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Thursday, July 17, 1986

OPENING OF SESSION

At 9:40 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

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

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Florenz D. Regalado.

Everybody remained standing for the Prayer.

PRAYER

MR. REGALADO: Almighty Father, You have called us to be one people, inhabitants of numerous islands, speaking diverse languages, heirs to various traditions, and yet sharing a common faith in You, the one God, creator of heaven and earth, and aspiring for a life of freedom, justice and peace.

In this land You have so graciously blessed, You have brought together Christian and Muslim and others who also believe in Your divine presence and unfailing providence.

We ask You to be with us in grace and power as we strive to forge the unity of our nation and create a new life for our people.

Enlighten us with Your wisdom, strengthen us with Your power, purify us with Your grace, as we endeavor to set down in writing the basic law of our land, so that it may be a living sign of Your justice and righteousness among us, and a means for making Your salvation a reality for all our people.

We make our prayer through Christ our Lord. Amen.

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar Present [*] Monsod Present

Alonto Present [*] Natividad Present [*]

Aquino Present Nieva Present

Azcuna Present [*] Nolledo Present

Bacani Present Ople Present [*]

Bengzon Present [*] Padilla Present [*]

Bennagen Present Quesada Present

Bernas Present Rama Present

Rosario Braid Present Regalado Present

Brocka Present Reyes de los Present

Calderon Present Rigos Present

Castro de Present Rodrigo Present

Colayco Present Romulo Present

Concepcion Present [*] Rosales Present

Davide Present [*] Sarmiento Present [*]

Foz

Present [*] Suarez Present

Garcia Present Sumulong Present

Gascon Present [*] Tadeo Present [*]

Guingona Present [*] Tan Present [*]

Jamir Present Tingson Present [*]

Laurel

Present [*] Treñas Present

Lerum Present [*] Uka Present

Maambong Present [*] Villacorta Present

Commissioner Villegas is on official mission.

The President is present.

The roll call shows 28 Members responded to the call.

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

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move that the reading of the Journal of the previous session be dispensed with.

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

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of the previous session.

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

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

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved. The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

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

COMMUNICATIONS

Letter from the Trade Union Congress of the Philippines signed by Messrs. Jeremias U. Montemayor, Democrito T. Mendoza and Ernesto F. Herrera, submitting its "Position Paper on the Draft of the Philippine Constitution, Part II."

(Communication No. 215 — Constitutional Commission of 1986)

To the Steering Committee.

Letter from Mr. Ramon R.J. Jamasali of Finance Ministry Intelligence Bureau, proposing provisions on the civil service.

(Communication No. 216 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Letter from Mr. Pedro O. Valdez, 1971 Constitutional Convention Delegate, reiterating his position on the superiority of the parliamentary system over the presidential system of constitutional government.

(Communication No. 217 — Constitutional Commission of 1986)

To the Committee on the Executive.

Letter from Dr. Fe Canlas-Dizon of the Philippine Medical Association, submitting Resolution No. 04-86-7 of the Board of Governors of the Association proposing provisions manifesting the state's concern for the welfare of the children and the youth.

(Communication No. 218 — Constitutional Commission of 1986)

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

Letter from Dr. Juanito Z. Obal of the Philippine Dental Association, submitting a resolution proposing the inclusion of provisions for the protection of Filipino children, youth and mothers.

(Communication No. 219 — Constitutional Commission of 1986)

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

Letter from Mr. Christian Estrada of 317 Taylo, Pasay City, opposing the principles of separation of church and state, and proposing the teaching of religion in schools.

(Communication No. 220 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from Msgr. Josefino Iledan, VC of Kabankalan, Negros Occidental, sending a resolution signed by more than two thousand residents of Negros Occidental proposing a provision that the state acknowledge the importance of religion in character-building and shall allow religious instruction in all levels of education.

(Communication No. 221 — Constitutional Commission of 1986)

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

Letter from Ms. Paula Carolina S. Malay and Mr. Romulo R. Intia of Salinlahi Foundation, Inc., 15 General de Jesus St., Heroes Hill, Quezon City, enclosing resolutions and related articles on the promotion of children's rights and welfare.

(Communication No. 222 — Constitutional Commission of 1986)

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

Letter from Mr. Nicolas L. Alonzo for the Barangay Council of Mangal, Sumisip, Basilan, suggesting provisions on autonomy of local governments (barangay).

(Communication No. 223 — Constitutional Commission of 1986)

To the Committee on Local Governments.

Letter from the Kilusang Magbubukid ng Pilipinas signed by Mr. Rafael Mariano, submitting its position papers on agrarian reform and countryside development.

(Communication No. 224 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from the honorable Commissioner Cirilo A. Rigos transmitting a letter of Rev. Tito E. Paseo of the Philippine Independent Church stating his stand on the separation of church and state.

(Communication No. 225 — Constitutional Commission of 1986)

To the Committee on General Provisions.

Letter from the Equality for all Filipinos, Inc., (EQUA-FIL) signed by Mr. Wenceslao Vinzons Tan, proposing inclusion of provisions which would give substance to Filipinos and citizenship.

(Communication No. 226 — Constitutional Commission of 1986)

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

Letter from Mr. Telibert C. Laoc, Project Director, Consultation on the Constitution, NAMFREL-Cebu, enclosing the results of the municipal and parochial consultations conducted by the Ateneo Center for Social Policy (ACSP), Lakas ng Sambayanan and NAMFREL-Cebu in the Province of Cebu.

(Communication 227 — Constitutional Commission of 1986)

To the Steering Committee.

SUSPENSION OF SESSION

THE PRESIDENT: The session is suspended for a few minutes.

It was 9:49 a.m.

RESUMPTION OF SESSION

At 9:50 a.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF PROPOSED

RESOLUTION NO. 486

(Article on Bill of Rights)

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: I move that we consider Committee Report No. 23 on Proposed Resolution No. 486 as reported out by the Committee on Citizenship, Bill of Rights and Obligations and Human Rights.

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

Consideration of Proposed Resolution No. 486 is now in order. With the permission of the body, the Secretary General will read only the title of the proposed resolution without prejudice to inserting in the Record the whole text thereof.

THE SECRETARY-GENERAL: Proposed Resolution No. 486, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE BILL OF RIGHTS.

(The following is the whole text of the substitute resolution per C.R. No. 23.)

COMMITTEE REPORT NO. 23

The Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights to which were referred the following:

Proposed Resolution No. 4, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON BILL OF RIGHTS.

Introduced by Hon. Davide, Jr.

Note: The Committee adopted P.R. No. 4 and PR. No. 84 as its joint working drafts.*

Proposed Resolution No. 84, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE WHOLE OF ARTICLE IV, 1973 CONSTITUTION, THE PHILIPPINE CONSTITUTION OF 1986.

Introduced by Hon. Bengzon, Jr.

Proposed Resolution No. 26, entitled:

RESOLUTION TO AMEND THE BILL OF RIGHTS BY PROVIDING THAT THERE IS NO DOUBLE JEOPARDY IN CASE OF MISTRIAL.

Introduced by Hon. Nollado.

Note: Considered unnecessary by the Committee.

Proposed Resolution No. 28, entitled:

RESOLUTION PROVIDING FOR A TRIAL IN ABSENTIA OF GOVERNMENT OFFICIALS WHO HAVE MALVERSED PUBLIC FUNDS OR PLUNDERED THE NATIONAL TREASURY.

Introduced by Hon. Nollado.

Note: Partially incorporated in Section 19.

Proposed Resolution No. 40, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION REQUIRING THE GOVERNMENT TO COMPENSATE VICTIMS OF TORTURE OR SIMILAR PRACTICES AND THEIR FAMILIES FOR THE PHYSICAL AND PSYCHOLOGICAL INJURIES INFLICTED UPON THEM, WHICH COMPENSATION SHALL LATER BE COLLECTED FROM THOSE GUILTY OF SUCH PRACTICES.

Introduced by Hon. Sarmiento.

Note: Substantially incorporated in Section 21.

Proposed Resolution No. 45, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION REQUIRING THE GOVERNMENT TO PROVIDE REDRESS AND PAYMENT OF COMPENSATION FOR DAMAGES TO ANY PERSON FOR ACTS COMMITTED DURING THE DECLARATION OF STATE OF EMERGENCY.

Introduced by Hon. Sarmiento.

Note: Partially incorporated in Section 21.

Proposed Resolution No. 48, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION THAT THE GOVERNMENT SHALL REFRAIN FROM ENGAGING IN OR AUTHORIZING TORTURE, OTHER CRUEL AND DEGRADING TREATMENT OR PUNISHMENT, UNEXPLAINED DISAPPEARANCE AND EXTRA-LEGAL EXECUTION, AND TO TAKE STEPS TO ELIMINATE SUCH PRACTICES BY OTHER.

Introduced by Hon. Sarmiento.

Note: Partially incorporated in Section 21.

Proposed Resolution No. 58, entitled:

RESOLUTION TO BROADEN THE SCOPE OF THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE BY PROHIBITING THE PASSAGE OF ANY LAW WHICH ESTABLISHES PRESUMPTION OF THE EXISTENCE OF PRIMA FACIE EVIDENCE.

Introduced by Hon. Davide, Jr.

Note: Voted down by the Committee.

Proposed Resolution No. 65, entitled:

RESOLUTION TO INCLUDE IN THE BILL OF RIGHTS OF THE NEW CONSTITUTION A PROVISION

THAT NO LAW SHALL BE PASSED ABRIDGING THE RIGHT OF PEACE-LOVING CITIZENS TO BEAR ARMS.

Introduced by Hon. Nollado.

Note: Referred to ordinary legislation.

Proposed Resolution No. 94, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION PROVIDING COMPENSATION FOR LOSS OF TIME AND INCOME TO AN ACCUSED WHO IS DETAINED DURING THE PENDENCY OF A CASE EITHER BECAUSE OF THE UNBAILABILITY OF THE OFFENSE CHARGED OR FOR FAILURE TO PUT UP BAIL BY REASON OF POVERTY BUT IS ACQUITTED AFTER TRIAL OR RELEASED BY THE DISMISSAL OF THE CASE FOR CAUSES NOT ATTRIBUTABLE TO HIM.

Introduced by Hon. Davide, Jr.

Note: Referred to ordinary legislation.

Proposed Resolution No. 98, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION LIMITING THE SUSPENSION OF THE WRIT OF HABEAS CORPUS BY THE PRESIDENT TO THIRTY (30) DAYS ONLY.

Introduced by Hon. Bengzon, Jr.

Note: Considered in relation to Section 15.

Proposed Resolution No. 101, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A POLICY GOVERNING THE DETERMINATION OF JUST COMPENSATION IN THE EXPROPRIATION OF PRIVATE PROPERTY WHEN IT IS DONE BY THE GOVERNMENT AND WHEN IT IS DONE BY AUTHORIZED CORPORATIONS, FIRMS OR ASSOCIATIONS AND TO PROVIDE THAT IF IN THE LATTER CASE A WRIT OF POSSESSION IS SECURED, RENTALS, EXCLUSIVE OF THE COMPENSATION, SHALL BE PAID UP TO THE TIME THE CASE IS SUBMITTED FOR DECISION.

Introduced by Hon. Davide, Jr.

Note: Partially incorporated in Section 2.

Proposed Resolution No. 103, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION THAT NO TEMPORARY DETENTION SHALL BE ALLOWED IN CASES WHERE THE OFFENSE CHARGED DOES NOT CARRY WITH IT THE PENALTY OF IMPRISONMENT.

Introduced by Honorable Davide, Jr.

Note: Referred to ordinary legislation/considered in relation to Section 18.

Proposed Resolution No. 131, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE WHICH WOULD ENSHRINE THEREIN THE EXERCISE OF PEOPLE'S POWER.

Introduced by Hon. Guingona.

Note: Partially incorporated in Section 9.

Proposed Resolution No. 154, entitled:

RESOLUTION TO LIMIT THE POWER TO ISSUE SEARCH AND ARREST WARRANTS TO JUDGES.

Introduced by Hon. Romulo.

Note: Substantially reproduced in Section 3.

Proposed Resolution No. 160, entitled:

RESOLUTION TO INCLUDE IN THE BILL OF RIGHTS CERTAIN RIGHTS IN BEHALF OF VICTIMS AND CRIMES.

Introduced by Hon. de los Reyes, Jr.

Note: Referred to ordinary legislation.

Proposed Resolution No. 165, entitled:

RESOLUTION PROVIDING FOR THE RECOGNITION OF THE RIGHT OF THE PEOPLE TO HAVE ACCESS TO INFORMATION OF PUBLIC CONCERN AS WELL AS TO UNFETTERED PARTICIPATION IN THE DISSEMINATION OF INFORMATION.

Introduced by Hon. Rosario Braid.

Note: Partially incorporated in Section 6.

Proposed Resolution No. 169, entitled:

RESOLUTION PROVIDING ADDITIONAL SAFEGUARDS TO THE CIVIL RIGHTS OF INDIVIDUAL VERSUS THE GOVERNMENT.

Introduced by Hon. Tadeo and Tan.

Note: Substantially incorporated in Sections 1, 3, 5, 14 and 21.

Proposed Resolution No. 175, entitled:

RESOLUTION TO INCORPORATE INTO THE BILL OF RIGHTS A PROVISION RECOGNIZING AND DEFENDING THE RIGHT TO LIFE OF THE UNBORN HUMAN EMBRYO.

Introduced by Hon. Quesada, Romulo, Sarmiento, Villegas, Colayco and Bengzon, Jr.

Note: Partially incorporated in Section 1.

Proposed Resolution No. 184, entitled:

RESOLUTION TO PROVIDE IN THE BILL OF RIGHTS THAT A FOREIGNER WHO IS PERSECUTED BY HIS COUNTRY BECAUSE OF HIS POLITICAL BELIEFS SHOULD BE GIVEN ASYLUM IN THE PHILIPPINES AND THAT EXTRADITION OF FOREIGNERS FOR POLITICAL OFFENSES SHALL NOT BE GRANTED.

Introduced by Hon. Nollado.

Note: Referred to the Committee on Preamble, National Territory and Declaration of Principles.

Proposed Resolution No. 191, entitled:

RESOLUTION TO PROVIDE IN THE BILL OF RIGHTS OF THE NEW CONSTITUTION THAT NO PERSON SHALL BE DETAINED BECAUSE OF HIS POLITICAL BELIEFS AND ASPIRATIONS.

Introduced by Hon. Nollado.

Note: Considered in relation to Sections 1 and 3.

Proposed Resolution No. 202, entitled:

RESOLUTION INCORPORATING IN THE NEW CONSTITUTION A PROVISION THAT UNBORN CHILDREN SHALL BE POSSESSORS OF HUMAN RIGHTS FROM THE FIRST MOMENT OF CONCEPTION.

Introduced by Hon. Bacani.

Note: Substantially incorporated in Section 1.

Proposed Resolution No. 209, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION RECOGNIZING AND SECURING THE RIGHT OF A PERSON ARRESTED OR SUBJECT TO CUSTODIAL OR TACTICAL INVESTIGATION OR INTERROGATION TO BE ADVISED OF HIS FUNDAMENTAL RIGHTS.

Introduced by Hon. Sarmiento.

Note: Substantially reproduced in Section 21.

Proposed Resolution No. 210, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION LIMITING THE AUTHORITY TO ISSUE WARRANTS OF ARREST, SEARCHES AND SEIZURE TO JUDGES.

Introduced by Hon. Natividad.

Note: Substantially reproduced in Section 3.

Proposed Resolution No. 226, entitled:

RESOLUTION TO ARRANGE THE PROVISIONS IN THE BILL OF RIGHTS IN LOGICAL SEQUENCE TO FACILITATE COMPREHENSION BY THE PEOPLE.

Introduced by Hon. Villegas.

Note: To be done after approval on Second Reading.

Proposed Resolution No. 237, entitled:

RESOLUTION TO ESTABLISH FREEDOM PARKS IN ALL TOWNS, CITIES AND PROVINCES IN THE PHILIPPINES.

Introduced by Hon. de los Reyes, Jr.

Note: Partially incorporated in Section 9/referred to ordinary legislation.

Proposed Resolution No. 242, entitled:

RESOLUTION DECLARING THE DEATH PENALTY AS CRUEL AND UNUSUAL PUNISHMENT EXPRESSLY BANNED BY THE 1986 CONSTITUTION.

Introduced by Hon. Ople, Maambong, de los Reyes and Natividad.

Note: Substantially reproduced in Section 22.

Proposed Resolution No. 245, entitled:

RESOLUTION ON THE INDIVIDUAL CITIZEN'S RIGHT TO GAINFUL EMPLOYMENT.

Introduced by Hon. Ople, de los Reyes, Maambong and Natividad.

Note: Referred to the Committee on Social Justice.

Proposed Resolution No. 250, entitled:

RESOLUTION PROVIDING IN THE NEW CONSTITUTION THE ABOLITION OF THE DEATH PENALTY.

Introduced by Hon. Garcia.

Note: Incorporated in Section 22.

Proposed Resolution No. 258, entitled:

RESOLUTION TO INCLUDE IN THE PROPOSED CONSTITUTION SECTION TWENTY, ARTICLE FOUR, OF THE 1973 CONSTITUTION WITH MODIFICATION TO MAKE THE PROTECTION EFFECTIVE.

Introduced by Hon. Treñas.

Note: Incorporated in Section 21.

Proposed Resolution No. 261, entitled:

RESOLUTION STRENGTHENING THE LIBERTY OF ABODE AND TRAVEL PROVISION OF THE BILL OF RIGHTS.

Introduced by Hon. Natividad, de los Reyes, Jr., Maambong and Ople.

Note: Partially incorporated in Section 5.

Proposed Resolution No. 274, entitled:

RESOLUTION TO INCLUDE IN THE PROPOSED CONSTITUTION SECTIONS THREE AND FOUR, ARTICLE FOUR, OF THE 1973 CONSTITUTION WITH MODIFICATION TO MAKE THE PROTECTION MORE EFFECTIVE.

Introduced by Hon. Treñas.

Note: Substantially reproduced in Sections 3 and 4.

Proposed Resolution No. 287, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION ON THE CITIZENS' RIGHTS AND DUTIES TO HEALTH.

Introduced by Hon. Quesada and Suarez.

Note: Referred to the Committee on Social Justice.

Proposed Resolution No. 293, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION PROTECTING THE RIGHTS OF VICTIMS OF CRIMES.

Introduced by Hon. Natividad.

Note: Referred to ordinary legislation.

Proposed Resolution No. 297, entitled:

RESOLUTION PROPOSING TO ADOPT IN THE CONSTITUTION AN ARTICLE FOR THE BILL OF RIGHTS OF CITIZENS.

Introduced by Hon. Tingson.

Note: Substantially reproduced in the proposed Article on the Bill of Rights.

Proposed Resolution No. 314, entitled:

RESOLUTION PROHIBITING THE STATE OR ANY OF ITS SUBDIVISIONS OR INSTRUMENTALITIES FROM REQUIRING A PERMIT FOR THE HOLDING OF RALLIES, DEMONSTRATIONS OR OTHER FORMS OF MASS OR CONCERTED ACTION IN THE EXERCISE OF THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

Introduced by Hon. Foz.

Note: Considered in relation to Section 6.

has considered the same and has the honor to report them back to the Constitutional Commission with the recommendation that Proposed Resolution No. 486, prepared by the Committee, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE BILL OF RIGHTS,

be approved in substitution of Proposed Resolution Nos. 4, 84, 26, 28, 40, 45, 48, 58, 65, 94, 98, 101, 103, 131, 154, 160, 165, 169, 175, 184, 191, 202, 209, 210, 226, 237, 242, 245, 250, 258, 261, 274, 287, 293, 297 and 314, with the Honorable Laurel, Jr., Bernas, Davide, Jr., Bengzon, Jr., Abubakar, Colayco, Sarmiento, Tadeo, Garcia, Villegas, Rodrigo, Bennagen, Lerum, Bacani, Padilla, Natividad, Nollado, Guingona, Romulo, Rosario Braid, de los Reyes, Jr., Tan, Quesada, Ople, Maambong, Treñas, Suarez, Tingson and Foz as authors thereof.

(Sgd.) J.B. Laurel, Jr.

Chairman

Committee on Citizenship, Bill of Rights,

Political Rights and Obligations

and Human Rights

(Sgd.) Joaquin G. Bernas (Sgd.) Yusup R. Abubakar

(Sgd.) Jose C. Colayco (Sgd.) Rene V. Sarmiento

(Sgd.) Jaime S. L. Tadeo (Sgd.) Edmundo G. Garcia

(Sgd.) Bernardo M. Villegas (Sgd.) Francisco A. Rodrigo
(with reservation)

(Sgd.) Ponciano L. Bennagen (Sgd.) Eulogio R. Lerum

(Sgd.) Teodoro C. Bacani (Sgd.) Ambrosio B. Padilla
(with reservation)

(Sgd.) Teodulo C. Natividad

PROPOSED RESOLUTION NO. 486

(Substitute Resolution)

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE BILL OF RIGHTS.

Be it resolved as it is hereby resolved, by the Constitutional Commission in session assembled, To incorporate in the Bill of Rights of the new Constitution, the following provisions:

ARTICLE

BILL OF RIGHTS

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. The right to life extends to the fertilized ovum.

SECTION 2. Private property shall not be taken for public use without just compensation.

SECTION 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

SECTION 4. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court when public safety or order requires otherwise. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

SECTION 5. The liberty of abode and of changing the same and of travel, within the limits prescribed by law, shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

SECTION 6. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law.

SECTION 7. The right of the people to form associations, unions, or societies for purposes not contrary to law shall not be abridged.

SECTION 8. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

SECTION 9. No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

SECTION 10. No law granting a title of royalty or nobility shall be enacted.

SECTION 11. No law impairing the obligation of contracts shall be passed.

SECTION 12. No ex-post facto law or bill of attainder shall be enacted.

SECTION 13. No person shall be imprisoned for debt or non-payment of a poll tax.

SECTION 14. No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

SECTION 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

SECTION 17. No person shall be held to answer for a criminal offense without due process of law.

SECTION 18. All persons shall, before conviction, be bailable by sufficient sureties, or may be released on recognizance as may be provided by law. Excessive bail shall not be required.

SECTION 19. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

SECTION 20. No person shall be compelled to be a witness against himself.

SECTION 21. It shall be the duty of every official investigating the Commission of an offense to inform the person under investigation of his rights to remain silent and to have counsel. If the person cannot afford the services of counsel, he must be provided with one who is competent and independent. These rights cannot be waived except in writing and in the presence of counsel. No force, violence, threat or intimidation shall be used against him. Secret detention places and incommunicado detentions are prohibited.

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

The Legislature shall enact a law punishing any violation of this section.

Compensation for and rehabilitation of victims of tortures or similar practices, and of their families, shall be provided by law.

SECTION 22. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted. Death penalty already imposed shall be commuted to reclusion perpetua.

SECTION 23. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

SECTION 24. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

MR. RAMA: Madam President, I ask that the sponsor, Commissioner Bernas, be recognized.

THE PRESIDENT: Commissioner Bernas is recognized.

SPONSORSHIP SPEECH

OF COMMISSIONER BERNAS

FR. BERNAS: Thank you, Madam President.

Madam President, I am taking up the sponsorship in the absence or in the lateness of our Chairman, Commissioner Laurel; but before I proceed, may I ask the other members of the Committee to come to my assistance. There are four empty seats here. I will feel free to call on the various members, if questions need to be answered by them.

The resolution before the body is Proposed Resolution No. 486. I hope everyone has a copy of it. It is on the Bill of Rights. I shall not attempt to explain every single section of the Bill of Rights, because each of them can be the subject of several full-dress lectures. Besides, no matter how lengthy the explanation will be, I am sure there will be other questions. We will reserve the details for these in the process of answering questions.

I will, therefore, limit my sponsorship remarks, first, to some general reflections, and, second, to a brief explanation of the changes that have been introduced — changes, that is, over the 1935 and 1973 versions of the Bill of Rights. After these, we can proceed.

First, the general reflections: The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder.

It is customary to distinguish three concepts: civil liberties, political freedoms and economic freedoms. The dividing line between these is thin but the distinction is made nonetheless. What we propose contains all three concepts.

To civil liberties belong freedom from arbitrary confinement, inviolability of the domicile, freedom from arbitrary searches and seizures, privacy of correspondence, freedom of movement, free exercise of religion and free choices involving family relations. Political freedoms include the freedoms involving participation in the political process, freedom of assembly and association, the right to vote, the right of equal access to office, the freedom to participate in the formation of public opinion, and also nonestablishment of religion or what is popularly called separation of church and state.

Economic freedom covers everything that comes under the heading of "economic self-determination," free pursuit of economic activity; in general, free choice of profession, free competition and free disposal of property.

It should be emphasized, however, that in the hierarchy of freedom under existing jurisprudence, economic freedom ranks the lowest and it is the freedom whose reasonable invasion by the state is easily allowed.

One might call what I have enumerated the traditional freedoms of liberal constitutionalism. Their principal characteristic as declared in the Bill of Rights is that they guarantee freedoms from the state and protection against the state, and that as guarantee and protection, they do not need further implementing action by the legislature. They are limits on the legislature and on every other official person or body; they can stop official action dead.

I mention this because in recent years, largely through the influence of socialism and with abundant help from the teachings of the Popes, there have arisen what are called social and economic rights. In the scheme of our work, I consider the social and economic rights principally the concern of the Committee on Social Justice. What distinguishes these new economic and social rights from the traditional liberties in the Bill of Rights is that in the strict sense the former are not rights which operate without implementing legislation, but rather they are more properly claims or demands on the state; they need implementing action by the state. Without the implementing action, they generally cannot be enforced against anybody by judicial action.

So I repeat: these new social and economic rights are not the principal concern of the proposal of the Committee. We do not wish to steal the thunder of the Committee on Social Justice, although in certain instances where certain economic rights, claims on the state, are intimately related to strict rights, we put them in also.

For a brief rundown of the innovations the Committee proposes: On Section I, the phrase "fertilized ovum" on line 10 — may I ask everyone to turn his report to the page with the numbered lines — might sound jarring to the legal ear. But if we explain the intent, one might be able to coin a more felicitous phrase than "fertilized ovum."

The intent of this addition is to preclude the Supreme Court from following the United States doctrine which does not begin to weigh the life of the unborn against that of the mother until the fetus has reached a viable stage of development. In American doctrine, during the first six months of pregnancy, the only requirement for allowing abortion is that it will not be harmful to the mother. It is only after the sixth month that the life of the fetus begins to be weighed against the life of the mother.

The innovation does not say that from the first moment the sperm and the egg shake hands, human life is already present, much less does it say that at that moment, a soul is infused; nor does the innovation say that the right to life of the fertilized ovum must prevail over the life of the mother all the time. All that the innovation says is that from the moment of fertilization, the ovum should be treated as life whose worth must be weighed against the life of the woman, not necessarily saying that they are of equal worth.

Section 2 is the same as the old Constitution.

The provision on Section 3 reverts to the 1935 formula by eliminating the 1973 phrase "or such other responsible officer as may be authorized by law," and also adds the word PERSONALLY on line 18. In other words, warrants under this proposal can be issued only by judges. I think one effect of this would be that, as soon as the Constitution is approved, the PCGG will have no authority to issue warrants, search and seizure orders, because it is not a judicial body. So, proposals with respect to clipping the powers of the PCGG will be almost unnecessary if we approve this. We will need explicit provisions extending the power of the PCGG if it wants to survive.

On Section 4, one will notice that by dropping the word "or" from the 1973 version, intrusion into communications and correspondence becomes allowable only upon order of a court and on stated grounds. We have removed the word "or."

Incidentally, it may be useful, for purposes of comparison, if we use the version on page 6 of the report where

there are indications of the changes made from the 1973 Constitution.

On Section 5, in the explanation on page 6 of the annotated provisions, it says that the phrase "and changing the same" is taken from the 1935 version, that is, changing the abode. The addition of the phrase WITHIN THE LIMITS PRESCRIBED BY LAW ensures that, whether the rights be impaired on order of a court or without the order of a court, the impairment must be in accordance with the prescriptions of law; that is, it is not left to the discretion of any public officer.

On Section 6 — the right of the people to information — the provision simply preserves the 1973 version.

Section 7 preserves the old provision not because it is strictly needed but because its removal might be subject to misinterpretation. It reads:

The right of the people to form associations, unions, or societies for purposes not contrary to law shall not be abridged.

It strictly does not prepare the old provision because it adds the word UNION, and in the explanation we received from Commissioner Lerum, the term envisions not just unions in private corporations but also in the government. This preserves our link with the Malolos Constitution as far as the right to form associations or societies for purposes not contrary to law is concerned.

Sections 8 and 9 preserve the old formulas which already are subject to very rich jurisprudence.

Sections 10, 11, 12, 13 and 14 are old provisions of the Bill of Rights.

Section 15 reads:

The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

What this has done is to drop "insurrection" and "imminent danger of insurrection, invasion or rebellion" as grounds for the suspension of the privilege of the writ of habeas corpus. This is a harmonization with the report of the Committee on the Executive and said Committee goes into more details about this.

Sections 16 and 17 preserve existing provisions.

Section 18 reads:

All persons shall, before conviction, be bailable by sufficient sureties, or may be released on recognizance as may be provided by law. Excessive bail shall not be required.

Since the report recommends that we drop the death penalty, this provision is harmonized with the dropping of the death penalty. In other words, all offenses are bailable now, before conviction, by sufficient sureties.

In addition to bail, there is an explicit recognition here of recognizance as an instrument for temporary release as may be provided by law. The details on how recognizance can be obtained or when it is applicable can be provided by law.

On Section 19, we have preserved the provision of the 1973 Constitution. It allows trial in absentia but only on condition that the accused was present at arraignment. That is the absolute requirement.

Section 20 provides that: "No person shall be compelled to be a witness against himself." We decided to make the self-incrimination clause a section by itself, separate from the rest of the old Section 22. And the provision of the 1973 Constitution which incorporates the Miranda Doctrine has been reworded to make it speak in more positive

terms. It says:

It shall be the duty of every official investigating the commission of an offense to inform the person under investigation of his rights to remain silent and to have counsel.

The old provision merely declared that he has the right to be informed of the two rights. Now, a duty is imposed on the investigating officer. These rights can- not be waived, except in writing and in the presence of a counsel.

Incidentally, we spent the most time perhaps on this Article because of reflections on the experience under martial law. And many of these reflections are an effort really to prevent the reoccurrence of things which happened during martial law. His rights cannot be waived, except in writing and in the presence of a counsel. No force, violence, threat or intimidation shall be used against him. Then, secret detention places and incommunicado detentions are prohibited.

The second paragraph which reads: "Any confession or admission" — the word "admission" is added to "confession" — "obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." It is a repetition of the exclusionary rule:

The legislature shall enact a law punishing violation of this section. Compensation for and rehabilitation of victims of tortures or similar practices, and of their families, shall be provided by law.

As we can see, these last two sentences are not self-executory, but they are intimately related to the previous sentences.

On Section 22, on penalties:

Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted. Death penalty already imposed shall be commuted to reclusion perpetua.

My recollection on this is that there was a division in the Committee not on whether the death penalty should be abolished or not, but rather on whether the abolition should be done by the Constitution — in which case it cannot be restored by the legislature — or left to the legislature. The majority voted for the constitutional abolition of the death penalty. And the reason is that capital punishment is inhuman for the convict and his family who are traumatized by the waiting, even if it is never carried out. There is no evidence that the death penalty deterred deadly criminals, hence, life should not be destroyed just in the hope that other lives might be saved. Assuming mastery over the life of another man is just too presumptuous for any man. The fact that the death penalty as an institution has been there from time immemorial should not deter us from reviewing it. Human life is more valuable than an institution intended precisely to serve human life. So, basically, this is the summary of the reasons which were presented in support of the constitutional abolition of the death penalty.

Section 23 preserves the old provision on double jeopardy.

Section 24 expands the 1973 provision by including quasi-judicial bodies — "Free access to the courts and quasi-judicial bodies." In putting this in, Commissioner Lerum had in mind, principally but not exclusively, labor courts — "and adequate legal assistance shall not be denied to any person by reason of poverty." That aspect, the matter of giving adequate legal assistance, is something which is not self-executory. It needs implementing legislation.

With these, I end my presentation of the report on the Bill of Rights. And I repeat my appeal to anybody in the Committee to come and join me here.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Nolledo is recognized.

MR. NOLLEDO: Thank you, Madam President.

FR. BERNAS: For purposes of our interpellation and clarification on debates, perhaps it would be best to use the version which has numbered lines.

MR. NOLLEDO: Thank you.

FR. BERNAS: May I ask Chairman Laurel to come forward.

THE PRESIDENT: Commissioner Laurel and the other members of the Committee are requested by Commissioner Bernas to come forward.

FR. BERNAS: We are a committee of about 15, but even those who are not here should not feel safe.

MR. NOLLEDO: I would like Father Bernas to answer personally my questions, unless it is absolutely necessary to delegate the same to another member of the Committee, if he does not mind.

FR. BERNAS: We will make the effort to do that.

MR. NOLLEDO: Thank you.

With respect to Section 3, lines 13 up to 20, am I right if I say that there are actually two parts of the section: the first part refers to the right of the people against unreasonable searches and seizures; and then the second part refers to the authority who will issue the search warrant or warrant of arrest?

FR. BERNAS: That is one way of putting it. Another way, the way I would put it is, the first part states what the right is and the second part states how the right is protected.

MR. NOLLEDO: And so, it seems to me that both parts should be equated with each other for the effective implementation of the section itself. I am asking this question in relation to what the sponsor stated that upon ratification of the Constitution, the PCGG will no longer issue a warrant. As I understand it, the moment the PCGG has evidence, they do not issue — correct me, if I am wrong — the search warrant but an order of seizure. So, if we consider the actuations of the PCGG as unreasonable, then we may apply the section. But if they claim that their acts are not unreasonable, it seems to me that the second part may be interpreted in their favor, because we talk of search warrant, although the seizure is only a consequence thereof. So, the Committee has to determine two conditions: first, the seizure should be unreasonable, and, second, there should be a basis for a search warrant, which does not seem to apply because the PCGG immediately proceeds to issue the seizure order.

FR. BERNAS: I am sure the Commissioner is very familiar with this question, having taught Constitution so often: "What is an unreasonable search?" The initial answer is that a search is generally unreasonable if it is made without a warrant except in that instance when jurisprudence allows searches without a warrant.

MR. NOLLEDO: And the second instance will be: even if there is a warrant but if it was executed with unnecessary force or anything similar to it?

FR. BERNAS: Yes.

MR. NOLLEDO: Of course this can be qualified by a provision in the Transitory Provisions upholding, perhaps, the right of the PCGG.

My next question is with respect to Section 5, lines 8 to 12 of page 2. It says here that the liberty of abode shall not be impaired except upon lawful order of the court or — underscoring the word "or" — when necessary in the interest of national security, public safety or public health. So, in the first part, there is the word "court"; in the second part, it seems that the question arises as to who determines whether it is in the interest of national security, public safety, or public health. May it be determined merely by administrative authorities?

FR. BERNAS: The understanding we have of this is that, yes, it may be determined by administrative authorities provided that they act, according to line 9, within the limits prescribed by law. For instance, when this thing came up, what was in mind were passport officers. If they want to deny a passport on the first instance, do they have to go to court? The position is, they may deny a passport provided that the denial is based on the limits prescribed by law. The phrase "within the limits prescribed by law" is something which is added here. That did not exist in the old provision.

MR. NOLLEDO: Thank you very much for that well-taken answer.

My next question is with respect to Section 6, lines 13 to 18, with particular emphasis on the word "limitations." May I know if these limitations pertain only to the manner of the exercise of the right to information on matters of public concern or can it effect to some degree the substantial exercise of the right?

FR. BERNAS: My understanding is that it can include the substantial content of the information; but these limitations, whether or not we are talking about procedure or substance, must necessarily be reasonable limitations.

MR. NOLLEDO: Under the Corporation Code, I understand the right of every stockholder to inspect corporate books and records shall not be denied on matters that are formal in nature or nonsubstantial. I was thinking that the limitations should refer only to the manner of exercise; otherwise it may negate the right itself.

FR. BERNAS: We would be amenable to a consideration of amendments on that. But we have in mind both substance and procedure, unless anybody in the Committee wants to add anything.

MR. NOLLEDO: The pertinent authority, like the President, may say that the national interest demands that there should be no exercise of the right over records involving foreign loans as has been the case. It seems to me that the citizens are denied the right to know what are the real terms and conditions entered into by our authorities with foreign countries. So, I am thinking that if one interprets this as referring to limitations on the substance, the right will have no meaning. It would become practically useless.

FR. BERNAS: Personally, I am not speaking for the Committee. I would have no serious objection to limiting this to procedure. But, perhaps, it is a matter which should be discussed at least on matters of national security. But, of course, that phrase is used sometimes to cover a multitude of sins and abuses.

MR. NOLLEDO: This is not actually a question. I am addressing this to all the members of the Committee, including the venerable Chairman, because I had two resolutions and I felt aggrieved that the provisions do not appear for reasons that I think are inappropriate. And I would like the Committee to reconsider, if possible, so that instead of reasoning out lengthily here for the inclusion of my resolution, the Committee may study these. The first resolution runs like this: No law shall be passed abridging the right of every peace-loving citizen to bear arms. This is similar to the Davide resolution because it seems to me that the reason is that we might be converted into Western cowboys in the country. I think that is an insult to the Filipino capacity and intelligence. It seems to me that those who have arms are the criminals.

FR. BERNAS: And I can assure the Commissioner that that is not my reason.

MR. NOLLEDO: I think it is the reason of the Chairman according to the papers.

And in the second resolution — I am just mentioning the resolution for reconsideration and Father Bernas might say that this pertains to the domain of legislation — I recommended the adoption of a provision that is found in the constitutions of most countries of Europe, particularly the West Germany Constitution and, correct me if I am wrong, the Constitution of Italy, that the state guarantees the right of asylum to foreigners who are denied basic freedoms in their countries and that these foreigners shall not be extradited. There are foreigners in countries with repressive regimes who are denied basic freedoms — the freedom of expression, the freedom of the press, et cetera — and if they ask for asylum in our country, the sponsor said that is only a matter of legislation and should not be included in the Constitution.

I beg to disagree because we have to sympathize with these people, we, having been victims of a repressive regime for about 14 years. These are the two resolutions I would like the Chairman and the members of the Committee to please reconsider.

Thank you very much.

FR. BERNAS: Thank you.

MR. RAMA: Madam President, I would like to ask the Vice-Chairman of the Committee some questions.

I was listening to the sponsor's arguments in favor of Section 22, particularly referring to the death penalty. In this particular section, excessive fine shall not be imposed nor cruel, degrading or inhuman punishment of the death penalty inflicted. Some of the arguments that Commissioner Bernas has set forth were a little sweeping and artful. For instance, he stated that the death penalty has not discouraged crime. May I know the basis for that statement?

FR. BERNAS: When some experts appeared before us and we asked them if there was evidence to show that the death penalty had deterred the commission of deadly crimes, none of them was able to say that there was evidence, conclusive evidence, for that.

MR. RAMA: I am curious. Who are these experts then — social scientists or penologists or what?

FR. BERNAS: Penologists.

MR. RAMA: Of course, we are aware that there is also another school of thought here, another set of experts, who would swear that the death penalty discourages crimes or criminality. Of course, Commissioner Bernas knows that never in our history has there been a higher incidence of crime. I say that criminality was at its zenith during the last decade.

FR. BERNAS: Correct, in spite of the existence of the death penalty.

MR. RAMA: Yes, but not necessarily in spite of the existence of the death penalty. At any rate, does the sponsor think that in removing the death penalty, it would not affect, one way or another, the crime rate of the country?

FR. BERNAS: The position taken by the majority of those who voted in favor of this provision is that means other than the death penalty should be used for the prevention of crime.

MR. RAMA: What about Commissioner Bernas? Does he feel very strongly that this should be included in the Constitution, thus shackle the hands of the legislature?

FR. BERNAS: My own perception is that we should include this in the Constitution because my fear is, if we do not do anything about this in a constitution, the Legislature will not do anything about it either.

MR. RAMA: For instance, in introducing this particular section, did Commissioner Bernas consider the violence

and the death penalties imposed by the past regime or the violation of human rights and this probably influenced his thinking into abolishing the death penalty?

FR. BERNAS: The main thing which persuades me is the respect which we must have for life. If I were a Justice of the Supreme Court who must affirm the death penalty, I would probably find it agonizing to be able to impose death, because I would see myself as too inadequate to be responsible for the total snuffing out of the life of an individual.

MR. RAMA: But the sponsor agrees with me that death penalty here is imposed by constituted authority and, as a matter of fact, governments send people by the thousands to death. In war, for instance, they are justified.

FR. BERNAS: War is a different thing from the execution of a death penalty, because war is a matter of defending the nation against people who are actually assaulting lives. In our particular case, we have the situation of a person who is already in custody and who is in no position to assault the life of anybody. The argument used is, his life is taken away precisely to prevent not him but others from assaulting the lives of citizens. But, as I said, there seems to be no adequate evidence that such a deterrent works.

MR. RAMA: In stating that there is no evidence that the death penalty would discourage crime, would the sponsor agree with me that perhaps the perception of people is more important than the theories or the opinions of experts in the sense that it might have been necessary or more important for the Committee to find out or to get a survey of what the people really think about this death penalty, whether it is discouraging or encouraging people to commit crime?

FR. BERNAS: I would agree with the Commissioner, if the theories were not based on perceptions, but the theories are themselves based on perceptions.

MR. RAMA: But there has not been any survey that the sponsor knows of regarding the perception of people, whether this discourages or encourages crime.

FR. BERNAS: Commissioner Garcia would like to say a few words on that.

MR. GARCIA: Actually, there has been authoritative studies done by Amnesty International and also by the United Nations in 1980. One source that I would like to quote is the study that Amnesty International presented last year which states that the comparison of crime rates in different countries that have retained or abolished the death penalty does not indicate that the threat of execution has been effective in preventing capital crimes. Studies on the death penalty indicate that changes in crime rates depend on many factors, apart from the existence of use of the death penalty. In fact, this brings out the conditions in society which, very often, lead to the commission of the crime and, therefore, enables a more modern approach towards penology which realizes that one has to look into the conditions which breed the crime and, at the same time, look into the fact that a man who has committed a crime has to be reformed through a more humane penal system. And I think, therefore, the stress and the view that both the person in jail and those in society take about crime is, in a sense, changed. The approach toward this problem becomes more humane.

MR. RAMA: In other words, we are really using theories to support this provision.

Thank you.

MR. LAUREL: Mga kasamahan, with the permission of my colleagues, I would like to express my support of the proposal to do away with the death penalty. In the same way, alam ninyo, hindi ako natutuwa sa doktor na ayaw ibigay sa Panginoong Diyos ang buhay ng isang pasyenteng gusto na Niyang kunin. They play God sometimes. I know of the case of a patient who could not hear, parang vegetable nang talaga, at dalawang taon na ay nasa

hospital pa. Kinukuha na siya ng Panginoong Diyos, ngunit palibhasa ay may kaya iyong pamilya, kaya patuloy ang paggagamot sa Kanya. Ito namang dating sistema natin, ayaw pang kunin ng Panginoong Diyos ay gusto na nating ibigay. Sapagkat hindi pa kinukuha, hindi pa namamatay. Samakatuwid, Diyos ang nagbigay ng buhay, dapat Diyos ang kumuha. Hindi pa naman kinukuha ng Diyos, ibinibigay na natin kahit sa papaanong paraan. Bakit natin papatayin ang tao? Kung may konsensiya rin lamang ang tao ay hindi maaaring hindi siya magsisi. Ang tunay na paghihirap ay maaaring panggalingan ng pagsisisi kung siya ay may ginawang masama. Di na siya dapat patayin kung talagang masama ang ginawa niya. Sa palagay ko, kapag pinatay ang tao, lalo lamang madadali ang kanyang paghihirap. Kapag under hard labor ang isang tao, mas lalo siyang mahihirapan. Para sa akin, ipaubaya na iyan sa Panginoong Diyos.

Mayroon din tayong sinasabi sa report na "death penalty already imposed shall be commuted to reclusion perpetua." Patuloy ang paghihirap nitong tao na sentenciada a muerte sapagkat buhay pa ay naghihirap na. At kung sakali namang talagang masama ang ginawa niya, huwag nating tapusin ang paghihirap sa pamamagitan ng pagpatay sa tao sa oras na di pa kinukuha ng Panginoong Diyos. Iyon naman ay sa aking palagay lamang.

Iba't iba ang ating palagay sa bagay na ito, kaya hirap na hirap tayong magpasiya. Pati ang Pangulo tuloy ay nakapagbibigay ng absolute pardon sapagkat naaawa rin naman. Kung minsan, maaaring magkamali ang tao in the imposition of the death penalty sapagkat kung maaaring magkamali sa pag-aabswelto, maaari ring magkamali sa imposition ng kamatayan. Kung mamimili tayo sa dalawang nagkakamali, kung sino ang pahihintututan natin, magaling pa iyong may kasalanan ang patatawarin natin kaysa walang kasalanan ang ating ipapapatay. Ito naman ay personal view ko lamang.

By the way, noong pinag-uusapan itong Bill of Rights, ako ay under protracted treatment by my dentist. Hanggang ngayon ay wala pa akong ngipin, kaya mahirap-hirap ang pagsasalita ko. Kaya ito ay pagkakataon ko naman to acknowledge publicly the splendid participation of the members of this Committee under the leadership of our learned President of the Ateneo de Manila, our colleague, the Honorable J.G. Bernas, of the Society of Jesus. Kaya pinasasalamatan ko siya at ang aking mga kasama dahil noon ay hindi ako pinakinabangang gasino at hindi ako nakialam dito sa Bill of Rights na ito. Nakasali lamang ako doon sa paggawa ng duties and obligations of the citizen na siya pa namang pinagkasunduan na huwag nang isama sa Saligang Batas. Allow me now to talk briefly about this matter.

Madam President, it is axiomatic that for every right there is a corresponding responsibility. This is a principle understood in every civilized society and embodied in Article V of the Constitution of 1973. Under the 1935 charter, which had a bill of rights but no bill of responsibility, many people felt that they could enjoy their liberties without discharging the obligations that were part and parcel of such liberties.

I imagine it was for the purpose of correcting that attitude that the framers of the 1973 Constitution saw fit to incorporate therein an enumeration of the duties and obligations of the citizens. The purpose, I suppose, was to impress upon the nation the undeniable fact that rights are inseparable from responsibilities.

The trouble, however, is that in specifying such responsibilities, the authors succeeded only in excluding many others no less important than those mentioned. Expressio unius est exclusio alterius, or to put it in more colloquial terms, the more particularized, the less said.

After considering all these facts, your Committee has decided not to include Article V of the 1973 Constitution in the fundamental law we are now framing. Perhaps we may incorporate elsewhere in the document the reminder that every right entails a concomitant responsibility to discharge it with due regard to the rights of others and subject to reasonable requirements and restrictions in the common interest. This can be incorporated in the Article on General Provisions.

Our thinking is that a separate article on the duties and obligations of the citizen is not really necessary as long as it is emphasized somewhere and in general terms only that one's rights can become more meaningful if they are enjoyed with a proper respect for the rights of others. We are therefore proposing the nonretention of Article V of the 1973 charter in the new Constitution.

MR. RAMA: I thank the Chairman of the Committee.

Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Rustico de los Reyes be recognized.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: Madam President, will the Committee yield to a few questions?

FR. BERNAS: Willingly. And, incidentally, if Honorable de los Reyes will allow me, babasahin ko ang mga pangalan ng makikisig na mga kasama natin.

The Committee includes Commissioners Colayco, Tadeo, Villegas, Bennagen, Bacani, Natividad, Padilla, Lerum, Rodrigo, Garcia, Sarmiento and Abubakar.

MR. DE LOS REYES: Madam President, during the public hearings of the Committee, it was said that at present there are 850 prisoners including women who are awaiting the implementation of the death penalty. Is this true?

MR. SARMIENTO: According to the Director of the Bureau of Prisons, there are at present 600 prisoners.

MR. DE LOS REYES: Six hundred?

MR. SARMIENTO: Yes.

MR. DE LOS REYES: And if the death penalty will be implemented, the state will practically be killing en masse 600 prisoners. Is that correct?

MR. SARMIENTO: That is correct.

MR. DE LOS REYES: One of the reasons advanced by some of those who are against the abolition of death penalty is that some parties, the offended parties or families of the offended parties and even law-enforcing agencies, might just decide to take the law into their own hands and there could be more salvaging and lawlessness. What does the Committee say to that argument?

FR. BERNAS: It is a possibility which we must face and, as a matter of fact, revenge would also be possible even in cases of erroneous acquittals. So, these are things which we must face, I think.

MR. GARCIA: Excuse me. In fact, the problem is a little different. In many countries of the Third World, specifically in Latin America, governments that have accepted the death penalty are, in fact, practicing what is now known as extrajudicial executions like disappearances and political murders. In Guatemala, for example, we now have 29,000.

The fact is, the tendency to take away lives specifically in its political context is taking a form of extrajudicial execution. I think that is more abhorrent, and we must avoid it. In Argentina, there were 30,000 disappearances. This mentality creates that kind of approach in solving these problems.

MR. DE LOS REYES: Let us go to Section 1.

No, by the way, I understand that there are some countries who first abolished the death penalty but later on reverted to its retention. And so, the suggestion of some is that although we abolish the death penalty in the Constitution, we should afford some amount of flexibility to future legislation. According to Commissioner Bernas, if we leave that to the legislature, the legislature will not do anything about it. In other words, the legislature will not abolish the death penalty. But suppose we reverse the situation by abolishing the death penalty in the Constitution, unless otherwise provided by law, so as to afford the state some amount of flexibility in the event that its abolition does not prove successful insofar as the prevention of crimes is concerned?

FR. BERNAS: I think that is a matter which can be considered during the period of amendments. But before we leave the subject, Commissioner Colayco would like to say something.

MR. COLAYCO: I would not like to embarrass our Committee, but I was one of the four who did not agree to the abolition of the death penalty. After the voting, I took a little time reading some books on the matter.

One of the most important issues raised in considering the matter of whether the death penalty should be abolished or not is whether the death penalty is a deterrent. Some of the books I have read make a distinction, and they agree on one point. That the mere fact alone that the death penalty is in the law books is probably not a sufficient deterrent. I suppose we have that situation in the Philippines. But they have made studies showing by their statistics that the actual execution does act, at least for the time being, to diminish the commission of offenses especially against persons, like murder.

I would like to read a short passage on that point. This is from the book of Mr. David P. Phillips, entitled:

Strong and Weak Research Designs for Detecting the Impact of Capital Punishment on Homicide.

As noted earlier, it is desirable to examine daily or weekly homicide statistics in order to detect short-term effects of capital punishment.

He is referring to most statistics which cite only yearly figures. Now he continues:

A search of the vital statistics collections of the library of Congress, the National Library of Medicine, and the British Museum revealed only one jurisdiction, England, that both practiced capital punishment and published weekly homicide statistics over a given period of time. The weekly homicide statistics for London from 1858 to 1921 were available for study.

A list of highly publicized English executions for the same period was generated from a standard encyclopedia of notorious murderers. Table 2 lists these executions, ranked by the amount of publicity each received, together with the number of homicides before, during, and after the week of its execution. The week in which the execution was publicized in the newspapers will henceforth be termed "the execution week" or "the experimental period." The week just before the experimental period and the week just after will be termed "the control period." It is evident that London in its control period is nearly identical to that of London in the corresponding experimental period, except for the presence of an execution in the experimental period. Thus, this procedure for choosing controls avoids the problem of dissimilar experimental and controlled periods encountered in other study designs.

Starting on the hypothesis, Mr. Phillips concludes that publicized executions produced a brief decline in homicides, that the more publicity given to the execution story, the more homicides decline. However, after graphing his findings, Mr. Phillips found that the dip in homicides just after execution is cancelled out by an equally large rise in homicides soon afterwards.

Mr. Ernest Van Den Haag, however, gives us a new evidence on the deterrent effect of capital punishment. In his

article, Mr. Van Den Haag cited the statistical study of Stephen K. Layson on the effects of executions on the murder rate. This 1985 study concluded that every execution of the murderers deters, on the average, 18 murderers that would have occurred without it.

Of course, these opinions are merely opinions and we will find probably in other books a contrary conclusion.

But I am calling the Commissioners' attention to the recent execution of two Australians who smuggled drugs into Malaysia. I think this is one area of criminality where an actual execution can deter the repetition of the same crime. I doubt if anyone would disagree that for now at least no one would think of doing what those two Australians did.

There are certain crimes which I think would require a deterrent like the death penalty; for instance, drug addiction. A drug distributor does not kill only one, but probably hundreds of people who fall and become addicted to the vice. This is something that nobody can deny. Our youth has increasingly become addicted to this. I am citing only one particular offense. So, I think the Malaysian experience is one evidence that, at least in certain areas of criminality we should keep the death penalty.

During our discussions in the Committee, four of us suggested the idea of Commissioner de los Reyes which was: to limit as it is so that the legislature can study the question further.

I came across a study or a report of the discussion in the English Parliament for about ten years in the 1950's and the suggestion was to suspend the death penalty for a certain period during which the legislature or parliament would make its own studies whether to finally abolish it or keep it in the books.

I thank you.

MR. DE LOS REYES: Thank you for that very informative dissertation, Commissioner Colayco.

During the past regime, one of the problems raised was, when the privilege of the writ of habeas corpus was suspended, some persons were denied bail. Is there anything in the report of the Committee which states that even if the writ of habeas corpus was suspended, a person can still be entitled to bail?

FR. BERNAS: There is nothing in the committee report to that effect, but if I remember correctly, in the report of the Committee on the Executive, one of the provisions is that the suspension of the privilege of the writ of habeas corpus does not suspend the right to bail.

MR. DE LOS REYES: So, the Committee will have no serious objection if we incorporate the same concept in the Article on the Bill of Rights because I think it should properly be placed here rather than in the provisions on the Executive?

FR. BERNAS: I personally would have no objection to that, so that then we could relinquish it or take it away from that Article.

MR. DE LOS REYES: Yes.

I notice that Section 22 of the committee report speaks of excessive fines, cruel, degrading or inhuman punishment, et cetera. This provision refers to punishment after conviction. May I know why there is no provision for inhuman, degrading and cruel treatment before conviction and during detention since that is one of the problems of prisoners? They are already practically being punished inhumanly while under detention. Would the Commissioner consider an amendment in the future that will cover such matter?

FR. BERNAS: Commissioner Sarmiento would like to say something We consider that adequately covered in Section 22. We are talking about penalties which presuppose conviction. But Section 21 deals with situations

before a penalty is imposed, even before a trial begins, or even before charges are filed.

MR. DE LOS REYES: Yes, but there is nothing in Section 21 which says that detention prisoners shall not be subjected to cruel, degrading or inhuman treatment.

FR. BERNAS: Lines 15, 16 and 17 state: "No force, violence, threat or intimidation shall be used against him."

MR. DE LOS REYES: Is this already covered or does that refer only to obtaining confession?

FR. BERNAS: The reason we separated Section 20 from Section 21 is that we want Section 21 to be more general than just for the purpose of preventing involuntary confessions. The Commissioner will notice that Section 20 is the general statement against self-incrimination. We have separated it as an article by itself so as to prevent the impression that those matters mentioned in Section 21 are only for the purpose of preventing self-incrimination. It is for the general purpose of more humane treatment.

MR. DE LOS REYES: The reason I ask this is that I think the phrase "No force, violence, threat or intimidation" refers to the physical infliction of injury to a person but does not cover matters involving inhuman conditions in prison and psychological torture. There are many instances where, because a prisoner has already been staying in jail or in a congested prison, he is forced to admit his guilt even if he is not guilty.

FR. BERNAS: I think the Committee will gladly entertain well-worded amendments to implement precisely that idea, if this is found to be unsatisfactory; but certainly it is the intention of the Committee to extend protection to people thus situated.

MR. DE LOS REYES: It says here: "These rights cannot be waived except in writing and in the presence of counsel." That means that before an accused or a suspect waives his right to counsel, that waiver itself must be with the assistance of counsel.

FR. BERNAS: That is correct.

MR. DE LOS REYES: That could be implemented in Metro Manila where there are several lawyers but there are several towns in our province, particularly those near the mountains, where one cannot find any lawyer. The lawyers are concentrated in the capital of the province. Will the Committee please inform us how we will go about the implementation of this provision in those cases?

FR. BERNAS: Commissioner Colayco will answer.

MR. COLAYCO: That particular problem was raised during our discussion of this section. It is true that in the provinces, especially those in the hinterlands, the problem of enforcing these protective measures that are provided for in Section 21 may appear to be difficult. But we must remember that under our present system of administration, there are executive judges, even executive municipal judges, who can easily take care of this problem in the barrios because under our law now we have municipal judges who are attending to several small towns at the same time. Also, there will be no problem in the capital because we have the Regional Trial Court's executive judge.

MR. DE LOS REYES: So, does the Commissioner mean that the judge himself in that town, where there are no practicing lawyers, will assist the accused in waiving his right to confess?

MR. COLAYCO: No. What I mean is that the judge can take care of appointing an attorney de officio. Surely, he knows who are the practicing lawyers in the area and, of course, the national government really will have to pay more attention to this particular problem. In the meantime, we believe that this is a necessary protection for the accused since the Commissioner mentioned the bad practice of the local peace enforcement officers, including the

PC people, of abusing the rights of the suspects during detention. Besides, we have to do something about this even if it may be difficult to implement this in the remote areas.

FR. BERNAS: I might add that implicit in this provision is a command to the state that, in a locality where it is really impossible to have a lawyer, the state is obliged to bring the person detained to some other place where there is a lawyer.

MR. SARMIENTO: May I add something to that. When we included this provision, we were thinking of two Supreme Court decisions; namely, on *People vs. Galit* and *Moncupa vs. Morales*. In those two cases, the Supreme Court ruled that before an accused can waive his rights, he should be assisted by a lawyer.

MR. DE LOS REYES: I read some observations and recommendations by Commissioner J.B. Laurel, Jr. which says that there should be some rearrangements of the articles. This could be taken care of by the Committee on Style such that the provision where the accused is still under custodial investigation should be placed ahead of that provision where the accused is already undergoing criminal prosecution. I have just called the attention of the honorable Commissioner that that observation of Commissioner Laurel could be taken into account.

My last question is about the right to exercise the power of eminent domain, Section 2, lines 11 and 12. Under the present law, upon deposit of the government of 10 percent of the assessed value, it can take over the property of a private individual and the private owner has practically no right to place the accurate value of his property, if he places an amount considered by the state in expropriating the property. On the other hand, if he places the correct amount, the state makes its own assessment.

Section 2 states that private property shall not be taken for public use without just compensation. What does the Committee have in mind as to the meaning of "just compensation"?

FR. BERNAS: In restating this, the Committee precisely intends to rely on existing jurisprudence on this. "Just compensation" is a concept which is not easily defined. Generally, jurisprudence defines it as the market value of the property; that is, the price which the property will command if the seller is not bound to sell and the buyer is not bound to buy. So, necessarily, it is a very flexible concept. It is a question of fact which alternately must be decided by a court. My own opinion on this is that, even if the law makes a preliminary assessment of what a just compensation is — for instance, that law which uses as a norm the amount in the tax declaration or the assessment, whichever is lower — that is only *prima facie* assessment. In the end, the final determination of whether or not the compensation is just will have to be made by the court.

MR. DE LOS REYES: Not in accordance with the existing presidential decree on the matter, which is oppressive and arbitrary?

FR. BERNAS: Precisely. What I am saying is that the existing presidential decree is not binding on the courts as far as the fixing of the just compensation is concerned because it is a question of fact which is always subject to review by the courts.

MR. DE LOS REYES: Thank you, Madam President; and I also thank the Commissioner.

MR. LAUREL: Commissioner Bernas is correct; just compensation is determined by the court. It is the fair and full equivalent of the sustained loss. As the Reverend Father said, it would be the cost to one who would sell it, and also, we have to take into account the cost it has to one who is under no obligation to sell it. But that is a question of fact which has to be determined on a case-to-case basis.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Regalado be recognized for his speech en contra.

THE PRESIDENT: Commissioner Regalado is recognized.

TURNO EN CONTRA

OF COMMISSIONER REGALADO

MR. REGALADO: Thank you, Madam President.

I wish to speak against Section 22 of the committee report on the abolition of the death penalty.

Madam President, in 1949 the British Royal Commission on Capital Punishment was created only to recommend to the Parliament whether or not the death penalty should be abolished. It took four years for the commission to submit its report in 1953. In 1957, a special commission on the death penalty was created by the State of Massachusetts only to submit a recommendation to the State Legislature on whether or not such a penalty should be abolished. It took two years for that special commission to submit a majority and a minority report. In this honorable Commission, it took only a few committee meetings to recommend the abolition of the capital punishment; and if approved by this Commission, it would have taken less than two months to enshrine that policy, not only in an ordinary statute but in the very fundamental law of the land.

It is, therefore, my respectful submission that this highly controversial issue which has been debated on for centuries in different fora and sectors, should merit a more prudent and cautious treatment. Since the vagaries of thought, the challenges of change and the unpredictability of socioeconomic and political ambiance would require more flexibility in governmental response to this problem, this matter should be addressed to the legislature and not to this Constitutional Commission. I need not point out the obvious advantages of a recourse to the former.

At any rate, since we are expected to vote on the resolution on the floor, I am constrained to explain my opposition to the proposed abolition of the death penalty which would result in life imprisonment as the maximum penalty that can be meted out in our criminal justice system.

Parenthetically, even the term "life imprisonment" or reclusion perpetua is in itself a misnomer and is deceptive to the public. Such a penalty has a duration of only 30 years, and with the grant of good conduct allowances under Article 97 of the Revised Penal Code, the total service of sentence, despite the death penalty having been imposed, would actually entail only 18 years, 2 months and 12 days, which is much less than the duration for reclusion temporal.

If we were to consider the special time allowances for loyalty and the special workmanship allowances and commutation of sentence, the time to be served would be further substantially reduced.

Allow me now to state the reasons for my objection, for which I do not claim responsibility but are culled from my own researches, specifically on the articles written by the Rev. S. Otley Reyes of the Society of Jesus; Dr. Robert Oswald, psychiatrist of Frankfurt University; Mr. Thomas McHugh, New York State Commissioner of Correction; and the Most Rev. Thomas Riley, Auxiliary Bishop of Boston.

First, on the aspect of deterrence: Current empirical data are inconclusive as to the deterrent effect of capital punishment, although it has been shown that the death penalty, if properly imposed and properly executed, can be an effective deterrent under certain conditions. On the other hand, there is likewise no empirical evidence as to the deterrent effect of life imprisonment which is now being advanced as the acceptable alternative to the death penalty.

Does the death penalty really serve as a deterrent? According to the Most Rev. Thomas Riley, whom I have quoted, all hums beings, including those suffering from some mental aberrations fear the loss of their lives. The

instinct of self-preservation is so fundamental that the death penalty cannot but have a powerful determining influence on the voluntary direction of human activity.

Second, on the theory of rehabilitation proposed by some in favor of only imprisonment: There is statistical evidence to prove that punishment by imprisonment alone does not achieve the purpose for which it ostensibly exists. Such punishments are never effective for purposes of rehabilitation. Few individuals, if any, actually benefit from penal confinement. Correctional institutions are merely relics of the thinking of the post-Newgate era in the 19th century, when it was postulated that confinement would automatically produce reformation. Our ideas have changed over the years, but our prisons have not. The subhuman conditions in our penal institutions have repeatedly been taken judicial notice of by our own Supreme Court.

Third, on the theory that only God, who created human life, has the right to take it away: Bishop Riley says that the state derives its authority ultimately from God and such authority is exercised in His name. It is not inconsistent to hold that the state claims such right in circumstances in which this would clearly appear to be in accord with God's own will.

Fourth, on the contention that it is beyond the authority of the state to take the life of a human being: The right of each man to his life is anterior to the existence of the state. Where, however, a man through his own fault has endangered the right of the state to carry on its divinely appointed function, he has forfeited his God-given right to life, and the state should likewise not be deprived of an indispensable means of protecting society from further and more serious harm.

Fifth, on the danger of abuse or error in imposing the death sentence: We should not allow some abuses connected with the imposition of capital punishment to obscure our understanding of the considerations which justify this right in principle. We should not argue that because the death penalty has sometimes been imposed for minor crimes, there can never be crimes of major proportions for which it would not be a necessary and indispensable means for the protection of society.

There is such a thing today as organized crime; it is a big business. Those who are engaged in it are highly intelligent, with highly competent counsel, and they are completely unscrupulous. They do not hesitate to plan and commit murder in cold blood when the need arises. We should not identify the death penalty with the gruesome methods which have been employed in particular situations or by individual executioners in other countries, because that is not true in the Philippines. The only way the death penalty can be carried out in the Philippines, by the fiat of the court and as provided by law, is by electrocution.

We should not infer from the fact that hatred or vengeance is sometimes associated with the infliction of capital punishment, that such motive constitutes the only reason for which the death penalty could be demanded or justified. The supreme authority of the state carries the right to inflict the death penalty when it can be shown to be a necessary means for protecting society against crimes which endanger its very foundation.

Sixth, on whether life imprisonment can afford sufficient protection to society: crimes of all descriptions are increasing numerically, and with greater efficiency of methods by which these are perpetuated. Respect for the moral law is diminishing; we have not yet reached the stage of moral development at which it would be prudent to remove a safeguard judged to be necessary by so many who are charged with the heavy responsibility of protecting human life against criminal attack.

Seventh, on whether capital punishment is wrong, because the death penalty is irrevocable and thus it is possible that a miscarriage of justice may send an innocent man to jail: The danger of convicting a person for a crime which he did not commit, while not absolutely improbable is, under existing circumstances, extremely remote.

We have enough safeguards in our substantive and procedural laws applied by the judiciary, aside from the power of the Chief Executive to grant pardons, reprieves and commutations.

There is far greater danger that a person who is really guilty of murder or some other equivalent heinous crime may escape the punishment which the law decreed for him. The mere possibility of error cannot be urged as a reason against the right of the state to inflict the capital punishment. If errors are ever made, this is the necessary price to pay within a society which is made up of human beings and in which authority is exercised not by angels but by men. It is not brutal or unfeeling to suggest that the danger of miscarriage of justice must be weighed against the far greater evils for which the death penalty aims to provide an effective remedy.

As of 1959, there were only some States in the United States which did not provide for the death penalty: Alaska, Delaware, Maine, Minnesota, and Wisconsin. Michigan, originally had no capital punishment since it was incorporated in the Union in 1847, but it provided for the capital punishment in 1959.

In the Philippines, and I am proud of our law on this matter, we provide for the death penalty only in certain extreme situations and for very serious cases. Under the Revised Penal Code, specifically before martial law, we had only 10 felonies punishable by the death penalty; namely, treason, correspondence with the enemy during times of war, qualified piracy, parricide, murder, infanticide, kidnapping, robbery with homicide, rape with homicide or with the use of deadly weapon or rape by two or more persons resulting in insanity (which fall under qualified rape), and finally arson resulting in death.

Under special laws, we only have five capital offenses; namely, espionage, certain subversive acts, certain acts regarding narcotics, certain acts inimical to civil aviation, and carjacking coupled with the killing of the owner, the driver or an occupant of the vehicle.

Of course, it is true that under the former regime, so many acts were considered criminal and the death penalty was imposed even for minor offenses, but that was the fault of the times, not the fault of the law. That was spawned by a period when so many acts were considered criminal with the hope that the death penalty would deter the commission of offenses against the powers that were. Under such situations, capital punishment could not be a deterrent, because it was not commensurate to the crime involved; it was politically inspired, or at times not carried out for political considerations. That is why some say that considering the proliferation of crimes during martial law, which was sought to be avoided or minimized by the imposition of the death penalty even for minor offenses, the capital punishment was not a sufficient deterrent. No, those were abnormal times, because if people are pushed against the wall by unreasonable and Draconian laws, the death penalty would not be an effective deterrent. But, if the death penalty were to be imposed and properly executed for serious crimes with all the safeguards as they do it in Thailand where the criminal sentenced to death is brought back to the very place where the crime was committed, and is executed there, I am almost sure that while the death penalty will not be a complete deterrent, it will have very substantial deterrent effects.

Thank you, Madam President

FR. BERNAS: Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

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

THE PRESIDENT: Commissioner Treñas is recognized.

MR. TREÑAS: Madam President, will the honorable Commissioner Bernas answer a few question?

FR. BERNAS: Willingly.

MR. TREÑAS: Section 21, line 19 on page 4 provides and I quote:

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

Is this rule absolute?

FR. BERNAS: Yes, the way it is worded.

MR. TREÑAS: Therefore, the confession or admission obtained in violation of this rule cannot be presented in any kind of proceeding.

FR. BERNAS: Yes.

MR. TREÑAS: How about in a proceeding against the person who violated this rule?

FR. BERNAS: Give us a little time to think on that, because the intention here is to protect the accused. So, as far as using it against the accused is concerned, it is absolute.

MR. TREÑAS: No question?

FR. BERNAS: None. Now, can it be used against the person who violated the provision . . .

MR. TREÑAS: Because the wording seems very clear and admits no exception. And, therefore, if it is used against the person who violated the rule, he can raise the prohibition under this provision.

FR. BERNAS: What can be used against the person who violated the rule is not the substance of the confession but the manner of obtaining the confession.

MR. TREÑAS: But the confession must still be used to prove the violation.

FR. BERNAS: The important thing is the manner the violator of this provision did it. What is important is the manner of obtaining the confession, not the content of the confession or admission.

MR. TREÑAS: Yes, but in proving the manner, necessarily we must prove the confession which was secured in violation of the rule.

FR. BERNAS: What is admissible in evidence is that the person did something in violation of this provision. What is not admissible is the content of what he said.

MR. TREÑAS: Can we clarify this during the period of amendments?

FR. BERNAS: We will entertain amendments at the proper time.

MR. TREÑAS: Just one more question on Section 2, page 1, lines 11 and 12. The term "just compensation" was already discussed. Unfortunately, I was out during the discussion. The term has been interrupted by trial courts in relation to the presidential decree mentioned by the Commissioner. May I know the interpretation of the Committee of "just compensation," taking into account that this is the same provision in both the 1935 and the 1973 Constitutions which have been modified by that presidential decree?

FR. BERNAS: I go on the principle that constitutional principles are not modified by decrees. Decrees must always be in conformity with constitutional principles. So, whatever is said in a presidential decree, or in a statute, for that matter, must always be measured against the constitutional principle. If a decree or a statute is in violation of the constitutional principles, then the decree is invalid. As I stated in my previous explanation, the decree

defines "just compensation" as either the assessed value of the property or the amount stated in the tax declaration, whichever is lower. In other words, the presidential decree made a prima facie determination of what "just compensation" is, but that is subject to review by the courts according to existing principles on the matter.

MR. TREÑAS: But the courts have uniformly taken that as the guide to determine "just compensation." So, for the record, insofar as our proceedings are concerned, since we are enacting or promulgating this new Constitution, may we hear from the Committee its interpretation of "just compensation"?

FR. BERNAS: Anybody can contradict me if I am wrong. I think I will be speaking for the Committee when I say that whatever determination there may be in a decree or a law of what just compensation is, is always subject to review by the courts.

MR. TREÑAS: So, what should be the interpretation of "just compensation"?

FR. BERNAS: We consider "just compensation" to be the market value of the property; that is, the value which the property will command in the open market, or the price which the property will command when the seller is not bound to sell and the buyer is not bound to buy. Both of them are free.

MR. TREÑAS: With that interpretation, is there any need to explain, even briefly, the meaning of "just compensation" in Section 2 to guide courts in the future?

FR. BERNAS: I think the guidance of the courts can be done in law schools and decisions. In my judgment, a constitutional provision is not necessary.

MR. TREÑAS: Thank you very much.

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

THE PRESIDENT: Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID: Madam President, will the sponsors yield to a few questions?

FR. BERNAS: Willingly.

MS. ROSARIO BRAID: On page 2, Section 6, lines 13 to 18, what does the phrase "the right of the people to information on matters of public concern" mean? What does this include?

FR. BERNAS: Anything that affects public interest.

MS. ROSARIO BRAID: My concern is that in the past this concept was not clearly understood as evidenced by the fact that most of our information systems have not attended to what we call the right of people to information on matters of public interest. And I refer to information needed for survival, information to serve basic needs, for productivity, agriculture, industry, health and education which is woefully inadequate particularly in the electronic media. So, I would like to expand this concept to include the right to communicate and the need for adequate, accurate and balanced information. I feel that we are suffering from very great disparities in information and knowledge where so much information is concentrated in the center while the rest of the country is suffering from information deprivation. The other concept is the "right to communicate" which does not seem to be included here.

As we all know, during the past decade, there has been a clamor among developing countries for a new information order. This concerns the rights of people, particularly those who are left out to demand the kinds of information they need. The present provision protects people's right to receive but not to initiate communication. Hence, in the spirit of a participatory democracy, we would like to reinforce this concept by including two-way

communication or two-way interaction.

We now go to Section 9 which states: "No law shall be passed abridging the freedom of speech, or of the press," et cetera. I would submit that this section has evolved out of our libertarian concept of the press based on liberal democracy. Would the sponsor agree that this provision protects the rights of a small minority, those who are already well-informed, the elite who live in urban areas and who have access to newspapers, television and other media? But we also know that we have a society where 70 percent of our population is not only below poverty line but also information-deprived. We therefore, seek for a new provision which would recognize the need to lessen these information disparities which would mean new structures favorable to the poor and the disadvantaged.

I would also like to comment on all the provisions because I feel that most of these are on political rights and are not specifically skewed to the needs of the large majority who needs protection and adequate opportunities for active participation. I know that the sponsor may probably think that this should be contained in the Article on Social Justice, but I hope some of these rights of the poor and the disadvantaged would also be contained in the Bill of Rights, such as the rights to education, food, sound and clean environment and health.

Thank you very much.

FR. BERNAS: Let me just comment on that. As I said in my sponsorship remarks, the principal concern of the Bill of Rights is strictly on the traditional freedoms of liberal constitutionalism. The principal characteristic of these traditional freedoms is that they guarantee freedom from the state and protection against the state, and they do not need any further implementing action by the legislature. They are limits on the legislature and every other official person or body. I mentioned this because in recent years, largely through the influence of socialism and with the abundant help from the Popes and from communicators like us and so forth, there have arisen what are called social and economic rights. In the scheme of our work, I consider these social and economic rights as principally the concern of other committees, particularly of the Committee on Social Justice. What distinguishes these new rights from the traditional liberties in the Bill of Rights is that, in the strict sense, they are not rights which operate without implementing legislation, but rather they are more properly "claims" or "demands" on the state. They need implementing action by the state. Without implementing action, they generally cannot be enforced against anybody by judicial action. So, what we are dealing with are those which are operative by themselves and do not need implementing action. We do not wish to steal the thunder of our other committees.

MS. ROSARIO BRAID: But is the Commissioner willing to expand this concept? We did not include this concept in the General Provisions because we thought it would be better to expand the concept in this particular provision.

FR. BERNAS: My own thinking is that those affirmative commands of the state to do something are better placed elsewhere.

MS. ROSARIO BRAID: Thank you.

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

THE PRESIDENT: Commissioner Rodrigo is recognized.

MR. RODRIGO: Madam President, there is still a long list of those who want to interpellate, and so I shall limit myself to just one point and that is on Section 4, page 2. This is a reproduction of the provision of the 1973 Constitution except for the deletion of the word "or" on line 4 between the words "court" and "when." So, the 1973 Constitution provides:

The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or

when public safety and order require it.

The word "or" has been deleted, so the proposed section reads, "lawful order of the court when public safety or order requires otherwise."

So, under the 1973 Constitution, an intelligence agency of the army can bug a telephone without violating that provision?

FR. BERNAS: Under the 1973 provision, yes.

MR. RODRIGO: But under the proposed Constitution that cannot be done.

FR. BERNAS: It cannot be done.

MR. RODRIGO: It can be done only upon a previous Order of the court.

FR. BERNAS: Yes.

MR. RODRIGO: Regarding that mini coup d' etat or, more accurately the coup d' hotel at the Manila Hotel, I read in the papers about a certain telephone call from Hawaii and it seems somebody listened to the telephone conversation. I do not know what the message was.

Under the 1973 Constitution, if that telephone conversation were recorded, the tape could be used as evidence.

FR. BERNAS: Yes.

MR. RODRIGO: If this proposed provision in the proposed Constitution were approved and would be in effect, that conversation could not be used as evidence.

FR. BERNAS: It cannot be used.

MR. RODRIGO: Will this not hamper the intelligence work of our Armed Forces and of our government to ward off subversion and rebellious plots against the government?

FR. BERNAS: I think that the matter can be handled within the limits of this provision. For instance, in the United States where there is an Anti-Wiretapping Act, it is possible to obtain authorization to tap conversations. but the requirements of probable cause and particularity of description are modified to suit the circumstances.

MR. RODRIGO: Yes, the Commissioner is referring to the Anti-Wiretapping Act of the Congress of the United States. But if the United States Constitution had a provision like the proposed provision, said Congress could not have enacted an Anti-Wiretapping Act which authorizes wiretapping in certain cases, except with court authorization.

FR. BERNAS: No. What I am saying is, for instance, in the case of United States v. United States District Court of Eastern Michigan, the question was: "Since wiretapping is prohibited, under what circumstances could wiretapping be done?" The answer given was: "Upon order of the court." Now, what are the requirements of the court for the issuance of an order? The general requirement for a warrant is that there must be probable cause and some particularity of description.

Let us take the residences of known gamblers as an example. It is possible to obtain an order for the tapping of their telephone conversation. So, the problem is: How do we solve the problem of particularity of description when we do not know what will go through the wire? According to the last American case I read, the court specified the subject matters which may be tapped.

In our particular case, for instance, if there is a reasonable ground to believe that General So-and-So is in touch

with agents abroad, it would be possible to obtain an order under this provision for authority to tap the telephone of an individual and to record and use in court matters transpiring on a particular subject like coup plots and similarly related things.

MR. RODRIGO: But is a court order necessary all the time?

FR. BERNAS: Under this provision, yes.

MR. RODRIGO: Can our legislature not depart from this? In certain cases, say, for example, the intelligence officers of the Armed Forces, can they wiretap without a court order?

FR. BERNAS: Under this provision, no, and this modification of dropping the two-letter word "or" was precisely put in there because of our experience of the past 12 years where this was so easily abused.

MR. RODRIGO: In matters involving national security or public order, sometimes things happen very fast, like the coup d' hotel. There was no more time to go to a judge to ask for an order. In the case of the telephone call from Hawaii, somebody happened to listen in, and if what was said was something seditious, this fellow who listened in and heard what was said could not testify in court. Is that it? He could not testify because he did not first obtain a court order before he listened in?

FR. BERNAS: The matter cannot be used in court against the persons who may be involved in the coup, but it may be used by the security forces so they can act upon it, and take the necessary preventive measures.

MR. RODRIGO: Just one more question. In Section 4, the Committee removed the word "or" before the phrase "when public safety or order requires." Is that regarding privacy of communication and correspondence?

FR. BERNAS: Yes.

MR. RODRIGO: On the other hand, Section 5 states:

The liberty of abode and of changing the same and of travel, within the limits prescribed by law, shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

A portion of this Section 5 uses a very similar phrasing as in Section 4. Why did the Committee not remove the word "or" before "when"?

FR. BERNAS: I am glad the Commissioner asked that question. As I recall, he was the one who recommended that we should not change it. So, perhaps he is in the best position to explain this.

MR. RODRIGO: Yes. As a matter of fact, I was unhappy even about the removal of the word "or" in Section 4. That is why I recommended not to remove "or" in Section 5. But by that time the word "or" in Section 4 was already removed.

FR. BERNAS: I might say that the subject matter is different. Section 4 deals with communication, speech and so forth, whereas the other section deals with physical movement. So, there is a difference there.

MR. RAMA: I ask that Commissioner de Castro be recognized.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Madam President.

This is still on page 4, Section 22, on the death penalty. With the complete dissertation made by Commissioner Regalado, I cannot add anything more except a few experiences which I would like to convey to the honorable

Members of the Commission. To me, this is a very vital subject matter which involves those who commit crimes and those who enforce the law.

Ako ay natuto ng ilang pananalita kay Speaker Laurel na aking kaibigan. Una, ang sabi niya, "Kinukuha na nga ng Panginoong Diyos itong lubhang mga mahihinang may sakit, ayaw pang ibigay nitong magagaling na doktor." Then he said, "Ayaw pang kunin ng Panginoong Diyos, ibinibigay na ng estado," referring to those who are to suffer the death penalty. Ang sabi ko naman, "Ayaw pa namang ibigay ng tao iyong buhay niya (the victim), bakit naman kinukuha noong isa (the criminal)?"

I had a very bad experience during my early teens. My neighbor, a widower, was robbed and murdered after winning a few pesos from gambling the night before. He had two children — a small boy and a small girl. The suspect was tried for robbery with homicide and was sentenced to death by the lower court. The Supreme Court, on review, reduced the penalty to reclusion perpetua. As Commissioner Regalado said, reclusion perpetua is not forever; it is for about 30 years. This man was given a pardon after 25 years. By that time, the boy and the girl were already in their mature age, about 30 to 32 years old. The son of the victim attempted to kill the murderer of his father. But he failed, and was caught; he was put to jail. The girl, who was already full-grown, saw her brother in jail. She also attempted to kill the murderer of her father but again, was unsuccessful. She was put to jail for several years. Talagang hindi pa mamamatay iyang murderer na iyan. Ayaw pa siyang kunin. I asked myself where justice is in this case.

During my few years in the National Police Commission, I travelled and visited many police agencies all over the world, in Europe, particularly in England, and also those in the United States. I talked to many penologists on whether or not there should be a death penalty. They were divided on this; some disagreed; some agreed. And as Commissioner Regalado said, it took a Massachusetts Commission two years to study this matter.

I am hoping that this Commission will not take three session days to decide whether or not to abolish the death penalty. I would request my fellow Members of the Commission to think over this question very well because it involves many things. I will still go for the recommendation of Commissioners de los Reyes and Regalado that this matter be referred to the National Assembly for further study.

Thank you.

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

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

I was jarred the moment I read Commissioner Bernas' Section 1. He used a very descriptive phrase which is grating to lawyers. I am referring to the phrase: "The right to life extends to the fertilized ovum." I really do not know the meaning of "fertilized ovum." Will the Commissioner be kind enough to explain this particular phrase to us since it relates to the word "person" under Section I of the Article on the Bill of Rights?

FR. BERNAS: The question really contains two questions: (1) What is the meaning of a fertilized ovum? (2) Is the fertilized ovum — whatever it is — a person which is a subject of rights? How do we describe a fertilized ovum? I wish we had a physician here; I, myself, am not happy using this phrase.

MR. SUAREZ: If the Commissioner is not happy using this phrase, will he join me in seeking the deletion of that phrase "fertilized ovum" at the proper time?

FR. BERNAS: I will join efforts to find a more felicitous phrase.

As I said, the main idea here is that we want to stop the Philippine Supreme Court from adopting the American doctrine on abortion. This American doctrine on abortion is based on a similar constitutional provision on due process, and, as the doctrine now exists in the case of *Roe v. Wade*, it, in effect, says that during the first two trimesters or the first six months of conception, abortion can be allowed anytime, provided that the method used will not endanger the mother. Abortion can be allowed, anytime, even if it is not medically needed for the mother. The only condition is that it should not endanger the life of the mother. It is only after the second trimester that the life of the fetus begins to be considered as against the life of the mother. That is the whole purpose of this.

MR. SUAREZ: In other words, it is anticipatory in character.

FR. BERNAS: Yes.

MR. SUAREZ: But does the term "fertilized ovum" with reference to the first sentence of Section I refer to a person? In other words, is the fertilized ovum already elevated to the category of a person as to enjoy a constitutional right? Is that the meaning?

FR. BERNAS: My own thinking would be that it is not a person yet. That is my own thinking, so that perhaps this whole sentence must be modified to express it in such a way that it is not an assertion that this begins to become a person from the very first moment or nine months before birth. As I said, I am in search of a proper way of expressing this. Perhaps you could say "protection of life should extend to the fertilized ovum."

MR. SUAREZ: Be that as it may, when we give unto the fertilized ovum the right to life and that life is killed, would the Gentleman consider the perpetrator an offender susceptible to the crime of murder?

FR. BERNAS: If the Gentleman asks me, even under the Penal Code, that would not be murder but abortion.

MR. SUAREZ: Because when one deprives a person of his or her life in a deliberate malicious way, he would be charged with the crime of murder.

FR. BERNAS: My understanding of the law on homicide and murder is that if one deprives a person who is already outside the womb of life, that is when there is murder or homicide. But if one deprives somebody of life who is still in the womb, it would be abortion. Perhaps Commissioner Padilla could help me out on this.

MR. SUAREZ: That is from the criminal aspect; let me go to the civil aspect. Would the Gentleman give a fertilized ovum the right to succession?

FR. BERNAS: No, that is not covered here.

MR. SUAREZ: Because the word "person" here refers to life, liberty or property, and so the Gentleman would deny unto this fertilized ovum the right to liberty and the right to property?

FR. BERNAS: Yes, it cannot do much as far as physical liberty is concerned because wherever his mother goes . . .

MR. SUAREZ: The Gentleman would not be discriminating against the fertilized ovum?

FR. BERNAS: I would be; but the law against discrimination recognizes real differences, and I think there is a very real difference between an unborn child and a born child.

MR. SUAREZ: I have a number of questions more to address, but may I reserve these at the proper time.

FR. BERNAS: Since I do not want to monopolize this, I think Bishop Bacani, member of the Committee, would like to say something about the original proposal.

BISHOP BACANI: The formulation reached by the Committee was "fertilized ovum," to precisely define what we meant. And it will be brought forward in another committee report that the right to life begins with conception. That is meant to explain what is understood on the committee report by the word "conception." The Gentleman was asking whether this is a human person. That is not the assertion yet of this section. But what we do assert is this, that this is human life already. If I may be allowed to read the results of the report by Fr. Robert Henley, who is also a Jesuit like Fr. Bernas, it seems they are in all camps. Let me just read this into the record. He says:

Specializing as it does in fetal physiology, Georgetown University, probably more than almost any other university, is aware of the biological facts regarding the beginnings of human life.

From the moment of conception a new biological entity exists. The entity cannot be considered as physically identical with the mother's body. To consider the matter broadly, there is no essential difference between an ovum fertilized within the body and an ovum fertilized outside the parent's body or rejected in an egg or emerging undeveloped, as in marsupials, in an external pouch. To destroy this entity is to destroy an existing life. Since this life entity is clearly within the development of the human species, there is obviously nothing added on a human being. Its destruction is the destruction of human life. Murder cannot be justified by a legal fiction.

So, I just want to read that into the record.

FR. BERNAS: I think Commissioner Padilla wants to say something.

MR. PADILLA: Madam President.

THE PRESIDENT: Yes, Commissioner Padilla is recognized.

MR. PADILLA: My humble name was mentioned and I would like to state that under the Civil Code, a fertilized ovum is not yet a person. However, a fertilized ovum may have the right to life. That is the reason why the Revised Penal Code penalizes the crime of abortion. The Penal Code is quite strict because even if the abortion is not through violence, even if it is with the consent of the mother or the grandparents, it is still penalized. Even if the intention or the purpose is to conceal the dishonor of the mother because she has become pregnant without the identity or much less the marriage of the father, that circumstance is only mitigating. So this matter is fully covered by the Civil Code, not only the crime but also the penalty of punishment of it as a crime against persons, and also includes infanticide, in case the baby is born but is killed within three days. These are all penalized and are covered already by the Civil Code and the Penal Code. There seems to be no need to place it in the Constitution. Many a time Commissioner Bernas has said that is proper in legislation. So, why should we make any exception to fertilized ovum? Even the controversial issue of the death penalty, is the proper domain of legislation.

MR. ROMULO: Madam President, just a question to Commissioner Padilla.

Suppose a fertilized ovum is done outside the womb, that is, on a test tube and the nurse should accidentally spill it, is she guilty of abortion?

MR. PADILLA: The Gentleman used the word "accidentally" that is recognized as an exempting circumstance.

MR. ROMULO: I will amend it to purposely.

MR. PADILLA: Provided the four requisites are present such as lawful act, with due care, cause injury to another without fault or intention of causing it. Those are some of the exempting circumstances provided in Article 12 of the Revised Penal Code.

If it is intentional, so long as it is an unlawful act, it is punishable, even if the act done be different from that

which he intended. Under Article 4 of the Revised Penal Code, criminal liability arises not only when there is dolus or criminal intent but also when there is culpa or negligence, lack of diligence, lack of care, lack of skill, etc.

FR. BERNAS: While Commissioner Padilla is on the floor, may I just ask one clarificatory question? Suppose our Supreme Court were to adopt the American Supreme Court decision in *Roe v. Wade*, would that do away with many of our abortion laws?

MR. PADILLA: No, I do not believe so because the Supreme Court cannot legislate and our laws are very clear, that abortion in whatever form is always penalized.

FR. BERNAS: Precisely, the decision in *Roe v. Wade* said that the state cannot prohibit abortion during the first two trimesters if the abortion can be done without damage to the health or life of the mother.

MR. PADILLA: But that is not our law.

FR. BERNAS: That is why my question is hypothetical. If our Supreme Court were to follow that lead, would that do away with much of our abortion laws?

MR. PADILLA: No, I do not believe the Supreme Court can amend our law. So abortion is penalized and our law does not provide "unless it be without danger to the life of the mother," and the Supreme Court cannot adopt such foreign element.

FR. BERNAS: Suppose our Supreme Court were to say that existing abortion laws in the Philippines are unconstitutional because they violate the right of privacy of the mother, which was the reasoning in the American Supreme Court.

MR. PADILLA: The Supreme Court will have to hold that our laws on abortion are unconstitutional.

FR. BERNAS: Correct, this is precisely to prevent the Supreme Court from arriving at a similar conclusion.

MR. PADILLA: I believe that is going too far, that the legislature should first amend the Revised Penal Code before the Supreme Court can assume the prerogative of reversing or repealing our law on abortion, because that matter is essentially legislative.

FR. BERNAS: But suppose the person is accused of abortion and his defense is that our abortion law is unconstitutional and, therefore, he should not be convicted.

MR. PADILLA: If the Supreme Court should make the mistake of legislating and of ignoring our present law on abortion as unconstitutional, that is a possibility that I would not even consider.

FR. BERNAS: So, it is the position of the Gentleman that the Supreme Court cannot declare laws unconstitutional.

MR. PADILLA: No, precisely, I do not believe that our penal law on abortion is unconstitutional. The Supreme Court may declare a law unconstitutional if it is clearly against the Constitution, or if it is a violation of the Constitution, especially of the fundamental rights of citizens or persons. We all accept that the Supreme Court, which is said to be the weakest department of government, is in a sense the strongest because it has the prerogative of declaring a legislative act or an executive order invalid and illegal if it violates or contravenes the Constitution.

FR. BERNAS: In the same way, for instance, that in *Roe v. Wade*, the American Supreme Court declared abortion laws unconstitutional because the American Supreme Court considered them violations of the right of

privacy.

MR. PADILLA: It is all hypothetical.

FR. BERNAS: It is not hypothetical, it is in 410 U.S. 113.

MR. PADILLA: What I mean by hypothetical is that which is invoking the U.S. decision, and yet our own Supreme Court will follow it on a particular case involving abortion.

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

THE PRESIDENT: Commissioner Brocka is recognized.

MR. BROCKA: Thank you, Madam President.

Some of the questions I wanted to ask have already been asked.

THE PRESIDENT: Will the Gentleman please talk louder. I have been requested by the people in the gallery; they cannot hear. They think we are just whispering among ourselves.

MR. BROCKA: Thank you; I am sorry.

Some of the questions I wanted to ask have been asked by Commissioner Suarez but I would still like to ask some of these questions for clarification because I feel very strongly that that particular line on Section I of the Bill of Rights — "The right to life extends to the fertilized ovum." — should be deleted. I feel that this sort of thing, like "love", is frighteningly catholic and is difficult to argue against. I just want to ask a few questions. Does this mean that abortion under any and all circumstances is a crime or violation of human rights?"

FR. BERNAS: No. It does not mean that.

MR. BROCKA: Does this apply to a situation where the mother might die if the pregnancy is allowed to continue? How about rape victims? Or any situation for that matter where the physical or psychological well-being of the woman would be endangered by an unwanted pregnancy?

FR. BERNAS: It does not mean that. As I explained, the only object of this is to take away the complete liberty of a woman to get rid of the fetus, even if it in no way endangers her health or her life.

MR. BROCKA: So, is it possible then that the provision is worded in such a way to make it very clear that what is banned is illegal abortion?

FR. BERNAS: That is why I made an appeal for a more felicitous expression.

MR. BROCKA: Thank you.

FR. BERNAS: But certainly those matters the Gentleman is afraid of are something not intended at all by this provision. The argument in *Roe v. Wade* is that the important thing is the privacy of the mother's womb. If she wants to get rid of that fetus anytime within the first six months, it is allowed provided it can be done safely, even if there is no medical reason for it. That is the only thing contemplated in this.

MR. BROCKA: Then, I suppose, as the Gentleman said, he is looking for a more felicitous word to describe that. In case the Gentleman cannot find the right phraseology, does this mean that the provision on the fertilized ovum will be placed in the Constitution with the original wording because it has sense of value?

FR. BERNAS: If we are unable to find a better substitute and if the provision is approved, then the fertilized ovum will be implanted in the Constitution.

(Laughter)

MR. BROCKA: I do not think it should be implemented, for the simple reason that medically, there is no clear consensus that the fertilized ovum is considered human life. It may be a living thing and, for that matter, so is a tadpole. But there is no constitution in the world that gives right to life to tadpoles.

Thank you.

MR. RAMA: One last question, Madam President. Has Father Bernas been an expert on fertilized ovum? If so, where did he get his expertise? (Laughter)

FR. BERNAS: I refuse to answer the question on the ground that it may incriminate me. (Laughter)

SUSPENSION OF SESSION

MR. RAMA: Madam President, I move that we suspend the session until two-thirty in the afternoon.

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

It was 12:14 p.m.

RESUMPTION OF SESSION

At 2:51 p.m., the session was resumed.

THE PRESIDENT: The session is resumed.

MR. MONSOD: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. MONSOD: May we continue the period of sponsorship and debate. May I call on Commissioner Rigos, Madam President.

THE PRESIDENT: Commissioner Rigos is recognized.

May we request the other members of the Committee to please come forward and join Commissioner Bernas.

REV. RIGOS: Madam President, my question is related to the first section of the proposed Bill of Rights.

THE PRESIDENT: The Gentleman may proceed.

REV. RIGOS: The first sentence is the same sentence we find in the 1935 and 1973 Constitutions; I have no difficulty with that. But like a few people who spoke this morning, I am a bit disturbed by the second sentence: "The right to life extends to the fertilized ovum."

In discussing this proposed sentence, did the Committee consider the sensibilities of some religious groups which do not look at the fertilized ovum as having reached that stage that it can be described as human life?

FR. BERNAS: Precisely, we used that word to try to avoid the debate on whether or not this is already human life.

REV. RIGOS: I think the Commissioner will remember that in the Protestant community, for instance, there are those who put very much emphasis on the difference between abortion and miscarriage. This sentence tends to interpret abortion from the period of what we call fertilized ovum, and this can raise a lot of questions especially among the members of the religious minority. Does the Gentleman think it possible to abort this sentence at the proper time from this proposed Bill of Rights?

FR. BERNAS: As I said before, the clear purpose of this — and so long as this is something understood by the

Commission — is to avoid the over-liberal doctrine, the position taken by the American Supreme Court. As I said, the doctrine in the American Supreme Court is that during the first six months, the mother is absolutely free to abort or not to abort. And if the state were to pass a law prohibiting abortion, let us say in the second trimester, under that doctrine it would be unconstitutional because life is not a consideration but whether or not abortion or termination of the pregnancy is needed medically. Under that doctrine, during the fifth month, termination of the pregnancy, whether or not needed for the health or for the life of a woman, cannot be prohibited by law. The only thing that the law can do is to prescribe that it be done in a manner safe for that woman. That is the only thing about this.

REV. RIGOS: Can we not achieve such objective through legislation?

FR. BERNAS: As a matter of fact, if the consensus comes out that this body rejects that over-liberal American doctrine, I think we can do away with this expression.

REV. RIGOS: I hope it will be possible for us to go along that way.

Thank you, Madam President.

THE PRESIDENT: Commissioner Bacani is recognized.

BISHOP BACANI: I would like to express on behalf of others that the one important reason why I believe this cannot simply be left to legislation is this: We would like to have a constitutional damper already on the assault to human life at its early stages. And we realized that it can be possible to more easily change . . . easier to change legislation on abortion. Hence, we would like to be able to prevent those changes in the laws on abortion later.

REV. RIGOS: But our religious authorities sharply differ in their opinions as to when human life can definitely be regarded to have commenced. If we constitutionalize the beginning of human life at a stage we call fertilized ovum, then we are putting a note of finality to the whole debate.

BISHOP BACANI: I would just like to remind Reverend Rigos that when we talk about this, it is not a question of religious boundaries. In fact, let me just read what is contained in an article given by one of my researchers. It says that many scholarly Protestant and Jewish leaders are prominent in the pro-life movement — and they are referring to the anti-abortion movement. I do not want to put this simply on the denominational plain, and it is misleading to put it at that level.

REV. RIGOS: Yes.

BISHOP BACANI: Because these are people who are not Catholics — who are Jewish, Protestants, even atheists — but who are against abortion.

REV. RIGOS: I think the Gentleman is correct. On the whole, we can describe the Protestant church as against abortion. But there is a big segment in the Protestant church that wishes to make a clear distinction between what we call abortion and miscarriage.

BISHOP BACANI: Yes, there is nothing here against miscarriage. What I mean is that miscarriage is not being ruled out. In fact, miscarriage is an accident.

REV. RIGOS: I thank the Commissioner.

FR. BERNAS: Madam President, may I take this opportunity to ask the Gentleman his own assessment of the cultural values today. As I said, as far as I am concerned, my only purpose in trying to defend this is to prevent the Supreme Court from taking an over-liberal approach to abortion. Is it the judgment of the Gentleman that that is something that will not happen in the culture of our country?

REV. RIGOS: It is my judgment that such an objective can be achieved through legislation. And if we were to do it through legislation, there is little leeway for the Congress to consider the various conflicting views on the subject.

At this juncture, the President relinquished the Chair to the Honorable Florenz D. Regalado.

MR. MONSOD: Mr. Presiding Officer, may I call on Commissioner Aquino?

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

MS. AQUINO: Mr. Presiding Officer, I would like to react to the position of Commissioner Bacani, if I may be allowed the liberty of treading into the domain of the celibates. I suppose I am entitled, I am unmarried anyway.

BISHOP BACANI: The Commissioner is also a celibate up to now.

MS. AQUINO: Yes.

FR. BERNAS: She has admitted it.

MS. AQUINO: Welcome to the club.

It should be sufficient to note briefly the way the discussions have been unfolding — that there is a wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth. This is the belief of the stoics and a certain predominant section of the Jewish faith, if I am not mistaken. It is my fear, however, that the moment we constitutionalize the term "fertilized ovum" (it may sound gross but that is how it is worded) it might disturb settled jurisprudence in civil law. Law and jurisprudence permits parents of a stillborn child to maintain a suit for wrongful death arising from prenatal injuries. But this right is in vindication of the personal interest of the parents, not the child. Civil law would likewise recognize the right of an unborn child, the inchoate right to future inheritance. But again that is contingent upon live birth, which is the perfection of that inchoate right. In other words, law and jurisprudence are settled that the personality and the right of a person do not ripen until one is born alive.

Madam President, I would now like to react to Commissioner Bacani — to say that life is present at conception is to give recognition to the potential rather than the actual. And I believe that in the domain of the Constitution, it is not up for us to preempt the question. The unfertilized egg has life, and if fertilized, takes on human proportions. I am willing to concede to that, but the law and our Constitution should deal with reality not obscurity, the known rather than the unknown. We should deal with facts rather than conjecture. It may be true that when the sperm shakes hand with the egg, it may eventually live, but it may also die. The Constitution should not deal with speculation. The phenomenon called life takes time to develop; in other words, a fetus represents nothing more than a potentiality for life. Conception is a process over time; it is not an event by itself. We do not have to resolve the question of when life begins now, when even those who are trained in their respective fields of medicine, philosophy or theology are unable to arrive at any consensus. I would doubt very much — if this Commission mostly considers the predominant influence of celibates like us, at this point in the development of man's knowledge — if we are in any position to prejudge this question.

MR. OPLE: Why did the Commissioner not take a vow?

MS. AQUINO: That does not preclude me from taking a vow later.

On the point raised by Father Bernas, I think his fear is — as I would say it — more apparent than real. The Commissioner's doubt about the possibility of the Supreme Court adopting the jurisprudence in *Roe v. Wade* is way off mark. Filipino culture would not allow abortion that is unqualified and unconditional. On this point, I

would like to propose a felicitous formulation although I do not think this rightfully belongs in the Constitution. Generally, the laws in the United States would provide for stages in pregnancy and conception, like for the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left entirely to the medical judgment of the pregnant woman's attending physician. For the stage subsequent to approximately the age of the first trimester, the state in promoting its interest in the health of the mother may, if it so chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. And for the stage subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it so chooses, regulate and even proscribe abortion.

MR. NOLLEDO: Will the Commissioner please yield to interpellations?

MS. AQUINO: Yes, gladly.

MR. NOLLEDO: Thank you.

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

MR. NOLLEDO: Thank you.

I would like to mention three terms in relation to the fertilized ovum: life, human and personality.

Does the fertilized ovum have life?

MS. AQUINO: That belongs to the field of medicine, but I believe that even an unfertilized egg, an egg that belongs to a man, has life itself. (Laughter) It takes human proportion only if it meets the sperm.

The Gentleman was referring to the sperm or egg. Without prejudging medical science, I believe that unfertilized egg or sperm has life, but it begins to assume human proportion only if it meets the partner.

MR. NOLLEDO: I remember Mr. Tolentino saying in his book that personality can also begin upon conception based on what is known as presumptive personality.

Second question: Can the fertilized ovum be considered human? Is it a human being?

MS. AQUINO: Yes, in the sense that it begins to assume the proportions of a human person.

MR. NOLLEDO: And while it is a fertilized ovum based on the Tolentino opinion, it has a presumptive personality because under the Civil Code of the Philippines, it is considered born for all purposes favorable to it. So it can inherit, it can be a recipient of a donation, it can be a recipient of any benefit.

MS. AQUINO: Presumptive personality, yes; but this is conditional, meaning, the perfection of personality is contingent upon being born alive.

MR. NOLLEDO: So, the recommendation of the Committee is that the right to life extends to the fertilized ovum. Where is the speculation there? The Commissioner said that the Constitution should not deal on speculations. I do not see any speculation.

MS. AQUINO: Speculation lies precisely on this: A fertilized egg or sperm or whatever is a fertilized egg or sperm, meaning, whether or not it will live or die is a matter of conjecture.

MR. NOLLEDO: It can die any time in the same manner that we human beings do. It can die at any time. So, while the fertilized ovum remains as such and continues in different stages, does the Commission agree with me, if I say that it has really the right to life?

MS. AQUINO: I cannot. This is very instructive because as the Commissioner will note, even this Commission

cannot settle the question of whether a fertilized egg has the right to life or not. Those experts in the field of medicine and theology cannot settle this question. It is bad enough for us to preempt this controversial issue by constitutionalizing the ovum; it would be doubly tragic for us to provide for ambiguities which may even disturb settled jurisprudence.

MR. NOLLEDO: I do not think there is ambiguity because the fertilized egg, in the normal course of events, will be developed into a human being, a fetus, and as long as the normal course of events is followed. I think the right to life exists and the Constitution should recognize that right to life. We do not presume accidents; we do not presume ambiguities. We presume that as long as it is categorized as a fertilized ovum, it will ripen into human personality.

MS. AQUINO: But does the Gentleman agree with me that the status of jurisprudence in civil law is that the right of a person is vested only upon a child when it is born alive? He begins to appropriate interest; he begins to lay claim to enforceable rights only when it is born alive.

MR. NOLLEDO: That so-called settled rule is qualified by the express provision of the Civil Code that for all purposes the child is considered born favorable to it, what is called as the presumptive personality. So, with due respect to my lady colleague, I think we should not be bound by settled jurisprudence. We are drafting the fundamental law of the land. In fact, we can even overrule the rulings of the Supreme Court even opinions of recognized luminaries. The Constitution should prevail over settled jurisprudence, even over existing laws. Does the Commissioner agree with me?

MS. AQUINO: We submit.

MR. NOLLEDO: Thank you, Mr. Presiding Officer.

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

BISHOP BACANI: May I also add this comment? After the eighth week, there is no scientific doubt any more that we are dealing with a human being. So, that is not a matter of speculation. Whether it is a human person is another thing, but there is no doubt that it is a human being.

May I just read into the record what an advocate of abortion wrote after his change of mind. This is from Dr. Bernard Nathanson. He said:

In early 1969, I and a group of equally concerned and indignant citizens, who had been outspoken on the subject of legalized abortion, organized a political action unit known as NARL, then standing for National Abortion Rights Action League. We were outspokenly militant on this matter and enlisted the women's movement and the protestant clergy into our ranks. We used every device available to political action groups, such as pamphlet tearing, public demonstrations, exploitation of the media, and lobbying in the appropriate legislative chambers. In the late 1969, we mounted a demonstration outside one of the major university hospitals in New York City that had refused to perform even therapeutic abortions. My wife was on that picket line and my three-year old son carried a placard urging legalized abortion for all. Largely because of this and a few similar groups, the monumental New York State Abortion Statute of 1910 was passed and signed into law by Governor Nelson Rockefeller. Our next goal was to assure ourselves that low cost, safe and humane abortions were available to all. And to that end, we established the Center for Reproductive and Sexual Health, which was the first and largest abortion clinic in the western world.

Sometime ago, after a tenure of a year and a half, I resigned as Director of the Center for Reproductive and Sexual Health. The center had performed 60,000 abortions with no maternal death, an outstanding record of which we are

proud. However, I am deeply troubled by my own increased uncertainty that I had, in fact, presided over 60,000 deaths. There is no longer serious doubt in my mind that human life exists within the womb from the very onset of pregnancy, despite the fact that the nature of the intra-uterine line has been the subject of considerable dispute in the past.

Electrocardiographic recordings of human brain activity had been noted in embryos at eight weeks. Our capacity to measure signs of life are still becoming more sophisticated and as time goes by, we will doubtless be able to isolate life's signs at earlier stages in fetal development.

I can go on but I stop there.

FR. BERNAS: Mr. Presiding Officer, in my own perception, there is no doubt that within this Commission there is a great respect for life. I have no doubt about that; that is the consensus. I also believe in the proposition that the proof of the pudding is in the eating. And the way this provision, as formulated, is sailing, and speaking as someone who is sometimes referred to as a constitutional lawyer, it is my perception that a law which is subject to innumerable interpretations and, therefore, likely to be misunderstood, misinterpreted, is a bad law. The way the provision is worded now confirms my belief that the phrase is not felicitous without making any reference to any celibate felicity here. That is my conviction at the moment. Whether or not we delete this line, my only interest is that there has been an expression of concern for life, but that this particular line 10 may not be the way to express it.

MR. MONSOD: Mr. Presiding Officer, I believe there is one more speaker who would like to make remarks on this section. May we call on Commissioner Rodrigo?

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

MR. RODRIGO: Mr. Presiding Officer, I would like to ask a question basic to the Bill of Rights. As rightly stated by the sponsor, the Bill of Rights lists the rights of individuals vis-a-vis the state; these are rights which cannot be violated by the state. What the Bill of Rights, therefore, tries to prevent is the violation of these rights by the state, and not by other individuals. For example, the provision "no person shall be deprived of life " means nondeprivation of life by the state without due process of law. But if a person kills another person, that is a violation of the penal law, but not of the Bill of Rights. That is not a violation.

"No person shall be deprived of property without due process of law" is aimed at the state. The government should not take my property without due process of law. But the government, by means of eminent domain, can take my property but pay me just compensation. My right here is protected by this Article on the Bill of Rights. But, if somebody steals from me, I am not protected by this Bill of Rights which is aimed at preventing the government from taking my property without due process of law.

I raise these matters because abortion is not done by the state. It is done by individuals. So, does abortion have any relation to this particular provision in the Bill of Rights?

FR. BERNAS: Do we have abortion laws in the country?

MR. RODRIGO: Yes.

FR. BERNAS: If the state were to say that abortion laws can cover only the period of the third trimester, from the sixth month on, then to that extent it is an assault of the state on the life of those below six months.

MR. RODRIGO: But that is not an assault by the state itself. It only opens the door to assaults by individuals. But, what the Bill of Rights tries to prevent are assaults by the state, by the government itself. What we are trying to prevent here is abortion from the moment of conception. The Bill of Rights might not be the right place for such a

provision, unless abortion will be compulsorily done by the state.

FR. BERNAS: I agree with the Gentleman that the Bill of Rights is generally a constitutional provision governing the relation between the state and the individual.

MR. RODRIGO: Yes.

FR. BERNAS: But as I said, the Bill of Rights also contains certain commands to the state and we put some of those commands in this Constitution, if they are intimately related to some other rights guaranteed by the Bill of Rights.

For instance, on page 4, Section 21, lines 22 to 26 are strictly not guarantees, but they are commands to the state flowing directly from the guarantees in the rest of the section.

Similarly, I would consider Section 10 a command to the state insofar as this command is intimately related to the first three lines.

MR. RODRIGO: However, this sentence is not worded as a command to the state, unlike the other provisions in the Bill of Rights.

That is all, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Quesada?

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

MS. QUESADA: Mr. Presiding Officer, I was one of the proponents of Resolution No. 175 which sought for a section that would express the right to life of the human embryo, with due regard to the equal right to life of the mother, to be guaranteed by law.

I wonder why it did not appear in this formulation in the Bill of Rights. May I know what was the thinking of the proponents who were present in the committee meeting?

FR. BERNAS: One reason was the words "human embryo." We got into a debate as to when an embryo begins to become human. We wanted to avoid that debate but, perhaps, not successfully. Certainly, as I said, if we must keep this provision, I am very open to a reformulation.

MS. QUESADA: Yes. But my main consideration here was the clause "with due regard to the equal right to life of the mother shall be guaranteed by law." Earlier I think Commissioner Brocka also mentioned something about this right that a mother should enjoy.

FR. BERNAS: So, we would very happily entertain an amendment by substitution on that matter.

MS. QUESADA: When the time comes.

FR. BERNAS: Yes.

MS. QUESADA: Still on the same section on the right to life, I am glad that Commissioner Rodrigo also mentioned something about this. I would like to get the opinion of the Committee on how an individual can invoke this particular right when a full-blown human being, not just an embryo nor a fertilized ovum, is deprived of life; a human being that would be denied the right to life because of the neglect or the absence of an important life-saving drug in a hospital. We have seen many of these individuals who lost their lives, practically "salvaged" by institutions pledged to prolonging life because of the neglect of the state in providing services. What provision of the law can these people invoke to protect their right to life?

FR. BERNAS: The Commissioner is addressing her question to Commissioner Rodrigo?

MS. QUESADA: No, I am asking the Committee because earlier, I did ask the Commissioner where we would put this particular concern of ours, the health care delivery system, in this Constitution. I am a nurse, and many of the people I have worked with are now struggling to improve the health care delivery system because they have been witnesses to lives lost of persons being "salvaged" in hospitals. There are many competent doctors and nurses who are unable, powerless and helpless to prolong the lives of patients in spite of their expertise.

We are talking about due process of law and the Gentleman said this due process of law would refer to people who have committed crimes against property, e.g. felony, or whatever. But when they go to a hospital or a clinic, they may not have access to an injection an antibiotic, a blood transfusion or just a simple tablet, resulting in the denial of the right to life. Nobody gets accused of any crime because there is no law that covers this particular situation in our society. Our respect for life is what makes us in the health sector work for justice in health. We have such respect for life, otherwise we would not be in this profession. And that is why I would like this particular body to respond to the need for our people to know that they have the right to protection under the law. We regret that many people outside health institutions enjoy civil and political rights, but once they enter a hospital, they cannot invoke the right to life and the due process of law.

Would this particular provision which states:

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

be applicable to the health situation described earlier?

FR. BERNAS: My own thinking is that it would be better placed in the Declaration of Principles. If the Commission will recall, for instance, in the 1973 Constitution, Section 7 of Article II says:

The State shall establish, maintain, and ensure adequate social services in the field of education, health . . .

But as I said, this is not self-executory; it has to be carried out by legislation.

MS. QUESADA: Should this not be enshrined in the Bill of Rights as a fundamental human right? Our personal experience shows that because of inadequacy or lack of social services, like health service, many people have been denied this right to life.

FR. BERNAS: As I was saying, my own general classification of what is in the Bill of Rights is that it is a list of those which the state may not do. It is not a list of those which the state must do. So, in the example of the Commissioner, what she is asking for is something which the state must do.

MS. QUESADA: Yes. This brings me to a second issue which is the expansion of the Bill of Rights. The limitation of the present conceptualization of the Bill of Rights has contributed to the lack of respect for human life. There is no such strong guarantee in our Constitution that enables us to give due respect not just to a fertilized ovum but to a fully developed being who loses his life, for instance, in a hospital. We health workers feel so helpless and powerless to do something about this because there is no such provision in our law that makes it the state's responsibility to insure that nobody is denied this right to health and, in effect, right to life. Therefore, in addition to what the Committee has covered here, we would like that the Committee explore the possibility of expanding the Bill of Rights to cover all the fundamental rights that have been enshrined in the Universal Declaration of Human Rights and in the International Covenant of Economic, Social and Cultural Rights ratified by our own government, in 1976. After we have gone through the general provisions and the provisions on social justice and human rights, we would be able to classify the other rights that we feel should be recognized by the

state. I think this is particularly timely now that the President of the Philippines, President Aquino, has mandated the teaching of human rights in all schools. Is the Committee open to the suggestion that these rights be classified under economic, social and cultural rights?

FR. BERNAS: As I said, the reason we limited ourselves to this is that there are other committees — such as the Committee on Human Resources, the Committee on Social Justice and the Committee on General Principles — working precisely on those topics. So, we did not want to steal the work from them. We want to give them a little work also.

MS. QUESADA: Would there be a possibility of harmonizing this with the other committees concerned?

FR. BERNAS: That is certainly something I am not closed to.

MS. QUESADA: Finally, I would like to seek clarification on page 3, Section 14, line 10, which states:

No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Could this provision be invoked in the following situation: Right now, we are witness to a situation where hundreds of nurses "volunteer" their professional services in hospitals for as long as two years on the guise of training for their application for overseas employment. But we know for a fact that these nurses are actually serving as volunteer workers without any pay to serve as cheap labor pool to maintain the necessary nursing services. So, we are asking what provision of the law could be invoked for this particular situation which some feel is like slavery. They are forced to work because there is no law that would be violated nor any legal provision that will prevent the management to just employ them on voluntary basis. Could this provision be invoked?

FR. BERNAS: From what the Commissioner has described, my initial reaction would be "no" because as she said, they are volunteer workers; their working is not involuntary. This provision covers any kind of involuntary service whether it be slavery, peonage, or what-have-you. But as I understand what she described, it seems to be voluntary and, perhaps, it should be covered more by labor legislation or social justice legislation.

MS. QUESADA: I thank the Commissioner.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Ople please?

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

MR. OPLE: Thank you very much, Mr. Presiding Officer.

Will the sponsor yield to a few questions?

FR. BERNAS: Very willingly.

MR. OPLE: Thank you.

The most recent preoccupation of the Committee and of the body has been the protection of human life, whether in nascent form or in a more developed form and I think this is also related to an innovation in Section 22, according to which no death penalty shall be inflicted. I am one of the authors of Proposed Resolution No. 242 which considers the death penalty a cruel and inhuman punishment, and I am glad that this is now being incorporated, presumably, together with all the resolutions in Section 22. I was struck, however, in the debates this morning by the remarks of Commissioner Garcia concerning other more contemporary, more systematic, more irresistible and overpowering threats to human life and safety, and these take the form of extrajudicial execution. In our countryside, there are millions who live in terror for fear of their lives in a situation where the

threat can come maybe in the middle of the night, whether from the military or their adversary forces, or other such contending forces in a situation of nascent civil war which we, of course, deplore.

The Bill of Rights, of course, provides for the protection of life and liberty and presumably the pursuit of happiness as well, but should it not mirror these conditions to which human life is so exposed in an unsettled political, economic and social situation in many parts of the country?

I do not know if Commissioner Garcia will agree that in the Escalante massacre, for example, some people were emboldened to shoot protesting citizens because of a perception that this kind of action was either part of a silent policy or it would be tolerated by their superiors as a necessary form of action in behalf of national security.

Will the Committee at some point consider amending the legislation that will give explicit recognition to this situation and provide that in the event members and agents of the military and of their adversary forces are determined to have committed flagrant abuses against the right to life, including extrajudicial executions and the mass deprivation of life, their superiors should be held equally accountable although there may be no written policy for judicial executions and salvages? Experience shows that men in uniform in the field are more likely to commit these crimes against life and against property, if they knew that these are sanctioned and tolerated, if not encouraged, by higher levels of authority. I do not know how an appropriate formulation for a bill of rights of this very rare problem of our times and of Third World countries in general can be introduced, but I suppose if the Committee is disposed to accept such a provision in the period of amendments, I will be happy to collaborate with the Committee on an appropriate formulation. Will the Committee consider that in due course?

FR. BERNAS: The Committee would be happy to avail itself of the skillful pen of Commissioner Ople.

MR. OPLE: Thank you very much, Mr. Presiding Officer.

MR. GARCIA: Could I just add a brief comment? In fact, we could also add here the systematic "hamletting" and prolong the zoning that we find in different rural areas in the countryside which definitely should also be addressed in this Bill of Rights.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Uka.

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

MR. UKA: Mr. Presiding Officer, now that we are almost through with a lengthy discussion of the egg and the ovum, I would like to make a few comments on the abolition of the death penalty.

After listening to our previous lengthy discussions on the subject and the propriety of putting in our new Constitution a provision abolishing the death penalty or capital punishment, I have now the impression that we are more concerned with the welfare of the culprit or the murderer. Many of us would say: "Kawawa naman siya (the murderer)." We never think of the poor victim and his family he has left behind. This, to me, is one-sided and is not fair. It is as simple as that.

The victim of murder is more pitiful than the murderer. As a human being and a Muslim, I like to ponder on the words of Jesus when he said about 2,000 years ago: "Forgive them, Father, for they know not what they do." Was Jesus referring to the sinners, like the murderers? Do these words apply to murderers whom we should forgive? To my simple mind, no because murderers know what they do. They plan the murder — there is evident premeditation on their part before they commit murder. So, obviously, those sacred words of Jesus cannot apply to the murderers because they do not deserve forgiveness, since they know what they are doing. They have committed a grievous wrong. But then, on the other hand, is killing the murderer also a grievous wrong? If so, then we will have two wrongs already. According to the Old Testament, justice meant "an eye for an eye, and a

tooth for a tooth." That is granting that he has a tooth. If he has no teeth, then what are we going to remove? He has to go to the dentist in order to have a tooth removed. If killing the murderer is wrong, according to the Fifth of the Ten Commandments which says "Thou shalt not kill" — which is also found in other sacred books — then what should modern society do? We are in a dilemma.

If the act of the murderer is wrong and killing the murderer or imposing a death penalty is also wrong, then what is proper? Can we then right a wrong by committing another wrong? One wrong plus one wrong equals two wrongs — very simple mathematics. What should society do?

Let us ponder on this, my friends. What is the proper course of action to take? Let us relax and find the correct answer to this very important question.

In countries like Saudi Arabia, Pakistan, Malaysia and other countries in the Middle East, people are afraid to commit crimes, especially murder. Public executions and lashings are very common and these serve as deterrents to crime. The abolition of capital punishment or the death penalty is certainly a very vital issue. The right to life belongs to both the victim of murder and the murderer. If we abolish the death penalty in our land, we will be the only country in Southeast Asia that has done so. Our crime rate, especially of capital crimes, like murder and salvaging, is very high in spite of the death penalty in our statutes. How much more if we abolish capital punishment or death penalty, with the existence of many so-called murder syndicates in our land? The penalty of reclusion perpetua or life punishment is not really a life sentence, as was very well explained by Commissioner Regalado, because there is always the pardon extended or given to those who are influential.

How about the so-called recidivist? A recidivist is a person who has the habit of killing. He will keep on killing and killing until he dies. He might even kill us and if that happens, there will be no more new Constitution to make, and I shudder to think of such an event. The cream of our land, according to us, will all die because we abolished the death penalty. Why should we abolish the death penalty?

Murderers, knowing that there is no death penalty, will keep on killing. The abolition of the death penalty will promote endless family feuds or strifes for many will take the law into their hands, as has been cited by the previous speakers, like Commissioners de Castro and Ople.

In Southern Philippines, when a crime is committed against a member of a family and nothing has been done or the offender has been pardoned, the victim's family or relatives will plant a bamboo tree which grows in any part of the land, even on rocky land. And as long as that bamboo tree is there, they will keep on killing a member of the murderer's family. And this goes on and on.

My friends, I really do not know what concrete suggestions I may give as to what course of action we should take because I do not know — and God, I know, will forgive me — what to do. It is safe to ask this simple question. Is it not more realistic and proper for us to have this matter of abolishing the death penalty left to our lawmakers or the legislature? So, instead of putting the issue on the abolition of the death penalty in our fundamental law or the Constitution, let us relax and leave that to our lawmakers. Anyway, most of us will be there in the legislature someday.

May Almighty God guide us along this line.

Thank you very much.

MR. GARCIA: Mr. Presiding Officer, could I make a very brief response? With all due respect to Commissioner Uka, precisely we have a unique opportunity right now after many years of authoritarian rule where a climate of resentment and hate has built up to move into a period where lasting peace, national unity and a climate of

reconciliation can prevail. Precisely, the abolition of the death penalty is one of those steps that could create this situation.

The Gentleman mentioned that he belongs to one of the cultural minority groups in the country. Historically, the death penalty as a judicial punishment has been brought to bear unequally and unjustly on the poor, the minorities and the oppressed groups within the population. That is a fact not only in this country but in many parts of the world. The wealthy, the politically well-connected and members of dominant racial and religious groups are far less likely to be sentenced to death and even less likely to be executed for offenses of comparable severity than are the poor, the supporters of the political opposition and members of unpopular racial or religious groups. Finally, as a method of attempting to eliminate political dissent, the use of the death penalty is apparent.

As a method of protecting society from crime, it has nowhere been shown to have a special deterrent effect. The brutal suppression of minority groups or social or political movements, like those that I have mentioned in Latin America, frequently contributes to political instability with both government and opposition resorting to violence in order to achieve their objectives or assert their control. In this context, both judicial executions and arbitrary killings often precipitate reprisals and add to a legacy of resentment, intolerance and social conflict.

This is an important issue because it will determine our state of mind and the national atmosphere, just as in the international order, there is the theory of mutual assured destruction, which relies on the balance of terror. In this country also, the climate of fear and terror should as much as possible be eliminated. We should try to strive for something different, for with trust and faith we can reform even a man who has committed a crime.

It is not a discrimination against the victims, but an effort to recognize that the roots and factors, which lead to crime and far deeper, are far more complex than just individual guilt. And, therefore, this requires a new attitude, a new approach, and this, I believe, is what we are trying to reach — from the old to the new, from a captive to a critical consciousness — the creation of something different. I think we should not be afraid to be bold and daring, creative, imaginative, and I think this is where we are going.

MR. UKA: Thank you very much for the explanation. I hope it will guide me to the course of action I may take, but offhand now, I can never forgive those who killed Jesus for no apparent reason whatsoever. He is my Guide also.

Thank you very much.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Natividad.

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

MR. NATIVIDAD: Mr. Presiding Officer, will the Committee yield to a few more questions?

FR. BERNAS: Yes, the Committee will gladly yield.

MR. NATIVIDAD: I am referring to Section 21 on page 4. This is called the rights of the accused. This, to my knowledge, was lifted from the Miranda ruling by a five-four decision of the U.S. Supreme Court and adopted almost verbatim in the 1973 Constitution. Am I right, Mr. Presiding Officer?

FR. BERNAS: It has its origins in the Miranda doctrine but it is not a verbatim reproduction.

MR. NATIVIDAD: It is not verbatim but essentially, substantially, it is. In the Miranda ruling, if I remember right, the duty of every official investigating the commission of an offense is to inform the person under investigation before the start of the investigation and this is the practice in the United States and in the Philippines. Although these provisions are silent, may I clarify for purposes of record and for the guidance of law

enforcement later on, that this is the concept that we are adopting in Section 21, are we not?

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. NATIVIDAD: So that it should be understood that this duty to inform the offender or the suspect of his constitutional rights should be done before the investigation.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. NATIVIDAD: Still in Section 21, with regard to the requirement for counsel, let me clarify a possible incident in the light of an actual law enforcement work.

Suppose the police is chasing a criminal who was just actually seen or witnessed as having committed a murder, or similarly was caught in flagrante delicto or "having killed the person." When he was caught, the criminal said: "I admit everything. I will confess everything because I hate this man. I would like to sign my confession now." Could he sign a confession? And if he signed a confession, would it be admissible in evidence?

FR. BERNAS: In other words, even before he was asked any question?

MR. NATIVIDAD: That is the situation. There are two elements there that are lacking: First, he has not been informed of his rights; and second, the presence of counsel.

FR. BERNAS: And not only that. Nobody asked him anything.

MR. NATIVIDAD: Yes, he came forward.

The man says: "I admit everything. You have seen me do it. I confess." These are the realities of law enforcement. If he gives a voluntary confession in that manner, will his confession be admissible in evidence under Section 21?

FR. BERNAS: My initial reaction would be "no." It should be asked again in the presence of counsel according to this provision. Would any other member of the Committee answer that? But my own reading is that the question must be repeated before counsel because a situation of hot pursuit is already a situation of pressure.

MR. NATIVIDAD: Suppose it is not a situation of hot pursuit or being caught in flagrante delicto, but the criminal has just committed a crime and the police came on time. He is arrested.

FR. BERNAS: I would say that the way this is worded, it still would be covered by this provision. I do not know if any other member of the Committee would like to add something.

MR. NATIVIDAD: If, as a consequence of this voluntary confession, physical evidence is recovered, such as a death gun, which is what usually happens in law enforcement work, will physical evidence recovered be admissible in evidence?

FR. BERNAS: If, as a consequence of the spontaneous outburst of the individual, physical evidence is found, my own thinking would be "yes," it would be admissible.

MR. NATIVIDAD: Admissible?

FR. BERNAS: That is my own answer. I am looking around at my other committee members to see if anybody would disagree with me.

MR. NATIVIDAD: We are now referring to the physical evidence, Mr. Presiding Officer.

FR. BERNAS: I beg the Gentleman's pardon.

MR. NATIVIDAD: We are now referring to the physical evidence — the gun. The Gentleman said it is admissible.

FR. BERNAS: My own thinking would be "yes." Do I hear any of my committee members disagree?

MR. NATIVIDAD: I just want to make it of record because this section is studied closely by law enforcers and our debates here will guide their proceedings. This is very ticklish, because this will either facilitate the investigation of criminal offenses, or if not properly interpreted, will hamper the efficient conduct of criminal investigations.

Let me go to the next question, still on Section 21, line 24, page 4 which says: "Compensation for and rehabilitation of victims of tortures or similar practices, and of their families, shall be provided by law." I welcome this provision because nobody takes care of these victims, and this is a matter that should be attended to. I am referring to this because in other countries, like the United States, England, New Zealand and others, they have what they call a victim compensation system or laws. The concept here is that the victims of violent crimes are compensated in accordance with law. There is a careful graduation of offenses; a limit to the amount that can be paid; a time limit within which the application for compensation is to be made, as well as a provision that any money paid to the victims can be later on recovered from the accused. If insurance is collected, it will be deducted. But the version in other countries includes victims of violent crimes, not just crimes; however, it does not include crimes against property.

Commissioner Uka has complained that in our criminal justice system, the victim is the forgotten orphan. This easily is an opportunity for this Commission to focus attention and help to the victims of crime in a modest way, because we are only going to help those who are victims of torture and victims of violent offenses, for it is very hard to fund this if we go beyond that. So during the period of amendments, will the Committee consider a proposed amendment to include the phrase VICTIMS OF VIOLENT CRIMES?

FR. BERNAS: The Committee would certainly leave it to the body whether or not to consider such an amendment in here because Section 21 has reference to acts of public officers. But I think, what the Commissioner is proposing to present would refer to victims of crimes committed by anybody.

MR. NATIVIDAD: The usual scenario here is that of an encounter between the police and the criminal elements with a bystander — that is what happens in Mindanao or the Visayas or even in Metro Manila. In the cross fire, somebody gets seriously injured or killed. Who helps the victim pay for his hospitalization or burial? Nobody. But the man is an innocent bystander — he has nothing to do with the events.

This is not exactly a crime perpetuated by private parties against each other. Government forces are involved here and in the state of affairs of our country today, this is a common happening, but what can we do?

Another case in point is a demonstration. I remember before the advent of martial law, there were eight young men who lost consciousness because some people hit them on the head during the darkness of the rallies in those times. The parents came to me because nobody attended to their hospitalization. They were rendered unconscious, and had lost all opportunities for schooling. Who will help them pay for their hospitalization, and if they recover from their disabilities, who will help them get back on their feet?

Mr. Presiding Officer, I am not actually limiting myself to the poor victims of violent offenses, although they are also entitled to help from the state as in other countries for their funding can easily be raised, if the justice of their cause can reach the ears and hearts of our countrymen. But we are only giving priority, of course, to the victims of government forces in the fight against criminal elements. I am also trying to move farther a little bit to include also the hapless victims of violent crimes where the boundary is vague, but, nevertheless, the need is very clear.

FR. BERNAS: Certainly, we will present that to the body for a vote.

MR. NATIVIDAD: May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.

Here in the cities, 85 percent are detention prisoners and only 15 percent are convicted prisoners. But if we visit the jails, they are so crowded and the conditions are so subhuman that one-half of the inmates lie down on the cold cement floor which is usually wet, even in summer. One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: *Halt v. Sarver*, *Jackson v. Bishop*, *Jackson v. Handrick*, *Jordan v. Fitzharris* and *Rockly v. Stanley* — stated that sub-human conditions in a prison is an unconstitutional imposition of cruel and unusual punishment.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails and for the judiciary to act because the judiciary in habeas corpus proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.

I submit, Mr. Presiding Officer.

FR. BERNAS: Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper; even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD: The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for habeas corpus or for injunction. This is revealed in a proper petition.

FR. BERNAS: I agree with the Commissioner, but as I said, the purpose of Section 22 is to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD: My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS: We would await the formulation of the Commissioner's amendment.

MR. NATIVIDAD: So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered.

FR. BERNAS: Mr. Presiding Officer, as I said, we have no quarrel whatsoever with the objective. We will await the formulation of the amendment.

MR. NATIVIDAD: Thank you.

MR. MONSOD: Mr. Presiding Officer, further to the same point, can we call on Commissioner Padilla.

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

MR. PADILLA: Thank you, Mr. Presiding Officer.

The first point raised by Commissioner Natividad was a situation where a person is caught in flagrante delicto or in the presence of other persons, and he voluntarily confesses his guilt. The question is whether that would be admissible in evidence or not.

In my opinion, under Rule 130, Section 29 of the Rules of Court on confession, so long as a confession is made voluntarily by a person, and he admits his guilt as to the commission of a crime, that admission or confession is admissible in evidence. I believe what is prohibited is when a suspect is arrested or detained and he is placed under custodial investigation or interrogation by the police or the military. Under such circumstance, he should be protected from any threat, force, violence or intimidation, because once arrested under custodial investigation, his statements may not be truly voluntary. And so in Section 21, based on the Miranda decision, I would not want to say or stress the duty of the investigating officer. I think we should stress the right of a person subject to investigation under custodial interrogation.

MR. MONSOD: Mr. Presiding Officer, on the same Section 21, I would like to call Commissioner Tan.

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

SR. TAN: Mr. Presiding Officer and members of the Committee, I am referring to Section 21, lines 12 to 14 which says:

If the person cannot afford the services of counsel, he must be provided with one who is competent and independent.

During martial law, many of those who were arbitrarily arrested and who did not know the law nor their rights, were given lawyers who were sometimes competent but not independent. And so they had no choice but to go on with the charges. So, what recourse do we have to prove that the lawyer is not independent? And if it can be proven that he is not independent, I was wondering, whether line 22 would be applicable.

FR. BERNAS: First of all, if it is proved that the lawyer is not independent but taking orders from authorities and does not take into consideration the welfare of his assigned client, then whatever confession or admission is obtained by him would not be admissible as evidence under lines 19, 20 and 21.

SR. TAN: But we have to prove that he is not independent.

FR. BERNAS: Yes.

SR. TAN: But how do we do that?

FR. BERNAS: It is a question of evidence.

SR. TAN: Thank you.

MR. MONSOD: Mr. Presiding Officer, further still on Section 21, may we call on Commissioner Suarez.

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

MR. SUAREZ: Thank you, Mr. Presiding Officer.

Distinguished sponsors, in Section 21, there is a sentence here which reads: "The legislature shall enact a law punishing any violation of this section." Do the sponsors consider that relevant in the Article on the Bill of Rights, Mr. Presiding Officer?

FR. BERNAS: Is the Gentleman asking my personal opinion?

MR. SUAREZ: No, what is the Committee's stand on this, Mr. Presiding Officer?

FR. BERNAS: The Committee has decided to keep it there.

MR. SUAREZ: May I know the personal stand of the Gentleman regarding the insertion of this particular provision.

FR. BERNAS: My own personal stand is: we could dispense with this but we would, perhaps, lose the emphasis that is placed on the importance of protecting the rights of the accused, and it is something which may be missed by the legislature.

MR. SUAREZ: Assuming, hypothetically, that this particular provision will remain as proposed in the draft resolution, are these the violations that are to be considered: First, the failure of the official investigating to inform the person under investigation of his rights to remain silent and to have counsel, and second, the failure to provide the one under custodial investigation with a counsel who is competent and independent?

FR. BERNAS: That may be a little different because providing counsel — I am not too sure about this — is more of a command to the state to make free legal counsel available. Besides, the investigator himself cannot take upon himself the responsibility of looking for counsel for the individual, unless the state has made counsel available.

MR. SUAREZ: Then what is the legislative compulsion that will require compliance with this particular mandate,

Mr. Presiding Officer?

FR. BERNAS: I guess this needs implementing legislation.

MR. SUAREZ: And if there is an implementing legislation, there must be somebody who should be held as the violator of that provision and against whom sanction should be imposed?

FR. BERNAS: Yes. Let us suppose that there is, in fact, a defender officially appointed in a municipality but the investigator neglects to contact that defender.

MR. SUAREZ: And the third possible violation would be the exercise or the use of force, violence, threat or intimidation against the supposed offender. That is also one of the violations that should be punished by the legislator.

FR. BERNAS: The use of force against the subject of the investigation?

MR. SUAREZ: That is the third violation. That is contemplated under this section, Mr. Presiding Officer.

FR. BERNAS: Yes.

MR. SUAREZ: The fourth one would be the establishment of secret detention places and incommunicado detentions.

FR. BERNAS: That would be another ground for creating a penal offense.

MR. SUAREZ: And the fifth one, I suppose, is placing these offenders in those so-called secret detention places and incommunicado detentions, if these had been established.

FR. BERNAS: Yes. And, in fact, I would say that the legislature may even add related matters. In other words, when we say that the legislature shall enact a law punishing any violation of this section, we are not limiting the legislature only to what are mentioned in these sections.

MR. SUAREZ: Another point, Mr. Presiding Officer, is the provision on the compensation for and rehabilitation of victims of tortures or similar practices and of their families which must be provided by law. Does the Gentleman feel that this is also proper or relevant in drafting the Article on the Bill of Rights or should it pertain to some other place?

FR. BERNAS: To the extent that it is intimately related to Section 21, there is some justification for putting it there:

MR. SUAREZ: So the victims of tortures can now demand, as a matter of right, compensation for and their corresponding rehabilitation, if necessary?

FR. BERNAS: As provided by law. This is not an automatic grant to victims. In other words, this also needs implementing legislation.

MR. SUAREZ: But, basically, is the right of these victims to demand compensation or rehabilitation constitutionally provided?

FR. BERNAS: This is more of a command to the legislature. This is the way I read this.

MR. SUAREZ: So if the legislature will sleep on this provision, then no compensation or rehabilitation could be demanded by the citizen whose rights had been violated. Is that the meaning of this particular provision, Mr. Presiding Officer?

FR. BERNAS: As I see it, if the legislature does not pass a law implementing this, the provision by itself will not enable the victims to obtain compensation. This is again a reminder to the legislature to do something about this.

MR. SUAREZ: I remember that one of our distinguished colleagues, Commissioner Azcuna, precisely submitted for the consideration of the Committee on the Judiciary the consideration of the so-called writ of amparo, meaning, that one has the right to demand the enforcement of a constitutional right. This is now a constitutional right. So, would the Gentleman think that without the legislative enactment, this is not an enforceable right?

FR. BERNAS: We were talking here, Mr. Presiding Officer, of compensation and a system of rehabilitation. We envision here compensation by the state and rehabilitation under state auspices.

MR. SUAREZ: And, therefore, this is a demandable or enforceable constitutional right? That is what I am trying to clear up, Mr. Presiding Officer.

FR. BERNAS: It is demandable in the sense that, if there is a law providing for this compensation and providing for a system of rehabilitation, then the victim can demand compensation and rehabilitation. But, as I say, unless this is implemented by the legislature, by itself it does not accomplish much.

MR. SUAREZ: Thank you for the clarification.

MR. MONSOD: May we call Commissioner Maambong?

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

MR. MAAMBONG: Mr. Presiding Officer and members of the Committee, I was really half-expecting that in order that we could understand the Bill of Rights properly, perhaps, Commissioner Bernas could furnish us his book on The Historical and Juridical Study of the Philippine Bill of Rights, which I understand was furnished to all the Members of the Constitutional Convention of 1971. But I also understand that there are financial constraints, and the copies of the book are actually out-of-stock. It is a rare collection actually. I am privileged to have one copy, though.

Mr. Presiding Officer, I am not going to ask questions on the substantive aspect of the Bill of Rights. By way of a general statement, I would rather say that the Committee did a good job of it, one way or the other. What I am really concerned about is that, in the previous interpellations, Commissioners Quesada and Rosario Braid, particularly, found difficulty in classifying the rights which they intend to be put into the Constitution. As a student of constitutional law, I myself find that kind of difficulty. So, perhaps, with the indulgence of the members of the Committee, it could really make my day, if I could put forth my own type of classification of rights which the Committee can feel free to reject or not, for the proper understanding of the rights that we are talking about.

I find three classifications of rights. One is a right which protects the citizens against the government. Would Commissioner Bernas agree that one classification of rights would be that which provides protection of the citizen against the government itself?

FR. BERNAS: One classification of the rights in a Bill of Rights?

MR. MAAMBONG: Rights in their totality under the Constitution.

FR. BERNAS: I would say that the rights in a Constitution are protection against the government.

MR. MAAMBONG: So, that is settled then. On that score, and inspired by one of our colleagues in the Batasang Pambansa, former Assemblyman Zosimo Paredes, Jr., we filed under this category a resolution on the right to revolt. But we have it from good authority that that is an inherent right of the government and it is not actually

necessary. Could the Commissioner comment on that?

FR. BERNAS: I would say that the right to revolt is something that is inherent in the people.

MR. MAAMBONG: Yes. Probably, the right to bear arms would fall under that category. Would the Commissioner say that?

FR. BERNAS: I would not put it under that category.

MR. MAAMBONG: The second category I was thinking of is rights which protect the citizens against other private citizens. Would the Commissioner consider that as a valid classification?

FR. BERNAS: I would not put that under the Constitution. That would be more of a matter for the Civil Code and the Penal Code.

MR. MAAMBONG: I was listening to Commissioner Rodrigo, and if I got the answer of the Committee correctly, Commissioner Rodrigo was envisioning a situation where a private individual injures another individual. And if I got the answer of the Committee correctly, the answer was, that is not covered by the Bill of Rights. Did I get that correctly, Mr. Presiding Officer?

FR. BERNAS: Correct. That is covered more by civil law and criminal law.

MR. MAAMBONG: I see. The third classification which I was trying to propose is the area where the rights envisioned by Commissioners Quesada and Rosario Braid would probably fall. I understand that there are such constitutional rights which protect citizens against almost every kind of enemy, whether it be human or inhuman, like common disasters, invasion, unemployment, starvation, pestilence, fire, flood, ignorance, poverty and diseases. Would the Commissioner agree to that as a valid classification, considering that there is indeed a proliferation of rights which fall under a very gray area of classification?

FR. BERNAS: Yes. As I said in my opening statements, there have arisen in recent years, particularly under the influence of socialist teachings and also of the teachings of the Pope, certain economic and social rights which strictly are not on the same level as the traditional political and civil liberties we have in the Bill of Rights because they are not self-executory. They are more in the nature of claims or demands which the citizen may make of the state, or claims or demands made by the people in general. The provision on social justice, for instance, says that the state shall insure good working conditions for laborers. Strictly speaking, that is not one of the traditional rights under the Bill of Rights. It is more of a command to the state — "Look, you better take care of that."

MR. MAAMBONG: So, while that is a valid classification, I take it to mean, Mr. Presiding Officer, that in contradistinction with the other rights which we mentioned, this type of right is a gray area because it is not strictly enforceable in court. It is more of an obligation on the part of the government which the government may or may not do. Would that be a correct statement, Mr. Presiding Officer?

FR. BERNAS: Yes, and that is why if we have to be very puristic about the Bill of Rights, we would excise from it those which need further action by the legislature.

MR. MAAMBONG: I consider this classification very important because I notice from the index of the resolutions that we have that this is the area where most resolutions are directed to — for instance, the right to information and we also have rights mentioned by Commissioner Quesada, and I think this is important for our purpose. Would the Commissioner also agree with the statement that even though we put in clear terms the Bill of Rights, there is no such thing as absolute perfection in cases of the Bill of Rights in any Constitution?

FR. BERNAS: I could not agree less with the Gentleman.

MR. MAAMBONG: I would try to direct my attention to the present Constitution that we are talking about in relation to the 1973 Constitution. I find three classifications of rights in our Constitution. The first classification would be the general provisions on liberty and property, and this takes care of due process, equal protection, obligation of contract clauses, limitations of police power, eminent domain, taxation. Would that be a valid classification?

FR. BERNAS: Yes. Classifications are classifications, and I would rather not talk about them as valid or invalid.

MR. MAAMBONG: Yes. Anyway, the other kind of rights are those under the equal protection of the laws; and the third one would be the specific individual rights affecting the liberty of the individuals like protection from arrests and seizures and all that. My point is this: in the equal protection clause, we have already civil, political, social, cultural and economic rights. But I notice that the economic rights are not in the Bill of Rights which we are now talking about. The economic rights are actually found in other parts of the Constitution. Is that correct, Mr. Presiding Officer?

FR. BERNAS: I would consider some of the provisions of the Bill of Rights as economic rights, for instance, the due process protection for property.

MR. MAAMBONG: Yes, but we also say that as far as economic equality is concerned, for example, protection to labor, that is not found in our Bill of Rights that we are talking about right now.

FR. BERNAS: Yes. We can make any number of classifications, and if we look at the commentaries on the Constitution, every commentator makes his own classification according to his purpose. So, classifications are mainly a pedagogical instrument, I think.

MR. MAAMBONG: Just by way of general statement, it is, therefore, very clear that when we are talking of the Bill of Rights, we are not limiting the people to the rights as stated in the Bill of Rights under Article 4 which we are talking about. We can still consult other portions of the Constitution. For example, with regard to political equality, we have to go to the provisions on the Commission on Elections, and for social and cultural equality, we have to go to other provisions of the Constitution. But that does not make it any less a right of a citizen.

FR. BERNAS: Definitely.

MR. MAAMBONG: Just one more point on this, Mr. Presiding Officer. I am very fond of the Commissioner. I have here his lecture on political rights found in the New Constitution, by Joaquin G. Bernas S.J. I think this is his, which he made in UP sometime ago. And I think we should put this on record for the purpose of putting in a premise to my next question.

The Commissioner said in his lecture:

A Constitution as we understand it is a written instrument by which the powers of government are established, limited and defined and by which these same powers are distributed among the various departments for their safe and useful exercise for the benefit of the body politic. Constitutional law, on the other hand, is broader than just the written instrument. It is a body of rules resulting from the interpretation of the Constitution, interpretation arising from actual conflicts that are brought before the courts. Included in constitutional law also are the contemporary constructions which the executive department gives to the written instrument.

Mr. Presiding Officer, is it possible that rights are not clearly set out in any page of the Constitution but are interpreted by the Supreme Court or interpreted by the executive department? As the Commissioner mentioned in his lecture, those rights could be availed of by the citizen even though it is not found in the Constitution.

FR. BERNAS: That is correct, Mr. Presiding Officer. The main thing in the Constitution is the text, the letter.

Constitutional law, however, is the whole body of law built around that letter.

MR. MAAMBONG: In other words, the Supreme Court or the executive department in the performance of their respective functions can actually grant rights not found in the Constitution to people.

FR. BERNAS: I would say that the executive department and the judicial department can make their readings of the meaning of the Constitution and determine therefore, the scope of the letter. But what the Gentleman wants to know is whether they create rights, or they legislate therefor. My answer would be, in my opinion, "no." But whatever they say must be something which they can deduce from the Constitution.

MR. MAAMBONG: I will just ask one more question, Mr. Presiding Officer. On Section 22, the original phrase used in the 1935 Constitution was "cruel and unusual punishment."

FR. BERNAS: Yes.

MR. MAAMBONG: In the configuration of the 1973 Constitution, the phrase became "cruel or unusual punishment."

FR. BERNAS: That is correct.

MR. MAAMBONG: In the United States Constitution as it stands now, it is still "cruel and unusual punishment." But now in the present submission that we are going over, it is "cruel or inhuman."

FR. BERNAS: "Cruel, degrading or inhuman."

MR. MAAMBONG: I just want to find out, Mr. Presiding Officer, why the Committee changed the word "unusual" to "inhuman."

FR. BERNAS: The reason for the change, Mr. Presiding Officer, is this: We avoided the use of the word "unusual" because it tended to give the interpretation that one cannot innovate therefore as far as penology is concerned — that, if a penalty is something that was never used before, then it would be invalid. So, in order to allow for the development of penology we decided that we should not prohibit unusual punishments in the sense that they are new or novel.

MR. MAAMBONG: Thank you.

One last question. With regard to the third kind of right which we mentioned and which we agreed on but is not actually enforceable in court but is more of the duty on the part of the government, would the following fall under that kind of classification: unemployment provisions of the law, public assistance for the disabled and public assistance for old age? I am particularly concerned about this because one of our colleagues, Commissioner de los Reyes, actually filed Resolution No. 413; directed at the disabled. Would it fall under this kind of right?

FR. BERNAS: Yes, they are the ones that should need implementing legislation. They would fall under that category.

MR. MAAMBONG: But, again, are these not strictly enforceable right?

FR. BERNAS: Not until the legislature passes a law making them demandable rights.

MR. MAAMBONG: Thank you very much.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Foz.

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

MR. FOZ: Mr. Presiding Officer, in the explanation of Section 9 of the draft about freedom of speech and of the press, there is the statement that the provision preserves the consecrated language of the old version, and this is only very true, because even our 1973 Constitution speaks in the following manner: "No law shall be passed abridging the freedom of speech, or of the press, etc.," and the same language is found in our 1935 Constitution. Now, this provision is traceable to the First Amendment of the US Constitution which has words to the same effect.

FR. BERNAS: Yes.

MR. FOZ: And, in turn, this provision of the American Constitution was influenced by what happened in England or the experience of the 13 colonies, and which, in turn, was influenced by what happened in England sometime before, especially during the time of John Milton, the famous English poet who rebelled against a law at the time, which would license printing and publishing. As presently worded in our Constitution and even in the American Constitution, the impression is that it is absolute freedom of speech and of the press that is being granted or stressed, but we know very well that this is not so. As a matter of fact, in our Revised Penal Code, we know there are provisions, particularly on libel and inciting to rebellion, which are, in fact, legal provisions which abridge freedom of expression and of the press. The question is: Has the Committee ever tried defining freedom of expression, freedom of speech and of the press?

FR. BERNAS: The Committee did not think it necessary or advisable to try to define these freedoms; rather, it would prefer to keep the original language which has been enriched by a large body of jurisprudence. It is a dynamic right which is very difficult to put into simple formulas, and we prefer to leave the formula this way.

MR. FOZ: But the sponsor says there has been a lot of judicial decisions which define the extent or the boundaries of freedom of speech and of the press, and our courts are, in turn, influenced particularly by American decisions or rulings on these twin freedoms.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. FOZ: Has the Committee ever given any thought to rewriting this provision on freedom of speech and of the press?

FR. BERNAS: The Committee did not, but if the Commissioner is prepared to do it, we would entertain it. We would, however, prefer to keep the original provision.

MR. FOZ: Thank you, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer, I ask that Commissioner Villacorta be recognized.

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

MR. VILLACORTA: Mr. Presiding Officer, this is in reference to Section 6, lines 15 to 17. I had earlier addressed this clarificatory question of Commissioner Bernas who suggested that I raise it on the floor in order to generate discussion. I would like to inquire from the Committee whether or not the provision includes access to data of government research projects and whether or not the phrase "official records, and to documents and papers pertaining to official acts, transactions, or decisions" includes findings of government research. I have my doubts whether it covers results of government research, since such studies do not always pertain to official acts, transactions or decisions. Their subjects usually include popular attitudes, livelihood problems and manpower development, all of which do not comprise official acts or transactions.

FR. BERNAS: The access to official records is subject to reasonable limitations. It was earlier asked whether the limitations envisioned are purely procedural or also substantive; in other words, can the government prohibit

access to certain types of information?

I hesitate to state a general rule on this because, as I said, when we were talking about this outside the session, for instance, I would have no difficulty if, say, the DAP were to conduct an opinion poll about the present government, and we were to give to the public access to the results of that opinion poll.

MR. VILLACORTA: I think so.

FR. BERNAS: My judgment would be "yes."

But suppose the government entered into a contract, let us say, with a drug company to do funded research on a particular kind of drug, will the public have a right of access to information about the findings of that research? I think there may be proprietary rights involved here.

MR. VILLACORTA: My point here, Mr. Presiding Officer, is that the public should be more than just informed about official transactions. I think they have the right to know data that concern them especially if they themselves are the subject of surveys. The experience during the past dispensation was that state-sponsored research was manipulated to serve the interests of the regime, to legitimize its policies and perpetuate the power of its leaders. And since its think tanks conduct research to have an empirical basis for policy formulation, the public has the right to have access to these research findings.

FR. BERNAS: On those things, as I said, I have no difficulty making a rule. I only have on those areas where there may be proprietary rights involved.

MR. VILLACORTA: Should not the popular sovereignty and popular interest prevail over proprietary rights of research?

FR. BERNAS: They should.

MR. VILLACORTA: The data will not be reproduced anyway, Mr. Presiding Officer. There will be no violation of copyright in this case, but we are simply guaranteeing that the people will know what the findings are all about.

FR. BERNAS: Perhaps, we are not clear on what we mean by proprietary rights. Perhaps, it would be better if the Commissioner gave examples of what he has in mind so it will be easier to answer.

MR. VILLACORTA: I have in mind, for example, the research findings on nutrition which the previous government suppressed because they proved that we are among the most malnourished countries in the world. Researchers from universities were refused access to data, for obvious political reasons. Since the intent of this Section 6 is to adequately inform the public so that nothing vital in state affairs is kept from them, then we should add to this provision access to the results of government research.

FR. BERNAS: In that particular example, I would have no hesitation in saying that that is something which should be made accessible.

MR. VILLACORTA: Would the Committee entertain an amendment I will propose at the proper time on this subject?

FR. BERNAS: I would say that we would have to wait for the wording, Mr. Presiding Officer.

MR. VILLACORTA: Thank you very much, Mr. Presiding Officer.

MR. MONSOD: Just a short clarificatory question from Commissioner Foz.

MR. FOZ: Under the same provision, Mr. Presiding Officer, would a regulation, let us say, by the Securities and

Exchange Commission, classifying as confidential the financial reports of certain corporations, such as multinational drug corporations, be covered by the provision, so that the SEC would have no legal basis, constitutional basis, for so prohibiting or not making this financial report available to those who may be interested in taking a look at it?

FR. BERNAS: Perhaps, I should ask somebody who has more familiarity with concrete circumstances on this matter.

MR. FOZ: Financial reports are required of corporations by the SEC, but these are considered classified matters not available for inspection by interested parties.

FR. BERNAS: I would ask for the reason why they are made classified matters.

MR. FOZ: This is an actual case of a researcher at the UP Law Center who was making a research on data on the financial operations of multinational drug companies. But when he went to the SEC to take a look at the financial records — data which are filed as a matter of course by these corporations as required by the Corporation Code — he was barred from taking a look at them.

FR. BERNAS: My initial reaction, Mr. Presiding Officer, is that that would be an unreasonable limitation which is against the interest of the public.

MR. FOZ: Thank you, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer.

MS. QUESADA: Just to follow up the inquiry about the right of the people to information on matters of public concern, would this particular instance be covered by this particular section? The University of the Philippines was commissioned by one ministry of the government to conduct a research on the nationwide implementation of primary health care. The findings were derogatory to the official pronouncement, and no amount of request or appeal to this research body would make it reveal the results of such study because this body said the study was commissioned by a government agency. Will the research group violate any rule if it revealed the results of its study?

FR. BERNAS: In my judgment, no, because this is a matter of public concern. Precisely, it was commissioned by the government to discover what is good for the nation, and I think it is something about which the public has a right to know.

MS. QUESADA: Thank you.

MR. MONSOD: Mr. Presiding Officer, we have the last three speakers. May we call on the Vice-President before we suspend our session.

THE PRESIDING OFFICER (Mr. Regalado): The Vice-President is recognized.

MR. PADILLA: Thank you, Mr. Presiding Officer.

I am a member of the Committee, but I would like to ask a few questions leading to possible amendments with regard to habeas corpus; that is, Section 15, page 3. I agree with the deletion of the word "insurrection" because under the Penal Code it is rebellion. In fact, it says "rebellion or insurrection." I notice that the phrase "or imminent danger thereof" which refers to invasion and rebellion which is provided in the 1935 and 1973 Constitutions is proposed to be deleted. I suppose that invasion refers to entry or actual invasion by a foreign power while rebellion is an actual armed and public uprising. For example, in the Manila Hotel incident, even if there were armed men or soldiers present when the Vice-President took his oath of office, in my opinion, there

was no rebellion. At most, I believe the crime was a conspiracy to commit rebellion. Considering the fact that rebellion does not arise until there is an actual armed public uprising against the government, does not the sponsor believe we should not delete the words "or imminent danger thereof" that were already in our Constitution?

Likewise, I do not know what the report of the Committee on the Executive is on the provision on the commander-in-chief, whether they also recommended the removal or deletion of the words "or imminent danger thereof."

FR. BERNAS: Yes, they also do. As a matter of fact, they did it ahead of us and we merely harmonized it. Perhaps, the better place to discuss this is when we are in the Article on the Executive, particularly on the provision on the commander-in-chief.

MR. PADILLA: No, this is a very important provision in the Bill of Rights. I feel that if we delete the words "or imminent danger thereof," the privilege of the writ of habeas corpus may not be suspended until there is an actual rebellion, actual armed public uprising against the government for any of the purposes mentioned in Article 134 of the Revised Penal Code.

If we will have to wait for the actual invasion or actual armed public uprising, does not the sponsor believe that this might render the powers of the President in the commander-in-chief provision, as well as in the Bill of Rights, inutile, making it very difficult, if not too late, for the suspension of the writ of habeas corpus, especially when we consider that contrary to some decisions of the Supreme Court during martial law, we agree that even if it is suspended, it does not necessarily carry with it the denial of the right to bail? Will not the Committee consider the reinstatement of the phrase "or imminent danger thereof"?

FR. BERNAS: The reason for the deletion of the phrase "or imminent danger thereof" is that it is such a vague concept which is very difficult to evaluate and, therefore, is open to abuse by the Executive. So following the lead of the Committee on the Executive, our Committee preferred to limit the grounds for the suspension of the privilege to actual invasion and actual rebellion.

MR. PADILLA: The phrase "or imminent danger thereof" contemplates not only the danger of invasion or rebellion but that the danger is imminent. Of course, we cannot specify every instance that would constitute imminent danger of invasion or imminent danger of rebellion. But a suspension of the writ of habeas corpus, which, in a way, is precautionary, and although it might entail certain rights of individuals, is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people.

The phrase "or imminent danger thereof" may not be precise nor specific, but is somewhat vague. But is there a better way of expressing it? In my opinion, if there is real danger and it is imminent, it should cover the situation.

FR. BERNAS: In the judgment of the Committee, putting that in as a ground would not be necessary for the protection of the security of the nation. If the amendment is proposed, we certainly will present it to the floor for a vote.

MR. PADILLA: Thank you, Mr. Presiding Officer.

This provision based on the Miranda decision was suggested to be transposed to make it follow the provision on warrant of arrest or unreasonable search and seizure.

FR. BERNAS: I would agree with that, Mr. Presiding Officer.

MR. PADILLA: Thank you.

But as I mentioned earlier, I would not stress the element of duty of the investigating officer. I prefer to stress the

right of the arrested person. In other words, the original text of the 1973 Constitution, in my opinion, is better worded than the proposed provision.

FR. BERNAS: Again, we will entertain amendments on that.

MR. PADILLA: Thank you, Mr. Presiding Officer.

On Section 23, on double jeopardy, there was a Davide resolution which allowed an appeal in a judgment of acquittal in a criminal case that states:

An acquittal by a trial court is, however, appealable provided that in such event the accused shall not be detained or required to put up bail.

This has been deleted by the Committee because it adheres to the existing provision on double jeopardy.

FR. BERNAS: Yes.

MR. PADILLA: I recall that when this same idea, but in different phraseology, was presented and approved by the Committee on the Judiciary, the great objection was that it would violate the immunity against double jeopardy. But I recall, the sponsor admitted, after I had explained the day before, that it did not violate double jeopardy but that it was unnecessary and harmful. What is the real position, Mr. Presiding Officer? Is it in violation of double jeopardy or is it just because it need not be stated in the Bill of Rights nor in the Article on the Judiciary?

FR. BERNAS: I explained my position on that, Mr. Presiding Officer, when we considered the matter in the Article on the Judiciary. The position I took was that it was not a departure from existing jurisprudence. In fact, it was more strict than existing jurisprudence in that it required not just abuse of discretion but it also required that the judgment be clearly against the evidence.

MR. PADILLA: That is correct, Mr. Presiding Officer. because we want to make the exercise of that right by the state or the offended party restrictive not only through a petition for a review on certiorari in the discretion of the Supreme Court which may dismiss it outright, but also on certain grounds that are really covered by "in excess or lack of jurisdiction."

But my common impression, Mr. Presiding Officer, is that most lawyers are of the opinion that when a judgment of acquittal is rendered by a trial court, that is final, executory and not appealable. And that common impression is general.

Does not the sponsor think, Mr. Presiding Officer, an appeal from an arbitrary judgment of acquittal rendered by a few corrupt judges of the offended party or the state will improve the administration of justice?

FR. BERNAS: Mr. Presiding Officer, I have expressed my position on this when we voted on Third Reading on the Article on the Judiciary. But if the Commissioner wants to raise the matter for reconsideration, he can present a motion on the floor.

MR. PADILLA: Thank you, Mr. Presiding Officer.

I remember a memorandum of honorable Commissioner Laurel, Chairman of the Committee, saying that if there was an appeal by the accused, why not include the fiscal.

I now go to this very far-reaching classification of the death penalty as cruel, degrading or inhuman.

Regarding the right to bail, both the 1935 and the 1973 Constitutions provide for an exception of those charged with capital offense where the evidence of guilt is strong, but this was deleted in this Section 18.

FR. BERNAS: It was deleted, Mr. Presiding Officer, because of the abolition of capital punishment. Perhaps, for purposes of order, before we take up Section 18, we should take up the matter of capital punishment first.

MR. PADILLA: Yes, Mr. Presiding Officer, because capital punishment is prescribed by law only for very few capital offenses, and the court usually only imposes the penalty of reclusion perpetua to death when the commission of a capital offense is attended with qualifying and aggravating circumstances. In both Constitutions, that exception appears, that one is entitled to bail before conviction, but in a capital offense where the evidence of guilt is strong, the court may deny the right to bail. And as the sponsor said, this was deleted because under Section 21 of the 1973 Constitution's Bill of Rights, it says: "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."

The Committee suggested the change of the words "or unusual" to "degrading or inhuman punishment, or the death penalty inflicted." I wish to make of record that I agree with the observations of Commissioners Colayco, Regalado and a few others who believe that capital punishment should be retained as it is provided for not only in the Revised Penal Code but also in the Rules of Court, including the 1985 Rules on Criminal Procedures. It was proposed that capital punishment be deleted because "only God who has given us life has the right to take it away." To the proponents, therefore, the state, even in a delegated way, cannot or should not impose the death penalty.

FR. BERNAS: Mr. Presiding Officer, that is one of the reasons given by the Committee, and I think the Committee has said everything it wants to say about it.

BISHOP BACANI: Perhaps, I could just add that also right now, in an atmosphere of public opinion in the Philippines, we should take account of the fact that the Catholic bishops did oppose capital punishment. In 1979 when this was discussed by the Batasang Pambansa, Bishop Legaspi stated the Catholic bishops' stand, and I quote the final part of it:

In the present stage of development of our people and conditions of our society, we refuse to take refuge in the death penalty as the only effective and morally possible means to safeguard the life and well-being of our community and of our citizens.

I quoted that because it will influence the thinking of at least 81 percent of our population.

MR. PADILLA: I am cognizant of that opinion of the Catholic bishops. As a Catholic and a Jesuit product of the Ateneo University, I would like to comply with and even obey such an opinion, but is this matter of death penalty, a matter of faith or morals, or is it not more of law and of retributive justice?

BISHOP BACANI: Yes, let me clarify that they were making a pastoral decision for the situation of the Philippines, and that that was an actual proposal by the Batasang Pambansa at that time. At present, they explicitly make it clear that the church has never condemned the right of the state to inflict capital punishment.

MR. PADILLA: Yes. With regard to the Batasang Pambansa, I remember that there was a parliamentary bill for the abolition of the death penalty, and I appeared before its committee and opposed that bill. So it is granted that the state is not deprived of the right even from a moral standpoint of imposing or prescribing capital punishment.

BISHOP BACANI: Yes. What I am saying is that from the Catholic point of view, that right of the state is not forbidden.

MR. PADILLA: In fact, not only forbidden, but we have to accept that the state has the delegated authority from the Creator to impose the death penalty under certain circumstances.

BISHOP BACANI: The state has the delegation from God for it to do what is needed for the sake of the common

good, but the issue at stake is whether or not under the present circumstances that will be for the common good.

MR. PADILLA: But the delegated power of the state cannot be denied.

BISHOP BACANI: Yes, the state can be delegated by God at a particular stage in history, but it is not clear whether or not that delegation is forever under all circumstances.

MR. PADILLA: So this matter should be left to the legislature to determine, under certain specified conditions or circumstances, whether the retention of the death penalty or its abolition would be for the common good. I do not believe this Commission can a priori, and as was remarked within a few days or even a month, determine a positive provision in the Constitution that would prohibit even the legislature to prescribe the death penalty for the most heinous crimes, the most grievous offenses attended by many qualifying and aggravating circumstances.

BISHOP BACANI: I would just like to say that precisely because this has been discussed for so long by other people and there has been so much work done before, we can stand on their shoulders. We have benefitted from so much discussion of it and our long experience with it in the past.

MR. PADILLA: Yes, but this is not an absolute truism. It is not a matter of faith or morals, but is more of law and, as I mentioned before, of retributive justice. I do not believe it is wise to impose an absolute prohibition in the Constitution regardless of the legislative power and to depend upon the prevailing circumstances.

BISHOP BACANI: I think the sense of the Committee is that given the development of the moral sense of the people, it is now right and the time for such a prohibition in our Constitution.

MR. PADILLA: We have to distinguish among the penalty prescribed by law, the penalty imposed by a court after due trial, the necessary provisions for safeguards, the automatic review by the Supreme Court and also the question of imposition and execution of the penalty.

Will the sponsor believe that even the prescription for the provision of this capital punishment should be prohibited because under the criminal law there should be no penalty unless prescribed by law, *nulla pena sine lege*, for the impression or the recommendation is against the execution of the death penalty?

FR. BERNAS: Mr. Presiding Officer, the Committee recommends the prohibition of the imposition of the death penalty and it is our position that this be given to the floor for decision.

MR. PADILLA: I notice the remarks of Commissioner Garcia regarding extrajudicial executions in Latin America. And I suppose also during the martial law in the Philippines there were so many extrajudicial executions which had been termed "salvaging," which means that people were just unheard from. Sometimes their bodies are seen floating on the Pasig River. Of course, extrajudicial execution is abhorrent to orderly society. But does the sponsor not think that precisely to avoid extrajudicial executions, this punishment which is reserved only for very few capital offenses and when attended by qualifying circumstances, should be retained to avoid retaliation or revenge, meaning, the victims or the relatives take the law into their own hands as was mentioned in one example by Commissioner de Castro? These are arbitrary and outside the process of the law. Does the sponsor not think that the fact that there were extrajudicial executions, especially in Latin America and also here during the martial law, that that is not an argument against but in favor of capital punishment?

MR. GARCIA: No, precisely, it is these governments which tolerate or even perpetrate extrajudicial executions because of a sense of overpowering inability or capability to snuff out the life of any man, and because of this atmosphere or climate of power and terror which they perpetrate, they are able to do this with impunity in a much more massive scale by means of extrajudicial execution without having to go through due process. What I am trying to precisely point out is the climate and the thinking of the overpowering capability of the state to impose

this kind of authority over its citizens without respect of due process, without respect for dissent. If we notice, in the countries where this happened, like in Guatemala, Chile, Uruguay, Paraguay and Argentina, before the changes took place in these countries, they were in an atmosphere of authoritarian rule where the death penalty was present.

MR. PADILLA: Precisely, we condemn these extrajudicial executions. We cannot use even a stronger language than "condemn" because these executions are done arbitrarily by abuse of power without hearing, without trial, without due process. But the provision on capital punishment under our Revised Penal Code and the Rules of Court provides for even a very long procedure of trial and review, and in some cases may merit the exercise of executive clemency by commutation or by conditional pardon. If we delete this, I am afraid we might be increasing not only extrajudicial executions by arbitrary and dictatorial regimes but also private executions by those aggrieved who might take the law into their own hands because they feel they did not receive retributive justice. In other words, the Commissioner's comment on extrajudicial executions, in my opinion, is not an argument for abolition but for retention.

MR. GARCIA: It is an argument for abolition precisely because it creates a climate of resentment and conflict due to a powerful state which stresses punishment rather than for the state to look into the factors or the root causes of why a crime is committed in society, why there is armed resistance, in fact, why there is injustice in society. It is a kind of philosophical outlook where one looks into the root causes, the conditions, the factors, rather than the crime itself. I believe we have argued this at length and, therefore, I would like to submit this now to the body.

MR. PADILLA: The Commissioner's statements seem to be in conformity with the so-called positivist theory of criminal law, not the classical or the accepted rule that criminal liability is based on intelligence and free will. The positivist theory even allows or recognizes the so-called socially dangerous person who may be repressed — this is the term used in the Code of Crimes, repressed instead of penalized — that, in a way, the society more than the individual is to blame, when definitely criminal liability must be based on intelligence and free will of the actor, which is the recognized rule in criminal law.

MR. GARCIA: There is also the progressive reform penology right now which tries to precisely have a new approach regarding the existence and the elimination of crimes. And it is moving away from the lethally archaic an eye-for-an-eye, a tooth-for-a-tooth concept into a more reformatory kind of condition where it is more holistic, and trying to see the entire context rather than simply the act itself. So I think it is an effort to move into a more modern, more multidisciplinary approach towards the elimination of crimes.

MR. MONSOD: Mr. Presiding Officer, I believe we have been arguing on this point for so long and we may be going around the issue using the same arguments. May we request Commissioner Aquino to make one point regarding the Miranda case?

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

MS. AQUINO: Thank you, Mr. Presiding Officer, and I also thank the Committee sponsors.

Does Section 21 contemplate both tactical and custodial interrogations?

BISHOP BACANI: I think both of them are included.

MS. AQUINO: The 1973 Constitution carries the same formulation; it does not distinguish between tactical and custodial investigations. But in practice, during the martial law period, military investigators would attempt to flout with impunity the provisions of Section 21 on the ground that Section 20 of the 1973 Constitution did not provide that the same rights would be applicable to tactical interrogation, but only to custodial interrogation.

MR. MONSOD: Mr. Presiding Officer, I think Commissioner Colayco would like to answer that point for the Committee.

MS. AQUINO: Yes.

MR. TADEO: Mr. Presiding Officer, puwede po bang makasusog lang kay Commissioner Aquino? Kasi po iyong tinutukoy ng Commissioner ay isa rin sa aking itatanong dahil sa ang karamihang biktima ng tactical investigation ay mga magbubukid. Sinasabi po ng mga military investigators na ito ay routinary procedure at isang pag-iimbita lamang kaya po ang mga manananggol ng mga magsasaka ay hindi makapasok. Ibig lang po naming linawin kung kasama ang custodial and tactical interrogations dito sa Section 21.

THE PRESIDING OFFICER (Mr. Regalado): Has Commissioner Aquino completed her inquiry, and is she adopting the questions of Commissioner Tadeo?

MS. AQUINO: I think we are raising the same question, Mr. Presiding Officer.

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

MR. COLAYCO: Section 21 is, we might say, an expansion of the provision in the 1973 Constitution which concerns the so-called custodial examination, which was the result precisely of a complaint of Commissioner Garcia that it has been the practice of military investigators to prohibit the assistance of counsel to persons suspected of being subversives on the ground that custodial interrogation is different from tactical interrogation. So the Vice-Chairman assigned us, Commissioners Sarmiento, Garcia and myself, to further study the problem, and we have come up with this.

We will notice that under the old rule, the mantle of protection where the suspect or accused under investigation could only claim the right against self-incrimination and the right to be informed of his right to have counsel and to remain silent was apparently limited to that portion of the investigation when he was already under the technical custody of the investigator. That is why it was referred to as custodial investigation.

We went further by extending the mantle of protection to the time immediately after the commission of any offense, whether the policeman or the person making the investigation has any suspect under custody. Thus, it is stated in Section 21 that it would be the duty of the investigating officer, when making preliminary investigation on the spot, on the place of the crime or elsewhere, to remind any person or suspect that he is entitled to remain silent, to have counsel and that if he does not have any, he could demand the service of one.

So, in effect, the custodial theory was extended, and we will notice we did not use the word "custodial" anymore, so that the military investigators could not go around the provisions by saying that tactical interrogation was different from custodial interrogation; in other words, to avoid other interpretations.

MS. AQUINO: Mr. Presiding Officer, a follow-up question to that. Would this section prescribe detention preliminary to technical custody; that would mean in the nature of temporary detention before technical custody or maybe temporary detention incidental to preliminary interrogation?

MR. COLAYCO: It depends on the situation. Under the rules, a person who is in the act of committing, who is about to commit or after committing an offense may be arrested without any warrant of arrest. Under the law, while he can be detained without a warrant of arrest, he must be released unless the case is brought to the court within the period prescribed by the Revised Penal Code. During that time when he is under custody even without a warrant of arrest, this Section 21 definitely applies.

MS. AQUINO: No. What I was contemplating is a situation which is not properly covered by appropriate warrants, but which may fall under the practice of tactical interrogation. So it will be a situation of temporary

detention incidental to preliminary interrogation. Does this Section 21 likewise proscribe that kind of practice?

MR. COLAYCO: Yes, because as I explained earlier, the wording does not make use anymore of the adjective "custodial."

MS. AQUINO: The same "custodial" was not also used in the 1973 Constitution.

MR. COLAYCO: No, it was not, Mr. Presiding Officer.

MS. AQUINO: It mentioned only investigation.

MR. COLAYCO: Yes. I would like to invite the Commissioner's attention to the last sentence of the first paragraph of Section 21, which states: "Secret detention places and incommunicado detentions are prohibited," which amply covers the problem the Commissioner has voiced.

MS. AQUINO: Thank you, Mr. Presiding Officer. Maybe, some amendments might be in order to precisely apply to custodial interrogation, temporary detention and preliminary technical custody.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Rosario Braid?

MS. ROSARIO BRAID: Mr. Presiding Officer, this is on a different issue. Following my interpellation this morning, I would like to underscore the power of communication to shape opinions, to create divisiveness or, on the other hand, to build understanding between different groups. I refer to the regular occurrence of reports in the media on criminals who are often described according to ethnic origin, such as a Muslim thief, a Chinese estafador, an Ilocano killer and so forth. Often, these disparaging remarks tend to create stereotypes in the minds of the public. These also tend to create divisiveness among different groups. I wonder if the Bill of Rights could protect the rights of minorities and groups who seek redress for disparaging remarks from the media.

FR. BERNAS: The Committee will entertain amendments to that effect.

MR. MONSOD: Mr. Presiding Officer, may we call on Commissioner Tadeo.

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

MR. TADEO: Tungkol po ito sa Section 5, page 2, lines 8 to 12 na nagsasaad:

The liberty of abode and of changing the same and of travel, within the limits prescribed by law, shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

Dito po sa Section 5 para kong nakikita na ang "hamletting" ay pinahihintulutan, which in the past regime of Mr. Marcos had been used in the name of national security. Ang limandaang-libung apektadong mga magbubukid ay inilagay sa isang relocation center na parang isang kural. Ang kanilang kabuhayan at kalusugan ay naapektuhan. Nakikita ko na itong Section 5 ay bukas na naman sa "hamletting." Iminumungkahi ko na alisin natin iyon "or when necessary in the interest of national security, public safety, or public health" sapagkat ang "in the interest of national security" ang siyang laging idinadahilan sa "hamletting." I suggest that we leave this matter of liberty of abode to the court.

FR. BERNAS: Certainly, the intention of the Committee in putting in "within the limits prescribed by law" was precisely against "hamletting" But if the perception is that it is not clear enough, we will entertain amendments to make sure that "hamletting" is banned.

MR. MONSOD: Mr. Presiding Officer, may we call on the last speaker, Commissioner Suarez.

THE PRESIDING OFFICER (Mr. Regalado): May we know from the Acting Floor Leader how many more speakers have registered to interpellate?

MR. MONSOD: This is the last one, Mr. Presiding Officer.

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

MR. SUAREZ: Mr. Presiding Officer, I think the Acting Floor Leader is already exhausted. So I will get through with my questions very quickly.

May I call the sponsor's attention to Section 3, particularly on the use of the word "personally." This, I assume, is on the assumption that the judge conducting the examination must do it in person and not through a commissioner or a deputy clerk of court.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. SUAREZ: The other point is that the Committee deleted the phrase "through searching questions" which was originally proposed after the word "affirmation." May we know the reason for this, Mr. Presiding Officer.

FR. BERNAS: The sentiment of most of the members of the Committee was that it would still be understood even without that phrase.

MR. SUAREZ: For purposes of record, does this envision a situation where the judge can conduct the examination personally even in his own residence or in a place outside of the court premises, say, in a restaurant, bar or cocktail lounge? I ask this because I handled a case involving Judge Pio Marcos in connection with the Golden Buddha case, and I remember the search warrant was issued at 2:00 a.m. in his residence.

FR. BERNAS: May I ask Commissioner Colayco to answer that question from his vast experience as judge?

MR. COLAYCO: We have never come across an incident like that. But we always make sure that the application is filed in our court. It has to be done there because the application has to be registered, duly stamped and recorded in the book.

MR. SUAREZ: So it is clear to everybody that when we said "it shall be determined personally by the judge after examination under oath or affirmation" that process must have to be conducted in the court premises.

MR. COLAYCO: Not only in the court premises but also in the courtroom itself. We do that at least in Manila.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

MR. COLAYCO: For the information of the body, the words "searching questions," if I am not mistaken, are used in the Rules of Court.

FR. BERNAS: The phrase is not yet used in the Rules of Court.

MR. SUAREZ: Thank you, Mr. Presiding Officer.

May I now go to Section 19. It is stated here that a trial in absentia, so to speak, can be conducted after arraignment under the situation stated and outlined in this section, which means that the accused has been duly notified and that his failure to appear is unjustifiable. This can proceed up to a decision of conviction. Is that the meaning of this provision, Mr. Presiding Officer?

FR. BERNAS: No. Is there not something in the Rules of Court that at least provides that the accused must be present?

MR. SUAREZ: In other words, before the promulgation of the decision, a trial in absentia can be conducted.

FR. BERNAS: This has reference to the period of trial. Is the promulgation part of the trial or not? I do not think it is part of the trial.

May I ask Commissioner Colayco regarding this.

MR. COLAYCO: I may be a bit rusty on this, but my recollection is that in case of conviction, the presence of the accused is required.

FR. BERNAS: I think we used the word "trial." In the old jurisprudence, under the "right to speedy trial," I remember that the interpretation of the court of the word "trial" was that it covered the period of the trial itself, excluding the decision. So my understanding here is that the accused should be present at the promulgation of the sentence.

MR. SUAREZ: So that development could exist only, if the accused had been properly arraigned.

FR. BERNAS: That is correct, Mr. Presiding Officer.

MR. SUAREZ: And, therefore, his failure to appear despite the service of notices to him is unjustifiable.

FR. BERNAS: Yes, Mr. Presiding Officer.

MR. SUAREZ: And up to the point where the judge can render the decision on the basis of the trial conducted, he cannot promulgate the decision?

FR. BERNAS: I think this covers the period until the prosecution rests the case.

MR. SUAREZ: Thank you for the clarification, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer, I move that we close the period of sponsorship and debate.

MR. NATIVIDAD: Just a moment, Mr. Presiding Officer.

May I just make a remark?

MR. MONSOD: I ask that Commissioner Natividad be recognized.

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

MR. NATIVIDAD: With regard to the remarks of Commissioners Tadeo and Aquino that there were two types of interrogations conducted during investigations in which they participated — the custodial and the tactical — I ask for tolerance to remark on this because this shows that the police organization or investigative bodies operating at that time were not truly police forces or civilian forces. They are military forces, and this is an argument for us to approve a civilian police. There is no such thing as tactical questioning in police work but custodial where the police engages in interrogations and interviews. When we question a suspect, it is interrogation; when we question a complainant or a witness, it is an interview, but this interrogation is subject to the rights of the accused. We cannot say that because a person is tactically interrogated, the constitutional rights of the suspect will not apply and cannot be respected. That is why we should, in this Constitution, approve the establishment of a really civilian police force to prevent the occurrence of such operation of police forces in the future.

MR. DE CASTRO: Mr. Presiding Officer.

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

MR. DE CASTRO: Thank you.

In reenforcement of what Commissioner Natividad has said, there is no such thing as tactical investigation by the police, but there is a tactical interrogation in times of war. The front line units, when they capture an enemy, are entitled to tactical interrogation of the prisoner and afterwards, the POWs are evacuated to the rear for further interrogation. What is this tactical interrogation of the front line units? This involves questions like "Where are your other companions?" "How many are they?" "What unit are they in?" and such other pertinent questions. That is what we call tactical interrogation. After that the prisoner is sent to the rear echelon for further investigation. So in police parlance, there is no such thing as tactical nor custodial investigation; it is just investigation period.

Thank you, Mr. Presiding Officer.

MR. MONSOD: Mr. Presiding Officer, I move that we close the period of sponsorship and debate.

THE PRESIDING OFFICER (Mr. Regalado): There is a motion to close the period of sponsorship and debate.

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

MR. MONSOD: Mr. Presiding Officer, I just want to make an announcement.

Proposed Resolution No 479, entitled: RESOLUTION TO INCORPORATE IN THE DECLARATION OF PRINCIPLES THE RECOGNITION OF RURAL DEVELOPMENT AND AGRARIAN REFORM AS PRIORITIES OF THE STATE, AND COOPERATIVES AS AN ORGANIZING PRINCIPLE, has been referred by the Committee on Social Justice to the Committee on Preamble, National Territory, and Declaration of Principles.

ADJOURNMENT OF SESSION

MR. MONSOD: Mr. Presiding Officer, it seems that our Members are valiantly carrying on despite exhaustion, but in the interest of everybody's health and the health of the Constitution we are trying to frame, I move that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDING OFFICER (Mr. Regalado): Is there any objection? (Silence) The Chair hears none; the session is adjourned until tomorrow at nine-thirty in the morning.

It was 6:01 p.m.

[*] Appeared after the roll call

[*] See Appendix.

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