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Monday, July 28, 1986

CALL TO ORDER

At 9:42 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Jaime S. L. Tadeo, to wit:

Aming Amang Diyos at Allah, Diyos ni Abraham, Moises, Jacob, Lapu-Lapu, Rizal at Bonifacio, Diyos ng Kasaysayan at ng Sambayanang Pilipino:

Kami ay lumalapit sa Iyo sa mga sandaling ito na kung saan kami ay nagtatalakayan tungkol sa aming Saligang Batas. Tinipon Mo kami mula sa iba't ibang kaabalahan, antas ng buhay, pananaw at simulain. Bagama't magkakaiba ang aming katayuan at pananaw, pinapag-isa Mo kami ng iisang adhikain — na makamtang ganap ang aming kalayaan at kasarinlan.

O Diyos, sa mga sandaling ito inilalapit ko sa Inyo ang mga magbubukid, manggagawa at iba pang aping uri at sektor. Patuloy pa rin kaming bihag ng mala-kolonyal at mala-pyudal na sistema na nagbabaon sa amin sa kumunoy ng kahirapan. Kaming magbubukid na lumilikha ng pagkain at yaman ng bansa na siyang mayroong kapangyarihang paningningin sa ginto ang kabukiran ang siyang walang makain.

Sa gitna ng katotohanang ito, kaming mga Commissioners ay nagtitipon sa isang lugar na mistulang malayo sa kapaitan ng buhay. Ilayo Mo kami sa tukso ng kasaganaan, ng karangyaan, ng kariwasan na maaaring maglayo sa aming adhikain at maghiwalay sa amin sa naghihirap na sambayanang Pilipino, at ng kanilang kapakanan na nais naming tugunan. Patnubayan Mo kami ng Iyong banal na diwa upang sa aming pagtatalakayan ay makalikha kami ng isang makabuluhang Saligang Batas na magbibigay ng pampulitika, pangkabuhayang kapangyarihan sa mga dukha at ganap na kasarinlan sa aming bayan, isang Saligang Batas na nagbibigay tiwala sa kakayahan ng sambayanang Pilipinong mangalaga at magpaunlad ng kanyang likas na yaman, na umugit sa sariling pag-unlad at kakayahang ipagtanggol ang sarili laban sa pampulitika at pangkabuhayang kontrol at monopolyo ng mga dayuhan.

Ito ang aming dalangin sa ngalan ng pakikibaka para sa katotohanan, katarungan at kalayaan.

Amen.

ROLL CALL

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

Bengzon, J. F. S. Ople, B. F.
Bennagen, P. L. Padilla, A. B.
Bernas, J. G. Muñoz Palma, C.
Rosario Braid, F. Rama, N. G.
Brocka, L. O. Regalado, F. D.
De Castro, G. M. Rigos, C. A.
Colayco, J. C. Rodrigo, F. A.
Concepcion, R. R. Romulo, R. J.
Davide, H. G. Suarez, J. E.
Foz, V. B. Sumulong, L. M.
Jamir, A. M. K. Tadeo, J. S. L.
Laurel, J. B. Tan, C.
Lerum, E. R. Tingson, G. J.
Maambong, R. E. Treñas, E. B.
Monsod, C. S. Uka, L. L.
Nieva, M. T. F. Villacorta, W. V.
Nolledo, J. N. Villegas, B. M.

With 34 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

Abubakar, Y. R. Gascon, J. L. M. C.
Alonto, A. D. Guingona, S. V. C.
Aquino, F. S. Natividad, T. C.
Azcuna, A. S. Quesada, M. L. M.
Bacani, T. C. De los Reyes, R. F.
Calderon, J. D. Sarmiento, R. V.
Garcia, E. G.

Mr. Rosales was absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL OF PETITION AND COMMUNICATIONS

TO COMMITTEES

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

Petition No. 1 — Constitutional Commission of 1986

Petition of the Honorable Commissioners Lugum L. Uka, Yusup R. Abubakar, Napoleon G. Rama, Regalado E. Maambong, Jose N. Nollado, Ma. Teresa F. Nieva, Hilario G. Davide, Jr., and Florenz D. Regalado, requesting the Committee on Human Resources to immediately call a meeting of the Committee to consider articles or sections of Proposed Resolution No. 451, entitled: "A RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION PROVISIONS RELATIVE TO THE PROBLEM OF ENGLISH, SPANISH AND FILIPINO, OUR MOTHER TONGUES, NATIVE LANGUAGES AND DIALECTS, AND OTHER RELATED SUBJECTS," which the Committee may wish to incorporate in the new Constitution

TO THE COMMITTEE ON HUMAN RESOURCES

COMMUNICATIONS

Communication No. 343 — Constitutional Commission of 1986

Communication from Mr. Mariano Z. Familara, Jr. of 5521 Devonshire, Detroit, Michigan, proposing that it be the policy of the state to stamp out graft and corruption and hidden wealth, and suggesting to this end that the burden of proof that said wealth or property were amassed legitimately be shifted to the owner or possessor thereof

TO THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS

Communication No. 344 — Constitutional Commission of 1986

Letter from Mr. David D. Boaz, Cato Institute, 224 Second St. SE, Washington, DC 20003, transmitting a copy of Cato Policy Report containing an article by Dr. Paul Craig Roberts, entitled: "The Constitutional Protection of Economic Freedom"

TO THE COMMITTEE ON THE NATIONAL ECONOMY AND PATRIMONY

Communication No. 345 — Constitutional Commission of 1986

Letter from Mr. Joaquin J. Pascual of 63-C P. Burgos St., Batangas City, urging the Constitutional Commission to adopt provisions for the welfare of senior citizens and government retirees

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 346 — Constitutional Commission of 1986

Letter from Mr. Potenciano M. Alcala, Sr. of 11 JG Village, Bakyas, Bacolod City, favoring the retention of US military bases and saying that Russian imperialism is worse than American imperialism

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 347 — Constitutional Commission of 1986

Communication from Mr. Bartolome Banaken and Ms. Lourdes Calde submitting the following preferences of the people of Bontoc and Bauko, Mountain Province who attended the public consultations conducted by the Honorable Commissioner Ponciano L. Bennagen: On education — Cordillera province be represented in the Textbooks Board to ensure inclusion of culture in the areas, guidance counselling and special education scheme for children with behavioral problems; on suffrage — adoption of measures to ensure that the illiterate voters' choices are truly reflected; on national language — English is preferred; on emergency powers — declaration of martial law and suspension of the writ of habeas corpus be vested with the legislature; abolition of death penalty; retention of US military bases and a presidential form of government with a unicameral legislature

TO THE STEERING COMMITTEE

Communication No. 348 — Constitutional Commission of 1986

Letter from Sinub-badan ka mga Bagobo na Mekatanod (Association of Awakened Bagobos) requesting the Commission to give favorable consideration on the rights and privileges of national minorities

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 349 — Constitutional Commission of 1986

Letter from Mr. Ricardo R. Lozano of 58 Gastambide St., Sampaloc, Manila, suggesting provisions providing for the right of the state to appeal from a decision of a lower court or tribunal, and for extrajudicial confessions freely and voluntarily given even without the assistance of counsel to be admissible in evidence

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

Communication No. 350 — Constitutional Commission of 1986

Letter from Mr. Marlo-Rodrigo R. de Jesus for Parañaque Political Science Society, Sto. Nino Executive Village, Barangay Sun Valley, Parañaque, Metro Manila, proposing provisions reiterating the prohibition against servants in the civil service, including military and barangay officials, from engaging in partisan politics and condemning violation thereof by ouster or dismissal from office

TO THE COMMITTEE ON CONSTITUTIONAL COMMISSIONS AND AGENCIES

Communication No. 351 — Constitutional Commission of 1986

Resolution No. 355 of the Sangguniang Panlalawigan of Cebu proposing a nuclear-free Philippines, banning the establishment of foreign military bases, depots and/or facilities intended for the storage of nuclear weapons or materials, setting up of nuclear power plants and the transit or overflight of any vehicle or airplane carrying nuclear weapons or materials

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 352 — Constitutional Commission of 1986

Letter from Mr. Mario P. Arenas of 3064 Brandywine Drive, San Jose, California, proposing a tenure of two consecutive terms with the right to run for the same office after a reasonable time for elective officials from councilor level to senatorial level

TO THE COMMITTEE ON THE LEGISLATIVE

Communication No. 353 — Constitutional Commission of 1986

Letter from Bro. Peter de Groot, FSC of La Salle Greenhills, Metro Manila, proposing the inclusion of the following provisions: "Parents should have the opportunity to send their children to the school of their choice"

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

Communication No. 354 — Constitutional Commission of 1986

Communication from Mr. Leopoldo C. Segovia of Atlag, Malolos, Bulacan, requesting a provision protecting consumers from the common practice of shortweighing and similar forms of deceit

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

Communication No. 355 — Constitutional Commission of 1986

Position paper submitted by the Seventh Day Adventist Church in the Philippines on religious liberty and separation of church and state

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 356 — Constitutional Commission of 1986

Letter from Mr. Vicente K. Cal, Sr. of Philippine Veterans Legion, Legion Home Bldg., PVAO Compound, Arroceros St., Manila, expressing apprehension on the ratification of the new constitution if a provision on the prohibition of foreign military bases in the Philippines is incorporated therein

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 357 — Constitutional Commission of 1986

Letter from Mr. Ricardo M. Talusan, no address, opposing the abolition of the death penalty and proposing the taxing of religious organizations' property and income, and provisions for free education from elementary school to college levels, among others

TO THE STEERING COMMITTEE

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, the Chair acknowledged the presence of the Second Year students from the Philippine Science High School inside the Session Hall.

UNFINISHED BUSINESS: COMMITTEE REPORT NO. 17 ON THE PROPOSED ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

On motion of Mr. Rama, there being no objection, the Body resumed consideration, on Second Reading, of the proposed Article on Accountability of Public Officers, entitled:

Resolution proposing to incorporate in the 1986 Constitution an Article on Accountability of Public Officers.

Thereupon, the Chair recognized the panel of Sponsors for the continuation of the period of amendments.

PROPOSED AMENDMENT OF MR. OPLE

On Section 2, page 1, line 17, Mr. Ople proposed the insertion of the words MANIFEST AND GROSS DISREGARD OF THE POPULAR WILL between the words "corruption" and "or".

Explaining his proposal, Mr. Ople noted that while the decision perpetually disqualifying the President from reelection would remove him from direct contention, as titular leader of his political party, he would still be vulnerable to pressures to use the powers of government on behalf of his party's next candidates for President and Vice-President, for the Legislature and for the local governments. He stated that the amendment would give the President an armor against such pressures because then the constitutional mandate would put at stake the prestige and authority of his office for clean and free elections. He also maintained that a provision explicitly making massive election frauds an impeachable offense would send a powerful signal to the entire nation that the new Constitution would not brook massive electoral cheating of the popular will.

On Mr. Sarmiento's inquiry on whether the proposed amendment would not be covered by the catchall phrases "violation of the Constitution" and "betrayal of public trust", Mr. Ople maintained that since the 1973 Constitution and the proposed Article had allowed the phrases "graft and corruption" and "betrayal of public trust" to complement the more general phrase "culpable violation of the Constitution", his proposal directed against the massive prostitution of the popular will through electoral cheating should also be allowed as a recognition of this central threat to democracy. Besides, Mr. Ople stressed that his amendment was made in response to a major perception of the people that the prostitution of the electoral process is a threat aimed at the very existence of democracy.

In reply, Mr. Sarmiento stated that giving due course to the proposed amendment would pave the way for the inclusion of other crimes as grounds for impeachment. He reiterated that the proposal is already included in the catchall provision.

In this connection, Mr. Guingona recalled that earlier, he did not insist on his amendment to include "national failure of justice evidenced by gross violation of human rights or of election laws" as additional ground for impeachment on the basis of the same explanation that it is already included in the concept of betrayal of trust. He explained, however, that his proposal excluded gross violation of election laws as a ground for impeachment because its inclusion would be inconsistent with the rationale behind the creation of an independent Commission on Elections. He then inquired whether gross violation of election laws is embraced in the concept of betrayal of public trust.

Replying thereto, Mr. Ople pointed out the lethal effects of the prostitution of electoral process on democracy. He stressed that his amendment would signal to the future that the Constitutional Commission has taken cognizance of the fact that the prostitution of the popular will could threaten the heart of democracy. He affirmed that this would only apply to the President and on the contention that to make the President liable for impeachment on this ground would, in effect, remove from the Commission on Elections, the responsibility for free, orderly and honest elections, he stressed that the President assumes a disproportionate burden of the responsibility because he holds the most powerful office in the land. However, on whether his proposal would include other officials, Mr. Ople pointed out that Section 2 applies only to the officials named therein and that he would not want to preempt future legislatures on the matter of distribution of responsibility.

Speaking against the proposed amendment, Mr. Treñas opined that "violation of the Constitution" and "betrayal of public trust" would include "manifest and gross disregard of popular will". He maintained that the prohibition on the President from seeking a reelection would prevent him from taking advantage of his office in gross disregard of the popular will.

Mr. Ople maintained that the President may not be in direct contention, but in accordance with tradition, he remains the titular head of his political party.

REMARKS OF MR. CONCEPCION

Mr. Concepcion pointed out that the phrase "other high crimes" in Section 2 is already all-embracing and settled jurisprudence includes any act, omission or conduct that would render an official unworthy to remain in office.

He stressed that if the grounds for impeachment would be more particularized, it might decrease its ambit following the rule *inclusio unius est exclusio alterius*. He added that the phrase "other high crimes" would be sufficient to enable an impeaching body to file a complaint against an official if in its opinion, such official had committed an act which would make it unworthy for him to remain in office.

REMARKS OF MR. BERNAS

Mr. Bernas opined that the proposed amendment would, in effect, weaken the provisions on impeachment. He explained that there is a general provision in the Constitution which says that "sovereignty resides in the people and all government authority emanates from them", which sovereignty is principally expressed in an election, referendum or plebiscite.

Mr. Ople pointed out that the original proposal had already been changed to MANIFEST AND GROSS DISREGARD OF THE POPULAR WILL.

Mr. Bernas, however, maintained that it would have the same result.

Mr. Monsod, on behalf of the Committee, stated that he agreed with the opinions of Messrs. Concepcion and Bernas that the phrase "massive and gross disregard of the popular will" is limiting; and that it could be considered embraced in the other grounds for impeachment enumerated in the same Section.

On this understanding, Mr. Ople withdrew his proposal.

AMENDMENT OF MR. OPLE AS MODIFIED

BY MR. DAVIDE

Thereupon, Mr. Ople proposed an amendment on Section 11 on the Ombudsman.

At this juncture, Mr. Rodrigo called attention to the letter of Mr. Raul Gonzales of the Tanodbayan, copies of which had been distributed to the Members. He suggested that the Members be given time to go over the substance of the letter before proposing any amendment to the provision because the Tanodbayan's position on the matter is a prejudicial question.

Mr. Ople maintained that no prejudicial question could arise because a letter was received from an office, no matter how important it may be, it being external to the Constitutional Commission. He added that his proposal would not likely collide with the position of the Tanodbayan.

The Chair allowed Mr. Ople to proceed.

Thereafter, on Section 11, page 4, line 21, Mr. Ople proposed to add a new sentence after the last sentence on the paragraph to read as follows: THE OMBUDSMAN MAY DESIGNATE A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT.

Mr. Ople explained that in the Armed Forces of the Philippines there have arisen fraternal and mutual aid organizations outside the chain of command, such as "The Guardians" and "El Diablo", which constitute informal grievance machineries against injustices to the rank and file, perceived graft in higher rank and neglect of the

needs of troops in combat zones. He pointed out that with a deputy Ombudsman for the military, the ordinary soldiers would now turn to him for their complaints and grievances and not to fall back on their informal devices to obtain redress. He stressed that the Ombudsman would help raise troop morale in accordance with the President's goal and those of military authorities themselves.

Mr. Sarmiento objected to the proposal stating that an Ombudsman should be for all and not for any establishment, for what would prevent other sectors from asking for similar Ombudsmen for their own sectors, considering that the Members of the Constitutional Commission had agreed in principle to create a Commission on Human Rights to handle such problems, and that there are existing offices such as the Judge Advocate General's Office and the Inspector General's Office which handle similar problems. He opined that the selection process should be improved for good people to occupy these offices rather than create an entirely new office which may only duplicate or add to already existing offices.

Mr. de Castro, likewise, opined that the amendment is unnecessary because a soldier could express his grievances to his commanding company officer, the Inspector General, and all the way up to the Chief of Staff.

In reply to the remarks of Messrs. Sarmiento and de Castro, Mr. Ople stressed that the Ombudsman would become a true and beneficent friend of rank and file soldiers especially in looking after the welfare of their widows and orphans. He added that the Ombudsman would have to work in close coordination with the Chief of Staff and the Ministry of National Defense so that the integrity of the chain of command would not be disrupted.

Mr. de Castro pointed out, however, that the military organization has already the Last Watering Hole and the Association of Generals and Flag Officers which are precisely looking after the welfare of veterans, soldiers' widows and orphans, thus making the proposed amendment unnecessary.

On Mr. Monsod's query regarding the relationship of the Ombudsman with the ordinary soldier and the military hierarchy, Mr. Ople replied that the Ombudsman would have to deal with them laterally and vertically. He stressed that its jurisdiction would not include the investigation of human rights violations committed by the soldiers against civilians so that it would not overlap or be inconsistent with the jurisdiction of the Commission on Human Rights.

Mr. Monsod, on behalf of the Committee, accepted the amendment.

At this juncture, Mr. Davide pointed out that the proposal should be placed on Section 6 and not on Section 11 because if it would be placed on the latter section, then the appointing authority would no longer be the President but the Ombudsman himself. He then proposed, on Section 6, page 3, line 16, to add a new sentence after "Mindanao" to read as follows: A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT MAY LIKEWISE BE APPOINTED.

Mr. Ople accepted the amendment.

Mr. Monsod, likewise, accepted the amendment.

Mr. de Castro objected to the amendment on two grounds: first, there is already an existing system in the military through which a soldier may air his complaints; and second, there is an approved provision that no military men may occupy any civilian office at any time.

Thereupon, Mrs. Quesada proposed to amend the amendment to include an Ombudsman for the health establishment to give the people who are deprived of the right to life and health a voice through which they could ventilate their complaints.

Mr. Ople did not accept the amendment.

Mr. Monsod, likewise, did not accept the amendment because the concept of an Ombudsman is new and it should be allowed to evolve, refine and perfect itself. He opined that there is a justification for a special mention of the military because it is a strategic and important sector at this time.

Mr. Rodrigo opined that the proposal, as worded, would make it merely discretionary for the President to appoint the deputy, thereby emasculating again his powers. He pointed out that the President, as Commander-in-Chief of the Armed Forces of the Philippines, is responsible for the discipline of its members and the creation of an independent office to perform functions which are constitutionally mandated to be performed by him would, in effect, reduce his powers.

In reply thereto, Mr. Monsod stated that a good President would welcome an Ombudsman including a separate deputy who would likewise be appointed by him.

Thereupon, Mr. Davide restated his amendment, to wit: A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT MAY LIKEWISE BE APPOINTED.

Submitted to a vote, with 22 Members voting in favor and 11 against, the amendment was approved by the Body.

Thereafter, Mr. Ople proposed to add a new section to be denominated as Section 15 to read as follows: A PUBLIC OFFICER SHALL UPON ASSUMPTION OF OFFICE DECLARE HIS ASSETS AND LIABILITIES. THE PRESIDENT, THE VICE-PRESIDENT, MEMBERS OF THE CABINET, MEMBERS OF CONGRESS, THE HEADS AND DIRECTORS OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND FLAG OFFICERS OF THE ARMED FORCES SHALL DISCLOSE TO THE PUBLIC THEIR NET WORTH AT THE BEGINNING OF THEIR TERMS AND EVERY TWO (2) YEARS THEREAFTER.

Mr. Ople stated that the principle had been discussed in the Committee on the Legislative but that it was made to apply only to Members of Congress. He stated that it was Messrs. Guingona and Davide who had called his attention to the fact that the principle should be applied universally by extending it to all public officers of the government.

Reacting thereto, Mr. Guingona confirmed Mr. Ople's advertence to him and his stand as reflected in the Journal of July 26, 1986. However, he proposed to amend Mr. Ople's amendment by 1) adding the words UNDER OATH before the period (.) in the first sentence; and 2) adding the phrase AND AT THE END OF THEIR TERMS before the period (.) in the last sentence. He stated that without his amendment, a Member of the Cabinet who leaves his office one and a half years after the last disclosure would not have to submit a statement of his assets and liabilities.

Mr. Ople stated that he was accepting the amendment on his own and on behalf of Mr. Bennagen.

Mr. Davide proposed an amendment by substitution to read as follows: EVERY PUBLIC OFFICER OR EMPLOYEE SHALL UPON ASSUMPTION OF OFFICE AND EVERY TWO (2) YEARS THEREAFTER AND WITHIN THIRTY (30) DAYS FOLLOWING HIS CESSATION FROM OFFICE DECLARE UNDER OATH HIS ASSETS AND LIABILITIES AND DISCLOSE TO THE PUBLIC HIS NET WORTH.

Mr. Ople declined the proposed amendment stating that Mr. Davide's proposal is already embodied in the Anti-Graft and Corrupt Practices Act which applies to all government employees. He stated that together with Mr. Bennagen, the proposed amendment they have presented would not require every government employee to disclose his net worth to the public as no one would really care about such information, unlike the President, Vice-President, Members of the Cabinet, Congress, heads or directors of government-owned or controlled corporations and flag officers of the Armed Forces, who have to set a good example to their subordinates. He

cited the fact that in the United States, comparable officers are required by law to make such disclosure. He stressed that for all other government employees, the requirement to submit a report of net worth should be left to the law.

Mr. Davide, however, argued that graft and corruption can be committed not only by those in the upper bracket but also by those in the lower bracket. He added that the net worth of an individual could be determined from his statements of assets and liabilities, so there is no need for a disclosure of his net worth.

Mr. Ople, however, reiterated that for government employees in general, the matter should be left to the law inasmuch as the statements of assets and liabilities are just placed in the archives, a practice which is not observed in the United States and in other countries.

Reacting on behalf of the Committee, Mr. Monsod manifested acceptance of the proposal in principle but suggested its restyling to read: A PUBLIC OFFICER SHALL, UPON ASSUMPTION TO OFFICE AND EVERY YEAR THEREAFTER, MAKE A DECLARATION OF HIS ASSETS, LIABILITIES AND NET WORTH, WHICH IN THE CASE OF THE PRESIDENT, VICE-PRESIDENT, MEMBERS OF THE CABINET, MEMBERS OF CONGRESS, HEADS AND DIRECTORS OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND OFFICERS OF THE ARMED FORCES, SHALL BE DISCLOSED TO THE PUBLIC. Mr. Ople agreed to the modification.

In reply to Mr. Davide's query on whether it should be "one year thereafter", the Chair stated that the proposal was "every year thereafter".

Mr. Davide proposed the phrase AND EVERY TWO YEARS THEREAFTER stating that to make it "every year thereafter" would be very expensive for the public official concerned as disclosure involves publication of his assets and liabilities.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 10:56 a.m.

RESUMPTION OF SESSION

At 11:05 a.m., the session was resumed.

RESTATEMENT OF THE AMENDMENT

Upon resumption of session, Mr. Monsod restated the amendment as follows: A PUBLIC OFFICER OR EMPLOYEE SHALL UPON ASSUMPTION TO OFFICE AND AS OFTEN THEREAFTER AS MAY BE REQUIRED BY LAW MAKE A DECLARATION UNDER OATH OF HIS ASSETS, LIABILITIES AND NET WORTH. IN THE CASE OF THE PRESIDENT, VICE-PRESIDENT, MEMBERS OF THE SUPREME COURT, MEMBERS OF THE CONSTITUTIONAL COMMISSIONS, OMBUDSMAN, MEMBERS OF THE CABINET, MEMBERS OF CONGRESS, GENERALS AND OFFICERS OF GENERAL OR FLAG RANK OF THE ARMED FORCES. THE DECLARATION SHALL BE DISCLOSED TO THE PUBLIC IN THE MANNER PROVIDED BY LAW.

The Chair manifested that the amendment was jointly proposed by Messrs. Ople, Bennagen, Guingona, Davide, Padilla, Concepcion and Sarmiento.;

On the matter of form, Mr. Padilla suggested that the Members of the Cabinet, Congress, Supreme Court and Constitutional Commissions be in that order instead of placing the Members of the Cabinet and Members of Congress at the end of the enumeration. On the Ombudsman, he suggested its deletion from the enumeration, and in lieu thereof, to add AND OTHER CONSTITUTIONAL OFFICES to make the provision all-embracing.

Mr. Monsod agreed, stating that it shall be referred to the Committee on Style.

INQUIRY OF MR. FOZ

In reply to Mr. Foz' query on whether the enumeration of the public officials is inclusive, Mr. Ople explained that the disclosure would be mandatory for the officers enumerated therein and that for ordinary government employees, they are as a rule already required to file their statements of assets and liabilities, not for public disclosure, but for purposes of examination by their superiors.

Mr. Foz argued, however, that statements of assets and liabilities are public records which should be available for public scrutiny. He expressed apprehension that the enumeration would, in effect, prohibit any law from requiring any other official not included in the listing to make such disclosure. He suggested that the phraseology be changed as to allow the Legislature to add other officials within the ambit of the disclosure requirement.

Mr. Nollado stated that for purposes of public disclosure, the Legislature should not be prohibited from requiring inferior officials from making a disclosure of their assets, liabilities and net worth.

Mr. Nollado, in reply to the inquiry of Mr. Foz, clarified that the enumeration of public officers for purposes of public disclosure should not prevent the Legislature from requiring public disclosure or declaration of the statements of assets and liabilities, including net worth, of other lesser officials not so listed. Mr. Foz accepted the amendment given this meaning.

Submitted to a vote and with 31 Members voting in favor and none against, the amendment was approved by the Body.

Thereafter, Mr. Ople informed that his last amendment on the Article had been cleared with the Committee, which amendment, coauthored by Mr. Bennagen and Members of the Committee, would read as follows: '

PUBLIC OFFICERS OWE THE STATE AND ITS CONSTITUTION UNCONDITIONAL ALLEGIANCE AT ALL TIMES. ANY PUBLIC OFFICER WHO SEEKS TO CHANGE HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT OF ANOTHER COUNTRY DURING HIS TENURE SHALL BE DEALT WITH BY LAW.

In explaining his amendment, Mr. Ople stated that public officers are expected to set the example on standard single-minded allegiance to the nation and to public interest. He noted that should public officers be seen preparing refuge of safety outside their country due to lack of faith in the stability of the government or society, the effect on other citizens would be demoralizing and unsettling and would also be divisive as it would flaunt a certain privilege that only a few can afford to buy security on foreign shores at any time. He noted that the statement of President Manuel L. Quezon "Love your country for it is the only one God has given you" would hold true for most Filipinos. He opined that in the face of danger, human reflex calls for flight or fight but maintained that public officers should not be seen as running away or preparing not to fight. At this time of danger, he stressed that they, and the rest of their countrymen, should not be seen as wavering in their dedication to national interest while they stay on as public officers. He added that public officers have the liberty to choose and that the draft provides a clarity of choice which would allow the public officers who may want to change their citizenship or live in a foreign country to do so but that doing so would mean forfeiture of the public office they

hold. He said, however, that this policy is not categorically stated in the draft provision which leaves to future legislatures the discretion to address its specific implications based on national interest and fairness to those concerned.

MR. REGALADO'S AMENDMENT TO THE AMENDMENT

Mr. Regalado proposed the inclusion of employees to make the provision more embracing. He noted that acts of public officers are generally publicly visible but acts of lower officials or employees are not easily seen or known. He proposed the rewording of the last sentence, to read:

NO PUBLIC OFFICER OR EMPLOYEE MAY DURING HIS TENURE SEEK A CHANGE IN HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT IN ANOTHER COUNTRY WITHOUT AUTOMATICALLY FORFEITING HIS OFFICE OR POSITION.

Mr. Romulo objected to the word “automatically” and expressed the Committee's preference to retain the clause “should be dealt with by law” inasmuch as there are so many different situations.

Mr. Regalado, in reply thereto, explained that the cause of forfeiture would be the same — applying for naturalization or seeking a change in citizenship status. He asked if there is any other situation or positive basis.

Mr. Ople noted that the proponents would like to leave maximum flexibility to future legislatures and that they merely stated a general principle in the provision. He admitted that there will be numerous consequences for a number of Filipinos which could be dealt with by the Legislature at the proper time.

On Mr. Regalado's proposal to include employees in the provision, Mr. Ople stated that this could be accommodated if the Committee would accept it. The Committee accepted Mr. Regalado's proposal.

Thereupon, Mr. Ople restated the amendment, to read:

PUBLIC OFFICERS AND EMPLOYEES OWE THE STATE AND ITS CONSTITUTION UNCONDITIONAL ALLEGIANCE AT ALL TIMES. ANY PUBLIC OFFICER OR EMPLOYEE WHO SEEKS TO CHANGE HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT OF ANOTHER COUNTRY DURING HIS TENURE, SHALL BE DEALT WITH BY LAW.

MR. SARMIENTO'S AMENDMENT TO THE AMENDMENT

Mr. Sarmiento observed that allegiance is not pledged to the state but to the Constitution inasmuch as the state is a group of persons occupying a definite portion of a territory as defined traditionally.

Replying thereto, Mr. Ople explained that the paragraph refers to the state in its generic sense, referring both to the nation and to its government. He maintained that the state should be immutable and fixed despite any change in leadership or government. As used in the paragraph, he said the word does not refer to any set of people.

Mr. Sarmiento withdrew his proposed amendment.

MR. BACANI'S AMENDMENT TO THE AMENDMENT

Mr. Bacani proposed to delete the words “unconditional allegiance” on the ground that whether it be the people or the government, the state can commit a mistake and, therefore, unconditional allegiance which amounts to faith should not be given to any human being or creature.

He agreed to Mr. Ople's suggestion to change it to “unambiguous” or “unequivocal”.

Mr. Romulo accepted the suggested amendment.

REMARKS OF MR. PADILLA

Mr. Padilla stated that he would have no objection to inserting the word "employees" after "public officer" but observed that under Article 203 of the Revised Penal Code, the latter includes employees since the distinction made in the Code is only between or among persons in authority, agents of persons in authority and public officers.

Mr. Regalado, in reply thereto, noted that Mr. Padilla's observation would be applicable only to criminal law but for purposes of political or administrative law, there is a distinction between a public officer and a public employee. He explained that the public officer is one who is vested with discretion while a public employee is one who performs purely ministerial functions. He agreed that the phrase "or employee" in the epigraph of hearing in the provisions of the Penal Code, specifically in Title VII, is a surplusage inasmuch as it had been decided that anyone who takes part in governmental functions, whatever his rank, is a public officer. However, he noted that for political and administrative purposes, there is a substantial distinction between the two terms.

Thereupon, Mr. Ople restated the amendment to read as follows:

PUBLIC OFFICERS AND EMPLOYEES OWE THE STATE AND ITS CONSTITUTION ALLEGIANCE AT ALL TIMES, AND A PUBLIC OFFICER OR EMPLOYEE WHO SEEKS TO CHANGE HIS CITIZENSHIP OR ACQUIRE THE STATUS OF AN IMMIGRANT OF ANOTHER COUNTRY DURING HIS TENURE SHALL BE DEALT WITH BY LAW.

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

PROPOSED AMENDMENT OF MR. RODRIGO

On the manner of appointing the Ombudsman and his deputies as provided for in Section 7, Mr. Rodrigo proposed that they be appointed by the President with the confirmation of the Commission on Appointments. However, he yielded the floor to Mr. Bacani who wanted to pose a prejudicial question.

MOTION FOR RECONSIDERATION

Mr. Bacani recalled that in the previous session, he voted against Mr. Rodrigo's amendment to delete the provisions relating to the Ombudsman, which amendment was lost. He then moved for reconsideration of the amendment in view of the letter from Mr. Raul Gonzales of the Tanodbayan. He noted that in the afternoon of the previous session, there were not enough Members present who could have given the Body a real sounding on the proposal.

The Chair informed Mr. Bacani that the Body had a quorum and that the proceedings of the Saturday afternoon session were perfectly in order.

Mr. Bacani clarified that the Members present were barely beyond the required number for a quorum adding that some Members who were not present at the time might want to vote in favor of the Rodrigo amendment, in the light of the information and arguments advanced by Mr. Gonzales. Thereafter, he read portions of the letter which underscored the need for the Office of the Tanodbayan to keep its powers, functions and responsibilities and make it work effectively.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 11:31 a.m.

RESUMPTION OF SESSION

At 11:48 a.m., the session was resumed.

REMARKS OF MR. SARMIENTO

Commenting on the letter, Mr. Sarmiento stated that the issue raised therein had been comprehensively debated upon and that to reopen the matter would amount to allowing interference that could impeach the independence of the Commission in its work of constitution-making. He urged that the Commission disregard said letter in the same way that it disregarded the letter coming from BAYAN, otherwise, it would open the floodgates to more letters asking for reconsideration of actions already taken by the Commission.

INQUIRY OF MR. RODRIGO

Mr. Rodrigo pointed out that, although the Commission receives hundreds of letters, Mr. Gonzales' letter was different in the sense that it would affect directly the Office of the Tanodbayan. He then inquired whether Mr. Raul Gonzales, as head of said Office, was invited to any Committee meeting on the creation of a separate Office of the Ombudsman.

Replying thereto, Mr. Monsod affirmed that Mr. Gonzales was indeed invited and that the arguments he presented were given full consideration in the Committee's deliberations, which arguments, in fact, were the same issues raised by Mr. Rodrigo.

As a rejoinder, Mr. Rodrigo maintained the propriety of giving importance to Mr. Gonzales' letter even without according the same importance to the other letters coming from BAYAN or UNIDO, since this particular letter would affect the head of an office whose functions would be duplicated by the creation of the Office of the Ombudsman.

WITHDRAWAL OF MR. BACANI'S MOTION

FOR RECONSIDERATION

Mr. Bacani withdrew his motion for reconsideration in view of the explanations given him. He explained that he presented the motion merely to give the Members who were not present in the previous session a chance to hear the arguments for and against the proposal, which motion could unduly delay the work of the Commission.

Moreover, he stated that as explained to him, the Ombudsman, in the exercise of his functions, could admonish officers and employees even on noncriminal charges.

PROPOSED AMENDMENT OF MR. RODRIGO

On Section 7, page 3, line 18, between the words "President" and "from", Mr. Rodrigo proposed to insert the words WITH THE CONFIRMATION OF THE COMMISSION ON APPOINTMENTS and to delete the rest of the section.

Explaining his amendment, Mr. Rodrigo pointed out that all the Commissioners in the Constitutional

Commissions would be appointed by the President with the confirmation of the Commission on Appointments and, therefore, the Ombudsman and his Deputies, who would have the same rank as the Commissioners, should not be excepted from such confirmation.

Replying thereto, Mr. Monsod stated that, as the Committee had previously pointed out, there is a difference between the Office of the Ombudsman and the Constitutional Commissions in that the Committee intended the Ombudsman to be a member of the Philippine Bar while the members of the other Constitutional Commissions need not be lawyers. He also maintained that the pre-screening by the Judicial and Bar Council that would apply to the Ombudsman would not be applicable to the members of the Constitutional Commissions.

REMARKS OF MR. COLAYCO

Mr. Colayco stated that Presidents are human beings and, as such, could be corrupted by power. On the argument that the present Tanodbayan was appointed by the President, he stated that all the previous Ombudsmen had been total failures because they could not fiscalize the President who appointed them. He stressed that the Committee wanted to correct this flaw by giving the President an appointing power limited to the persons chosen by a known political body so that the Ombudsman would not owe any debt of gratitude to the Judicial and Bar Council.

Adverting to some practices in the United States, Mr. Colayco stated that in some States, some sectors favored direct legislative selection without participation by the Executive to emphasize the desirability of depoliticalizing the selection process.

Finally, Mr. Colayco maintained that it would not make sense to have a fiscalizer appointed by the President whose office is supposed to be under the jurisdiction of such appointee.

Responding thereto, Mr. Rodrigo pointed out that the Ombudsmen then appointed were working under martial law and, therefore, the Commission should not use the condition then as a norm for the proposal. He also pointed out that under Sections 4 and 5, the members of both the Sandiganbayan and the Tanodbayan would be appointed by the President with the concurrence of the Commission on Appointments.

On the argument that it is the Judicial and Bar Council that would submit a list of recommendees, Mr. Rodrigo pointed out that while the President would be limited to a choice of three, the members of the Judicial and Bar Council would be appointees of the President who may refuse to appoint any of those recommended and ask the Council to submit another list of recommendees. He stated that, since all the other officials of the government except the Judiciary would be appointed by the President with the confirmation of the Commission on Appointments, there is no reason why the Office of the Ombudsman should be an exception.

Mr. Monsod reiterated his nonacceptance of the proposed amendment.

RESTATEMENT OF THE AMENDMENT

Thereupon, Mr. Rodrigo restated his amendment to reword Section 7, to read:

SECTION 7. THE OMBUDSMAN AND HIS DEPUTIES SHALL BE APPOINTED BY THE PRESIDENT,
WITH THE CONFIRMATION OF THE COMMISSION ON APPOINTMENTS.

INQUIRY OF MR. DE LOS REYES

At this juncture, in reply to Mr. de los Reyes' inquiry, Mr. Romulo stated that the Judicial and Bar Council would consist of the Chief Justice, the Minister of Justice, representatives of Congress as ex officio members, a representative of the Integrated Bar, a law professor, a retired Justice of the Supreme Court, and a representative

of the private sector as regular members.

Mr. Romulo agreed with Mr. de los Reyes that the Council would practically be a Commission on Appointments, the only difference being that the Council would have a balanced composition of nonpolitical and political personages.

REMARKS OF MR. OPLE

Mr. Ople pointed out that, although he would rather have the Office of the Ombudsman directly accountable to the President, the proposal, as amended, would be bearable if said Office would help the future Congress monitor the effects of its laws and the efficiency and integrity of the government.

Submitted to a vote, and with 8 Members voting in favor and 28 against, the amendment of Mr. Rodrigo was lost.

AMENDMENT OF MR. DE CASTRO

Mr. de Castro stated that graft and corruption have already seeped through the dignity of man that even the Armed Forces has not been spared, so much so that in order to confront this problem, it created an Anti-Graft and Corruption Board. While the Commission recognizes graft and corruption as cancerous maladies, he lamented the failure of the Body to declare a state policy against it. In this regard, he called attention to his proposed Resolution against graft and corruption which was originally referred to the Committee on Accountability of Public Officers but was subsequently transferred to the Committee on Preamble, National Territory and Declaration of Principles. He inquired whether the Committee would agree to a suggestion to adopt a state policy on graft and corruption, in reply to which Mr. Monsod agreed, but pointed out that the Resolution adverted to should properly belong to the Article on the Declaration of Principles.

In view thereof, Mr. de Castro made a reservation to raise the same matter at the appropriate time.

Mrs. Rosario Braid, on a point of information, stated that her proposal regarding the duty of the government to eradicate nepotism, favoritism, corruption and waste in public life supports Mr. de Castro's proposed Resolution which, she opined, should also belong to the Article on the Declaration of Principles.

As proposed by Mr. de Castro and accepted by the Sponsor, the Body approved the amendment on Section 14, page 5, line 28, to insert a comma (,) and the phrase DIRECTLY OR INDIRECTLY and a comma (,) after it between the words "granted" and "by".

SUSPENSION OF SESSION

On motion of Mr. Rama, the Chair suspended the session until one-thirty in the afternoon.

It was 12:19 p.m.

RESUMPTION OF SESSION

At 1:46 p.m., the session was resumed.

Upon resumption of session, the Chair announced the presence of Dr. Abdul Ghani, adviser to the President of Indonesia, and his party who were in the Session Hall.

JOINT AMENDMENT OF MESSRS. BENNAGEN, REGALADO AND DAVIDE

As proposed jointly by Messrs. Bennagen, Regalado and Davide, and accepted by the Sponsor, the Body approved the rewording of Section 8 to read as follows:

SECTION 8. THE OMBUDSMAN AND HIS DEPUTIES SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES AND AT THE TIME OF THEIR APPOINTMENTS AT LEAST FORTY (40) YEARS OLD WITH RECOGNIZED PROBITY AND INDEPENDENCE AND MEMBERS OF THE PHILIPPINE BAR, AND MUST NOT HAVE BEEN CANDIDATES FOR ANY ELECTIVE OFFICE IN THE NEXT PRECEDING ELECTION. THE OMBUDSMAN MUST HAVE FOR TEN (10) YEARS OR MORE BEEN A JUDGE OR ENGAGED IN THE PRACTICE OF LAW IN THE PHILIPPINES.

On Mr. Abubakar's queries as to who would determine the "probity and independence" of the appointees and what standard would be used, Mr. Romulo, on behalf of the Committee, replied that the Judicial and Bar Council would initially determine whether the candidates for appointment possess the qualification of "probity and independence" and as to the standard, a candidate must have a certain degree of accomplishment and public reputation.

Mr. Bennagen proposed, on Section 12, page 4, to insert a new paragraph before Section 12(1) to read as follows:

(1) TO INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PERSON ANY ACT OR OMISSION OF ANY PUBLIC OFFICIAL, EMPLOYEE, OFFICE OR AGENCY WHEN SUCH ACT OR OMISSION IS ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT.

Mr. Romulo requested Mr. Bennagen to confer with Mr. Natividad who had a similar amendment. He manifested that the principle being enunciated is acceptable to the Committee.

AMENDMENT OF MR. JAMIR

On Section 5, page 3, line 9, Mr. Jamir proposed to insert after "shall" the phrase **HEREAFTER BE KNOWN AS SPECIAL PROSECUTOR. IT SHALL . . .** and on line 10 to insert between the words "as" and "provided" the phrase **NOW OR HEREAFTER MAY BE.**

Mr. Jamir explained that his proposal would harmonize with the change of the Sandiganbayan into the Anti-Graft Court, so that there would be no confusion with Tanodbayan with respect to the prosecutorial function of that office.

Mr. Monsod accepted the amendment.

In reply to Mr. Foz' query as to whether the Tanodbayan would be reduced to the status of Special Prosecutor, Mr. Monsod stated that it is the intent of the Committee to separate the purely prosecutory functions of the Tanodbayan from the Ombudsman's functions as enumerated in the Constitution. He added that as contemplated, the Office of the Ombudsman would continue to be called Tanodbayan while its prosecution arm would be known as the office of the Special Prosecutor.

On whether the Tanodbayan, who is presently enjoying the rank of a Justice of the Intermediate Appellate Court, would be reduced to a mere member or officer of the Ministry of Justice's Prosecution Division with the reduction of his office to that of special prosecutor attached to the Anti-Graft Court, Mr. Monsod replied that the Constitution is silent as to his rank and that it does not automatically follow that if he is a special prosecutor he would be at a certain level in the Ministry of Justice.

On whether or not, in the absence of a Constitutional mandate authorizing the Legislature to establish the

Anti-Graft Court similar to the 1973 Constitution which created the Sandiganbayan, the same would be left to the discretion of the Legislature, Mr. Colayco pointed out that the Constitutional provisions on the Sandiganbayan with its powers and jurisdiction remain the same and only its name had been changed. He stressed that in the case of the Tanodbayan whose name was also changed to Special Prosecutor, his powers also remain the same, except for the realignment of those functions which he had not been able to perform under the present setup.

On Mr. Rodrigo's contention that although the jurisdiction of the Sandiganbayan as provided in Section 4 would not be reduced with the change of name, the same thing could not be said of the Tanodbayan because Section 5 has reduced its function, Mr. Monsod agreed that the functions of the Tanodbayan as defined under the 1973 Constitution would, indeed, be reduced under the new Constitution.

On whether Tanodbayan Raul Gonzales' attention was called to the reduction of the functions of his office, Mr. Monsod stated that it could be the reason why he wrote the letter. He added that Mr. Gonzales had recognized these two functions and the constitutional provision on the matter would make it explicit.

On whether the Tanodbayan as Special Prosecutor would not duplicate the functions of fiscals under the Ministry of Justice, Mr. Monsod stated that during the Committee meetings, the need for specialization in anti-graft cases was stressed by Mr. Gonzales and Sandiganbayan Justice Garchitorena. Mr. Monsod added that it is the intent of the Committee to limit the functions of the Tanodbayan to the prosecution of anti-graft cases filed in the Sandiganbayan, for which reason, its name was changed to Special Prosecutor while that of the Sandiganbayan to Anti-Graft Court.

At this juncture, Mr. Foz pointed out that the provision on the Tanodbayan in the proposed Constitution provides that its jurisdiction would include those offenses committed by public officials and employees in relation to the performance of their duties which means that its jurisdiction is not merely limited to the prosecution of anti-graft cases.

Mr. Monsod corrected the Committee's stand on the matter stating that the sense of the provision is that the present functions exercised by the present Tanodbayan shall continue, except for those that have been vested on the Ombudsman which would include violations under Article 7 of the Revised Penal Code, referring to the performance by public officials of their duties.

On the proposed name for the Tanodbayan, Mr. Monsod stated that it should be Special Prosecutor.

Mr. Rodrigo observed that the name itself implies that its functions would be limited to prosecution of special cases, thus emasculating the Tanodbayan completely. Mr. Rodrigo, however, stated that he was not pursuing any amendment but that he was merely stressing his point.

In reply to the Chair's query as to what office would have administrative supervision over the Tanodbayan, Mr. Romulo, on behalf of the Committee, stated that there would be no office which shall have administrative supervision over it because the Decree creating it provides that it shall be the President who may remove him for cause.

Mr. Rigos stated that the difficulty lies in the fact that the Tanodbayan referred to in Section 5 of the draft Article is understood to be the same as the Ombudsman under Section 6, Article XIII of the 1973 Constitution. He then proposed to delete the "Tanodbayan" in Section 5 of the draft Article and in lieu thereof, to provide for the creation of the Office of Special Prosecutor without making reference to Section 6, Article XIII of the 1973 Constitution in order to avoid confusion.

In reply, Mr. Monsod stated that although the Committee held the same view, the new Constitution could not

avoid the reference to the 1973 Constitution because of the reality of an existing office. He stated that the Committee had likewise entertained the thought of embodying it in the Transitory Provisions but decided to include it in the draft Article so that the concepts would stand out in the sequence of paragraphs.

RESTATEMENT OF THE AMENDMENT OF MR. JAMIR

Upon direction of the Chair, Mr. Monsod restated Mr. Jamir's proposal to amend Section 5 to read "The Tanodbayan, PRESENTLY EXISTING, SHALL HEREAFTER BE KNOWN AS SPECIAL PROSECUTOR. It shall continue to function and exercise its powers as NOW OR MAY HEREAFTER MAY BE provided by law, except those conferred on the Office of the Ombudsman created under this Constitution."

APPROVAL OF THE AMENDMENT

Submitted to a vote, with 24 Members voting in favor and 4 against, the Body approved the amendment.

INQUIRY OF MR. SUAREZ

In reply to Mr. Suarez' inquiry on whether the functions of the Special Prosecutor would be different from the functions of the Office of the State Prosecutor, Mr. Romulo stated that they would be distinct and separate since the Special Prosecutor would be handling all prosecution cases coming from the Sandiganbayan.

On whether the state prosecutors would be precluded from acting as special prosecutors, Mr. Romulo stated that the Special Prosecutor could appoint such deputies as he may choose. Mr. Suarez observed that there could be a duplication of functions, in reply to which, Mr. Romulo stated that they would be separate offices since the Office of the Special Prosecutor would have reference to the present Tanodbayan.

Mr. Regalado, on a point of information, stated that in practice, the Tanodbayan, now referred to as the Special Prosecutor, deputizes provincial fiscals in remote areas to handle the preliminary investigation, while the actual prosecution in the Sandiganbayan is handled by the Tanodbayan. This, he stated, is done so that people from the provinces need not come to Manila for the preliminary investigation.

In reply to Mr. Guingona's query on whether said deputation could be done without the approval of the Minister of Justice, Mr. Regalado stated that the practice is based on the Rules of the Tanodbayan, adding that the Minister of Justice gives his concurrence to the deputation of provincial or city fiscals outside Manila after determining the number and availability of fiscals in a particular region.

At this juncture, the Chair requested Mr. Jamir to state his next amendment.

PROPOSED AMENDMENT OF MR. JAMIR

Thereupon, Mr. Jamir proposed that TANODBAYAN be placed before "Ombudsman", the latter word to be within parentheses, wherever it occurs in the draft Article. He explained that the 1971 Constitutional Convention used "Tanodbayan" as the most appropriate Filipino term for "Ombudsman".

Mr. Monsod inquired if Mr. Jamir would be amenable to TANODBAYAN OR OMBUDSMAN, stating that "Ombudsman" has acquired an international meaning and acceptance, to which Mr. Jamir agreed.

Mr. Rodrigo observed that the existing Tanodbayan is likewise called Ombudsman under the 1973 Constitution. He inquired under what section it shall exist. Replying thereto, Mr. Monsod stated that it shall continue to exist under Section 5 and shall be referred to as the Special Prosecutor. He stated that the new Office of the Ombudsman or Tanodbayan would be the one to be created by mandate of the new Constitution.

Mr. Davide proposed an amendment to Mr. Jamir's amendment to read: "Office of the Ombudsman TO BE KNOWN AS THE TANODBAYAN", stating that it would not look elegant to indicate "or" in the Ombudsman's stationery. Mr. Jamir accepted the amendment which, in turn, was accepted by the Committee.

Mr. Sarmiento proposed LINGKOD-BAYAN stating that it would embrace all concepts of tanod, guardian and watchman, which the Committee, through Mr. Monsod, did not accept on the ground that it was confusing. Mr. Sarmiento desisted from pursuing his proposed amendment.

Mr. Bacani proposed TANGGOL-BAYAN in lieu of Tanodbayan to avoid confusion. He stated that since the literal translation of "Ombudsman" is protector of the people, "Tanggol" would be more expressive of the fact that it shall champion the cause of the people.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 2:31 p.m.

RESUMPTION OF SESSION

At 2:37 p.m., the session was resumed.

QUESTION OF PRIVILEGE OF MR. GUINGONA

Upon resumption, Mr. Guingona stated that in the previous session, he had suggested to change the Ombudsman but that consideration of his suggestion was deferred upon request of the Committee which said that the matter would be referred to the Committee on Style. He stated that there would be discrimination if the Body were to consider the matter.

The Chair stated that it was about to invite the Body's attention to the fact that the proposed amendment before was a joint amendment of Mr. Guingona and the other proponents.

Reacting thereto, Mr. Monsod explained that the proposal before the Body could temporarily retain the phrase "Ombudsman to be known as Tanodbayan" to be later referred to the Committee on Style. He stressed that the Body has one month to decide on the options to give ample time to the Body to reflect on the appropriate nomenclature.

The Chair stated that Mr. Monsod's explanation ruled out any discrimination against any Member, and that the session was suspended precisely to allow the Members to discuss the matter.

Adverting then to Mr. Bacani's previous statement, Mr. Guingona stated that the matter of changing the name should not be referred to the Committee on Style since it is the responsibility of the Committee concerned.

By way of rejoinder, Mr. Monsod stated that Mr. Guingona took the floor on a question of privilege because he wanted to adhere to the original agreement in the previous session. He then inquired whether Mr. Guingona would regard the Committee's position out of order.

CLARIFICATION BY THE CHAIR

The Chair explained that Mr. Guingona had proposed the name "Bantaybayan" which proposal was referred to the Committee on Style. She noted that in view of the proposed amendment with respect to the nomenclature, the matter had been reopened. She stated that there is merit to Mr. Guingona's contention that the name of the Office

of the Ombudsman could not just be referred to the Committee on Style. She stated that the Commission should decide whether to change or retain the nomenclature of "Ombudsman" which as explained by the Committee Chairman has acquired an international connotation or meaning.

VOTING ON MR. JAMIR'S AMENDMENT

Mr. Jamir, upon inquiry by the Chair, stated that his original amendment was the addition of the word "TANODBAYAN" with the word OMBUDSMAN enclosed in parentheses [()] but that he had accepted the Committee's suggestion that the word OR be placed between TANODBAYAN and OMBUDSMAN. He stated that thereafter Mr. Davide came up with another amendment.

Mr. Davide restated his amendment, to wit: OMBUDSMAN TO BE KNOWN AS TANODBAYAN, which was accepted by the Committee.

Mr. Bacani explained that at this point he suggested an amendment to the amendment of Mr. Jamir, to use TANGGOL-BAYAN which he thought was accepted by Mr. Jamir.

The Chair noted that at this point, the session was suspended. On inquiry of the Chair as to the result of the consultation, Mr. Romulo informed that the consensus reached was to leave it to the Committee on Style, but inasmuch as the Body had to decide on it, the Committee was submitting the matter to a vote.

Submitted to a vote, 28 Members voted in favor, 6 voted against and Mr. Rodrigo abstained from voting on the proposed amendment for the Ombudsman to be known as the TANODBAYAN.

Thereafter, for the record, the Chair also called for a vote on the proposed amendment for the Ombudsman to be known as the TANGGOL-BAYAN for which 9 Members voted in favor. With majority of the Members voting in favor of the amendment for the Ombudsman to be known as the TANODBAYAN the Chair declared said amendment approved by the Body.

INQUIRY OF MR. MAAMBONG

At this juncture, Mr. Maambong inquired as to the status of the original Tanodbayan in view of the approval of the amendment. He noted that in effect there would be two Tanodbayans.

Mr. Monsod clarified that the existing Tanodbayan would be known as the Special Prosecutor as provided in Section 5.

PROPOSED AMENDMENT OF MR. JAMIR

After Section 12(5), on page 5, line 20, Mr. Jamir proposed a new subsection to read as follows:

TO FIND WAYS AND MEANS OF REDUCING RED TAPE IN GOVERNMENT OPERATION AND IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS;

MR. SARMIENTO'S AMENDMENT TO THE AMENDMENT

Mr. Sarmiento, with Mr. Concepcion as coauthor, proposed a new provision, to wit:

TO EXAMINE AND STUDY THE ACTUAL OPERATIONS OF THE GOVERNMENT, AND TO MAKE RECOMMENDATIONS TO ENSURE EFFICIENCY COORDINATION OF VARIOUS OFFICES, AND CORRECT IRREGULARITIES AND PRACTICES.

He explained that the Ombudsman has three functions, namely: as mobilizer, watchdog and official critic. The

first two functions, he said, are reflected in the enumeration while the third, as "official critic" meaning making recommendations to cut red tape and to improve efficiency, is not reflected therein.

Mr. Jamir did not accept the amendment on the ground that it would overload the Tanodbayan, the Sandiganbayan or the Ombudsman with duties far beyond the comprehension of the Committee when it proposed the particular provision.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 2:50 p.m.

RESUMPTION OF SESSION

At 2:57 p.m., the session was resumed.

REMARKS OF MR. DE CASTRO

Mr. de Castro observed that the Body had just approved in Section 6 Mr. Ople's amendment to provide for a separate deputy for the military, and that Section 8 requires the Ombudsman and his deputies to be members of the Philippine Bar and to have been engaged in law practice for at least 10 years. He expressed doubt whether there are military officers who have been engaged in the practice of law for that length of time, although there are several officers who are members of the Philippine Bar.

Mr. Monsod, in reply thereto, clarified that the requirement concerning law practice is only for the position of Ombudsman and not his deputies, the requirement for which position would be membership in the Philippine Bar.

On inquiry of the Chair, Mr. Monsod stated that the Deputy Tanodbayan need not be a military man and need not have practiced law for 10 years or been a judge for 10 years. Thereafter, Mr. Monsod read the amended Section, to wit:

THE OMBUDSMAN AND HIS DEPUTIES SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES AND AT THE TIME OF THEIR APPOINTMENTS AT LEAST FORTY YEARS OLD, WITH RECOGNIZED PROBITY AND INDEPENDENCE, AND MEMBERS OF THE PHILIPPINE BAR AND MUST NOT HAVE BEEN CANDIDATES FOR ANY ELECTIVE OFFICE IN THE NEXT PRECEDING ELECTION.

REMARKS OF MR. MAAMBONG

Mr. Maambong stated that he had prepared a Section 3 provision on impeachment which had been submitted to the Committee and copies of which had been furnished the Members. He stated that the Resolution covers several steps in the impeachment proceedings, starting with initiation, action of the Speaker, committee action, calendaring of report, voting on the report, referral to the Senate, trial by the Senate and judgment. He stated that the proposal was borne out of his experience as a member of the Committee on Justice, Human Rights and Good Government in the last Batasang Pambansa. He informed that he had consulted the Rules of the House of Representatives and of the Senate of the United States in the formulation of said Section.

SUGGESTION OF MR. BENNAGEN

Mr. Bennagen suggested that in the interest of coherence, the Body should go back to the procedure of calling for anterior amendments instead of allowing random amendments. He stated that he had still two pending amendments.

In response thereto, Mr. Rama explained that the Body was not able to follow established procedure inasmuch as Members did not indicate which sections of the Article they would want to amend. He noted that Mr. Bennagen was supposed to coordinate with Mr. Natividad for a certain amendment and he was of the impression that they had not yet gotten together.

Mr. Bennagen then stated that he had already consulted Mr. Natividad, but that his current proposal was another amendment. He explained that the amendment discussed earlier concerned the insertion of a subsection contained in Committee Report No. 16 which was not included in Committee Report No. 17 and the Body had not acted on it yet. He stated that he gave way to Mr. Jamir's amendment because it concerned the nomenclature of the office.

INQUIRY OF MR. REGALADO

At this juncture, Mr. Regalado inquired whether the Body would revert to the process of anterior amendment, to which the Chair replied that the Floor Leader was calling the Members in the sequence they had registered and that the Body would continue with the procedure for the afternoon session. She added that Mr. Bennagen's amendment would be considered by the Body inasmuch as he had the floor.

INQUIRY OF MR. BENNAGEN

Mr. Bennagen inquired on the method of amendment that the Body would follow, to which Mr. Rama informed that the list of Members who would propose amendments was already prepared and suggested that the sequence be followed, for the time being.

On whether the Body would revert to the process of anterior amendments after consideration of his amendments, the Chair stated that the Members would be called according to the list.

REMARKS OF MR. JAMIR

Mr. Jamir informed the Chair that when the session was suspended, he had the floor and that he merely consulted with other Members who had amendments similar to his own. He stated that he would like to proceed with the rest of his amendments.

MOTION OF MR. BENNAGEN

Mr. Bennagen moved that after the deliberations on the Article on Accountability of Public Officers, the Body go back to the procedure of anterior amendments, section by section, to put more order in the deliberations and the logical sequence of the Articles.

There being no objection, said motion was approved by the Body.

AMENDMENT OF MR. BENNAGEN

Mr. Bennagen proposed on Section 12, page 4, after line 24, an amendment by insertion of Section 6(a) of Committee Report No. 16, which reads as follows:

1)

TO INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PERSON, ANY ACT OR OMISSION OF ANY PUBLIC OFFICIAL, EMPLOYEE, OFFICE OR AGENCY WHEN SUCH ACT OR OMISSION IS ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT;

and which was previously accepted by the Committee.

Mr. Monsod, in accepting the amendment, stated that it is a restatement of the first draft of the Committee Report.

MR. BACANI'S AMENDMENT TO THE AMENDMENT

Mr. Bacani proposed to change the phrase "when such act is illegal" inasmuch as it is only an investigatory phase which would prejudice the outcome. He proposed instead to use the phrases SUSPECTED TO BE ILLEGAL or APPEARS TO BE ILLEGAL.

RESTATEMENT OF MR. BENNAGEN'S AMENDMENT AS MODIFIED BY MR. BACANI

As proposed by Mr. Bennagen, amended by Mr. Bacani and accepted by the Sponsor, the Body approved an amendment to insert the following between lines 24 and 25 of page 4:

TO INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PERSON, ANY ACT OR OMISSION OF ANY PUBLIC OFFICIAL, EMPLOYEE, OFFICE OR AGENCY WHEN SUCH ACT OR OMISSION APPEARS TO BE ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT.

AMENDMENTS OF MR. JAMIR

As proposed by Mr. Jamir and accepted by the Sponsor, the Body approved the following amendments:

1) On page 5, after Section 12(5), insert the following:

TO DETERMINE AND MAKE RECOMMENDATIONS FOR THE OBSERVANCE OF HIGH STANDARDS OF ETHICS AND EFFICIENCY AND TO ELEMINATE THE ROOT CAUSES OF INEFFICIENCY RED TAPE; MISMANAGEMENT, FRAUDS, AND CORRUPTION IN THE GOVERNMENT.

Mr. Jamir stated that this amendment was co-authored by Messrs. Natividad, Sarmiento, Bennagen and Concepcion.

2) After the last proposal, insert the following:

THE TANODBAYAN OFFICIALS AND EMPLOYEES, OTHER THAN THE DEPUTIES, SHALL BE APPOINTED BY THE TANODBAYAN ACCORDING TO THE CIVIL SERVICE LAW.

MANIFESTATION OF MR. MAAMBONG

At this juncture, Mr. Maambong manifested that the proposed provision on impeachment which he had submitted to the Committee might be objectionable on account of its lengthy provisions. He suggested that, to save time, the Committee consider his proposal, together with those of Messrs. Regalado and Davide.

Reacting thereto, Mr. Monsod informed that the Committee had sat down with Messrs. Davide and Regalado on a draft which differed in formulation from that of Mr. Maambong on the question of need for an investigation before proceeding to the order of business. He stated that should Mr. Maambong be willing to accept its insertion into the version of Messrs. Davide and Regalado, the Committee would have the proposal subject to refinements on style by the Committee on Style.

Mr. Maambong maintained, however, that before a complaint could be formally received by the Legislature, it has to be accompanied by a resolution of a number of Members of the House because any disregard of such procedure could subject the impeachable officers to harassment.

At this juncture, Mr. Davide stated that the reconciliation could be easily accomplished by inserting a comma (,) after "Members" in the Committee modification and by inserting the words UPON A RESOLUTION OF INDORSEMENT BY ANY MEMBER OF THE HOUSE after "citizen".

Mr. Maambong stated that, although Mr. Davide's amendment was acceptable, the Committee should go over the three proposals to save time. He then suggested a deferment of consideration of the proposed amendment, to which Mr. Monsod agreed.

Thereupon, the Chair called for the next amendment.

PROPOSED AMENDMENTS OF MR. MAAMBONG

On page 4, line 15, Mr. Maambong proposed to delete the words "as champions of the people" and in lieu thereof, to insert the phrase SHALL GIVE EFFECT TO THE 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.

Explaining his amendment, Mr. Maambong stated that his proposal is a constitutional provision which specifies the function and duty of the Ombudsman as mandated in the Constitution.

The Sponsor did not accept the amendment on the ground that the proposal is not necessary. He further stated that the Committee would not want to identify the Ombudsman as a vehicle for the people to express their sentiments.

Mr. Monsod affirmed, however, that one of the functions of the Ombudsman is to give effect to the 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. Thereupon, Mr. Maambong did not insist on his amendment.

Thereafter, on page 5, Mr. Maambong proposed the deletion of the whole Section 13 on the ground that this provision is also found in Section 11 of Republic Act 1379 which provides for the forfeiture in favor of the State of any property established to have been unlawfully acquired by any public officer or employee and providing for the procedure therefor.

Responding thereto, Mr. Nollado stated that since Section 11 of RA 1379 is a statutory provision which could be repealed by the Legislature, the Committee felt that because of its importance it should be reproduced in different words in the proposal in order to constitutionalize said provision.

Thereupon, Mr. Maambong did not insist on his amendment.

On page 5, line 23, Mr. Maambong proposed the rewording of Section 13 to read as follows:

THE LAWS CONCERNING ACQUISITIVE PRESCRIPTION AND LIMITATION OF ACTIONS CANNOT BE INVOKED BY, NOR SHALL THEY BENEFIT PUBLIC OFFICIALS OR EMPLOYEES, IN RESPECT TO ANY PROPERTY UNLAWFULLY ACQUIRED.

Mr. Maambong explained that Section 13 covers only civil actions while his proposal would be more encompassing in that it would cover both criminal and civil actions.

MR. DAVIDE'S AMENDMENT TO THE AMENDMENT

Mr. Davide proposed an amendment to the amendment by adding, after "employees" the words OR THEIR CO-PRINCIPALS, ACCOMPLICES OR ACCESSORIES; and after "prescription" to add a comma (,) and the words LACHES OR ESTOPPEL, such that the whole provision would read:

THE RIGHT OF THE STATE TO RECOVER PROPERTIES UNLAWFULLY ACQUIRED BY PUBLIC OFFICIALS OR EMPLOYEES OR THEIR CO-PRINCIPALS, ACCOMPLICES OR ACCESSORIES OR TO PROSECUTE OFFENSES IN CONNECTION THEREWITH SHALL NOT BE BARRED BY PRESCRIPTION, LACHES OR ESTOPPEL.

Mr. Nollado stated that the objectives of the proposal had all been contemplated in the provision and that it would not be practical to clutter the Constitution with words, no matter how beautiful they may be.

Mr. Maambong stated that, although he was inclined to accept the amendment to his amendment, the proposal of Mr. Davide was not an amendment to his amendment but to the original provision of Section 13. He suggested that consideration of the amendment be deferred so that the Committee could study his proposal more closely.

Mr. Nollado, however, maintained that Section 13 which Mr. Maambong proposed to amend would cover both civil and criminal aspects. With respect to Mr. Davide's amendment, Mr. Nollado stated that any property unlawfully acquired by public officials is considered acquired through a criminal act and that whoever is in possession of such property, whether he is a principal, accomplice or accessory, should return such property to the State. He added that the right of the State to initiate forfeiture of the property does not prescribe.

At this juncture, the Chair stated that the Committee believed Mr. Maambong's proposals were already included in the simple sentences of the present Section 13.

Thereupon, Mr. Maambong withdrew his proposed amendment.

AMENDMENT OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Sponsor, the Body approved an amendment on page 5, line 25, after "employees" to insert the words OR THEIR CO-PRINCIPALS, ACCOMPLICES OR ACCESSORIES OR TO PROSECUTE OFFENSES IN CONNECTION THEREWITH; and after "prescription" to add a comma (,) and the words LACHES OR ESTOPPEL.

Mr. Davide explained that Republic Act 1379 on forfeiture of ill-gotten wealth would cover only the civil aspect, thus the necessity of including the criminal action and the imprescriptibility of such action.

Adverting to the other concepts in Civil Law, Mr. Davide stated that laches is a concept entirely different from prescription in the sense that while an action may not prescribe, it may be barred by laches; and that while an action may not prescribe or may not be barred by laches, there may be an estoppel. Mr. Davide maintained that should the concept be strengthened, the Constitution should be very specific by having it related to both criminal and civil actions and by adding laches and estoppel to prescription.

AMENDMENT OF MR. BACANI

As proposed by Mr. Bacani and accepted by the Sponsor, the Body approved an amendment on page 3, line 15, between the words "and" and "one", to insert the words AT LEAST.

AMENDMENTS OF MR. PADILLA

As proposed by Mr. Padilla and accepted by the Sponsor, the Body approved an amendment on page 1, line 9, to substitute the word "fidelity" with RESPONSIBILITY and to insert LOYALTY between "integrity" and "and" so that the phrase would read: RESPONSIBILITY, INTEGRITY, LOYALTY AND EFFICIENCY.

On page 2, Mr. Padilla proposed the deletion of the word "not" on line 24 and to change the word "but" to AND on line 27, which amendments Mr. Romulo did not accept on the ground that the word "not" was placed to convey the idea that the Senate should not go further than removing the impeachable officer.

In view thereof, Mr. Padilla withdrew his proposed amendments.

On page 4, line 15, Mr. Padilla proposed the substitution of the word "champions" with PROTECTORS, which the Sponsor accepted.

Mr. Tingson proposed the deletion of the words "as champions of the people" on the ground that it insinuates that some other officials just as important are not champions of the people.

The Sponsor did not accept Mr. Tingson's amendment, explaining that the words sought to be deleted would precisely emphasize the special character of the Ombudsman as a protector of the people.

There being no objection, the Body approved Mr. Padilla's proposed amendment.

PROPOSED AMENDMENTS OF MR. TINGSON

On Section 1, page 1, Mr. Tingson proposed the substitution of the word "modest" with FRUITFUL, explaining that the word "modest" reflects a colonial mentality whereas "fruitful" carries a mandate that he would not just be a spectator but a participant in making the Philippines truly free and progressive.

Mr. Romulo did not accept the proposed amendment and, adverting to Mr. Tadeo's proposed Resolution, pointed out that the purpose is to make the public official set an example by avoiding conspicuous display of wealth and power. He stated that the word "fruitful" could be misunderstood to mean that he should aggrandize himself while in office.

Additionally, Mr. Nollado stressed that the word "fruitful" could carry a malicious implication to mean enrichment.

On Section 8, Mr. Tingson proposed the reduction of the age requirement from forty to thirty-five and the years of practice from ten to seven years, to which Mr. Monsod replied that forty is the appropriate minimum age because the Office requires a lot of moral suasion and some experience which a man of forty could have already accumulated.

On whether such argument could have been said in support of the proposal to reduce the age requirement for Senator, Mr. Romulo pointed out that the Ombudsman and the Senator have different functions, the former being required to do administrative functions.

THE PRESIDENT RELINQUISHED THE CHAIR

At this juncture, the President relinquished the Chair to the Honorable Efrain B. Treñas.

PROPOSED AMENDMENT OF MR. NATIVIDAD

On Section 5, Mr. Natividad proposed to add a sentence after line 12 which, as modified by the Committee, shall read: THE SPECIAL PROSECUTOR SHALL FUNCTION AS A PROSECUTION ARM OF THE OMBUDSMAN IN APPROPRIATE CASES.

Mr. Rodrigo noted that the proposed amendment would relegate the Tanodbayan to the status of a mere prosecution arm of the Ombudsman in special cases.

In reply to Mr. Guingona's inquiry, Mr. Natividad opined that the Special Prosecutor would not fall under the Office of the Ombudsman.

On whether the Special Prosecutor could be deputized by the Ombudsman or may be assigned work by the Ministry of Justice, Mr. Monsod stated that the acceptance of the proposed amendment was premised on the recognition of the role of the Special Prosecutor in appropriate cases.

Mr. Rodrigo stated that he could not perceive the principal role of the Ombudsman because, as has been stated, its function is not to prosecute but to be a mere *sumbangan ng bayan*, to which Mr. Monsod replied that there is a difference between the Ombudsman exercising a prosecutory function and as a special prosecutor in appropriate cases.

Mr. Rodrigo maintained that there is a lot of difference if the Special Prosecutor is called the prosecution arm.

Mr. Natividad proposed the deletion of the word "arm" so that the proposed amendment, as amended, would read: THE SPECIAL PROSECUTOR SHALL PROSECUTE CASES REFERRED TO IT BY THE OMBUDSMAN.

Mr. Davide objected to the proposed amendment on the ground that it is already covered by Section 12(2). He pointed out that under said Section, the Ombudsman could direct any prosecutor to prosecute a complaint which it may determine proper for an action to be filed.

In view thereof, Mr. Natividad withdrew his proposed amendment.

INQUIRY OF MS. AQUINO

On Section 3 on impeachment procedure, Ms. Aquino expressed doubt on the effectivity and validity of the impeachment procedure embodied therein which virtually adopted in toto the procedures in the 1935 and 1973 Constitutions.

Ms. Aquino recalled that impeachment originated in England one and a half centuries ago but was later found to be obsolete when the English countries adopted the principle of ministerial responsibility. Tracing its legal history, she pointed out that there has been a growing tendency to vest the powers of impeachment, not in the legislature, but in the judiciary. However, she stated that unfortunately the procedure of vesting impeachment powers in the legislature found its way to the constitutions of British colonies and eventually to the United States Constitution.

Ms. Aquino called attention to the fact that in the Philippines, experience showed that all efforts to impeach the President, as demonstrated in the impeachment cases against Presidents Quirino and Marcos, had been effectively frustrated simply because of partisanship and political loyalties, leading to the conclusion that impeachment proceedings vested in a legislature are practically futile and inutile, cumbersome and complicated and grossly inadequate in terms of exacting from public officers fidelity to the Constitution and to the State.

Ms. Aquino then inquired whether the Committee would agree to transfer the powers of impeachment trial, after it

has been initiated by a joint action of the legislature, to the judicial courts.

Replying thereto, Mr. Monsod stated that it is the position of the Committee that even if it has been unsuccessful, a liberalized impeachment provision by itself could act as a deterrent. He pointed out the fact that the impeachment charges against President Marcos, although it failed, had an impact on the President as demonstrated by the fact that he called a snap election to seek a fresh mandate. He stated that impeachment, even if it is a political act, would not preclude a judicial action.

Ms. Aquino maintained that impeachment, although it is an exercise of a political act, is essentially a judicial function because it covers not only political matters but even legal matters, to which Mr. Monsod replied that the question which the Body should address to is whether the provision on impeachment is still necessary or whether it serves a useful purpose as far as the political processes are concerned.

Ms. Aquino then inquired whether the Committee is amenable to a massive overhaul of the impeachment procedures to make it a viable option, to which Mr. Monsod replied that the Committee would welcome any suggestion except to transfer the impeachment power to the courts.

Mr. Monsod stated further that an overhaul of the Section on impeachment would not be appropriate at this point, although the Committee would welcome amendments thereto.

Ms. Aquino, however, observed that the proposed impeachment procedures should not be a mere glorified political masturbation but a viable option for the protection of the State against erring public officers, in reply to which, Mr. Monsod opined that this constitutional provision would have deterrent effects even in cases where it failed.

On Mr. Nollado's query, Ms. Aquino stated that what she was suggesting was the transfer of impeachment powers to the judicial courts after the articles of impeachment had been initiated and formulated jointly by the two Houses of Congress.

Mr. Ople then pointed out that the proposed provision on impeachment was almost a verbatim copy of Article VII of the American Constitution, which he said was one of the causes of the resignation of President Richard Nixon, such that it became a check on the presidency. He opined that the proposed provision on impeachment would not only be a constitutional decoration but a sword in a scabbard which is as good as a sword drawn.

Reacting thereto, Ms. Aquino underscored that impeachment is not intended to prosecute or demand restitution but to be an exemplary act by which the State infuses the highest sense of responsibility to public service, such that an erring public officer, if found guilty, would be disqualified from public trust. She added that it is not enough for it to be just a sword in the scabbard because it would surely rust unless it is drawn.

At this juncture, in reply to the Chair's query, Ms. Aquino stated that she would be proposing an amendment in Section 3 to vest in the judicial courts the power to try impeachment cases after the Legislative Chambers have jointly initiated and formulated the articles of impeachment.

Mr. Monsod, on behalf of the Committee, reiterated that the proposed provision on impeachment would be retained, stating that if the intent of Ms. Aquino is to vest in the judicial courts the power to try the President in impeachment cases, the more appropriate judge of the actions of the President, being an elected official, would be the Legislature which is composed of elected representatives of the people. Mr. Romulo also stated that impeachment proceedings are political acts rather than judicial in nature.

Ms. Aquino, however, maintained that impeachment proceedings should not be equated with the power to impeach. She added that impeachment proceedings are essentially judicial, such that when the Members of the

Legislature sit on an impeachment proceeding, they sit not as a legislative body but as a court of justice, to which Mr. Romulo agreed.

On whether the Legislature, in considering such impeachment proceeding, would be bound by the Rules of the House, specifically on the effect on the case if it adjourns, Mr. Romulo explained that it would depend on the rules that the Legislature would adopt; but on the premise that the Legislature would be acting like other courts of justice, it would not lose jurisdiction on the case only because of adjournment.

In the event the President resigns before the promulgation of judgment had been rendered, Mr. Romulo stressed that because the purpose of impeachment proceedings is the removal and disqualification of an official from office, then his resignation would render the case moot and academic, without prejudice to further criminal and civil adjudication.

At this juncture, Mr. Guingona stated that if impeachment proceedings are essentially political, the courts may be given the power to adjudicate, to which Ms. Aquino agreed but further explained that a deviation from that concept of impeachment proceeding as a political act would necessitate a reassessment of the proposed procedure.

Furthermore, Mr. Guingona pointed out that in other countries like the United Arab Republic, Zambia and France, among others, the power to adjudicate an impeachment proceeding is vested in the courts.

Thereupon, Ms. Aquino stated that although she had no specific amendment, her proposal could probably be interrelated with the proposed amendments of Messrs. Davide, Maambong and Regalado which the Body had deferred.

AMENDMENTS OF MR. REGALADO

On page 1, line 18, after the period (.), Mr. Regalado proposed to add the following sentence: ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT.

He explained that nothing could prevent the Legislature from providing that other officers not enumerated therein be also removed by impeachment. He added that Presidential Decree No. 1606, which provides for the removal of the Justices of the Sandiganbayan by impeachment, would still stand until the Legislature repeals or amends it.

The Sponsor accepted the amendment, and there being no objection, the same was approved by the Body.

On page 4, line 5, after the period (.), Mr. Regalado also proposed to add the following sentence: THEY SHALL NOT BE QUALIFIED TO RUN FOR ANY OFFICE IN THE ELECTION IMMEDIATELY SUCCEEDING THE END OF THEIR TERM OR RESIGNATION FROM OFFICE.

He explained that an Ombudsman, who is publicly visible and capable of projecting himself in the limelight, might use his position as a springboard in the coming election or might resign so that he could enter politics. He stated, however, that the Ombudsman could not be deprived of being elected in other elections.

Mr. Davide then proposed an amendment to Mr. Regalado's amendment by substituting the phrase "the end of their term or resignation from office" with the phrase THEIR CESSATION FROM OFFICE, considering that cessation from office may be caused by removal, resignation, end of term, or incapacity, which amendment to the amendment was accepted by Mr. Regalado.

In reply to Mr. Monsod's query, Mr. Regalado affirmed that the interval between the cessation from office and one's running for election would be three years.

In view thereof, the Sponsor accepted the proposed amendment of Mr. Regalado, as amended by Mr. Davide.

At this juncture, Mr. Foz proposed to amend the amendment as amended by substituting the phrase "in the election immediately succeeding their cessation from office" with the phrase IN THE NEXT TWO SUCCEEDING ELECTIONS AFTER THE EXPIRATION OF HIS TERM.

He stated that in order to prevent the Ombudsman from harboring political ambitions during or after his term, the period from which he would be barred from running for election should be prolonged to two succeeding elections, in reply to which, Mr. Monsod observed that two successive elections would mean nine years, which would be too long for a righteous man before he could serve the people.

Mr. Foz maintained that the approved provision for the term of a member of the Lower House is only three years and that there would be an election every three years so that a former Ombudsman would be eligible to run for office in six years and not nine years, to which Mr. Monsod replied that if an Ombudsman ceases to hold office shortly after an election, he would have to wait almost nine years before he could run for an elective office.

Mr. Regalado suggested that prohibiting an Ombudsman from running after only one election would be a happy compromise since the country may need the services of one who had proven himself worthy of his position.

Mr. Foz withdrew his proposal.

Thereupon, as proposed by Mr. Regalado and accepted by the Sponsor, the Body approved the addition of the following sentence to Section 9: THEY SHALL NOT BE QUALIFIED TO RUN FOR ANY OFFICE IN THE ELECTION IMMEDIATELY SUCCEEDING THEIR CESSATION FROM OFFICE.

Thereafter, Mr. Regalado proposed on Section 12(1), page 5, line 3, to change the semicolon (;) to a comma (,) and to add the phrase ESPECIALLY ANY VIOLATION OF CIVIL, POLITICAL, NATURAL OR HUMAN RIGHTS.

He explained that the proposed Resolution on Human Rights pending in the Committee on Constitutional Commissions and Agencies may not be approved, hence the amendment would express the concern over the protection of civil, political, natural or human rights through the Ombudsman.

Mr. Sarmiento objected to the proposal on the ground that it would expand the powers of the Ombudsman which should be limited to the investigation of cases involving graft and corruption, inefficiency and mismanagement and that the Commission on Human Rights should be the appropriate body to investigate human rights violations.

At this juncture, Mr. Foz, on a point of information, stated that there is a consensus in the Committee on Constitutional Commissions and Agencies to establish a Commission on Human Rights which would have jurisdiction over matters proposed by Mr. Regalado.

Mr. Regalado maintained that he would be willing to withdraw his proposal if Mr. Foz would give his assurance that the proposal for the establishment of the Commission on Human Rights would be approved by the Body.

Mr. Foz reported that 7 out of the 13 Committee Members voted in favor of the establishment of the Commission and that it is possible that the same would likewise be approved by the Body.

He stressed that he would not object to the approval of Mr. Regalado's proposal provided that it would not be an impediment to the Committee's submission of a report on the creation of a Commission on Human Rights.

Mr. Monsod stated that the Committee would accept Mr. Regalado's proposal on the understanding that it would be deleted should the Committee on Human Rights be established in the Constitution.

Mr. Regalado agreed.

At this juncture, Mr. Davide proposed to amend Mr. Regalado's proposal by changing "especially" with INCLUDING and to delete "natural".

Mr. Regalado accepted the change from "especially" to INCLUDING but rejected the deletion of "natural" on the ground that jus naturale has not always been translated into statutory, political or civil rights.

Mr. Monsod agreed with Mr. Davide that the word "natural" should be deleted.

Mr. Regalado agreed to the deletion on the assurance that all the rights under jus naturale would be covered by statutory provisions on civil, political and human rights.

Mr. Monsod agreed to the interpretation.

Thereafter, the proposed amendment of Mr. Regalado, as modified by Mr. Davide, and subject to the reservation of the Committee was submitted to a vote and, there being no objection, the same was approved by the Body.

AMENDMENT OF MR. FOZ

On page 6, line 2, as proposed by Mr. Foz and accepted by the Sponsor, the Body approved the amendment changing the word "substantial" to CONTROLLING.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed, on Section 3(5)1 line 20, to add after "preside" the sentence IN ALL OTHER CASES, THE PRESIDENT OF THE SENATE SHALL PRESIDE.

Mr. Monsod rejected the amendment, stating that it is already clear that the Chief Justice of the Supreme Court would only preside over the impeachment proceeding if it is the President who is on trial.

Mr. Davide withdrew his proposal.

AMENDMENT OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Sponsor, the Body approved the amendment on Section 7, page 3, line 21, to place a period (.) after "thereafter" and to substitute "without any confirmation" with SUCH APPOINTMENTS SHALL REQUIRE NO CONFIRMATION.

AMENDMENT OF MR. DAVIDE AS MODIFIED

BY MR. DE LOS REYES

Mr. Davide proposed, on page 4, line 1, to insert after "not" the phrase HOLD ANY OTHER OFFICE OR EMPLOYMENT OR and on line 2 to add after "profession" the following: OR IN THE MANAGEMENT OF ANY BUSINESS WHICH IN ANY WAY MAY BE AFFECTED BY THE FUNCTIONS OF THEIR OFFICE, OR BE FINANCIALLY INTERESTED, DIRECTLY OR INDIRECTLY, IN ANY CONTRACT WITH, OR IN ANY FRANCHISE OR PRIVILEGE GRANTED BY THE GOVERNMENT, OR ANY OF ITS SUBDIVISIONS, AGENCIES OR INSTRUMENTALITIES, INCLUDING GOVERNMENT OWNED OR CONTROLLED CORPORATIONS OR THEIR SUBSIDIARIES.

Mr. Davide agreed with Mr. de los Reyes' observations that the same disqualifications and prohibitions attached to a member of the Constitutional Commissions apply to the Ombudsman whose position is deemed equal in rank

to that of the former.

Mr. de los Reyes then proposed to abbreviate the sentence to simply state "they shall be subject to the same disabilities provided for in Section 3, Article XII of this Constitution".

Mr. Davide proposed "disqualifications and prohibitions" in lieu of "disabilities", to which Mr. de los Reyes agreed, so that, as restated, the amendment on page 4 would be to substitute lines 1 and 2 with the sentence: THEY SHALL BE SUBJECT TO THE SAME DISQUALIFICATIONS AND PROHIBITIONS AS PROVIDED FOR IN SECTION 3, ARTICLE XII OF THIS CONSTITUTION.

The Committee accepted the amendment.

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

PROPOSED AMENDMENT OF MR. DAVIDE

On Section 11, page 4, line 15, Mr. Davide proposed to insert AT NO EXPENSE TO AN AGGRIEVED PARTY, after "act".

Mr. Monsod rejected the proposal, stating that the matter of fees should be left to the decision of the Office of the Ombudsman.

With the assurance that the matter of fees would be subject to the rules and regulations to be promulgated by the Ombudsman, Mr. Davide withdrew his proposal.

AMENDMENTS OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Sponsor, the Body approved the following amendments:

1)

On page 4, line 17, add OR ANY SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF, after "government"; on line 18, insert OR CONTROLLED after "owned"; on line 19, delete "or instrumentalities"; on line 27, insert OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF after "government"; and on line 28, insert OR CONTROLLED before "corporation";

2)

On page 5, line 9, change the capital letter "T" with a small letter "t" and insert before "To" the phrase IN ANY APPROPRIATE CASE AND SUBJECT TO SUCH LIMITATIONS AS MAY BE PROVIDED BY LAW; on line 12, to insert FOR USE between "disbursement" and "of"; and on the same line, after "funds" add OR PROPERTIES;

3)

On the same page 5, reword Section 12(6) to read:

TO PROMULGATE ITS RULES OF PROCEDURE AND TO EXERCISE SUCH OTHER POWERS OR PERFORM SUCH FUNCTIONS OR DUTIES AS MAY BE PROVIDED BY LAW; and

4)

On page 6, add ANY MEMBER OF THE CONSTITUTIONAL COMMISSIONS, THE JUDICIARY OR THE OMBUDSMAN after "Congress" so that the whole of Section 14, as amended, together with the amendments of Messrs. Treñas and de Castro would read as follows:

SECTION 14. NO LOAN GUARANTY OR OTHER FORM OF FINANCIAL ACCOMMODATION FOR ANY BUSINESS PURPOSES MAY BE GRANTED, DIRECTLY OR INDIRECTLY, BY ANY GOVERNMENT-OWNED OR CONTROLLED BANK OR FINANCIAL INSTITUTION TO THE PRESIDENT, VICE-PRESIDENT, MEMBER OF CABINET, MEMBER OF CONGRESS AND MEMBER OF THE CONSTITUTIONAL COMMISSIONS, THE JUDICIARY OR THE OMBUDSMAN.

Mr. Foz opined that the members of the Constitutional Commissions are independent and nonpolitical officials and should therefore not be included in the same level with politicians.

Mr. Davide, however, maintained that the amendment is precisely intended to obviate the possibility that the Ombudsman or members of the Constitutional Commissions who are independent and are not elected by the people would use their offices to exert pressure and influence in order to obtain loans for business purposes.

Mr. de Castro opposed the inclusion of “judicial officials” as it would even include a municipal trial court judge who receives a very low salary. Mr. Davide argued that his proposal is intended to prevent the possibility of undue influence on a judge's decision as he might be a debtor of a bank which has a pending case in his sala. He added that the Members of the Judiciary would be adequately compensated.

Reacting thereto, Mr. de Castro stated that the situation contemplated would be quite remote, to which Mr. Davide stated that the bank might be located in the municipality where he is sitting as a judge.

Mr. Monsod, on behalf of the Committee, stated that the sense of the Body on the matter during the previous session was to limit the enumeration in the amendments of Messrs. Treñas and Foz.

On suggestion of Mr. Monsod, Mr. Davide presented his proposed amendments one after the other for purposes of voting on each proposal as follows:

1)

On the Members of the Constitutional Commissions, with 17 Members voting in favor and 5 voting against, the Body approved the amendment;

2)

On the Members of the Judiciary, with 18 Members voting in favor and 16 voting against, the Body approved the amendment; and

3)

On the Ombudsman, with 35 Members voting in favor and none against, the Body approved the same.

INQUIRY OF MR. FOZ

On Mr. Foz' query whether Members of the family of public officers mentioned in the Section are included in the prohibition, Mr. Monsod stated that members of their immediate family are included, but not other relatives, unless evidence would show that they are acting as dummies.

INQUIRY OF MR. GUINGONA

In reply to Mr. Guingona's query on whether the Ombudsman and his deputies are included, Mr. Monsod stated that only the Ombudsman was referred to since he is the only constitutional official, unlike in the case of the Constitutional Commissions.

AMENDMENTS OF MR. SARMIENTO

On page 6, Mr. Sarmiento proposed a new section to be denominated as Section 15 to read:

THE TANODBAYAN OR THE OMBUDSMAN SHALL ENJOY FISCAL AUTONOMY. THE APPROVED ANNUAL APPROPRIATIONS FOR THE OMBUDSMAN SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

He stated that the Ombudsman, being the champion and protector of the people's cause should be given fiscal autonomy.

Mr. Monsod accepted the amendment.

There being no objection, the Body approved the same.

On Section 10, page 4, line 11, Mr. Sarmiento proposed to change the capital letters C on "Constitutional Commission" to small letters, stating that it might be construed as the Constitutional Commission of 1986. Mr. Monsod stated that the matter was duly amended at the instance of Mr. de los Reyes, but that for purposes of clarification, he was accepting the proposal.

There being no objection to the amendment, the Body approved the same.

On Section 12(5), page 5, line 19, Mr. Sarmiento proposed to substitute "circumstances" with PUBLIC INTEREST to make the provision clearer. Mr. Romulo, however, stated that the subparagraph is so worded to avoid any possibility of libel, for which reason, Mr. Sarmiento withdrew his amendment.

Mr. Sarmiento proposed to include a new subparagraph in Section 12 to read: THE LAW SHALL PROVIDE FOR A SYSTEM OF RECALL OF PUBLIC OFFICERS, stating that even appointive officials may be subject to recall to make such public officers accountable to the people.

On the query whether the proposal would include constitutional officers, Mr. Sarmiento stated that only the local public officers are to be recalled, to which Mr. Monsod replied that the proposed amendment appropriately pertains to the Article on Local Governments.

Mr. Nollado, as the Chairman of the Committee on Local Governments, assured Mr. Sarmiento that he will consider any amendment to that effect when the Body deliberates on the report of his committee, for which reason, Mr. Sarmiento withdrew his proposed amendment.

AMENDMENT OF MR. RIGOS

As proposed by Mr. Rigos and accepted by the Sponsor, the Body approved on page 2, line 16, between the words "all" and "impeachment" to insert CASES OF; and on page 4, line 2, to insert the word OTHER between "any" and "profession".

PROPOSED AMENDMENT OF MR. GUINGONA

Mr. Guingona proposed to delete the entire Section 5, on the Office of Special Prosecutor. He stated that there is no need to provide for the Office since all the other prosecutors are under the Ministry of Justice which, he argued, could bring about conflicts or duplication of work.

Mr. Guingona's second proposed amendment was for the incumbent Tanodbayan to function as the Ombudsman or Tanodbayan. He also proposed that as a last resort in extraordinary cases, the Ombudsman should be given prosecutory powers.

Mr. Monsod observed that the points raised by Mr. Guingona were already discussed in the previous session and was voted down by the Body. He then inquired whether Mr. Guingona was asking for a reconsideration on the points raised by him.

In reply, Mr. Guingona stated that he was not aware that a proposal was made to delete the particular Section, but that he was moving for its reconsideration.

Reacting thereto, Mr. Guingona stated that the proposal that had been introduced in the previous session was not the same as his proposal to grant the Ombudsman prosecutory power, with the Tanodbayan functioning as the Ombudsman.

Mr. Bengzon informed that the matter be addressed to the Body for a vote on whether to allow Mr. Guingona's motion for reconsideration, to which Mr. Guingona agreed, by stating that his proposal intends to transfer the prosecutory power of the Tanodbayan to the Ombudsman.

Mr. Jamir pointed out that there was prejudicial question as to whether Mr. Guingona voted with the majority when the matter was taken up in the previous session, to which Mr. Guingona stated that there were many votings that he could not recall.

POINT OF ORDER

Raising a point of order, Mr. Bengzon agreed with Mr. Jamir's observation that Mr. Guingona should first indicate how he voted on the matter.

Thereupon, the Chair inquired how Mr. Guingona voted on the subject matter in the previous session.

REMARKS OF MR. RODRIGO

At this juncture, Mr. Rodrigo explained that he proposed the amendment to delete all the provisions creating the Ombudsman (Section 6) but the motion of Mr. Guingona, which is altogether different, would delete Section 6. He informed that the Body had not yet voted on the issue whether to delete Section 5 or not although it had already voted on the deletion of Section 6.

Upon inquiry of the Chair, Mr. Romulo stated that Section 5 has been amended several times by Messrs. Jamir, Treñas, Regalado and others and all the amendments which were accepted by the Committee had been voted upon by the House. He noted that one would presume that inasmuch as Section 5 had been amended, the Body therefore had decided to retain it.

Mr. Guingona, in reply thereto, stated that the Body had adopted for that day a procedure where it would only consider anterior amendments and the Members had to wait for their turn to be called to introduce their amendments. He noted that although the Members voted in favor of an amendment, it may consider the proposal to delete it.

Mr. Nollado maintained that Mr. Guingona should have raised a prejudicial question or moved to delete the Section before allowing other Members to amend it. Mr. Guingona replied that he could not do so inasmuch as the Floor Leader had advised him to wait for his turn.

Mr. Monsod asked the Chair to give due course to the proposed amendment of Mr. Guingona in order to resolve the issue.

Thereupon, the Chair called for a vote on the motion for reconsideration by Mr. Guingona at which point Mr. Monsod stated that the vote should not be on the motion for reconsideration considering that there was no finding

that it had been voted on but rather a vote on the proposal to delete Section 5.

Submitted to a vote and with 7 Members voting in favor and 24 against, the amendment was lost.

AMENDMENT OF MR. SUAREZ

Mr. Suarez noted that Section 11 mentions complaints filed but does not use the qualifying word "verified" and that the phrase "in any form or manner" might be susceptible to various interpretations. He stated that the Body would not like to constitutionalize harassment but the Section could be used as a weapon of harassment by unscrupulous individuals against public officials. Thereafter, he proposed on line 16 of Section 11, to delete the word "the" and insert the word VERIFIED before the word "complaints", then after the word "filed" to delete the comma (,) together with the phrase "in any form or manner" such that the Section would read "The Ombudsman and his deputies, as protectors of the people, should act promptly on VERIFIED complaints filed against public officials . . . "

Mr. Colayco explained that under Section 11, the principal function of the officer would be capability to attend and act immediately upon complaints not leading to prosecution but to correction or implementation of the request whether phoned in, written, or oral. He stressed that the Committee would like to cure the despair of the common people with government officials who are beyond their reach. He noted that it has become a common and sad spectacle to see people going from one government office to another to seek the help of public officials. He observed that in countries like the United States, Singapore and Japan, people are free to call in.

Mr. Nollado added that most of the complainants are poor people and to require them to have their complaints verified would be foolhardy inasmuch as they would have to consult lawyers whom they cannot afford and that in the end they may just decide not to pursue their complaints. He added that the Ombudsman is empowered to publicize a complaint although in so doing he would have to take into account all the factors involved in the complaints and thus there will be no harassment.

Mr. Suarez, in reply thereto, queried as to how the Ombudsman or his deputies shall notify the complainants of the action taken and the results thereof if the complaint is unknown as in the case of any anonymous call or an anonymous letter. Mr. Colayco explained that in such circumstances there is nothing the Ombudsman can act upon. Mr. Suarez suggested a reformulation of this portion of the section.

In response thereto, Mr. Monsod proposed to amend the section with the phrase "and shall where applicable, notify" which was amended by Mr. Colayco to "whenever applicable". The amendment was accepted by Mr. Suarez who, thereafter, withdrew his original amendment. There being no objection, the said amendment was approved by the Body.

SUGGESTION OF MR. MONSOD

At this juncture, Mr. Monsod informed that there is a substantial amendment on the procedure on impeachment which needs to be considered by the Body and noted that it would be the appropriate time to take up the matter, as has been agreed upon by the three major proponents of the Article.

AMENDMENT OF MR. DE LOS REYES

On page 2, line 20, after the clause "but shall not vote", Mr. de los Reyes proposed to add the sentence, to wit:

IN CASE OF DEATH, DISABILITY, REMOVAL OR RESIGNATION OF THE CHIEF JUSTICE THE MOST SENIOR ASSOCIATE JUSTICE SHALL PRESIDE AND IF FOR THE SAME REASONS HE COULD NOT PRESIDE, THE NEXT SENIOR ASSOCIATE JUSTICE SHALL PRESIDE. THE SAME

RULE SHALL APPLY IF THE NEXT SUCCEEDING SENIOR ASSOCIATE JUSTICE COULD NOT PRESIDE FOR THE SAME REASON.

He noted that it would be possible that during an impeachment proceeding, something may happen to the Chief Justice in which case the President can frustrate the impeachment move by not appointing a Chief Justice.

Mr. Romulo stated that normally, if the Chief Justice cannot preside, an Acting Chief Justice is appointed. He inquired if the amendment could refer instead to the Chief Justice. Mr. de los Reyes observed that the President may not appoint an Acting Chief Justice if he is the one under impeachment. He noted the need for an automatic rule in the Constitution.

Mr. Romulo, thereupon, inquired from Mr. Concepcion if the appointment of an Acting Chief Justice is automatic or done by the President, to which Mr. Concepcion replied that whenever the Chief Justice is absent or the position is vacant, the Senior Associate Justice performs his duties.

Mr. de los Reyes, thereafter, withdrew his amendment.

On Section 4, Mr. de los Reyes proposed to insert the clause PRESENT ANTI-GRAFT COURT KNOWN AS THE, before the word "Sandiganbayan", then to delete the word "created" and thereafter delete lines 2 and 3 up to the word "it" on line 4 such that the provision would read:

The PRESENT ANTI-GRAFT COURT KNOWN AS THE Sandiganbayan, shall continue to function and exercise its jurisdiction as provided by law.

He stated that there are some who believe that the word "Sandiganbayan" should not be deleted from the Constitution and his amendment would be a compromise between those who want to call it an anti-graft court and the others who prefer to retain the word "Sandiganbayan". Mr. Monsod accepted the amendment on behalf of the Committee which amendment, there being no objection, was approved by the Body.

AMENDMENT OF MR. OPLE

On Section 12, Mr. Ople proposed to reword paragraph (5), to read:

TO PUBLICIZE MATTERS COVERED BY ITS INVESTIGATIONS WHEN CIRCUMSTANCES SO WARRANT AND WITH DUE PRUDENCE.

Mr. Ople explained that it is true that publicity will be a major tool of the Sandiganbayan in creating the moral pressures it will need in order to perform. He noted, however, that not all those who will file complaints are well-meaning persons and they can avail of the presence of the Sandiganbayan and its powers to give the color of privilege to complaints which may not be well-founded. He noted that the Ombudsman must exercise due care and prudence in publicizing matters covered by investigations so as not to cause undue injury to reputations of persons.

Mr. Monsod, on behalf of the Committee, accepted the proposed amendment which, there being no objection, was approved by the Body.

PROPOSED AMENDMENT OF MS. AQUINO

Ms. Aquino stated that her amendment to Section 3(5) seeks to transfer the jurisdiction of the impeachment trial of the President from the Senate to the Supreme Court. Ms. Aquino, with Mr. Guingona as coauthor, proposed to substitute Section 3(5), with the following:

THE SENATE SHALL HAVE THE POWER TO TRY IMPEACHMENT CASES AFFECTING THE

VICE-PRESIDENT, MEMBERS OF THE SUPREME COURT AND MEMBERS OF THE CONSTITUTIONAL COMMISSIONS. WHEN THE PRESIDENT IS ON TRIAL THE SUPREME COURT SHALL BE CONVENED AS THE COURT OF IMPEACHMENT. NO PERSON SHALL BE CONVICTED WITHOUT THE CONCURRENCE OF TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE IN THE CASE OF THE VICE-PRESIDENT, MEMBERS OF THE SUPREME COURT AND MEMBERS OF THE CONSTITUTIONAL COMMISSIONS OR OF THE MEMBERS OF THE SUPREME COURT IN THE CASE OF THE PRESIDENT.

Mr. Romulo stated that the Committee could not accept the amendment principally because the Committee believes that impeachment would be a political act. The President's peers, he said, who are equally elected are better judges on the matter and that the amendment would politicize the Supreme Court.

Submitted to a vote and with 13 Members voting in favor and 25 against, the amendment was lost.

PROPOSED AMENDMENT OF MR. REGALADO

Mr. Regalado informed that his proposed amendments would be on paragraphs 2, 3, 4 and 5 of Section 3 and that copies thereof had been circulated to the Members although he would put in a few minor phrases to perfect the amendments.

Thereafter, he proposed to amend Section 3(2), to read:

A VERIFIED COMPLAINT FOR IMPEACHMENT MAY BE FILED BY ANY OF ITS MEMBERS OR BY ANY CITIZEN WHICH SHALL BE INCLUDED IN THE ORDER OF BUSINESS WITHIN TEN SESSION DAYS AND REFERRED TO THE PROPER COMMITTEE WITHIN THREE SESSION DAYS THEREAFTER.

Mr. Romulo noted that Members do not have copies of Mr. Regalado's proposed amendments. Mr. Regalado explained that Members had copies of the joint amendments although his own amendments would be briefer and noted that the points raised by Mr. Maambong could be taken up in a new section which he intended to propose.

Mr. Romulo sought clarification inasmuch as the provision on impeachment given the Members bears the notation that it is a joint proposal of Messrs. Maambong, Davide and Regalado, which amendments would apply to Section 3.

Mr. Maambong explained that he culled all the provisions therein from the proposals of Messrs. Davide, Regalado and himself and added that he signed it as he had no time to confer with Mr. Regalado. He stated that all amendments included in the various proposals are contained therein and it would be a matter of arranging these amendments and that there are no substantial deviations.

Mr. Regalado stated that while Mr. Maambong's statement is true, he has, nevertheless, decided to put in an additional section. He noted that in subparagraph 2, for instance, there is mention of the statement about endorsing a verified complaint for impeachment by any citizen alleging ultimate facts constituting ground/s for impeachment which, in other words, would be like a provision in the Rules of Court. He said that instead, he would propose that these procedural requirements, such as endorsement of a complaint by a citizen to avoid harassment or crack complaints, could be taken up in a new Section 4, to wit:

THE CONGRESS SHALL PROMULGATE ITS RULES ON IMPEACHMENT TO EFFECTIVELY CARRY OUT THE PURPOSES THEREOF.

All other procedural requirements, he said, could be taken care of by the Rules of Congress.

In reply to the Chair's query, Mr. Regalado informed that he had circulated copies of his proposed amendments to

the Members although, after consultation, he had decided to add some amendments.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 6:10 p.m.

RESUMPTION OF SESSION

At 6:15 p.m., the session was resumed.

AMENDMENTS OF MR. REGALADO

Upon resumption of session, Mr. Regalado proposed amendments on Section 3, to reword the following subsections thereof to read:

(2)

A VERIFIED COMPLAINT FOR IMPEACHMENT MAY BE FILED BY ANY OF ITS MEMBERS OR BY ANY CITIZEN UPON A RESOLUTION OF ENDORSEMENT BY ANY MEMBER OF THE HOUSE WHICH SHALL BE INCLUDED IN THE ORDER OF BUSINESS WITHIN TEN SESSION DAYS AND REFERRED TO THE PROPER COMMITTEE WITHIN THREE SESSION DAYS THEREAFTER. THE COMMITTEE, AFTER HEARING AND BY A MAJORITY VOTE OF ALL ITS MEMBERS, SHALL SUBMIT ITS REPORT TO THE HOUSE WITHIN SIXTY SESSION DAYS FROM SUCH REFERRAL, TOGETHER WITH THE CORRESPONDING RESOLUTION. THE RESOLUTION SHALL BE CALENDARED FOR CONSIDERATION BY THE HOUSE WITHIN TEN SESSION DAYS FROM RECEIPT THEREOF FROM THE COMMITTEE. (3) A VOTE OF AT LEAST ONE-THIRD OF ALL THE MEMBERS OF THE HOUSE SHALL BE NECESSARY TO INITIATE IMPEACHMENT PROCEEDINGS, EITHER TO AFFIRM A RESOLUTION OF IMPEACHMENT BY THE COMMITTEE OR TO OVERRIDE ITS CONTRARY RESOLUTION. THE VOTES OF EACH MEMBER SHALL BE RECORDED.

(4)

IN CASE THE VERIFIED COMPLAINT OR RESOLUTION OF IMPEACHMENT IS FILED BY AT LEAST ONE-THIRD OF ALL THE MEMBERS OF THE HOUSE, THE SAME SHALL CONSTITUTE THE ARTICLES OF IMPEACHMENT AND THE TRIAL BY THE SENATE SHALL FORTHWITH PROCEED.

(5)

NO IMPEACHMENT PROCEEDINGS SHALL BE INITIATED AGAINST THE SAME OFFICIAL MORE THAN ONCE WITHIN A PERIOD OF ONE YEAR.

(6)

THE CONGRESS SHALL PROMULGATE ITS RULES ON IMPEACHMENT TO EFFECTIVELY CARRY OUT THE PURPOSES OF THIS SECTION.

Mr. Regalado stated that Subsection (6) could also be made a separate paragraph or a separate section.

INQUIRY OF MR. RODRIGO

In reply to Mr. Rodrigo's query on the change from three-fourths to two-thirds vote in the Senate and from two-thirds to one-third vote in the House of Representatives, Mr. Regalado stated that in conjunction with the 1973 Constitution, the votes required to initiate impeachment proceedings and to convict were one-fifth and two thirds vote, respectively. He pointed out that, although the Committee originally proposed a majority vote, he took into consideration the fact that following the 1973 Constitution which only requires one-fifth, the votes of only 50 would be required with a maximum of 250 Members of the House of Representatives, which number would be very easy to obtain. On the other hand, he contended that under the 1935 Constitution the two-thirds vote would be too demanding because a bigger number of votes would be needed just to initiate the proceedings. He stressed that a vote of one-third was a happy compromise that would not make it very easy nor too difficult to initiate an impeachment proceedings.

MR. RODRIGO'S AMENDMENT TO THE AMENDMENT

Mr. Rodrigo proposed to amend the amendment by changing the word "one-third" to ONE-HALF.

Mr. Rodrigo pointed out that impeachment is a very serious matter, which was the reason why two-thirds of the House was required in the 1935 Constitution. He maintained that the reduction from two-thirds to one-third is very drastic.

He also stated that with one-third vote, not only the President would be harassed but the Members of the Senate as well who would be compelled to sit in judgment. He further stated that the Chief Justice of the Supreme Court would likewise be harassed because he would be compelled constitutionally to preside in the Senate during the trial of the impeachment case.

Mr. Regalado maintained, however, that one-third vote was a happy compromise between the exacting requirement of the 1935 Constitution and the very liberal requirement of the 1973 Constitution, either of which has its dangers.

Mr. Rodrigo pointed out that the 1973 Constitution was different in that it had a unicameral legislature, to which Mr. Regalado replied that whether it is a unicameral or bicameral system, the fact remains that the initiation proceedings would be in the same House of Representatives.

Mr. Regalado did not accept the amendment to his amendment.

Submitted to a vote, and with 14 Members voting in favor and 24 against, the amendment of Mr. Rodrigo was lost.

APPROVAL OF MR. REGALADO'S AMENDMENTS

Thereupon, the Sponsor accepted the amendments of Mr. Regalado, and there being no objection, the same were approved by the Body.

REMARKS OF MR. MAAMBONG

At this juncture, Mr. Maambong stated that, although he was not moving for the reconsideration of the approval of Mr. Regalado's amendments, he wanted to put on record his view that the filing of the Articles of Impeachment is not initiated on the Floor but starts from the filing of the complaint and, therefore, the resolution by the Committee containing the Articles of Impeachment is the one approved by the Body. He stressed that the Body does not initiate but only approves or disapproves the resolution, so much so that the Committee on Style could

probably help in rearranging the phrases to mean such intent.

TERMINATION OF THE PERIOD OF AMENDMENTS ON THE ARTICLE ON ACCOUNTABILITY OF PUBLIC OFFICERS

Thereafter, on motion of Mr. Bengzon, there being no objection, the Body closed the period of amendments on the Article on Accountability of Public Officers.

Likewise, on motion of Mr. Bengzon, there being no objection, the Chair directed the Secretariat to furnish all Members of the Commission with a clean copy of the Article on Accountability of Public Officers before the same would be voted upon on Second Reading.

ADJOURNMENT OF SESSION

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

It was 6:33 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO
Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA
President

Approved on July 29, 1986

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