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Wednesday, August 27, 1986

CALL TO ORDER

At 9:58 a.m., the President of the Constitutional Commission, the Honorable Cecilia Muñoz Palma, called the session to order.

NATIONAL ANTHEM AND PRAYER

The National Anthem was sung followed by a prayer led by Mr. Ricardo J. Romulo, to wit:

"Dear God, in the words of St. Francis, "make us an instrument of your peace,

Where there is hatred, let us bring love,

Where there is injury, pardon

Where there is doubt, faith

Where there is despair, hope

Where there is darkness, light

Where there is sadness, joy."

Dispel therefore from our hearts those dark shadows of suspicion and fear which becloud our minds and our visions.

In drafting this new Covenant for all our people, teach us to accept with serenity the things that cannot be changed. Give us the courage to change the things that can and should be changed. And, above all else, grant us the wisdom to distinguish one from the other so that we can be spared of further strife and dissension.

This we ask in the name of our Lord, Jesus Christ.

Amen."

ROLL CALL

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

Alonto, A. D.

Carcia, E.G.

Azcuna, A. S.

Gascon

Bacani, T. C.
Guingona, S.V.C.
Bengzon, J. F. S.
Jamir, A.M.K.
Rosario Braid,
Lerum, E.R.
Calderon, J. D.
Maambong, R.E.
De Castro, C. M.
Monsod, C.S.
Colayco, J. C.
Natividad, T. C.
Concepcion, R. R.
Nieva, M.T.F.
Davide, H. G.
Nolledo, J.N.
Foz, V. B.
Ople, B.F.
Padilla, A.B.
Romulo, R.J.
Muñoz Palma, C.
Sarmiento, R.V.
Rama, N.G.
Sumulong, L.M.
Regalado, F.D.
Tan, C.
De los Reyes, R.F.
Tingson, G.J.
Rigos, C.A.
Uka, L.L.
Rodrigo, F.A.

Villegas, B.M.

With 36 Members present, the Chair declared the presence of a quorum.

The following Members appeared after the Roll Call:

A.M.

Abubakar, Y. R.

Bernas, J. G.

Aquino, F. S.

The following Members were absent:

Bennagen, P. L.

Suarez, J. E.

Brocka, L. O.

Tadeo, J. S. L.

Laurel, J. B.

Villacorta, W. V.

Quesada, M. L. M.

Messrs. Rosales and Treñas were sick.

On August 26, 1986, Mr. Abubakar, who was present, was inadvertently marked absent.

READING AND APPROVAL OF THE JOURNAL

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

REFERENCE OF BUSINESS

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

REFERRAL TO COMMITTEE OF COMMUNICATION

Upon direction of the Chair, the Secretary-General read the title, of the following Communication which, in turn, was referred by the Chair to the Committee hereunder indicated:

Communication No. 634 — Constitutional Commission of 1986

Communication from Mr. Edgardo J. Angara, President, University of the Philippines, Quezon City, transmitting a copy of the Executive Summary submitted by Atty. Casiano O. Flores, Head of the Division of Continuing Legal Education of the U.P. Law Center, who had been conducting a series of 2-day "constitutional mini-conventions" in the various regions of the country as part of the U.P. Constitution Project to get the perceptions and reactions of the various sectors in the deliberations/discussions of the Constitutional Commission of 1986.

TO THE STEERING COMMITTEE

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

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

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

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

MOTION OF MR. MAAMBONG

At this juncture, Mr. Maambong moved, pursuant to his reservation, for the creation or establishment of a Commission on Human Rights not as an independent constitutional commission but through Congress by mandate of the Constitution. He explained that the motion was filed in view of the sentiment among some members that the creation of the commission should only be constitutionally mandated instead of creating it as an independent constitutional commission.

In reply to the query of the Chair whether the motion could be in the form of an amendment, considering the stage of the proceedings, Mr. Maambong agreed, manifesting, however, that the proponents feel that it is a prejudicial question and that, should the Body approve the motion, another motion could be presented to delete the whole Article and to substitute it with one section to be transposed to the Article on General Provisions.

The Chair suggested that the Committee be given time to confer on the action its Members would take on the motion.

Mr. Maambong stated that he would furnish the Committee with a formulation of his motion.

SUSPENSION OF SESSION

The Chair suspended the session.

It was 10:07 a.m.

RESUMPTION OF SESSION

At 10:26 a.m., the session was resumed.

Upon resumption of session, the Chair recognized Mr. Maambong.

PROPOSED AMENDMENT OF MR. MAAMBONG

Mr. Maambong withdrew his earlier motion and proposed to delete the whole Article on the Commission on Human Rights and to substitute it with the following Section:

SECTION__. CONGRESS SHALL CREATE A COMMISSION TO INVESTIGATE VIOLATIONS OF INDIVIDUAL, CIVIL AND POLITICAL RIGHTS COMMITTED BY OR AGAINST PUBLIC OFFICERS, CIVILIAN, POLICE AND MILITARY AUTHORITIES OR PRIVATE PARTIES. IT SHALL HAVE SUCH POWERS AND FUNCTIONS AS MAY BE PROVIDED BY LAW.

Mr. Maambong mentioned as his co-authors Messrs. Calderon, Jamir, Colayco and de Castro.

He then made a reservation for Mr. Calderon speak in support of the motion, Meanwhile, he asked for the Committee's reaction to the amendment.

Responding thereto, Mr. Monsod stated the Committee's position that the proposed special body must be invested with independence not only for credibility but also for the effectiveness of its work. However, he stated that it is the opinion of the Committee that it need not be a commission similar to the three constitutional commissions, namely, the Commission on Audit, the Commission on Elections and the Civil Service Commission. He recalled that the Ombudsman is a constitutional creation but is not considered one of the constitutional commissions. He stated that the intent is merely to establish an independent office which could function in the area of human rights, to which nominations or appointments could be shielded from politics by doing it through the Judicial and Bar Council and giving it fiscal autonomy.

Replying then to Mr. Maambong's inquiry whether said special body could be dissolved by Congress considering that it would not belong to the category of constitutional commissions, Mr. Monsod replied in the negative, stressing, however, that it should be a constitutional creation so that over time, its scope could be enlarged to include social and economic rights as well as causes of violations of human rights both in the narrow and broad sense. He affirmed that it would be a continuing body regardless of whether it has performed its function in the field of human rights, be it individual, political or civil rights, and that the only reason for initially limiting its scope is that the Committee wants to avoid diluting its efforts at a time when real and concrete problems have to be addressed.

On whether the Chairman and Members of the Commission would be subject to impeachment, Mr. Monsod stated that the Committee did not contemplate making impeachment applicable to them but would like to leave to Congress the manner by which they may be removed. He agreed that unlike the Ombudsman, the officers of the Commission may be removed under the Civil Service Law or laws which Congress may enact.

At this juncture, Mr. Jamir manifested that he was in full agreement with the sentiments of Mr. Maambong.

INQUIRY OF MR. DE CASTRO

In reply to Mr. de Castro's query, Mr. Monsod stated that the Commission on Human Rights need not be necessarily placed in the Article on Constitutional Commissions but under some other Articles, like the Article on General Provisions. He agreed that the formulation of Mr. Maambong could still be subject to certain amendments.

FURTHER INQUIRY OF MR. MAAMBONG

Mr. Maambong inquired whether the formulation on the commission would carry only one section. He suggested that the Committee reformulate the amendments in only: one section and all other provisions, for instance, on the functions of the office, could be provided by law.

Mr. Davide, however, suggested that to save time, the Committee need not undertake a reformulation and the Body could work on the framework of the Article as presented on the understanding that it would not be a separate subdivision of the Article on Constitutional Commissions. He suggested that the Body disregard the heading and subheading above Section 1 and make Section 2 as the second paragraph of a single section of the Article.

At this juncture, the Chair recognized Mr. Colayco.

MANIFESTATION OF MR. COLAYCO

Mr. Colayco manifested support for the stand of the Committee that the Commission on Human Rights would still be a constitutional commission but not as a separate constitutional commission under the Article on Constitutional Commissions.

MANIFESTATION OF MR. VILLEGAS

Mr. Villegas, likewise, manifested support for the view of the Committee and cited the analogous situation of the central monetary authority which would be independent of the President and which Congress could not dissolve at will.

REMARKS OF MR. DE CASTRO

In reply to Mr. Sarmiento's query whether he would agree to Mr. Davide's suggestion, Mr. de Castro stated that since the proposal is for an independent body to be created by law to include functions and removal of officers, it would be difficult to follow the Committee's formulation. He expressed support for Mr. Maambong's motion for an independent human rights body to be created by law.

FURTHER INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query on whether the reformulation of the Committee would include only one section or would also cover functions and duties as in the case of the provisions on the Ombudsman, Mr. Sarmiento stated that it would consist of two or three sections to include the powers and functions of the Commission, just like the Article on Accountability of Public Officers.

Mr. Maambong then suggested that the Body first determine whether the creation of the Commission shall be by the Constitution or by Congress, to which Mr. Sarmiento replied that it shall be created by the Constitution for the reasons already given by Mr. Monsod.

At this juncture, the Chair noted that Mr. Maambong's proposed amendment posed a basic question whether Congress shall create the office which the Committee did not accept because it is the sense of the Committee that the creation of the said Commission be enshrined in the Constitution.

In reply, Mr. Maambong suggested that the Body first decide the issue since it is basic to all the provisions that will be formulated later on.

REMARKS OF MR. RODRIGO

In support of Mr. Maambong's amendment, Mr. Rodrigo stated that, like the Ombudsman, the office proposed to be created would be a paper tiger if it would be independent of the President because its powers would merely be investigatory and recommendatory with no power to compel police agencies and fiscals to investigate and prosecute unless it has the backing of the President. He also stated that its creation would be very expensive if branches would be established in the different parts of the country. It would have to depend on the present investigating agencies of the government which are under the President and, therefore, like the Ombudsman, it would only raise false hopes among the people. He maintained that Congress, composed of elective representatives, should enact the law creating the office under the Executive Department.

REMARKS OF MR. RAMA

Mr. Rama stated that one of the basic questions that should be answered is whether or not this body on human rights is so necessary that it should be placed in the Constitution. He invited attention to the fact that there has been grave concern all over the world for people whose human rights have been violated, such violations being considered as an international crime which merited notice by international organizations that recognize the importance of human rights.

Mr. Rama noted that there was no basic conflict because Mr. Maambong agreed with the Committee that it need not be a constitutional commission like the others provided for in the Article on Constitutional Commissions but that it should be included in the Constitution. He observed that it is a matter of defining the powers and he agreed with the suggestion of Mr. Davide that in the meanwhile, there is no need to formulate a basic policy on the status of said office and the Body may continue with the amendments on other sections defining the functions and qualifications of the members of said body.

REMARKS OF MR. RODRIGO

Mr. Rodrigo pointed out that there was no disagreement on the need of such an office and of a provision for it in the Constitution. He observed that Mr. Maambong's amendment was based on a provision mandating Congress to create the body. He said that the disagreement is on the act that the proposed body would be isolated from the President without enough power and personnel to act on its own since it would only investigate violations of human rights and make recommendations.

In reply to Mr. Colayco's observation that he gave the impression that he was entirely against the idea, Mr. Rodrigo stressed that he was in favor of the proposed amendment of Mr. Maambong for a provision in the Constitution to mandate Congress to create the body. He pointed out, however, that his disagreement was on the status of said body which was sought to be isolated from the President without giving it enough powers to act on its own, his stand being that it should be an office in the Executive Department so that it would have the latter's cooperation in investigating cases as well as in recommending prosecution of cases anywhere in the country.

As to how the Constitutional Commission could be sure that the next President of the Philippines would be somebody who could be trusted, Mr. Rodrigo stated that neither could one be sure that the members of the Commission on Human rights can be trusted. He stated that the President is at least elected by the people.

Reacting thereto, Mr. Monsod acknowledged the merits of Mr. Rodrigo's arguments and that the Committee would be willing to accept his advice on how to reconcile them with the Committees position. He affirmed the need for the proposed body to work and cooperate with the Executive because of the services required for the discharge of its functions.

Aside from making this a permanent constitutional commission, Mr. Monsod stressed that the intent of the Committee is to make the Commission on Human Rights function even under the worst circumstance that the Executive may not be very cooperative. It is in this context, he stated, that the Committee would be willing to entertain proposals that would provide safeguards against the Commission being rendered useless by an uncooperative Executive.

REMARKS OF MR. NOLLEDO AGAINST MR. MAAMBONG'S AMENDMENT

In speaking against Mr. Maambong's amendment, Mr. Nollado disagreed with Mr. Rodrigo that the Commission on Human Rights would only be a paper tiger, stating that he intends to propose amendments that would strengthen the powers of said Commission, among others, one that would give the Commission the power to

provide appropriate legal measures which may include injunctive relief and issuance of the writ of habeas corpus.

Mr. Nollado noted that the arguments raised by Mr. Rodrigo were the same argument E he raised against the creation of the Ombudsman. He stated that it is understandable if some Members are still suffering from paranoia considering the sad experiences they had during the previous regime. He further questioned the propriety of giving Congress the power to create this Commission. He urged the Constitutional Commission not to miss the golden opportunity to create this very important body based on the sad experiences suffered by many during the Marcos regime. He pointed out that everyone is learning his lessons and he warned that should the Body remain adamant by not adopting remedies to avoid the condemnable practices of the past regime, history might repeat itself and the Body would be judged harshly by future generations.

Mr. Nollado pointed out that for many years during the Marcos regime and even at present, human rights have been abundantly violated and he, together with Messrs. Rodrigo and Rama, could attest to this fact. He stated that the concern for the protection of human rights is worldwide and the provisions on the creation of the Commission on Human Rights underscored the need to strengthen a mechanism that would truly protect human rights and vindicate violations thereof. He adverted to a resolution which he filed seeking to include the Article on the Declaration of Principles a provision that would mandate the State to respect the dignity of the human personality and guarantee full respect to human rights having in mind that a nation which does not intensely value human rights does not deserve the respect of other freedom-loving nations.

Finally, Mr. Nollado stressed that by setting up the Commission on Human Rights as a veritable watchdog or guardian of the people against violations of human rights, the Body would manifest to the world its respect for human dignity and honor. He stated that he could not understand the hesitation to create the Commission on Human Rights if, indeed, the sufferings and anguish of the victims of human rights violations should find sympathy in the heart of everyone. He opined that leaving to Congress the creation of the Commission on Human Rights is giving less importance to a truly fundamental need to set up a body that would effectively enforce the rules designed to uphold human rights.

COMMENTS OF MR. PADILLA

Adverting to Mr. Maambong's proposed amendment by substitution and the suggestion of Mr. Davide that the Body continue with the amendments of the Committee's draft proposals, Mr. Padilla expressed the view that the proposed amendment of Mr. Maambong is a priori that deserves the Body's prior consideration. He further opined that the proposal of the Committee is not necessary because for the protection of human rights, there is the entire machinery of the government, particularly the law enforcement agencies, the prosecuting and the administration of justice, but should there be a need to provide a section in the Constitution, he suggested that the Body consider the substitute amendment of Mr. Maambong, considering that it would provide for only one section in another portion of the Constitution rather than a separate Article that would be in the nature of a prejudicial question.

Mr. Padilla questioned the propriety of empowering the Commission on Human Rights to issue injunctive relief and the issuance of the writ of habeas corpus as suggested by Mr. Nollado, because the proposed Commission is investigative and essentially administrative. He stated that there is no question on the importance of human rights and that violations thereof should be prevented, detected and punished, but the prejudicial question before the Body is whether to entertain Mr. Maambong's proposed amendment by substitution. He stated that should the Body accept the amendment, it could limit its amendment to the substitute section.

REMARKS OF MR. GARCIA

Mr. Garcia stressed that the very heart of the proposal is the independence of the Commission on Human Rights. He recalled, as a former researcher of Amnesty International, how governments denied that there were tortures and political prisoners in their countries when they were investigated about human rights violations. He pointed out that very often, the most credible organizations/commissions on human rights are those that are independent and privately-owned.

Mr. Garcia stated that an independent commission on human rights would give credibility to the government in the sense that this body would not be subject to pressure or control from the political leadership. Furthermore, he stated that while political fortunes come and go, the creation of a commission on human rights would give continuing focus on the importance of human rights and prevent their violations. He stated that there is no substitute for an ongoing and continuing educational program on human rights to instill consciousness among people who are willing to uphold and defend their basic rights.

Finally, Mr. Garcia asked the Members who were once victims of human rights violations to present their suggestions and proposals designed to strengthen the Commission on Human Rights.

MANIFESTATION OF MR. MAAMBONG

Mr. Maambong manifested his intention to ask for suspension of consideration of his proposed amendment in favor of placing before the Body the issue of whether or not the Commission on Human Rights should be created as an independent body in the Constitution or whether it should be created by Congress through a constitutional mandate. He asked the Committee if it could present some amendments to the amendment by substitution which would in a way resolve the basic issue which he earlier stated.

The Chair, however, pointed out that there were some observations in favor of the creation of the Commission on Human Rights by Congress and that this issue should be presented to the Body.

SUGGESTION OF MR. MONSOD

Mr. Monsod suggested that, as proposed by Mr. Davide, the Body vote on the first paragraph of the Committee's proposal which reads: THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS COMPOSED OF A CHAIRMAN AND TWO COMMISSIONERS WHO SHALL BE NATURAL-BORN CITIZENS OF THE PHILIPPINES, MEMBERS OF THE BAR, AND WITH SUCH OTHER QUALIFICATIONS AND DISQUALIFICATIONS AS MAY BE PROVIDED BY LAW.

Mr. Monsod clarified that the Commission on Human Rights would not be in the same category as the Constitutional Commissions like the Commission on Civil Service, the Commission on Audit and the Commission on Elections and that the word "independent" would not preclude amendments that would resolve the issues on the need of cooperation and independence. He added that this would likewise resolve the issue implicit in the proposed amendment of Mr. Maambong.

Mr. Maambong accepted Mr. Monsod's proposal provided that it would resolve the issue whether the Commission on Human Rights would be directly created by the Constitution or whether this would be created by Congress through a mandate in the Constitution

Mr. Monsod assured that it would resolve the issue because should the Body approve the first paragraph, the Commission on Human Rights would become a constitutional office although it would still need an implementing act of Congress. He affirmed that should the Body vote otherwise, it would mean that the Body does not want the

Commission on Human Rights created directly by the Constitution but by Congress through a mandate in the Constitution.

SUGGESTION OF THE CHAIR

The Chair suggested that the issue to be presented to the Body is whether the Commission on Human Rights should be created by Congress through a mandate in the Constitution, which Mr. Maambong accepted.

INQUIRY OF MR. NATIVIDAD

In reply to Mr. Natividad's inquiry, Mr. Maambong affirmed that should the Body vote on his proposal, it would not preclude the Members from proposing amendments that would strengthen the Commission.

SUGGESTION OF MRS. ROSARIO BRAID

Mrs. Rosario Braid suggested that there be an assurance that an appropriate framework should be provided within which Congress could act in the sense that there should be subsequent sections that would define the functions, the scope and type of this Commission on Human Rights, in reply to which Mr. Maambong reiterated that the Members are not prevented from proposing additional provisions should his proposal be voted upon by the Body.

COMMENTS OF MR. FOZ

Mr. Foz stated that if it is the intent of the Body to mandate Congress to create the Commission on Human Rights, it should provide as well for the framework on which this body could function.

MR. BACANI'S PROPOSED AMENDMENT TO THE AMENDMENT

Mr. Bacani presented compromise amendment reads: THERE SHALL BE A COMMISSION WHOSE FUNCTIONS AND LIMITATIONS WILL BE DETERMINED BY CONGRESS.

MOTION OF MR. MAAMBONG

Mr. Maambong moved that the creation of the commission on Human Rights done by Congress through a mandate of the constitution and not by direct creation of the constitution.

REMARKS OF MR. RAMA AGAINST THE MOTION

Speaking against the motion, Mr. Rama stressed that the basic concept and the most essential provisions of the Constitution are the structure of government and the Bill of Rights, the reason being that the rights of citizens should be guaranteed against the excesses of the government. It is in this context, he stated, that there is a need to create a Commission on Human Rights to guarantee and protect the rights of the citizens. He underscored the need of providing in the Constitution the creation of the Commission on Human Rights consistent with the concern expressed by many international organizations.

PARLIAMENTARY INQUIRY OF MR. DAVIDE

On Mr. Davide's parliamentary inquiry, the Chair affirmed that whatever vote the Body take would not preclude the presentation of subsequent amendments.

RESTATEMENT OF MR. MAAMBONG'S MOTION

Mr. Maambong restated his motion that the Commission on Human Rights be created by Congress by mandate of the Constitution and that it should not be created directly by the Constitution.

COMMENTS OF MR. CONCEPCION

Mr. Concepcion disagreed with the alternative by stating that the Body should vote only on the question of whether or not the Commission on Human Rights shall be created by Congress through a Constitutional mandate. He opined that a negative vote would not mean an affirmative vote on the other alternative. He stated that this would give the Body a chance to discuss the other alternative. He stressed that what the Body should vote on is whether the Commission on Human Rights should be created by Congress under a mandate of the Constitution.

Mr. Maambong accepted Mr. Concepcion's amendment to his motion.

On Mr. Bacani's query whether he would not want to have the honor of establishing the Commission on Human Rights in the proposed new Constitution, Mr. Maambong replied that although he is in Mr. Bacani presented a compromise amendment favor of the creation of such a Commission, he would rather mandate Congress to create it.

Thereafter, the motion of Mr. Maambong was submitted to a vote, and with 11 Members voting in favor and 22 against, the same was lost.

Thereupon, Mr. Maambong manifested that in view of the result of the voting, he was withdrawing his motion for substitution.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Mrs. Rosario Braid proposed, on Section 1, line 9, to change the comma (,) after "Philippines" to a period (.) and to add the sentence THE CHAIRMAN AND ONE MEMBER SHOULD BE MEMBERS OF THE BAR FOR AT LEAST TEN YEARS, THE THIRD MEMBER SHOULD REPRESENT ANOTHER SECTOR SUCH AS EDUCATION OR OTHER DEVELOPMENT AREAS.

SUSPENSION OF SESSION

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

It was 11:32 a.m.

RESUMPTION OF SESSION

At 11:51 a.m., the session was resumed.

Upon resumption of session, Mr. Sarmiento requested Mr. Bernas to sit with the Committee.

AMENDMENT OF MR. MONSOD AS MODIFIED BY MR. BACANI

Thereupon, Mr. Monsod proposed that the first paragraph only state that the principle which would read as follows: THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS.

At this juncture, Mr. Rodrigo stated, for the records, that an office such as the proposed Commission which is not granted sufficient powers of its own, if independent from the Executive, would be a paper tiger.

Thereupon, Mr. Bacani proposed to modify the amendment so that it would read as follows THERE IS HEREBY CREATED AN OFFICE WHICH SHALL BE CALLED THE COMMISSION ON HUMAN RIGHTS.

Mr. Monsod accepted the amendment.

Mr. Sarmiento restated the amendment, to wit: THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS.

Submitted to a vote, and with 33 Members voting in favor, none against and 1 abstention, the same was approved by the Body.

Mr. Bernas stated that before the Body proceeds with the consideration of the Commission's composition and the qualifications of its members, the Committee would like to consider its minimum functions with an opening for Congress to expand such functions later

AMENDMENT OF MR. OPLE AS MODIFIED

BY MR. DE CASTRO

Mr. Ople proposed, on Section 2, page 1, line 22, to add after "private parties" a clause which reads: INCLUDING THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION OR INSURRECTION.

Mr. Ople explained that the Armed Forces of the Philippines (AFP), through its Chief of Staff Gen. Fidel Ramos, has expressed strong reservations concerning a human rights policy that shuts itself to violations committed by forces adversary or hostile to the State since the effect of this is highly demoralizing to the members of the military establishment.

He pointed out that there are already reports that the efficiency of the AFP might be impaired if the military men would have to exist in fear of prosecution for human rights violations while their adversaries are exempt from such inquiry and immune to such risks.

He explained that the phrase "private parties" would dispel the apprehension that some would be excepted from the rule.

Reacting thereto, Mr. Garcia stated that the Committee is divided on the issue. He opined that: 1) the inclusion of crimes committed by lawless elements or insurgents would duplicate the functions of ordinary courts and fiscals; and 2) it would be difficult if not impossible to prosecute these elements since they are not recognized as legitimate forces, not being signatories to the Universal Declaration of Human Rights or the International Convention on Civil and Political Rights.

In reply, Mr. Ople stated that: 1) he agrees to the creation of the Commission to deter violations of human rights whoever may be the violator since atrocities committed by insurgents correspond to certain crimes under the Revised Penal Code; and 2) the moral-force exerted by the Commission would be a deterrent to such violations.

On the remark that the insurgents are not signatories to the Convention or Treaty adverted to, he stated that the government is not precluded from asserting its jurisdiction and power to enforce the law.

At this juncture, Mr. de Castro proposed to amend Mr. Ople's amendment, to read: INVESTIGATE ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND POLITICAL RIGHTS. He explained that enumeration of offenders would exclude other possible offenders.

Commenting on Mr. Ople's amendment, Mr. Bernas stated that the existing jurisprudence in criminal law is that

rebellion absorbs all other acts, thus, to connect violations of human rights with rebellion would be to ignore the specifications of violations of human rights, so that being charged with rebellion would itself be a defense against a charge of violation of human rights.

Mr. Ople argued that rebellion is not a condition sine qua non for violation of human rights by a rebel, to which Mr. Bernas replied that its mere mention would make "rebellion" the context that would cover everything.

Mr. Ople stated that "rebellion" or "insurrection" casts a constitutional net which may not refer to actual conditions of combat but segregates such violations of human rights which may be independently proceeded against by the Human Rights Commission.

Mr. Bernas stated that the problem is on the language of the proposed amendment which would make the act of "rebellion" the context of the provision. He maintained that its deletion would make everyone else fall under "private parties".

Ms. Aquino observed that the proposed amendment has a myopic focus of the problems of human rights because human rights speaks of an improper balance of power. between the masses which, traditionally and historically, are best appreciated in the context of state and institutional violence. She stressed that it is in this context that the Commission should function.

Mr. Ople agreed with Ms. Aquino's comment stating that the Commission is needed to counter the overbearing and powerful state. He stated that information shows that insurgent forces do exist and that the recent public apology by an NPA commander in Cagayan de Oro and Misamis Oriental for deaths of innocent civilians makes clearer the fact that atrocities and violations are also committed by them. He stated that this would cause demoralization in the ranks of the military because of the discriminatory effect of the provision.

Mr. Foz stated that the Committee prefers Mr. de Castro's amendment because it is all-embracing and that it allows Congress to specify the scope of the Commission's jurisdiction and power.

Mr. Ople stated that he would be willing to accept Mr. de Castro's amendment provided that the deletion of the enumeration would subject all violators of human rights to the provision.

Commenting on the statements of Mr. Bernas, Mr. de los Reyes stated that rebellion is not a complex crime and that any crime committed aside from the rebellious act is a separate offense which could be prosecuted independently. He stated that acts committed by the military are usually published in the papers creating a very bad image for the military. He opined that the Ople amendment would balance the situation by bringing to public knowledge the atrocities committed by the insurgents.*

Mr. Concepcion proposed to add PRIVATE PARTIES without distinction, stating that the Commission should be more interested in determining the causes of violations of human rights and how to prevent the same, and preparing statistics of known cases of violations by the military and civilians not for the purpose of prosecution but of suggesting ways and means to minimize, reduce, correct or remedy the situation.

Mr. Regalado expressed support for Mr. de los Reyes' observations by stating that in the cases of *People vs. Geronimo* and *People vs. Taruc*, it was held that any other offense committed by the rebels in furtherance of the rebellion is a separate crime. He observed that Mr. Ople's amendment underscores the concern of General Ramos for which he suggested CRIMES AGAINST PUBLIC ORDER which would include rebellion, sedition and tumultuous disturbances.*

Mr. Concepcion observed, however, that the more the offenses are specified, the more it will limit the functions of the Commission.

In reply to the observation of Mr. Concepcion, Mr. Bernas stated that this is precisely the reason why mention of any crime should be avoided to focus on the violations of human rights, as proposed by Mr. de Castro.

On the query of the Chair whether the formulation of Mr. de Castro was acceptable to him, Mr. Ople stated that the response of the Committee to his question as to the purview or the scope of human rights violations within the jurisdiction of the Commission on Human Rights being proposed was not satisfactory. He observed that there is a tendency to evade the issue on whether human rights violations committed by anti-government forces would be encompassed by the term "private parties". Mr. Bernas clarified, in answer thereto, that the Committee is trying to avoid using a language which would tend to connect violations of human rights to any specific crime such as rebellion, as there may be trouble in determining whether such violation is done in furtherance of, or independently of rebellion. He stated that "private parties" would cover rebels since they are not public officials, civilians or military authorities. He noted that the amendment of Mr. de Castro, which focuses on the violation and not on the violators, would be preferable.

Thereupon, Mr. Ople inquired what the position of the Committee would be with reference to the term "private parties" and whether it would support the points raised by Mr. Bernas, to which Mr. Sarmiento replied that the Committee Members are divided on the issue.

INQUIRY OF MRS. NIEVA

Mrs. Nieva sought clarification stating that she raised the same question in the previous session, to which Mr. Sarmiento replied that "private parties" would include all sides — leftists, rightists, centrists, rebels and any private group.

Mr. Garcia affirmed that Mrs. Nieva's observation was correct and that in the Committee Report, the term "all parties" would include all these different groups. He clarified that what the Committee was trying to present was the debate on the issue of human rights which is being followed by the Presidential Committee on Human Rights created by the Aquino government. He stated that the issue of human rights violations had been discussed by the Committee which concluded that all crimes, in one way or another, are violations of human rights which are punishable by courts and prosecuted by fiscals. He noted that the suggestion that the Committee pursue all crimes which may be committed by different groups would prevent the Committee from pursuing its essential task to go after crimes where remedies are feasible and where victims do not have ready access to legal remedies. He adverted to the remarks of Ms. Aquino that the government has a monopoly of legitimate power and can punish crimes through the ordinary courts of law. While admitting that there are violations of human rights committed by the rebel forces, Mr. Garcia underscored that the Commission on Human Rights to be created would enable ordinary citizens to have access to legal remedies to fight abuses from all sources.

Mr. Garcia recalled that when he was head of the Commission of Amnesty International in Colombia President Julio Cesar Ayala on January 16, 1980 told him that before investigating human rights violations of the Colombian government, inasmuch as there were no political prisoners in the country, he should go after crimes committed by the guerillas. He noted that this is normally the answer of government and that Amnesty International has taken the view that the states which are signatories to human rights covenants and instruments should be responsible for respect for human rights in their own countries. He also noted that unless these states are willing to give legitimate recognition to rebel forces, then they can go after these rebel forces in their inquiries and investigations. He stressed that the government should make sure that these crimes are punished in ordinary courts.

REMARKS OF MR. MONSOD

Mr. Monsod stated that the position of the Committee has been stated in the Committee Report and that violations of human rights would include offenses by the government, military officials and private parties. He stressed that the proposal of Mr. de Castro would give flexibility to Congress and the Commission on Human Rights to determine their priorities.

At this juncture, Mr. Ople manifested that in view of the division among the Committee Members, he was declining the amendment of Mr. de Castro and proposing that his own amendment be put to a vote.

REMARKS OF MR. BACANI

Mr. Bacani maintained that the Committee is united. In view of the explanations given, Mr. Bacani observed that the stand of the Commission had been clearly stated in the previous days' session. He stressed that Mr. Garcia, although a member of the sponsoring panel, is not a member of the Committee.

REMARKS OF MR. FOZ

Mr. Foz explained that it is the sense of the Committee that the term "private parties" would include all other parties which may be violators of human rights and this is so general that it covers even the proposed amendment of Mr. Ople, specifically with reference to the clause "those who may be engaged in acts of rebellion or insurrection against the State". He added that this was made clear in the interpellation of Mrs. Nieva.

Thereupon, Mr. Ople accepted the amendment of Mr. de Castro's amendment to his amendment.

REMARKS OF MR. DE CASTRO

Mr. de Castro expressed his gratitude to Mr. Ople and the Committee for accepting his amendment. He informed that since the creation of the Presidential Committee on Human Rights, the military has always felt that the work of the Committee has been directed towards them. He stated that he has raised this matter in his conversation with Justice J.B.L. Reyes and Mrs. Avanceña of the Presidential Committee on Human Rights. Adverting to the creation of the Commission on Human Rights, he stated that he was faced with the problem of how to remove the word "military" from the functions of the proposed Commission inasmuch as this is demoralizing to the military who would be the subject of the Commission's work.

VOTING ON THE AMENDMENT OF MR. OPLE,

AS AMENDED

As restated by the Chair, the amendment, as amended, would read:

INVESTIGATE ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND POLITICAL RIGHTS.

Submitted to a vote, and with 34 Members voting in favor and none against, the proposed amendment, as amended, was approved by the Body.

POINT OF INFORMATION OF MR. NOLLEDO

At this juncture, Mr. Nollado read the last two paragraphs of the joint statement issued by Mrs. Quesada and Messrs. Bennagen, Suarez, Tadeo and Villacorta on August 27, 1986, to wit:

“We are repeatedly told that our action has generated broad and keen interest in the work of the Constitutional Commission. If rather unintended, we take this as a salutary consequence. We trust that the generated interest shall remain alive and supportive of our collective efforts at framing a constitution. We enjoin the people to remain steadfast in their wholehearted participation in the writing of a vital chapter of our history.

“With this call, we are happy to announce that tomorrow, Thursday, we shall be returning to the Constitutional Commission to continue our work in seeking new pathways for a collective development fully aware that the needs and ideals of the people shall always remain paramount.”

POINT OF INFORMATION OF MR. TINGSON

Mr. Tingson informed that the effectivity of the resolution on franking privileges which he filed with Ms. Tan, amended by Mr. Davide to last until August 15, 1986, unanimously approved by the Body and implemented by the President, has been continued by the Post Office until the work of the Constitutional Commission is finished.

SUSPENSION OF SESSION

The Chair suspended the session until two-thirty in the afternoon.

It was 12:44 p.m.

RESUMPTION OF SESSION

At 2:56 p.m., the session was resumed.

AMENDMENT OF MR. DAVIDE

As proposed by Mr. Davide and accepted by the Sponsor, the Body approved an amendment on page 1, line 20, after the word “Investigate”, to insert a comma (,) and the words ON ITS OWN OR ON COMPLAINT BY ANY PARTY followed by another comma (,).

PROPOSED AMENDMENT OF MR. NOLLEDO JOINTLY WITH MR. TINGSON

On page 1, after Subsection 1), Mr. Nollado proposed to add a new Subsection 2), to wit:

DEFINE THE SCOPE OF HUMAN RIGHTS VIOLATIONS WHICH SHALL FALL WITHIN ITS JURISDICTION TAKING INTO ACCOUNT THE BILL OF RIGHTS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

Mr. Nollado explained that the Commission should be given the power to define its jurisdiction because the whole gamut of civil and political rights covers a very wide field.

In reply to Mr. Foz' query on whether the proposal, giving it the power to define the scope of human rights violations which shall fall under its jurisdiction, would in effect grant some kind of legislative power to the Commission on Human Rights, Mr. Nollado stated that it would not because it simply seeks to implement Subsection 1 which empowers the Commission to investigate at its instance or at the instance of any party all forms of human rights violations which would constitute the basis for defining the instances of human rights violations over which the Commission could assume jurisdiction.

MR. BENGZON'S AMENDMENT TO THE AMENDMENT

Mr. Bengzon stated that he would be satisfied with a reading into the record of the meaning of "human rights violations", specifically with an answer to the effect that human rights violations are violations of the rights articulated in the Bill of Rights and in the International Convention on Civil and Political Rights. He suggested that if this meaning is entered in the Journal, there would be no need for Mr. Nollado's proposed amendment.

Reacting thereto, Mr. Nollado stated that the Commission is expected to promulgate its own rules of procedure, among others, setting forth the instances over which the Commission would have jurisdiction. He pointed out that while it would seem sufficient to enter into the records instances over which the Commission may have jurisdiction, his amendment would obviate the need of further research by persons who would like to take advantage of the benefits of the existence of the Commission.

Thereupon, Mr. Bengzon proposed to amend the amendment by substituting the phrase "Universal Declaration of Human Rights" with THE CONVENTION OF THE CIVIL AND POLITICAL RIGHTS IN THE UNITED NATIONS.

Mr. Nollado accepted the amendment to his amendment.

Reacting thereto, Mr. Monsod stated that the Committee had in mind enumerating some basic functions of the Commission with the last subsection providing that Congress define the initial functions of the Commission as well as its functions over time, the idea being, to give the Commission more modest objectives during its initial years and later expanding them beyond civil and political rights depending on the increase in the level of development and changes in the type of human rights violations.

In view thereof, Mr. Nollado suggested adding the phrase UNTIL OTHERWISE PROVIDED BY CONGRESS at the end of the section.

Responding thereto, Mr. Bernas stated that fixing jurisdiction is a function of the Constitution or of the legislative body and, if at all jurisdiction shall be provided, it shall be by the Constitution or by Congress and not by the Human Rights Commission.

Additionally, Mr. Monsod informed that the Committee would propose a complementary section in the Transitory Provisions to the effect that until the Commission shall have been established by Congress in accordance with the Constitution, the present Presidential Committee on Human Rights would function as the Commission so that it would already have its own terms of reference. He stated that thereafter Congress could expand or delineate such functions.

Messrs. Bengzon and Nollado accepted Mr. Monsod's suggestion.

INQUIRY OF MR. TINGSON

In reply to Mr. Tingson's query whether Section 2(4) refers to a continuing program of education based on the Bill of Rights, Mr. Garcia stated that human rights education would depend on the audience, for instance, for the military and law-enforcement agents, the subject could be the standard: rules for the treatment of prisoners. He also stated that the Declaration against Torture and treaties and other international instruments could educate the people and help them form some consciousness on human rights protection.

PROPOSED AMENDMENT OF MR. DAVIDE

On page 2, Mr. Davide proposed to amend Section 2(2), to read:

ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES TO COMPEL THE ATTENDANCE OF ANY PARTY TO ITS PROCEEDINGS OR THE PRODUCTION OF MATERIALS, RECORDS AND DOCUMENTS, WITH THE POWER TO CITE FOR CONTEMPT FOR VIOLATIONS THEREOF.

MR. NOLLEDO'S PROPOSED AMENDMENT

TO THE AMENDMENT

Mr. Nollado proposed an amendment to the amendment by adding, after the word "thereof", the clause PROVIDED, HOWEVER, THAT THE RULES OF EVIDENCE SHALL NOT BE STRICTLY FOLLOWED IN HEARINGS CONDUCTED BEFORE THE COMMISSION.

Mr. Davide stated that the proposal might already be included in the authority of the Commission to adopt its own rules of procedure, in reply to which Mr. Nollado explained that should the Constitution authorize the Commission to adopt its own rules of procedures, it would not follow that the rules of evidence shall not be strictly followed.

Mr. Davide suggested that Mr. Nollado's proposal be taken up later since it could be incorporated as a separate sentence.

Reacting thereto, Mr. Bernas stated the Committee's position in favor of a generalized statement of the power of the Commission to issue rules and regulations for purposes of its investigatory power which will include the power to issue subpoena and subpoena duces tecum.

Thereafter, upon request of the Chair Mr. Davide restated his amendment: ADOPT ITS OWN RULES OF PROCEDURES INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES.

Mr. Bernas observed that the language was awkward. Thereupon, Mr. Davide modified his amendment by limiting it to ADOPT ITS OWN RULES OF PROCEDURE.

Mr. Monsod accepted Mr. Davide's amendment, as modified.

Thereupon, Mr. Nollado withdrew his amendment to the amendment on the understanding that the rules of evidence shall not be strictly applied as technically understood in the presentation or receipt of evidence by judicial bodies.

INQUIRY OF MR. PADILLA

In reply to Mr. Padilla's query whether the deletion of the phrase "in accordance with the Rules of Court" would mean that the rules of procedure to be adopted by the Commission could deviate or violate the Rules of Court, Mr. Davide stated that it would not follow because the Supreme Court will it that they would be within the framework of the Rules of Court.

On the rationale for such deletion, Mr. Davide pointed out that in all the provisions on the Constitutional Commissions, the Commissions are allowed to adopt their own rules of procedure subject to review by the Supreme Court. He stated that for the proposed Commission on Human Rights, although it would be lower in level than the regular Constitutional Commissions, the same procedure in the matter of vesting it with certain

authority and powers could be adopted.

REMARKS OF MR. REGALADO

Mr. Regalado recalled that during the previous session, the question was raised whether the Commission on Human Rights would be a quasi-judicial body, to which the Committee replied in the affirmative. He pointed out, however, that later the Committee adopted the position, to which he agreed, that the Commission would not be a quasi-judicial body because of the lack of adjudicatory function subject to review by a higher tribunal but purely an administrative fact-finding function similar to that of the Agrava Board.

Mr. Regalado, however, manifested disagreement with Mr. Davide when the latter called attention to the provisions of the Article on the Judiciary stating that these rules would after all be subject to review by the Supreme Court. He pointed out that under Section 7 of the Article on the Judiciary, the rules of procedure of special courts and quasi-judicial bodies are the ones which will be reviewed by the Supreme Court. He stated, however, that while the Commission would not be a quasi-judicial body, the rules it may adopt must not differ substantially from the provisions of the Rules of Court. He also pointed out that the rules of evidence would be strictly applied because this is an administrative body and that the Rules of Court itself provides that they would only have suppletory application to non-judicial proceedings.

Mr. Regalado stated that he would be in favor of retaining the phrase “in accordance with the Rules of Court” because there are two kinds of contempt proceedings, namely, the judicial under the Rules of Court and the legislative power to cite for contempt. Mr. Regalado cited the case of *Arnault vs. Nazareno* where the power of Congress to punish for contempt and to hold Arnault indefinitely in detention until he would reveal what was desired in the investigation of the Tambobong-Buenavista estates was exercised pursuant to the inherent power of Congress to punish for contempt and not in accordance with the Rules of Court on the power of the Judiciary to punish for contempt.

He pointed out the peculiarity of the Commission on Human Rights in that it is purely an administrative rather than a quasi-judicial body. He explained that if it were a quasi-judicial body, although it does not have the power to cite for contempt, it could apply through the proper regional trial court for the contemner to be ordered to appear before it. He maintained that the proposed Commission is similar to the Agrava Board which was purely a fact-finding board and it was for this reason that it was necessary to empower the Agrava Body with the power to cite and to punish for contempt in accordance with the Rules of Court to distinguish it from the legislative process of holding persons in contempt wherein the penalty is subject only to the discretion of Congress unlike those in the Rules of Court where there are specific penalties for direct or indirect contempt.

In view thereof, Mr. Regalado proposed the retention of the words “in accordance with the Rules of Court of the Philippines”.

MODIFIED AMENDMENT OF MR. DAVIDE

In the light of Mr. Regalado's explanation and on the admission of the Commission that the Commission on Human Rights is not a quasi-judicial body, Mr. Davide proposed a compromise amendment which would read: **ADOPT ITS OWN RULES OF PROCEDURE SUBJECT TO REVIEW BY THE SUPREME COURT.** He explained that this compromise amendment would be equated with the rules of procedure of quasi-judicial bodies and special courts under the Article on the Judiciary.

Additionally, Mr. Bernas stated that if there is a review by the Supreme Court, the purpose of the review is to see whether it is in accordance with the Rules of Court of the Philippines.

INQUIRY OF MR. DE LOS REYES

On Mr. de los Reyes' inquiry on whether there is anything that would prevent the Commission on Human Rights from adopting its own rules of procedure even if the phrase "adopt its own rules of procedure" is not placed in the Constitution, Mr. Davide stressed that should the Constitution be silent on the matter, said Commission might not have that power and it is for this reason, he stated, that there is an enumeration of the powers and functions.

Mr. de los Reyes took exception to Mr. Davide's reply by stating that whenever a commission is created, it carries with it the necessary power to make its own rules of procedure. He maintained that the proposed amendment of Mr. Davide is superfluous and unnecessary.

REMARKS OF MR. BERNAS

Mr. Bernas stated that it is not just a question of empowering the Commission to promulgate its own rules but it is also a command to the Commission to make sure that it promulgates its own rules because in fairness to the public, it should know what the rules of the game are. He agreed with Mr. Regalado that if the Commission is a purely administrative body, there is a need to specify its powers to cite for contempt considering that this power relates to judicial and quasi-judicial functions.

APPROVAL OF MR. DAVIDE'S AMENDMENT, AS AMENDED

As proposed by Mr. Davide, amended by Mr. Regalado and modified by the Committee, the Body approved the amendment which reads: **ADOPT ITS OWN RULES OF PROCEDURE, CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT IN THE PHILIPPINES.**

PROPOSED AMENDMENT OF MR. NOLLEDO

On Section 2(3), page 2, line 7, Mr. Nollado proposed to insert after the word "measures" the following: **WHICH MAY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS.**

Subsection 3, as amended, would read:

PROVIDE APPROPRIATE LEGAL MEASURES WHICH MAY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS FOR THE PROTECTION OF HUMAN RIGHTS OF ALL PERSONS WITHIN THE PHILIPPINES. . .

In explaining his proposed amendment, Mr. Nollado stressed that his proposal would strengthen the powers and jurisdiction of the proposed Commission. He underscored the need of empowering the Commission to issue injunctive relief as well as the writ of habeas corpus, which, although a judicial power, the Body has jurisdiction to grant to the Commission on Human Rights. He stated that his proposal would empower the proposed Commission to investigate and know what is happening inside a military jail and that it would not be powerless to order the production of the body to see whether the charges have sufficient legal basis. As a victim of humiliation inside the jail together with Messrs. Calderon, Rama and Rodrigo, Mr. Nollado stated that if the Commission could really investigate without issuing a writ of habeas corpus or a writ of amparo, then the Body may not create this Commission on Human Rights anymore.

Finally, Mr. Nollado asked the Members of the Committee to seriously consider his proposed amendment which, he believed, would make the powers of the Commission more meaningful.

Mr. Bernas stated that if the Commission on Human Rights is granted the power of injunctive relief including the issuance of a writ of habeas corpus, such Commission would then be converted to a quasi-judicial body contrary

to what had been contemplated in the discussions with Messrs. Davide and Regalado.

Replying thereto, Mr. Nollado stated that the Body is creating a Commission which should be an exception to the rule. He recommended that the Body drop the idea of creating an independent Commission on Human Rights if this is not given teeth.

Mr. Bernas argued that the acceptance of the proposed amendment would make unnecessary all that were said with respect to Subsection 2 on the ground that this Commission would then become a quasi-judicial body which would be subject to the rules of quasi-judicial bodies as found in the Article on the Judiciary. He opined that the issuance of the writ of habeas corpus should be left to the courts because the writ of habeas corpus by its very nature, is an instantaneous remedy.

Mr. Sarmiento informed that lately, the Supreme Court has been liberal in the issuance of the writ of habeas corpus, for which reason, he opined that the proposed amendment is unnecessary since courts are at present liberal.

In reply thereto, Mr. Nollado recalled that when the late Senator Benigno Aquino, Jr. filed a petition for a writ of habeas corpus, it took the Supreme Court nine years to decide. He expressed doubts even on the presently constituted Supreme Court on the ground that circumstances may change. He maintained that the Committee should adopt his amendment if it is an instantaneous remedy because the Commission would be useless if it cannot give instantaneous remedy when circumstances so demand.

Mr. Foz supported Mr. Nollado's proposed amendment by stating that it would really vest the Commission with the power to issue injunctive relief and other reliefs depending on the circumstances.

Mr. Nollado offered a compromise proposal to the effect that the order of the Commission shall be subject to review by the Supreme Court.

REMARKS OF MS. AQUINO

Ms. Aquino stated that while she would like to express support for Mr. Nollado's proposed amendment, the Body might be confronted with the problem of overhauling the very nature of the Commission in the sense that if it is vested with adjudicative functions, necessarily it would have to assume the multifarious accoutrements which are needed for the enforceability of its powers to issue the writ of habeas corpus. She pointed out that as an administrative body, it could not enforce its ruling unless its powers and duties are realigned accordingly as an adjudicative body.

Mr. Nollado maintained that the Constitution could grant such power, besides, he pointed out that there is a distinction between adjudicative power and the power to issue a writ of habeas corpus. He stated that the power to issue a writ of habeas corpus does not necessarily mean that the quasi-judicial body is making an adjudication considering that its proceedings are only preparatory to further consideration of the case. He maintained that if the Commission is powerless to issue a writ of habeas corpus to order the production of the body of a man being tortured, such Commission might not as well be created.

Ms. Aquino disagreed that the issuance of a writ of habeas corpus as a remedy is not an adjudicative power by stating that before the remedy is granted by the court, there is a level of appreciation of evidence to vest precisely in the person seeking relief the right to be delivered to court for an inquiry into the legitimacy or legality of his detention.

Mr. Nollado argued that the appreciation of evidence is not in the technical sense because when affidavits are attached including the allegation of a prima facie case on the part of the complainant, the court or the

administrative body must be able to grant immediate relief, to which Ms. Aquino replied that her concern is on the power of the Commission to enforce the writ because, as presently constituted, it does not have such power.

SUSPENSION OF SESSION

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

It was 3:43 p.m.

RESUMPTION OF SESSION

At 3:57 p.m., the session was resumed.

AMENDMENT OF MR. NOLLEDO JOINTLY WITH MESSRS. COLAYCO, REGALADO, NATIVIDAD, AZCUNA, AND MS. AQUINO

Upon resumption of session, and after consultation with the members of the Committee, Mr. Nollado, jointly with Messrs. Colayco, Regalado, Natividad and Azcuna, and Ms. Aquino, proposed, on page 2, line 7, between the words "measures" and "for", to insert the phrase WHICH MAY INCLUDE PREVENTIVE RELIEF.

He explained that preventive relief would include an order from the Commission to conserve the body of the detainee and to prevent the authorities from hiding, torturing, or transferring the body until further orders of the court, without prejudice to the right of the aggrieved party as well as the Commission to petition the Supreme Court or any appropriate court to issue a writ of habeas corpus. He stated that his proposal is in line with the provisions of Article 24 of the Revised Penal Code.

Thereupon, Mr. Davide proposed a substitute amendment to the amendment by inserting the words PREVENTIVE MEASURES AND between the words "including" and "provisions" so that line 9 would read INCLUDING PREVENTIVE MEASURES AND PROVISIONS FOR LEGAL AID SERVICES FOR INDIGENT, to which Mr. Nollado agreed.

In reply to Ms. Aquino's query, Mr. Nollado affirmed that preventive measures would include the power to order visitation by counsel and relatives, and the power to order medical treatment. and attention but would exclude the power to release or inquire into the legality of the detention which pertains to the Supreme Court.

In reply to Mr. Foz' observation that the Commission would not be prevented from inquiring into the legality of the detention, Mr. Nollado agreed that said inquiry would be part of its investigative power or part of its recommendations to the appropriate court, body or officer, without the Commission itself deciding on the legality of the detention.

On the reference made to Article 24 of the Revised Penal Code in relation to preventive measures, Mr. Padilla observed that said reference was inappropriate because the preventive measures proposed by Mr. Nollado would not be considered penalties, to which Mr. Nollado replied that he was not applying the provisions of Article 24 of the Revised Penal Code but merely aligning his proposal with it.

Mr. Padilla, moreover, stated that a person who is arrested or detained but not judicially charged should be released within five working days.

In reply to Mr. Natividad's query, Mr. Nollado affirmed that his proposal would cover the situation of a complainant who is harassed and for whom the Commission, with the help of local police, could enjoin the party concerned from continuing the harassment, it being a nonadjudicative function. In this connection, upon inquiry of Ms. Aquino, Mr. Nollado affirmed that this power need not arise from an adversarial situation which calls for

the observance of substantive and procedural due process of law, which should not saddle the function of the Commission.

Thereafter, Mr. Foz accepted the amendment of Mr. Nollado as amended by Mr. Davide, so that page 2, line 9, would read INCLUDING PREVENTIVE MEASURES AND PROVISIONS FOR LEGAL AID SERVICES FOR INDIGENT:

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

AMENDMENT OF MR. DAVIDE JOINTLY WITH MR. RAMA

On page 2, line 9, before the word "including", Mr. Davide, jointly with Mr. Rama, proposed to insert the phrase AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD.

The Sponsor accepted the proposed amendment.

In reply to Mr. Colayco's query, Mr. Davide explained that through the representations of the diplomatic and consular offices, immediate assistance may be given to Filipinos abroad, especially in the Middle East, who are victims of violations of human rights.

Ms. Tan supported Mr. Davide's proposal in the light of reports that many Filipino maids and dancers abroad have no one to turn to for legal assistance, such that they usually come back mentally ill.

On Mr. Padilla's suggestion to substitute "all Filipino citizens" on line 8, Mr. Davide stated that line 8 refers to all persons within the Philippines, whether Filipinos or foreigners, and that his proposal is to include Filipinos abroad.

Accepted by the Committee, and there being no objection, the amendment of Mr. Davide was approved by the Body.

FURTHER AMENDMENT OF MR. DAVIDE

On the same page, lines 9 and 10, Mr. Davide proposed to substitute the words "for indigent persons" with the words TO THE UNDERPRIVILEGED.

He explained that protection should be given not only to indigent persons but also to those who can afford the assistance of private lawyers since they are also people within the Philippines. He also stated that his proposal would be consistent with the use of the word "underprivileged" in the Article on Social Justice.

Mr. Foz pointed out, however, that the provision intends to provide free legal service to indigents and "underprivileged" and would widen its scope, to which Mr. Davide replied that the Citizens Legal Assistance Office under the Ministry of Justice could help in rendering legal aid.

The Sponsor accepted the proposed amendment of Mr. Davide.

Mr. Nollado objected on the ground that some underprivileged can afford private legal assistance and that the provision should only be limited to "indigents", which term was consistently used in certain provisions of law to mean "paupers".

On Mr. Bernas' observation that the provision does not contemplate free legal assistance, Mr. Foz explained that the Commission may provide free legal assistance to the poor; however, the provision refers to Legal aid to victims of violations of human rights, regardless of financial capacity.

Mr. Bernas maintained that legal aid does not have to be free, and the Commission may refer those who can afford to pay to private practitioners.

In view of Mr. Bernas' explanation, Mr. Nollado withdrew his objection.

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

INQUIRY OF MR. MAAMBONG

In reply to Mr. Maambong's query, Mr. Sarmiento explained that the words "legal measures" on line 7 would include legal assistance as well as procedures and safeguards that the Commission would recommend to Congress to ensure respect for human rights. Mr. Sarmiento affirmed that legal aid services refer to assistance that may be rendered not only by the Citizens Legal Assistance Office but also by other human rights organizations whose assistance may be sought by the Commission.

Additionally, the Chair pointed out that even the Integrated Bar of the Philippines has been giving legal aid for the purpose.

AMENDMENT OF MR. NATIVIDAD

On page 2, between Lines 6 and 7, Mr. Natividad proposed to insert a new paragraph (3) to read:

(3) EXERCISE VISITORIAL POWERS OVER JAIL, PRISON OR DETENTION FACILITY.

He explained that the Commission on Human Rights should be empowered to visit jails or prisons or any detention facility where most violations of human rights happen, even if there is no complaint from any person.

The Sponsor accepted the proposed amendment.

In reply to Mr. de Castro's query, Mr. Natividad explained that should the Commission find that prisoners live in subhuman conditions which is a violation of human rights, it shall take necessary steps consistent with its rules and regulations.

In this connection, Mr. Sarmiento stated that Mr. de Castro's concern would be covered by the new paragraph (4) pursuant to which preventive measures and legal assistance may be given to prisoners.

Mr. de Castro pointed out that police officers may blame the substandard conditions on lack of funds for the construction and maintenance of better detention facilities, to which Mr. Natividad replied that the Commission should rather be interested in cases of tortures and illegal solitary confinement. He stated, however, that the Commission may also report said conditions to higher authorities or make representations with Congress to increase the appropriations for detention facilities.

Mr. de Castro reiterated that in most jails in Metro Manila, the prisoners are sleeping on the floor and that jail authorities could not do anything because of lack of funds.

Accepted by the Committee, and there being no objection, the amendment of Mr. Natividad was approved by the Body.

AMENDMENT OF MRS. ROSARIO BRAID AS MODIFIED

BY MR. BERNAS

Mrs. Rosario Braid proposed, on Section 2, page 2, line 13, to add after “rights” the following: UNDERTAKE RESEARCH ON PEACE, DEMILITARIZATION, NON-VIOLENT STRATEGIES, AND RELATED PROBLEM AREAS.

Mrs. Rosario Braid explained that the Commission should also undertake medium and long-term policy research on the means of attaining national and international peace; studying ways of working towards the goal of respect for all the rights of people without distinction as to race, sex, language, religion or philosophical conviction; attend to factors which lead to violence, ethnic, racial or religious discrimination including colonialism and neo-colonialism; and to expand the rehabilitation of torture victims.

Mr. Bernas stated that the Committee accepts the spirit of the proposal but in order to simplify matters, he proposed that RESEARCH be inserted between "of" and "education" on line 12, with the understanding that it would include all those enumerated by Mrs. Rosario Braid.

Mrs. Rosario Braid accepted the amendment. Submitted to a vote, and there being no objection, the same was approved by the Body.

PROPOSED AMENDMENT OF MRS. ROSARIO BRAID

Mrs. Rosario Braid then proposed to add a new section which reads as follows:

THE CONGRESS MAY EXPAND THE SCOPE OF THE COMMISSION TO INCLUDE CONCERNS STATED IN THE BILL OF RIGHTS AND OTHER SOCIAL, ECONOMIC AND CULTURAL RIGHTS, SHALL IDENTIFY CAUSES AND CONSEQUENCES OF VIOLATION OF THESE RIGHTS AND ESTABLISH APPROPRIATE MECHANISMS AND PROGRAMS THAT SHALL PROMOTE THESE RIGHTS.

Mr. Bernas, likewise, accepted the spirit of the proposal with the understanding that this is already included in Section 2(6).

Mrs. Rosario Braid did not insist on her proposal.

AMENDMENT OF MR. OPLE

Mr. Ople proposed, on Section 2(5), line 14, to insert the following: MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS.

Mr. Ople explained that the Commission on Human Rights would now become the focal point for the efforts of the government to ensure that Congress enacts the proper laws by way of implementing the country's treaty obligations and in the exercise of this function it may call upon other agencies especially the diplomatic service to render support.

Mr. Garcia accepted the amendment on the understanding that it is an independent monitoring of compliance by the Philippine Government in accordance with international standards, which monitoring is, in fact, being performed by independent private organizations like the Task Force Detainees.

Mr. Sarmiento, likewise, accepted the amendment.

At this juncture, Ms. Tan pointed out that, as explained by Mr. Sarmiento, the spirit and origin of the Commission is that it was supposed to be a modest organization which would give immediate relief and action on cases of

human rights violations especially for the underprivileged. She observed, however, that the Commission's functions have increased to cover such things as research, monitoring of international treaties on human rights and others because of which it may no longer have time to take care of individual violations of human rights as originally planned.

Mr. Ople, however, maintained that the research function is already built into the Commission and it is compatible with the monitoring function.

In addition thereto, Mrs. Rosario Braid stated that the research and monitoring functions could be linked to existing related research institutions so that the performance of such functions would not necessarily incur considerable overhead costs.

On Ms. Aquino's query whether the Commission remains as an administrative body after all the amendments were accepted, Mr. Sarmiento stated that considering the new powers and functions added to the Commission, it would no longer be a purely administrative body but quasi-judicial body.

Ms. Aquino observed that there would necessarily be a readjustment in the concept of the Commission.

Mr. Ople pointed out that a quasi-judicial body still belongs to the genus of administrative bodies.

Thereafter, Mr. Ople's proposal was submitted to a vote, and there being no objection, the same was approved by the Body.

AMENDMENT OF MR. DAVIDE AS MODIFIED BY MR. BERNAS

Mr. Davide proposed, on Section 2(5), page 2, line 13, to substitute "propagate" with ENHANCE.

Mr. Sarmiento accepted the proposal.

Mr. Bernas proposed to add RESPECT FOR after "enhance".

Mr. Davide accepted the amendment to his proposal.

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

AMENDMENT OF MR. DAVIDE

Mr. Davide proposed to insert a new paragraph before Section 2(5), on page 2, to read as follows:

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

Mr. Bernas pointed out that there is a similar provision in the Bill of Rights, to which Mr. Davide replied that the provision in the Bill of Rights refers to victims of torture while his proposal is broader in scope.

Mr. Sarmiento accepted the proposal.

On Mr. Maambong's query whether the phrase "provide appropriate legal measures" on Section 2(3) already covers recommendation to Congress of measures which may be promulgated as stated in the previous interpellation, Mr. Sarmiento explained that legal measures would cover indemnification of victims of human rights violations so there may be a need to reformulate the paragraphs to accommodate Mr. Davide's proposal for more clarity.

Mr. Sarmiento stated that he does not have any objection to the proposal if the purpose is simply to make things

clearer.

On Mr. Bernas' query as to the meaning of "compensation", Mr. Davide explained that the Commission would only recommend to Congress measures to compensate the victims of human rights violations but not to fix such compensation.

On Mr. Natividad's observation, that in the Bill of Rights, the Body had already provided for a mandate to Congress to formulate a human rights violation victim plan, Mr. Davide pointed out that said provision was limited to victims of torture while his proposal is broader in scope.

Mr. Natividad proposed to amend Mr. Davide's proposal so that it would read as follows: THE COMMISSION SHALL ADMINISTER THE GOVERNMENT'S VICTIM COMPENSATION SYSTEM.

He explained that his proposal would reinforce the Commission's function as the human rights enforcer in the country and since it would deal directly with victims of human rights violations, it should also pay them depending on the availability of funds and in accordance with the rules that it may promulgate.

Mr. Bernas pointed out that since it is Congress which would provide for compensation and the system of compensation, it should also decide as how this compensation system would be administered.

Mr. Natividad informed that it is the Ministry of National Defense which pays the compensation of victims of violations of human rights and without a clear signal to Congress that such function should be given to the Commission, it may give the function to the Ministry of National Defense.

Mr. Davide stated that the recommendation for such compensation shall be handled by the Commission and it is, but logical that it would recommend to Congress to give to the office the function of paying compensation to human rights violation victims. He stressed that it would be better to grant the Commission flexibility as to how the compensation may be distributed or allotted.

In addition, Mr. Bernas stated that Mr. Natividad's proposal is an administrative detail which need not be placed in the Article but which could be provided for by the law itself granting compensation.

At this juncture, Mr. Jamir proposed to amend Mr. Davide's proposal by substituting "of human rights" with THEREOF.

Mr. Davide did not accept the proposal because the phrase sought to be substituted refers to victims of human rights violations while the first "human rights" refers to the promotion of rights.

On Mr. Monsod's query whether human rights violations would include those committed by private parties, Mr. Davide replied that it would cover all kinds of violations pursuant to the first paragraph of the Section. He added that as to who should be compensated would be subject to the recommendation of the Human Rights Commission.

On whether the compensation need not come from the government, Mr. Davide answered in the affirmative.

Mr. Bernas added that the law may require that the guilty party pay the compensation. He added that even for offenses against the Bill of Rights, if the government compensates for offenses of public officers, it could also collect reimbursement from such public officers.

Thereupon, there being no objection, the Body approved Mr. Davide's amendment to insert on page 2, between lines 13 and 14, the following new subparagraphs:

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

() APPOINT ITS OFFICIALS AND EMPLOYEES IN ACCORDANCE WITH LAW;

AMENDMENT OF MR. GASCON

Mr. Gascon proposed an additional subparagraph to read:

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

In reply to Mr. Sarmiento's query whether the power is similar to that of the Presidential Committee on Human Rights, Mr. Gascon stated that it is a verbatim reproduction.

Mr. Davide requested deferment of consideration of the proposed amendment, stating that he would propose an amendment to the effect that until Congress shall provide otherwise, the Presidential Commission on Human Rights shall continue to exercise its functions in addition to the rights conferred in the new provision.

In reply to Mr. Bernas' query, Mr. Davide affirmed that the purpose of the amendment is to enshrine the power in the Constitution so that in the event of repeal of the existing Executive Order, the power will continue.

The Chair noted that there would be no conflict, in view of which Mr. Davide desisted from pursuing his request.

The Committee accepted Mr. Gascon's amendment which, there being no objection, was approved by the Body.

Thereafter, Mr. Gascon proposed another sub-paragraph, to wit: TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNITS.

Mr. Davide proposed a modification by inserting after "assistance" the phrase IN THE EXERCISE OF ITS FUNCTIONS.

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

INQUIRIES OF MR. RODRIGO

Mr. Rodrigo observed that while the President has control over all ministries, bureaus and offices, the Commission appears to be an exception, in derogation of the President's power of control since part of such power would be transferred to the Commission.

In reply, Mr. Gascon stated that the power is merely incidental to its function and that the Commission may seek assistance from other government agencies. Additionally, Mr. Sarmiento stated that in case of refusal of the ministry or bureau concerned to comply with the Commission's request, the Commission may make representations with the President.

Mr. Bernas stressed that while the Commission is given the power, the President has the right to refuse should the bureau or ministry concerned feel that it should not comply with the request.

REMARKS OF MR. MAAMBONG

Mr. Maambong adverted to a parallel provision in the Article on the Commission on Elections relative to the deputation of agencies with the concurrence of the President. He suggested adoption of the terminology of said

provision for purposes of alignment.

RESTATEMENT OF MR. GASCON'S AMENDMENT

Thereupon, Mr. Gascon restated his amendment to read: TO CALL UPON, WITH THE CONCURRENCE OF THE PRESIDENT, ANY MINISTRY . . .

Mr. Bernas suggested: SUBJECT TO A COUNTERMAND ORDER OF THE PRESIDENT, which Mr. Maambong said means the same thing.

Mr. Maambong stated that “countermand” does not sound appropriate.

Mr. Bernas suggested SUBJECT TO THE PRESIDENT'S RIGHT OF REFUSAL.

Mr. Monsod suggested SUBJECT TO REFUSAL BY THE PRESIDENT.

Mr. Bernas suggested that the Committee on Style could supply the proper words.

Mr. Gascon restated his amendment as modified as follows: TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE IN THE PERFORMANCE OF ITS FUNCTIONS WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNIT, SUBJECT TO REFUSAL BY THE PRESIDENT.

Mr. Davide suggested REQUEST THE ASSISTANCE OF ANY MINISTRY, OFFICE OR AGENCY IN THE EXERCISE OF ITS FUNCTIONS.

In reply to Mr. Gascon's query on the Committee's position on the matter, Mr. Bernas stated that the prestige of the Commission can be relied upon and that it would be too politically costly for the President to decline the request of the Commission.

Mr. Maambong observed that it is a good compromise since it would imply that the ministry or bureau concerned has secured the clearance from the President.

There being no objection, the Body approved the amendment.

PROPOSED AMENDMENT OF MR. DAVIDE

Mr. Davide proposed Section 3 to read: ,

THE COMMISSION SHALL ENJOY FISCAL AUTONOMY AND ITS MEMBERS SHALL BE SUBJECT TO THE SAME DISQUALIFICATIONS AND DISABILITIES AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS.

Commenting on the amendment, Mr. Monsod stated that it would be limiting the Commission if comparison is made with the other Constitutional Commissions. He suggested that the matter be left for Congress to determine.

On the matter of “fiscal autonomy”, Mr. Bernas stated that it should be considered separately, to which Mr. Davide agreed.

On the disqualifications and disabilities, Mr. Davide stated that the Commission on Human Rights could not be placed on equal level with the other Constitutional Commissions.

At this juncture, Mr. Bernas requested for a deferment of Mr. Davide's proposed amendment until after Section 1 shall have been considered, to which Mr. Davide agreed.

On Mr. Maambong's query whether the amendment on fiscal autonomy had already been accepted, Mr. Bernas stated that its status was still unclear.

Thereupon, Mr. Maambong proposed to substitute the portion on fiscal autonomy with: THE APPROVED ANNUAL APPROPRIATION FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY . . . , in line with the provision on the other Constitutional Commissions. However, stated that this could be taken up later.

Mr. Bernas suggested that the Body proceed to the Commission's composition.

At this juncture, Mr. Nollado suggested that Section 3, reading CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHOULD FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS should contain, in line with Mr. Monsod's suggestion, some points of reference to guide Congress in fixing the jurisdiction of the Commission, namely: 1) the pertinent provisions of the Bill of Rights; 2) the pertinent provisions of the Universal Declaration of Human Rights; and 3) the answers of the Chairman and Members of the Committee, especially Messrs. Sarmiento and Garcia, to the interpellation of Mr. Bengzon. He further stated that according to Mr. Monsod, the Members of the Committee concurred with the suggestion that there should be a provision in the Transitory Provisions that pending action on the part of Congress, the presently constituted Commission on Human Rights shall continue to function. He then sought the Committee's reaction on his remarks.

The Chair suggested a suspension of the session before the Body considers the matter.

ADJOURNMENT OF SESSION

At this juncture, on motion of Mr. Rigos, there adjourned until nine-thirty in the morning of the following day.

It was 5:13 p.m.

I hereby certify to the correctness of the foregoing.

(SGD.) FLERIDA RUTH P. ROMERO

Secretary-General

ATTESTED:

(SGD.) CECILIA MUÑOZ PALMA

President

Approved on August 28, 1986

* See the Journal of August 28, 1986 for the correction.

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