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Saturday, August 2, 1986

CALL TO ORDER

At 9:35 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

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

Most gracious and loving God, let Thy Spirit guide us in our work today. Help us realize our inadequacy that we may look up to Thee for guidance and wisdom. Grant us the strength equal to our task, and the faith that will enable us to overcome all difficulties.

Amen.

ROLL CALL

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

Alonto, A. D. Padilla, A. B.

Bengzon, J. F. S. Muñoz Palma, C.

Bennagen, P. L. Quesada, M. L. M.

Rosario Braid, F. Rama, N. G.

Calderon, J. D. Regalado, F. D.

De Castro, C. M. De los Reyes, R. F.

Concepcion, R. R. Rigos, C. A.

Davide, H. G. Rodrigo, F. A.

Foz, V. B. Romulo, R. J.

Garcia, E. G. Rosales, D. R.

Guingona, S. V. C. Suarez, J. E.

Jamir, A. M. K. Sumulong, L. M.

Laurel, J. B. Tan, C.

Maambong, R. E. Tingson, G. J.

Monsod, C. S. Uka, L. L.

Nieva, M. T. F. Villacorta, W. V.

Nolledo, J. N. Villegas, B. M.

Ople, B. F.

With 35 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.

Aquino, F. S. Lerum, E. R.

Azcuna, A. S. Natividad, T. C.

Bacani, T. C. Sarmiento, R. V.

Brocka, L. O. Tadeo, J. S. L.

Mr. Treñas notified the Constitutional Commission, through the Secretariat of his absence.

Messrs. Bernas and Colayco were absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEES OF COMMUNICATIONS

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

Communication No. 416 — Constitutional Commission of 1986

Letter from former Senator Magnolia W. Antonino, 15th Floor, G. E. Antonino Building, T. M. Kalaw Street, Ermita, Manila, submitting some proposals for inclusion in the Constitution, to wit: (1) there shall be a Commission on Appointments composed of members of the Legislature; (2) the only elective provincial officials shall be the Governor and the Vice-Governor. The Governor and the Vice-Governor shall be the chairman and vice-chairman, respectively, of a provincial assembly composed of all the municipal mayors in the province; (3) the only elective municipal officials shall be the Mayor and Vice-Mayor who shall be chairman and vice-chairman, respectively, of the municipal assembly composed of all barrio captains; and (4) the right of every citizen to possess firearms in his residence subject to reasonable restrictions and qualifications

TO THE STEERING COMMITTEE

Communication No. 417 — Constitutional Commission of 1986

Letter from Mr. Ramon R. Batino, Jr. of P. O. Box 627, Bacolod City, expressing apprehension over the possible effects of the dismantling of the U.S. bases in the Philippines in the areas of national security, economic stability, and religious freedom

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 418 — Constitutional Commission of 1986

Letter from Mr. Alexander de Jesus of the Miners Association of the Philippines, Inc., submitted thru the Honorable Commissioner Ambrosio B. Padilla, suggesting a provision in the Constitution that "a petition for review of a final decision of the Supreme Court during martial law which is manifestly against the evidence and is contrary to law may be filed within one year from the ratification of this Constitution and given due course"

TO THE COMMITTEE ON AMENDMENTS AND TRANSITORY PROVISIONS

Communication No. 419 — Constitutional Commission of 1986

Letter from Mr. Jose R. Reyes of 2278 Pasong Tamo Extension, Makati, Metro Manila, and twenty-eight others, urging the Constitutional Commission to adopt a provision in the Constitution for the renewal of the U.S. Military Bases Agreement upon its expiry in 1991, and to take a firm stand with the forces of freedom, instead of taking a stance of neutrality and non alignment

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 420 — Constitutional Commission of 1986

Letter from Ms. Dolores A. Endriga, OIC, School of Urban and Regional Planning, University of the Philippines, Diliman, Quezon City, submitting a resolution adopted by the U.P. School of Urban and Regional Planning Faculty, suggesting incorporation in the Constitution of a provision on housing

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 421 — Constitutional Commission of 1986

Letter from Mr. Ricardo Amador of 32 Badminton Street, New Saint Francis Village, Cainta, Rizal, suggesting among others, the adoption of the electoral college type of voting for national elections

TO THE COMMITTEE ON CONSTITUTIONAL COMMISSIONS AND AGENCIES

Communication No. 422 — Constitutional Commission of 1986

Communication signed by one thousand two hundred fifty-four people with their corresponding addresses, seeking to include in the 1986 Constitution a provision obliging the state to protect the life of the unborn from the moment of conception

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

Communication No. 423 — Constitutional Commission of 1986

Letter from the Honorable Bienvenido A. Tan, Jr., Commissioner of Internal Revenue, expressing doubts whether the adoption of important provisions by mere majority vote is a sufficient indication of the real will of the people, suggesting therefor that when voting at the referendum/plebiscite, the electorate can then indicate a vote for the Constitution as a whole document and the disputed provisions thereof and the resulting vote will decide what the final document will be

TO THE STEERING COMMITTEE

Communication No. 424 — Constitutional Commission of 1986

Letter from Ms. Rosa Maria Juan Bautista of the Division of Research and Law Reform, U.P. Law Center, proposing provisions renouncing child labor, protecting working children, and giving aid and support to the Juvenile and Domestic Relations Court; and enclosing copies of lectures delivered at the U.P. Institute of Industrial Relations

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

Communication No. 425 — Constitutional Commission of 1986

Communication from the Integrated Bar of the Philippines, entitled: "Explanatory Note of the Proposed Commission on Justice"

TO THE COMMITTEE ON THE JUDICIARY

Communication No. 426 — Constitutional Commission of 1986

Letter from Ms. Antonnette Queri, Campus Ministry Team, requesting a provision protecting the unborn

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

Communication No. 427 — Constitutional Commission of 1986

Communication from the Family Planning Organization of the Philippines, Sorsogon Provincial Chapter, Sorsogon, Sorsogon, signed by its President, Cecilia A. Ortiz and other officers, petitioning the Constitutional Commission to incorporate in the Constitution a clear-cut statement on national policy on family planning

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 428 — Constitutional Commission of 1986

Communication from the Family Planning Organization of the Philippines, Davao Provincial Chapter, 33-F J.P. Laurel Avenue, Davao City, signed by its Chapter President, Roberto V. Alcantara and other officers and members, expressing among others the desire to have a Commission on Population whose activities are independent of any social or health agency

TO THE COMMITTEE ON GENERAL PROVISIONS

Communication No. 429 — Constitutional Commission of 1986

Letter from Ms. Rosalita Bengzon Moran of 686 Aurora Blvd., Quezon City, voicing the plight of small landowners whose landholdings were covered by land reform, saying that small landowners were made the sacrificial lambs to quiet rural restiveness, and that she has not been paid her lawful share for some years now, among others

TO THE COMMITTEE ON SOCIAL JUSTICE

Communication No. 430 — Constitutional Commission of 1986

Letter from Mr. Ben Divina, c/o United Nationalist Democratic Organization, Old Congress Bldg., Manila, submitting a newspaper clipping captioned "Overseas Workers as Capitalists"

TO THE COMMITTEE ON SOCIAL JUSTICE

MANIFESTATION OF MR. RAMA

Thereafter, Mr. Rama manifested that approval on Second Reading of the Article on the Legislative would be postponed because the amended copies thereof had not yet been distributed.

Likewise, he stated that voting on Second Reading on the Article on the Executive would be deferred because there would still be amendments to be considered.

BUSINESS FOR THE DAY: COMMITTEE REPORT NO. 34 ON PROPOSED RESOLUTION NO. 534

On motion of Mr. Rama, there being no objection, the Body proceeded to the consideration, on Second Reading, of Committee Report No. 34 on Proposed Resolution No. 534, entitled:

Resolution to incorporate in the new Constitution a separate Article on Social Justice.

SUSPENSION OF SESSION

At this juncture, the Chair suspended the session.

It was 9:47 a.m.

RESUMPTION OF SESSION

At 9:51 a.m., the session was resumed.

Upon resumption of session, the Chair recognized the Chairman and members of the Committee on Social Justice for the sponsorship.

SPONSORSHIP REMARKS OF MRS. NIEVA

Mrs. Nieva expressed the Committee's hope that social justice would be the centerpiece of the 1986 Constitution in providing the material and social infrastructure for the realization of basic human rights, the enhancement of human dignity and the effective participation in democratic processes.

She pointed out that the February revolution was not merely a fight against a dictatorship nor a fight for the restoration of human rights but a clamor for a more equitable sharing of the nation's resources and power.

She explained that social justice must include the provision of man's basic needs, the equalization of access to productive resources, and the promotion of people's organizations. She stated, however, that it is not the intent of the Article on Social Justice to give to the State all the burden of providing for said basic needs with the people doing nothing to enhance human dignity. The State, she said, should only provide the necessary and sufficient conditions for the people to take an active role, one such important condition being the democratization of productive resources.

She explained that to achieve democratization of productive resources, the fruits of development should not only be concentrated to a small minority but to all sectors of society. She underscored the State's duty to promote such measures as land reform, cooperatives, profit-sharing, and people's organizations, so that even workers could actively participate in the promotion of democracy and social justice.

She pointed out that the Article on Social Justice deals mainly with the major areas of concern, namely: the concept of social justice, labor, agrarian and natural resources reform, urban land reform and housing, health, women, indigenous cultural communities, and the role and rights of people's organizations.

On Sections 1 and 2, she noted that the State is mandated to give highest priority to social justice through equal distribution of the country's resources, wealth and power for the greater good.

She also stated that Section 3 and 4 deal with labor and recognize the rights of overseas workers and organized labor. She noted that the concept of collective negotiations is also introduced for the protection of the rights of unorganized sectors. She stressed that the right of labor to its just share is recognized in the same level as the protection of the right of business enterprises to reasonable returns on investments.

On Section 5, which provides for agrarian and natural resources reform, she stated that farmers and farmworkers are given the right to own the lands they till, individually or collectively, through cooperatives and similar organizations. The scope of land reform would also be extended to all agricultural lands, subject to maximum retention limits, and fair and progressive system of compensation to be provided by Congress.

She underscored that Section 7 provides for cooperatives and similar farmers' organizations and other technological, financial, and marketing support necessary for a successful land reform, which shall also be extended to other natural resources such as public lands under lease or concession. Furthermore, she pointed out that Section 8 provides specific reference to fishermen, who number about 700,000, and seeks to allow them beneficial use of marine or fishing resources, and to grant them financial, technical and research assistance for the promotion and conservation of sea resources. On urban land reform and housing, she stated that Sections 10 and 11 address the problems of more than 25 million Filipinos who do not enjoy the benefits of home and landownership, complementary infrastructures, and neighborhood services. She also stated that employment opportunities would be provided the squatter families who would be re located.

On Section 12, Mrs. Nieva stated that this section would extend the housing program to low-income rural dwellers within the context of the comprehensive agrarian reform program.

Sections 12, 14 and 15, she stated, are premised on the principle that a healthy nation is a strong nation. She observed that previous Constitutions mentioned health in passing and that it is the Committee's hope that the sections would cater to the average citizen, especially the disadvantaged, by providing them an integrated and comprehensive health care program at affordable cost, with Section 14 specifically mandating the State to maintain an effective food and drug monitoring system to prevent the problem of dumping by foreign countries of harmful and adulterated food and drugs into the country, and Section 15 taking cognizance of the needs of millions of disabled persons so that they may be integrated into the mainstream of society.

Sections 16 and 17 would give protection to the working women, recognize their maternal functions and promote their well-being so that they may fully realize their capabilities in the service of the country.

She stated that Section 18 deals with the indigenous communities and their needs, as well as respect for their cherished traditions, values, beliefs and practices.

On Sections 19 and 20, she stated that these sections highlight the importance of people's organizations as a consideration for the realization of the objectives of social justice by giving due respect to the people's right to organize, to participate and to be consulted on socio-political and economic decision-making, the organizations contemplated being the sectoral organizations, trade unions, peasant organizations, urban poor, cooperatives and consumer organizations, human rights groups, basic Christian communities and similar organizations.

INTERPELLATION OF MR. NOLLEDO

Mr. Nollado observed that Section 2, which highlights social justice, mentions only two parts, namely 1) diffusion of property, and 2) reference to supporting structures, yet the sponsorship also spoke of the rights of women and

of the disabled, including their right to organize, which are embraced in the Article as a whole. He suggested that Section 2 also provide for these rights for purposes of symmetry.

Replying thereto, Mrs. Nieva stated that the rights adverted are also implied in Section 1 of the Article. She, however, stated that Mr. Nollado's suggestion would be considered during the period of amendments.

On whether it could be gleaned from Section 4 that the Committee recommends profit-sharing, Mrs. Nieva stated that the Committee intended it as a recommendation and not as a mandate. She pointed out the contradictory views on the matter and that even the Ministry of Labor and Employment did not recommend profit-sharing although it recommended various schemes towards giving the same benefits for labor.

On Mr. Nollado's observation on the need for legislation should Congress decide to adopt profit-sharing, Ms. Aquino stated that the Committee could at best provide a mandate on equitable sharing of fruits, without specifically saying that the profit-sharing scheme is self-implementing, considering that even the Ministry of Labor and Employment did not expressly advocate a specific mandate on profit-sharing. Thus, she confirmed Mr. Nollado's observation that the provision is not self-executing. Mr. Monsod, however, pointed out the operative phrase "to its share" which, he said, should be read in connection with "voluntary modes".

In reply to Mr. Nollado's query on the reason for dispensing with "compulsory arbitration" which was a feature of both the 1935 and 1973 Constitutions, Mrs. Nieva stated that during the public hearings both labor and management groups had ruled out "compulsory arbitration".

Additionally, Mr. Monsod explained that the Committee intended to emphasize the voluntary modes of arbitration, although it did not completely rule out compulsory arbitration. He stressed that the Committee had decided not to specify it in the draft in deference to the wishes of both management and labor.

On the procedure to be observed in the absence of compulsory arbitration, Mr. Monsod stated that the law provides for certain steps which, however, may culminate in recourse to the right to strike after exhaustion of the remedies available.

On whether the Legislature could provide for a process of compulsory arbitration, Ms. Aquino stated that Congress is not precluded from providing for implementing guidelines for other modes of settling disputes.

On Section 5, Mrs. Nieva affirmed that "farmers" includes tenants whether on a leasehold or sharehold contract and that "farmworkers" refers to farmers employed in a plantation on administration basis. On the phrase "to own directly", Mr. Monsod confirmed Mr. Nollado's observation that it refers to direct ownership by the tiller, while Mrs. Nieva affirmed that the word "collectively" contemplates farmers' cooperatives owning and uniting their efforts on specific areas of land.

On whether the *mushav* and the *kibbutz* systems were contemplated by the Committee, Mr. Tadeo stated that the provision speaks of two modes of implementing an authentic land reform program, namely 1) direct ownership, and 2) group or collective farming through cooperatives.

In addition thereto, Mr. Bennagen stated that collective ownership includes communal ownership by the minorities. He stated that the farmers of Tanay, the Cordilleras, Mindoro and Mindanao do not clamor for individual ownership of lands but would like to own lands collectively.

On whether the phrase "just distribution of all agricultural lands" refers only to privately-owned lands, Mr. Tadeo explained that they refer to all arable public and private lands.

Reacting, thereto, Mr. Nollado invited the Committee's attention to Sections 5 and 7 which he said would contradict each other with the use of the term "all". Mr. Monsod explained that Section 7 includes both public and

private agricultural lands.

On the need of small landowners for adequate protection against expropriation, Mrs. Nieva stated that the Committee had provided the phrase "subject to such retention limits as Congress may prescribe."

Mr. Tadeo also stated that landownership would be limited to certain areas subject to the condition that the owner himself shall till it.

On whether it is the productivity of the land, rather than its area that should be considered for purposes of expropriation, Mr. Tadeo pointed out that as far as the farmers are concerned, what is important is the state of productivity of the land from which they can generate capital with which to improve their livelihood.

Additionally, Mr. Monsod explained that for purposes of land retention, such factors as economic size and local conditions would be taken into account by Congress when called upon to enact the implementing law.

On whether the term "management" in Section 6 would vest the farmers the right to participate in the management of the farm, Mr. Tadeo affirmed that it would give such right to regular and non-regular farmworkers or farm laborers in the absence of tenancy relations. He stated that participation by farm workers would apply to livestock and poultry raising.

On the Committee's concept of agro-industrial farms owned by corporations, Mr. Tadeo adverted to and adopted Dr. Mahar Mangahas' view that natural resources include mineral, forest and water resources whether public or private, titled or not, and whether owned by Filipinos or foreigners over which social conflict is induced by unjust distribution.

Mr. Monsod clarified that the phrase "planning, organizing and management of the program" should be distinguished from participation in the management of companies engaged in agriculture to which the phrase would not apply.

On Section 13, Mr. Nollado expressed concern for the sick and the indigent despite the provision for social services to be extended at affordable cost for the reason that what would be affordable to the upper class may not be affordable to the middle class. He stated that he would like to present an amendment for the State to provide medical care for the paupers.

INTERPELLATION OF THE GUINGONA

Replying to Mr. Guingona's query, Mrs. Nieva and Mr. Monsod agreed that the phrase "promote full employment" in Section 3 would include the concept of free choice of employment without prejudice to known union security measures such as a close-shop agreement. Mr. Monsod, moreover, stressed that the State should pursue policies that would increase employment opportunities and promote full employment.

On Mr. Guingona's query whether the phrase "promote full employment" would include the concept of free choice of employment, Mrs. Nieva stated it would.

As to whether free choice of employment shall be without prejudice to known union security measures such as close-shop agreements, Mr. Monsod stated that this would refer to Section 4 which deals with specific labor-management relations at the firm level. Ms. Aquino, on behalf of the Committee, noted that the provision on employment addresses two problems unemployment and underemployment. She assured Mr. Guingona that the provision does not have any effect on union-shop or close-shop agreements for the security of employees.

Mr. Guingona inquired whether a provision similar to Article 24 of the Universal Declaration of Human Rights which says that "everyone has the right to rest and leisure, including reasonable limitation of working hours and

periodic holidays with pay" could be included in the Article on Social Justice, Mrs. Nieva responded that the Committee would be amenable to any suggestion or amendment at the proper time.

Mr. Guingona then manifested his intention to propose an amendment to the effect that the State shall aim to maintain a comprehensive system of social insurance for the protection of every person from the economic consequences of unemployment, old age, sickness, disability and other such circumstances.

On the matter of housing, Mr. Guingona observed that as explained by Mrs. Nieva the provision on housing in the Article is more of a declaration of principle which is not self-executory. He informed that he and Mr. Villegas submitted a resolution which provides for a special provident fund, patterned after the concept espoused by the late Dr. Salvador Araneta, which could be used exclusively for homes for the homeless at subsidized costs. He observed that the Committee did not accept the basis for securing the necessary funds and inquired if it could study the sources of funding this special provident fund.

Ms. Aquino, in reply thereto, stated that the Committee had become the forum of many specific grievances and demands, and that it had, at one time or another, dangerously treaded on the functions of the Legislature. She asked that the Body focus its perspective on the matter of social justice and its rightful place in the Constitution, and stressed that the Committee envisioned the Article as a mandate which would give enough impetus for statutory implementation.

INTERPELLATION OF MR. FOZ

Mr. Foz prefaced his interpellation by stating that the Body had approved three provisions under various Articles which are related to Section 4 on the rights of workers, to wit: 1) a provision on the scope of the Civil Service; 2) a provision on the same Article which states that the right to self-organization shall not be denied to government employees; and 3) a provision in the Bill of Rights protecting the right of workers whether in the private or public sector, to form unions. He maintained that the first does not nullify the Bill of Rights provision on the right to form unions but merely defines the scope of the civil service. He stated that the second reinforces workers' right to organize and engage in concerted activities which must necessarily include the right to strike and that the third would embrace the right to engage in concerted activities such as to negotiate terms and conditions of work with the employer/management and to declare strike as an ultimate tool in case of failure of negotiations with management.

Upon inquiry of Mr. Foz whether the workers mentioned in Section 4 are those in the private and public sectors, Mrs. Nieva replied in the affirmative although she stated that the Committee had reservations as regards the members of the Armed Forces and Civil Defense or the police force.

Mr. Foz stated that he was informed that the original provision exempted members of the Armed Forces and Civil Defense.

Ms. Aquino informed that the Committee was sharply divided on the matter and that the Subcommittee Report carried a specific proviso which would exempt members of the Armed Forces, Civil Service and Civil Defense from availing of the right to strike. She stated that there was a consensus to just reflect it for purposes of the Committee Report and leave the matter to the Body.

Mr. Foz inquired whether the Committee had any intention of defining the scope of the first sentence in Section 4 to apply to private and public workers, in reply to which, Mr. Monsod stated that the Committee recognizes that there may be exceptions to the rule and that it wanted the Body to define that rule more clearly before it is finalized. Mr. Monsod affirmed that members of the Armed Forces and the Police are exceptions and that the Body would decide on other exceptions.

On the difference between collective bargaining and collective negotiations, Mrs. Nieva explained that collective negotiations are intended for non-unionized workers not covered by collective bargaining agreements (CBA) while collective bargaining would refer to unionized workers who are covered by CBAs. She noted that the latter constitutes about 3.1% of the total labor force of the country. She added that there must be other ways to negotiate for the rights of the greater majority of the workers who are not covered by the CBAs.

As to whether employees of a private firm may group themselves and organize, short of establishing a formal labor union, and then negotiate with management as to the terms and conditions of work, Mrs. Nieva replied that this may be taken as a preliminary step.

Mr. Foz recalled a provision in the Labor Code which encourages the formation of voluntary employee committees in different companies, by giving management the initiative to form such committees. He observed that the law involving this matter could provide that initiative should come from the employees themselves to avoid management from influencing these committees.

Ms. Aquino stated that the concept of collective negotiation was introduced in the Philippines by the U.P. Institute of Labor and Management Relations addressed to non-unionized employees and laborers as well as to government employees, inasmuch as these two groups experience the same difficulty in not having specific collective bargaining agents to represent them. She stressed that the idea is to recognize and provide a constitutional mandate for the process of collective negotiation.

On whether under the phrase "participation in policy and decision-making", the Committee had in mind allowing employees' representatives to sit in the Board of Directors of companies organized as a corporation, Mr. Monsod stated that the phrase must be read together with the phrase "affecting their rights and benefits." He explained that the proper implementation of this provision would rest to a large degree on management and labor themselves inasmuch as the Constitution cannot mandate this. He added that labor and management must discuss and agree on the areas on which participation could be promoted.

On whether Congress, in implementing this provision, could provide that employees be allowed to sit in the Board of Directors of a corporation and participate in the discussion of matters affecting their rights and benefits, Mr. Monsod stated that if participation is through invitation, it would be in order, but if Mr. Foz meant that employees' representatives are to be elected directors of the company and participate in areas affecting their rights and benefits, he explained that it was not the intention of the Committee to tell Congress to mandate that labor sit in the board.

As to whether these representatives may be allowed under such law to sit in the Board of Directors on matters affecting their rights and benefits, Mr. Monsod replied that all these details can be left to legislation.

Mr. Foz stated that the Committee is not ruling out compulsory arbitration in certain cases and that the law which Congress may pass may provide for such arbitration as a last recourse in resolving industrial or labor disputes.

REMARKS OF MRS. ROSARIO BRAID

Mrs. Rosario Braid noted that the Article is a unifying theme for several articles and agreed with Mrs. Nieva that the Article on Social Justice would be the centerpiece.

She observed that there are provisions on agrarian reform and on labor which could be included in the Article on National Economy and Patrimony. She stated that the concept of non-monetized economy is an area which could be addressed to social justice and which could be integrated in the Article on National Economy and Patrimony. She also adverted to a review of some 25 constitutional provisions in the constitutions of other countries where

the concept of social justice could be seen in a more comprehensive framework. She observed that the Article addresses itself to a movement from a zero-sum society to a non-zero-sum society or a society of sharing. She also noted a need for linkages with non-formal education concepts of attitudinal changes towards egalitarianism and reorientation in the attitudes of labor.

She stated the need to harmonize the Article with other provisions. In the case of agrarian reform, she noted that it does not manifest the State's concern of forging partnership with government and voluntary community-based institutions. She adverted to the examples of voluntary land sharing in Negros which has merits in terms of a model for future land reform program. She expressed the hope that the Article would make explicit the promotion of partnership with non-governmental agencies.

With respect to Section 9 on the promotion of integrated development of agricultural, fishing and marine resources, Mrs. Rosario Braid observed that the past 20-year implementation of large-scale integrated area development failed to promote the lives of the people. She noted that large-scale area integrated development is not a positive concept and that there is a need to come up with alternative ways of organizing labor and rural institutions.

Mr. Rosario Braid also pointed out that, although the Article mentions cooperatives, the cooperatives have not been given importance comparable to that given them in constitutions of developed countries. She stated that it could be because of the impression that cooperatives have had a negative history that the Committee did not see it fit to give cooperatives a rightful place in terms of the appropriate legal mandate. She urged that the Committee see to it that democratic cooperatives are seen as possible instrumentalities in guiding the ownership, utilization and exploitation of natural resources and operation of public utilities.

Mrs. Rosario Braid then reserved a turn to introduce amendments to translate her concern that social justice is seen in a more comprehensive frame-work and linked with attitudinal changes and transformation of the development philosophy of society.

REMARKS OF MR. BENNAGEN

Mr. Bennagen concurred with Mrs. Rosario Braid's observations. He noted that the Committee on Social Justice had the greatest number of consultations with various sectors and had spent a great deal of time trying to evolve a comprehensive framework which, unfortunately, could not be included in the report.

He pointed out that the Committee did not fail to incorporate aspects of attitudinal and structural changes as could be gleaned from the first two sections. He pointed out that the moral component contained in Section 1 was envisioned to be a social justice provision on the side of the poor, the deprived and the oppressed. Specifically advertent to the statement of Dr. Mangahas, he stated that the State itself has been a major source of injustice and, therefore, the State should be able to correct said injustice and assume a moral stance in relation to the poor, the deprived and the oppressed which should permeate the bureaucracy, technocracy and structures of Philippine society.

On the duty of the State to promote an integrated development of agricultural, fishing and marine resources as contained in Section 9, Mr. Bennagen stated that the Committee did not have in mind the experiences of integrated area development which as a concept was very good on paper but extremely bad in implementation.

He stressed that the provision intends to emphasize the fact that the integrated development project should respond to the basic needs of the people. He opined, however, that the integrated area projects responded to the demand of external market rather than to the needs of the people and, therefore, the efforts of integrating the development processes in agriculture, fishing and marine resources should also provide the basis for later

industrialization of the country. He reiterated that there was no reference whatsoever to the integrated area development concept.

With reference to Mrs. Rosario Braid's advertence to voluntary distribution and cooperation between owners and farmers, Mr. Monsod stated that Section 6 precisely provides that voluntary arrangements being made should be respected and encouraged.

INTERPELLATION OF MR. REGALADO

Mr. Regalado stated that he is in favor of the objectives of the social justice provisions based on the dictum that "he who has less in life should have more in law". He noted, however, that one of the Committee members had observed that there was an attempt at self-censorship in that the Committee tried to condense so many provisions to make it appear as a sort of declaration of principles, although the Committee had desired to be emancipated from the original Committee on Declaration of Principles and State Policies. He also stated that the 1935 and 1973 Constitutions had only one section on social justice which seemed to have stood the country in good stead. He stated that, despite the attempt at self-censorship, the Article contains certain provisions which are proper for legislation and that many of the formulations therein appear too technical for him.

With respect to Section 1, Mr. Regalado observed that there was an attempt at a definition of "social justice" but expressed doubt whether the Committee looked at the legal aspect as part of the imperatives. Adverting to the case of *Calalang vs. Williams*, he stated that Justice Laurel defined "social justice" as "neither atomism, nor communism, nor anarchy but the humanization of laws and the equalization of social and economic forces so that justice, in its rational and objectively secular conception, may at least be approximated".

On Section 1, Mr. Regalado observed that the clause "shall be the primary consideration in the pursuit of national development" gives the impression that all other considerations should take a back seat to the social justice aspect. He also observed that the "power" in the phrase "to redistribute wealth and power" is uncertain as to whether it is political power vis-a-vis Section 19 or some other kind of power.

On Section 2, with reference to the phrase "shall regulate the acquisition, ownership, use and disposition of property and its fruits", Mr. Regalado stated that ownership of property has, among its attributes, the right to the fruits, the right to possess, the right to dispose, the right to abuse and the right to destroy. He asked why Section 2 singled out the right to the fruits when it is already implied as one of the attributes of ownership.

On the phrase "promote the establishment of independent and self-reliant socio-political and economic structures" which, he observed, has for its antecedent the word "property", Mr. Regalado requested clarification as to what self-reliant socio-political and economic structures are involved for purposes of this restriction on property.

On Section 3, on the right to strike, Mr. Regalado stated that he would leave it to the Committee to discuss in relation with Mr. Foz' intended interpellation thereon.

On Section 5, Mr. Regalado inquired whether leasehold tenancy would be proscribed under the provision which speaks of "the primacy of the right of farmers and farmworkers to own directly or collectively the lands they till."

On the phrase "all agricultural lands", Mr. Regalado inquired whether these would embrace lands exclusively devoted to the cultivation and raising of vegetables and feed grains like sorghum. He also asked whether the phrase "lands they till" involves personal cultivation or cultivation through workers.

He also raised the question whether the phrase "Congress may prescribe a fair and progressive system of compensation" is embraced in the concept of "just compensation" under the Rules of Court as well as under jurisprudence on the matter of expropriation as an exercise of the State's right of eminent domain.

With respect to Section 7, on the phrase "natural resources", Mr. Regalado inquired whether it would include offshore mineral land within the continental shelf or the waters used for hydroelectric power and, on the assumption that they are included, what scheme or formula could be used to apply "the principles of agrarian reform" in relation to offshore and inland mineral lands and whether it would affect the concept of the regalian doctrine with respect to minerals under one own's property.

On Section 8 with respect to the "communal use of marine and fishing resources", Mr. Regalado assumed that the Committee had taken into account the problem posed by the Laguna Lake Development Authority.

He stated that Section 9 is a matter on which he would seek the assistance of the Committee on the meaning of the phrase "integrated development of agricultural fishing and marine resources". With respect to the "industrialization objective of the country", Mr. Regalado stated that he would not know what is the objective of the present government, whether to adhere to an agricultural economy like Thailand, aspire for an industrialized program, or opt for the agro-industrial system.

On Section 10, Mr. Regalado adverted to the two decisions of the Supreme Court on the distinction between urban and rural land. He stated that one decision held that the distinction between urban and rural land is dependent on the actual use or the purpose to which the land is devoted, while the other would have it depend upon its geographical situation whether it is within or outside a town, municipality or city. He requested that the Committee enlighten him on this matter.

On Section 11, Mr. Regalado inquired whether the phrase "urban poor dwellers" would refer to squatters. He stated that he found the provision "No resettlement shall take place without consultation with the communities to be relocated and their involvement in its planning and implementation" bothering because of its broad scope.

On Section 12, Mr. Regalado inquired whether under the provision reading "The housing program shall extend to low-income rural dwellers in the context of a comprehensive agrarian reform" residential lands of private ownership are meant to be placed under a comprehensive agrarian reform.

With respect to Section 16, Mr. Regalado stated that he would seek the guidance of the Committee in understanding the phrase "optimum working conditions especially in relation to their maternal functions". He inquired as to what optimum working conditions would have to be taken into account in connection with maternal functions and the reason why maternal functions have to be specified when, admittedly, women cannot have paternal functions.

On Section 17, which provides for promotion of the "welfare and well-being of women to fully realize their capabilities in the service of the country", Mr. Regalado inquired as to what kind of service is envisioned therein — educational service, civil service or military service.

Finally, on Section 19, which speaks of the "role of people's organizations as a principal means of empowering the people to pursue and protect by peaceful means their legitimate and collective interests and aspirations", Mr. Regalado stated that he would not know if this means political participation.

He then expressed the hope that with the guidance of the Committee, he would be able to formulate some acceptable amendments to the Article.

Replying thereto, Mrs. Quesada stated that the tenor of Mr. Regalado's remarks smacks of professional egocentrism just because the Committee members could not talk in legalistic terms the way the legal minds express themselves. She noted that Mr. Regalado's remarks sounded very condescending and presented the impression that the Committee had been very irrational and that it should come out with a more sane and rational

presentation.

By way of a rejoinder, Mr. Regalado stated that when he said he intended to come up with sane and rational amendments, there was no attempt at legalese and that what he was pointing out was that the phrases used by the Committee were phrases used by technocrats which very few people could really understand.

Mr. Regalado admitted that he could not understand some phrases like "an integrated economic program" and "socio-economic structures and processes".

COMMENTS OF COMMITTEE MEMBERS

By Mr. Garcia

Mr. Garcia informed that even in the Committee, the members had a hard time coming out with the definition of social justice. He pointed out that in one of its earlier formulations, the concept of social justice refers to justice, not as practiced by individuals, but as one which is embodied in the structures and institutions of society. He stressed that in order to have justice, there must be a redistribution not only of economic wealth but also of political power in the sense that such powers should also be in the hands of the majority so that they could help shape the future of their lives. He likewise pointed out the Section on people's organization as an enabling vehicle to which the people could attain justice by being involved in decision-making.

Mr. Garcia stated that social justice involves a vision of man in society and fundamental to this vision are two notions, namely: 1) man possesses personal dignity and certain rights which the State does not confer and cannot take away, and 2) man is by nature a member of various communities concerned with his welfare but in the same manner he is obliged to contribute his share in order that he could achieve full development as a person.

Mr. Garcia pointed out the dynamic tension throughout the Article on Social Justice which reflects on one hand, the inherent dignity and inalienable rights of persons and on the other, the obligation of the community to use material wealth and political power for the welfare of all its members, especially the poor and the weak.

Finally, with respect to the primacy of social justice, Mr. Garcia explained that the State should give emphasis not simply on economic growth but also on creating egalitarian conditions in the sense that it should provide lasting peace that could be the condition or atmosphere under which all projects could prosper.

By Mr. Monsod

Mr. Monsod stressed that Section 1 should be read in the context that Congress should give the highest priority to social justice in terms of measures that promote the redistribution of power and the reduction of social, economic and political inequalities.

By Mr. Tadeo

Mr. Tadeo further explained that "fixed rental" and "owner-cultivator" as features of the leasehold system are not prohibited under the law. He stated that being a part of land reform, it is a step towards full ownership.

He stated that the term "agricultural worker" was not used because the Committee felt that this would include piggery and poultry and it was the consensus to use the term "farmworker" to distinguish it from piggery, poultry and livestock industry.

On the coverage of "agricultural lands", he pointed out that this would refer to all arable lands, either private or public, and this includes coconut, sugar, sorghum, vegetables, pineapple and banana plantations.

He stated that an "owner-cultivator" is one who personally supervises the entire operation in the field, from

preparation to harvesting, without assistance from a regular farmworker.

On fair and progressive compensation, Mr. Tadeo explained that this would refer to the lower value of a big landholding which increases as the size of the landholding decreases. In other words, he stated that the bigger the size of land, the lower the price and conversely, the smaller the land, the higher the price, which scheme, he opined would not prejudice land reform beneficiaries. On the other hand, with respect to just compensation, he stated that reference should be made to Republic Act No. 3844 which defines "just compensation" as the reasonable capacity of the farmer to pay.

On Section 7, he explained that natural resources, whether forest or mining field, are just part of the land. He stated that inasmuch as there are lands which have been fully depleted by mines and left idle, these are suitable for agriculture, and therefore, they should benefit landless agricultural workers, in the same manner that forest lands which have been left idle by kaingineros should be given to landless agricultural workers.

On communal fishing, Mr. Tadeo cited Laguna Lake which everyone should benefit from, specifically the small fishermen.

On Section 9, Mr. Tadeo stressed that the government in the pursuit of agricultural development, should hasten industrial development. He stated that raw materials should be transformed to things with higher value.

On Section 12, Mr. Tadeo pointed out the need to implement Republic Act No. 1199 which provides that in a one-hectare land, 300 square meters should be given to the tenant so that he could give full attention to the farm.

By Mr. Villacorta

Mr. Villacorta, quoting the case of *Calalang vs. Williams*, stated that social justice would be promoted "through the exercise of power underlying the existence of all governments on the time honored principle of *salus populi est suprema lex*".

By Mrs. Quesada

Explaining the meaning of "optimum working condition", Mrs. Quesada stated that working women should not be exposed to harmful conditions and they should be extended special care by providing them safe and healthful working conditions. She cited as an example a working pregnant woman who should not be scheduled to work at night because it may affect her biological rhythm. She pointed out that maternal function refers exclusively to working women.

By Mr. Bennagen

Mr. Bennagen, in defining social justice, read two quotations, to wit:

"No other question has been discussed so passionately; no other question has caused so much precious blood and so many bitter tears to shed; no other question has been the object of so much intensive thinking by the most illustrious thinkers from; Plato to Kant. And yet this question is today as unanswered as it ever was. It seems that it is one of those questions that man cannot find a definitive answer but can only try to improve the question."

"A society, in which the question of justice ceased to be a constant prod and perplexity, would not be humane in any sense that matters."

OBSERVATION OF MR. REGALADO

Mr. Regalado noted that under the proposed Article on Social Justice, there is no specific provision regarding the employment of minors. He suggested that the Committee take into account the welfare of minors which constitute 28 per cent of the labor group.

INTERPELLATION OF MR. DE CASTRO

Mr. de Castro stated that since he was born of a poor and simple family, he is in favor of the Article on Social Justice which reflects what President Magsaysay said that the poor should have more in law. He admitted that he had been reading the report of the Committee on Social Justice and he found it difficult to comprehend. Specifically on Section 2, he observed that it contains some socialistic and communistic ideas. He then inquired whether Section 4 which mentions the right to strike includes wildcat strikes, to which Mr. Villacorta replied that Section 6, Article II of the 1973 Constitution is almost identical to Section 2 of the Committee Report. He pointed out that there is nothing communistic in the salient features of the Article, on the right of workers to self-organization, the rights of farmers to own the lands they till, the participation of farmworkers in the planning and management of agrarian reform programs, the right of fishermen to use marine and fishing resources, the provision of ample opportunities to the urban poor and indigenous cultural communities, and the reasonable participation of people's organizations in decision-making, to which Mr. de Castro replied that this is a matter of opinion.

On Mr. de Castro's query whether wildcat strikes are included in the term "strike" which appears on page 2, line 6, Mr. Monsod replied in the negative, but stated that the Committee would welcome any amendment thereon, such as adding the phrase "in accordance with law".

On temporary or seasonal workers, like the harvesters, Mr. Tadeo stated that they would not be included in the term "farmworkers", which term refers to regular workers, such as the sacadas.

Furthermore, on Mr. de Castro's query whether "squatters" are being constitutionalized, Mr. Monsod explained that the intent of Section 11 is to avoid abuses by the military where in some instances, dwellings of squatters were demolished without due process of law. He stated that the provision does not state that they could not be evicted; they could be evicted only with due process and any action to the contrary would be violative of the Constitution.

MANIFESTATION OF MRS. NIEVA

At this juncture, Mrs. Nieva requested that proposed amendments be submitted to the members of the Committee to allow them time to study or consolidate said amendments.

INTERPELLATION OF MR. PADILLA

Mr. Padilla invited attention to the provision of the 1973 and 1935 Constitutions that social justice is the promotion of the well-being and economic security of all the people.

Thereafter, in reply to Mr. Padilla's observation that the proposed Article on Social Justice provides for rights in addition to those contained in the Bill of Rights, Mrs. Nieva stated that the proposed Article provides for social and cultural rights, while the Bill of Rights provides for political and civil rights.

Mr. Padilla pointed out that the Constitutional provision on social justice aims to promote the general welfare of all the people, and that providing exceptional rights to a particular class which may contravene the rights of

others, would not be a promotion of the general welfare. He also opined that although political power could be redistributed through the electoral processes, material wealth or private properties could not be redistributed because of the constitutional right to property.

In reply, Mr. Monsod explained that the Article merely states that Congress should provide for measures that would promote social, economic and political equities and the structures and processes which protect and enhance the inalienable right to human dignity, and the redistribution of wealth and power for the common good. He stressed, however, that the rights enumerated in the Article are subject to limitations in order not to prejudice the rights of others who also have the right to social justice. Specifically, he pointed out that the rights of labor and farmers would effect the redistribution of wealth, but always subject to the right of business enterprises or landowners to reasonable returns on their investment or property.

On the distinction between the rights under the Bill of Rights and those provided under the proposed Article, Mr. Bacani explained that, as pointed out by Mr. Bernas, the Bill of Rights speaks of self-executory rights, while the Article on Social Justice provides for rights which require implementation, which rights are focused to the attainment of the common good. He also opined that such rights would not contravene the rights of others, but it is the task of the legislators to find the areas of reconciliation.

On housing and social services, Mr. Monsod explained that the Article does not intend to give it to them free but at costs which the poor can afford.

Mr. Padilla maintained that the Bill of Rights only mentions of the right of labor to self-organize but the proposed Article added the rights to collective bargaining and collective negotiation, and the right to strike. He also noted that redistribution of wealth would be contrary to the right of persons to property, of which the owner cannot be deprived of without due process, and he is also entitled to equal protection of laws.

On Mr. Padilla's query whether it is the intention of the Committee to adopt Mr. Marcos' concept of land reform regarding the redistribution of wealth, Mr. Bacani stated that the provisions on Social Justice do not contradict the other sections of the Constitution and that the redistribution of wealth would be done with due respect to the property rights of individuals enshrined in the Bill of Rights.

Mr. Garcia added that unlimited access to economic wealth and power cuts off the enjoyment of the same rights by the poor who are in the majority. He stressed that a close examination of the Article would show that there is no undue limitation on private property as Congress is supposed to promote and provide for measures which shall be in the spirit of due process and always for the common good.

Mr. Padilla observed that during the Marcos regime, land certificates were distributed at the expense of landowners making Mr. Marcos very popular. He observed that it was easy to give away the land of others, but no one can give what he does not own.

He referred to Justice Laurel's definition of social justice in *Calalang vs. Williams* to the effect that social justice is not anarchy nor despotism, but the equilibrium of all political, economic and social forces to attain the common good for all the people.

He stated that it is unsafe to grant additional rights to some sectors at the expense of other sectors of society. He opined that the solution to this problem is to have more production that would benefit capitalists, farmers and society as a whole.

Reacting thereto, Mr. Bacani stated that the intention of the Committee's proposals is to empower those who have less in life and not to harm anybody's right, so that they could assert claims which they have been denied. He

stressed that social justice would benefit the deprived as well as those who already have by giving dignity to the destitute.

Mr. Padilla agreed with Mr. Bacani's statements, but stressed that there should be an assurance of equal opportunity. He stated that to grant a few and deprive the great majority would be social injustice. He stated that the solution to this nagging problem would be to remove social discrimination by extending equal opportunity with the assurance that justice would be administered correctly.

On Mr. Bacani's query whether Mr. Padilla would exclude the payment of just compensation among the just acts which could be done by the State, Mr. Padilla stated that it has been provided since 1935, that big landed estates are available for distribution to deserving Filipinos. He opined, however, that big landowners who have devoted their lands to industrial projects, employing technicians and workers who enjoy a dignified life by virtue of their employment with some enterprise holding big landholdings, should not be subject to land reform, more so, because their projects are dollar savers and dollar earners for the country.

Replying thereto, Mr. Tadeo stated that land distribution does not mean removing respect for one's property rights. He stressed the fact that social conflict and unjust distribution of wealth exist when one owns property while others do not.

On genuine land reform, Mr. Tadeo stated that Congress would enact a scheme for implementation. He stated that small landowners should not be apprehensive about the program since the scheme contemplated by the Committee would be implemented on them on its last phase when the country shall have reached the stage of industrialization. He stressed that the program would be implemented gradually.

Mr. Tadeo stated that land reform is based on a biblical passage that property should pertain to one's own need and any excess thereof should be shared with those who do not have.

Mr. Padilla stated that "each according to his needs" is dangerous, and argued that limitation to property rights are recognized in the Civil Code and the Christian principle has adopted the rule that an owner has no right to abuse (jus abutendi) the enjoyment of his property rights to injure the rights of others.

REMARKS OF MRS. ROSARIO BRAID

Supporting the arguments of Mr. Padilla, Mrs. Rosario Braid stated that balance in the social order could be attained with the improvement of individual capacities for productivity. She stressed the need for cooperatives to provide better income for the producers and better buying power for the consumers. She stated that access to educational opportunities and information would enable the individual to compete, thereby leading to a more balanced social order.

APPROVAL OF RESOLUTIONS OF APPRECIATION

At this juncture, on motion of Mr. Bengzon, there being no objection, the Body approved the following Resolutions expressing its appreciation to certain organizations in the conduct of its public hearings, to wit:

1)

Proposed Resolution No. 535, entitled:

RESOLUTION IN RECOGNITION BY THE CONSTITUTIONAL COMMISSION OF THE INVALUABLE SUPPORT AND CONTRIBUTION OF THE PHILIPPINE ADJOURNMENT OF SESSION SOCIAL SCIENCE COUNCIL IN THE PUBLIC CONSULTATIONS AND FOR PROVIDING RESOURCE MATERIALS FOR THE DRAFTING OF THE NEW CONSTITUTION,

Introduced by Messrs. Bennagen, Villacorta and Garcia; and

2)

Proposed Resolution No. 532, entitled:

RESOLUTION EXPRESSING THE PROFOUND APPRECIATION OF THE CONSTITUTIONAL COMMISSION TO THE NATIONAL MOVEMENT FOR FREE ELECTIONS FOR THE INVALUABLE ASSISTANCE IN ORGANIZING PROVINCIAL CONSULTATIONS,

Introduced by Messrs. Sarmiento, and Villacorta and Mrs. Quesada.

ANNOUNCEMENT OF MR. GUINGONA

Mr. Guingona announced that the Sponsorship Committee would be working starting next week with the use of IBM computers.

ADJOURNMENT OF SESSION

On motion of Mr. Romulo, there being no objection the Chair declared the session adjourned until nine-thirty in the morning of Monday, August 4, 1986.

It was 1:05 p.m.

I hereby certify to the correctness of the foregoing.

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

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA
President

Approved on August 4, 1986

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