsman member from Mindanao and maybe he will be in Cagayan de Oro City or Davao City. How about the people in Jolo, Zamboanga, and the other barrios of Mindanao? There may be one Ombudsman in Cebu. How about the people from the distant barrios of Cebu and Siquijor? And so, it will just be a useless appendage. On the other hand, if we try to make it accessible to the people, then it will be a very expensive though useless appendage. We will have to create a central office, branch offices in the regions, provincial and municipal offices extending up to the barrios, if we really want this to be effective and accessible to the people.

Madam President, we do not have that kind of money now. So, I suggest that the proposal be left to the legislature for consideration at a later date when we understand this better and when we can afford financially to put offices all over the Philippines so that this Ombudsman office can perform its functions as expected.

And what is worse, this will be an interrogation of presidential functions. I think the function, the work and the duty to see to it that our laws are complied with and that government officials perform their functions belongs to the President. The President is elected by all the people in the Philippines. They repose their trust in him. The members of the Ombudsman are only appointed and there are only five members. Why should we allow these five persons to perform, independent of the President, a function which is essentially a presidential function?

And finally — I do not want to speak long Madam President — it will raise false hopes in the minds of our people. This is a Constitution that we are drafting. People look up to the Constitution. They think that every provision of the Constitution is important and effective. But the way I see it, as I already explained, we will raise the hopes of the people. There is now an Ombudsman and they want to go to its office but they cannot find where it is. We will just disillusion our people.

And so, Madam President, I think these functions should be left to the executive. And who knows, maybe, if an executive wants to make this as an instrument to what we call "pamunasan," he can even use this as a scapegoat. He can say, "Well, there is graft and corruption; that is not my fault. You go to the Ombudsman which is anyway a toothless and useless appendage."

Thank you.

MR. SUMULONG: Madam President, may I direct a few questions to Commissioner Rodrigo?

THE PRESIDENT: Commissioner Sumulong is recognized.

MR. RODRIGO: Gladly.

MR. SUMULONG: I just want to find out how the provisions in this resolution will work out. I refer to this power given to the Ombudsman. Section 12, paragraph 1 reads:

To direct, upon complaint or at its own instance, any public official or employee of the government, as well as

of any government-owned corporation or institution, to perform and expedite any act or duty required of him by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

Suppose I go to the office of the Land Registration Commission in order to register a deed of absolute sale. I bring with me the duplicate certificate of title. When I presented this document, the one in charge of accepting documents for registration would not attend to me. He would not give any attention to me. Do I go to the Ombudsman who has no supervision or control over this said employee in the Land Registration Commission or should I file my complaint before the Land Registration Commissioner himself? Or else, do I go to the Minister of Justice?

MR. RODRIGO: He is a minor employee. In the Bureau of Lands, we have to go first to the bureau director, and if the bureau director does not act accordingly, we go to the Minister of Agriculture and even the Minister of Justice, if prosecution is necessary.

MR. SUMULONG: May I refer to paragraph 2 of the same section. It says:

. . . To direct the officer concerned to take appropriate action against a public official or employee at fault, and to recommend his removal, suspension, demotion, fine, censure or prosecution, and to see to the compliance of the directive.

Suppose under this provision, I go to the Office of the City Fiscal of Manila in order to file a criminal complaint and the Assistant Fiscal to whom I brought the case would not attend to me, shall I go to the office of the Ombudsman who has no supervision and control over this Assistant Fiscal, or should I file my complaint before the City Fiscal himself or before the Minister of Justice?

MR. RODRIGO: Before the City Fiscal himself or the Minister of Justice.

MR. SUMULONG: Thank you very much.

MR. MAAMBONG: Madam President, will Commissioner Rodrigo yield to a few questions?

MR. RODRIGO: Gladly.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, early this morning, I did share my concern just like the Commissioner about the creation of this Ombudsman which is separate from the Tanodbayan. But I was thinking that probably we can still save this provision if we can agree among ourselves on how to go about it. First of all, I would like to read the philosophy behind the creation of the Ombudsman. It says here in the book that I am using . . .

MR. RODRIGO: Is that in 1971?

MR. MAAMBONG: This is actually the New Philippine Constitution by . . .

MR. RODRIGO: So, that was on the creation of the Ombudsman called the Tanodbayan in the 1973 Constitution?

MR. MAAMBONG: Yes, it does relate to it. It says here:

The Ombudsman proceed from the proposition that the plain, ordinary citizen is helpless before the monster that ate the bureaucracy. The people are alienated by the cold, distant and impersonal treatment they received from the government. The main thrust of the proposal is to impress upon government officials and employees that they are servants rather than masters of the people, that the "tong" or "lagay" system is unnecessary because the salaries paid to them actually come from the pockets of the people through taxes.

Does the Commissioner agree with this philosophy of the creation of the Ombudsman?

MR. RODRIGO: Yes.

MR. MAAMBONG: Now, I will go further, Madam President.

MR RODRIGO: If it is to be created, I think it should not be completely independent of the President. As a matter of fact, I think it should be a body that is under the President, otherwise it will have no coercive function; it will have no coercive power.

MR MAAMBONG: Yes, Madam President, the Commissioner already said that.

The same book also mentions that in the Philippines the concept is not entirely new although we do not call such body or agency an Ombudsman. As early as 1949, this idea came out in the form of President Quirino's Integrity Board, the Presidential Complaints and Action Committee (PCAC) of President Magsaysay, the Presidential Committee on Administrative Performance Efficiency (PCAPE) of President Garcia, the Presidential Anti-Graft Committee (PAGCOM) of President Macapagal and the Presidential Agency on Reforms and Government Operations (PARGO) of President Marcos. However, these bodies are not independent; they are not immune from political interference and necessarily, they fail as they have, in fact, failed. Would the Commissioner agree that this is also the purpose for the creation of the Ombudsman, similar to the mentioned agencies created by the previous Presidents?

MR RODRIGO: I do not admit that those agencies failed. I am not acquainted with the others but I am acquainted with PCAPE with Manny Manahan as the Chairman. I think it did a very good work because it had the backing of the President with all the powers and resources of the President. And I think that is true also of the other agencies which the Commissioner mentioned.

MR MAAMBONG: The Commissioner really does not want to include the provision of Ombudsman in the Constitution. But would he be amenable to include the functions of the Ombudsman in the present Tanodbayan as if they were actually in the present configuration of the law creating the Tanodbayan?

MR RODRIGO: The concept of the Tanodbayan, I think, is to have a constitutional body that will take care of these graft and corruption cases. But even that, if it were to be independent completely from the President, is preferable than the proposed Ombudsman because at least it has teeth; the Tanodbayan can prosecute. But then as we saw, unless the Tanodbayan just plays the role of an investigating body for the Sandiganbayan, the original purpose of the Tanodbayan was really lost.

MR. MAAMBONG: In other words, the Commissioner is willing to live with the idea that we should not constitutionalize the Ombudsman and at the same time the Tanodbayan, as it is presently created under P.D. No. 1607, can continue its work?

MR. RODRIGO: I have not made a thorough study on that.

MR MAAMBONG: What I am trying to envision is, if we cannot really put the Ombudsman in the Constitution — of course, that has not been decided yet — may — be under Section 5, we can just say: **THE TANODBAYAN CREATED BY LAW PURSUANT TO THE MANDATE OF THE PREVIOUS CONSTITUTION SHALL CONTINUE TO FUNCTION AND EXERCISE ITS POWERS PROVIDED BY LAW.**

MR RODRIGO: That is how it would read after I amended that section by deleting the words "except those conferred on the office of the Ombudsman. . ." But then at least, if we maintain the Tanodbayan, we will not be raising false hopes in the mind of our people, because our people do not think of the Tanodbayan as an agency which can receive their complaints nationwide.

MR. MAAMBONG: Will the Commissioner agree that on the assumption that the Ombudsman will be so

constitutionalized, this would still need an implementing law because a very big organization would have to spend money and this needs again the consent of Congress?

MR. RODRIGO: No, because the wording of Section 6 is: "There is hereby created . . .

MR MAAMBONG: I am talking of the appropriations.

MR. RODRIGO: Unlike the creation of the Tanodbayan which says: "Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman to be known as the Tanodbayan," in the 1973 Constitution, it was very clear that the Tanodbayan needed an enabling act in order to exist. And the Batasan did enact a law or was it by presidential decree?

MR. MAAMBONG: The implementing law of the Tanodbayan is contained in a republic act. I think we clarified that this morning.

MR. RODRIGO: But here it is categorical: "There is hereby created an independent office of the Ombudsman." It is hereby created by means of this Constitution. But, of course, if the legislature does not provide the funds, I do not see how this office that is created by the Constitution can survive.

MR. MAAMBONG: That is really my point, Madam President, because in the present proposal the Ombudsman is actually a constitutional creation while the Tanodbayan and the Sandiganbayan are not. They were created by a mandate of the Constitution. But, actually, I am more interested on the appropriation aspect. What I was saying is that even if we constitutionalize the Ombudsman, without the proper appropriation from the Congress, the Senate and the House of Representatives, then this will not be operationalized anyway.

MR RODRIGO: Correct, and that will place us in an ugly situation.

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

THE PRESIDENT: Who is the next Commissioner to introduce an amendment?

MR. MAAMBONG: There is a pending motion.

MR. MONSOD: Madam President, there is a pending motion to delete all references to Ombudsman in this Article.

THE PRESIDENT: And this proposed amendment has not been accepted.

MR. MONSOD: No, Madam President.

THE PRESIDENT: So, we will proceed to vote.

MR. DE LOS REYES: Madam President, may I speak against the amendment to delete?

THE PRESIDENT: Please proceed.

MR. DE LOS REYES: The arguments of Commissioner Rodrigo are as follows: The Tanodbayan has already been visualized as the Ombudsman. That is true. I was a member of the Constitutional Convention and the intention was really to make the Tanodbayan the Ombudsman but as it turned out, the functions of the present Tanodbayan are so unlike the functions as proposed now of the Ombudsman. And, therefore, inasmuch as the Tanodbayan is already specializing in prosecuting anti-graft and corruption cases, there is need for another body which will attend to the needs of the little man, the common tao. It will be some sort of a superprotector or guardian of the small people.

I have some experience in going to different offices. For example, we have the GSIS and the SSS. Sometimes, the

employees of these institutions do not attend to a poor laborer who is working on his pension and other benefits. So at least with an Ombudsman, this poor laborer can go to the office of the Ombudsman, but the Ombudsman will not necessarily direct the SSS to pay the laborer. In its actual operation, perhaps, the Ombudsman will simply write a letter to the Director of the SSS or the Director of the GSIS inquiring about the reason for the delay in the payment of the benefits of this laborer.

In connection with the question of Commissioner Sumulong, the Register of Deeds does not register the document of a poor man who does not know what to do. It does not mean that the Ombudsman will directly order the Register of Deeds to register that document. The Ombudsman in its actual operation can inquire from the Register of Deeds about the reason. Maybe there is some defect in the document. But if he finds out, for example, that the Register of Deeds is simply delaying the registration because he is waiting for some consideration, the Ombudsman then can advise the person concerned to complain to the Commissioner of Land Registration and even help that person in the preparation of his complaint. That is how I understand the purpose of the Ombudsman.

The argument of Commissioner Rodrigo that the office of the Ombudsman is toothless, and then later on saying that it would be performing the functions of an executive is somewhat contradictory. It is not toothless because if, despite the efforts of the Ombudsman, in spite of the gentle persuasion to these public employees concerned they do not perform their tasks, the Ombudsman has the right to publicize, when circumstances so warrant, matters covered by his investigation, and that is where his power lies. And that is where he can serve the people very effectively. He can recommend the officer concerned to take appropriate action against a public official. So, it is really the Ombudsman who will be able to help the small people, those who cannot afford lawyers, by serving as some sort of a supercounsel de officio for the poor complainants. And so I think if we are really concerned for the protection of the ignorant people who do not know what to do, there is a need for the creation of this Ombudsman. And as stated by Commissioner Maambong, before this was under the Office of the President. And what happened? The President sometimes used it for political purposes. But if we make him independent, he will independently perform his functions of serving the people.

So, with all due respect to the brilliant argument of Commissioner Rodrigo, I am painfully constrained to object to the deletion of the provision on the Ombudsman. I think this is a good provision, a very revolutionary provision, which should stay in this new Constitution.

Thank you, Madam President.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong has already been given a chance. We Will recognize Commissioner Aquino first.

MR MAAMBONG: No, I will just ask the previous speaker a question, Madam President.

THE PRESIDENT: The Gentleman may proceed.

MR MAAMBONG: Will my colleague from the Partido Nacionalista ng Pilipinas yield to one question?

MR. DE LOS REYES: Gladly.

MR MAAMBONG: Will the creation of the Ombudsman perhaps give effect to the constitutional right of the people to petition the government for redress of grievances and to promote higher standards of integrity and efficiency in the government service?

MR. DE LOS REYES: I beg the Commissioner's pardon? Will he please repeat the question?

MR. MAAMBONG: Will the creation of the Ombudsman give effect to the constitutional right of the people to petition the government for redress of grievances and to promote higher standards of integrity and efficiency in the government service?

MR. DE LOS REYES: I think so, yes.

MR. MAAMBONG: The Commissioner mentioned something which struck my mind. He was saying that probably the Ombudsman can make follow-up jobs for the citizens. I thought that was our extralegal function while we were in Congress. I would be very happy to get that thing off my back because as we all know, when we were in Congress, we were always harassed by our constituencies to make follow-up jobs for them. If that is one of the functions, I will be very happy that it will be taken away from us.

Thank you very much.

MR. DE LOS REYES: Yes, that will be one of the functions.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: Thank you, Madam President.

I would have to respectfully differ with Commissioner Rodrigo in his motion to delete the concept of an Ombudsman. I am in full agreement and concurrence with the philosophy behind the Ombudsman. However, like him, I would have a lot of discomfort with the idea of accepting the Ombudsman the way it is now being envisioned by the Committee, to be like a lame duck and an institutionally sterile appendage. As presented, the trappings of an Ombudsman would deal with the pretensions of moral courage and a provocative presence which, according to Commissioner Romulo, would be intended to exert some kind of moral pressure.

There is an agreement among us that the reason we are institutionalizing an Ombudsman is that we are fighting an attritional warfare against graft and corruption which is deeply entrenched and indifference in the public service which is almost intransigent. If we are addressing these problems, we need more than the institutionally sterile Ombudsman being proposed now.

However, my suggestion is, instead of deleting the concept, we give it more muscle by reinforcing its functions and vesting in it some functions that are quasi-compulsory or prosecutorial. Otherwise, if we are unable to address this problem, I will be in full agreement with Commissioner Rodrigo that what we have now is an Ombudsman and that is nothing more than a constitutional eunuch.

Thank you.

THE PRESIDENT: Commissioner Natividad is recognized.

MR NATIVIDAD: Will Commissioner Rodrigo please yield to one or two questions?

MR. RODRIGO: Gladly.

MR NATIVIDAD: The Commissioner stated that the Ombudsman, as now conceived, is a toothless tiger.

MR. RODRIGO: I said it is toothless.

MR NATIVIDAD: It can be a dog?

MR. RODRIGO: A tiger, even if it is toothless, has claws.

MR. NATIVIDAD: The Ombudsman does not even have claws. But in answer to that, our colleague, Commissioner de los Reyes, said it is not toothless. It has some artificial teeth.

The Commissioner said that it has the power to call the attention of the public official concerned or to publicize failure to perform duties and to recommend administrative action. My question is: Is it not that these powers belong to the citizens? Even without an Ombudsman we have the power to publicize failings of government officials or agencies. An ordinary citizen can publish a complaint which is not entertained properly by any government agency. Is that correct?

MR. RODRIGO: That is correct, especially now, with the proliferation of so many newspapers and radio and television stations, we do not have to create a constitutional office just so the failings of some government officials will be publicized in the papers.

MR. NATIVIDAD: Insofar as recommending administrative action, that is also a prerogative of citizens. They can write a letter to the President asking for administrative action. Is that not correct?

MR. RODRIGO: That is correct.

MR. NATIVIDAD: I think what the Commissioner said about the lack of teeth is correct. Due to our experience in administrative proceedings, being toothless is going to be a difficult situation.

The other point I would like to raise is: If an Ombudsman, who is without real powers, keeps writing to the bureau directors and to the Cabinet members, we will have a confrontation between the Ombudsman and the President.

MR. RODRIGO: Yes.

MR. NATIVIDAD: That is true because he has constitutional powers to be a busybody and the President is the constitutional chief executive. So, we have two agencies that are positioned for confrontation: one with teeth, the other without any tooth. I am just perceiving it from my own experience because this Ombudsman, as a matter of duty, will be writing letters everyday. But absolutely he has no power to compel obedience especially from high-ranking officials. As I can see it, there will be some pompous bureau directors who will say: "Who is he to dictate upon me? I take orders from the President or the minister. Who is that Ombudsman ordering my ministry? My ministry is only answerable to the President and no less."

We now have a complicated situation. But suppose instead of abolishing the Ombudsman, we make the Tanodbayan the prosecuting arm of the Ombudsman so that it has some kind of teeth even if it is an artificial denture? It will have power to prosecute administrative cases as the Ombudsman under the 1973 Constitution who can prosecute civil or administrative cases.

MR. RODRIGO: That would be the result if my amendment is approved.

MR. NATIVIDAD: I agree with our beautiful Commissioner here, Commissioner Aquino, that instead of abolishing an office that has potentials for serving our people, let us reinforce it; make the Tanodbayan its prosecuting arm so that it can, when necessary, prosecute grave misconduct committed by any public official who would refuse to obey its legitimate orders. Does the Commissioner agree?

MR. RODRIGO: I agree.

MR. NATIVIDAD: The powers envisioned in the 1973 Constitution, its enabling law, and the new proposed Constitution as I can glean from the present Ombudsman provision are not really limited to legal matters. They speak of efficiency. Why should it be the exclusive territory of lawyers like the Commissioner and me? There should be a management expert here or an economist. When we say efficiency in the government, we do not leave this exclusively to lawyers like us. We must have a true Ombudsman who has to be equipped with personnel who can assess the performance efficiency of agencies even in the case of graft and corruption. Those who have experience against graft and corruption in the recent campaign will tell us that one of the best ways to fight graft

and corruption is through an initial management survey because without a management survey, we could not locate and detect the points where graft and corruption persistently occurs. In the management of an agency, there is duplication of duties, there is passing of the buck so that the clientele or the public could not get action enough, and there is opportunity to delay action. Graft and corruption comes up especially in financial institutions. Therefore, does the Commissioner agree with me that the overall totality of this concept is that it should also have room for an economist, a management expert, and even a human rights expert?

MR RODRIGO: Yes.

MR. NATIVIDAD: Thank you.

MR. OPLE: Madam President.

MR. RODRIGO: I would like to call attention to the fact that at this moment, there are three Bulakenos on the floor.

Thank you.

MR. OPLE: Madam President.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Before Commissioner Rodrigo sits down, will he yield to a question or two?

MR RODRIGO: Gladly.

MR. OPLE: The first part of my interpellation will be directed to the proponent of the amendment and the second part, just another question or two, to the distinguished sponsors.

Am I right in saying that according to Commissioner Rodrigo's amendment, the most important point is that an independent office of the Ombudsman could encroach upon the principal responsibility of the Chief Executive who controls all the ministries under the Constitution?

MR. RODRIGO: Yes.

MR. OPLE: I share some of the Commissioner's concern about that. Perhaps if this office of Ombudsman fails, then it just lapses into oblivion since the citizens will no longer come before it for help. If it succeeds, then it becomes a competitor to the President of the Philippines who under the Constitution is in command of the entire government and presumably responsible for its success or failure in its totality.

If we try to correct this orientation of the office of the Ombudsman so that it becomes a constitutional arm of the President of the Philippines, the powers of the executive, in effect, being placed behind the high mission of the office of the Ombudsman and the cooperation of the President insuring that the entire organization of government will support the work of the Ombudsman as a matter of administrative and legal responsibilities, will the distinguished Gentleman from Bulacan reconsider his amendment?

MR. RODRIGO: Yes.

MR. OPLE: The Commissioner will consider it.

Thank you very much, Madam President.

May I direct a question to the Committee? In the light of the previous discussion and in the interest of a compromise that would save this Commission from the pain of having to vote, perhaps with a very close and divisive result, will the Committee consider later an amendment to the amendment of Commissioner Rodrigo that

would close this chasm, which I myself agree can be embarrassing and dangerous for the President of the Philippines, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD: The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is — that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal.

The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.

MR. OPLE: Yes. Madam President, just one last manifestation on my part. I think there is a tendency, partly healthy and partly unhealthy, for us to create constitutional umbrellas of immunity from executive intervention on the part of bodies that are embedded within the executive branch of the government. There is a propensity sometimes to fall into a state of constitutional paranoia where we automatically suspect that even as lofty an office as that of the President of the Philippines will have to be protected from its own innate propensities for evil.

I think the Constitution vests the powers of the executive and the responsibility for the government as a whole in the presidency, and that in writing this Constitution we ought to take a balanced approach, partly skeptical, partly paranoid that is healthy; if it is only partly paranoid, we ought to be on guard.

But to think of the presidency as a power to be circumvented, avoided, evaded at all times so that we seek refuge in constitutional immunities from the intervention of the presidency is, I think, not a very rational approach to the task of writing a Constitution, especially with respect to the structure of government.

Thank you, Madam President.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: May we just state that perhaps the honorable Commissioner has looked at it in too much of an absolutist position. The Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We do not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. That is not foreclosed.

So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Madam President.

I fully concur in the observations of Commissioner Maambong regarding the background of the creation of the Ombudsman or the Tanodbayan.

As originally envisioned, it was supposed to, perform the function of fiscalizing the different departments of the government as well as governmental offices in the traditional Scandinavian concept. Unfortunately, however, it was not a constitutional creation but a constitutionally mandated body. Therefore, it needed legislative support. Then we had, of course, the creation by presidential decree of the Tanodbayan. Unfortunately, by presidential decree enumerating the functions and duties of the Ombudsman, too much stress was placed on his prosecutory functions and less on his administrative fiscalization functions. That is where, I think, the Ombudsman as the Tanodbayan failed to discharge that other part of its duties, aside from the consideration that, taking into account the political ambiance at the time, while the President with the right hand granted it administrative fiscalization powers, with the left hand, he withdrew from those functions the capability of the Tanodbayan to perform what was granted by law.

This is just like the practice of heads of law offices, telling their assistants: "You will be paid so much; you are free to have private practice." However, office cases must be given priority. Therefore, the statement "I allow you private practice" is, in effect, a hollow grant of assistance.

I have gone over the records of the Tanodbayan in its annual report to the President in connection with its prosecutory and administrative functions in fiscalizing the different offices of the government. I have talked with two former justices of the Tanodbayan and they gave me the same complaint: They are so swamped with prosecution work such that even if they work up to six or seven o'clock in the evening, they still cannot finish their work as prosecutors, especially in serious cases which they cannot just delegate to their deputies. Tanodbayan Justices Ericta and Fernandez were never able to submit policy recommendations because they were, in effect, preempted by their prosecutory duties.

In the last report of the Tanodbayan, the percentage of work that they performed were as follows: prosecutory functions under Title VII of the Revised Penal Code; that is, crimes committed by public officers — 1,198 cases (27.62 percent); other crimes in relation to public office — 1,127 (25.98 percent); violation of corrupt law practices — 1,049 (24.18 percent); other complaints not involving crimes — 439 (10.12 percent) and which they were not able to attend to; request for assistance — 249 cases (5.74 percent); administrative complaints on acts in relation to the office of the public officer but which do not amount to crimes and, therefore, are not supposed to be within their prosecutory functions — 60.62 percent.

In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: first, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people.

Not only in the Philippines but anywhere in the world, bureaucratic red tape has always been the bane of democratic institutions, and this bureaucratic red tape, omissions or nonfeasance, malfeasance or misfeasance do not amount to a crime.

The purpose of the Tanodbayan, on its secondary function, is to respond to the complaints of the common citizen. It has been said here that Juan de la Cruz, if he has not been given attention by the head of a bureau or office, could always make the corresponding complaints to the head of that office. If even a minor clerk will not listen to poor little Juan de la Cruz, does the Commissioner expect him to go to the bureau director or to the minister? What will he do? It has been said here that he can go to the Ministry of Justice. That bureaucratic practice does not amount to a crime so the Minister of Justice will just tell him that it is outside of his jurisdiction.

Again, it has also been said here that the Tanodbayan would, in effect, be competing with the President in the performance of executive powers because he would be in confrontation with the President. I think a sincere President who is fully dedicated to public service would appreciate his attention being called by the Tanodbayan about the shortcomings of his ministries, bureaus or offices over which under the Constitution he is supposed to have full control. But the President is only a human being; he has to work for and protect those different appointive officials under him.

The myriad of details that go to the Office of the President are such that they are enough to break his health, they are back-breaking burdens, such that so many things never actually reach the personal attention of the President. They are supposed to have been taken care of by his alter egos, but sometimes right in his alter egos lies the fault or the cause of bureaucratic red tape.

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. We are more concerned about the little men; we are not concerned about those of the middle income, upper middle income classes or the rich, for they can always hire lawyers. But the moral suasion of a letter from the Tanodbayan or the Ombudsman addressed to a head of the ministry or a bureau or office, telling him that it has come to the former's attention, whether by letter or of his own knowledge, that Mr. So and So has been following up for the last three months his salary voucher which he intends to use for the support of his family who cannot live forever on one meal or no meals at all in one day, invites action. "Will you please take action on this matter or explain to us why no action has been taken? Or are there any other supporting papers necessary to justify his claim?" We can be sure that a letter from such a personality addressed even to a minister will make him sit up and take notice. But if Mr. Juan de la Cruz, poor as he is and benighted in education, would send a letter, I doubt very much if even a well-meaning head of a ministry would be able to attend to that because it will just pass through the lower echelons who will say, "this is a minor matter." So, it goes into the wastebasket. There is supposed to be created a constitutional office — constitutionalized to free it from those tentacles of politics — and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President. This will not require a confrontation. Confrontation presupposes contradictory motives or contradictory objectives. If the President is really interested in good government, the more he will welcome the fact that here is an arm of his, independent from him as known to the people, but in cooperation with him for the purpose of good government, where the little men in the street, a member of the Great Unwashed, can always go to and lay his head on a shoulder and say, "Mr. Ombudsman, ang pamilya ko po ay tatlong araw nang hindi kumakain. Hindi ko na masabing no more rice tayo, magmemorize na lang kayo." That is actually the purpose of the office of the Ombudsman.

Of course, there is a question of whether it is, as it was in the past, only to be constitutionally mandated or must be of constitutional creation. The former Tanodbayan was only constitutionally mandated, hence it required an enabling legislative act to exist and to operate. The purpose of this is to have it constitutionalized to free it from

any inroads of pressures with the corresponding logistical support given to it.

Bureaucratic red tape has been with us for generations, as far as I can recall, and I am old enough to have had that experience. Try following up your papers in the government. Even judges and justices have to go through the hegira of rounds of offices and bureaus just to collect their retirement pay, and these are people who stand tall in stature in society. If that could happen even to those people of eminence, what chance has a member of the Great Unwashed, like little Juan de la Cruz, who cannot even express himself properly in either English or Tagalog? For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support.

Thank you, Madam President.

MR. SARMIENTO: Madam President, may I ask that Commissioner Uka be the last speaker to speak on the issues.

THE PRESIDENT: All right, Commissioner Uka is recognized.

MR. UKA: Madam President, only for a few minutes. I would like to ask a few clarificatory questions of the honorable members of the Committee.

By the way, my friends, from what language is this word "Ombudsman"? Where does it come from? I do not quite understand it. Can we not translate it into Tagalog or Ilocano for that matter?

MR. COLAYCO: We are open to suggestions.

MR. UKA: Can we not translate it into, say, Tanodbayan? It is easy to understand the word "Sandiganbayan." So I suggest that it be translated into a word that we can understand before we vote on this. This word "Ombudsman" is quite confusing. Suppose a lady is appointed, do we call her Ombudswoman? (Laughter) It would be more confusing. Shall we call her Ombudsbabae, or Ombudslalaki if he is a male? (Laughter) Another thing, there is a charge that the Ombudsman is going to be toothless. If it is really toothless, well, some of the most beautiful smiles I have seen are from toothless mouths. I am not thinking of what the Commissioner is thinking. Why not transfer all the powers and duties of the Ombudsman to the Tanodbayan, and then make the Tanodbayan an independent entity, or combine the whole thing; that is, if we do not want to have an expensive additional office?

I have spoken for less than one minute; thank you very much, Madam President.

MR. SARMIENTO: Madam President, the motion of Commissioner Rodrigo has been sufficiently discussed. I move that we put the matter to a vote.

VOTING

THE PRESIDENT: The Chair believes that the issue posed by the proposed amendment of Commissioner Rodrigo is clear enough. We now put the matter to a vote.

Those in favor of the proposed amendment of Commissioner Rodrigo to delete all provisions relating to the Ombudsman, please raise their hand. (Few Members raised their hand.)

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

The results show 5 votes in favor and 21 against; the proposed amendment is lost.

May we have the next amendment?

MR SARMIENTO: Madam President, I will present my amendment which has been accepted by the Committee.

THE PRESIDENT: The Commissioner may proceed.

MR. SARMIENTO: On page 1, Section 1, line 10, I propose to insert the words PATRIOTISM AND between the words "with" and "justice."

May I briefly explain my amendment. Patriotism is not fidelity. It is not integrity nor efficiency; it is love of country. Mabini, in his True Decalogue, discussed the importance of patriotism or love of country.

THE PRESIDENT: What does the Committee say?

MR. MONSOD: It is accepted.

THE PRESIDENT: The Committee has accepted the amendment.

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

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: I have, heretofore, submitted in writing to the Chairman of the Committee a series of proposed amendments, and I would like to find out what happened to them because whether adopted or not, they will at least have made my day.

MR. SARMIENTO: Madam President, Commissioner Regalado will follow Commissioner Foz. He is No. 27 in my list. So, may I respectfully suggest that we follow the listing.

THE PRESIDENT: So, who will be next?

MR. SARMIENTO: We recognize Commissioner Treñas for his amendment.

THE PRESIDENT: Commissioner Treñas is recognized.

MR. TREÑAS: Madam President, I have already suggested an amendment to Section 5, lines 7 to 9, on page 3, which is to delete the phrase "created pursuant to the mandate of Section 6 of Article III of the 1973 Constitution," and in lieu thereof, insert the words PRESENTLY EXISTING. It will now read: "The Tanodbayan, PRESENTLY EXISTING shall continue to function and exercise its powers as provided by law."

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

MR. MONSOD: Madam President, we accept the amendment. Also, we would like to suggest on line 10, which is also an amendment of Commissioner Regalado, to insert IS NOW OR HEREAFTER MAY BE between the words "as" and "provided." Secondly, we would like to apply Commissioner Treñas' former amendment to Section 4 on the Sandiganbayan; that is, with the approval of the proponent.

MR. TRERAS: Yes, I accept.

THE PRESIDENT: Thank you.

MR. MONSOD: The amendment is accepted.

THE PRESIDENT: Is there any objection to the proposed amendments to Sections 4 and 5? (Silence) The Chair hears none; the amendments are approved.

MR. MAAMBONG: Madam President, we just want to know how it reads now because we got lost in the discussion.

MR. TREÑAS: The Committee has formulated it, I think.

MR. MONSOD: Section 4 will now read: "The Sandiganbayan, presently existing shall hereafter be known as the Anti-Graft Court. It shall continue to function and exercise its jurisdiction as is now or may hereafter be provided by law."

MR. TREÑAS: That is correct.

MR. MONSOD: Then Section 5 will now read: "The Tanodbayan, presently existing shall continue to function and exercise its powers as is now or hereafter may be provided by law, except those conferred on the office of the Ombudsman created under this Constitution."

THE PRESIDENT: We now go to the next proponent.

MR. TREÑAS: May I propose my last amendment? I must state that I have not cleared this with the Committee, but it may be acceptable.

THE PRESIDENT: On what page?

MR. TREÑAS: That is on page 6, Section 14, line 1. I propose to delete the word "public" and lieu thereof insert the words MEMBER OF THE CABINET OR ELECTED. Section 14 will now read: "No loan, guaranty or other form of financial accommodation for any business purpose may be granted by any government-owned or controlled bank or financial institution to any MEMBER OF THE CABINET OR ELECTED official, or to any firm or entity in which he has substantial interest during his tenure."

The wording of this section is too embracing to any public official. We have hundreds of public officials who will be deprived of financial assistance. Usually, it is the higher appointive or elective officials in the government, like the members of Cabinet who take advantage of this provision.

MR. COLAYCO: May I react to that, Madam President?

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: We will just sit with the Committee.

MR. COLAYCO: May I be recognized, Madam President?

THE PRESIDENT: Commissioner Colayco is recognized.

MR. COLAYCO: The Commissioner mentioned "elective officials."

Would this cover all elective officials down to the lowest officials?

MR. TREÑAS: They fall within that category, but the term "elective" is more restrictive than "public officials."

MR. COLAYCO: I know. But the barangay captain is an elective official, and I hardly think that he has any clout or influence.

MR. FOZ: Madam President, in that connection, I have an amendment to the amendment, if the proponent will accept.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, I would like to propose an amendment to the amendment in this wise: MEMBERS

OF CONGRESS instead of "ELECTED official."

MR. TREÑAS: To limit the prohibition, I accept the amendment.

THE PRESIDENT: What is the position of the Committee on this?

MR. DE LOS REYES: Madam President, may I propose an anterior amendment to delete Section 14.

THE PRESIDENT: To delete?

MR. DE LOS REYES: Yes, Madam President. My reason is, as follows: Just imagine a mere councilor or a barangay captain who wants to engage in a piggery business or a poultry business not being granted a loan for it.

MR. FOZ: Madam President, precisely, the amendment to the amendment would limit the prohibition to Members of the Congress.

MR. DE LOS REYES: But that is already covered in our provisions on the Article on the Legislative regarding conflict of interests and all those things. With respect to the members of the Cabinet, that is covered in the report of the Committee on the Executive because that is where the influence is. But to a lowly councilor or even a vice-mayor or mayor of a town, there is no influence that he can exert on the DBP or the GSIS. So I suggest that we delete this section. This is very discriminatory against small public officials.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: One problem that usually arises is that the mayor may himself not have any influence to force DBP or PNB or a government bank to lend him, but it is part of the political spoils system that word comes down to lend him money. This is one of the problems that we wanted to address. This is only for a business, not for residential, personal purpose, or things like that.

MR. DE LOS REYES: Madam President, but business purpose could embrace small business purpose. If a small official wants to engage in a little piggery or poultry business, or a little sari-sari store, he cannot even borrow. How can he survive?

MR. MONSOD: My understanding is that about 50 percent of the resources of the banking system are controlled or owned by the government. One of the reforms in the banking system is to reduce the role of the government to 25 percent. Therefore, this would mean that if a mayor or governor really has a meritorious project, there would be no reason why he would not be able to borrow from the private banking sector. What we are only trying to avoid here is the use of government financial institutions for political purposes.

MR. DE LOS REYES: Yes, but that is not so clearly stated in the provision. The way it is worded, it is an all-embracing prohibition. It says:

No loan, guaranty or other form of financial accommodation for any business purpose may be granted by any government-owned or controlled bank or financial institution to any public official, or to any firm or entity in which he has substantial interest, during his tenure.

MR. MONSOD: We cannot accept the deletion of the entire section, but we are open to amendments within the section.

MR. TREÑAS: Madam President.

THE PRESIDENT: Let us go back to Commissioner Treñas.

MR. TREÑAS: I have accepted the amendment of Commissioner Foz.

THE PRESIDENT: How would the Commissioner's amendment go?

MR. TREÑAS: As amended by Commissioner Foz, the persons covered are members of the Cabinet and Members of the Congress.

MR. DE LOS REYES: If that is the amendment, I will withdraw my amendment to delete. Small public officials are protected.

MR. RODRIGO: Madam President, may I be recognized?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Before we vote, I would like to propound a question to the members of the Committee.

The prohibition here is limited to the grant of loan or guarantee for business purpose. Why? Let us say a Congressman wants to borrow money to travel to Europe or to go gambling. He does not come under the prohibition because he is not going to use it for business purpose but for "monkey business." Why? I would like to know the reason for limiting this to "business purpose."

MR. MONSOD: The thinking of the Committee when this was considered was that most of the ills associated with the use of government financial institutions, the massive ones, were really for business purposes.

MR. RODRIGO: Suppose he wants to build a mansion as has been done in many cases.

MR. MONSOD: A residential purpose was not envisaged in this prohibition.

MR. RODRIGO: But why? What is the philosophy? Why can a Senator borrow money from or be guaranteed by government financing institutions for building a mansion, for travel abroad, for gambling. but he is not allowed to borrow for business?

MR. MONSOD: As we had mentioned we were addressing ourselves to the bigger problem which was what is usually the case — the vast resources of the financial institutions go to big accommodations for business purposes. So we did not want to have an all-embracing net on this. But we would be happy to have the body vote on this.

The Committee is accepting the amendment of Commissioner Treñas.

MR. RODRIGO: Will Commissioner Treñas admit an amendment to the amendment by deleting the word "business"? Will the Committee accede to that amendment?

THE PRESIDENT: In other words, that would cover any purpose even building a house?

MR. RODRIGO: Any purpose, yes.

MR. NOLLEDO: Madam President, may I make a comment on that?

THE PRESIDENT: Commissioner Nolleto is recognized.

MR. NOLLEDO: Madam President, there are many public officials who are members of the GSIS. Under the GSIS Law, they are entitled to personal loans. With the amendment, we will also prohibit the grant of loans to GSIS members. That is why we put the word "business." When we talk of business, usually people borrow in terms of millions.

I have not heard of any public official who borrowed money for the purpose of going abroad or for building mansions. It is all right. But an official cannot borrow for the entire amount for that mansion because there are

limitations imposed by the GSIS Law and the banking institutions of the government. Perhaps, he can invest his own equity.

So, I think deleting the phrase "business purpose" may be most unfair to many public officials.

MR. RODRIGO: I would have favored the original proposition of deleting this whole section. I do not see the logic in limiting the prohibition to loans or guarantees to be used for business. As a matter of fact, I would prefer that we accommodate somebody who may use it for business rather than somebody who will just spend the money for travel.

The Commissioner mentioned the GSIS. I will mention the Development Bank of the Philippines. Let us say that some councilors in a certain town want to put up a piggery project and they want to borrow money from the DBP for this purpose.

MR. MONSOD: Under the amendment, they would not be covered anymore.

MR. NOLLEDO: They will not be barred.

MR. RODRIGO: They will not be covered. Let us say that a Congressman wants to borrow from DBP to use for prawn business which is now a very good business. Can he not borrow?

MR. MONSOD: I think we answered that earlier. We are trying to avoid the use of political power. If it is a truly meritorious project, it can be financed by the private sector.

MR. RODRIGO: But why should the government sector discriminate against the borrower who will use it for business vis-a-vis a borrower who will just waste the money?

MR. MONSOD: Where did the Commissioner get the example of the borrower who will waste the money? I do not remember it in our discussion.

MR. RODRIGO: I was not in discussion with the Gentleman.

MR. NOLLEDO: I think we can understand this better if we consider the public officials who are inhibited from getting these loans. They are the members of the Cabinet and Members of the Congress who can easily impose influence upon the proper officials in charge of granting these loans.

MR. RODRIGO: All right. But they are inhibited only if they borrow for business, not if they are going to borrow for something else.

MR. MONSOD: Yes, because statistically the problem arose out of business loans that involve large amounts.

MR. RODRIGO: But is it possible that Congressmen, Senators and Cabinet members might borrow substantial amounts also for purposes other than business?

MR. MONSOD: Statistically those happened but apparently those are mere exceptions. It is really the business loans that are quite large.

MR. RODRIGO: So, the distinction should be on the amount of the loan, not on whether it is going to be for business or for something else.

MR. MONSOD: Yes, the problem is that this is a Constitution that will last for 100 years. What may be a good limitation now of P1 million or P10 million may be nothing 50 years from now or whatever.

MR. RODRIGO: I was not proposing that. I was just saying that it would be a more logical consequence of what the Commissioner said that the Committee limited the prohibition to business because it is for business that

substantial amounts are borrowed.

MR. OPLE: Madam President.

MR. RODRIGO: Anyway, if we are going to be consistent, then I will defer my proposed amendment.

MR. OPLE: Madam President, in support of the Committee, do I have the recognition?

THE PRESIDENT: The Commissioner may proceed.

MR. OPLE: In the sense of proportion, I think the Committee is right that it is behind the prohibition on business loans. When we take account of the most recent disclosures, the PNB had P67 billion of non-performing assets and the Development Bank of the Philippines, P97 billion of non-performing assets. I think a close look at many of these loans will show the intervention of powerful officials of the government and some letters of instructions expressly directing the PNB and the DBP to grant loans, sometimes of mind-boggling magnitude. The P67 billion plus P97 billion should be more than P150 billion. I think the Committee is right in taking cognizance of these unconscionable errors and wastes arising from the exercise of undue influence. Therefore, I would like to support the position of the Committee concerning the prohibition of business loans in particular.

Thank you, Madam President.

THE PRESIDENT: I think we are ready to vote.

We will vote first on the proposed amendment of Commissioner Rodrigo to the amendment of Commissioner Treñas, that is, the deletion of the word "business."

MR. RODRIGO: I withdraw my proposed amendment to the amendment.

THE PRESIDENT: Thank you.

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: I have a question to ask of the Committee regarding the same section which has to do with the words "substantial interest." Just what do the words "substantial interest" refer to, Madam President?

MR. NOLLEDO: If we consider the provisions of the National Internal Revenue Code in relation to the Corporation Code, 20 percent will amount to substantial interest.

MR. FOZ: In other words, under this provision if a member of the Cabinet or a Member of the Congress has at least 20-percent interest in a company or enterprise, would the prohibition apply to such company?

MR. NOLLEDO: If the word "substantially" remains.

MR. MONSOD: Madam President, may we vote on the proposed amendment, and then we would be willing to consider an amendment as well.

THE PRESIDENT: So, we will proceed to vote first on the amendment of Commissioner Treñas to insert on line 1, page 6, the words "MEMBER OF THE CABINET AND MEMBER OF CONGRESS."

MR. MONSOD: Madam President, I believe I missed the answer earlier. Members of the Cabinet would include deputy ministers or just the ministers themselves?

THE PRESIDENT: So, the President and the Vice-President are not included?

MR. TREÑAS: So far; that is my amendment.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I would like to introduce an amendment to the amendment.

THE PRESIDENT: The Gentleman may proceed.

MR. DAVIDE: This is precisely to include the President and the Vice-President and also the Members of the Constitutional Commission and the judiciary. Between the words "to" and "any" insert the following: THE PRESIDENT OR VICE-PRESIDENT OR ANY MEMBER OF THE CABINET, OF CONGRESS, CONSTITUTIONAL COMMISSION, OR THE JUDICIARY.

MR. TREÑAS: I regret I cannot accept the amendment.

MR. DAVIDE: Which portion of the amendment?

MR. TREÑAS: The Gentleman's amendment to include members of the judiciary and Constitutional Commissions. I stick to the amendment I presented.

MR. DAVIDE: I defer the presentation of my amendment.

MR. MONSOD: Would the proponent accept the President and Vice-President?

MR. TREÑAS: Yes.

MR. FOZ: Madam President, we know very well that in the case of the President, he is not supposed to engage in business nor practice any profession unless the Committee on the Executive will change the disabilities in the case of the President.

MR. DAVIDE: Since it affects my amendment, I will only cite the first portion of this section:

No loan, guaranty or other form of financial accommodation for any business purpose . . . or to any firm or entity in which he has substantial interest, during his tenure . . .

The President or the Vice-President may have substantial interest in any firm or entity but he may not be engaged in the management of any business. So, it is still necessary that he should be included.

THE PRESIDENT: So, how is it now?

MR. MONSOD: The Committee has accepted the proposed amendment, as amended So, line 1 will read: "bank or financial institution to THE PRESIDENT, VICE-PRESIDENT OR ANY MEMBER OF THE CABINET OR CONGRESS."

THE PRESIDENT: Let us vote on that first.

Is there any objection to this particular proposed amendment which has been accepted by the Committee?

MR. DE CASTRO: Madam President.

THE PRESIDENT: Yes, Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

I understand that the purpose here is to avoid the exercise of political power in getting loans from any bank or

banking institution of the government. Is that correct?

MR. MONSOD: For business purposes, yes.

MR. DE CASTRO: If the President or a Member of the Congress exercises political power so that his crony, not a Member of the Congress, can borrow from a government banking institution, is that covered by the prohibition?

MR. MONSOD: No. Madam President.

MR. DE CASTRO: Then he can still exercise political power and use his crony to get loans from any government institution?

MR. MONSOD: Under this Article, the Gentleman would be correct.

MR. DE CASTRO: Then where is the strength of this provision, if the purpose is to prevent the President, the Vice-President, the Members of the Congress and the members of the Cabinet from exercising political power?

MR. MONSOD: This provision was only meant to address the direct relationship but if the Gentleman has any amendment, we would be happy to consider it after the voting on this present one.

MR. DE CASTRO: So, it is still open to further amendments after that?

MR. MONSOD: We would be open to any suggestions the Gentleman may have in that regard.

MR. DE CASTRO: Thank you.

VOTING

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

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

MR. RODRIGO: I want to record my abstention.

THE PRESIDENT: The results show 22 votes in favor, none against and one abstention; the amendment is approved.

MR. MAAMBONG: Madam President, we have just run out of Assistant Floor Leaders, so with the consent of the Chair and the body, I am appropriating the position in the meantime.

May I ask for the recognition of Commissioner Guingona for his amendment?

THE PRESIDENT: Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Madam President.

In connection with my manifestations earlier, I would like to propose the change of the word "Ombudsman" to BANTAY BAYAN in the pertinent portions of Sections 5 to 12.

MR. MONSOD: We regret we cannot accept that because it might be misconstrued as NAMFREL. NAMFREL uses the "Bantay Bayan" theme and we do not want to be accused of inserting ourselves into the Constitution. However, we appreciate the intent of the proponent and we would be happy to accept any other substitute.

MR. GUINGONA: May I offer a substitute, Madam President?

I would like to propose TANGGOL BAYAN.

MR. MONSOD: This would then be a co-authorship between the Gentleman and Bishop Bacani.

MR. GUINGONA: Yes, I originally had in mind this word but Commissioner Brocka objected. He was insisting on "BANTAY BAYAN." So, I have no objection to having Commissioner Bacani be co-author.

MR. DE LOS REYES: May I offer an amendment to the amendment co-authored by Commissioner Regalado — SUMBUNGAN NG BAYAN.

MR. GUINGONA: I am sorry I cannot accept the amendment. My proposal is TANGGOL BAYAN.

THE PRESIDENT: Is that accepted?

MR. MONSOD: May we request that we defer this? I think we know that the intent is to create a Tagalog word for "Ombudsman." And I was wondering if we can defer this because I believe there may be other options and we do not want to foreclose them. As a matter of fact, we think Commissioner Rodrigo can be of help to us.

So, if it is all right with the body. I request a deferment, with a reservation that this be handled in the Committee on Style, with suggestions from the Commissioners.

THE PRESIDENT: In the meantime, will the Committee accept the word "TANGGOL BAYAN"?

MR. GUINGONA: Yes, we already broached this matter this morning and I think we have had a pretty long discussion.

MR. MONSOD: If it is found that "TANGGOL BAYAN" is the best substitute, we will give appropriate credit to the Gentleman.

MR. GUINGONA: No, it is not the credit. It is just that I want to make sure that we do not use a foreign word. That is my only concern. What I am afraid of is, since we are rushing the approval of this particular committee report, we may end up without being able to take up this matter.

This was proposed earlier and has been discussed quite extensively and I have asked if there is anybody else who would like to suggest, I would welcome any suggested amendment.

MR. MONSOD: May we defer it?

MR. GUINGONA: For when? On Monday we are supposed to take up the Article on the Legislative.

MR. MONSOD: We have up to August 15.

MR. GUINGONA: The Gentleman means the period of amendments will not be closed. The problem is that after the other amendments are presented, the period of amendments will be closed.

MR. MONSOD: Madam President, this is not the first time we have made a reservation on a question of style.

MR. GUINGONA: All right, with that reservation, I submit, Madam President.

MR. BENNAGEN: Madam President.

THE PRESIDENT: Commissioner Bennagen is recognized.

MR. BENNAGEN: I understand that there is a term in Maguindanao which captures the concept of Ombudsman, but I will have to ask Datu Michael Mastura about that tomorrow.

MR. MONSOD: We would welcome suggestions.

MR. BENNAGEN: Thank you very much.

THE PRESIDENT: So, on the matter of the name to be given to this particular office, this is being deferred to some later time, as suggested by the Committee Chairman.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: May I ask that Commissioner Quesada be recognized for her amendments?

THE PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: Madam President, this is actually not an amendment but a clarification, which I would like entered into the Journal. This has reference to the Ombudsman and his deputies being considered as champions. I felt concerned that it might preempt people power. We are trying to make people become concerned and interested, and yet we talk of the champion of the people. This could discount the contribution of the people who have organized themselves to correct injustice and to contribute to good government.

MR. MONSOD: We do accept that the Ombudsman cannot possibly preempt or substitute for a lot of things in our country and in the Constitution, among them and more importantly, people's power. It is just one of the safeguards.

MR. MAAMBONG: Madam President, may I ask that Commissioner Davide be recognized for his amendments?

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: Madam President, I have several amendments. On Section 1, on line 7, after the word "employees," insert a comma (,) and the following: INCLUDING THOSE IN GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS AND THEIR SUBSIDIARIES, then put another comma (,).

THE PRESIDENT: Is this accepted by the Committee?

MR. ROMULO: We have no real objection except that it makes the paragraph so long. It loses some of its impact. The definition of a public officer, I think, already includes those who are employed in government corporations.

MR. DAVIDE: If we can agree because in all the other provisions that we have approved so far, we always included in the concept of public officers and employees the phrase "including those in government-owned and controlled corporations with original charters and their subsidiaries." If we can only agree that for purposes of accountability of public officers, the term "public officers and employees" is deemed to include and should include those in government-owned and controlled corporations with original charters and their subsidiaries, I will not insist.

MR. ROMULO: We query only the subsidiaries because subsidiaries of government corporations with original charters are not covered by the Civil Service. Does the Gentleman remember the example of such corporations?

MR. DAVIDE: So, only those with original charters.

MR. ROMULO: We agree.

MR. DAVIDE: It should be very clear now in the Record, for purposes of interpretation, that public officers and employees include those in government-owned and controlled corporations with original charters.

MR. MONSOD: Madam President, the Committee accepts that interpretation.

MR. DAVIDE: So, I will not insist then to avoid repetition of the same words. However, I move for an

amendment on line 7. Instead of the word "shall," insert MUST AT ALL TIMES.

THE PRESIDENT: Does the Committee accept the amendment?

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

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

MR. DAVIDE: On line 9, Madam President, between the words "integrity" and "efficiency," insert a comma (,) and the word HONESTY.

THE PRESIDENT: What does the Committee say?

MR. ROMULO: Does "integrity" not include "honesty"?

MR. DAVIDE: Not necessarily. Honesty should also include one's conduct even outside the office. So, he should really be an example. Integrity may only be related to his office.

MR. ROMULO: I think we meant "integrity" to include one's conduct in and out of the office.

MR. DAVIDE: Then I will not insist.

On line 10, instead of "modest," substitute it with EXEMPLARY.

THE PRESIDENT: Is this accepted?

MR. ROMULO: It does not convey the intention of the original proponent, if we make it "EXEMPLARY."

MR. DAVIDE: Then I would modify. Between "modest" and "lives," insert AND EXEMPLARY.

MR. ROMULO: Will the Gentleman please explain "EXEMPLARY" as far as he is concerned?

MR. DAVIDE: He should really be a paragon of virtue as a public official or employee. The mere fact that he is leading a modest life does not necessarily mean that he is a paragon of virtue, that he is an example in the community. Modesty in living does not necessarily mean a life worthy of emulation by the other members of the community.

THE PRESIDENT: Commissioner Tan is recognized.

SR. TAN: I would humbly object because we will be a cause of more frustration to the people if we put so many words which we cannot reach.

MR. DAVIDE. I will not insist.

On lines 13 and 14, I move for the deletion of the words "and the Ombudsman." The Ombudsman should not be placed on the level of the President and the Vice-President, the members of the judiciary and the members of the Constitutional Commissions in the matter of removal from office.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: We regret we cannot accept the amendment because we feel that the Ombudsman is at least on the same level as the Constitutional Commissioners and this is one way of insulating it from politics.

MR. DAVIDE: Madam President, to make the members of the Ombudsman removable only by impeachment would be to enshrine and install an officer whose functions are not as delicate as the others whom we wanted to

protect from immediate removal by way of an impeachment.

MR. MONSOD: We feel that an officer in the Ombudsman, if he does his work well, could be stepping on a lot of toes. We would really prefer to keep him there but we would like the body to vote on it, although I would like to ask if we still have a quorum, Madam President.

THE PRESIDENT: Do we have a quorum? There are Members who are in the lounge.

The Secretary-General and the pages conduct an actual count of the Commissioners present.

THE PRESIDENT: We have a quorum.

MR. MONSOD: May we restate the proposed amendment for the benefit of those who were not here a few minutes ago.

MR. DE LOS REYES: Madam President, parliamentary inquiry. I thought that amendment was already covered in the amendment of Commissioner Rodrigo. One of those amendments proposed by Commissioner Rodrigo was to delete the word "Ombudsman" and, therefore, we have already voted on it.

MR. DAVIDE: Madam President, may I comment on that.

THE PRESIDENT: Yes, the Gentleman may proceed.

MR. DAVIDE: The proposed amendment of Commissioner Rodrigo was the total deletion of the office of the Ombudsman and all sections relating to it. It was rejected by the body and, therefore, we can have individual amendments now on the particular sections.

THE PRESIDENT: The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment. Is that right?

MR. DAVIDE: Yes, Madam President.

MR. RODRIGO: Before we vote on the amendment, may I ask a question?

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: The Ombudsman, is this only one man?

MR. DAVIDE: Only one man.

MR. RODRIGO: Not including his deputies.

MR. MONSOD: No.

VOTING

THE PRESIDENT: We will now vote on the amendment.

As many as are in favor of the proposed amendment of Commissioner Davide, 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 14 against; the amendment is lost.

MR. DAVIDE: Madam President, I have a proposed amendment by substitution to paragraphs (2) to (4) of Section 3, beginning on lines 1 to 14 of page 2. I wonder if the Committee had decided on the substitute amendment.

MR. MONSOD: Madam President.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: This is such an important and quite a lengthy amendment, and we were wondering if we can take this up later after the Members of the Commission have been given copies of the proposed amendment because the amendment would involve the procedures for impeachment, and perhaps the Members of the Commission should have a chance to read them.

THE PRESIDENT: Does the Gentleman have any objection?

MR. DAVIDE: I would have no objection, Madam President.

THE PRESIDENT: We will consider it later.

MR. DAVIDE: On the same concept again on impeachment on line 20, page 2, after the word "preside," I seek to add the following words: BUT SHALL NOT VOTE. The Chief Justice as the presiding officer in the impeachment trial shall not vote.

THE PRESIDENT: What does the Committee say?

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

THE PRESIDENT: We can proceed to vote on this.

Is there any objection to the proposed amendment on line 20? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE: On line 26, instead of "Government," substitute it with REPUBLIC with the R capitalized.

THE PRESIDENT: Is this accepted?

MR. MONSOD: May we ask the proponent if it would also have the same meaning were we just say IN THE GOVERNMENT, or would it have a different meaning from saying "under the REPUBLIC of the Philippines"?

MR. DAVIDE: It might really be different because my purpose is only to restore the original provision both in the 1935 and 1973 Constitutions. It would appear more elegant if it is the "REPUBLIC of the Philippines."

MR. MONSOD: Madam President, the Committee accepts the amendment.

MR. DAVIDE: Since there are many other proponents, I would give way to the others until we reach the provisions on the Sandiganbayan.

THE PRESIDENT: Is there any objection to the proposed amendment on line 26 of page 2? (Silence) The Chair hears none; the amendment is approved.

MR. MAAMBONG: Madam President.

THE PRESIDENT: Commissioner Maambong is recognized.

MR. MAAMBONG: I ask that Commissioner Rustico de los Reyes be recognized for his amendments.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, will the Committee agree to the following amendments: On line 25 of page 2, Section 2 (6), I propose to delete the words "and enjoy" and the phrases of honor, trust or profit" on line 26, so that the whole sentence will read: "Judgment in cases of impeachment shall not extend further than the

removal from office and disqualification to hold any office under the Republic of the Philippines."

I think the word "enjoy" is superfluous and unnecessary. The words "of honor, trust or profit" are also superfluous because he could be disqualified from any office.

MR. MONSOD: Madam President, the Committee accepts the amendment.

THE PRESIDENT: Is there any objection?

MR. DAVIDE: Madam President, I would object to the proposal.

THE PRESIDENT: All right, Commissioner Davide is recognized.

MR. DAVIDE: Not only because both in the 1935 and 1973 Constitutions are the words "honor, trust or profit" included, but also because each has a particular meaning.

An office of honor may be just an honorary office. If a person is impeached, he cannot even receive any honorary office. So, we should not destroy the original concept of the effects of impeachment on any office qualified as an office of honor, an office of trust or an office of profit. We should restore these concepts as embodied in the two important Constitutions.

MR. DE LOS REYES: May I reply to the distinguished Commissioner.

I am deleting the words "honor, trust or profit" precisely because they will be more embracing to include even honorary offices. For example, the word "profit" may have no particular meaning in the 1935 Constitution, but we are precisely amending the Constitution to conform to contemporary events. And "profit" has a different connotation nowadays.

If we remove the words "of honor, trust or profit," they will embrace all kinds of office. Once a person is impeached, he cannot hold any other office, whether it is an office of honor, trust or profit in the government. Even as consultant at one peso a year, he cannot.

MR. DAVIDE: That is to be left entirely to interpretation that the word "office" would now relate to any kind of office, whether one of honor or of trust or of profit.

I will not insist on my objection provided that that should really be the interpretation.

THE PRESIDENT: All right.

MR. DE LOS REYES: Thank you.

THE PRESIDENT: The body has not yet acted on the proposed amendment of Commissioner de los Reyes. So, will the Commissioner restate his amendments?

MR. DE LOS REYES: On line 25, delete the words "and enjoy" and on line 26, delete the words of honor, trust or profit."

THE PRESIDENT: Has the amendment been accepted by the Committee?

MR. MONSOD: Yes. Madam President.

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

MR. DE LOS REYES: On lines 9 and 10 of page 4, it is stated: .

A Deputy of the Ombudsman shall have the rank of a Commissioner of a Constitutional Commission and his

salary, which shall not be decreased during his term of office.

The sentence does not sound right.

Will the Committee agree that we adopt the same arrangement in the first sentence, so that the Deputy of the Ombudsman shall have the same rank of a Commissioner and shall receive the same salary, which shall not be decreased during his term of office?

THE PRESIDENT: So, what is the proposed amendment?

MR. DE LOS REYES: The proposed amendment is to delete the phrase "and his salary" on line 11 and instead, substitute it with the phrase: AND SHALL RECEIVE THE SAME SALARY.

THE PRESIDENT: Is that accepted?

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

MR. MAAMBONG: Madam President, I am sorry if I am taking a dual role here but I have an anterior amendment to the same Section 10.

On page 4, Section 10, I propose to simplify the whole paragraph by deleting the second sentence from lines 9 to 13. The first sentence of Section 10, starting on line 6, should read: "The Ombudsman AND HIS DEPUTIES shall have the rank of a Chairman AND MEMBERS OF A CONSTITUTIONAL COMMISSION, and THEY shall receive the salary, which shall not be decreased during THEIR term of office."

In that manner, we save one sentence because it would be too long to have two sentences in one section.

MR. DE LOS REYES: Would Commissioner Maambong be agreeable to the insertion of the word RESPECTIVELY?

MR. MAAMBONG: In what portion of the amendment?

MR. DE LOS REYES: "CHAIRMAN AND MEMBERS OF THE CONSTITUTIONAL COMMISSION, RESPECTIVELY."

MR. MAAMBONG: The amendment is accepted.

MR. DE LOS REYES: The amendment is also accepted. (Laughter)

THE PRESIDENT: It is accepted by the Committee?

MR. MONSOD: Yes, Madam President.

THE PRESIDENT: Is there any objection to the proposed amendment on Section 10? (Silence) The Chair hears none; the amendment is approved.

MR. MAAMBONG: May I read the sentence for the record so that we will not be confused. Section 10 reads: "The Ombudsman and his deputies shall have the rank of a Chairman and members of a Constitutional Commission, respectively, and they shall receive the same salary, which shall not be decreased during their term of office." The next sentence is deleted.

MR. DE LOS REYES: My next amendment will be the same as that of Commissioner Davide on the manner the impeachment shall be enunciated. Therefore, I will just submit my written amendment so that it can be taken up later on.

Thank you, Madam President.

MR. MAAMBONG: Madam President, I ask that Commissioner Blas F. Ople be recognized.

THE PRESIDENT: Commissioner Ople is recognized.

MR. OPLE: Yes, Madam President. Will the Committee entertain a proposal which shall consist of an additional section at the end of the draft article to read as follows: NO PUBLIC OFFICER MAY DURING HIS TENURE SEEK TO CHANGE HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT IN ANOTHER COUNTRY WITHOUT FORFEITING HIS POST.

May I explain briefly the principle behind the proposed amendment, Madam President.

THE PRESIDENT: The Gentleman may proceed.

MR. OPLE: Thank you, Madam President.

When we speak of accountability of public officers, we can presume that this derives from the allegiance to the state and to its Constitution. That allegiance must always be clear and I think most of the Members of this Commission may have heard by now of reports more rampant than before about members of our public service, including those in the diplomatic and consular services abroad, seeking to apply for a change of citizenship in their countries, temporary domicile or acquiring what is known as a green card. Of course, there is now in the Omnibus Election Code a prohibition against running for office. I think these acts imputed to a good number of Filipino members of our public service or public officers have now reached the sort of critical mass to cause genuine concern to our government. Therefore, this is by way of establishing a constitutional directive so that by itself it can become a major deterrent to these violations of public policy. The Committee had, of course, previously considered this in our consultation and they found it meritorious and worthy of their support

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: In one of the proposed amendments I submitted — and these are with the Chairman — there is an amendment closely allied with that of Commissioner Ople. That is in my handwritten notes under Section 8 and possibly we can take both amendments together.

MR. OPLE: I shall be happy to be associated with the distinguished Commissioner.

MR. REGALADO: The Chairman will please read my proposed amendments on Section 8, which may have a connection with the proposal of Commissioner Ople.

MR. MONSOD: The proposed amendment of Commissioner Regalado on Section 8 would read in this manner: "THE OMBUDSMAN AND HIS DEPUTIES SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES, AT LEAST FORTY YEARS OLD," — and here is another amendment by Commissioner Bennagen — "OF RECOGNIZED PROBITY, INDEPENDENCE AND PATRIOTISM, RESIDENTS OF THE PHILIPPINES AND MEMBERS OF THE PHILIPPINE BAR."

MR. REGALADO: My proposed amendment which has something to do with the residence of the Ombudsman and his Deputies reads THE OMBUDSMAN AND HIS DEPUTIES SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES, AT LEAST FORTY YEARS OLD, AND RESIDENTS OF THE PHILIPPINES.

That is the one that has some connection with the green card or the immigrant status that Commissioner Ople mentioned.

MR. OPLE: Yes, I think it is a more specific provision than the general principle that this new section seeks to

establish. So for all purposes, I think this proposed new section can be considered separately and on its own merits by the Committee, Madam President.

May I read my proposed amendment again: NO PUBLIC OFFICER MAY DURING HIS TENURE SEEK TO CHANGE HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT IN ANOTHER COUNTRY WITHOUT FORFEITING HIS POST. So, there are two categories of actions contemplated here, both of which may result in the forfeiture of post. The first is when a public officer, during his tenure, applies for a change of citizenship. The application alone will have the effect of exposing him to forfeiture. But in the case of the immigrant. I suppose this assumes a completed status of an immigrant. In either case, this is considered inconsistent with the accountability of public officers and, therefore, I would like to seek the Committee's support for this amendment.

THE PRESIDENT: What does the Committee say?

MR. ROMULO: Madam President, there are so many empty seats; I am just wondering if we have a quorum.

MR. MONSOD: Madam President, we may not have quorum anymore, I was wondering if we should take a vote, and if we can adjourn and take this up on Monday.

THE PRESIDENT: Yes, I would like to make it of record that we have to adjourn because of lack of quorum.

THE SECRETARY-GENERAL: Excuse me, Madam President, we have 24 Commissioners now.

MR. DE CASTRO: That still will not form a quorum.

THE SECRETARY-GENERAL: Including the President, we have 25 Commissioners.

THE PRESIDENT: So, we have a quorum. But there is a motion to adjourn.

MR. DE CRSTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: I do not like to accuse my co-Members of the Commission, but sometimes they leave this hall without the permission of the President or anybody else. To me it is a very ungentlemanly act of any Member of this Commission, so much so that we cannot do business if the quorum is being questioned. I will suggest that strict measures be taken against anybody who leaves this hall without the permission of the President.

Thank you, Madam President.

THE PRESIDENT: Thank you.

MR. MAAMBONG: Madam President.

THE PRESIDENT: There is a motion by the Chairman to adjourn.

MR. MAAMBONG: I did not hear that motion, Madam President, and the motion is supposed to come from the Floor Leader.

THE PRESIDENT: What is the pleasure of the Acting Floor Leader?

MR. MAAMBONG: The Floor Leader did not make any motion to adjourn, considering that according to the Secretary-General we still have a quorum. But we are ready to accept suggestions.

THE PRESIDENT: To adjourn?

MR. MAAMBONG: Any suggestion, Madam President, because the Floor Leader has not made any motion to adjourn. We still have a quorum.

MR. DE CASTRO: Madam President, if we have a quorum, I object to the adjournment. Let us continue the business.

Thank you, Madam President.

THE PRESIDENT: Let us proceed. There is still the pending amendment of Commissioner Ople. May we act on that first?

MR. ROMULO: Will Commissioner Ople please restate the amendment?

MR. OPLE: Yes, gladly, Madam President.

I propose that this be denominated Section 15 in the draft article of the committee report. The section shall read as follows: NO PUBLIC OFFICER MAY DURING HIS TENURE SEEK A CHANGE IN HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT IN ANOTHER COUNTRY WITHOUT FORFEITING HIS POST.

MR. NOLLEDO: Madam President, I would like to pose some queries to Commissioner Ople.

THE PRESIDENT: Commissioner Nolleddo is recognized.

MR. NOLLEDO: Thank you, Madam President, .

It seems to me that the proposed provision contemplates a situation where the public officer is a Filipino citizen.

MR. OPLE: Yes, Madam President.

MR. NOLLEDO: While I know that generally, public officers are Filipino citizens, whether natural-born or otherwise, there is a possibility that a public officer working under the Republic of the Philippines may be an alien. The Gentleman will note that there are positions that are highly technical where Filipinos may not qualify. So, literally, it may happen that the alien employee who is working in the Republic of the Philippines may change his citizenship into that of a Filipino. Will he then forfeit his seat?

MR OPLE: Yes. I admit that that can cause an absurdity. But at the same time, I think, the reference is clear. We refer to 99.99 percent of our public officers who are all presumed to be Filipino citizens.

MR ROMULO: Yes.

THE PRESIDENT: Is there any other Commissioner who would like to interpellate?

SUSPENSION OF SESSION

MR. ROMULO: May we ask for a suspension of session, Madam President?

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

It was 5:03 p.m.

RESUMPTION OF SESSION

At 5:18 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. MAAMBONG: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR MAAMBONG: We still have a quorum, Madam President, and we are prepared to go on but per request of the Members of the body, I would like to articulate the fact that they are really very tired. I would like to know from the Committee if the Committee has no objection to our intention to adjourn. I would like from the Committee, Madam President.

MR. MONSOD: We would like to request that we adjourn until Monday.

MR MAAMBONG: Before that, Madam President, in view of that manifestation, I move to suspend consideration of the Article on Accountability of Public Officers until such other date as may be scheduled by the Steering Committee.

THE PRESIDENT: May we continue within the first hour of our session on Monday so that we can finish this particular Article?

MR MONSOD: We are prepared to continue, Madam President, except that we may have to consult the Chairman of the Steering Committee. I believe there was a schedule but we are at the disposal of the Commission.

MR OPLE: Madam President, as the proponent of the amendment that is being overtaken, I look forward to the resumption of this amendment process by the first hour on Monday morning in accordance with the agreement with the Committee and the Acting Floor Leader.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

MR. DAVIDE: I understand that yesterday the Chairman of the Steering Committee had scheduled the continuation of the report of the Committee on the Legislative on Monday. We would like to find out what time the report of the Committee on the Legislative will be taken up on Monday, morning or afternoon, to accommodate the report of the Committee on Accountability?

THE PRESIDENT: Chairman Monsod, how many hours do you think it will take, at least based on the number of amendments that had been submitted?

MR MONSOD: Madam President, we believe we can finish this in the morning session; that is our expectation.

SUSPENSION OF CONSIDERATION OF C.R. NO. 17

(Article on Accountability of Public Officers)

MR. MAAMBONG: With that manifestation, Madam President, I restate my motion to defer consideration of the Article on Accountability of Public Officers for Monday morning.

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

ADJOURNMENT OF SESSION

MR MAAMBONG: I move for adjournment of session until Monday at nine-thirty in the morning, Madam President.

THE PRESIDENT: The session is adjourned until Monday at nine-thirty in the morning.

It was 5:21 p.m.

[*] Appeared after the roll call.

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