

RESOURCE BOOK

ON THE
COMMISSION ON HUMAN RIGHTS
OF THE PHILIPPINES



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Published by



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Fostering Democratic Governance:

“Strengthening the Human Rights Infrastructure in the Philippines”

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FOREWORD

With a deep sense of honor, the Commission on Human Rights of the Philippines (CHRP) presents the first volume of the publication series on the CHRP Resource Book.

The Commission was created under the 1987 Constitution as a response to the culture of impunity and human rights violations permeating the country at the end of the twenty-year martial rule under the Marcos Regime. The Commission, regarded under international human rights law as a 'national human rights institution' (NHRI) answers the international call for the establishment of national infrastructures for the effective employment, protection and promotion of human rights. Currently enjoying an "A" accreditation with the United Nations International Coordination Committee, the Commission is deemed compliant with the Paris Principles governing national human rights institutions.

In its twenty-year existence, the Commission has experienced various triumphs and challenges through several legislations and series of judicial interpretations of its Constitutional mandates. With the anticipated passage of the proposed enabling CHRP Charter seeking to strengthen the Commission, it is expected that renewed efforts to elucidate CHRP provisions will be proceeding rapidly.

This publication is designed as a companion primarily for the workforce of the Commission, advocates of human rights as well as all stakeholders and partners in the human rights community who endeavor to better understand the Commission – what it is and what it's not, its functions and mandates, its Constitutional provisions, Executive Orders, Supreme Court jurisprudence, Constitutional deliberations, proposed legislations and other documents that express and elaborate on the Commission.

With this maiden issue on the CHRP Resource Book Publication Series, it is hoped that the Commission is fully appreciated and properly viewed as an independent institution that plays a central role in building a human rights culture in the country. It is in this respect that the Fourth Commission presents the various basic documents on the provenance and processes of the actions of the Commission.

As this sourcebook is being published, moves in Congress to finally draft a Charter for the Commission is underway. It is hoped that this new legislation will further strengthen the Commission for the greater promotion and protection of human rights in the country.


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1

CONSTITUTIONAL PROVISIONS

*“There is hereby created an independent office
called The Commission on Human Rights...
(to) investigate, on its own or on complaint by any party,
all forms of human rights violations involving civil and political rights...”*

ARTICLE XIII**SOCIAL JUSTICE AND HUMAN RIGHTS****HUMAN RIGHTS****SECTION 17**

1. There is hereby created an independent office called the Commission on Human Rights.
2. The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.
3. Until this Commission is constituted, the existing Presidential Committee on Human Rights shall continue to exercise its present functions and powers.
4. The approved annual appropriations of the Commission shall be automatically and regularly released.

SECTION 18

The Commission on Human Rights shall have the following powers and functions:

1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
3. Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
4. Exercise visitorial powers over jails, prisons, or detention facilities;
5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
6. Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
7. Monitor the Philippine Government's compliance with international treaty obligations on human rights;

8. 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;
9. Request the assistance of any department, bureau, office, or agency in the performance of its functions;
10. Appoint its officers and employees in accordance with law; and
11. Perform such other duties and functions as may be provided by law.

SECTION 19

The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations.

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EXECUTIVE
ORDER
163

*"I, Corazon C. Aquino, President of the Philippines...
do hereby (declare) the Commission on Human Rights
as provided under Article XIII of the 1987 Constitution
to be now in existence..."*

DECLARING THE EFFECTIVITY OF THE CREATION OF THE COMMISSION ON HUMAN RIGHTS AS PROVIDED FOR IN THE 1987 CONSTITUTION, PROVIDING GUIDELINES FOR THE OPERATION THEREOF, AND FOR OTHER PURPOSES.

WHEREAS, the 1987 Constitution has been ratified by the people;

WHEREAS, the 1987 Constitution has created an independent office called the Commission on human Rights; and

WHEREAS, there is an urgent necessity to constitute the Commission on Human Rights to give effects to the State policy that "the State values the dignity of every human person and guarantees full respect for human rights;"

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1

The Commission on Human Rights as provided under Article XIII of the 1987 Constitution is hereby declared to be now in existence.

SECTION 2

The Commission on Human Rights shall be composed of a Chairman and four members who must be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, and must not have been candidates for any elective position in the elections immediately preceding their appointment. However, a majority thereof shall be members of the Philippine Bar.

The Chairman and the Members of the Commission on Human Rights shall not, during their tenure, hold any other office or employment. Neither shall they engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of their office, nor shall they be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, any of its sub-divisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

The Chairman and the Members of the Commission on Human Rights shall be appointed by the president for a term of seven years without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor.

The Chairman and the Members of the Commission on Human Rights shall receive the same salary as the Chairman and the Members of the Commission on Human Rights shall receive the same salary as the Chairman and Members, respectively, of the Constitutional Commissions, which shall not be decreased during their term of office.

SECTION 3

The Commission on Human Rights shall have the following powers and functions:

- Investigate, on its own or on complaint by any party all forms of human rights violations involving civil and political rights;
- Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the rules of Court.
- Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
- Exercise visitorial powers over jails, prisons, or detention facilities;
- Establish a continuing program of research, education and information to enhance respect for the primacy of human rights;
- Recommend to the Congress effective measures to promote human rights and to provide for compensation to victim of violations of human rights, or their families;
- Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- 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;
- Request the assistance of any department, bureau, office or agency in the performance of its functions;
- Appoint its officers and employees in accordance with law; and
- Perform such other duties and functions as may be provided by law.

SECTION 4

The Presidential Committee on Human Rights, created under Executive Order no. 8 dated March 18, 1986, as modified, is hereby abolished. The Commission on Human Rights shall exercise such functions and powers of the Presidential Committee on Human Rights under Executive Order No. 8, as modified, which are not inconsistent with the provisions of the 1987 Constitution.

The unexpended appropriations of the Presidential Committee on Human Rights are hereby transferred to the Commission on Human rights. All properties, records, equipment, buildings, facilities and other assets of the Presidential Committee on Human Rights shall be transferred to the Commission on Human Rights.

The Commission on Human Rights may retain such personnel of the Presidential Committee on Human Rights effected under this Executive Order shall receive the benefits to which they may be entitled under existing law, rules and regulations.

SECTION 5

The approved annual appropriations of the Commission on Human Rights shall be automatically and regularly released.

SECTION 6

All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SECTION 7

This Executive Order shall take effect immediately.
Done in the City of Manila, this 5th day of May, in the year of our Lord, nineteen hundred and eighty-seven.

(Signed) **CORAZON C. AQUINO**
President of the Philippines

By the President:
(Sgd.) **JOKER P. ARROYO**
Executive Secretary

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OTHER LAWS THAT ELABORATE ON THE MANDATES OF CHRP

1. ON PERSONS DEPRIVED OF THEIR LIBERTY

REPUBLIC ACT No. 7438 – *“An Act Defining Certain Rights Of Person Arrested, Detained Or Under Custodial Investigation As Well As The Duties Of The Arresting, Detaining And Investigating Officers, And Providing Penalties For Violations Thereof”* (Custodial Rights of the Accused)

SECTION 2

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the **Commission on Human Rights** or by any international non-governmental organization duly accredited by the Office of the President. The person’s “immediate family” shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

2. ON CHILDREN IN CONFLICT WITH THE LAW

REPUBLIC ACT NO. 9344 – *“An Act Establishing A Comprehensive Juvenile Justice And Welfare System, Creating The Juvenile Justice And Welfare Council Under The Department Of Justice, Appropriating Funds Therefor And For Other Purposes”* (Juvenile Justice Law)

SECTION 8

Juvenile Justice and Welfare Council (JJWC). - A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative supervision. The JJWC shall be chaired by an undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

xxx

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

xxx

(f) Commission on Human Rights (CHR);

SECTION 11

Child Rights Center (CRC). - The existing **Child Rights Center of the Commission on Human Rights** shall ensure that the status, rights and interests of children are upheld in accordance with the Constitution and international instruments on human rights. The **CHR** shall strengthen the monitoring of government compliance of all treaty obligations, including the timely and regular submission of reports before the treaty bodies, as well as the implementation and dissemination of recommendations and conclusions by government agencies as well as NGOs and civil society.

3. ON CHILDREN IN SITUATIONS OF ARMED CONFLICT

RULES AND REGULATIONS ON CHILDREN IN SITUATIONS OF ARMED CONFLICT (Pursuant to Section 32 of REPUBLIC ACT NO. 7610 – *“An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes”*) to implement Article X of said Act concerning “Children in Situations of Armed Conflict” -

SECTION 1**Definition of Terms –**

- i. **“Commission” refers to the Commission on Human Rights.**

SECTION 21

Visitation of the Child. – Upon being informed of the detention/ arrest of the child by government forces, the Department or the local representative of the **Commission** shall immediately visit the child to determine the observance by the government forces of the human rights of the suspect.

xxx

SECTION 22

Reports of Violation of Rights of Children. - Reports of specific incidents of violations of human rights of children in situations of armed conflict shall be filed with the Department or the **Commission** or non-governmental organizations duly accredited by the **Commission** to monitor human rights violations. The **Commission** shall forward said reports to the general headquarters of the government forces or may file the same directly with the office of the city/provincial prosecutor for appropriate action.

SECTION 24

Release of Child on Recognizance. – Within twenty four (24) hours after the filing of a criminal complaint/information against the child in court, the legal counsel of the child, or in his absence, the representative of the Department or **Commission** may request the appropriate Court to release the child on recognizance to the representative of the Department or **Commission** or to any responsible member of the community who shall be responsible for the child’s appearance in court. The child who is released on recognizance may be placed with a family, in a government rehabilitation center, or in an accredited welfare agency.

4. ON VIOLENCE AGAINST WOMEN AND CHILDREN

REPUBLIC ACT NO. 9262 – *“An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor And For Other Purposes”* (Anti-Violence Against Women and their Children Act of 2004)

SECTION 39

Inter-Agency Council on Violence Against Women and Their Children (IAC-VAWC). - In pursuance of the above mentioned policy, there is hereby established an Inter-Agency Council on Violence Against Women and their Children, hereinafter known as the Council, which shall be composed of the following agencies:

- (a) Department of Social Welfare and Development (DSWD);
- (b) National Commission on the Role of Filipino Women (NCRFW);
- (c) Civil Service Commission (CSC);
- (d) **Commission on Human Rights (CHR)**;
- (e) Council for the Welfare of Children (CWC);
- (f) Department of Justice (DOJ);
- (g) Department of the Interior and Local Government (DILG);
- (h) Philippine National Police (PNP);
- (i) Department of Health (DOH);
- (j) Department of Education (DepEd);
- (k) Department of Labor and Employment (DOLE); and
- (l) National Bureau of Investigation (NBI).

These agencies are tasked to formulate programs and projects to eliminate VAW based on their mandates as well as develop capability programs for their employees to become more sensitive to the needs of their clients. The Council will also serve as the monitoring body as regards to VAW initiatives.

The Council members may designate their duly authorized representative who shall have a rank not lower than an assistant secretary or its equivalent. These representatives shall attend Council meetings in their behalf, and shall receive emoluments as may be determined by the Council in accordance with existing budget and accounting rules and regulations.

5. OTHER MANDATES / POWERS

A. ON APPROVAL TO DETAIN PERSONS WHO VIOLATED THE HUMAN SECURITY ACT

REPUBLIC ACT NO. 9372 - "An Act to Secure the State and Protect Our People From Terrorism" (Human Security Act of 2007)

SECTION 19

Period of Detention in the Event of an Actual or Imminent Terrorist Attack. – In the event of an actual or imminent terrorist attack, suspects may not be detained more than three (3) days without the written approval of a **municipal, city, provincial or regional office of a Human Rights Commission** or judge of the municipal, regional trial court, the Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest to the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five (5) days after the detention of the persons concerned: *Provided, however,* that within three days, after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

B. ON PROSECUTORIAL FUNCTIONS OF THE CHRP

REPUBLIC ACT NO. 9372 - "An Act to Secure the State and Protect Our People From Terrorism" (Human Security Act)

SECTION 55

Role of the Commission on Human Rights. – The **Commission on Human Rights** shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act, and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism.

4

SUPREME COURT
DECISIONS
ON THE
COMMISSION ON HUMAN RIGHTS
(1989-2004)

**A. COMMISSION ON HUMAN RIGHTS EMPLOYEES' ASSOCIATION (CHREA)
Represented by its President, MARCIAL A. SANCHEZ, JR., petitioner, vs.
COMMISSION ON HUMAN RIGHTS, respondent.**

G.R. No.155336. July 21, 2006

FACTS

On 25 November 2004, the Court promulgated its Decision in the above-entitled case, ruling in favor of the petitioner.

A Motion for Reconsideration was consequently filed by the respondent to which petitioner filed an Opposition. In its Motion, respondent prays in the main that this Court reconsiders its ruling that respondent is not among the constitutional bodies clothed with fiscal autonomy.

ISSUES

WHETHER OR NOT THERE IS LEGAL BASIS TO SUPPORT THE CONTENTION THAT THE CHR ENJOYS FISCAL AUTONOMY AND THAT ALTHOUGH ADMITTEDLY A CONSTITUTIONAL CREATION, IS NONETHELESS NOT INCLUDED IN THE GENUS OF THE OFFICES ACCORDED FISCAL AUTONOMY BY CONSTITUTIONAL OR LEGISLATIVE FIAT.

WHETHER OR NOT THE CHR CAN VALIDLY RECLASSIFY OR UPGRADE WITHOUT THE APPROVAL OF THE DEPARTMENT OF BUDGET AND MANAGEMENT.

RULING

As already settled in the assailed Decision of this Court, the creation of respondent may be constitutionally mandated, but it is not, in the strict sense, a constitutional commission. Article IX of the 1987 Constitution, plainly entitled "Constitutional Commissions," identifies only the Civil Service Commission, the Commission on Elections, and the Commission on Audit. The mandate for the creation of the respondent is found in Section 17 of Article XIII of the 1987 Constitution on Human Rights, which reads that –

Sec. 17. (1) There is hereby created an independent office called the Commission on Human Rights.

Thus, the respondent cannot invoke provisions under Article IX of the 1987 Constitution on constitutional commissions for its benefit. It must be able to present constitutional and/or statutory basis particularly pertaining to it to support its claim of fiscal autonomy.

The 1987 Constitution expressly and unambiguously grants fiscal autonomy only to the Judiciary, the constitutional commissions, and the Office of the Ombudsman.

As compared to Article VIII, Section 3; Article IX, Part A, Section 5; and Article XI, Section 14 of the 1987 Constitution on the Judiciary, the constitutional commissions, and the Office of the Ombudsman, respectively, Article XIII, Section 17(4) on the Commission of Human Rights (CHR) evidently does not contain the first sentence on the express grant of fiscal autonomy,

and reproduces only the second sentence on the automatic and regular release of its approved annual appropriations.

The respondent relies on the statement of then Constitutional Commissioner Hilario G. Davide, Jr. that the first sentence on the express grant of fiscal autonomy to the respondent was deleted from Article XIII, Section 17(4) of the 1987 Constitution because it was a *surplusage*. Respondent posits that the second sentence, directing the automatic and regular release of its approved annual appropriations, has the same essence as the express grant of fiscal autonomy, thus rendering the first sentence redundant and unnecessary.

This Court, however, believes otherwise. The statement of then Constitutional Commissioner Davide should be read in full. Referring to the deletion of the first sentence on the express grant of fiscal autonomy, he explained that the first sentence "would be a surplusage because the autonomy **actually intended** is the automatic release of these appropriations."

After reviewing the deliberations of the ConCom on Article XIII, Section 17(4), of the 1987 Constitution, in its entirety, not just bits and pieces thereof, this Court is convinced that the ConCom had intended to grant to the respondent the privilege of having its approved annual appropriations automatically and regularly released, but nothing more. While it may be conceded that the automatic and regular release of approved annual appropriations is an aspect of fiscal autonomy, it is just one of many others. The grant of fiscal autonomy is more extensive than the mere automatic and regular release of approved annual appropriations of the government entity.

In addition, the Constitutional Fiscal Autonomy Group (CFAG), to which respondent avers membership, defined the term "fiscal autonomy" in its Joint Resolution No. 49, dated 24 July 1998, as follows –

IV. Definition of Terms:

1. Fiscal Autonomy shall mean independence or freedom regarding financial matters from outside control and is characterized by self direction or self determination. **It does not mean mere automatic and regular release of approved appropriations** to agencies vested with such power in a very real sense, the fiscal autonomy contemplated in the constitution is enjoyed even before and, with more reasons, after the release of the appropriations. Fiscal autonomy encompasses, among others, budget preparation and implementation, flexibility in fund utilization of approved appropriations, use of savings and disposition of receipts. x x x (Emphasis supplied.)

While the assailed Decision and the present Resolution may render the status of respondent's membership in CFAG uncertain, the then Chairperson of respondent, Aurora P. Navarrete-Recina, duly signed CFAG Joint Resolution No. 49, and respondent should be held bound by the definition of fiscal autonomy therein. Having agreed to such a definition of fiscal autonomy, respondent has done a complete turn-about herein and is now contradicting itself by arguing that the automatic and regular release of its approved annual appropriations is already tantamount to fiscal autonomy.

Respondent asserts that it is granted fiscal autonomy by Book VI, Chapter 1, Section 1, paragraph 9, of the Administrative Code of 1987. However, as its title suggests (*Constitutional Policies on the Budget*), the aforesaid provision is supposed to merely re-state the policies on budget as declared by the 1987 Constitution and, therefore, cannot grant or extend to the respondent a privilege not found in the 1987 Constitution.

To reiterate, under the Constitution, as well as the Administrative Code of 1987, respondent enjoys fiscal autonomy only to the extent that its approved annual appropriations shall be automatically and regularly released, but nothing more.

On the main issue of whether or not the approval by the Department of Budget and Management (DBM) is a condition precedent to the enactment of an upgrading, reclassification, creation and collapsing of plantilla positions in the CHR, this Court staunchly holds that the imprimatur of the DBM must first be sought prior to implementation of any reclassification or upgrading of positions in government.

Regardless of whether or not respondent enjoys fiscal autonomy, this Court shares the stance of the DBM that the grant of fiscal autonomy notwithstanding, ALL government offices must, all the same, kowtow to the Salary Standardization Law. This Court is of the same mind with the DBM on its standpoint, thus –

Being a member of the fiscal autonomy group does not vest the agency with the authority to reclassify, upgrade, and create positions without approval of the DBM. While the members of the Group are authorized to formulate and implement the organizational structures of their respective offices and determine the compensation of their personnel, such authority is not absolute and must be exercised within the parameters of the Unified Position Classification and Compensation System established under RA 6758 more popularly known as the Compensation Standardization Law. x x x (Emphasis supplied).

If the Judiciary, a co-equal branch of government, which was expressly granted by the Constitution with fiscal autonomy, is required to conform to the Salary Standardization Law and is subject to the scrutiny of the DBM, sagaciously, the respondent cannot be deemed to enjoy a better position than the Judiciary. The respondent must, likewise, toe the line.

In line with its role to breathe life into the policy behind the Salary Standardization Law of “providing equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions,” the DBM, in the case under review, made a determination, after a thorough evaluation, that the reclassification and upgrading scheme proposed by the respondent lacks legal rationalization.

The DBM expounded that Section 78 of the General Provisions of the General Appropriations Act (GAA), FY 1998, which the respondent heavily relies upon to justify its reclassification scheme, explicitly provides that “no organizational unit or changes in key positions shall be authorized unless provided by law or directed by the President.” Here, the DBM discerned that **there is no law authorizing the creation of a Finance Management Office and a Public Affairs Office in the**

CHR. Anent respondent's **proposal to upgrade twelve (12) positions of Attorney VI, SG-28 (sic, 26) to Director IV, SG-28**, and three (3) positions of Director III, SG-27 to Director IV, SG-28, in its Central Office, the DBM denied the same as this would change the context from support to substantive without actual change in functions.

As the final thrust, respondent is precluded from invoking the Special Provisions Applicable to All Constitutional Offices Enjoying Fiscal Autonomy in the 1998 GAA. The Special Provisions of the 1998 GAA refer to the broad and extensive concept of fiscal autonomy. They already go beyond ensuring the automatic and regular release of the approved annual appropriations, but already enumerate the ways by which the named government entities can use their appropriations to effect changes in their organizational structure and their savings for certain official purposes. Even assuming *arguendo* that the said Special Provisions are applicable to respondent, it should be noted that the last sentence in paragraph 1 qualifies the power of a fiscally autonomous government entity to formulate and implement changes in its organizational structure so that, "x x x the implementation hereof shall be in accordance with salary rates, allowances and other benefits authorized under compensation standardization laws." And, as exhaustively expounded in the assailed Decision and the herein Resolution, only the DBM has the authority and the technical expertise to determine compliance by respondent to the provisions of the Salary Standardization Law.

WHEREFORE, the Motion for Reconsideration is PARTIALLY GRANTED. The assailed Decision of this Court dated 25 November 2004 is hereby MODIFIED, declaring the respondent CHR as a constitutional body enjoying limited fiscal autonomy, in the sense that it is entitled to the automatic and regular release of its approved annual appropriations; nonetheless, it is still required to conform to the Salary Standardization Law. Accordingly, its entire reclassification scheme remains subject to the approval of the DBM.

**B. COMMISSION ON HUMAN RIGHTS EMPLOYEES' ASSOCIATION (CHREA)
Represented by its President, MARCIAL A. SANCHEZ, JR., petitioner, vs.
COMMISSION ON HUMAN RIGHTS, respondent.**

G.R. No.155336. November 25, 2004.

FACTS

On February 1998, Congress passed Republic Act No. 8552, otherwise known as the General Appropriations Act of 1998. It provided for Special Provisions Applicable to All Constitutional Offices Enjoying Fiscal Autonomy. The last portion of Article XXIII covers the appropriations of the CHR.

On the strength of these special provisions, the CHR, through its then Chairperson Aurora P. Navarette-Recina and Commissioners Nasser A. Marohomasalic, Mercedes V. Contreras, Vicente P. Sibulo, and Jorge R. Coquia, promulgated Resolution No.A98-047 on 04 September 1998, adopting an upgrading and reclassification scheme among selected positions in the Commission.

Annexed to the said resolution is the proposed creation of ten additional plantilla positions, namely: one Director IV position, with Salary Grade 28 for the Caraga Regional Office, four

Security Officer II with Salary Grade 15, and five Process Servers with Salary Grade 5 under the Office of the Commissioners.

On 19 October 1998, CHR issued Resolution No. A98-055 providing for the upgrading or raising of salary grades and also the creation and upgrading of the following positions in the Commission.

To support the implementation of such scheme, the CHR, in the same resolution, authorized the augmentation of a commensurate amount generated from savings under Personnel Services.

By virtue of Resolution No. A98-062 dated 17 November 1998, the CHR "collapsed" the vacant positions in the body to provide additional source of funding for said staffing modification. Among the positions collapsed were: one Attorney III, four Attorney IV, one Chemist III, three Special Investigator I, one Clerk III, and one Accounting Clerk II.

The CHR forwarded said staffing modification and upgrading scheme to the DBM with a request for its approval, but the then DBM Secretary Benjamin Diokno denied the request.

In light of the DBM's disapproval of the proposed personnel modification scheme, the CSC-National Capital Region Office, through a memorandum dated 29 March 1999, recommended to the CSC-Central Office that the subject appointments be rejected owing to the DBM's disapproval of the plantilla reclassification.

Meanwhile, the officers of petitioner CHREA, in representation of the rank-and-file employees of the CHR, requested the CSC-Central office to affirm the recommendation of the CSC-Regional Office. CHREA stood its ground in saying that DBM is the only agency with appropriate authority mandated by law to evaluate and approve matters of reclassification and upgrading, as well as creation of positions.

The CSC-Central office denied CHREA's request in a Resolution dated 16 December 1999, and reversed the recommendation of the CSC-Regional Office that the upgrading scheme be censured.

CHREA filed a motion for reconsideration, but the CSC-Central Office denied the same on 09 June 2000.

Given the cacophony of judgments between the DBM and the CSC, petitioner CHREA elevated the matter to the Court of Appeals. The Court of Appeals affirmed the pronouncement of the CSC-Central Office and upheld the validity of the upgrading, retitling, and reclassification scheme in the CHR on the justification that such action is within the ambit of CHR's fiscal autonomy.

Unperturbed, petitioner filed this petition to the Supreme Court.

ISSUE

WHETHER OR NOT THE COMMISSION ON HUMAN RIGHTS CAN VALIDLY IMPLEMENT AN UPGRADING, RECLASSIFICATION, CREATION, AND COLLAPSING OF PLANTILLA POSITIONS IN THE COMMISSION WITHOUT THE APPROVAL OF THE DEPARTMENT OF BUDGET AND MANAGEMENT.

RULING

PETITION IS GRANTED.

Republic Act No. 6758, entitled *An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes, or the Salary Standardization Law*, dated 01 July 1989, which provides in Section 2 and 4 thereof that it is the DBM that shall establish and administer a unified Compensation and Position Classification System. Thus :

Sec. 2. Statement of Policy. - It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work. For this purpose, the Department of Budget and Management (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution. (emphasis supplied)

Sec. 4. Coverage. - The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.

The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term "government-owned and controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions. (emphasis supplied).

The disputation of the Court of Appeals that the CHR is exempt from the long arm of the Salary Standardization Law is flawed considering that the coverage thereof, as defined above, encompasses the entire gamut of government offices, sans qualification.

The power to 'administer' is not purely ministerial in character as erroneously held by the Court of Appeals. The word to *administer* means *to control or regulate in behalf of others; to direct or superintend the execution, application or conduct of; and to manage or conduct public affairs, as to administer the government of the state.*

The regulatory power of the DBM on matters of compensation is encrypted not only in law, but in jurisprudence as well. As measured by the foregoing legal and jurisprudential yardsticks, the imprimatur of the DBM must first be sought prior to implementation of any reclassification or upgrading of positions in government. This is consonant to the mandate of the DBM under the Revised Administrative Code of 1987, Section 3 Chapter I, Title XVII, to wit :

days within which to vacate the questioned premises of North EDSA.

On 12 July 1990, the group led by their President Roque Fermo, filed a letter complaint with the CHR against, the petitioners asking the late CHR Chairman Mary Concepcion Bautista for a letter to be addressed to the then Mayor Brigido Simon Jr., of Quezon City to stop the demolition of the private respondents' stalls, sari-sari stores, and carinderia along North EDSA.

On 23 July 1990, the CHR issued an order, directing the petitioners "to desist from demolishing the stalls and shanties at North EDSA pending resolution of the vendors/squatters' complaint before the Commission" and ordering said petitioners to appear before the CHR.

The CHR subsequently, in its resolution of 1 August 1990, ordered the disbursement of financial assistance of not more than P200,000.00 in favor of the private respondents to purchase light housing materials and food under the Commission's supervision and again directed the petitioners to "desist from further demolition, with the warning that violation of said order would lead to a citation for contempt and arrest.

A motion to dismiss, dated 10 September 1990, questioned CHR's jurisdiction which was followed subsequently by a Supplemental Motion to Dismiss.

In an order, dated 25 September 1990, the CHR cited the petitioners for contempt for carrying out the demolition of the stalls, sari-sari stores and carinderia despite the "order to desist," and it imposed a fine of P 500.00 on each of them.

On 1 March 1991, the CHR issued an Order, denying petitioners' motion to dismiss and supplemental motion to dismiss.

The CHR opined that "it was not the intention of the (Constitutional) Commission to create only a paper tiger limited only to investigating civil and political rights, but it (should) be (considered) a quasi-judicial body with the power to provide appropriate legal measures for the protection of human rights of all persons within the Philippines."

Petitioners motion for reconsideration was denied. Hence this petition.

ISSUE

WHETHER OR NOT THE COMMISSION ON HUMAN RIGHTS HAS JURISDICTION OVER THE ALLEGED VIOLATION OF RIGHTS.

RULING

THE PETITION HAS MERIT.

Now written as Sec.18, Article XIII, of the 1987 Constitution, is a provision empowering the Commission on Human Rights to "investigate, on its own or on complaint by any party, all forms of human rights violations involving *civil and political rights*" (Sec.1).

Recalling the deliberations of the Constitutional Commissions, aforequoted, it is readily apparent that the delegates envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violations. While the enumeration has not likely been

meant to have any preclusive effect, more than just expressing a statement of priority, it is nonetheless, significant for the tone it has set. In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR's scope of investigatorial jurisdiction. They have thus seen fit to resolve, instead, that "Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendation."

In, the particular case at hand, there is no cavil that what are sought to be demolished are the stalls, sari-sari stores and *carinderia*, as well as temporary shanties, erected by private respondents on a land which is planned to be developed into a "People's Park." More than that, the land adjoins the North EDSA of Quezon City which, this Court can take judicial notice of, is a busy national highway. The consequent danger to life and limb is not likewise simply ignored. It is indeed paradoxical that a right which is claimed to have been violated is one that cannot, in the first place, even be invoked, if it is not, in fact, extant. The Court was not prepared to conclude that the order for the demolition of the stalls, sari-sari stores and *carinderia* of the private respondents can fall within the compartment of "human rights violations involving civil and political rights" intended by the Constitution.

On its contempt powers, the CHR is constitutionally authorized to "adopt its operational guidelines and rules of procedure, and cite contempt for violations thereof in accordance with the Rules of Court." Accordingly, the CHR acted within its authority in providing in its revised rules, its power "to cite or hold any person in direct or indirect contempt, and to impose the appropriate penalties in accordance with the Rules of Court." That power to cite contempt, however, should be understood to apply only to violations of its adopted operational guidelines and rules of procedure essential to carry out its investigatorial powers. To exemplify, the power to cite for contempt could be exercised against any person who refuse to cooperate with the said body, or who unduly withhold relevant information, or who decline to honor summons, and the like, in pursuing its investigative work. The "order to desist" (a semantic interplay for a restraining order) in the instance before us, however, is not investigatorial in character but prescinds from adjudicative power that it does not possess.

The CHR does have a legal standing to indorse, for appropriate action, its findings and recommendations to any appropriate agency or government.

D. EXPORT PROCESSING ZONE AUTHORITY, petitioner, vs. THE COMMISSION ON HUMAN RIGHTS, TERESITA VALLES, LORETO ALEDIA and PEDRO ORDOÑEZ, respondents.

G.R. No. 101476. April 14, 1992

FACTS

On May 30, 1980, P.D. 1980 was issued reserving and designating certain parcels of land in Rosario and General Trias, Cavite, as the "Cavite Export Processing Zone" (CEPZ). For purposes of development, the area was divided into Phase I to IV. A parcel in Phase IV was bought by the Filoil Refinery Corporation, formerly

Filoil Industrial Estate, Inc. The same parcel was later sold by Filoil to the Export Processing Zone Authority (EPZA).

Before EPZA could take possession of the area, several individuals had entered the premises and planted agricultural products therein without the permission from EPZA or its predecessor, Filoil. To convince the intruders to depart peacefully, EPZA, in 1981, paid a P10,000.00 financial assistance to those who accepted the same and signed quitclaims. Among them were Teresita Valles and Alfredo Aledia, father of the respondent Loreto Aledia.

Ten years later, on May 10, 1991, respondents Valles and Aledia filed in the respondent CHR a joint complaint praying for "justice and other reliefs and remedies". The CHR conducted an investigation of the complaint.

According to the CHR, the private respondents, who are farmers, filed in the Commission on May 10, 1991 a verified complaint for violation of their human rights. They alleged that on March 20, 1991, at 10:00 o'clock in the morning, Engineer Neron Damandamon, EPZA Project Engineer, accompanied by his subordinates and members of the 215th PNP Company, brought a bulldozer and a crane to level the area occupied by the private respondents who tried to stop them by showing a copy of the letter from the Office of the President of the Philippines ordering the postponement of the bulldozing. However, the letter was crumpled and thrown to the ground by a member of Damandamon's group who proclaimed that: "The President in Cavite is Governor Remulla!"

On May 17, 1991, the CHR issued an Order of Injunction commanding EPZA, the 125th PNP Company and Governor Remulla and their subordinates to desist from committing further acts of demolition, terrorism, and harassment until further orders from the Commission. Two weeks later, the same group again bulldozed the area.

CHR Chairman Mary Concepcion Bautista issued another injunction Order reiterating her order and expanded it to include the Secretary of Public Works and Highways, the contractors, and their subordinates.

EPZA filed in the CHR a motion to lift the Order of Injunction for lack of authority to issue injunctive writs and temporary restraining order. CHR denied the motion. On September 11, 1991, the petitioner, through the Government Corporate Counsel, filed in this Court a Special Civil Action for Certiorari and Prohibition with prayer for the issuance of a restraining order and/or preliminary injunction.

The Court issued a TRO, ordering the CHR to cease and desist from enforcing and/or implementing the questioned injunction orders.

ISSUE

WHETHER OR NOT THE CHR HAS JURISDICTION TO ISSUE A WRIT OF INJUNCTION OR RESTRAINING ORDER AGAINST SUPPOSED VIOLATORS OF HUMAN RIGHTS, TO COMPEL THEM TO CEASE AND DESIST FROM CONTINUING THE ACTS COMPLAINED OF.

RULING

The constitutional provision directing the CHR to "provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection" may not be construed to confer jurisdiction for, if that was the intention, the Constitution would have expressly said so. "Jurisdiction is conferred only by the Constitution or by law."

Evidently, the "preventive measures and legal aid services" mentioned in the Constitution refer to the extrajudicial and judicial remedies (including preliminary writ of injunction) which the CHR may seek from the courts on behalf of the victims of human rights violations. Not being a court of justice, the CHR itself has no jurisdiction to issue the writ, for a writ of preliminary injunction may only be issued "by a judge of any court in which the action is pending (within his district), or by Justice of the Court of Appeals, or of the Supreme Court. It may also be granted by the judge of a Court of First Instance (now Regional Trial Court) in any action pending in an inferior court within his district." (Sec.2, Rules of Court). A writ of preliminary injunction is an ancillary remedy. It is available only in a pending principal action, for the preservation or protection of the rights and interests of a party thereto, and for no other purpose.

PETITION IS GRANTED. The orders of injunction issued by the CHR are hereby annulled and set aside and the temporary restraining order which the Court issued is hereby made permanent.

E. HON. ISIDRO CARIÑO, in his capacity as Secretary of the Department of Education, Culture and Sports, DR. ERLINDA LOLARGA, in her capacity as Superintendent of City Schools of Manila, petitioners, vs. THE COMMISSION ON HUMAN RIGHTS, GRACIANO BUDOY, JULIETA BABARAN, ELSA IBABAO, HELEN LUPO, AMPARO GONZALES, LUZ DEL CASTILLO, ELSA REYES AND APOLINARIO ESBER, respondents.

G.R. No. 96681. December 2, 1991

FACTS

On Monday and a class day, some 800 public school teachers, among them members of the Manila Public School Teachers Association (MPSTA) and Alliance of Concerned Teachers undertook what they described as "mass concerted actions" to "dramatize and highlight" their plight resulting from the alleged failure of the public authorities to act upon grievances that had time and again been brought to the latter's attention. Through their representatives, the teachers were served with an order of the Secretary of Education to return to work in 24 hours or face dismissal, and a memorandum directing the DECS officials concerned to initiate dismissal proceedings against those who did not comply and to hire their replacements.

For failure to heed the return-to-work order, the CHR complainants (private respondents were administratively charged on the basis of the principal's report and given five (5) days to answer the charges. They were preventively suspended for ninety-days " pursuant to Sec.41 of P.D. 807 and temporarily replaced.

Amidst the filing of several court cases, the respondent teachers submitted sworn statements to the Commission on Human Rights to complain that while they were participating in peaceful mass actions, they suddenly learned of their replacements as teachers, allegedly without notice and consequently for reasons completely unknown to them.

Their complaints-and those of other teachers also 'ordered suspended by the xx (DECS)," all numbering forty-two (42) were docketed. In connection therewith the Commission scheduled a "dialogue", and sent a subpoena to Secretary Cariño requiring his attendance therein.

Through the Office of the Solicitor General, Secretary Cariño sought and was granted leave to file a motion to dismiss was submitted alleging grounds therefore," that the complaint states no cause of action and that the CHR has no jurisdiction over the case."

Pending determination by the Commission of the motion to dismiss, judgments affecting the "striking teachers" were promulgated in two cases.

The Commission on Human Rights has made clear its position that it does not feel bound by the Court's joint Resolution. It has also made plain its intention "to hear and resolve the case on the merits." It intends, in order words, to try and decide or hear and determine these cases.

The CHR evidently intends to itself adjudicate, that is to say, determine with character of finality and definiteness, the same issues which have been passed upon and decided by the Secretary of Education, Culture & Sports, subject to appeal to the Civil Service Commission, this Court having in fact, as aforementioned, declared that the teachers affected may take appeals to the Civil Service Commission, if still timely.

Hence this petition.

ISSUE

WHETHER THE COMMISSION ON HUMAN RIGHTS HAS ADJUDICATORY POWERS.

RULING

The Court declares the Commission on Human Rights to have no such power; and that it was not meant by the fundamental law to be another court or quasi-judicial agency in this country, or duplicate much less take over the functions of the latter.

The most that may be conceded to the Commission in the way of adjudicative power is that it may investigate, i.e., receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. But fact-finding is not adjudication, and cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of the controversy the facts of the controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law. This function to repeat, the Commission does not have.

The proposition is made clear by the constitutional provisions specifying the powers of the Commission on Human Rights.

Hence, it is that the Commission on Human Rights, having merely the power 'to investigate', cannot and should not "try to resolve on the merits" (adjudicate) the matters involved in the abovementioned case as it has announced it means to do.

These are matters undoubtedly and clearly within the original jurisdiction of the Secretary of Education, being within the scope of the disciplinary powers granted to him under the Civil Service Law, and also within the appellate jurisdiction of the Civil Service Commission.

F. MARY CONCEPCION BAUTISTA, petitioner, vs. SENATOR JOVITO R. SALONGA, COMMISSION ON APPOINTMENTS, COMMITTEE ON JUSTICE, JUDICIAL AND BAR COUNCIL AND HUMAN RIGHTS AND HESQUIO R. MALLILLIN, respondents.

G.R. No. 86439. April 13, 1989

FACTS

On August 1987, the President of the Philippines *designated* herein petitioner Mary Concepcion Bautista as "Acting Chairman, Commission on Human Rights." It is to be noted that by virtue of such appointment, petitioner Bautista was advised by the President that she could qualify and enter upon the performance of the duties of the Office of Chairman of the Commission on Human Rights, requiring her to furnish the Office of the President and the Civil Service Commission with copies of her oath of office.

On December 22, 1988, before the Chief Justice of the Supreme Court, Hon. Marcelo B. Fernan, petitioner Bautista took her oath of office by virtue of her appointment as Chairman of the Commission on Human Rights.

Immediately, after taking her oath of office as Chairman of the Commission on Human Rights, petitioner Bautista discharged the functions and duties of the Office of Chairman of the Commission on Human Rights which, as previously stated, she had originally held merely in an acting capacity beginning 27 August 1987.

On 9 January 1989, petitioner Bautista received a letter from the Secretary of The Commission on Appointments requesting her to submit to the Commission certain information and documents as required by its rules in connection with the confirmation of her appointments as Chairman of the Commission on Human Rights.

On 10 January 1989, the Commission on Appointments' Secretary again wrote petitioner Bautista requesting her presence at a meeting of the Commission on Appointments Committee on Justice, Judicial and Bar Council and Human Rights set for 18 January 1989 that would deliberate on her appointment as Chairman of the Commission on Human Rights.

On 13 January 1989, petitioner Bautista wrote to the Chairman of the Commission on Appointments stating, for the reasons therein given, why she considered the Commission on Appointments as having Jurisdiction to review her appointment as Chairman of the Commission on Human Rights.

In respondent Commission's comment dated 3 February 1989, there is attached a letter of the Commission on Appointments' Secretary to the Executive Secretary, Hon. Catalino Macaraig, Jr. making reference to the "ad interim Appointment with Her Excellency extended to Atty. Mary Concepcion Bautista on 14 January 1989 as Chairman of the Commission on Human Rights" and informing Secretary Macaraig that, as previously conveyed to him in a letter of 25 January 1989, the Commission on Appointments disapproved petitioner Bautista's "ad interim appointment" as Chairperson of the Commission on Human Rights in view of her refusal to submit to the jurisdiction of the Commission on Appointments.

On the same date (1 February 1989), the Commission on Appointments' Secretary informed petitioner Bautista that the motion for reconsideration of the disapproval of her "ad interim appointment as Chairman of the Commission on Human Rights" was denied by the Commission on Appointments.

On 20 January 1989, or even before the respondent Commission on Appointments had acted on her "ad interim appointment as Chairman of the Commission on Human Rights" petitioner Bautista filed with this Court the present petition for certiorari with a prayer for the immediate issuance of the restraining order, to "declare unlawful and unconstitutional and without any legal force and effect any action of the Commission on Appointments as well as of the Committee on Justice, Judicial and Bar Council and Human Rights, on the lawfully extended appointment of the petitioner as Chairman of the Commission on Human Rights, on the ground that they have no lawful and constitutional authority to confirm and to review her appointment.

Acting on petitioner's amended petition and supplemental urgent ex-parte motion, the Court resolved to issue a temporary restraining order directing respondent Mallilin to cease and desist from effecting the dismissal, courtesy resignation, removal and reorganization and other similar personnel actions.

Hence this petition.

ISSUE

WHETHER THE PRESIDENT, SUBSEQUENT TO HER ACT OF 17 DECEMBER 1988, AND AFTER PETITIONER BAUTISTA HAD QUALIFIED FOR THE OFFICE TO WHICH SHE HAD BEEN APPOINTED, BY TAKING THE OATH OF OFFICE AND ACTUALLY ASSUMING AND DISCHARGING THE FUNCTIONS AND DUTIES THEREOF, COULD EXTEND ANOTHER APPOINTMENT TO THE PETITIONER ON 14 JANUARY 1989, AN AD INTERIM APPOINTMENT AS TERMED BY THE COMMISSION ON APPOINTMENTS OR ANY OTHER KIND OF APPOINTMENT TO THE SAME OFFICE OF CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS THAT CALLED FOR CONFIRMATION BY THE COMMISSION ON APPOINTMENTS.

RULING

PETITION IS GRANTED.

The Court with all due respect to both the Executive and Legislative Departments of government, and after careful deliberation, is constrained to hold and rule in the negative. When Her Excellency, the President converted petitioner Bautista's designation as Acting Chairman to a permanent appointment as Chairman of the Commission on Human Rights on 17 December 1988, significantly she advised Bautista that, by virtue of such appointment, she could qualify and enter upon the performance of the duties of the office. All that remained for Bautista to do was to reject or accept the appointment. Obviously, she accepted the appointment by taking her oath of office before the Chief Justice of the Supreme Court and assuming immediately thereafter the functions and duties of the Chairman of the Commission on Human Rights.

Since the position of Chairman of the Commission on Human Rights is not among the positions mentioned in the first sentence of Sec.16, Art VII of the 1987 Constitution, appointments which are to be made with the confirmation of the Commission on Appointments, it follows that the appointment by the President of the Chairman of the CHR is to be made without the review or participation of the Commission on Appointments. To be more precise, the appointment of the Chairman and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, whose appointments are expressly vested by the Constitution in the President with the consent of the Commission on Appointments. The President appoints the Chairman and Members of the Commission on Appointments because they are among the officers of the government "whom he (the President) may be authorized by law to appoint." And Section 2(c) of Executive Order No. 163, 5 May 1987, authorizes the president to appoint the Chairman and the Members of the Commission on Human Rights. It provides : "(c) the Chairman and the Members of the Commission on Human Rights shall be appointed by the President for a term of seven years without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor."

Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefore, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No.163-A, being antithetical to the constitutional mandate of the independence for the Commission on Human Rights has to be declared unconstitutional.

To hold, as the court holds, that petitioner Bautista is the lawful incumbent of the office of the Chairman of the Commission on Human Rights by virtue of her appointment, as such, and her acceptance thereof, is not to say that she cannot be removed from office before the expiration of her seven (7) year term. She certainly can be removed but her removal must be for cause and with her right to due process properly safeguarded.

G. COMMISSION ON HUMAN RIGHTS, petitioner, vs. CIVIL SERVICE COMMISSION and ATTY. ELIAS V. PACETE, respondents.

G.R. No. 101207. October 1, 1993.

FACTS

Atty. Elias Pacete, a permanent appointee since February 1, 1988 to the position of Division Chief of Region IX of the Commission of Human Rights (CHR) based in Zamboanga City, filed an application for optional retirement pursuant to Rep. Act No. 1616, 1 dated June 17, 1989 effective July 31, 1989 because of failing eyesight. On July 7, 1989, however, Pacete sent a notice of withdrawal of his application for retirement. On July 17, 1989, Pacete was informed by the Chairman of the CHR through a telegram of the acceptance and approval of his application for optional retirement effective July 31, 1989 and the appointment of Atty. Rodrigo Roy as his successor effective August 1, 1989.

On August 25, 1989, the Government Service Insurance System (GSIS) informed private respondent that his application for optional retirement cannot be favorably considered due to his failure to meet the condition provided for in Section 12 (c) of Rep. Act No. 1616, as amended, requiring three (3) years of continuous service preceding retirement. Consequently, the GSIS advised the CHR to allow Pacete to continue in the service to complete the said requirement.

Accordingly, Pacete requested the CHR that he be reinstated to his former position with back wages and allowances and the recall of the appointment of his successor, Atty. Roy. On October 18, 1989, the CHR through a resolution, denied his request and instead formally charged him with incompetence, gross inefficiency in the performance of official duty and failure to account for public funds.

On May 27, 1990, Pacete, after being informed of the action taken by the CHR elevated his case to the Merit Systems Protection Board (MSPB). On August 31, 1990, the MSPB ordered the immediate reinstatement of private respondent to his former position with payment of back wages and other benefits allowed by law without prejudice to the outcome of the formal charges against him.

Upon learning of the favorable decision in favor of private respondent, Atty. Roy forthwith stepped down as Regional Field Officer on October 1, 1990.

The CHR, through its then Chairman, Mary Concepcion Bautista, filed a motion for reconsideration dated October 15, 1990. On January 10, 1991, the Board affirmed its August 31, 1990 decision. On February 11, 1991, petitioner appealed the decision of the MSPB to the Civil Service Commission which affirmed the decision of the MSPB on July 25, 1991.

Meanwhile, because of private respondent's failure to settle his accountability as Regional Field Officer in the amount of P114,758.60, the CHR referred this matter to the Office of the Ombudsman for the filing of appropriate criminal charges against him on July 26, 1991.

Hence this petition.

ISSUE

WHETHER OR NOT PUBLIC RESPONDENT CSC GRAVELY ABUSED ITS DISCRETION IN ORDERING THE REINSTATEMENT OF PRIVATE RESPONDENT AND THE PAYMENT OF HIS BACKWAGES.

RULING

The Court affirms the decision of the Civil Service Commission. The issue in this case revolves around the optional retirement of private respondent. The collateral issues of his incompetence and inefficiency are questions of fact which this court has no jurisdiction to pass upon.

The Court finds that there was a glaring disregard of this procedure laid down in the law. In fact, the October 18, 1989 resolution of the CHR denying him reinstatement for failure to fulfill the three-year requirement of continuous service preceding retirement was reached without notice and hearing. Much less was there any request for optional retirement of private respondent from the CHR to the Civil Service Board of Appeals based on incompetence and inefficiency. Although he was furnished a copy of the resolution denying his application for reinstatement with the attendant charges against him, he was not afforded the opportunity to refute them prior to the promulgation of the said resolution. The records disclose that the petitioner required private respondent to answer the charges of alleged incompetence and inefficiency in the same resolution which denied his reinstatement. The attempt to observe due process was made only after he had been separated from the service. The refusal of the CHR to restore Pacete to his former position, being tantamount to termination without valid cause, the MSPB decreed back wages in private respondent's favor.

To aver that the real cause which precipitated the approval of the optional retirement of private respondent was the latter's incompetence and inefficiency based on CHR's proffered evidence and that its approval was an opportune time to separate him from the service smacks more of a subterfuge to ease him out since the charges were leveled against him only after the GSIS had disapproved his application due to non-fulfillment of the three-year requirement of continuous service preceding retirement.

H. SECURITY AND CREDIT INVESTIGATION, INC. and VICENTE REYES, JR., petitioners, vs. THE NATIONAL LABOR RELATIONS COMMISSION (First Division), FELICIANO MERCADO, EDGAR SOMOSOT and DANTE OLIVER and the COMMISSION ON HUMAN RIGHTS, respondents.

G.R. No. 114316. January 26, 2001

FACTS

This is a petition for certiorari assailing the Decision of respondent National Labor Relations Commission (NLRC), First Division, dated January 24, 1994, in NLRC Case Nos. 00-03-01791-90 and 00-03-01886-90 which affirmed with modification the Decision, dated November 18, 1993, of Labor Arbiter Jose G. De Vera ordering

petitioner Security and Credit Investigation, Inc. (petitioner) to reinstate private respondents Feliciano Mercado (Mercado), Edgar Somosot (Somosot), and Dante Oliver (Oliver) without backwages and ordering third-party respondent Commission on Human Rights (CHR) to reimburse petitioner in the amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00).

ISSUE

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SET ASIDE THE ORDER OF LABOR ARBITER JOSE G. DE VERA REQUIRING THE CHR TO REIMBURSE PETITIONER.

RULING

Section 6 of R.A. 6727 imposes the liability for payment of the increase in wages on the principal which in this case is the CHR, thus:

In case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

It is thus clear that the CHR is the party liable for payment of the wage increase due to respondent security guards. While petitioner, as the contractor, is held solidarily liable for the payment of wages, including wage increases, as prescribed under the Labor Code, 19 the obligation ultimately belongs to the CHR as principal.

The Labor Arbiter was therefore correct in requiring the CHR to reimburse petitioner the amount of P28,500.00 representing the unpaid wage increases of respondent security guards for the period July 1, 1989 to April 15, 1990.

I. IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF LEONARDO PAQUINTO AND JESUS CABANGUNAY, CHAIRMAN SEDFREY A. ORDOÑEZ, COMM. HESQUIO R. MALLILLIN, COMM. NARCISO C. MONTEIRO, COMM. PAULYNN PAREDES-SICAM, THE COMMISSION ON HUMAN RIGHTS, petitioners, vs. DIRECTOR OF PRISONS,

G.R. No. 115576 August 1994

FACTS

Why are Leonardo Paquinto and Jesus Cabangunay still in prison?

These persons are among the civilians who were tried by the military commissions during the period of martial law. Both were originally condemned to die by musketry, but their sentence was commuted by the new Constitution to reclusion perpetua.

Their convictions were subsequently nullified by this Court in the case of *Olague v. Military Commission No. 34*, where we held that the military tribunals had no jurisdiction to try civilians when the courts of justice were functioning.

Accordingly, in the case of *Cruz v. Ponce Enrile*, this Court directed the Department of Justice to file the corresponding informations in the civil courts against the petitioners within 180 days from notice of the decision.

No information has so far been filed against Paquinto and Cabangunay, but they have remained under detention.

On May 27, 1992, Ernesto Abaloc, together with Cabangunay and Paquinto, wrote to the United Nations Human Rights Committee (UNHRC) complaining that their continued detention violated their rights under Articles 6, 7, 9, 10, 14, and 26 of the International Covenant on Civil and Political Rights.

In its decision dated October 14, 1993, the UNHRC declared their communication as admissible and requested the Republic of the Philippines to submit a written explanation of their complaint within six months from the date of transmittal.

The Department of Foreign Affairs furnished the Commission on Human Rights with a copy of the decision. Thereupon, the Commission, through its Chairman Sedfrey A. Ordonez, wrote the Secretary of Justice of its intention to sue for the release of the complainants unless criminal charges had already been filed against them.

On June 7, 1994, the Department of Justice informed the Commission that Abaloc had been released on September 29, 1992, and that Paquinto and Cabangunay were still detained at the National Penitentiary. There was the intimation that it would not object to a petition for habeas corpus that the Commission might choose to file for Paquinto and Cabangunay. This assurance was later confirmed in a letter from the Department dated May 31, 1994.

The present petition for habeas corpus was filed with this Court on June 13, 1994. The writ was immediately issued, returnable on or before June 22, 1994, on which date a hearing was also scheduled.

RULING

There is absolutely no question that the prisoners' plea should be heeded. The government has failed to show that their continued detention is supported by a valid conviction or by the pendency of charges against them or by any legitimate cause whatsoever. If no information can be filed against them because the records have been lost, it is not the prisoners who should be made to suffer. In the eyes of the law, Paquinto and Cabangunay are not guilty or appear to be guilty of any crime for which they may be validly held. Hence, they are entitled to be set free.

Liberty is not a gift of the government but the rights of the governed. Every person is free, save only for the fetters of the law that limit but do not bind him unless he affronts the rights of others or offends the public welfare. Liberty is not derived from the sufferance of the government or its magnanimity or even from the Constitution itself, which merely affirms but does not grant it. Liberty is a right that inheres in every one of us as a member of the human family. When a person is deprived of this right, all of us diminished and debased for liberty is total and indivisible.

WHEREFORE, the petition is GRANTED. Jesus Cabangunay and Leonardo Paquinto should not be detained in prison a minute longer. They are ordered released IMMEDIATELY.

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DELIBERATIONS OF THE 1987
CONSTITUTIONAL COMMISSION
IN THE CREATION OF
THE COMMISSION ON
HUMAN RIGHTS

WEDNESDAY, AUGUST 26, 1986

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**CONSIDERATION OF PROPOSED RESOLUTION NO. 539
(Article on the Constitutional Commissions-
Commission on Human Rights)**

MR. BENGZON. I move that we consider Committee Report No. 37 on Proposed Resolution No. 539 as reported out by the Committee on Constitutional Commissions and Agencies.

THE PRESIDENT. Is there any objection? (Silence) The Chair hears none; the motion is approved. Consideration of Proposed Resolution No. 539 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. 539, entitled: RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE PROVISIONS ON THE COMMISSION ON HUMAN RIGHTS.

COMMITTEE REPORT NO. 37

The Committee on Constitutional Commissions and Agencies, to which was referred Proposed Resolution No. 365, introduced by Hon. Garcia and Sarmiento, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE NATIONAL POLICE COMMISSION, THE NATIONAL POLLUTION CONTROL COMMISSION, THE JUDICIAL COMMISSION, THE COMMISSION ON GOOD GOVERNMENT, AND THE COMMISSION ON HUMAN RIGHTS AS ADDITIONAL INDEPENDENT CONSTITUTIONAL COMMISSIONS.

has considered the same and has the honor to report it back to the Constitutional Commission of 1986 with the recommendation that Proposed Resolution No. 539 prepared by the committee, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE PROVISIONS ON THE COMMISSION ON HUMAN RIGHTS.

be approved in substitution of Proposed Resolution No. 365, with the Committee on Constitutional Commissions and Agencies and Hon. Garcia and Sarmiento as authors thereof.

Respectfully submitted:

(Sgd.) Cirilo A. Rigos
Vice-Chairman

(Sgd.) Vicente B. Foz
Chairman
Committee on Constitutional
Commissions and Agencies

(Sgd.) Yusup R. Abubakar

(Sgd.) Roberto R. Concepcion

(Sgd.) Crispino M. de Castro

(Sgd.) Alberto M K. Jamir

(Sgd.) Christian S. Monsod

Teresa F. Nieva

Florenz D. Regalado

(Sgd.) Rustico F. de los Reyes, Jr.

Francisco A. Rodrigo

(Sgd.) Bernardo M. Villegas

(Sgd.) Decoroso R. Rosales

PROPOSED RESOLUTION NO. 539

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE PROVISIONS ON THE COMMISSION ON HUMAN RIGHTS.

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

ARTICLE _____ THE CONSTITUTIONAL COMMISSIONS

E. The Commission on Human Rights

Sec.1. There shall be an independent Commission on Human Rights composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines, at least thirty-five years of age and members of the bar for at least ten years.

The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment. Of the Commissioners first appointed, one shall hold office for seven years, another five years, and the third for three years. Appointment to any vacancy shall only be for the unexpired portion of the term of the predecessor.

SEC. 2. The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate all forms of human rights violations committed by public officers, civilian and military authorities, or by private parties;
- (2) Issue subpoena and subpoena duces tecum to compel the attendance of any party to its proceedings or the production of materials and documents, with the power to cite for contempt for violations thereof in accordance with the Rules of Court promulgated by the Supreme Court of the Philippines;
- (3) Provide appropriate legal measures for the protection of human rights of all persons whose human rights have been violated or need protection; and
- (4) Establish a continuing program of education and information to propagate the primacy of human rights.
- (5) Perform such other duties and functions as may be fixed by law.

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MR. BENGZON. I ask that Commissioners Foz and Sarmiento be recognized to sponsor the committee report.

THE PRESIDENT. Commissioners Foz and Sarmiento are recognized, and the members of the committee are requested to occupy the front desk.

MR. FOZ. Madam President, may we request that copies of the proposed resolution be distributed to the Members so that they can follow our sponsorship of the resolution.

SPONSORSHIP REMARKS OF COMMISSIONER SARMIENTO

MR. SARMIENTO. This resolution was sponsored by Commissioner Garcia and this humble representation and approved by the committee as shown by Committee Report No. 37.

My fellow Commissioners, the creation of a Human Rights Commission is a timely innovation in our Constitution. It has come at a time when the recognition of the need to protect and promote human rights is at its height. Fifteen years of abuses of fundamental rights and freedoms have awakened us to the need for a comprehensive program for the promotion, protection and respect for human rights. Such a program can best be formulated and undertaken by a specialized agency which is independent from the three main branches of government and equipped with the necessary powers and functions to carry out its programs. Moreover, Commission on Human Rights falls squarely into the list of priorities of the present government and dovetails with the commission's innovative work on human rights. As envisioned, the commission will investigate human rights abuses committed by any person and arising from any source, whether caused by private practices inimical to human rights or resulting from government policies, rules and regulations or the implementation thereof. In relation thereto, it can recommend to the President or to the appropriate agencies the various courses of action, from the prosecution of guilty parties to the indemnification and adoption of measures for protection, and the review and repeal of oppressive rules, policies or even laws. In addition, the commission will conduct education and public information campaigns with a view to increasing public awareness of human rights issues consistent with its objective of promotion and inculcation of respect for human rights. Hopefully, with a permanent constitutional body in pursuit of long-term human rights goals through a continuing program, we may be able to attain what very few Third World countries have been able to. The establishment of a Human Rights Commission in our Constitution will be the symbol of our commitment to justice and peace, and the promotion and protection of human dignity.

SPONSORSHIP REMARKS OF COMMISSIONER GARCIA

MR. GARCIA. I would simply like to add just one point. I think an outstanding feature of this probable Commission on Human Rights is the fact that it will help establish a program of education and information to propagate human rights. In other words, we envision the prevention of human rights violations in the future where we have a citizenry that is convicted that it must uphold its basic rights; that it must defend its basic rights because it knows what its right are, in the first place. Also, for those who must uphold the law, they will be educated in a sense; for example regarding the treatment of prisoners and detainees and the proper procedures according to the due process of law. So this responsibility that will be given to the Human Rights Commission will, in a way, resolve and prevent, rather than cure what is unjust after it has been committed.

Secondly, I believe it is also very important fact that because we have now won our basic rights as a people, we must also, in a sense, realize that there are many other people in other parts of the world who have not yet won their rights. One of the other areas of education is precisely to show the different forms and ways of the human rights of other peoples are violated in other parts of the world. And we can also have a people who will be conscious of these violations and perhaps contribute to the protection of human rights wherever they are violated; because human rights have rights have no color, no creed, no nationality and no boundaries.

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MR. SARMIENTO. Before we entertain questions, we wish to express our thanks to the following members of the committee who have encouraged and supported us: Commissioner Rigos, vice-chairman; Commissioner Foz, chairman; Commissioners Abubakar, Monsod and Rosales; our beloved Chief Justice Roberto Concepcion; Commissioners Jamir, de los Reyes and Villegas.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. The committee is now ready to entertain questions from the floor regarding the committee report on the proposed resolution.

MR. RAMA. I ask that Commissioner Nolleddo be recognized.

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDDO. Thank you, madam President. I would like to propound a few questions of the chairman and the members of the committee. I understand that, based on the committee report, the powers of the Commission on Human Rights are principally investigative and recommendatory in nature. Am I right?

MR. SARMIENTO. Yes, the Commissioner is right.

MR. NOLLEDDO. And therefore, after the investigation is conducted, recommendations are made. Can the Commissioner give us the coverage of these recommendations?

MR. SARMIENTO. These recommendations will include, among others, the filing of appropriate criminal actions to parties guilty of human rights violations.

MR. NOLLEDDO. And who will then prosecute these cases, the ordinary fiscals?

MR. SARMIENTO. The appropriate government agencies like the City Fiscal's Office and the prosecutory arm of the government, will undertake this prosecution.

MR. NOLLEDDO. Am I right if I say that the prosecutors will be assisted also by the Commission on Human Rights?

MR. SARMIENTO. We are not foreclosing that possibility. It is possible that they can work together for the

prosecution of various crimes against human rights.

MR. NOLLEDO. I will expect the Commission on Human Rights to hold its office in the greater Manila area. How about violations in different parts of the country, say, in Mindanao or the Visayas? How will these cases be investigated? Will the parties have to come to Manila?

MR. SARMIENTO. That is a very good question, madam President. We discussed that question actually during our committee hearings. We are thinking of expanding the commission to cover the various islands of the country so that the services will be rendered to victims of human rights violations in all parts of the country. So, possibly, extension offices will be created in the three islands of the country.

MR. FOZ. At the same time, Madam President, the commission will be within its contempt authority to deputize even private lawyers or public officers in the investigation of certain cases or incidents which might have taken place or might have happened in some far-flung parts of the country necessitating, therefore, the assistance of other public or private groups. For instance, I have in mind the Integrated Bar of the Philippines' chapters in areas where violations of human rights may have been committed. So public, as well as private, assistance may be secured by the proposed Commission on Human Rights in the investigation of such cases.

MR. SARMIENTO. In addition to the IBP, we can ask the services of human rights organizations, lawyers' organizations, for instance, the Protestant Lawyers' League, which is an organization of lawyers scattered throughout the country. We have also the Free Legal Assistance Group which has a membership of about 200 lawyers scattered throughout the country. We have also the group known as MABINI, Movement of Attorneys Brotherhood, Integrity, Nationalism which can also assist the Commission on Human Rights. We have also the CLASP, Citizens Legal Assistance Society of the Philippines, of Vice-President Laurel. So we can ask the services of these various lawyers' organizations.

MR. NOLLEDO. May I please be enlightened on the nature of the Commission on Human Rights? Is it a purely administrative body or is it a quasi-judicial body? I will follow this up with another question.

MR. SARMIENTO. It is a quasi-judicial body, not a purely administrative body. If we look at the functions enumerated under Section 2, we will notice that it is not merely an administrative body but a quasi-judicial body.

MR. NOLLEDO. Therefore, am I right if I conclude that the Rules on Evidence will not be strictly followed?

MR. SARMIENTO. Yes, Madam President.

MR. NOLLEDO. With respect to page 2, line 9 it says here that one of the functions of the Commission on Human Rights is to provide appropriate legal measures for the protection of human rights of all persons within the country, including provisions for legal aid services for indigent persons, et cetera. I would like to know the coverage of this legal aid. Will it cover only cases filed before the commission, or it will likewise cover cases filed before the appropriate courts or tribunals?

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MR. SARMIENTO. Madam President, it will cover cases that are being handled by the commission. And if there are cases pending before other tribunals that would involve human rights violations I think it is within the province of this commission to provide its assistance.

MR. NOLLEDO. My last question, Madam President, is with respect to page 2, line 12- "Establish a continuing program of education information to propagate the primacy of human rights." Did the Commissioner ever recommend that human rights be a part of the curriculum in high school or college?

MR. GARCIA. Yes, in fact, that has already been discussed in the committee hearings, and that is one of the proposals we would like to make.

MR. NOLLEDO. Thank you, Madam President.

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. I would like to ask a few questions. Will this Commission on Human Rights be one of the constitutional commissions under Article XII which we already approved?

MR. SARMIENTO. Yes, Madam President.

MR. RODRIGO. There are now three constitutional commissions- Commission on Civil Service, Commission on Elections and Commission on Audit.

MR. SARMIENTO. Yes, Madam President.

MR. RODRIGO. Just as a matter of procedure, have we not already approved Article XII on Second Reading?

MR. FOZ. Yes, Madam President.

MR. RODRIGO. Have we approved it on Third Reading also?

MR. FOZ. Yes, but the reservation was made with regard to the initial provision which enumerates the constitutional commissions in the Constitution to the effect that this provision will be subject to additional constitutional commissions that the body may later on wish to approve and include in the constitutional draft, Madam President.

MR. RODRIGO. I do not remember. However, minus that reservation, the procedure would be to ask for a reconsideration of the approval of this article. I think it was approved also on third reading.

MR. FOZ. Yes. But the record will bear us out that there was such a reservation. I remember it very distinctly that that was made clear before we even voted on second reading on the draft- on the common provisions, which relates to the three constitutional commissions. The reservation was made, Madam President.

MR. RODRIGO. So if the present proposal is approved, then Section 1 of Article XII, which reads: "The constitutional commissions shall be the Civil Service Commission, the Commission on Elections and the Commission on Audit," should likewise be amended.

MR. FOZ. Yes, it should be amended to include the Commission on Human Rights, madam President.

MR. RODRIGO. Since the Commission on Human Rights will come under Article XII, it will be subject to the common provisions under Article XII.

MR. FOZ. That is right, Madam President.

MR. RODRIGO. One of the provisions of Article XII is:

No member of the constitutional commission shall, during his tenure, hold any other office or employment or engage in the practice of any profession.

So, if this provision were to be followed, Atty. Diokno cannot practice his profession if he becomes the chairman of the Commission on Human Rights. It is to be remembered that he is in the active practice of law.

MR. FOZ. Madam President, all the appointees will have to be subject to the same qualifications and disqualifications as provided in the common provisions.

MR. RODRIGO. So let us say Atty. Diokno, who is now the chairman of the Presidential Committee on Human Rights, remains or becomes the chairman or even a member of that committee, he will have to give up his law practice, else he has to reject or resign the position as chairman of the Human Rights Commission.

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MR. FOZ. That would be the consequence, if he accepts an appointment in the proposed Commission on Human Rights.

MR. RODRIGO. By the way, may I know who is the vice-chairman of the commission now?

MR. SARMIENTO. The vice-chairman is Justice J.B.L. Reyes, who is now the acting chairman of the Committee on Human Rights in the absence of Commissioner Diokno.

MR. RODRIGO. So does the Commissioner think we can get real able lawyers with the caliber of Atty. Diokno and Justice J.B.L. Reyes, if they come under this prohibition that they cannot practice their profession?

MR. SARMIENTO. Madam President, we have, I believe, many able lawyers. I think years of handling human rights cases during the dark days of martial law have produced lawyers who are capable, able, dedicated and committed to the promotion and protection of human rights. Aside from these lawyers, there are many retired Justices of the Supreme Court who can provide their wisdom, their advice and their assistance. Chief Justice Concepcion will always be there to give his tips in the handling of these cases.

MR. RODRIGO. Yes, I know that there are many human rights lawyers. I handed a few cases on human

rights myself. But then, Atty. Diokno and Justice J.B.L. Reyes are very useful as practicing lawyers, defending victims of violations of human rights. But from the answer of the committee to the queries of Commissioner Nolleto, it seems that a human rights lawyer who is very active in defending human rights cases will be a mere investigator and advisor once he becomes a member of the commission.

MR. SARMIENTO. Madam President, when I mentioned able and dedicated lawyers, I was not referring to lawyers who are purely active in the practice of law. There are also academicians, members of the academe, who do their researching and counseling, and I think they will be effective of this commission.

MR. RODRIGO. Thank you very much.

MR. SARMIENTO. Thank you, Madam President.

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

THE PRESIDENT. Commissioner Nieva is recognized.

MS. NIEVA. Madam President, I am one of the sponsors of this proposed resolution. When this was first presented, a request was made that I be one of the sponsors. I immediately acceded because I thought that this was a very vital commission that we would need especially in view of our experience during these past 15 years. However, this is the first time that I really have had a chance to look at the entire article and I just want one or two clarifications. In this Section 2, line 22, what would the term "private parties" encompass?

MR. SARMIENTO. Madam President, "private parties" include those persons who are not in any way connected with the government, who is not a military officer or a military personnel, but just a layman, an ordinary person.

MS. NIEVA. Would this refer, therefore, to parties or groups like the sects that we have, those "Tadtad groups" and all those who are also guilty of human rights violations, including even the NPA's? What I mean are the rightists, the leftists or whoever they are, who we know are not innocent of human rights violations.

MR. SARMIENTO. It is correctly stated, Madam President.

MS. NIEVA. So, therefore, this would include all groups- the leftists, rightists or the centrists. Therefore, the scope of this Human Rights Commission would be much wider than the present Commission on Human Rights?

MR. SARMIENTO. Yes, Madam President, that is why it will require a full-time dedication.

MS. NIEVA. I am satisfied with the answers, Madam President, because this has been the subject of debate, especially with the commission of Atty. Diokno. There have been so many protestations that they should also cover both sides to be fair, but that does not lie within their purview. In this Commission as presently constituted, however, the committee is assuring us that it would cover all groups or individuals guilty of human rights violations.

MR. SARMIENTO. The original intention of the proponents was to limit the coverage to military authorities but because of the suggestions and comments we have received from other Commissioners and relying on their collective wisdom, we decided to include private parties.

MS. NIEVA. Thank you very much.

MR. SARMIENTO. Thank you, Madam President.

SR. TAN. May I ask questions of the proponents, Madam President?

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THE PRESIDENT. Commissioner Tan is recognized.

SR. TAN. Madam President, there is one thing I notice here and that is the proposed commission is similar to the Diokno Commission, but it is narrower in the sense of recommendatory powers.

MR. SARMIENTO. Yes, there are differences, Madam President. Section 2, paragraph (1), includes private parties; Section 2, paragraph (3), provides appropriate legal measures for the protection of human rights, including provisions for legal aid services; and Section 2, paragraph (4), provides for the establishment of a continuing program of education. These are not some of the functions of the Diokno Commission. We believe that we should add new functions, one of which is a massive information education campaign. So these are new provisions, Madam President.

SR. TAN. Yes, that is great. I guess it was done on the assumption that we will have very many human rights violations which I hope would decrease.

MR. SARMIENTO. Madam President, we limited the recommendatory function because there are other government agencies which can handle this duty. For instance, we have the Office of the City Fiscal, Office of the Provincial Fiscal, the Ministry of Justice, which can very well handle the prosecution of human rights cases. So this proposed commission will work closely with these government entities.

SR. TAN. Thank you.

MR. SARMIENTO. Thank you, madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. Madam President, just a couple of questions. Section 2, paragraph (3), reads:

Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, including provisions for legal aid services...

I am struck by the words "within the Philippines." What about those Filipinos who have persecuted outside the Philippines? We will remember that the long arm of martial law during the time of President Marcos reached out to the United States to persecute, harass and even kill people who were fighting for freedom. So it is the sense of this committee that it would only provide legal measures and legal aid services to the people within the Philippines? Is there any particular reason for this?

MR. SARMIENTO. As the section is phrased and as it is intended, what we have in mind was to provide legal protection to those in the Philippines. Right now we have so many human rights violations. So the massiveness of these violations would entail much work, much effort, on the part of the members of the commission. So, that alone would consume much of its time, but if the Commissioner has a suggestion that would possibly include human rights violations committed abroad, then he can make it at the appropriate time.

MR. RAMA. Yes. I am thinking that we should delete the phrase "within the Philippines," because we should not stop the Human Rights Commission from making representations, say, with the United States government and sending some kind of legal aid to Filipino citizens who have been persecuted abroad.

MR. SARMIENTO. Madam President, that is a very good suggestion because what we have in mind when the Commissioner raised that point is the case of Commissioner Calderon who was persecuted by Mr. Marcos. That was why they had to leave the country and seek refuge in other countries.

MR. RAMA. So when the time comes, would the Commissioner be amenable to delete this portion?

MR. SARMIENTO. That will be most welcome, Madam President.

MR. RAMA. Madam President, may I ask that Commissioner Natividad be recognized.

THE PRESIDENT. Commissioner Natividad is recognized.

MR. NATIVIDAD. Thank you, Madam President. Just a few questions to the august committee.

I am in agreement with this proposal, although I would like to ask whether in the enumeration of the commission's powers and functions it would not be necessary to give the commission visitorial powers because cases of human rights violations are also committed in jails, sometimes in prisons and in detention centers. The commission members may very well be excluded from actually and immediately responding to a complaint by visiting any complainant. So I think the commission should have visitorial powers over any and all jail and detention centers in the Philippines so that at any moment the people will know that if there is a complaint, a representative of this commission may visit any complainant in any detention center and determine his situation.

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MR. SARMIENTO. Madam President, coming from an expert on criminology and penology like Commissioner Natividad, that suggestion will be most welcome.

MR. NATIVIDAD. So at the proper time, I would like to propose the addition of the words "VISITORIAL POWERS," so that the Commission should visit any and all detention centers- military or civilian. It should be able to visit any of these jails without securing any permission from any other authority but by virtue of this constitutional fiat.

MR. FOZ. Madam President, although that visitorial powers would, I think, be part of the proposed commission's power to investigate, to make it clear that the commission would have such power, I agree with Commissioner Natividad that it should really be spelled out.

MR. NATIVIDAD. It should be spelled out because investigation is understood to include interrogation, interview, questioning and gathering of evidence. But since these detention centers are covered by specific regulations banning visitors at certain times, I think we should spell out that the commission may visit these complainants in these detention centers at any time, if it has a mission order.

MR. FOZ. I agree with the Commissioner, Madam President.

MR. NATIVIDAD. Now the other point that I would like to say is that our draft Constitution has made a very vital innovation in the field of victimology.

Victimology means the study of matters about the victims of crimes and abuses. In another part of our constitution, we have provided compensation for victims of human rights violations and, perhaps, even crimes. Eventually, our government will have to put up a victim compensation system, a victim compensation board or a victim compensation office to implement this constitutional provision of compensating victims of human rights violations and even of violent crimes. I propose that these functions of the Human Rights Commission, because this commission would be the best judge as to what damages have been suffered by the victims.

MR. SARMIENTO. I think that suggestion can well be covered by Section 2 (5) which reads: "It shall perform such other duties and functions as may be fixed by law."

MR. NATIVIDAD. But this is a complex duty. It has to be spelled out because we have to establish the parameters here as practiced in other countries where these are spelled out in specific terms: How much do we pay? What is the ceiling? When should they be paid? When should the application be made? What are the evidences that are necessary to support such a claim? What do we do if there is insurance? These things are very complex in nature as implemented in other countries which give satisfaction to people who are victims of crimes. So, I do not think we should mention these in general statement. The Commissioner should specify it and, I think, it enriches this constitutional provision.

MR. SARMIENTO. The Commissioner can introduce an amendment to cover his suggestions at the proper time.

MR. NATIVIDAD. Yes. In the investigation of the performance of these investigative powers, what does the Commission on Human Rights exercise? Are these merely fact-finding powers or are police powers being used in the investigation?

MR. SARMIENTO. The investigative powers would cover fact-finding and police powers. This is an all-embracing term.

MR. NATIVIDAD. The commission is going to exercise police powers?

MR. SARMIENTO. Yes.

MR. NATIVIDAD. I would like to clarify the parameters of these powers. It is a common case now that prisoners are being detained in prisons because of the failure of the judiciary to hear their cases complemented by the fact that they cannot put up the bail for their freedom. They are being detained in prisons way beyond the period of the highest penalty that they can be punished with. May they appeal to the commission to be set free?

MR. SARMIENTO. Yes. To me, that is a violation of the constitutional right to a speedy trial and, therefore, it is considered a violation of human rights. So, these detainees can appeal to the commission for appropriate action.

MR. NATIVIDAD. Yes. This is because this particular case involves detention. But let us take the case of those who are victims of crimes. In the pursuit of the prosecution of their cases they suffer extreme inconvenience such as being unaware of the status of their case. They are not informed by the prosecution agency of the government whether their case is postponed or not.

They are not protected from harassment of their family or their friends. They sometimes are on the verge of giving up their case because of these harassments. Would this constitute a violation of their rights within the purview of the powers of this commission?

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MR. SARMIENTO. They can seek protection and guidance from the commission. If we look at Section 2 (3), we have this provision:

Provide appropriate legal measures for the protection of human rights of all persons within the Philippines.

So, my humble submission is that legal measures would cover giving advice, assistance and counseling to victims of the crimes the Commissioner has mentioned.

MR. NATIVIDAD. I am thankful for that because I would like that to happen. Let us take another example. There is a complaint that the victims are being harassed. They are being threatened; in fact, they have been previously maltreated. The powers of the commission are merely to request the military or the police to protect them. That is what Commissioner Tan referred to as "recommendatory." Would it not be advisable for the commission to have the power to direct the security forces of our country to provide protection for victims of human rights rather than just to rely on the good graces and humanitarian hearts of these people to provide the protection for the said victims?

MR. SARMIENTO. I think that will be a humane expansion of the functions of the Commission on Human Rights that is contributing beneficially to the idea of creating a Commission on Human Rights.

MR. NATIVIDAD. That is why I am trying to draw the answers from the committee because these victims of human rights complain that they are being harassed and they do not know where to go. They cannot even go to the courts to obtain protection from certain units or individuals or from police or military units. They do not know anybody in the police or military forces. But now they have a new hope because of the existence of this Commission on Human Rights. But if the commission merely requests that they be given protection, the military police unit will then say: "That is not in our priority because we have many other jobs and missions to accomplish." So, may I draw the answer from the committee? Does the committee think that it may be advisable that in cases of this nature, the commission, being a quasi-judicial body, may direct the police forces to provide protection for them? The commission should not request and not merely recommend but directly provide security forces for a certain period of time as in other countries.

MR. SARMIENTO. Commissioner Rigos as well as Commissioner Garcia are nodding their heads. I think I can

speak in behalf of the committee that the functions would cover the Commissioner's suggestion.

MR. NATIVIDAD. Can the members of the commission enjoin people from harassing people? Can the members of the commission, under the enumeration of its powers here, not only provide protection for complainants but may also enjoin people and say, "Stop violating the rights of these people"? Can they do that under this enumeration of duties?

MR. SARMIENTO. If that is necessary to protect human rights, why not?

MR. NATIVIDAD. Could we not specify this more in an amendment- that they may enjoin; they may protect? What I have been saying is if these vital functions- to protect them directly and to enjoin people from continuing the commission of violation of human rights- will these still need a little amendment?

MR. SARMIENTO. Regarding the enumeration of additional functions, I will confer with the members of the committee- the chairman and the vice-chairman.

MR. NATIVIDAD. Yes.

MR. SARMIENTO. But personally I will fully endorse the Commissioner's suggestion.

MR. NATIVIDAD. I am interested in seeing that it is not merely a paper tiger but something that has got teeth to bite by enjoining people not to continue in the commission of violation of human rights and by directing protection to people. Thank you.

MR. RAMA. I ask that Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you, Madam President. Members of the committee and the honorable chairman, I think there is a little typographical error in Committee Report No. 37. I appear as one of the sponsors; I am not. Also, I am not a member of the committee, so I will request that my name be deleted.

On the qualifications of the chairman and the commissioners of the Commission on Human Rights, one should have been a member of the Bar for at least 10 years. Can any other person other than a lawyer not be a chairman or member of this commission?

MR. SARMIENTO. Since this work will involve legal issues and legal matters, we deemed it best that the chairman should be a lawyer, and so with the members. But my personal feeling is that, if there are laymen or persons who are qualified to be human rights advocates like nuns, priests and psychologists, may we not include them?

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MR. DE CASTRO. So, from the Commissioner's answer, not only members of the Bar can be a chairman of the commission.

MR. SARMIENTO. But that is my personal position; I still have to confer with the committee for decision.

MR. FOZ. Actually, that was the feeling of the committee regarding these qualifications but we would welcome suggestions on this portion of this provision of the draft.

MR. DE CASTRO. Thank you. In regard to the qualifications for chairman and members of a constitutional commission, it is stated: 'persons of integrity, of probity, of independence of mind, etc.' And yet in this committee report, we find that a chairman or a commissioner can just be a member of the Philippine Bar with at least 10 years of practice. Whether he has the probity or the integrity is of no issue. Is that the meaning of this qualification?

MR. SARMIENTO. Maybe at an appropriate time, we can welcome suggestions like the inclusion of words like "men of integrity, honesty and independence of mind." So, we will welcome any suggestion in that regard.

MR. DE CASTRO. The more basic question I have in my mind is: Why constitutionalize the Human Rights Commission? Will it not be better if they work under the executive?

MR. SARMIENTO. As I have stated in my sponsorship speech, there is a need for a specialized body to handle human rights violations. During martial law, we had many cases of human rights violations. Even until now, we have cases of salvaging, disappearances, hamletting which are committed all throughout the country. So, because of the massiveness of these human rights violations, I think there should be a body that will conduct the investigation and set appropriate actions to stop the commission of these human rights violations.

MR. DE CASTRO. Cannot the executive, even without constitutionalizing this body, choose the right people with the necessary expertise to conduct the necessary investigation all over the Philippines?

MR. GARCIA. Precisely, one of the reasons why it is important for this body to be constitutionalized is the fact that regardless of who is the President or who holds the executive power, the human rights issue is of such importance that it should be safeguarded and it should be independent of political parties or powers that are actually holding the reins of government. Our experience during the martial law period made us realize how precious those rights are and, therefore, these must be safeguarded at all times.

Secondly, as I mentioned earlier, we also felt that it was important to educate the people because human rights, in a sense, cannot be given. People have to know what these rights are and they have to safeguard, uphold and even defend these rights. This can only be done if there is a continuing human rights education program. So, those are the basic reasons why we would propose that this be in form of a constitutional commission that would be above the changes of fortunes of political parties in this country.

MR. SARMIENTO. May I just volunteer the information that in New Zealand they have a constitutional body known as the Commission on Human Rights. However, its specific function is limited to providing education and conducting information campaign. But as we know, New Zealand is different from our country. We have our own peculiarities.

Here in our country we have violations more massive than those committed in New Zealand. So, I think there is a need for this Commission on Human Rights and for the expansion of its functions.

MR. DE CASTRO. There is no question that there is a need for this commission. My question is: Why constitutionalize it? When we include this commission under the executive department, then the Commissioner will mention politics, and so on. When we talk of the presidency especially in our proposed

constitutional provision especially of a President who shall have no reelection whatsoever, we do not talk about a politician but of a statesman who shall look after the welfare of his country.

So when a President creates this commission and shall be under him, he should look at it as the protector of this country.

MR. GARCIA. May I answer that point, Madam President?

THE PRESIDENT. The Commissioner may proceed.

MR. GARCIA. I would like to state this fact: Precisely we do not want the term or the power of the Commission on Human Rights to be coterminous with the President, because the President's power is such that if he appoints a certain commissioner and that commissioner is subject to the President, therefore, any human rights violations committed under that person's administration will be subject to presidential pressure. That is what we would like to avoid- to make the protection of human rights go beyond the fortunes of different political parties or administrations in power.

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MR. DE CASTRO. I am pursuing the question of Commissioner Natividad and the cases he gave as examples which necessitated the provision for security. Would it not be better if the commission were under the executive because the armed forces and the police are under the President and it would be easier to provide the necessary security if it were the President who will order them?

MR. GARCIA. Could I answer that? That is true but, at the same time, if the President solely had that power, the President could also withhold doing that function because it would be subject again to the discretion or the judgment of the President.

Here we have a commission entrusted with the task of protecting human rights; and therefore, if it so deems and judges necessary that there will be military protection against the victims of harassment, then that commission could provide that protection, independent of what the administration in power thinks, because normally they would be sympathetic with their armed forces.

MR. DE CASTRO. Can security be provided through the military and the police? I asked so, because the one who will provide the protection is certainly the police or the military.

MR. GARCIA. Yes.

MR. DE CASTRO. Suppose the military would say, "We are too busy; we have plenty of problems other than to provide security."

MR. GARCIA. Precisely, the Commission on Human Rights would be empowered to direct those military officers concerned to give protection to human rights victims or to victims of harassment or to towns which are subjected to some kind of difficulties because of special circumstances in the area.

MR. DE CASRTO. There is no question about the authority that will be given the commission to direct the armed forces or the police to provide security. So, in case they say that they are too busy and they do not

have the right people, we better leave it to the executive. It will be very different if it is the President telling them since he is the Commander-in-Chief.

MR. GARCIA. But if we empower this commission, we would, therefore, give it authority to direct the armed forces and to give priority to their tasks. The armed forces could drop this assigned task if they are really busy in doing other things or a new detachment can be sent to do this job of giving protection for human rights victims. On the other hand, they could drop other tasks in order to perform this newly assigned duty.

MR. SARMIENTO. In addition to that, the commission is not precluded from securing the assistance of the President. As I stated before, it will work closely with various government entities.

MR. DE CASTRO. We talk of the victims of human rights and they will have to complain to this commission, is that right?

MR. GARCIA. Yes.

MR. DE CASTRO. So, this commission can investigate. What then will be the work of the ombudsman which we created to investigate all complaints received from all sectors? There will be two bodies now: The Commission on Human Rights and the Ombudsman.

MR. MONSOD. If the Commissioner still recalls, by virtue of the Regalado amendment, we included a phrase in the section on the functions of the ombudsman to cover human rights offenses that are civil and political in nature. But during the discussion, we also said that there was a pending proposal for a Commission on Human Rights, we will adjust the section on ombudsman to remove the overlapping of functions.

MR. DE CASTRO. Why should we create two bodies when one body is enough?

MR. GARCIA. This commission has a very precise task. Its international instruments would be the Universal declaration of Human Rights, the International Covenant on Civil and Political Rights, and the recently concluded Declaration of Torture of 1985.

The commission has a very specific function which is the protection of civil and political rights. Due to the experience of 14 years of martial rule, we want to ensure that hereafter human rights in this country are not violated, and therefore, provide this very specific body with the function to ensure the safeguarding of these rights.

MR. MONSOD. May I also add that even in the discussion on the ombudsman, we recognize that the scope of the functions of the ombudsman was already very wide, even without the inclusion of the functions that are now being proposed for the Commission on Human Rights, but we wanted a fall-back position in case there was no approval of the Commission on Human Rights separately.

MR. DE CASTRO. The matter of investigating all complaints all over the Philippines is certainly broad. Very soon we will have to create a commission on graft and corruption because that is a very broad subject matter which affects the very social foundation of our country.

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MR. SARMIENTO That is why we have this ombudsman to protect the people, the purpose of which is to protect our people from grafters and to promote efficiency and prevent mismanagement.

MR. DE CASTRO Also, to investigate all types of complaints which will include complaints against violation of human rights.

MR. SARMIENTO The investigation of human rights will be conducted by the Commission on Human Rights. Matters involving graft and corruption, matters that will prevent waste and mismanagement will be handled by the critic and watchdog, the ombudsman, and this was clearly stated and explained by the honorable Commissioner, Justice Colayco.

So if we give that additional power, then we will be expanding the powers of the ombudsman to a point that it will be ineffective.

MR. DE CASTRO Let us go to the police power which Commissioner Natividad mentioned.

When there is a violation of human rights and an investigation is to be conducted, would this investigation be some sort of an invitation for that violator? How would the investigation be conducted?

Suppose we want to investigate "A" on the complaint of "B" for violation of human rights, how will we investigate "A"?

MR. SARMEINTO If we look at Section 2 (2), we have this provision:

That the Commission shall have the power to issue "subpoena" and "subpoena duces tecum" to compel the attendance of any party to its proceedings.

This would involve proceedings that will cover investigations and inquiries.

MR. DE CASTRO Let us proceed with the police power we have. When we investigate, certainly it will take a little time. Perhaps that man under investigation could be detained for a period of six hours but when the case is serious, the investigation could last for about 18 hours. Does the Commissioner foresee the number of hours for detaining somebody to be investigated?

MR. SARMIENTO Nobody could depend upon the efficiency of an investigator. But even then, that investigator has to respect the rights of that person who is under custodial interrogations or under any form of investigations, as provided in our Article on the Bill of Rights.

MR. DE CASTRO So, on the number of hours for investigation, we stated that minor offenses be investigated within six hours but for serious offenses, could it take about 18 hours. Will that be the rule?

MR. SARMIENTO We have this formula of 6-9-18, within which the case has to be filed with the proper judicial body. But as pointed out by our honorable chairman, this investigation is to get information which is not in form of a custodial interrogation conducted by policemen or military personnel.

MR. DE CASTRO. After a short investigation, the man can say, "I want to go home now so I can take care of my child."

MR. SARMEINTO. If no crime has been committed, he will be allowed to go home.

MR. DE CASTRO. Cannot this commission request some other investigative agencies of the government, like the NBI?

MR. SARMIENTO. As I said, the commission will work intimately with various government agencies. It might even invite the Commissioner who is an expert on police matters to assist the commission. Right now, the Presidential Committee on Human Rights is working closely with the NBI and other government agencies.

It might solicit the assistance of an expert on victimology, like the Commissioner Natividad and other experts on penology.

MR. DE CASTRO. Under section 2 (1), I can see that about 90 percent or more of the people to be investigated are either the military or the police.

MR. SARMIENTO. No.

MR. DE CASTRO. Has the committee estimated that number?

MR. SARMIENTO. The investigation is not limited to...

MR. DE CASTRO. Yes, but in actual practice, it will be about 90 percent of the military or the police. Has the committee thought of that?

MR. SARMIENTO. We have that in mind, but there will also be violations committed by private parties.

MR. DE CASTRO. Yes.

MR. SARMIENTO. Right now we cannot make any numerical percentage.

MR. DE CASTRO. That is about 10 percent.

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MR. SARMIENTO. It is hard to make an approximation.

MR. DE CASTRO. If the President is the Commander-in-Chief of the armed forces and the police, then it will be much better if the President is the one who should head this commission.

Will this provision include the NPAs in the investigation?

MR. SARMIENTO. In my reply to the query made by Commissioner Nieva, I answered that the investigation would cover violations committed by the NPAs.

MR. DE CASTRO. How will the NPAs be investigated, by invitation or by subpoena duces tecum?

MR. SARMIENTO. We are now dealing on details. We will leave to the commission the implementation of its task.

MR. DE CASTRO. The members of this commission will have restrictions, like the chairman and members of the COA, the Civil Service and the COMELEC- they cannot practice their profession.

MR. SARMIENTO. Yes.

MR. DE CASTRO. I am now pursuing the question of Commissioner Rodrigo. Section 2 (3) states: "provide appropriate legal measures for the protection," and line 9 reads: "for legal aid services." Is this not practicing the profession when the Commissioner renders legal services?

MR. SARMIENTO. May I reply to that? That is correct, but it is sad to say that during martial law, many of our lawyers would have handled political cases involving the violations of political and civil rights, but many of these indigent persons were deprived of expertise of legal assistance. Hence, it is now the task of this commission to deputize human rights organizations, legal aid organizations to provide legal assistance. I know it is the task of lawyers but we have to be honest enough to admit that some lawyers- I am saying all- are very selective in handling cases.

MR. DE CASTRO. I am very honest enough when I ask these questions. Let us say that the commissioners and the chairman cannot really practice their legal profession, but they can deputize people who may practice the profession. Am I correct?

MR. SARMIENTO. What does the Commissioner mean when he says "they may deputize the people who mat practice the profession?" Does the Commissioner mean that they may deputize lawyers to handle cases involving human rights violations?

MR. DE CASTRO. Yes, thank you.

MR. SARMIENTO. Thank you.

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

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. Line 10 of Section 1 mentions "members of the Bar for at least ten years." I suppose the Commissioner means not just being a member of the Bar but he should have practiced.

MR. SARMIENTO. Yes.

MR. BENGZON. Hence, a member of the Bar who not had the practice of law is not qualified under this article.

MR. SARMIENTO. First, we have to clarify what we mean by practice. What we have in mind are the members of the Bar who have been actively engaged in the practice of law, and this would include even law professors.

MR. BENGZON. That is correct. I am not referring to a lawyer who has been in business. That means he has not been in the practice of law.

MR. SARMIENTO. A lawyer who has been engaged in business but is committed to the promotion of human rights can be a member of this commission. So, we should not exempt him from being a member of this commission.

MR. BENGZON. That is precisely my question. Is the Commissioner not limiting this only to a member of the Bar engaged in the practice of law?

MR. SARMIENTO. No.

MR. BENGZON. So, the requirement is that as long as he is a lawyer by profession, he is qualified.

MR. SARMIENTO. Yes.

MR. BENGZON. Section 2 (1) states "investigate all forms of human rights violations," and line 22 includes the phrase "private parties." Is the intention to include the maltreatment of children?

MR. SARMIENTO. That is possible.

MR. BENGZON. No. I am not talking of possibilities. I am talking whether or not it is intent of the committee. For example, a parent who maltreats his child, would that case be covered by the provision?

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MR. SARMIENTO. What we have in mind when we formulated section 2 (1) are violations of civil and political rights. My understanding is that maltreatment of children does not fall within the concept of civil and political rights; so maybe an appropriate government agency can handle this problem.

MR. BENGZON. That is my difficulty because I think there is a hairline distinction. I would like to give the Commissioner another example. Let us take, for example, a lady who has detained as a prisoner and then was molested. Here, a crime against chastity was committed upon her. Who would have jurisdiction over that case?

MR. SARMIENTO. I think that will be covered by the Commission on Human Rights because here we have a detainee whose rights have been violated because she has been molested.

MR. BENGZON. Let us take the example of a lady who was detained for the crime of murder. While she was in jail, she was molested. What the Commissioner is saying is that that particular instance of her being molested falls under the jurisdiction of the Commission on Human Rights. So, in this instance, there will be two cases. The first one is the case against the policeman who might have molested her. This case will fall under the Commission on Human Rights. The second case is a case of murder for which the woman was originally accused of and detained. Am I correct in that?

MR. SARMIENTO. Yes.

MR. BENGZON. All right.

MR. GARCIA. I would like to make a clarification on that point. Although maltreatment or the crimes that the Commissioner mentioned may fall within the province of this commission, the primacy of its task must be made clear in view of the importance of human rights and also because civil and political rights have been determined by many international covenants and human rights legislations in the Philippines, as well as the Constitution, specifically the Bill of Rights and subsequent legislation. Otherwise, if we cover such a wide territory in area, we might diffuse its impact and the precise nature of its task, hence, its effectivity would also be curtailed.

So, it is important to delineate the parameters of its task so that the commission can be most effective.

MR. BENGZON. That is precisely my difficulty because civil and political rights are very broad. The Article on the Bill of Rights covers civil and political rights. Every single right of an individual involves his civil right or his political right. So, where do we draw the line?

MR. GARCIA. Actually, these civil and political rights have been made clear in the language of human rights advocates, as well as in the Universal Declaration of Human Rights which addresses a number of articles on the right to life, the right against torture, the right to fair and public hearing, and so on. These are very specific rights that are considered enshrined in many international documents and legal instruments as constituting civil and political rights, and these are precisely what we want to defend here.

MR. BENGZON. So, would the Commissioner say civil and political rights as defined in the Universal Declaration of Human Rights?

MR. GARCIA. Yes, and as I have mentioned, the International Covenant of Civil and political Rights distinguished this right against torture.

MR. BENGZON. So as to distinguish this from the other rights that we have?

MR. GARCIA. Yes, because the other rights will encompass social and economic rights, and there are other violations of rights of citizens which can be addressed to the proper courts and authorities.

MR. SARMIENTO. May I just make an additional comment? I think one who has been molested while under detention can be investigated by this commission. The molestation would partake of torture in another form. It could have been done to extract information or to harass.

MR. BENGZON. Is there a legal definition of that particular case? This is the first time I have heard of the molestation of a lady partaking of torture.

MR. SARMIENTO. During the martial law, we handled cases involving women detainees who were molested for purposes of extracting information or to harass or to soften up her commitment. So, I think that kind of maltreatment would fall under the scope of the Commission on Human Rights.

MR. BENGZON. Do we have jurisprudence or do we have definitions enunciated by international bodies as

to what is the scope of human rights on crimes against chastity which partake of the nature of torture? Do we have any definition of jurisprudence to that effect as the Commissioner has stated? I ask because I know that crimes against chastity are covered by the Revised Penal Code and are prosecuted according to the laws of the land. That is precisely one of my questions.

Let us say a crime against chastity is committed against a person who is detained because of another crime. I am not even talking of the reason for the detention, be it political or not. As I said, the lady who was accused of murder had no money to bail herself out, so she had to stay in jail. The jail keeper molested her. That particular crime that is committed against her is a crime against chastity for which the jail keeper has to be answerable for. Who will investigate the case? Will it be the fiscal, the ombudsman, or the Commission on Human Rights?

What I would like to find out are the parameters of the functions of the commission. When we get into a problem like where we would have difficulty in delineating it, then we get into the wider scope of every right as stated in the Bill of Rights.

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MR. SARMIENTO. As I said, we will give primary to civil and political rights. Since this will involve other issues possibly, the commission can work closely with other government agencies to undertake the prosecution of officials guilty of this crime.

MR. BENGZON. The principal reason why I am bringing up all these difficulties, including the first question I have with respect to the maltreatment of children is that these are problems which have to be really spelled out. As the Commissioner said, these have to be coordinated with other agencies of the government. We cannot obviously spell these things out in the Constitution. But how would we word it, if we decide to constitutionalize this commission? How do we word Section 2 in such a way as not to create a confusion or to create an overlapping of functions with the other agencies of government?

MR. SARMIENTO. To avoid confusion, the commission will be authorized to define its functions. I understand that Commissioner Nolleto has an amendment to this effect to avoid confusion.

MR. BENGZON. So, we will authorize the commission to define its functions, and, therefore, in doing that the commission will be authorized to take under its wings cases which perhaps heretofore or at this moment are under the jurisdiction of the ordinary investigative and prosecutorial agencies of the government. Am I correct?

MR. GARCIA. No. We have already mentioned earlier that we would like to define the specific parameters which cover civil and political rights as covered by the international standards governing the behavior of governments regarding the particular political and civil rights of citizens, especially of political detainees or prisoners. This particular aspect we have experienced during martial law which we would now like to safeguard.

MR. BENGZON. Then, I go back to that question that I had. Therefore, what we are really trying to say is, perhaps, at the proper time we could specify all those rights stated in the Universal Declaration of Human Rights and defined as human rights. Those are the rights that we envision here?

MR. GARCIA. Yes. In fact, they are also enshrined in the Bill of Rights of our Constitution. They are integral parts of that.

MR. BENGZON. Therefore, is the Gentleman saying that all the rights under the Bill of Rights covered by human rights?

MR. GARCIA. No, only those that pertain to civil and political rights.

M. BENGZON. On page 2, line 7, will the Commissioner kindly explain the meaning of the phrase "Provide appropriate legal measures for the protection of human rights"? can they legislate? What can the commission do?

MR. SARMIENTO. What we had in mind when we formulated this provision is the giving of free legal aid services to indigents but without foreclosing the possibility of adding other services and other measures.

MR. BENGZON. So, the phrase "appropriate legal measures" would actually mean services in addition or apart from legal aid?

MR. SARMIENTO. Yes, Madam President.

MR. BENGZON. Such as what?

MR. SARMIENTO. For instance, we have in the Article on Bill of rights indemnification and rehabilitation of victims of human rights violations. This commission will assist victims to be indemnified and rehabilitated by the government. So this would be covered by the function of providing appropriate legal measures for the protection of human rights.

MR. BENGZON. Does the committee envision giving quasi-judicial powers to this commission in view of its powers to issue subpoena, subpoena duces tecum, compel attendance, and cite parties for contempt?

MR. SARMIENTO. In reply to a previous query, I said that the commission is a quasi-judicial body with the power to issue subpoena, subpoena duces tecum and the power to compel parties to produce necessary documents.

MR. BENGZON. I still have a lot of difficulties trying to delineate the parameters between the functions of this commission, the complaint functions of the ombudsman and the functions of the ordinary prosecutorial agencies of the government. I hope that the committee can reword Section 2 (1).

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MR. SARMIENTO. Maybe, at an appropriate time, the Commissioner can introduce his amendment to clarify this matter.

MR. BENGZON. Thank you.

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

THE PRESIDENT. Commissioner Tingson is recognized.

MR. TINGSON. Madam President, may I address this question to Commissioner Rigos, please?

Does he agree that in essence practically all violations of human rights are violations against moral law?

REV. RIGOS. Yes, Madam President.

MR. TINGSON. Does Commissioner Rigos argue that, as somebody said, all the moral ills of the world can be cured by two tablets and the two tablets were those that Moses carried with him on which the Ten Commandments were written?

REV. RIGOS. I believe so, Madam President.

MR. TINGSON. After hearing that, may I then ask the chairman of the committee the following question? There is in our proposed Declaration of Principles, Section 2 which states:

The Filipino people commit themselves to peace, equality and freedom. They renounce war as an instrument of national policy and adopt the generally accepted principles of international law as part of the laws of the land.

We understand, of course, that we are signatory to the United Nations, that whatever the United Nations draw up especially on the line of human rights, we automatically would say "yes". Is that not the stance of our country along that line?

MR. FOZ. Yes, Madam President.

MR. TINGSON. I am impressed, of course, with this booklet that was distributed to us by the Secretary-General entitled, "Universal Declaration of Human Rights." It is impressive that the Article on Social Justice and other provisions in the Constitution- and some of them have already been approved on Third Reading- have adopted some of the rights therein; for example, mothers and children are entitled to special care and assistance in line with the question of Commissioner Bengzon a while ago. Education shall be free, at least in the elementary and fundamental stages, and compulsory. These are all in our new Constitution now. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should not act towards one another in the spirit of brotherhood. Everyone has the right to life, liberty, security of person; of course, in the Article on Social Justice it is provided that no person in our country should be deprived of life and property without due process of law.

What I am trying to ask the committee is: Would it then entertain an important amendment to the effect that this Constitution shall take cognizance of the Universal Declaration of Human Rights and that the adjudication of cases in violation of human rights in this country would be in conformity with said declaration?

MR. FOZ. We might consider it at the proper time.

MR. TINGSON. Thank you very much.

Madam president, when President Aquino assumed office, several leaders of organizations who are not God-fearing and whose ideology was diametrically opposed to our Christian ideology, were immediately released from prison. For this, she is being criticized up to now because some people believe that these leaders were out to destabilize the government and our country. And yet, our President did not hesitate to release them. Was it because she believes that having been separated from their wives and children for 10 years or so, their rights as human beings were violated and not because she is sympathetic to their political ideology?

MR. SARMIENTO. May I reply to that, Madam President?

MR. FOZ. I think so, Madam President.

MR. SARMIENTO. The President released these persons under detention in the spirit of reconciliation. That was the primary consideration which impelled the President to release these persons.

MR. FOZ. In addition, if I remember right, the release was made because up to the time of their release, there had been no formal charges filed against them in court. In other words, they had been under detention for so many years without the authorities filing formal charges against them. They had long been under detention and they do not even know what charges they were being held. Only a few of them had charges before the military tribunals.

MR. TINGSON. And that is a serious violation of human rights.

MR. FOZ. Yes, Madam President.

MR. TINGSON. Thank you very much. But may I ask again: will the sponsor entertain an amendment towards mentioning the Universal Declaration of Human Rights?

MR. FOZ. We will consider it.

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MR. TINGSON. Thank you.

MR. SARMIENTO. May I just comment on the statement made by Commissioner Tingson? In the Universal Declaration of Human Rights, we have an enumeration of economic, social and cultural rights. Violations of these rights will not be within the domain of the Commission on Human Rights. As we stated a while ago, this commission will give primacy to violations of civil and political rights.

MR. TINGSON. We will so formulate the amendment then as to conform to what the sponsor said a while ago.

MR. SARMIENTO. Thank you, Madam President.

MR. RAMA. Madam President, the next registered speaker is Commissioner de los Reyes.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. Madam President, I am yielding my time to Commissioner Padilla.

MR. PADILLA. Thank you.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. The Aquino government has the Commission on Human Rights under senator Diokno, and the idea, I think, is to investigate prior or undiscovered violations of human rights during the dictatorial regime of the past administration, particularly tortures of arrested and detained persons, including, of course, disappearances, salvaging, hamletting, et cetera. Is the function of this Commission on Human Rights the same but to be applied to future violations by the regime, whether they be the police, the military, the NPA, public officials or even private persons? Is that the concept or objective of this article?

MR. SARMIENTO. Madam President, the commission has additional functions. The Presidential Committee on Human Rights had limited functions. In this committee report, we added new functions the purpose of which is to investigate all forms of human rights violations, past and present.

MR. PADILLA. But I suppose the past is to be covered by this commission.

MR. SARMIENTO. Yes, Madam President.

MR. PADILLA. Of course, we speak of human rights, and I believe it means personal or individual rights. Many of these are found in the Bill of Rights, but we distinguish from civil, political, economic, cultural and other rights.

MR. SARMIENTO. Yes, Madam President.

MR. PADILLA. The violations under the Penal Code all fall under human rights.

MR. SARMIENTO. Yes, Madam President. But these violations of the provisions of the Revised Penal Code can be well handled by appropriate government agencies.

MR. PADILLA. That is my point. Does not the sponsor believe that for the adequate protection and repression of violations of human rights, we should encourage a more effective police protection and suppression of crime, and a speedy and efficient administration of justice under the judiciary?

MR. SARMIENTO. Yes, Madam President.

MR. PADILLA. If this protection and even promotion of human rights can be effectively done by an improved police service, as well as efficient judicial system, does not the sponsor believe that this commission, consisting of chairman and two members who will probably be having an air-conditioned room in Metro Manila, will not be able to prevent, much less, remedy violations of human rights?

MR. SARMIENTO. But, Madam President, what we have in mind are men who are not confined in air-conditioned rooms. The men who will be appointed will have to go to the field; they will have to conduct fact-finding investigations; they will have to work with the people to feel their sufferings and pains to understand

what human rights violations are. So, in this way, they will be effective human rights advocates.

And I believe this cannot be handled efficiently by police forces considering the massiveness of human rights violations. We will be rendering the policemen inutile or ineffective if they will devote much of their time investigating human rights abuses.

MR. PADILLA. Under paragraph 4, which says: "Establish a continuing program of education and information to propagare the primacy of human rights' would this not be included in the Article on Human Resources which stresses education?

MR. SARMIENTO. There is a resolution approved by that committee stating that the school curriculum includes giving education to pupils and students about human rights. But I believe that schools should work closely with this commission so that the continuing program of education on human rights will be effective.

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MR. PADILLA. It may be a duplication.

On paragraph 3, it says: 'legal aid services for indigent persons.' I understand there is the Citizen's Legal Aid Office (CLAO) which has a number of deputized lawyers, some of them assigned to each branch of our courts and they are even paid out of government funds. Will this intended commission supplant or delete this office?

MR. SARMIENTO. No, Madam President. As a matter of fact, the commission can deputize this CLAO to handle this kind of cases, but the assistance of CLAO will not be enough, and this is supported by our experience in the past. Considering the number of human rights violations, CLAO does not have the sufficient manpower and facilities to handle this kind of cases. Many of the victims of human rights violations have to go to IBP and ask the assistance of Chief Justice Concepcion, the MABINI, the FLAG, the PLL and other cause-oriented groups.

MR. PADILLA. This is the point because many lawyers of the CLAO are not helping indigent persons. Many of them are practicing law and they sometimes collect fees in addition to their salaries, and sometimes it strange that the fiscal represents the prosecution and another government office represents the defense. It is not a very nice equilibrium of judicial representation.

As mentioned by Commissioner de Castro, paragraph 1 says: "investigate all forms of human rights violations." That seems to be the main function of the ombudsman under Section 12, paragraph 1: 'to investigate on its own or complaint by any person, any act that is illegal, unjust, improper or inefficient. And I suppose the word "illegal" can also cover criminal violations of human rights.

MR. SARMIENTO. Madam President, in the speech delivered by Commissioner Colayco, he explained that the function of the ombudsman will be that of critic and watchdog primarily to prevent waste and mismanagement, graft and corruption in our government bureaucracy. He did not contemplate in his explanation all forms of human rights violations like salvaging, disappearances, hamletting, torture, et cetera.

MR. COLAYCO. Madam President.

THE PRESIDENT. Commissioner Colayco is recognized.

MR. COLAYCO. May I give a short reaction. The ombudsman's role is merely to help the ordinary citizen against the inaction of the administrative department of our government, not to take care of human rights violations. That is, I think, spelled out very clearly in the article.

THE PRESIDENT. Thank you.

MR. PADILLA. Just one or two more questions. Even under the Aquino administration, we witnessed carnappings done in broad daylight in public view.

MR. SARMIENTO. Madam president, the Vice President's son, Alexander Padilla, was a victim of carnapping a few days ago.

MR. PADILLA. Yes, and before him, the Minister of National Defense, Juan Ponce Enrile.

Does the sponsor believe that by creating this Commission on Human Rights, such deprivations committed with impunity against the right of property- because that is also a human right, I believe- could be avoided or minimized?

MR. SARMIENTO. I think we can leave to proper government agencies the investigation of carnapping cases and the prosecution of carnappers, otherwise we will be expanding the functions of the Commission on Human Rights. As we said, we will be giving primacy to violations of civil and political rights. Carnapping is properly covered by the revised penal code. And so, we believe that appropriate government agencies can conduct the investigation, like the PC, Metrocom and other law enforcement agencies.

MR. PADILLA. That is my point. If we strengthen and improve our law enforcement agencies, not only in preventing but also in detecting and apprehending, then bringing the culprits to justice, we will have an effective administration of justice. This will be more effective in protecting and promoting human rights rather than the creation of another commission whose functions might duplicate or overlap. I have always said that we should not make our government machinery more bureaucratic. We should simplify, and if possible, reduce unnecessary or overlapping bureaus and offices.

MR. SARMIENTO. I do not think it will overlap with other bureaus and offices. This commission will be a specialized government entity that will handle all forms of human rights violations. As a matter of fact, the President, aware of the magnitude of human rights violations, created a Presidential Committee on human Rights, specifically to investigate all forms of human rights violations. But as explained by Commissioner Garcia, we want that this commission be beyond fortunes, politics, whims and caprices of politicians so that there is the need for an independent Commission on human Rights.

MR. PADILLA. The assumption is that the creation of this commission will achieve all those purposes.

MR. SARMIENTO. It may not achieve all these purposes. At least it will minimize all these violations; not only minimize all these violations; not only minimize, but also promote and protect human rights by conducting educational campaigns.

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MR. PADILLA. Madam President, one of the sponsor's answer to my question contemplates a nationwide agency with many deputized offices or employees all over the country, not only the commissioners. Will that not duplicate the work of the police, the NBI and other government offices and then, ultimately, a just, speedy and effective administration of justice under the judiciary?

MR. FOZ. The answer to the first part of the statement, the question of whether the commission would have, let us say, regional branches or offices, is something that should be taken care of by enabling laws or implementing laws, so it is the intention that the commission should be able to deputize public, as well as private, individuals or organizations to be able to really effectively carry out its functions.

THE PRESIDENT. I am sorry we have to interrupt this discussion.

MR. PADILLA. Thank you.

THE PRESIDENT. We will suspend the session for our luncheon break at the South Lounge. During the luncheon, we will have an informal caucus among ourselves.

MR. GASCON. Madam President.

THE PRESIDENT. Commissioner Gascon is recognized.

MR. GASCON. We have a deadline of twelve o'clock for the proposed amendments to the Article on national Economy and Patrimony.

SUSPENSION OF SESSION

THE PRESIDENT. We will take it up during our caucus.

The session is suspended.

It was 12:17 p.m.

RESUMPTION OF SESSION

At 3:21 p.m. the session was resumed.

THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. There are still interpellators on the Article on Human Rights. May I ask that the chairman and the committee members take their seats in front.

THE PRESIDENT. Commissioners Foz, Sarmiento, Garcia, Monsod and Rigos will please take their seats in front.

MR. RAMA. The next registered speaker, Madam president, is Commissioner Bacani, who is not yet here. So, in the meantime, may I call on Commissioner Romulo to interpellate.

THE PRESIDENT. Commissioner Romulo is recognized.

MR. ROMULO. Thank you, Madam President.

I would like to pick up on the comment, in answer to Commissioner Nollado, that this is a quasi-judicial body. I believe that this is not because its main function is investigative and there is no adjudicatory function. It is like the Agrava Commission. It has subpoena powers but its main duty is to determine the facts. Would the committee comment on that?

MR. SARMIENTO. I think with that clarification, I will agree with Commissioner Romulo, but as I said this morning, it has more than fact-finding powers. And if Commissioner Romulo will note, aside from conducting investigations, it will also provide appropriate legal measures; it will establish a continuing program of education and perform such other functions as mentioned this morning by Commissioner Natividad.

MR. ROMULO. Yes, in that respect, it is a commission with many functions.

MR. SARMIENTO. Yes.

MR. ROMULO. Just by way of comment, like the others, I am bothered only by the possible multiplicity of overlapping jurisdiction because of the broadness of the term "human rights." But the others have commented on that, and I hope we can find a remedy for it.

MR. SARMIENTO. That is why I think the apprehensions will be eliminated if we state that we will give primacy to civil and political rights, not economic, social and cultural rights. That is to limit the functions of this Commission on Human Rights.

MR. ROMULO. With regard to Section 3, I would just like to call the sponsor's attention to the provision in the Judiciary Act which, if he will recall, was Commissioner Azcuna's proposal for the judiciary; that is, promulgate rules concerning the protection and enforcement of constitutional rights. So, again, does not the sponsor think that we will have an overlapping of functions?

MR. SARMIENTO. I think that provision in the Article on the Judiciary will be supplementary to the functions of the Commission on human Rights. I do not see any overlapping or conflict between that article and this article on the Commission on Human Rights.

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MR. ROMULO. I do not remember the sponsor's exact reply to commissioner Bengzon, but for clarity, when we say legal measures, are we empowering the commission to issue rules, regulations or procedures?

MR. SARMIENTO. Yes, Madam President. It will be recalled that the executive order creating the Presidential committee on human Rights specified that function empowering the committee to promulgate rules and regulations. This commission would also have that right. The other constitutional commissions have that power. So I do not see any reason why we should deprive this commission with that particular function or power.

MR. ROMULO. Then, perhaps, we should have a stronger verb than "provide."

MR. SARMIENTO. We will welcome the amendment at the proper time.

MR. ROMULO. And, finally, I ask this basic question which I think has already been asked: assuming that we have an effective Tanodbayan, a reformed judiciary, a reinvigorated prosecutorial service plus a reoriented presidency and armed forces, does the sponsor think we still need a Commission on Human Rights?

MR. SARMIENTO. I think the protection and promotion of human rights will be an ongoing concern. So, even if we have a strengthened judiciary, we will still need this Commission on Human Rights. Human rights will always be with us as long as we live as human beings.

MR. ROMULO. Yes, but, presumably, as we improve the judicial system, because the response to the violation of human rights would improve, did the sponsor not consider that perhaps a Commission on Human Rights may be necessary for a certain number of years and then it can be phased out depending on how the other judicial machinery in our government is working out?

MR. SARMIENTO. Yes, I think I will agree with the Gentleman. We do not foreclose the possibility that at some point in time, this Commission on Human Rights will be phased out. But, as of now, we really need the creation of a Commission on Human Rights.

MR. GARCIA. Could I just add to that?

There is also a need for ongoing information on human rights, both for the civilian population and the military and police forces, for them to enforce human rights and to understand the standards by which their behavior will be judged. So, I believe the better informed the citizenry and those who are especially mandated to enforce the law, the better. I think this is an important function of this Human Rights Commission; therefore, the need for this will be a permanent thing.

MR. ROMULO. When we speak of a continuing program of education and information, does the committee envision that the commission itself would undertake it or the commission would recommend to the Ministry of Education, Culture and Sports to have certain courses?

MR. SARMIENTO. I think both, Madam President. The commission itself will undertake the educational campaign or in coordination with the ministries of the government.

MR. ROMULO. And as reported here, does the sponsor feel that we need a commission to undertake this work?

MR. SARMIENTO. Yes, Madam President. I conferred with the honorable Chief Justice Concepcion and retired Justice J.B.L. Reyes and they believe that there should be an independent Commission on Human Rights free from executive influence because many of the irregularities on human rights violations are committed by members of the armed forces and members of the executive branch of the government. So as to insulate this body from political interference, there is a need to constitutionalize it.

MR. ROMULO. Thank you.

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

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Thank you, Madam President.

May I just pose a few minor matters to the committee. I do not know if we took this up this morning because I happen to be out attending to our printing problems for the Commission.

On page 2, lines 5 and 6, I suppose the committee could possibly consider more of a style the deletion of the words "promulgated by the Supreme Court," because the proper terminology here is "RULES OF COURT in the Philippines." That is already understood.

MR. SARMIENTO. I thank the Commissioner for that observation.

MR. REGALADO. Also, lines 14 and 15 appear to be subparagraph 5-"perform such other duties and functions as may be fixed by law." In the Common Provisions, Article XII, Section 7, that is required and it is one of the functions of all the constitutional commissions. Perhaps, the sponsor may consider the deletion thereof at the proper time.

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MR. SARMIENTO. Thank you for that observation, Madam President.

MR. REGALADO. One major concern of mine is the meaning of the phrase "human rights" because we are going to have a constitutional commission on human rights but along the same vein as those mentioned by those who spoke before me. We do not seem to have a very definite concept of what is human rights.

The body will recall that during the proceedings on the Article on Accountability of Public Officers, as a fall-back provision in the event that this article is not approved by this Commission, I had proposed therein an addition to Section 12, paragraph 2, the last phrase there which says, "including any violation of civil, political or human rights," which I had explained before. But it will also be noticed that I was quite careful in delineating and specifying "civil, political or human rights," because if it is a civil right of which one is deprived, the procedure would be, of course, to go through a civil case. If it is a political right that is violated,

it could either be a civil case or a criminal case, it will be within the jurisdiction of the regular prosecutory services. If it is a civil case, then it will be within the individual initiative of the party complaining.

The committee mentioned this morning that in connection with the term "human rights," they are referring only to the civil and political rights embodied in the Universal Declaration of Human Rights but excluding the social and cultural rights mentioned therein.

My problem with this amorphous term is, for instance, let me invite attention to this Universal Declaration of Human Rights, particularly, Article XVI, paragraph 1 which says:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

If this right is violated, it is actually a violation of a civil right which, however, is now enshrined as one of the human rights under the Universal Declaration of Human Rights. In other words, we actually have here a civil right which is considered under the protection of a human right provision under the universal declaration. So, bringing it down now into this particular article, if there should be such a violation in the Philippines which only is with respect to the freedom to marry, the freedom to found a family, since it is a human right, would that fall within the jurisdiction of the proposed Commission on Human Rights?

MR. SARMIENTO. Madam President, Commissioner Aquino would like to answer the question. She is a human rights' advocate.

MS. AQUINO. I do not claim any expertise on the subject matter, but, madam President, may I be allowed to reply.

THE PRESIDENT. Yes, Commissioner Aquino.

MS. AQUINO. I shall attempt to reply to the query of Commissioner Regalado. I think the question is conceptual in the sense that it is essentially of what values other than those we have constitutionally provided for in the Bill of rights, provide the reservoir of sources for decisional norms in human rights cases.

In the United States there is a debate about interpretative and non-interpretative review of human rights cases. And the consensus pertaining for the moment is that the values that would serve as reservoir for decisional norms would be tradition and consensus. By tradition, we refer to principled traditions which would be determinate and helpful in projecting human rights cases.

In the Philippines, we speak of the tradition of political oppression during the period of martial law. We speak of the tradition of racial bigotry. Minimally, we could speak of the tradition of religious intolerance in the South, for example. And on matters of consensus, the consensus is on the matter of history.

This is where I would like to differ partly with the committee when it seems to focus on political cases only. It is askew; it is a bit off mark. When we speak of countries in the Third World, like the Philippines, we speak of human rights as something that is basic, something that pertains to a right to life, shelter, food, decent education and decent standards of living. It is essentially the assertion of our clamor for dignity to human life. It is born out of a collective struggle of the Filipino people against a neo-colonial history.

Compared to the countries of the First World, wherein capitalism gives full gear to individual initiative, we speak of human rights in the context of the Magna Charta of Rights as the end in itself- the freedom to assemble, speak and petition for redress of grievances.

It would seem, therefore, that there is a focus on individual and collective rights. There is a vital difference in the countries of the First World and the Third World on this matter. The emphasis, and rightly so, in the countries of the First World, is on individual rights, the Magna Charta; while in the countries of the Third world, the meaningful concept of human rights is seen in collectivism. It is a collective right of the people against inhumanity, oppression, starvation and ignorance, such that we speak of human rights not as end in themselves, but rather as means to achieve greater ends,

I think the focus should be more rightly directed in that trend.

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MR. REGALADO. Madam President.

MR. SARMIENTO. Does that answer the Commissioner's question?

MR. REGALADO. Madam President, conceptualization, we admit, is proper and apt with its interstitial differences in the quiet pathways of the academe. But I am more concerned with the application of this particular article in the roaring boulevards of actual life. And it will not be a question merely of conceptualization, but of jurisdiction. We have other agencies: the ombudsman, the regular prosecutorial services, the courts of justice.

We would like to find out now exactly what are those particular cases involving human rights which would fall within the jurisdiction of this particular constitutional commission. And I remember this morning that the committee mentioned that it will be for the commission to determine what are the cases that would be within its jurisdiction and not be compounding an undue delegation of powers.

On the other hand, I see no mention here about Congress providing for such cases as shall fall within the exclusive jurisdiction of this Human Rights Commission.

Actually, when we go into the actual application of this article, divorced from its present ephemeral status, we will have that problem: When do we invoke the jurisdiction of the Human Rights Commission? Unless there is a specification as to the cases that fall within their jurisdiction and, even if not exclusion, but at least something which may either be within their primary or where to go, would the committee want it to be defined and enumerated or determined by the commission itself or would it give Congress a chance to say what are the those cases which should fall within the jurisdiction of the Human Rights Commission?

MR. SARMIENTO. I think it will be for the enabling law to define exactly what are these specific offenses that will be covered by the Commission on Human Rights.

MR. REGALADO. Because I recall that in the original resolution that was filed in the committee of which I am also a member, it was more specific. I think it was the experience during the past regime that there were violations of human rights on a nationwide scale and generally committed. I think that is the thrust of this

article. It is generally directed against the military forces as well as the police and the paramilitary forces which were responsible for all those things. And I think that was the progenitor which spawned the idea of a constitutional commission.

MR. SARMIENTO. Among other things, Madam President.

MR. REGALADO. I remember that there were things about salvaging, hamletting. Does the committee think that at the proper stage, it could formulate a more specific area or parameters of the jurisdiction of this Human Rights Commission, so we would know whether there would be a necessity really for a constitutionalizing the same?

I also voice the concern of some of the other Commissioners, whom I had the opportunity to exchange views with, that they feel that if we constitutionalize this commission, it is, in effect, an assumption on our part that the same situation that gave rise to the idea of having such a commission, the nationwide periodicity occurrence of human rights violations, will continue, so that we will have a constitutional Human Rights Commission indefinitely and, of course, coequally, there must also be the corresponding widespread violations of human rights. And some of them had mentioned to me that suppose after about a few years, with the proper enforcement of the laws, with the proper enforcement of the laws, with the proper implementation and the protection granted to the citizens, there will only be very isolated violations of human rights, which could very well be handled by the ordinary agencies of the government, and yet we have here a constitutional commission which may turn out to be no longer necessary or, if necessary at all, not to that extent. We cannot change it or we cannot remove it unless we amend the Constitution. And there were views expressed by some: why not just a constitutionally mandated commission?

So, I am giving that as a feedback from some Commissioners so that the committee may think of the possible advance defenses should there be onslaughts, as Commissioner Maambong had already mentioned, which could be in the form of prejudicial question.

MR. SARMIENTO. Madam president, let us go by parts. First, I would like to address my reply to the comment or inquiry as to whether or not these violations are continuing. My answer to that is yes. Until now, we have reports of human rights violations being committed in almost every part of the country. Fact-finding missions are being conducted and they reported that there are massive human rights violations.

For instance, in the Veritas issue of August 14 to 20, 1986, the caption was "Violations Go On," and they enumerated many human rights violations committed in the provinces.

Then, in the Issue of the Daily Inquirer of August 14, 1986, the caption was: "Farmer's Childs Rights Abused." And in this morning's Malaya, we have reports of human rights violations being committed in the provinces by government forces.

So, I believe that there is still a need for this Human Rights Commission.

On the inquiry on whether there is a need for this to be constitutionalized, I would refer to a previous inquiry that there is still a need for making this a constitutional body free or insulated from interference. I conferred with former Chief Justice Concepcion and the acting chairman of the Presidential Committee on Human Rights, retired J.B.L. Reyes, and they are one in saying that this body should be constitutionalized so that it will be free from executive control or interferences, since many of the abuses are committed by the by the members of the military or the armed forces.

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MR. REGALADO. Will the sponsor admit that this commission and the thrust of its work is really mainly directed against human rights violations by public officers or military personnel or military authorities?

MR. SARMIENTO. By the nature of the human rights violations, yes, Madam President.

MR. REGALADO. Mentioned here in Section 2, paragraph 1 is the matter of violations of human rights by private parties. Does not the sponsor think that if human rights violations are committed by private parties, the regular prosecutorial services of the government could properly take care of them? So that in the definition of the jurisdiction of the Commission on Human Rights, we zeroed in on the acts committed by these public officers, the military officers and paramilitary units.

MR. SARMIENTO. Actually, that was the original recommendation of the proponents of the resolution—that we limit it to offenses committed by public officers. But the committee recommended that we include private parties.

MR. REGALADO. In the same manner, like in the case of the ombudsman, it will be noticed that the thrust is with respect to official malfeasance, misfeasance or nonfeasance. So, at least, there is that delineating area as to their jurisdiction.

MR. SARMIENTO. At the proper time, the Gentleman may recommend his amendment just to clarify.

MR. REGALADO. I think we can also include private parties or civilians, if they act in conspiracy with these public officers. So that, at least, we will know just exactly what is the area within which this commission should operate aside from the other agencies charged with the protection of human rights.

MR. SARMIENTO. We will appreciate the Commissioner's recommendation in this point.

MR. REGALADO. Thank you.

MR. RAMA. In connection with the discussion on the scope of human rights, I would like to state that in the past regime, every time we invoke the violation of human rights, the Marcos regime came out with the defense that, as a matter of fact, they had defended the rights of people to decent living, food, decent housing and a life consistent with human dignity.

So, I think we should really limit the definition of human rights to political rights. Is that the sense of the committee, so as not to confuse the issue?

MR. SARMIENTO. Yes, Madam President.

MR. GARCIA. I would like to continue and respond also to repeated points raised by the previous speaker.

There are actually six areas where this Commission on Human Rights could act effectively: 1) protection of rights of political detainees; 2) treatment of prisoners and the prevention of tortures; 3) fair and public trials; 4) cases of disappearances; 5) salvagings and hamletting; and 6) other crimes committed against the religious.

Regarding the other point on the necessity of a permanent commission, the experience of Amnesty International suggests that even countries in Europe or the United States of America need organizations on human rights like the Amnesty International where human rights education is critical to make people aware of their rights. This is because the rights are normally protected and defended when the citizens are themselves conscious these rights are theirs and they exist. And, lastly, for those who are supposed to uphold the law, which I mentioned earlier, like the soldiers and policemen who are in-charge of jails, they should also be made conscious that there are rules that determine their behavior towards prisoners whom they are supposed to treat and deal with.

MR. RAMA. Is it also the sense of the committee that higher levels of human rights are taken care of by the Article on Social Justice?

MR. GARCIA. Exactly, there are other for a where these concerns will be dealt with. For example, on land reform, there will be the Ministry of Agrarian Reform; on labor, there will be the Ministry of Labor, and so on. There are other areas but we felt it is important to elevate this entire concern for human rights to a constitutional commission to make this a permanent and lasting concern that would be beyond the reach of political changes in government.

MR. RAMA. Madam President, may I ask that Commissioner Aquino be recognized.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. Madam President, I will have to take exception to the position of Commissioner Garcia on this point because to limit the concept of human rights to political rights in matters of political oppression is very intellectually dishonest. In my previous discussion, the point that I was discussing is that human rights lie at the roots of social disequilibrium. For so long as there is structural imbalance, we would have cases of human rights. In fact, earlier when I said initially that when we speak of human rights in Third World countries, they are means not just the end in themselves, to attain dignity to human life. To this extent, I believe and I am in full agreement with the committee that the work of human rights is very noble. In fact, I think it is missionary, without sounding very patronizing about it. Whenever there is every opportunity, we should proselytize for human rights. But then, if the committee will agree with me, and this is my dilemma, human rights are basic and fundamental to the roots of social disequilibrium; it would, in effect, state likewise that when we create a constitutional commission, it is as if the objective attains to the level of a constitutional messiah that addresses structural problems of disequilibrium. WE should resist that drift. I would like to disabuse the mind of Commissioner Rama about it. But for purposes of conceptual clarity, let us not just address the symptoms of the violations of human rights. Deeply imbedded are the questions of social justice, economic justice, structural oppression and social disequilibrium.

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MR. GARCIA. The entire scope of human rights precisely is more on the political, civil, economic and social rights. I agree with Commissioner Aquino that the sources of many of these violations of political rights are in themselves social and economic in nature- poverty, hunger, lack of employment, lack of land, powerlessness, lack of participation in political power. We all realize these in our experience with the people. These are the basic and root causes of many of their malaise. We are not at all safe in advocating a human

rights commission if these are not the root causes. In fact, the Article on Social Justice precisely tries to address the structural, social, historical and political imbalances in our society. But what we are trying to say in this proposed article on the Commission on Human Rights is that there is also a certain set of problems regarding political detention, arrests, torture, disappearances, salvagings which we have experienced in the past and which we never want to be repeated. These are a certain set of rights which are very limited, I agree. They do not even touch, as I understand, on the root causes of the problem. But, nevertheless, they are a problem that will remain with us and with many Third World countries. And one of the major reasons why they are often not defended is that people are not aware of the extent and nature of their rights. And, therefore, one of the major advances that we can have in this country is to have a commission which will not only try to cure the effects later on, but also to prevent these by creating or forming consciences with a human rights dimension which is specific and limited in order to make it effective.

Take the example of Amnesty International. It is effective because it limits itself to the concerns of political imprisonment and torture. If it concerns itself with the whole gamut of human problems- economic, injustice, social injustice and others- it could never be that effective. Therefore, we are far more modest in our efforts in this article which tries to remedy only one area, although there are other articles, other efforts and other vehicles and media where the other basic problems of society will have to be addressed.

MS. AQUINO. I hope Commissioner Garcia appreciates my position. It is not just an abstract diversion. It creates actual pragmatic problems. For example, on matters of jurisdiction, as a human rights lawyer, I handle cases of squatters who are forcibly evicted. Squatting is a human rights problem; the oppression workers is a human rights problems; sexual discrimination is a human rights problem. Would these areas properly pertain to the jurisdiction of the Human Rights Commission?

MR. GARCIA. Although they are part of the human rights problem, we are saying that this committee should have far more modest objectives. If they want to try to remedy only one area, that is all right; it is a clearer consciousness of what basic civil and political rights are. Then this one area that the committee should try to defend and safeguard. What does one do when he is arrested? What does one do if there is pressure to make him sign a confession without counsel, without a lawyer? These are certain rights of individuals that make one far stronger when he confronts the police power of the State.

In other words, I realize we are not solving the ultimate problem of land of the squatter here, of land of the farmer who is being evicted, but, nevertheless, we are equipping him with political tools with which to confront forces that are ranged against him. But I am saying that there are other avenues and other areas which can meet the more major and more critical problems of social justice and economic imbalance.

MS. AQUINO. I was asking for this clarification because I wanted us to rid ourselves, and I am part of it, of the odium of this messianic syndrome, and neither do I want to raise false hopes about problems which are basic, societal and structural. That was only my concern.

MR. GARCIA. Thank you very much.

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

MR. MAAMBONG. Thank you, Madam President.

I am happy to note that most of my questions have already been answered, but there are still concerns which I would like to indicate for the committee. There are three points on which I would like to go back

to the problems indicated by Commissioners Regalado, Tingson and the rest, regarding the parameters of power and functions of human rights. I was very much concerned earlier when Commissioner Garcia referred to the Universal Declaration of Human Rights. As I understood him earlier, this is supposed to be the coverage of the jurisdiction of the Commission on Human Rights, but later he said that it actually covers only political and civil rights. And then here comes Commissioner Aquino talking about the collective rights of the people to decency of livelihood, and so on.

So, it appears to me now that from the very start we have already been in a confused state as to what really is the coverage of this term "human rights". Could the committee perhaps give us a definitive statement on what is really the coverage?

Before that, I would like to emphasize that during the discussion on the Bill of Rights, I was very specific in asking Commissioner Bernas about the classification of rights, and we seem to have reached a point where we said that all these rights could be classified into individual rights, political rights, civil rights, economic, social and cultural. What is the coverage of these human rights we are talking about in this proposed article?

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MR. SARMIENTO. The Gentleman just said that we are in a confused state; I humbly disagree, madam President, because we made it clear that the coverage of the Commission on Human Rights should be purely of civil and political rights. The Universal Declaration of Human Rights covers so many rights- economic, social, cultural, civil, political- but as I said, we will limit ourselves to civil and political rights and to our Bill of Rights.

MR. MAAMBONG. Madam President, is that an indication that later on the committee will clarify these in any of the provisions or will the committee await amendments from the floor on those points?

MR. SARMIENTO. We will gladly accommodate amendments, Madam President.

MR. MAAMBONG. Thank you.

But I have to disagree with Commissioner Sarmiento when he said that the coverage of human rights would only be political and civil; I think that is too limiting. I have been reading some articles and some reports Amnesty International adverted to by Commissioner Garcia, and I noticed that the violations investigated by Amnesty International- they came to the Philippines and I saw their report- seem to indicate that they were not only investigating violations of political rights but individual rights. When we talk of torture, we are not talking of violations of political rights, we are talking of individual rights, and the deprivation of liberty or life.

As a matter of fact, I recall that because of our interest in this matter, we have caused it to be inserted in Section 19 of the Bill of Rights. I have been trying to insert this and, finally, the body approved it. This refers to employment of physical, psychological or degrading punishment against prisoners or detainees. So, would the Commissioner reconsider his statement that the coverage of this Human Rights Commission would only be political and civil say that the coverage should be more on individual rights violation?

MR. GARCIA. But the persons who enjoy civil and political rights are the individuals. For example, Article 5 of the Universal declaration of Human Rights, which prohibits torture or cruel or inhuman or degrading forms of treatment, is directed to protect the rights of individuals against torture. So, I do not see any contradiction in saying that civil and political rights are individual rights.

MR. MAAMBONG. Is the committee saying that when we say violation of political rights, we are actually covering individual rights violations?

MR. GARCIA. Definitely.

MR. MAAMBONG. Then I can get along with that.

MR. SARMIENTO. As Commissioner Maambong said, the power or the coverage of the Commission on Human Rights is very limiting. It is, Madam President. As mentioned by Commissioner Garcia, it is a modest attempt to solve the human rights problems in our country. It is not an attempt to cover all forms of human rights violations.

MR. MAAMBONG. Madam President, I think we are going to have a difficulty again, as adverted to by Commissioner Bernas, when we go into classifications. As far as my classification is concerned, individual rights are not covered by political rights. As a matter of fact, Article 21 of the Universal Declaration of Human Rights enumerates political rights; for example, that everyone has the right to take part in the government. I think that is clearly a political right. Another is that everyone has the right to equal access to public service in his country; the Universal Declaration of Human Rights went on further by saying that the will of the people shall be the basis of the authority of government. However, I take the word of the committee that when we say violation of individual rights, this is included in the term "political rights." This way, we will not be bogged down in our own method of classification.

The next point to consider is the creation of the Commission on Human Rights. I think the committee will agree that this commission can be created in three ways: it can be created as a constitutional body, just like the other constitutional commissions; we can have it mandated by the Constitution, the Congress can create this body. Would Commissioner Sarmiento agree with me on that?

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MR. SARMIENTO. Yes, Congress can create this body, but as I have said, if we leave it to Congress, this commission will be within the reach of politicians and of public officers and that to me is dangerous. We should insulate this body from political control and political interference because of the nature of its functions- to investigate all forms of human rights violations which are principally committed by members of the military, by the Armed Forces of the Philippines.

MR. MAAMBONG. Yes. As a matter of fact, even without the Constitution, even without the law, this Commission on Human Rights can still be created by executive fiat, whether we are in a revolutionary government or a constitutional government.

MR. SARMIENTO. As a matter of fact, President Aquino created the Presidential Committee on Human Rights.

MR. MAAMBONG. Yes, but we are in a revolutionary government, the Office of the President can still create this kind of commission. The Gentleman will agree with me on that?

MR. SARMIENTO. Yes.

MR. MAAMBONG. Madam President, I mentioned a similar Commission on Human Rights in New Zealand. This is part of their Constitution. They call it Human Rights Commission, and this is part of the unwritten Constitution of the unwritten Constitution of New Zealand. But the principal function of this commission is educational in nature. In our case, we are expanding the functions of the Human Rights Commission.

MR. MAAMBONG. In New Zealand, the commission is created directly by the Constitution. Is that right?

MR. SARMIENTO. Yes.

MR. MAAMBONG. Thank you.

The Human Rights Commission is supposed to be an independent body. I would not press an answer to this, but how much would the budget be, as far as this is concerned?

MR. SARMIENTO. Sufficient enough to make independent, I think.

MR. MAAMBONG. Would the Commissioner agree with me that this Commission on Human Rights is some sort of an oversight commission just like the ombudsman in relation to Tanodbayan? In the ombudsman concept, as explained by Commissioner Colayco, the Ombudsman receives complaints from people because of malfeasance, misfeasance or nonfeasance in government functions and then it passes them on to the Tanodbayan. In this case, just like the Ombudsman, the Commission on Human Rights will also receive complaints, do some investigation but actually in the implementation itself, it will have to pass them on to the regular investigative bodies of this government.

MR. SARMIENTO. Not to the investigative bodies but to the prosecutory bodies of the government, because the commission will do the investigation.

MR. MAAMBONG. In other words, if the Commissioner will investigate, does it have to have a corps of investigators?

MR. SARMIENTO. Yes.

MR. MAAMBONG. And in other words, it will rely on the investigative facilities of the Philippine Constabulary at the present setting or the NBI or any other investigative arm. It will have to have its own corps of investigators.

MR. SARMIENTO. Madam President, it will have its own corps of investigators and the body can depend upon the existing agencies of the government to assist it in its investigative work.

MR. MAAMBONG. I am a little bit worried about Section 2 (1) which says: "Investigate all forms of human rights violations committed by public officers..." and this includes civilian and military authorities. Could the Gentleman explain what he means by "civilian and military authorities"?

MR. SARMIENTO. Madam President, "civilian and military authorities" refer to paramilitary forces. They could also refer to members of the PC-INP, members of the army, marine and navy.

MR. MAAMBONG. Just to clarify the points taken up earlier, Commissioner Garcia said that this is actually not only an investigative agency, but a recommendatory agency; it is also a preventive agency. Is that right, Commissioner Garcia?

MR. GARCIA. Yes.

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MR. MAAMBONG. And it can conduct an information campaign and according to Commissioner Sarmiento, it may assist in the actual prosecution of offenses and will, in fact, cover different islands of the country, if that is at all possible. Finally, is it not a fact that when we talk of the Commission on Human Rights, we are more or less interested in the wholesale violation of rights, like atrocities, political persecutions? We do not really concern ourselves with the day-to-day crime that is committed in this country. Otherwise, the whole commission will be bogged down.

MR. SARMIENTO. Yes, Madam President. We leave it to the proper law-enforcement agencies to take care of the day-to-day crimes being committed in our country.

MR. MAAMBONG. So, we are more or less concerned with these violations which affect, probably to coin the word, humanity itself and involve so many people, like the Escalante massacre and all these.

MR. GARCIA. No, Madam President. It can also refer to one individual who is imprisoned. The violation of the rights of any one single person is a violation of human rights. When a man is not given fair trial or is tortured, this committee or this commission must investigate the violation and try to prosecute with the help of other agencies.

MR. MAAMBONG. That is really what I am worried about, madam president. A person might perceive that his human right is violated, and human right is a very broad term. And then, he not only goes to the regular investigative authorities; he also goes to Human Rights Commission. We now have two agencies working along the same line. How do we intend to solve this, Madam President?

MR. SARMIENTO. Commissioner Maambong mentioned day-to-day crimes. What I have in mind when I answered hi question were ordinary crimes, such as robbery, homicide, murder. But when we speak of violations against the right or the freedom against torture, against cruel and inhuman or degrading treatment or punishment or violation of the right to due process of law, freedom from arbitrary search and seizure, these are violations that can well be covered by the Commission on Human Rights.

MR. MAAMBONG. That, more or less, clarifies my question. I will just point out one thing that is happening now in the Province of Cebu, but this is not to scare the Commissioners.

If we will go over our newspapers in Cebu, the rate of killing of police officers and military officers is almost once every two days. Last Sunday, I attended the burial of one of our police patrolmen, Pat. Rolando Ruiz, a good friend of mine. Another student of mien, PC Major Pedy Noval was shot in the head. This has been

going on since November 1984 up to present; and the body count has been going on everyday. Cardinal Vidal has expressed his concern. A few days ago, in the town of Tuburan, which is adjoining my town of Asturias, the whole station command was overrun, and three policemen were executed by a group of 50 men wearing military uniforms.

This may not be true throughout the country, but I am very much distressed because this has not happened before in Cebu. Will this be considered part of the job of the commission, for example, to investigate this wholesale killing of police officers and military personnel going on not only in Cebu but all over the country?

MR. SARMIENTO. Committed by whom? Do we have suspects?

MR. MAAMBONG. That is the queer thing about it. I looked over the statistics and found out that since 1984, those killed, whether police officers, military officers, columnists or newspapermen, were shot in the head. Nobody has been arrested or charged in court; nobody has ever been convicted because these are crimes which are supposed to be committed by people whom we do not know anything about. They attribute this to the sparrow unit of the New People's Army but even this is not clear. This is happening not only in the Province of Cebu but in other provinces. This is what I mean by wholesale killing of military personnel and police officers. And so, I ask of these should be investigated by the Commission on Human Rights.

MR. SARMIENTO. I agree with Commissioner Maambong.

MR. MAAMBONG. Thank you.

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

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. Madam President, my colleagues: I am inclined to agree with Commissioner Aquino. Although I feel that the legal and political aspects are important, I would like to see human rights in a broader context. I feel that the approach here is, to use the analogy in medicine, more curative than preventive. Perhaps such a commission, if it were elevated to a constitutional commission, should concern itself more with the environment, the historical, cultural, socio-economic conditions that have fomented this state of attitudinal and value orientation towards violence. I feel that if such is established, it should follow the form that the New Zealand Human Rights Commission had taken- that it should be more of an educational commission. I would submit that many human rights violations are, as aptly described, symptoms of the malady that is seen in terms of the inequities in our socioeconomic life, and the continuing barrage of messages from our media and other information channels as well as the educational system, which continually feed us with violence and which portray deviant behavior as the norm.

Therefore, if such is established, I hope it concentrates more on policy research and action programs on areas such as nonviolence and peace strategies. It would emphasize unique Filipino values and nonviolent strategies on social change. We will, therefore, be working on changing the environment rather than merely concentrating on a limited area. If such is established, we could work more towards the restructuring of the mass communication system and the educational system. It would emphasize the values in family life and will work towards a more comprehensive coordination of all formal and non-formal education as these are the very institutions that have contributed to the present human rights violations.

I also hope that we could include in the Human Rights Commission members not only from the legal field but also educators. If we accept that human rights promotion is a problem of education, why should we limit it only to attending to the symptoms of the problem? I hope that a more in-depth analysis of the functions of this commission is made and that we refocus it to establishing a research institution that would be devoted to peace research, to non-violent strategies.

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MR. GARCIA. Regarding the first point of the Commissioner, the different articles in the Constitution try to address the myriad problems that we face in this country. I agree with Commissioner Rosario Braid that there are numerous structural problems that are far more deep-seated and important in character. I understand that in the different articles of the constitution, we try to address these diverse problems that we face in our society, including what the Commissioner already mentioned. The Committee on Human Resources will be discussing these points on education, science, arts and culture. So, as I already mentioned, we are simply trying with very modest efforts to defend and safeguard the civil and political rights of citizens, especially when it concerns politically-related offenses or rights.

With regard to the second suggestion on incorporating into this commission men of other professions, we will be open to that suggestion if the Commissioner can formulate that amendment during the proper time.

MS. ROSARIO BRAID. Yes, may I add that it is not just propagating the primacy of human rights but focusing on how we can reorient sectors or individuals who are constant violators of human rights- providing them continuing educational programs. Some of them are now in prison; some are in the military; and some are drug addicts. Reorientation programs tailored violent strategies would help them realize that there are alternative ways of solving problems, rather than by violent means.

In other countries, they have tried to address the problems of human rights by establishing peace institutes. I know of several countries like Finland and other developing countries, where although their long-term goals are directed to the prevention of human rights violation, their programs, however, focus on policy research and action programs.

MR. SARMIENTO. Madam President, the suggestion of the Commissioner is covered by one of the functions of the Human Rights Commission, and that is to establish a continuing program of education and information. This program of education could cover the non-violent strategies which she mentioned and possibly the creation of peace institutes.

MS. ROSARIO BRAID. But could we be more specific? The way it reads now, it would appear that it is enough to package an informal education program that would teach children and adults the importance of human rights. But we know that we must create the appropriate institutions that would examine the causes and consequences of human rights violations and that subsequent information and educational programs should be based on policy research.

MR. SARMIENTO. Madam President, we are formulating a fundamental law, a constitution, and I think we need not specify these various educational approaches. My submission is that these are covered by a continuing program of education.

MS. ROSARIO BRAID. Yes.

MR. SARMIENTO. But for the record, the Commissioner can mention those things as part of the continuing program of education.

MS. ROSARIO BRAID. But I would like to hope that the committee shall accept an amendment that focuses on peace research and applied programs for nonviolent strategies of social change, something to that effect.

MR. SARMIENTO. Yes.

MS. ROSARIO BRAID. Thank you very much.

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

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. Madam President, I will ask two questions which I consider very important and they need only very direct answers. Does the committee consider such a commission necessary?

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MR. GARCIA. Yes, otherwise we would not propose it.

BISHOP BACANI. Does the committee consider it necessary that the body should be a constitutional commission?

MR. GARCIA. Yes. In his sponsorship speech, Commissioner Sarmiento explained why he considers it important. For me, the most important reason is this: We are dealing here with politically-related violations; therefore, it is important that the body is beyond the reach of political changes in government; that the members be not simply presidential appointees but that they are beyond that; that the body is independent and, therefore, can even check those forces, like the military, the police who are supposed to implement or enforce, but sometimes repress the rights of citizens.

BISHOP BACANI. While I am in full sympathy with the idea that there should be such commission, I am not convinced by the reasoning to opt for a constitutional commission. Let us take the case of our problem regarding deforestation which has roots and ramifications that go into the executive and legislative branches of the government, and yet we do not ask, despite the seriousness of the need for reforestation and the need to arrest deforestation, for a constitutional commission on forest conservation. Let us also take the example of the situation on pollution- again, the causes go into the executive and legislative branches of government, and yet people do not petition for a constitutional commission on pollution control despite the urgency of the problem and the fact that it is so widespread and that it has roots and branches all over, and needs independent men. Yet when it comes to human rights violations, we say: "Well, because we need people who are independent because the problem is so widespread, we should have a constitutional commission."

MR. GARCIA. The critical factor here is political control, and normally, when a body is appointed by Presidents who may change, the commission must remain above these changes in political control. Secondly, the other

important factor to consider are the armed forces, the police forces which have tremendous power at their command and, therefore, we would need a commission composed of men who also are beyond the reach of these forces and the changes in political administration.

BISHOP BACANI. But that is also very true regarding deforestation. The same elements- military, men in politics, people appointed by the President- are also involved and yet we do not really ask for such a constitutional commission even though we are told by the Ministry of Natural resources, for example, that if our present rate of deforestation continues, by the year 200 we shall irreversibly enter into a process of "desertification" which may have entered already, they say. But as I said, nobody has proposed to create such a commission for forest conservation.

MR. SARMIENTO. With respect to the creation of such a commission, our resolution advocated for the creation of a commission for environmental protection.

BISHOP BACANI. But not in that resolution.

MR. SARMIENTO. We had that proposed resolution, but it was disapproved by the committee. So, what remained was this Commission on Human Rights.

BISHOP BACANI. Yes. But let us consider this hypothesis also. I can understand that the three constitutional commissions: the Commission on Elections, the Civil Service Commission, the Commission on Audit, will always have something to do on a big scale. But let us say- and let me be very hopeful for a while- that President Aquino really succeeds and Minister Enrile and General Ramos cooperate with her, which is not an impossibility, and the army becomes very disciplined during the term of President Aquino. What will this Human Rights Committee deal with? It cannot deal with human rights violations of the outlaws because they are beyond the reach of the arm of the law. They will likely not take education from the government. As for the army and the police, in my hypothesis, which is not impossible, they will be behaving very well. So, what will the Commission on Human Rights do now?

MR. GARCIA. There is a lot of tasks, Commissioner Bacani. The ongoing formation of consciousness of people regarding human rights is a very big task. Secondly, it is not only the citizens, but also the men who are supposed to uphold the law – soldiers and policemen. Training and formation should also be considered here. And, thirdly, as I mentioned also earlier, just because we have resolved our problems momentarily does not mean that there are no other human rights problems around us. I think this should be part of our consciousness as a people, as a result of our solidarity with human rights victims all over the world.

Finally, governments come and go, but if this commission stays, it will in a sense ensure that human rights will be protected no matter who is President. And that, I think, is a far more important safeguard for the future generations to come.

BISHOP BACANI. Yes, but for that, we will not need a constitutional commission on human rights. I would admit that we need a commission, some kind of a body. As regards to education, I do not know whether the educative purpose will serve as a sufficient rationale for this.

Let us consider section 4 of the Human Resources committee report. There will be a big task of education involved here. The study of the Constitution and human rights shall be part of the curricula in all schools. So, this area will be taken care of for a very large portion of our people, and then mass media education can also be done.

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MR. MONSOD. Madam President, I was just wondering whether we can think about the issue a little more in this sense, that we can see over the next few years, maybe in five or ten years, given the structural problems of the economy- the poverty, and maldistribution of income and so on- the structure of political power in the country, there will be problems of human rights in the foreseeable future. Personally, I would like to see this kind of commission expand its horizons beyond crimes involving political beliefs. Perhaps over time, this could take into consideration the wider view of human rights, social and economic rights, the educational aspects- the research into the deeper reasons for all kinds of human rights violations. In other words, the creation of a constitutional commission is a signal of the importance of human rights, but the more immediate problems are these crimes involving political beliefs. But this does not mean that this commission cannot be expanded in its scope later on. I do not see any point in time where our country will not need a Commission on Human Rights, given the very wide spectrum of human rights that are really attainable or, at least, what we would like to attain over the years.

So personally, I would like to see not a closed definition of the functions of this commission, but a slight opening so that if we do solve the immediate problems, we can go into these other problems.

BISHOP BACANI. Yes. Thank you.

I would really second the suggestion already given by many of us that we specifically name the violations that fall under the competence of this commission, for the present at least. For example, we speak of murder as not included as a human rights violation and yet salvaging would be. It is so difficult to define the line of demarcation.

MR. SARMIENTO. We will welcome the amendment in due time.

BISHOP BACANI. Thank you.

MR. MONSOD. Maybe what the Commissioner means is that we can look at it on several stages. Then we can have more specific crimes in the first stage.

MR. RAMA. Madam President, Commissioner Guingona would like to be recognized.

THE PRESIDENT. Commissioner Guingona is recognized.

MR. GUINGONA. Thank you, Madam President.

I would like to start by saying that I agree with Commissioner Garcia that we should, in order to make the proposed commission more effective, delimit as much as possible, without prejudice to future expansion, the coverage or scope of the concept and jurisdictional area of the term "human rights". I was actually disturbed this morning when reference was made without qualification to the rights embodied in the Universal Declaration of Human Rights, although later on, this was qualified to refer to civil and political rights contained therein.

If I remember correctly, Madam President, Commissioner Garcia, after mentioning the Universal declaration

of Human Rights of 1948, mentioned or linked the concept of human rights with other human rights specified in other conventions. I think he mentioned one other convention which I do not remember. Am I correct?

MR. GARCIA. Is Commissioner Guingona referring to the Declaration of Torture of 1985?

MR. GUINGONA. I do not know, but the Commissioner mentioned another.

MR. GARCIA. Madam President, the other one is the International Covenant on Civil and Political Rights of which we are a signatory.

MR. GUINGONA. I see. The only problem is that, although I have a copy of the Universal Declaration of Human Rights here, I do not have a copy of the other covenant mentioned. It is quite possible that there are rights specified in that convention which may not be specified here. I was wondering whether it would be wise to link our concept of human rights to general terms like "convention" rather than specify the rights contained in the convention.

As far as the Universal declaration of Human Rights is concerned, the committee, before the period of amendments, could specify to us which of these articles in the Declaration will fall within the concept of civil and political rights, not for the purpose of including these in the proposed constitutional article, but to give the sense of the Commission as to what human rights would be included, without prejudice to expansion later on, if the need arises. For example, there was no definite reply to the question of Commissioner Regalado as to whether the right to marry would be considered a civil or social right. Is it not a civil right?

MR. GARCIA. Madam President, I have to repeat the various specific civil and political rights that we felt must be envisioned initially by this provision. – freedom from political detention and arrest, prevention of torture, right to fair and public trials, as well as crimes involving disappearances, salvagings, hamlettings and collective violations. So, it is limited to politically related crimes, precisely to protect the civil and political rights of a specific group of individuals, and therefore, we are not opening it up to all of the definite areas.

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MR. GUINGONA. Correct. Therefore, just for the record, the Gentleman is no longer linking his concept or the concept of the Committee on Human Rights with the so-called civil or political rights as contained in the Universal Declaration of Human Rights.

MR. GARCIA. When I mentioned earlier the Universal Declaration of Human Rights, I was referring to an international instrument.

MR. GUINGONA. I know.

MR. GARCIA. But it does not mean that we will refer to each and every specific article therein, but only to those that pertain to the civil and political rights that are politically related, as we understand it in this Commission on Human Rights.

MR. GUINGONA. Madam President, I am not even clear as to distinction between civil and social rights.

MR. GARCIA. There are two international covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The second covenant contains all the different rights- the rights of labor to organize, the right to education, housing, shelter, et cetera.

MR. GUINGONA. So, we are just limiting at the moment the sense of the committee to those that the Gentleman has specified.

MR. GARCIA. Yes, to civil and political rights.

MR. GUINGONA. Thank you.

MR. RAMA. Madam President, there are only two more registered speakers but one of them is not around, so I ask Commissioner Tan be recognized.

THE PRESIDENT. Commissioner Tan is recognized.

SR. TAN. Madam President, from the standpoint of the victims of human rights, I cannot stress more on how much we need a Commission on Human Rights. First of all, we are completely wrong if we think that the Aquino government has brought about peace. There are more cases of salvaging now than there was even before. And just this week, we had two in our area- one was electrocuted in the Makati Police Unit because they wanted to exact a confession; and the other was tortured in the Manila Police Unit. So, we are under illusion if we think that even after 100 years, we will have no human rights problems. Another reason is, human rights lawyers are very, very scarce. Whenever we need them, we can only find Soc or Fely or Rene; they are very scarce. Even my own family of lawyers does not know anything about human rights law.

Another reason is that human rights victims are usually penniless. They cannot pay and very few lawyers will accept clients who do not pay. And so, they are the ones more abused and oppressed. Another reason is, the ones more abused and oppressed. Another reason is, the cases involved are very delicate- torture, salvaging, picking up without any warrant of arrest, massacre- and the persons who are allegedly guilty are people in power like politicians, men in the military and big shots. Therefore, this Human Rights Commission must be independent.

I would like very much to emphasize how much we need this commission, especially for the little Filipino, the little individual who needs this kind of help and cannot get it. And I think we should concentrate only on civil and political violations because if we open this to land, housing and health, we will have no place to go again and we will not receive any response. I think our human rights lawyers, especially those belonging to the MABINI and FLAG, are of the heroes of martial law.

Thank you.

MR. RAMA. Madam President, there are no more registered speakers, so, I ask that we close the period of sponsorship and debate so we can move on to the period of amendments.

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

SUSPENSION OF SESSION

MR. RAMA. There is a request that we suspend the session for a few minutes.

THE PRESIDENT. The session is suspended.

It was 4:44 p.m.

RESUMPTION OF SESSION

At 5:01 p.m., the session was resumed with the Honorable Francisco A. Rodrigo presiding.

THE PRESIDING OFFICER (Mr. Rodrigo). The session is resumed.

MR. RAMA. Mr. Presiding Officer.

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THE PRESIDING OFFICER (Mr. Rodrigo). The Floor Leader is recognized.

MR. RAMA. On account of the impending typhoon, I move that we adjourn the session until tomorrow at nine-thirty in the morning.

MR. MAAMBONG. Mr. Presiding Officer, before the Chair rules on the motion, I would like to manifest my reservation to file a motion tomorrow, concerning the present article we are discussing which I intimated during the caucus. I will do it tomorrow or otherwise, it will be done by Commissioner Calderon.

Thank you.

ADJOURNMENT OF SESSION

THE PRESIDING OFFICER (Mr. Rodrigo). Let that reservation be recorded.

Is there any objection to the motion for adjournment? (Silence) The Chair hears none; the session is adjourned until tomorrow at nine-thirty in the morning.

It was 5:01 p.m.

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R.C.C. NO.67

Wednesday, August 27, 1986

OPENING OF SESSION

At 9:58 a.m., the President, the Honorable Cecilia Munoz 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 song the National Anthem.

THE PRESIDENT. Everybody will please remain standing for the prayer to be led by the Honorable Ricardo J. Romulo

Everybody remained standing for the Prayer.

PRAYER

MR. ROMULO. 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 vision.

In drafting this new Covenant for all our people, teach us to accept with serenity the things that cannot be changed. Give us 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 further strife and dissension.

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

ROLL CALL

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

THE SECRETARY-GENERAL, reading:

Abubakar.....Present	Natividad.....Present
Alonto.....Present	Nieva.....Present
Aquino.....Present	Nolledo.....Present
Azcuna.....Present	Ople.....Present
Bacani.....Present	Padilla.....Present
Bengzon.....Present	Quesada.....Absent

Bennagen.....Present
 Bernas.....Present
 Rosario Braid.....Present
 Brocka.....Present
 Calderon.....Present
 Castro de.....Present
 Colayco.....Present
 Concepcion.....Present
 Davide.....Present
 Foz.....Present
 Garcia.....Present
 Gascon.....Present
 Gungona.....Present
 Jamir.....Present
 Laurel.....Absent
 Lerum.....Present
 Maambong.....Present
 Monsod.....Present

Rama.....Present
 Regalado.....Present
 Reyes de los.....Present
 Rigos.....Present
 Rodrigo.....Present
 Romulo.....Present
 Rosales.....Absent
 Sarmiento.....Present
 Suarez.....Absent
 Sumulong.....Present
 Tadeo.....Present
 Tan.....Present
 Tingson.....Present
 Trenas.....Absent
 Uka.....Present
 Villacorta.....Absent
 Villegas.....Present

The President is present.

The roll call shows 36 Members responded to the call.

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

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. Madam President, I move that we dispense with the reading of the Journal of yesterday's session.

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

APPROVAL OF JOURNAL

MR. RAMA. Madam president, I move that we approve the Journal of yesterday's session.

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

MR. RAMA. Madam President, I move that we proceed to the Reference of Business.

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

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Communication, the President making the corresponding reference:

COMMUNICATION

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 UP 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 UP Constitution Project to get the perceptions and reactions of various sectors in the deliberations/ discussions of the Constitutional Commission of 1986.

(Communication No. 634- Constitutional Commission of 1986)

To the Steering Committee.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor leader is recognized.

CONSIDERATION OF PROPOSED RESOLUTION NO. 539 (Article on the Constitutional Commissions- Commission on Human Rights)

Continuation

PERIOD OF AMENDMENTS

MR. RAMA. We are now in the period of amendments on the Article on the Commission on Human Rights. I move that we take up the said article.

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

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Madam President, yesterday I entered in the record a reservation to file a motion concerning the Article on the Commission on Human Rights. I am now prepared to present the motion.

Madam president, I move that we create or establish the Commission on Human Rights, not as an independent constitutional commission but through Congress by mandate of the Constitution.

Madam President, this motion is filed because of the feeling of some Commissioners that this Commission on Human Rights should only be constitutionally mandated and not created as an independent constitutional commission, and I mentioned this in our caucus.

THE PRESIDENT. Can that not be in form of an amendment?

MR. MAAMBONG. Yes, Madam President.

THE PRESIDENT. So, to resolve the particular motion of the Floor Leader, we shall now continue the deliberations. We are now in the period of amendments. May we call the honorable members of the Constitutional Commission who are involved in this particular matter.

MR. MAAMBONG. Yes, Madam President. As a matter of fact, we feel that this is a prejudicial question which should be resolved, and if the motion is approved on that assumption, then another motion will be presented before the committee to delete the whole Article on the Commission on Human Rights and substitute it with one section to be transposed to the Article on General Provisions which will be presented for approval. This is, of course, on the assumption that our motion will be approved.

THE PRESIDENT. We will give the members of the committee time because they have to be informed of this motion and be given a chance to confer among themselves as to the action they will take with respect to the Commissioner's motion.

MR. MAAMBONG. Yes, Madam President. As a matter of fact, I was informed by Commissioner Calderon that he will speak in favor of my motion.

I will now present a copy of this formulation to the committee.

SUSPENSION OF SESSION

THE PRESIDENT. In the meantime, the session is suspended.

It was 10:07 a.m.

RESUMPTION OF SESSION

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

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THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. I would like to ask that Commissioner Maambong be recognized.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Madam President, may I be allowed to withdraw the motion which I presented earlier.

Considering that we are now in the period of amendments on this Article on the Commission on Human Rights and in its place substitute this provision which reads: "SECTION __ CONGRESS SHALL CREATE A COMMISSION TO INVESTIGATE VIOLATIONS OF INDIVIDUAL, CIVIL AND POLITICAL RIGHTS COMMITTED BY OR AGAINST OPUBLIC OFFICERS, CIVILLANS, POLICE AND MILITARY AUTHORITIES OR PRIVATE PARTIES. IT SHALL HAVE SUCH POWERS AND FUNCTIONS AS MAY BE PROVIDED BY LAW."

This motion, an amendment by substitution, is presented by Commissioners Calderon, Jamir, Colayco, de Castro, and this humble Member. However, I reserve the right of Commissioner Calderon to talk on the motion. In the meantime, I am asking the committee for its comment.

THE PRESIDENT. Is the committee ready to react now?

MR. MONSOD. Yes. It is the committee's position that this proposed special body, in order to function effectively, must be invested with an independence that is necessary not only for its credibility but also for the effectiveness of its work. However, we want to make a distinction in this Constitution. Maybe what happened was that it was referred to the wrong committee. In the opinion of the committee, this need not be a commission that is similar to the three constitutional commissions like the COA, the COMELEC, and the Civil Service. It need not be in that article.

As a matter of fact, if the Commissioner could recall, in the case of the Ombudsman, which is a body created by the Constitution, it is not considered one of the constitutional commissions. The intent here of the committee is not that it will be the fourth constitutional commission within that article, but merely to establish it as an independent body. We need not call it a commission, an independent office that can function in the area of human rights.

Our suggestion, therefore, is that we should approve this regardless of where we end up putting it in the Constitution. It need not be in the Article on Constitution Commissions. We are asking this Commission to approve the creation of an independent body, independent in the sense that the process of nomination and appointment in the sense that the process of nomination and appointment will be shielded from politics and our proposal is that it can be through the Judicial and Bar Council and fiscal autonomy. This way, we are sure that this special body within those terms of reference, then maybe we can separate this from the issue of why we adding an extra constitutional commission.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. May I clarify the thinking of the committee, madam President? First, the committee is saying that the Commission on Human Rights must be an independent body but it is not in the category of the three constitutional commissions. Is that the thinking of the Committee?

MR. MONSOD. Yes.

MR. MAAMBONG. Considering that it is not in the category of the three constitutional commissions, can the Commission on Human Rights, if created, be dissolved by Congress? That is one concern also.

MR. MONSOD. No. We would like it to be constitutional creation because we could feel the problems of human rights particularly in the next few years. We foresee in the foreseeable future that we will have more

problems of human rights, even in the narrow sense of the political and civil rights. But we also foresee that over time as we become more developed, as our institutions function normally, the scope of this commission, since it is a constitutional body, can be enlarged to include social and economic rights. It can include the concepts proposed by Commissioner Rosario Braid in looking into the causes of the violations of human rights, both in their narrow and broad senses. Therefore, it has a place in the Constitution because the horizon for its functions is well beyond the immediate problems.

MR. MAAMBONG. In other words, the Commissioner is saying that it will not become *functus officio* at all. It will be a continuing body, regardless of whether it has performed its function in the field of human rights, as far as the individual, political and civil rights are concerned.

MR. MONSOD. Yes, and it can expand its scope as the need and circumstances arise because human rights is a very broad concept. The only reason we are limiting this concept now and trying for very modest objectives at this time is because we do not like the committee to dilute its efforts at this time when there are very real and concrete problems that have to be addressed.

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MR. MAAMBONG. The third point I would like to be clarified about is the officers or the functionaries of the Commission on Human Rights starting with the acting chairman or members thereof, whatever may be the composition. I am referring to top level officers. Are they impeachable?

MR. MONSOD. We do not conceive the process of impeachment for them. We may leave it to Congress to provide the means for their removal. Let us take the case of the Sandiganbayan. The process and the causes for the removal of its officers are left to Congress because even if this Sandiganbayan is a constitutional creation, there will still be a need for an act of Congress in order to put in the details of the implementation of this special body.

MR. MAAMBONG. In other words, the officers thereof will be contradistinguished with the officers of the Ombudsman because the Ombudsman officers are impeachable officers. Here we are contemplating a situation where they may be removed under the civil service law or by laws to be provided by Congress.

Incidentally, the Commissioner mentioned Sandiganbayan. I think the impeachability of Sandiganbayan officers is only found in law. In last discussion that we had, there was already an agreement with the Committee on Constitutional Commissions and Agencies that said officers are not supposed to be impeachable.

MR. MONSOD. Yes, by virtue of the amendment of Commissioner Regalado wherein we are limiting the method of impeachment only to those specifically provided in the Constitution.

MR. MAAMBONG. Personally, I understand the sentiments of the committee about this. But I must reflect for the record that the I am only one of the proponents of this motion; there are also other proponents like Commissioner Calderon, Jamir, Colayco and de Castro. I would like to know their sentiments because I am only the presenter of this motion.

Thank you, Madam President.

MR. JAMIR. Madam President.

THE PRESIDENT. Commissioner Jamir is recognized.

MR. JAMIR. I agree fully with the sentiments of Commissioner Maambong.

MR. MONSOD. Thank you.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you, Madam President.

May I ask just one question of the committee? I heard the Commissioner state that this will be a section in the Constitution. Did I hear him right?

MR. MONSOD. No, I mentioned that this need not be placed in the Article on Constitutional Commissions; it can be in other sections. It can even be in the Article on General Provisions.

MR. DE CASTRO. Where does the Commissioner intend to place this at this time.

MR. MONSOD. Frankly, we would like to be guided by this Commission regarding the appropriate place to put this provision in.

MR. DE CASTRO. Will the formation Commissioner Maambong on this matter still be subject to certain amendments?

MR. MONSOD. Yes, but I believe he withdrew it when we explained our position. We are always open to amendments within the framework of our concept.

MR. DE CASTRO. Then, if we can be furnished a clean copy of this formulation, we can use it so that we can be guided formally on how to make our amendments.

Thank you.

MR. MAAMBONG. To be clarified in this matter, we have presented before the committee our amendment by substitution and it is now on record. With the thinking of the committee regarding the issues which we have raised and to save time, I am hoping that the committee could reformulate, on the basis of our proposed amendment by substitution, a definite provision which we could work on.

However, I would like to ask the committee one question again. Assuming that the reformulation of our proposed amendment by the committee will be carried, would it be one section only? I ask because we have made reference to the Article on the Ombudsman, and it includes other sections which provide for its functions. We are thinking along the line that, perhaps, if the committee will agree, once the members reformulate the section, then it would only be one section and all the other provisions, like the functions of the office will have to be provided for by law. I really do not know the thinking of the committee; that is why I am asking.

MR. RODRIGO. Madam President, parliamentary inquiry. Did I hear it correctly that Commissioner Maambong had withdrawn his proposed amendment?

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MR. MAAMBONG. No.

THE PRESIDENT. Not yet.

MR. MAAMBONG. It is still on the stream.

MR. RODRIGO. Therefore, I would like to support that amendment, Madam President.

MR. DAVIDE. Madam President.

THE PRESIDENT. I believe that Commissioner Sarmiento was intending to react to the question propounded by Commissioner Maambong.

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

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Madam President.

In order not to lose time, I suggest that no reformulation be undertaken by the committee. We could work on the framework as presented, but it is to be clearly understood that it will not to be considered as a separate subdivision of the Article on Constitutional Commissions.

Let us totally disregard the heading and subheading above Section 1, and we begin to work from Section 1. And since it might be included in the Article on General Provisions, Section 2 may be treated only as the second paragraph of one single section of this particular article. There is no need really for a reformation of the entire proposed section.

MR. MAAMBONG. Madam President.

THE PRESIDENT. May we hear Commissioner Colayco first? He may have some ideas on this, and then we will call on commissioner Villegas.

MR. COLAYCO. Thank you Madam President.

When this matter was first proposed yesterday, I assured the committee that I would support the proposal as it was presented, although some of my colleagues had already declared their reservations about making it part of the Article on the Constitutional Commissions. My thinking at that time was this, and I will be honest, that if the body did not approve the proposal as worded in Proposed Resolution No. 539, I was going to move that it be a mandated commission. After hearing the brief explanations of the committee, personally, I am willing to go along. In other words, the commission will still be a constitutional commission but not a separate constitutional commission.

MR. VILLEGAS. Madam President.

THE PRESIDENT. Commissioner Villegas is recognized.

MR. VILLEGAS. Madam President, this is just to present an analogous situation. The Central Monetary Authority, which we approved in the Article on National Economy and Patrimony, is a mandated body which Congress cannot dissolve at will, and is independent of the President. That is precisely why we wanted a Central Monetary Authority. So, more or less, that could be the analogous situation that would support the committee's views.

MR. SARMIENTO. May we know if the manifestation of Commissioner Davide satisfies COMMISSIONER DE Castro; that is, we start with this article or this draft as presented by the committee so as to save time?

MR. DE CASTRO. As we have stated, this independent body will have to be created by law to include its functions and the removal of the officers thereto, so, it will be quite difficult if we follow the formulation in Sections 1, 2, and 3 of the Proposed Resolution No. 539. So, I would then support the motion of Commissioner Maambong that there be an independent body, like the Commission on Human Rights, to be created by law.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. There is, in fact, an unresolved question which I presented to the committee. The question was: In the reformulation of the committee, would this provision be another section or would it cover also functions, duties and others, like the Ombudsman? On the assumption that would be so, I suggest that the proposed section which we have presented before the committee be the lead section that will be amended without making reference to the present formulation because it would only confuse us. At any rate, this section that I am presenting can be amended anytime. We can add, deduct, and, for purposes of clarity, make reference to the sections which are now in the committee report.

Would it be a one-section thing or would it be several sections?

MR. SARMIENTO. It will not be a one-section thing. If we will note the Article on Accountability of Public Officers, when we created the Sandiganbayan, we enumerated its powers and functions, but it was not a one-section thing. Maybe we can have two or three sections on this independent body known as the Commission on Human Rights.

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THE PRESIDENT. Commissioner Maambong's proposed amendment poses a very basic question.

MR. MAAMBONG. Yes, madam President.

THE PRESIDENT. The proposed amendment of Commissioner Maambong is to the effect that is Congress

which shall create, whereas it is the sense of the committee that the creation of this body be already enshrined in the Constitution.

MR. MAAMBONG. Yes, I was about to go into that by suggesting to the committee that perhaps we should ask the commission itself to determine at first blush whether we should have this body created by the Constitution or whether it should be created by Congress. That is precisely why I want the first motion I presented earlier to be clarified. I do not know what is the thinking of the committee on this matter.

MR. SARMIENTO. It will be created by the Constitution, not by Congress. Commissioner Monsod explained why it should be shielded from the executive power or from political interference. There was the manifestation made by Commissioner Villegas. It should be similar to that independent body, the Central Monetary Authority.

MR. MAAMBONG. I understand that.

THE PRESIDENT. In other words, the committee does not accept the proposed amendment of Commissioner Maambong as formulated.

MR. MAAMBONG. Yes, that is quite clear. That is why I was thinking whether we should submit that issue to the body first because that is basic to all the provisions which we will formulate later on.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. Madam President, I would like to say a few words in favor of the amendment proposed by Commissioner Maambong. I am afraid that, like the Ombudsman which I also opposed, this office will be a paper tiger if we make it independent of the President. Its powers are merely to investigate and to recommend.

Let us visualize this office, if it is created by the Constitution. When the Constitution is approved, we will need an implementing act to create this office, and especially an appropriation for this office. It will be an office segregated from the President. The appropriation will be for the three commissioners, for personnel, office equipment and office rental. The office will be in Manila. Human rights violations occur all over the Philippines, Madam President. Who will investigate human rights violations in Mindanao, in the Visayas, Northern Luzon and in Bicol? There are only three Commissioners, so are we going to give them branch offices everywhere? This will be very expensive. So, they will have to depend on the present investigating agencies of the government which are under the President. But since this office is segregated from the President, it will have no power to compel police agencies or fiscals to investigate and to prosecute. So, it will just be a paper tiger. As I said of the Ombudsman, we will just again be raising the hopes of our people—false hopes— that here, at last, is an office and we will solve human rights violations.

I do not know why we seem to have lost all our confidence in the President and also in the members of our Congress. We refer to them as politicians, and we say we cannot trust politicians. But remember that these politicians will be elected by the people. They are representatives of the people. We seem to have developed a paranoia just because of one Marcos. That is my basic objection to this. So, I favor the proposed amendment of Commissioner Maambong. Let Congress, composed of elective officials elected by the people, enact the law creating this office and let it be under the executive department. Otherwise we will be again creating another office which is a paper tiger. We will spend the money of the people uselessly. Public funds will be appropriated for an office which is only in Manila.

Furthermore, we will just be raising false hopes among our people. We do not want to disillusion them anymore.

Thank you.

MR. RAMA. Madam President.

THE PRESIDENT. Commissioner Rama is recognized.

MR. RAMA. I think one of the basic questions that we should answer is whether or not the Commission on Human Rights is necessary and whether it should be placed in the Constitution.

Let me call attention to the fact that all over the world, there is a very grave concern for people whose human rights have been violated. This crime has been considered an international crime. We will notice that there are now international organizations on human rights and that even the biggest and the most prestigious institutions and foundations have granted awards to those people who fought for human rights. Therefore, it is necessary that we should recognized the importance of human rights and the Commission on Human Rights or a body on human rights to be included in our Constitution. That is the point precisely of the committee. We cannot just ignore this very important problem on human rights which is now the concern all over the world because of the brutal violation of humanity by dictatorships and other agencies. Therefore, as far as that is concerned, we should recognized the importance of a body on human rights.

There is no basic conflict, Madam President, because Commissioner Maambong, as well as the committee, has agreed that it need not be a constitutional commission with the rights and powers and the status of the other constitutional commissions, like the COA and the COMELEC, but definitely we should include it in the Constitution.

That is the only basic problem and the committee has agreed to that. So, there is no basic conflict. It is a matter of definition of what are the powers. Therefore, I agreed with Commissioner Davide that in the meantime that we have formulated a policy on the status of that body, we may continue the amendments to the rest of the section, which merely defines the function and the qualifications of the members of this commission.

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MR. MAAMBONG. Madam President.

THE PRESIDENT. Is Commissioner Nollado still here?

Is Commissioner Rodrigo through?

MR. RODRIGO. No, not yet, Madam President. There is no disagreement that we should have such an office, such a body. Call it an office. Call it a commission. I also agree that we must have a provision in the Constitution. That is precisely the proposed amendment by Commissioner Maambong; that we enact a provision in the Constitution mandating Congress to create that body. So, there is no disagreement on that. The disagreement, as far as I am concerned, is in isolating this office or this commission from the President,

but, at the same time, not giving this commission enough power to act on its own but merely to investigate violations all over the Philippines, without any personnel of its own. It will have to depend on the personnel in the executive department which is under the President but is segregated from the President.

MR. COLAYCO. Madam President.

THE PRESIDENT. Commissioner Nolleto is recognized.

MR. NOLLEDO. I am giving way to Commissioner Colayco. I will just speak after Commissioner Colayco.

MR. COLAYCO. Just one clarificatory question for Commissioner Rodrigo.

THE PRESIDENT. Commissioner Colayco is recognized.

MR. COLAYCO. Earlier the Commissioner gave me the impression that he was against the entire idea because he was talking about the "toothless tiger," the way he also talked about the Ombudsman. But afterwards he said that he had no objection to the principles.

MR. RODRIGO. No, as a matter of fact, I am in favor of the proposed amendment of Commissioner Maambong which proposes a provision in our Constitution to mandate Congress to create this body. My disagreement is in the status of the office. What is the status of this office? Will it be segregated from the President but, at the same time, not have powers to act on its own? My stand is that it should be an office within the executive department, so that it can get the cooperation of the whole executive department in investigating cases all over the Philippines and in prosecuting or recommending the prosecution of those cases anywhere in the Philippines. We already have the offices and the personnel under the executive department all over the Philippines for this.

MR. COLAYCO. The Commissioners' main objection then is the mechanics suggested by the committee in effecting the protection intended for those who are victims of violations of human rights.

MR. RODRIGO. It is not only the mechanics, but it is also the form. I said form because I do not know what this is. If we create an office it should be either under the judiciary or the executive or the legislative, but this one will be in limbo. It is not even a constitutional commission.

MR. COLAYCO. The Commissioner's earlier objection was that the Office of the President is not involved in the project. How sure are we that the next President of the Philippines will be somebody we can trust? Remember, even now there is a growing concern about some of the bodies, agencies and commissions created by President Aquino.

MR. RODRIGO. If that is the case, how sure are we that the members of the commission are people we can trust. At least the President is elected by the people.

MR. COLAYCO. Yes, but the President will be the one who will be handling the whole commission, and he can get away with anything he wants.

MR. RODRIGO. Why we can we not trust the President, elected by the people, and we seem to be putting more trust on a commission composed of three people, appointed by the President?

MR. COLAYCO. I will leave it to the body.

MR. MONSOD. Madam President.

THE PRESIDENT. The committee desires to react now. Commissioner Monsod is recognized.

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MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. We also want a commission to function even under the worst circumstance when the executive may not be very cooperative. However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from the Commissioner Rodrigo on how to reconcile this. We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.

MR. NOLLEDO. Madam President.

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDO. I would like to speak for two or three minutes against the amendment.

THE PRESIDENT. The Commissioner may proceed.

MR. NOLLEDO. Thank you.

I beg to disagree with Commissioner Rodrigo that the Commission on Human Rights is a paper tiger. I have some amendments here that would strengthen the powers of the Commission. In my No. 3 amendment distributed to the Members of this Commission, I wanted to add after the word "measures" on line 7, page 2, an amendment that will give the Human Rights Commission the power to provide appropriate legal measures which may include injunctive relief and issuance of the writ of habeas corpus. I heard the same arguments from Commissioner Rodrigo when he talked against the creation of the Ombudsman.

His argument seems a broken record. He said that we are suffering from a paranoia which is understandable and he wants to leave to Congress the power to create. Why do we have to pass the buck? He wants to mandate the Congress the power to create. Why do we have to pass the buck? He wants to mandate Congress to create the body similar to the Human Rights Commission now under consideration. I think we should not pass the buck to Congress. We should not miss that golden opportunity of creating this very important body based on the sad experiences we had during the Marcos regime. We are learning lessons from history. But if we remain adamant by not adopting remedies to avoid the condemnable practices of the past regime- I refer to the Marcos regime- then history repeat itself. We will, in the words of Commissioner Aquino, be judged harshly by the future generations.

Madam President, for many years during the Marcos regime, human rights were abundantly violated. Even in the present regime, we still have these violations. Commissioners Rodrigo, Rama and I were victims of the violations of human rights when, without previous charges, we were sent to jail. The concern for the protection of human rights is worldwide as indicated by Commissioner Rama. The provisions on the constitutional authority known as the Human Rights Commission underscore the need to strengthen a mechanism that will truly protect human rights and vindicate victims of violations thereof.

I have filed a resolution to include in the Declaration of Principles a provision that the State will respect the dignity of the human personality and guarantee full respect for human rights. A nation which does not intensely value human rights does not deserve the respect of other freedom-loving nations.

By setting up the Commission on Human Rights as a veritable watchdog and guardian of our people against violations of human rights, we manifest to the world our respect for human dignity and honor. I cannot understand the hesitation to set up the Commission on Human Rights just because we have other commissions already set up in the 1986 Constitution. The sufferings and the anguish of the victims of violations of human rights in the Philippines and everywhere in the world should find sympathy in the heart of everyone of us, including the heart of Commissioner Rodrigo who himself suffered in jail by reason of the abundant violations of human rights during the repressive Marcos regime. 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 will effectively enforce the rules designed to uphold human rights.

Thank you, Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. Madam President, Commissioner Maambong proposed the substitution of this proposed Article on Commission on Human Rights to one section, probably to be inserted in the General Provisions. Commissioner Davide suggested that we continue the amendments of the committee draft. I believe that the Maambong recommendation for a substitute section is an a priority that deserves our prior consideration.

In line with my interpellations yesterday, I am of the opinion that this draft of the committee is not necessary because, for the protection of human rights, we have the entire machinery of government, particularly the law enforcement agencies, the prosecuting arm and the administration of justice. But if there be need to insert a section in the Constitution, then we should consider the substitute amendment of Commissioner Maambong instead of the suggestion of Commissioner Davide, because if this Commission decides for one section in another portion of the Constitution, like in the General Provisions, rather than a separate article, that issue would be in the nature of a prejudicial question.

To give, as Commissioner Nolleto claims, even injunction relief and issuance of the writ of habeas corpus, then how can this function be given to this Commission on Human Rights when this is essentially judicial? That human rights are very important, there is no question. That violations must be prevented, detected and punished, there is also no question. But what is the issue now? Shall we entertain the Maambong amendment by substitution? I believe we should, because if that should be accepted by the majority, then we can limit our amendments to the substitute section proposed by Commissioner Maambong.

Thank you, Madam President.

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MR. GARCIA. Madam President, may the committee respond.

THE PRESIDENT. Commissioner Garcia is recognized.

MR. GARCIA. Thank you very much, Madam President.

Before we address the procedural question which Commissioner Rodrigo requested, I would like to touch on a very important question which I think is at the very heart of what we are trying to propose- the independence of this Commission on Human Rights. I would like to relate to the body a personal experience of mine I think is important to understand why this commission should be independent from political pressure or control.

When I was working as a researcher for Amnesty International, one of my areas of concern was Latin America. I heard a mission to Colombia in 1980 I remember the conversation with President Julio Cesar Turbay Ayala and he told me that in Colombia, there were no political prisoners. This is a very common experience when one goes to government to investigate human rights. From there, we proceed to the Procuraduria General to the Attorney-General, to the Ministry of Justice, to the Ministry of Defence, and normally the answer that one will get are: "There are no political prisoners in our country"; "Torture is not committed in this country." Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. In fact, what we are proposing is an independent body on human rights, which would provide government with credibility precisely because it is independent of the present administration. Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly. We all know how political fortunes comes and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on. Therefore, this commission plays a vital role. And, finally, as I repeatedly mentioned yesterday, there is no substitute for the formation of consciousness of a populace that is willing to stand up and defend and uphold its basic rights. This can only be included through a continuing educational program regarding human rights.

And so believe that this is necessary. I would also like to request those of us who have more experiences on how to make this more effective to make suggestions. If is true, as it stands, that it is not as effective as we would wish, then we would like to accept amendment which would precisely strengthen this office, make it a nationwide effort to ensure that human rights will be protected.

Thank you very much, Madam President.

THE PRESIDENT. I think that issue is clear.

Commissioner Maambong is recognized.

MR. MAAMBONG. Madam President, I was about to ask for the suspension of the consideration of my motion for substitution, and in its place, to put before the body the issue on whether or not the Commission on Human Rights be created as an independent body in the Constitution or created by Congress by mandate of the Constitution. But I am wondering if the committee perhaps present some amendments to the amendment by substitution which would, just the same, resolve the basic issue. The other proponents believe that the basic issue should be resolved: whether this be constitutionally mandated to be created by Congress or directly created by the Constitution.

But if the proposed reformulation of the committee will solve the issue, I think we can save time by using that kind of procedure.

THE PRESIDENT. But there are observations that have been made here to the effect that some Commissioners believe that this should be left only to Congress rather than for an office to be created in the Constitution itself.

So, I suppose that is the issue that we should present now to the body.

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MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. What we would like to suggest, as proposed by Commissioner Davide, is to put to a vote the first paragraph of the proposal of the committee. We just want to make some minor change on that, but what we want to put to a vote is this issue now.

THE PRESIDENT. The proposed amendment of Commissioner Maambong is pending before the body.

MR. MONSOD. Yes, this will be by way of an amendment by substitution of the Commissioner's proposal, but it will deal with the same issue.

What we would like to propose to a vote is the paragraph which reads as follows: "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."

That is the only paragraph that we would like the body to vote on. The understanding is that this office will not be in the same status or in the same category as the other constitutional commissions like the COA, the COMELEC and the Civil Service.

Secondly, the word "INDEPENDENT" does not preclude amendments that may be proposed by the Commissioner Rodrigo to resolve the issues that he has raised earlier on the need for cooperation and at the same time, that there is a need for some independence.

So, that is the understanding behind this, but we would like to ask the body to vote on this first paragraph which also resolves the issue implicit in the Maambong amendment.

THE PRESIDENT. What does Commissioner Maambong say since he is the proponent of this amendment?

MR. MAAMBONG. The parliamentary situation is that we have proposed an amendment which is now before the committee, and the formulation of the committee is supposed to be an amendment which we proposed.

THE PRESIDENT. Does Commissioner Maambong accept the amendment?

MS. NIEVA. May I be recognized, Madam President? May I ask for further clarification of the proposal as read by Commissioner Monsod?

THE PRESIDENT. We will first request Commissioner Maambong to make a reply.

MR. MAAMBONG. Madam President, as long as it will resolve once and for all the issue in the mind of the proponent, we accept; that is whether this Commission on Human Rights will be directly created by the Constitution or by Congress through the mandate of the Constitution.

In order to resolve to the issue, we are willing to accept that amendment to the amendment.

MR. MONSOD. Madam President, the issue will be resolved because if the body votes for this first paragraph, then it becomes a constitutional office, although it will still need an implanting act of the Congress.

MR. MAAMBONG. In other words, if the body will not vote in favor of that amendment to the amendment, it means that the body does not want the Commission on Human Rights to be created directly by the Constitution but instead it would want it to be created by Congress through the mandate of the Constitution, is that it?

MR. MONSOD. That is the implication.

THE PRESIDENT. Why do we not pose this simpler question to the body? Does the body desire to have a Commission or a Committee on Human Rights created by Congress but mandated by the Constitution or for Congress to create such a body?

MR. MAAMBONG. As a matter of fact, Madam President, that was our original formulation.

THE PRESIDENT. I think that is simpler. Those who will vote yes would mean that they are in favor that this should be left to congressional action.

MR. MAAMBONG. That would be more direct and would favor that, Madam President.

THE PRESIDENT. Does Commissioner Nieva have any question so as to guide her in her vote?

MS. NIEVA. After we have voted on this, because my question is on the qualification of the members.

THE PRESIDENT. Yes, we will take that up later.

MR. NATIVIDAD. Madam President.

THE PRESIDENT. Commissioner Natividad is recognized.

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MR. NATIVIDAD. Just one clarificatory question. If we vote on the proposal making it a constitutionally mandated office to be created by Congress, we will be able also to present amendments to strengthen that office?

MR. MAAMBONG. Definitely, madam President, we can still do that.

MR. NATIVIDAD. So, it will not prevent us because we have the impression that it will just become a section in the General Provisions.

MR. MAAMBONG. The other members of the commission will not be precluded to do that. That would be up to the committee actually because that would constitute an amendment which is only one section.

MR. NATIVIDAD. We intend to present amendments to further strengthen that body. In that case, we are clarified.

Thank you, Madam President.

MR. MAAMBONG. Yes, Madam President.

MS. ROSARIO BRAID. Madam President.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. I have similar problem. I think the issue here is that if we vote for the Commissioner Maambong's amendment, we should ensure that we have an appropriate framework within which Congress can act rather than leaving it to the Congress to set that office. So that if we vote otherwise, it means that we can proceed to tightening and strengthening the framework within which an office can operate. I think this is also in support of the amendment of Commissioner Natividad, although I would like to propose subsequent sections that would define the functions and scope of this type of commission.

MR. MAAMBONG. In that case, Madam President, I will answer the same way as I have answered Commissioner Natividad. The Commissioner is not precluded to propose additional provisions but these will be subject again to the acceptance of the committee.

MR. RAMA. Madam President.

THE PRESIDENT. What is to be decided is which is better- to have this in the Constitution or will it just be a creation of Congress?

MR. RAMA. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. Madam President, just for a clarification. If we are going to mandate Congress to establish this office on human rights and provide a framework for such a body as to the function, et cetera, we might as well, provide right here in the Constitution for such a body. Under the limitations that we would like to put, as suggested by the committee, we might as well do it here so that we can provide for all the amendments that we so that we can provide for all the amendments that we have in mind, such as the ones being proposed by Commissioner Rosario Braid, Natividad and the others.

BISHOP BACANI. Madam President.

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. Madam President, may I suggest as a compromise that we briefly say something like this: "THERE SHALL BE A COMMISSION ON HUMAN RIGHTS WHOSE FUNCTIONS, LIMITATIONS BE DETERMINED BY LAW."

MR. RAMA. Madam President.

THE PRESIDENT. Is that acceptable?

BISHOP BACANI. With this amendment, we will be creating it and at the same time leave the details to Congress; hence, we will satisfy those who want that it be created and at the same time those who are not against its creation but would like to leave the further details to the future legislature. So, I propose that amendment.

MR. RAMA. Madam President.

THE PRESIDENT. Is that acceptable to Commissioner Maambong?

MR. MAAMBONG. Madam President, in order to save time and in accordance with the suggestion of the Chair, I would rather that the issue as to whether this Commission should be directly created by the Constitution or should be created by Congress by mandate of the Constitution be resolved. And for that purpose, Madam President, to keep the parliamentary situation in order, I am now formally asking the committee to defer consideration of my amendment by substitution, and instead I am now presenting this motion before the body. I move that the creation of the Commission on Human Rights be by Congress through the mandate of the Constitution.

MR. RAMA. Madam President.

THE PRESIDENT. Commissioner Rama is recognized.

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MR. RAMA. I would like to speak against that motion, Madam President. We have forgotten the basic concept of Constitution. The basic concept and the most necessary provisions in a Constitution precisely is the structure of government and the Bill of Rights. The reason for this is that the Bill of Rights guarantees the rights of the citizens against the violations of a ruler. We have to provide certain guarantees to the citizens against the excess of the government. In the same manner, we have to have a Commission on Human Rights which would guarantee certain rights of the citizens against the excesses of the government. That is the most basic concept in the Constitution. Therefore, as to the question set forth by the Chair as to whether we should because it is part of the basic and most fundamental principle of a constitution. I think Commissioner Bernas will agree. It is just proper and necessary because of our experience and the trend in the world today wherein human right is a concern of many international organizations.

THE PRESIDENT. That has been the subject of all the observations that have been given here this morning. Is there anybody else?

MR. MONSOD. Yes, Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. May we request a vote at this time with the understanding that a vote of yes is a vote for the Maambong amendment and a vote for no is a vote for the committee's position.

MR. MAAMBONG. I will further clarify that.

THE PRESIDENT. Please restate the motion.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Parliamentary inquiry. Does it mean that whatever would be the vote would not preclude the presentation of subsequent amendments?

THE PRESIDENT. I think that is understood.

MR. DAVIDE. Thank you.

THE PRESIDENT. That has been clarified.

MR. MAAMBONG. May I restate the motion?

THE PRESIDENT. Please restate the motion now.

MR. MAAMBONG. I move that the Commission on human Rights be created by Congress by mandate of the Constitution and not to be created directly by the Constitution. And I would like to clarify this motion by

saying that those who are in favor of this motion will actually be saying that they would like this Commission on Human Rights to be created by Congress upon mandate of the Constitution.

THE PRESIDENT. Commissioner Concepcion is recognized.

MR. CONCEPCION. Madam President, I do not agree with the alternative. I think we should vote only on the question of whether or not the Commission on Human Rights shall be created either as recommended by the committee or the amendment of Mr. Maambong. But the consequence of the voting is a different thing. A negative vote on this question does not mean that it is an affirmative vote on the other alternatives suggested. We vote on whatever the Commission wants to settle. We vote yes or no. If the vote is negative, we should discuss the other alternative.

THE PRESIDENT. But what is before us now is the proposal or the motion of Commissioner Maambong to the effect, in brief, that it should be created by Congress.

MR. CONCEPCION. What I object to is that a vote which is adverse to the point voted on, will constitute an affirmative vote for some other point.

MR. MAAMBONG. Madam President, I accept the amendment. And so the motion would be that the Commission on Human Rights should be created by Congress under the mandate of the Constitution.

BISHOP BACANI. May I just ask Commissioner Maambong one question.

Since there is no doubt in the Commissioner's mind that such a body should anyway be established, I just like to ask whether or not the Commissioner wants this Constitutional Commission to have the honor of establishing that body, because there is no doubt whatsoever in his mind that he wants it to be mandated by this Constitution, that such a body should be established by Congress. And so, would he not rather have the honor to do that here? That is why I proposed that amendment. We can leave the further determination of the membership, functions and limitations of this commission to the enabling law.

MR. MAAMBONG. The Gentleman is correct in that I am in favor of the creation of the Commission on Human Rights, but in this Constitutional Commission we have actually two options; either we create it directly in the Constitution itself or we mandate Congress to create it for us. And that is precisely the point proposed by the Chair to which we agree.

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THE PRESIDENT. Which is now before the body; that is clear.

BISHOP BACANI. That is why I am asking the Commissioner whether or not he wants the honor of having it actually established.

VOTING

THE PRESIDENT. Commissioner Maambong has already answered that in the negative. So, that is clear now in the minds of everybody.

As many as are in favor of the motion of Commissioner Maambong, please raise their hand. *(Few Members raised their hand.)*

As many as are against, please raise their hand. *(Several Members raised their hand.)*

The results show that 11 votes in favor and 22 votes against; the Maambong motion is lost.

Let us go back to the committee report.

MR. RAMA. Madam President, Commissioner Rosario Braid has registered ahead.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. Madam President.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. In view of the result of the voting, I am now formally withdrawing my motion for a substitution.

Thank you.

THE PRESIDENT. Thank you.

Does Commissioner Rosario Braid have an amendment?

MS. ROSARIO BRAID. Madam President, may I suggest an amendment to Section 1, between lines 9 and 11. it should state this way: "There shall be an independent Commission on Human Rights composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines. 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."

This is my substitute amendment which could be rephrased later, but this is the essence.

BISHOP BACANI. Madam President, may I have an anterior amendment.

MR. SARMIENTO. Madam President.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Madam President, may we request the proponents to approach the table so that we will consider all the amendments. So, we will ask for a suspension, Madam President.

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

SUSPENSION OF SESSION

It was 11:32 a.m.

RESUMPTION OF SESSION

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

THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. May I ask that Commissioner Sarmiento be recognized.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Madam President, may we ask Commissioner Bernas to sit with us as we entertain the amendments from our colleagues.

Thank you.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We would now like to propose that we go by paragraph and the committee would like to ask the body for the approval of the first paragraph which will only state the principle: "THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS." And then after that, we can go to the next paragraph.

THE PRESIDENT. Is there any objection to this particular first paragraph which has been given by Commissioner Monsod?

MR. RODRIGO. I just want to make of record my belief that an office such as this which is not granted sufficient powers of its own, if independent of the executive, will be a paper tiger.

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THE PRESIDENT. Please restate it so that we can take a vote.

MR. MONSOD. The first paragraph will state: THERE SHALL BE AN INDEPENDENT OFFICE CALLED THE COMMISSION ON HUMAN RIGHTS."

THE PRESIDENT. As many as are in favor of this particular sentence or paragraph, please raise their hand.

BISHOP BACANI. Madam President, may I introduce an amendment to that which will read: "THERE IS HEREBY

CREATED AN OFFICE WHICH SHALL BE CALLED THE COMMISSION ON HUMAN RIGHTS.”

MR. MONSOD. We accept, Madam President.

VOTING

THE PRESIDENT. As many as are in favor of this particular sentence, as amended, please raise their hand. (Several members raised their hand.)

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

As many as are abstaining, please raise their hand. (No member raised his hand.)

The results show 33 votes in favor, no vote against and one abstention; the first paragraph is approved.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Before considering the composition and qualifications of this commission, the committee would like to consider the functions first. And I think the idea of the committee is to put down some minimum functions with an opening for Congress to expand the functions. And for that purpose, the committee would like to begin consideration on the basis of Section 2, before we go back to the composition and qualifications.

THE PRESIDENT. How will it read?

MR. MONSOD. Madam President, I believe Commissioner Ople has a proposal in that regard.

MR. OPLE. May I be recognized?

THE PRESIDENT. Commissioner Ople is recognized.

MR. OPLE. Thank you, Madam President. I would like to propose an amendment to subparagraph 1 of Section 2, line 22, in the form of an additional clause following the phrase “private parties.”

May I read the whole paragraph, as proposed to be amended: “Investigate all forms of human rights violations committed by public officers, civilian and military authorities, or by private parties INCLUDING THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION OR INSURRECTION.” And if the committee will kindly allow me, I would like to state very briefly the reason for this amendment.

The Armed Forces of the Philippines, through its Chief of Staff, General Fidel Ramos, has time and again expressed strong reservations concerning a human rights policy that shuts itself to violations committed by forces adversary or hostile to the State. They say there must be no area of violations that should be closed to human rights inquiry, including those atrocities that may be perpetrated by rebel or insurrectionary forces.

The military, of course, is understandably the most exposed and the most vulnerable to human rights investigations in the nature of the task they have to do. But where even the conceptual application of

human rights standards to their adversary forces is denied from the start, as though this were a sacrosanct and impenetrable area of concern, the effect is highly demoralizing.

There are already reports, Madam President, that the efficiency of the AFP might be impaired where they have to exist in fear of prosecution for human rights violations while their adversaries are exempt from such inquiry and immune to such risks.

This amendment, therefore, enters the caution that the "private parties" designated here in this subparagraph who may be liable will not mean that if violations are committed by forces adversary to the State, they are exempted from responsibility as "private parties". This will ease a great burden on the minds of soldiers defending the Republic, that the human rights policy of the Constitution is discriminatory and unfair to them, while creating a zone of immunity for others, and will also put undisciplined forces outside the military on notice that the arm of the law in the Philippines with respect to human rights violations recognizes no barriers.

So, I seek the committee's kind consideration of this proposal, Madam President.

THE PRESIDENT. What does the committee say?

MR. DAVIDE. Madam President.

THE PRESIDENT. Can we have the reaction of the committee on this?

MR. GARCIA. Madam President, I would like to make a few comments.

THE PRESIDENT. Commissioner Davide is recognized.

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MR. DAVIDE. I am seeking to introduce amendment to the Ople amendment, but I believe that the committee would still react.

MR. GARCIA. Would the Commissioner would like to speak first?

THE PRESIDENT. Commissioner Davide is proposing an amendment; the Gentleman may proceed.

MR. GARCIA. I would like to react to the proposed amendment of Commissioner Ople.

This debate about the scope of the Human rights Commission has been a long one. In fact, if one has followed the discussions between the armed forces and the present Committee on Human Rights, I think the conclusion of the committee is rather clear. In fact our committee is also divided on this point. Perhaps, the body should resolve this. All crimes are violations of human rights in many ways. But the precise idea of the Committee on Human Rights is that we have to try to investigate those violations of political and civil rights where remedies are nor feasible, where the victims do not have ready access to legal remedy. And so, if we include in the scope of this committee, crimes committed by lawless elements, outlaws or insurgents, we will then be duplicating the functions of ordinary courts and fiscals because all crimes, for example,

kidnapping and murder, are punishable by the courts and these can be prosecuted by fiscals. Secondly, even if we put this under the scope of the existing Human Rights Committee, we will find it extremely difficult, if not impossible, to actually prosecute because they are not recognized as legitimate forces. For example, in the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, the signatories are state signatories. In fact, the entity that is supposed to make sure that the rights of the citizens are respected is the State, and they have all the forces of law and the armed forces to make sure that these rights of all the citizens are respected. And if there are violations, they are precisely supposed to go after those who have committed the crimes. Therefore, we have an existing system of justice- ordinary courts and fiscals- to prosecute these crimes, but Human Rights Commission has a very precise purpose. Those who do not have ready access to justice nor ready access to legal remedy are supposed to be helped by this commission.

MR. OPLE. Madam President.

MR. DE CASTRO. Madam President.

MR. OPLE. May I reply briefly to the points made by Commissioner Garcia. I think this Commission Garcia. I think this Commission is right in creating an independent office to be known as the Commission on Human Rights, first of all, because this proclaims a national commitment not only to punish violations of human rights but also to deter the violations of human rights no matter who committed them. It is true that when, let us say, rebel forces commit an atrocity, probably these crimes would correspond to certain violations of the Penal Code or the criminal law. But why do we hesitate to put upon such crimes- obviously, political crimes- the stigma and the moral deterrent of the designation of such crimes as also human rights violations? Secondly, we are not saying that the violator of human rights on the part of such forces will be immediately accessible. Members of the military will, of course, be more accessible but certainly the moral force of this deterrent effect of acknowledging a stigma of human rights violations also on those atrocities perpetrated by what I call adversary forces or those hostile to the State. We are not saying that they will be immediately brought to the fiscals and the courts. The times may not yet be propitious for that but facts can be gathered; witnesses, if they dare to come forward, can be encouraged so that there is a record of this violation of human rights in the Human Rights Commission. And the Human Rights Commission may then make the appropriate recommendations.

Madam President, I also recognize that rebel forces are not signatories to the International Convention of Civil and Political Rights; neither are they signatories to any international treaty which has the force of law in our own country. But the Philippine State is not prohibited thereby from exercising its jurisdiction and enforcing the law and a symmetry of justice that recognizes no barriers, whether these barriers are ideological or military in the character at this time. And, therefore, I think, in the interest of constitutional symmetry, justice and security, I would like to submit that this is a very proper and necessary amendment.

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. May the proponent agree to an amendment to his amendment?

MR. OPLE. May I respectfully listen to the propose amendment.

MR. DE CASTRO. I will say: "INVESTIGATE ALL FORMS OF HUMAN RIGHTS VIOLATIONS INVOLVING CIVIL AND

POLITICAL RIGHTS." We shall refrain from enumerating "public officers" and so on. This, I believe, will include everybody, even members of this commission.

MR. OPLE. So that we do not have to face this painful choice, Madam President.

MR. DE CASTRO. Yes, because the more we enumerate, the more there will be exclusions of certain enumerations. With this amendment, there will be no exceptions, whether they be the military, police, civilian or whoever they are. As I said, it will include every member of this commission.

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FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. May I just make an observation on the amendment of Commissioner Ople before we decide on the amendment to the amendment? The observation I would make would be a technical one which, I think, in the context of existing jurisprudence in criminal law, might make this amendment of Commissioner Ople self-defeating. In the present jurisprudence in criminal law, when there is a charge of rebellion, all other offenses are swallowed in the charge of rebellion. So that if we connect violations of human rights with rebellion, under the present jurisprudence, we will have to ignore the specifications of violations of human rights and pay attention only to the single crime of rebellion because rebellion absorbs everything else. Whereas if we do not connect this with rebellion, then we can go after the human rights violations of the rebels without having to tag them as rebels. But if we connect human rights violations with rebellion, then the defense would be: "I am charged with rebellion" and that absorbs everything else.

MR. OPLE. Madam President, may I just call the attention of Commissioner Bernas to the fact that rebellion is not a condition sine qua non for a rebel committing a violation of human rights. We just raise him to the level of responsibility and accountability of every other citizen who may commit such violations of human rights. It is not a necessary condition and it does not even have to provide the essential context to the violations of human rights contemplated in this subparagraph.

FR. BERNAS. The problem I see, Madam President, is that by the very fact that we mentioned "including those who may be engaged in acts of rebellion," we are using "rebellion" in fact as the context; and once we use "rebellion" as the context, then the context colors everything else.

MR. OPLE. The name "rebellion" or "insurrection" here, I think, casts a constitutional net so that violators of human rights among these forces, let us say, engaged in an armed insurrection may refer not to actual conditions of combat. An example is what the armed forces do at times wherein perhaps because of misplaced orders or loss of control and discipline; they massacre some people who are innocent. Then that, I think, creates a violation of human rights which can be segregated and proceeded against independently as a violation of human rights that this Human Rights Commission can take cognizance of.

FR. BERNAS. The problem I have is the language of the proposed amendment.

MR. OPLE. I am willing to listen to an amendment to improve the language.

FR. BERNAS. Because the language of the amendment says "INCLUDING THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION." So, the Gentleman is, in fact, making the acts of rebellion as the context for this addition. If we just take that out, everyone else comes under "private parties." So, even the rebels come under "private parties" and we do not have to take the act of "rebellion" as the context because the moment we do, the defense will come up with the argument that the act of "rebellion" is the context.

MR. OPLE. Does the committee subscribe to this construction just made by Commissioner Bernas?

MR. DE CASTRO. Madam President, I have a proposed amendment to the amendment.

THE PRESIDENT. Is the proposed amendment of Commissioner de Castro accepted by Commissioner Ople?

MR. OPLE. Yes, Madam President.

MR. DE CASTRO. This will exclude enumeration of people and parties.

MR. OPLE. My answer will probably depend on the committee's collective response to the question that I just put to them.

MR. RAMA. Madam President.

THE PRESIDENT. Yes, because it affects the formulations made by the committee.

MR. RAMA. Madam President, Commissioner Aquino would like to be recognized.

MS. AQUINO. Madam President, I would just like to volunteer some observations on the proposal of Commissioner Ople. I am apprehensive that the proposed amendment has a very myopic focus on the problem of human rights. In fact, I think the emphasis is a bit askew. When we speak of human rights, we speak of an improper balance of power between the masses and the State such that traditionally and historically, human rights are best appreciated in the context of state and institutional violence where the masses lay destitute and powerless. Even in the context of cotemporary political theory, they are known to have surrendered a certain measure of their personal liabilities in favor of the State if only to yield to the requirements of social order and regulations.

When we speak of state violence, we think of the people who, sundered from the seats of power and gasping in forlorn fashion over futile ideologues, become reservoirs of hate and bitterness whenever they feel the institutionalized state violence being perpetrated by the powers-that-be. So, we speak of human rights in the context of the State which has the unchallenged monopoly of the legal use of force. This is the kind of imbalance that is sought to be corrected by a human rights commission which is being proposed by the committee.

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THE PRESIDENT. Is Commissioner Ople insisting on his amendment after the explanation?

MR. OPLE. I am waiting for the response of the committee, but in the meantime, will the Chair allow me to reply briefly to Commissioner Aquino's points?

THE PRESIDENT. Please proceed.

MR. OPLE. Yes, there is no question that when we speak of human rights, the main concern is that of an overpowering and, perhaps, overbearing State violating, through any of its instrumentalities, the political and civil rights of presumably helpless citizens. There is no question about that, and I would like to say that the reason that I think providing for an independent office to be known as the Commission on Human Rights is an excellent decision is that this all-powerful and overbearing State must be countered and be put under reins through mainly the moral and legal force of a nation exemplified in the Commission on Human Rights.

But I merely put it to the Commission to understand that the armed forces says that about 17 percent of all the villages in this country have now come under the influence, if not control, of insurrectionary forces, and whether we believe them or not, the reports are there showing that some of our brothers engaged in this armed struggle against the State committing their own excesses. And recently, an NPA commander in Cagayan de Oro City and Misamis Oriental did publicly apologize and offer reparation to some civilians who lost their lives probably because of a failure of control in discipline.

If we do not make an attempt to satisfy the sense of lopsided justice in terms of human rights, knowing the hurts suffered by some of our own soldiers now, then the result is demoralization and since the committee, in my previous consultations with them, candidly admits the private parties cover violations of human rights also by these inimical forces, what I wanted to find out was the reason for hesitating to make this explicit.

I have listened to Commissioner Bernas and I think his point is valid, but I am waiting for the committee to respond.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. The committee would like to say that it prefers the amendment presented by Commissioner de Castro because it gives much leeway; it is all-embracing, and Congress will really have the chance to specify what will be the scope of the jurisdiction of the power of the proposed Commission on Human Rights.

MR. DE CASTRO. Thank you.

MR. OPLE. Madam President, I was looking for a symmetry and Commissioner de Castro has now proposed a kind of symmetry by the deletion of the enumeration of various parties, public or private, that will fall within the scope of the investigation of human rights violations. Nevertheless, by eliminating this enumeration of "public officers, civilian and military authorities or by private parties," if it is understood that the purview of the Commission on Human Rights extends to all citizens whoever they may be and whatever pursuits they

may be engaged in, then I will be willing to yield to the amendment of Commissioner de Castro.

MR. SARMIENTO. Madam President, those are not excluded, but, as Commissioner Foz said, we will leave it to Congress.

MR. REGALADO. Madam President.

MR. RAMA. Madam President.

MR. OPLE. But the principle of universal application of the human rights policy is not denied by the committee.

MR. SARMIENTO. Yes, Madam President.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DELOS REYES. Madam President, I would just like to comment on the statement of Commissioner Bernas when we speak of rebellion, other crimes are swallowed. Perhaps, what he meant was that all other crimes are absorbed. It is true that there is no such thing as a complex crime of the rebellion with murder or rebellion with arson and, in that sense, other crimes are absorbed. But these crimes committed independently or rebellion amounting to torture, are certainly not absorbed by rebellion but are independent crimes which can be prosecuted independently.

And I think there should be a balance in the investigation by the proposed Human Rights Commission. Doon po sa amin, ang mga NPA ay kinuha ang isang PC na nabalitaan lamang nilang nang-aabuso. At sa harap ng kanyang pamilya, pinahirapan at pinatay. Iyan po ba ay bahagi pa ng rebellion? Sa palagay ko ay abuso na iyan. That is already a human rights violation.

Isang pulis ang nagkakagusto sa isang babae, subali't nang hindi sila magkasundo, inihabla ng rape ng babae iyong pulis. Iyong kapatid ng babae na sumama sa NPA ay kinuha ang pulis at pinutol iyong kanyang "organ." Is that still part of rebellion that can be swallowed or absorbed by rebellion? That is human rights violation.

But the important thing is that when this Human Rights Commission investigate cases, it will publish all the abuses of the military, thereby presenting a very bad image of the military. But if we place there the amendment of Commissioner Ople, stating that this will include violations by people who are engaged in acts of rebellion, then there will be a balanced investigation and reporting and people will see not only the abuses of the military but also the abuses of these people who seek to overthrow our government.

Thank you, Madam President.

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

THE PRESIDENT. Commissioner Concepcion is recognized.

MR. CONCEPCION. Thank you, Madam President.

To start with, I would like to propose an amendment to the amendment and that is simply to add the words "PRIVATE PARTIES WITHOUT DISTINCTION" and I will explain, if the Chair will permit me.

As I understand, it, the Commission on Human Rights is not in charge of prosecuting violations thereof. It should be more interested in determining where and why human rights are violated and recommending measures to forestall such violations.

I hope that the Commission on Human Rights would undertake studies and provide statistics therefore. As regards violations committed by the military or the civilians, the prosecution of violations and their punishments is the function of the prosecutors and ordinary more important public service by devising means and ways to prevent or minimize violations regardless of who the violators are.

Thank you.

FR. BERNAS. Madam President.

THE PRESIDENT. Does Commissioner Regalado still want to say something?

MR. REGALADO. I just want to support the statement of Commissioner de los Reyes that the use of the word "rebellion" here absorbs all other crimes that may have been committed by the rebels on the occasion thereof. That was the old case of *People vs. Hernandez* applying the doctrine of pro reo and which, as a matter of fact, was penned by Justice Concepcion. But subsequently in the cases of *People vs. Geronimo* and *People vs. Taruc*, it was clearly stated that any other offenses committed by these adversary forces are on the occasion of acts of rebellion. Of course, I take issue here with the word used, "of rebellion or insurrection," which after all mean the same. But if the purpose of Commissioner Ople is really to underscore this concern which has been articulated even by the Chief of Staff, General Ramos, in the matter of his comment on the Presidential Committee on Human Rights which seeks to investigate soldiers but not the rebels, and if he will really insist on this and it is acceptable to the committee, then we can just state there "CRIMES AGAINST PUBLIC ORDER," which would involve rebellion, sedition, tumultuous disturbances and not only rebellion per se.

MR. CONCEPCION. Madam President.

MR. REGALADO. Although all other crimes committed in connection therewith or on the occasion thereof are always separately punishable, the doctrine of pro reo does not apply there.

FR. BERNAS. Madam President.

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THE PRESIDENT. Let us first hear Commissioner Concepcion who desires to explain.

MR. CONCEPCION. I would simply make this observation. The more we specify the offenses that are included, the more we limit the function of the Commission on Human Rights under the theory that when a specification is made, all those not specified are excluded. So it would be better not to mention what particular crimes are intended or what we have in mind. We simply leave it to the commission because their function is broad enough, particularly if we add the phrase "ALL PARTIES WITHOUT DISTINCTION" or a phrase of a similar nature. So we would broaden rather than limit the ambit of our intendment with the phrase "those committed in connection with" or as a means necessary for the commission of the crime of this or that. This would exclude all other crimes or offenses.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. That is precisely the reason why we would like to avoid any mention of any crime so that we do not have to go through any trouble of trying to determine whether or not the violation of human rights was done in furtherance of rebellion. So we would like the focus to be on the violations of human rights. It is for that reason that we think the proposal of Commissioner de Castro gives us that proper focus. The focus is not so much on any particular crime or crime in general but on the violations of human rights.

THE PRESIDENT. I think that is acceptable to Commissioner Ople.

MR. OPLE. Madam President, the response of the committee to my question as to the purview or the scope of human rights violations within the jurisdiction of the Commission on Human Rights has not been very satisfactory. I think there is a tendency to evade the issue of whether or not human rights violations committed by forces inimical to the State are encompassed within the purview of the Commission on Human Rights by the term "private parties."

FR. BERNAS. I think the committee is clear that is covered by the term "private parties." What we are trying to avoid precisely is any language that would tend to connect it to any specific crime especially if we connect it with rebellion because we may have to go through the trouble of determining whether it was done in furtherance of, or independently of, rebellion. But, certainly, "private parties" would cover the rebels since they are not public officers; they are not civilian or military authorities. And, again, it is for that reason that I think the amendment of Commissioner de Castro is preferable because the focus is on the violation and not on the violator.

MR. OPLE. May I hear the final official position of the committee through the chairman of the committee. Is this construction supported?

THE PRESIDENT. That is, whether the term "private parties" include rebels, insurgents...

MR. OPLE. Yes, precisely the point just made by Commissioner Bernas.

MR. SARMIENTO. Madam President, the committee is divided on this issue, so may we hear the side of Commissioner Garcia.

MS. NIEVA. Can I just ask for a clarification, Madam President?

Yesterday, I asked the question: What did "private parties" include? And it was made clear to me that it included all sides- leftists, rightists, centrists, rebels, sects and any private groups. So, I am now a little bit perturbed because it is in the minutes, and that was clarified to me by Commissioner Sarmiento.

MR. SARMIENTO. Yes, Madam President. That was my reply to the query made by Commissioner Nieva, but Commissioner Garcia would like to make his observations on this issue.

MR. GARCIA. Madam President, I would like to clarify. What Commissioner Nieva observed is correct. The committee report, in fact, says "all parties" which includes different groups. What I have tried to present this morning is precisely the long debate on the issue of human rights being followed by the existing Presidential Committee on Human Rights created by the present government. In other words, they have themselves discussed this issue and the conclusion is precisely that all crimes, in one way or another, are violations of human rights, punishable by courts and prosecuted by fiscals. If we are going to suggest that crimes by all these groups are going to suggest that crimes by all these groups are going to be committed, the committee will be constrained to pursue so many of these different crimes, rather than go to its essential task which is to go after crimes where victims do not have ready access to legal remedy. Following the philosophy enunciated by Commissioner Aquino where the government, which has the monopoly of legitimate power, controls the legal system and is also armed to punish crimes, they can thus pursue cases through the ordinary courts of law. We are admitting that there are violations of human rights committed by rebel forces, but what we are saying is that the commission we are creating is precisely to enable ordinary citizens to have access against all the forces of the State. So, I am stating the actual position of the committee.

MR. OPLE. Madam President.

MR. GARCIA. Secondly, to give the international context, when I headed the Commission of Amnesty International to Colombia, I remember the very first statement made by President Julio Cesar Turbay Ayala of Colombia on January 16, 1980. He said:

Before you investigate the human rights violations of my government, because there are no political prisoners in my country, why don't you go after the crimes committed by the guerillas?

In other words, that is normally the answer of government. And, therefore, Amnesty International's response was, because the state parties are signatories to the human rights covenants and instruments, they are the ones who must be responsible for human rights to be respected in their countries. And unless they are willing to give legitimate recognition to the rebel forces, then the commission cannot go after them. What governments should do is to make sure that these crimes are punished in the ordinary courts.

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MR. RAMA. Madam President.

MR. MONSOD. May the committee respond?

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. With all due respect to the opinion of Commissioner Garcia, who is not a member of the committee, the position of this committee is what is stated in the report- that it would include offenses by government and military officials as well as of private parties. Our acceptance of the proposal of Commissioner de Castro is merely to give flexibility to Congress and the commission to determine the priorities of their work; but in terms of the scope, the committee report is very clear.

MR. OPLE. If that is the case and the sponsoring panel is not united on this point, I am considering to decline the amendment of Commissioner de Castro and to ask the committee whether it is their pleasure to put my amendment to a vote.

BISHOP BACANI. Madam President.

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. I think all the members of the committee are united; Commissioner Garcia is not a member of the committee.

MR. OPLE. I am speaking of the sponsoring panel, Madam President.

BISHOP BACANI. That is why. Before, I thought that they were all members of the committee. My point was to ask the committee even before any voting takes place to show many of them agree with the opinion of Commissioner Garcia, so we would really know the sense of the committee. But it is now very clear that the committee's sense is really the same as it was yesterday, and Commissioner Garcia, therefore, even though he is a member of the sponsoring panel, is not in accord with the committee.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. It is the sense of the committee that when we use the term "private parties," we really want to make it clear that aside from those mentioned in the enumeration, all other parties may be offenders or violators of human rights and, of course, it is so general that it covers even the amendment of Commissioner Ople when it says, "THOSE WHO MAY BE ENGAGED IN ACTS OF REBELLION OR INSURRECTION AGAINST THE STATE."

MR. OPLE. Thank you very much.

MR. FOZ. And this was precisely raised by Commissioner Nieva yesterday during the interpellations and it was very clear.

MR. OPLE. With that categorical reiteration of the definite intent of the committee, I now would like to accept the amendment to my amendment by Commissioner de Castro.

THE PRESIDENT. So that what will be submitted to the body for a vote is the amendment of Commissioner de Castro.

MR. RAMA. The body is ready to vote.

MR. DE CASTRO. Madam President, may I just have a word please? I am very thankful to the committee and to Commissioner Ople for accepting my amendment to the amendment, but I would like to inform the body that since the creation of the Human Rights Commission, the military has always felt that it is always directed to them. When I saw Justice J.B.L Reyes and Madam Avancena and they talked to me about human rights, I told them that this is principally directed towards the military, and that my problem is how to create Human Rights Commission and remove from its function the word "military." It really is demoralizing to the military when we say that they are subjects of investigation by the commission. I found this morning the appropriate wordings to use so I can eliminate the word "military" in the formulation of the provision on the investigation of human rights violations.

Thank you.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. We have precisely manifested that we have accepted the amendment proposed by Commissioner de Castro.

THE PRESIDENT. Yes, as formulated, the proposed amendment reads this way: "Investigate all forms of human rights violations INVOLVING CIVIL AND POLITICAL RIGHTS." Is that correct?

MR. FOZ. That is correct, Madam President.

VOTING

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

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

As many as are abstaining, please raise their hand. *(One Member raised his hand.)*

The results show 34 votes in favor, none against and 1 abstention; the proposed amendment is approved.

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MR. RAMA. Madam President, may I ask Commissioner Nolleto be recognized for some information?

THE PRESIDENT. Please proceed.

MR. NOLLEDO. Madam President, I have here in my possession a statement from our separated brethren. I would like to read the last two paragraphs with the kindest indulgence of the Members of this Commission:

August 27, 1986

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.

(Sgd.) Minda Luz Quesada
(Sgd.) Ponciano Bennagen

(Sgd.) Jaime Tadeo
(Sgd.) Wilfrido Villacorta
Jose Suarez

Thank you, Madam President.

MR. RAMA. Madam president, another information from Commissioner Tingson before we suspend the session.

THE PRESIDENT. Commissioner Tingson is recognized.

MR. TINGSON. Madam President, soon after the Constitutional Commission was convened, Commissioner Tan and I filed a resolution unanimously approved by this body and implemented by the President of the Philippines to give the public franking privileges. Commissioner divide amended the said resolution so that the franking privileges would last only until August 15. But, Madam President, I am happy to inform our colleagues that I received information today that the post office will continue our franking privileges until our work here is over. This means the people can write to us without stamps and we also can do the same thing until our work is over.

Thank you, Madam President.

BISHOP BACANI. Madam President, I would like to correct Commissioner Tingson. We cannot exercise that franking privilege ourselves.

THE PRESIDENT. We can. The executive order of the President grants us the same privilege.

BISHOP BACANI. I am sorry.

SUSPENSION OF SESSION

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

THE PRESIDENT. The session is suspended.

It was 12:44 p.m.

RESUMPTION OF SESSION

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

THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President, we are still in the period of amendments.

THE PRESIDENT. Is there any pending amendment?

MR. RAMA. Madam President, may I ask that Commissioner Davide be recognized on the Article on the Commissioner on Human Rights?

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Madam President.

The first amendment is on Section 2 (1), page 1, line 20. After the word "investigate", add a comma (,) and the phrase "ON ITS OWN OR ON COMPLAINT BY ANY PARTY" followed by another comma (,).

THE PRESIDENT. What does the committee say?

MR. FOZ. May we ask the proponent to repeat the amendment?

MR. DAVIDE. On Section 2 (1), line 20, after the word "investigate", add a comma (,) and the phrase "ON ITS OWN OR ON COMPALINT BY ANY PARTY" followed by another comma (,).

MR. FOZ. We accept the amendment, Madam President.

THE PRESIDENT. Is there any objection to this proposed amendment of Commissioner Davide which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

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MR. DAVIDE. On Section 2 (2), page 2, delete the phrase "issue subpoena and subpoena duces tecum" and substitute it with the following: "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES," so that the two lines will now read: "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES to compel the attendance any party to its proceeding or the..."

MR. FOZ. What about the power to cite for contempt?

MR. DAVIDE. The amendment is only up to that part because we will retain the phrase on the power to cite for contempt. So, I would propose the following omnibus amendments: First, on line 1, substitute "issue subpoena and subpoena duces tecum" with the phrase "ADOPT ITS OWN RULES OF PROCEDURE, INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES"; on line 3, insert after the word "materials," a comma (,) and the word "RECORDS"; on line 4, delete the phrase "in accordance with"; on lines 5 and 6, delete all the words. The entire paragraph will read as follows: "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. Madam President, I thought the amendment of Commissioner Davide would cover only the first page or Section 1. I have an anterior amendment, copies of which were already distributed to the Members of the Commission.

My anterior amendment, Madam President, is to add a new Section 2 (2) after line 22 of page 1. This is coauthored by Commissioner Tingson, and takes into account the observations of Commissioner Bengzon during his interpellation in yesterday's session. The proposed Section 2 (2) will read as follows: "DEFINE THE SCOPE OF HUMAN RIGHTS VIOLATIONS WHICH SHALL FALL WITHIN ITS JURISDICTION TAKING INTO ACCOUNT THE BILLS OF RIGHTS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS."

I would like to state here, Madam President, that former Chief Justice Concepcion made a statement in this morning's session that the Commission on Human Rights may define the extent of its jurisdiction. I think it should be the commission that should be given the power to define its jurisdiction because the whole gamut of civil and political rights covers a very wide field and it is the commission itself that should be empowered to identify the cases over which it can exercise jurisdiction.

MR. FOZ. Madam President, we have a question to ask the proponent.

Is the Commissioner, in effect, granting some kind of legislative power to the Commission on Human Rights by giving it the power to define the scope of human rights violations which shall fall under its jurisdiction?

MR. NOLLEDO. It is not exactly a legislative power because it is implementing Section 2 (1) which provides that the commission has the function to investigate at its own instance or at the instance of any party all forms of human rights violations. The word "all forms of human rights violations" will constitute the basis for the commission to define the instance of violations of human rights over which it can assume jurisdiction.

MR. BENGZON. Madam President.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. I was precisely going to stand up and talk about lines 20 to 21, and with the permission of Commissioner Nolleto, I would be satisfied with the reading onto the record what we really mean by human rights violations. The way things stand now, the meaning is broad. I wanted to have a sharper focus on what these human rights violations are so that there will not be any confusion later on when a case arises and several agencies of the government might wish to have jurisdiction. For that reason, I would be satisfied with a question addressed to the committee and with an answer to the effect that these human rights violations consist of the rights as articulated by us in the Bill of Rights and in the Civil and Political Rights in the United Nations.

If we enter those in the Journal, then to me, it is more than sufficient focusing of what we mean by "human rights violation." And, therefore, there is no need any longer for the proposed amendment of Commissioner Nolleto. I hope that Commissioner Nolleto shares that view.

MR. NOLLEDO. Madam President, I do not share the view of Commissioner Bengzon- with due respect to him- because the Human Rights Commission is expected to promulgate its own rules of procedure, including rules that are directly connected with procedure, and one of these is to set forth the instances over which the commission has jurisdiction. While it is true that entering in the records the instances over which the commission has jurisdiction would seem to suffice, I think there is no need of further research on the part of persons who would like to take advantage of the benefits afforded by the existence of this commission when the commission itself so promulgates the instances that shall fall under its jurisdiction.

MR. BENGZON. But, Madam President, I think it goes without saying that this commission would have that right without our really specifying it. Assuming that the amendment is approved, I was wondering if Commissioner Nolleto would be willing to substitute the phrase "THE CONVENTION OF THE CIVIL AND POLITICAL RIGHTS IN THE UNITED DECLARATION OF HUMAN RIGHTS" which is broad.

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MR. NOLLEDO. I agree.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. Madam President, what we had in mind was to enumerate some basic functions of the commission, with the last subsection providing that Congress shall define the initial functions of the commission as well as those functions granted to it over time. Our idea, Madam President, is for the commission to have more modest objectives during its initial years, as we had mentioned earlier, and then these can be expanded to go even beyond the civil and political rights as the level of our development increases and there will be changes in the types of human rights violations existing in the country. So, if it is all right with both Commissioners Nolleto and Bengzon, we can put this as a catchall phrase at the end of the enumeration and to give enough leeway for congress to expand the functions of the Commission from the initial modest objectives.

MR. BENGZON. Madam President, is the committee suggesting that the formulation of Commissioner Nolleto, as amended by me, would then be transposed to page 2, somewhere on the last line?

MR. MONSOD. Yes, after we have gone through some basic functions of the commission, then we can have a last phrase and leave that up to Congress. We have taken that into account, Madam President.

MR. NOLLEDO. In that case, we can add to the last part of the section the phrase "UNTIL OTHERWISE PROVIDED BY CONGRESS." So, we will give to the commission the initial duty to define its jurisdiction, taking into account the Bill of Rights and the convention mentioned by Commissioner Bengzon, after which we add the phrase "UNTIL OTHERWISE PROVIDED BY CONGRESS." Ultimately, it will be Congress that will determine the extent of the jurisdiction of the Commission on Human Rights.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. I am a little uncomfortable with the idea of allowing the commission to fix its jurisdiction. Fixing jurisdiction is a function either of the Constitution itself or of the legislative body, not even courts fix their own jurisdictions. It is either the Constitution or the legislative that does this. So, it would seem to me that if we have to talk about jurisdiction at all, we should not leave it to the Human Rights Commission but we either do it ourselves or we leave it to Congress.

MR. MONSOD. Madam President, just an additional comment. We were going to propose as a complementary provision to this article a section in the Transitory Provisions to the effect that until the Human Rights Commission is established by Congress in accordance with this Constitution, the present Presidential Committee on Human Rights will function as the commission so that it will already have its own terms of reference. Then Congress may expand, delineate or add to these functions.

So, that would be the complementary approach to this section, Madam President.

MR. BENGZON. I think we will agree to that as an addition to the interpretation I articulated a few minutes ago and which should be read into the record. Then we leave the definition of functions to Congress.

MR. NOLLEDO. I agree with Commissioner Bengzon, Madam President.

MR. MONSOD. Madam President, we will be glad to consider the subsequent wordings as we go further into this article.

MR. NOLLEDO. Thank you.

MR. TINGSON. Madam President.

THE PRESIDENT. Commissioner Tingson is recognized.

MR. TINGSON. Madam President, since I am a cosignatory to the first part of the amendment by Commissioner Nolleto, may I be clarified on one point. The chairman of the committee or the committee itself provides on page 2, line 12 the establishment of a continuing program of education and information to propagate the primacy of human rights. I suppose we are referring to a continuing program of education that is based on

the Bill of Rights, which is part of the Constitution. Is that right, Madam President?

MR. GARCIA. With regard to human rights education, this would depend on the audience, of course. The program will be based on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and then, of course, the Bill of Rights.

Now, for the particular audiences among law enforcement agencies, such as the military, there are definite standard rules for the treatment of prisoners. There is also the Declaration Against Torture and other such treaties or international instruments which could help educate our people and form their consciousness regarding human rights protection.

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MR. TINGSON. Specifically, would that include materials like the Universal Declaration of Human Rights issued by the United Nations?

MR. GARCIA. Exactly.

MR. TINGSON. Thank you very much.

MR. RAMA. Madam President, I ask that Commissioner Davide be allowed to continue his presentation of amendment.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. May we know what is the reaction of the committee to my proposed amendment on Section 2 (2)?

MR. NOLLEDO. Madam President.

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDO. Thank you, Madam President.

I would like to amend the amendment of Commissioner Davide by adding some words to his last word. What is the last word of the Commissioner, please?

MR. DAVIDE. We will stop at the word "thereof" on line 4.

MR. NOLLEDO. Does that complete Section 2 (2) on page 2 of the committee report?

MR. DAVIDE. Yes.

MR. NOLLEDO. Madam President, I propose to add the following clause and place a period (.) after it: "PROVIDED, HOWEVER, THAT THE RULES OF EVIDENCE SHALL NOT BE STRICTLY FOLLOWED IN HEARINGS CONDUCTED BEFORE THE COMMISSION."

MR. DAVIDE. Madam President, that might be included already in the authority of the commission to adopt its own rules of procedure.

MR. NOLLEDO. Madam President, when we authorize the commission to adopt its own rules of procedure, it does not necessarily mean that the rules of evidence shall not be strictly followed. If the Gentleman does not mind, may I ask him to reconsider because giving the commission the power to adopt rules of procedure will not preclude my amendment.

MR. DAVIDE. May I suggest that the proposal be taken later because it could be incorporated, probably, as a separate sentence.

MR. NOLLEDO. I would like to know what is the reaction of the committee to the Davide amendment. So, we can have that first?

FR. BERNAS. I think the committee is in favor of having a generalized statement of the power of the Human Rights Commission to issue rules and regulations necessary for its investigatory function.

MR. DAVIDE. Yes. Is this separate from the present section 2 (2)?

FR. BERNAS. It will be in lieu of, and will include the power to issue subpoena and subpoena duces tecum.

THE PRESIDENT. Will Commissioner Davide read his proposal again for the guidance of the committee.

MR. DAVIDE. Yes, Madam President. On line 1, substitute the words "Issue subpoena and subpoena duces tecum" with the following: "ADOPT ITS OWN RULES OF PROCEDURES INCLUDING THE ISSUANCE OF COMPULSORY PROCESSES."

On line 3, insert between the words "materials" and "and" the following: comma (,) RECORDS; then on line 4, delete the words "in accordance with"; delete the entire lines 5 and 6; so that the amended subsection will now simply read as follows: "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."

FR. BERNAS. The language is a little awkward, Madam President.

MR. DAVIDE. "ADOPT ITS OWN RULES OF PROCEDURE WHICH SHALL INCLUDE RULES ON THE ISSUANCE OF COMPULSORY PROCESSES."

FR. BERNAS. But would that not be included already in the idea of empowering the commission to adopt its own rules.

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MR. DAVIDE. Precisely.

FR. BERNAS. In other words, we are trying to shorten this as much as possible.

MR. DAVIDE. My proposal is just to substitute the original with "ADOPT ITS OWN RULES OF PROCEDURE."

MR. MONSOD. Is it all right with the proponent if we say, "ADOPT ITS OWN RULES OF PROCEDURE AND EVIDENCE"?

MR. DAVIDE. I do not think it is necessary because the idea is that this commission should not really be bound by the technical rules of evidence. It is investigative in character.

MR. MONSOD. We are amenable to just using the phrase "ADOPT ITS OWN RULES OF PROCEDURE."

MR. DAVIDE. Yes.

MR. NOLLEDO. In that case, I will be satisfied if the committee reiterates the statement of Commissioner Davide that in adopting the rules of procedure the commission will necessarily adopt rules on evidence; that the commission is not bound by the technical rules of evidence; and that the rules of evidence shall not be strictly followed in proceedings before it.

FR. BERNAS. The rules of evidence that will be followed are the looser rules applicable to administrative agencies.

MR. NOLLEDO. And, therefore, they are not strictly applied as technically understood in the presentation of evidence before judicial bodies.

FR. BERNAS. Yes.

MR. NOLLEDO. In that case, Madam President, I withdraw my amendment.

Thank you.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. With the insertion of the phrase "ADOPT ITS OWN RULES OF PROCEDURE," and with the elimination of the last phrase "in accordance with the Rules of Court promulgated by the Supreme Court," will this mean that the rules of procedure of this commission can depart from, or even violate, the Rules of Court?

MR. DAVIDE. Madam President, may I respond to it?

THE PRESIDENT. Please proceed.

MR. DAVIDE. Under the Article on the Judiciary, rules of procedure of all quasi-judicial bodies and administrative bodies will be subject to review by the Supreme Court. And, therefore, the rules of procedure to be adopted by the proposed Commission on Human Rights will be subject to review by the Supreme Court.

MR. PADILLA. Yes. That does not answer the question. Whether it can be reviewed by the Supreme Court is something separate. My question is: Will the elimination of the phrase "in accordance with the Rules of Court" mean that the rules of procedure to be adopted by this commission can deviate from, and even contradict or violate, the Rules of Court?

MR. DAVIDE. It will not follow because the Supreme Court will have the authority to review all rules of procedure and the Supreme Court will do it that it would be within the framework of the Rules of Court.

MR. PADILLA. Why then eliminate the Rules of Court that have been promulgated by the Supreme Court?

MR. DAVIDE. My first answer, Madam President, will be that in all the provisions on constitutional commissions, or on the Ombudsman, for instance, we always allow these commissions to adopt their own rules of procedure, but subject to the review of the Supreme Court. Since this is practically an independent commission, even at a lower level than the regular constitutional commissions, we should adopt the same procedure in the matter of vesting it with certain authority and powers.

MR. PADILLA. So, the words "SUBJECT TO REVIEW" should be added.

THE PRESIDENT. Maybe, we could also add that the mention of the Rules of Court here was made in relation to the power to cite for contempt.

MR. DAVIDE. Yes.

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. May I comment on this?

THE PRESIDENT. Please proceed.

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MR. REGALADO. Yesterday, there was a question as to whether the proposed Commission on Human Rights would be, in effect, a quasi-judicial body, and the committee said that they envisioned a quasi-judicial body. Although later, on questioning by Commissioner Romulo, it seems that the position of the committee was that this is purely an administrative body, not a quasi-judicial body. I agree that it is not a quasi-judicial body because it has no adjudicatory functions subject to review by a higher tribunal. It is purely an administrative fact-finding body similar to the Agrava Board. It is not a "judicial body softened with a quasi" because it has

no adjudicatory functions and there is no provision here for appellate review of its functions.

Commissioner Davide has called attention to the provisions of the Article on the Judiciary that these rules will, after all, be subject to review by the Supreme Court. I regret to differ with the Commissioner because under Section 7 of the Article on the Judiciary, the rules of procedure of special courts and quasi-judicial body. While the commission may, therefore, adopt its own rules, these must not differ substantially from the provisions of the Rules of Court. Of course, on the matter of the rules of evidence, it is obvious that the rules of evidence here will not strictly be applied because this is an administrative body. The Rules of Court provide that they will only have suppletory application to nonjudicial proceedings.

On this matter of the power to cite for contempt for violations thereof, wherein properly appended is the phrase "in accordance with the Rules of Court" I am in favor of retaining the phrase "in accordance with the Rules of Court" for this reason: there are two kinds of contempt proceedings that are followed in the Philippines- the judicial method which is under the Rules of Court, and that method under the legislative power to cite for contempt. And there is a whale of a difference between the two. These are not merely rules of procedure because the peculiarity of the rule on contempt is its being a procedural rule with a penal character. As a matter of fact, it is a special civil action in the nature of a criminal charge. In the case of contempt, pursuant to the provisions of the Rules of Court, there are specific penalties for direct contempt or in facie curiae and indirect contempt.

On the other hand, there is also another kind of contempt proceedings in the legislative, like Congress. Let us take the case, for instance, 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 pursuant to the inherent powers of Congress to punish for contempt, not in accordance with the Rules of Court on the power of the Judiciary to punish for contempt.

The peculiarity of the Commission on Human Rights is that, it is purely administrative, it is not quasi-judicial at all. If it were a quasi-judicial body, just like the fiscal's office, if the subpoenas are not followed and while the fiscal does not have the power to cite for contempt, he can apply to the proper regional trial court for the contemner to be ordered to appear before the fiscal. But, again, this is not a quasi-judicial body. This is similar to the Agrava Board which was purely fact-finding that is why it was necessary to empower it with the power to cite for contempt and to punish for contempt in accordance with the Rules of Court, in order 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.

For that reason and to avoid some confusion or doubts in the future, I am proposing an amendment to the amendment of Commissioner Davide, if he will consider it, that we maintain after the word "thereof" the phrase "in accordance with the Rules of Court IN THE PHILIPPINES"- the "Rules of Court in the Philippines" being the correct and complete official title of the rules- just so, this commission may not adopt rules of contempt similar to legislative bodies which is a little dangerous.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. In the light of the disquisitions made and it being now made to appear that the review by the Supreme Court of the rules will not be available because of the admission of the committee that this

Human Rights Commission is not a quasi-judicial body, may I propose a compromise amendment which would read: "ADOPT ITS OWN RULES OF PROCEDURE SUBJECT TO REVIEW BY THE SUPREME COURT." This amendment will be equated with the rules of procedure of quasi-judicial bodies and special courts under the Article on the Judiciary.

FR. BERNAS. The understanding is 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 in the Philippines.

MR. DAVIDE. Yes.

MR. DE LOS REYES. Madam President.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. May I ask some questions of the proponent? If we do not place in the Constitution the phrase "adopt rules of procedure," is there anything that will prevent this Human Rights Commission from adopting its own rules of procedure even if the Constitution were silent on that?

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MR. DAVIDE. Madam President, if the Constitution were silent on that, the commission might not have that power and that is the reason why we made an enumeration of its powers and functions. The issuance of subpoenas duces tecum, as well as citing an individual for contempt for failure to appear in any of its proceedings, must be in accordance with the Rules of Court.

MR. DE LOS REYES. I think I have to disagree most respectfully. Whenever a commission is created, it carries with it the necessary power to make its own rules of procedure; and, therefore, it is my respectful submission, Madam President, that the amendment which will empower the commission to make its own rules of procedure is superfluous and unnecessary.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. I would seem to me that this 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 it is possible that the commission might not, and in fairness to the public under investigation, the public should know what the rules of the game are. So, it is more than just giving it the power, but rather giving it a command that it better issue rules. I would also tend to agree with Commissioner Regalado that if this is a purely administrative body, we would have to specify its power to cite for contempt because the power to cite for contempt is in connection with judicial and quasi-judicial powers.

MR. DAVIDE. Can we have the committee formulate the proposed combined amendment?

THE PRESIDENT. May we have the amendment read again?

FR. BERNAS. "ADOPT ITS OWN RULES OF PROCEDURES, CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN ACCORDANCE WITH THE RULES OF COURT PROMULGATED BY..."

THE PRESIDENT. Is there any objection to this proposed amendment which has been accepted by the committee?

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Madam President, in connection with my statement yesterday to the committee, I propose to delete the phrase "PROMULGATED BY THE SUPREME COURT," and continue with the phrase: "IN THE PHILIPPINES" because that is the official title of the rules.

THE PRESIDENT. Is this accepted by the committee?

MR. SARMIENTO. the amendment is accepted, Madam President.

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

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

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Madam President, I have already given the intended amendment, and I have to ingraft it to the Davide amendment.

MR. RAMA. Madam President, I ask that Commissioner Rosario Braid be recognized on Section 2.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. Madam President, I would like to propose an amendment to Section 2 (4), lines 12 to 13.

MR. NOLLEDO. Madam President, with due respect to Commissioner Rosario Braid, I have an anterior amendment to Section 2 (3).

THE PRESIDENT. Please proceed, Commissioner Nolleddo.

MR. NOLLEDO. Madam President, copies of this amendment have been distributed to the honorable Members of the Commission. After the word "measures" on line 7, page 2, I propose to add the following words so that Section 2 (3) will now read as follows: "Provide appropriate legal measures WHICH AMY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS for the protection of human rights of all persons within the Philippines, provisions for legal aid services for indigent persons whose human rights have been violated or need protection". The words I propose to add are "WHICH MAY INCLUDE INJUNCTIVE RELIEF AND ISSUANCE OF THE WRIT OF HABEAS CORPUS," and these are intended to strengthen the powers and jurisdiction of the Commission. These words are recommended to be included therein, taking into account the interpellations of Commissioner Natividad in yesterday's session. And if the commission

would have no power to issue injunctive relief, say, against harassments which may also involve violations of human rights, and there would be no power to issue the writ of habeas corpus which is a judicial power, but which this Constitutional Commission has jurisdiction to give to the Commission on Human Rights then the commission would have no reason to exist.

I would like to cite an example, Madam President. Here comes a complainant. Her husband is detained being tortured; she goes to the Human Rights Commission for relief. Do we mean to say that the commission is powerless to order that the person of the husband be produced before it, before investigation proceeds, especially if there are charges of torture? The members of the Human Rights Commission would like to see if there are really physical injuries inflicted upon the detained person.

I ask every Member of this Commission to think it over because I was also a victim of humiliation inside the jail, together with Commissioners Calderon, Rama and Rodrigo. If the commission can investigate without having the power to issue a writ of habeas corpus or a writ of Amparo as contemplated by Commissioner Azcuna, then let us not create this Human Rights Commission anymore. It is really a paper tiger as stated by Commissioner Rodrigo. It can investigate but then it does not even know what is happening inside the jail of the military. A man is being tortured, and yet the commission is powerless to order the production of the body to see whether the charges have sufficient legal basis or not.

I ask the members of the committee to please consider seriously the inclusion of the power to issue injunctive relief and the writ of habeas corpus to make the creation of the commission more meaningful.

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FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Without meaning to contradict Commissioner Nolleto, when we give this commission the power of injunctive relief, and not just any injunctive relief, and including the issuance of a writ of habeas corpus, are we not changing the nature of the commission, that is, are we making it a quasi-judicial body, as a matter of fact?

MR. NOLLEDO. Madam President, we can grant judicial powers to quasi-judicial bodies. An example is the National Labor Relations Commission, formerly ably headed by Commissioner Ople, which had the power to issue subpoena duces tecum, subpoena testificandum and to hold in contempt witnesses before it. These are judicial powers.

FR. BERNAS. They are correct, Madam President. I was just trying to clarify this in the light of what we just approved. So that if we accept the amendment of Commissioner Nolleto our discussion with Commissioners Regalado and Davide would really have to be reversed because we have converted the Commission into a quasi-judicial body. And I am not saying that I am against converting this into a quasi-judicial body.

MR. NOLLEDO. Thank you.

FR. BERNAS. In fact, that is the effect.

MR. NOLLEDO. We are constituting, Madam President, a body that is an exception to the rule. As contemplated by the Davide amendment, it must be in accordance with the pertinent provisions of the Rules of Court because we are strengthening the powers of the Commission.

I recommend that we just drop the idea of creating an independent Commission on Human Rights if we do not give teeth to this body.

FR. BERNAS. Let us suppose that we accept this. Everything we said in section 2(2) would really be unnecessary because now, we have a body that is quasi-judicial and, therefore, subject to all the rules of a quasi-judicial body as found in our Rules in the judiciary.

MR. NOLLEDO. I agree with that as a general statement. But we have to consider the functions of the commission in considering my amendment.

FR. BERNAS. Madam President, I am not disagreeing with the substance of the proposal of the Gentleman. I am just trying to clarify concepts.

MR. NOLLEDO. Thank you.

FR. BERNAS. Personally, I would leave the issuance of the writ of habeas corpus to the courts because the very nature of the writ of habeas corpus is that it is an instantaneous remedy and the body itself can go to court and ask for the issuance of a writ of habeas corpus.

MR. NOLLEDO. In the meantime, the husband is already dead.

MR. SARMIENTO. May I share this information, Madam President. Lately, the Supreme Court has been liberal with respect to the issuance of a writ of habeas corpus on the basis of mere telegrams. So does the Gentleman not think that this would be unnecessary since courts are now very liberal? This was a vote adopted just recently by the Supreme Court.

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MR. NOLLEDO. I do not believe so, Madam President.

MR. SARMIENTO. And besides, courts are operative, they are really liberal.

MR. NOLLEDO. When Ninoy Aquino filed a petition for a writ of habeas corpus, it took the Supreme Court several years to decide on the petition. Even with respect to the presently constituted Supreme Court, I have my doubts because circumstances change. If this is an instantaneous remedy as stated by Commissioner Bernas, I think the committee should adopt this amendment because the commission would really be useless if it cannot give instantaneous remedy as circumstances may demand.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. I think there is some kind of divergence of opinion in the committee because personally I would support the proposal of Commissioner Nolledo to vest the proposed commission with the power to issue injunctive relief and also all other reliefs depending on the circumstances.

MR. NOLLEDO. I am happy that the chairman supports me. Why do we not compromise? As chairman of the Committee on Local Governments, when I hear an amendment, I would try to reason out and suggest amendments, too. For example, in order to meet the objections of Commissioner Bernas, we have to subject the order of the Human Rights Commission to judicial review. I will agree with subjecting to review the order of the commission by the Supreme Court.

THE PRESIDENT. May we hear Commissioner Aquino first before we enter into any compromise?

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THE PRESIDENT. May we hear Commissioner Aquino first before we enter into any compromise?

MS. AQUINO. Madam President, I would only like to express my support for the position of Commissioner Nolledo, however, we might have to confront the problem of overhauling the very nature of the Human Rights Commission in the sense that, if we vest the commission with adjudicative functions, necessarily it will have to assume likewise the multifarious accoutrements which are needed for the enforceability of its powers to issue the writ of habeas corpus.

As an administrative agency, the commission cannot enforce its ruling against the military establishment. For example, unless we realign its powers and duties accordingly as an adjunctive body.

MR. NOLLEDO. And the Constitution, Madam President, can grant that power. Besides, there is a distinction between adjunctive power and the power to issue a writ of habeas corpus. The power to issue a writ of habeas corpus does not necessarily mean that the quasi-judicial body is making an adjudication or is making a decision. It is only preparatory to further consideration of the case. When a man is being tortured and there is no power on the part of the commission to issue a writ of habeas corpus to order the production of his body in order to see whether tortures are being done, then please let us not create this Commission on Human Rights.

MS. AQUINO. Madam President, I already agreed with Commissioner Nolledo, however, I cannot agree to his position that the issuance of the writ of habeas corpus as a remedy is not an adjunctive power; it is a level of appreciation of evidence needed to vest precisely in the person seeking relief the right to be delivered to court and for an inquiry into the legality of his detention.

MR. NOLLEDO. The appreciation of evidence is not done in the technical sense because affidavits are

attached to the petition and then as long as the allegations show a prima facie case on the part of the complainant, the court of the administrative body must be able to grant immediate relief.

MS. AQUINO. I am not so much concerned with that as I am concerned with the power of the court to enforce the writ. I mean, as it is already constituted the way we have agreed in the initial sections, the commission would not have that power.

SUSPENSION OF SESSION

MR. SARMIENTO. Madam President, may we ask for a suspension.

THE PRESIDENT. The session is suspended.

It was 3:43 p.m.

RESUMPTION OF SESSION

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

THE PRESIDENT. The session is resumed.

REV. RIGOS. Madam President.

THE PRESIDENT. Commissioner Rigos is recognized.

REV. RIGOS. We ask that Commissioner Nolleto be recognized.

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THE PRESIDENT. Commissioner Nolleto is recognized.

MR. NOLLEDO. Madam President, after exhaustive and deep consultation with the chairman and members of the committee, my amendment on line 7, page 2, will now read as follows: "Provide appropriate legal measures WHICH MAY INCLUDE PREVENTIVE RELIEF." It is understood that the words "PREVENTIVE RELIEF" should cover an order from the commission to conserve the body of the detainee and to prevent the authorities from hiding it, or from torturing or transferring the body until further orders of the court, without prejudice to the right of the aggrieved party to petition for the issuance of a writ of habeas corpus with the Supreme Court or appropriate court.

FR. BERNAS. It is not only the party who can ask for a writ but the commission itself can ask for it.

MR. NOLLEDO. Yes. And this provision is aligned with the provisions on preventive measures contemplated in Article 24 of the Revised Penal Code.

I would like to mention Commissioners Colayco, Aquino, Regalado, Natividad and Azcuna as coauthors.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. May I propose an amendment? The amendment should be placed on line 9 after the word "including," so that the phrase will read: "including PREVENTIVE MEASURES AND provisions for legal aid services."

MR. NOLLEDO. I accept the amendment, Madam President.

MR. SARMIENTO. How will the amendment read?

MR. DAVIDE. The amendment will now read: "including PREVENTIVE MEASURES AND provisions for legal aid services for indigent persons."

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. Just for clarification and also for the record. Does this power include the power to order visitation by counsel and relative?

MR. NOLLEDO. Certainly.

MS. AQUINO. Does this power include the power to order medical treatment for the detainee?

MS. NOLLEDO. Yes.

MS. AQUINO. But does this exclude the power to release or to inquire into the legality of the detention which essentially pertains to the writ of habeas corpus?

MR. NOLLEDO. Yes. It will be the Supreme Court that will decide those cases.

MR. FOZ. Madam president, in that connection, I do not see any legal bar for the Human Rights Commission to inquire into the legality of detention.

MR. NOLLEDO. Without finally deciding on it.

MR. FOZ. Yes

MR. NOLLEDO. I see.

MR. FOZ. But the commission can really inquire as to when it can investigate and then it inquires into all the aspects of the detention.

MR. NOLLEDO. I agree. That will be part of its investigative power, and will form also part of its recommendation to the appropriate court or body or officer.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. I heard the phrase "PREVENTIVE MEASURES" and reference was made to article 24 of the Revised Penal Code. These are preventive measures that are not considered penalties. They have no reference whatever.

MR. NOLLEDO. I used the word "alignment" UPON SUGGESTION OF commissioner Regalado. I did not say that I am applying the provisions of that article. They are only similar to each other, Madam President.

MR. PADILLA. And we should not forget, Madam President, that a person who has been arrested or detained but is not judicially charged must be released within five working days.

MR. NATIVIDAD. Madam President.

THE PRESIDENT. Commissioner Natividad is recognized.

MR. NATIVIDAD. During the interpellations, I brought up the matter to enjoin because I believe in the statement of my co-proponent that this is necessary to implement the program of protection of human rights. Suppose there is a claim that the complainant is being harassed. Will this amendment we are proposing cover this situation where the commission, with the help of the local police, enjoin the parties from continuing the harassment of the complainant?

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MR. NOLLEDO. Not being an adjudicative function, I say yes.

MR. MATIVIDAD. Thank you.

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. Just one clarification. Will this power have to arise necessarily from an adversarial procedure?

MR. NOLLEDO. No.

MS. AQUINO. In which case, they will have to be bound by the rigid requirements of substantive and procedural due process which, I submit, should not saddle the function and the power of this commission.

MR. NOLLEDO. Not necessarily, Madam President. I would like to know the reaction of the committee.

MR. FOZ. The committee accepts the amendment, Madam President.

MR. SARMIENTO. Madam President, we accept the amendment including the answers of Commissioner Nolleddo.

THE PRESIDENT. Does Commissioner Sarmiento mean that Commissioner Nolleddo's answers will be included in the amendment?

MR. SARMIENTO. Madam President, as part of our record, to clarify.

May we ask the proponent read the amendment?

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDDO. "Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, including provisions for PREVENTIVE RELIEF AS WELL AS for legal aid services for indigent persons, et cetera."

MR. DAVIDE. Madam President

MR. NOLLEDDO. May I ask Commissioner Davide, who amended my amendment, to please read my amendment as amended by him?

MR. DAVIDE. On line 9, after the word "including," insert the phrase "PREVENTIVE MEASURES AND" so that the entire line will read: "including PREVENTIVE MEASURES AND provisions for legal aid services for indigent."

MR. NOLLEDDO. Thank you, Madam President.

THE PRESIDENT. Is there any objection to this proposed amendment which has been accepted by the committee? (Silent) The Chair hears none; the amendment is approved.

REV. RIGOS. Madam President, we are now ready to vote on paragraph (3) as amended.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. There are still amendments on page 2, paragraph (3), which we would like to introduce.

THE PRESIDENT. Commissioner Davide will please proceed.

MR. DAVIDE. On line 9, before "including," insert the following: "AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD." This was taken up yesterday especially in the light of the interpellation by Commissioner Rama. So this will then be jointly sponsored by both of us.

MR. SARMIENTO. It is accepted, Madam President.

THE PRESIDENT. The amendment has been accepted.

Is there any objection to this proposed amendment?

Commissioner Colayco is recognized.

MR. COLAYCO. Clarificatory question, Madam President. How do we expect the commission to give protection to people outside our country?

MR. DAVIDE. The commission may avail of our diplomatic and consular offices to give immediate assistance to groups of Filipinos who are victims of violations of human rights and apply for the necessary remedy with the proper forum in said areas.

MR. COLAYCO. I am not too enthusiastic about that particular section.

MR. DAVIDE. There are many Filipinos, especially in the Middle East, who are victims of violations of human rights, but we are not providing any assistance. So perhaps the commission can expand its services even to Filipinos residing abroad.

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THE PRESIDENT. Commissioner Tan is recognized.

SR. TAN. Madam President, I would like to support this proposal very much because we have reports of many Filipino maids and dancers and other Filipinos working abroad who need legal assistance. They have no place to go, and when they go to our embassy, they are not given assistance and they come back home, some mentally ill.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. Why do we not just simplify line 8 to read: "human rights of ALL FILIPINO CITIZENS"?

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. When it comes to persons within the Philippines, we should not distinguish between Filipinos and non-Filipinos, but when it comes to persons abroad, the mantle of protection must be only to Filipino citizens and that is the reason why we have to adopt a separate concept- to those in the Philippines, all the people; outside the Philippines, only the Filipinos.

THE PRESIDENT. Is there any objection to the proposed amendment of Commissioner Davide which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. DAVIDE. On the same paragraph, lines 9 and 10, Madam President, I would like to change the words "for indigent persons" to the phrase "TO THE UNDERPRIVILEGED." Again, I would like to say if special attention must be given, it should not just be able to afford the necessary assistance of private lawyers. They must be given the same protection since this is for all the people of the Philippines.

MR. FOZ. No, Madam President.

MR. DAVIDE. So the indigent poor under the proposal will be the only ones benefited by the legal aid. Madam President, in the Social Justice Article, we used the word "underprivileged," so I insist on my amendment to have some symmetry in the broader concept of the Article on Social Justice.

MR. FOZ. I am not exactly opposing the Commissioner's amendment, but I just would like to state that this provision really speaks of free legal aid to the indigents.

MR. DAVIDE. Yes, free legal aid, because there are many underprivileged who cannot afford to pay for legal aid services.

MR. FOZ. But if the Commissioner would change "indigent persons" to "UNDERPRIVILEGED" it would cover a lot more ground.

MR. DAVIDE. Yes, that is the intention. After all, we have the CLAO to take care of it.

MR. FOZ. The committee accepts the amendment.

THE PRESIDENT. The committee has accepted the amendment. Is there any objection?

MR. NOLLEDO. Madam President, I object to the amendment.

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDO. Madam President, as I understand it, "underprivileged" is broader than "indigent". There are many underprivileged squatters who are engaged in profitable business and they can afford to pay the legal fees. So I think the committee should stick to the word "indigent" as used in the Laurel laws. When we say "indigent", it is almost equivalent to paupers. They have no source of livelihood, or what they earn from their sources of income will just be sufficient to keep their body and soul together. I repeat, "underprivileged" is so broad so that the use of it would give advantage to those who can easily afford to pay the legal fees.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Madam President, line 9 does not say "free legal aid services."

MR. NOLLEDO. That was the understanding when the chairman was asked whether or not it is free legal aid services. The chairman answered in the affirmative. The word "underprivileged," Madam President, is really broad. One may be underprivileged in the sense of political rights; or underprivileged in the sense of social rights, et cetera. So, I believe that the word "indigent" is appropriate in the provision. I refer to pauper litigants in the Rules of Court. When we talk of "underprivileged persons," they may be underprivileged in many respects. So the word "indigent" should prevail. We submit it to the floor for a vote.

MR. FOZ. Actually, without having a provision like this, I think the proposed Commission on Human Rights may provide free legal aid services to the poor. I think this provision would really emphasize that the commission shall be available for legal aid for those whose rights are being violated. So this applies, more or less, to victims of human rights violations.

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MR. NOLLEDO. Regardless of financial capacity. What does Commissioner Bernas say? If he is agreeable to the word "underprivileged," I will withdraw my objection.

FR. BERNAS. Legal Aid is rather broad, Madam Preseident. It does not have to be free. In the case of those who can afford, it could involve referrals to private practitioners.

MR. NOLLEDO. So it may be free or not.

FR. BERNAS. It will be free or not. I guess the understanding is that when the commission itself gives legal aid, it will be free. But in the case of people who can afford, the commission is also free to give their service for referrals.

MR. NOLLEDO. In that case, Madam President, I withdraw my objection.

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

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Just a minor clarification which may lead to some amendments. Does the use of the words "legal measures" on line 7, page 2, mean that this commission will recommend to Congress, for example, the passage of certain laws? Or are we referring to legal measures to be adopted by the commission itself?

MR. SARMIENTO. I think legal measures would include legal assistance and procedures and safeguards to ensure that the government would respect human rights which the commission would recommend to Congress.

MR. MAAMBONG. That includes the proposal of measures to be passed by Congress.

MR. SARMEINTO. Yes, Madam President.

MR. MAAMBONG. Regarding the words "legal aid services," does it mean that there would be some sort of assistance other than by the present Citizen's legal Assistance Office (CLAO) under the Ministry of Justice? Is this another form of assistance other than that given by the Ministry of Justice?

MR. SARMIENTO. Yes, Madam President.

MR. MAAMBONG. And that has nothing to do with the legal assistance services given by private organizations like CLAO, FLAG or MABINI.

MR. SARMIENTO. Madam President, these legal aid services would cover "providing legal assistance." And this commission would possibly seek the services of these human rights organizations for effective legal aid services.

MR. MAAMBONG. Could we properly say that this is in addition to the agencies now existing under the Ministry of Justice and in coordination with private legal assistance offices?

MR. SARMIENTO. The Commissioner is correct, Madam President.

THE PRESIDENT. In addition, the Integrated Bar of the Philippines has been giving its own legal aid.

MR. MAAMBONG. Thank you, Madam President. I have no amendment.

REV. RIGOS. I ask that Commissioner Natividad be recognized for an anterior amendment on page 2, paragraph (2).

THE PRESIDENT. The same section- section 2. Commissioner Natividad is recognized.

MR. NATIVIDAD. I would like to propose a separate paragraph (3) after paragraph (2) which reads: "EXERCISE VISITORIAL POWERS OVER ANY JAIL, PRISON OR DETENTION FACILITY." I would like to explain with the indulgence of the committee.

THE PRESIDENT. Commissioner Natividad may proceed.

MR. NATIVIDAD. I feel that motu proprio, or upon the complaint of a citizen or a person, the commission should have the power to visit these jails, prisons and any detention facility because I think most human rights violations happen in these facilities. It will be a ray of hope to those who are detained in these facilities, if they know that at any moment this commission may be coming for a visit and will witness the condition under which they are being detained. So even without a complaint, I would like to see that this commission can motu proprio visit these detention facilities and determine for itself if there is any violation of human rights committed.

MR. SARMIENTO. The amendment which is a new paragraph is accepted, Madam President.

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THE PRESIDENT. Will Commissioner Natividad please restate the whole amendment so that we can put it to a vote?

MR. NATIVIDAD. The new paragraph (3) reads: "EXERCISE VISITORIAL POWERS OVER ANY JAIL, PRISON OR DETENTION FACILITY."

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. May I ask a few questions of the proponent?

MR. NATIVIDAD. Gladly, Madam President.

MR. DE CASTRO. Suppose with the visitorial powers of the commission it found that the prisoners are living in substandard or subhuman conditions, what will the commission do?

MR. NATIVIDAD. The commission will be guided by its own rules, which will determine whether or not any situation constitutes a violation of human rights. And if the situation constitutes a violation of human rights, then the commission has to follow its own rules and regulations.

MR. DE CASTRO. I mean, suppose the commission found out that the jail facilities are in subhuman conditions, what will it do? I am not referring to the rules; the thing is what it will do.

MR. SARMIENTO. Madam President, I think that will be covered by the new paragraph (4) which provides for legal measures for the protection of human rights.

MR. DE CASTRO. Will the commission investigate the police officer, which handles the jail facilities, if they found out that the facilities are in subhuman conditions?

MR. SARMIENTO. Yes, Madam President.

MR. DE CASTRO. Suppose the police officer said, "We have no fund; you give us money so we can provide them the human conditions."

MR. NATIVIDAD. That is their defense, and that would be taken into consideration.

MR. DE CASTRO. It is not a defense, it is reality.

MR. NATIVIDAD. Yes, that is why it is a complete defense for lack of funds. But I think the commission will be more interested in whether people in jail are being tortured; whether there is a complainant; whether they are being kept in a solitary cell over an extended period of time. And to my own perception, these are the instances where they should be interested in. A surprise visit, for example, will help the commission find out that there are many people in solitary cells. We have reports that people who are kept in solitary cells over a long period of time, say months or years, lose their power to speak.

Madam President, these are the practices which I perceive will be unearthed if this commission has the visitorial powers over these detention facilities.

MR. DE CASTRO. Madam President, I do not question those who are in solitary confinement and so on. What I ask about is the subhuman conditions of the jail facilities. The Commissioner had been in the police service for some time. He had investigated and inspected all these jail facilities and had made urgent reports for their reform, construction or improvement. But until now, nothing has happened. So what are our reports for?

MR. NATIVIDAD. Yes, I agree with the Commissioner. We are always reporting these to higher authorities, but in this new Constitution, I remember in our discussion with Father Bernas that we had these provisions approved that in these instances where the conditions in jails are subhuman, these may constitute unusual and inhuman punishment, subject to abatement by the State. And the remedy is wide open now. We are, therefore, for educational measures or for representations to congress to give more appropriations for the detention facilities, Madam President.

MR. DE CASTRO. Madam President, if this commission will go to all the jails in Metro Manila, it will find out that these are all in subhuman conditions. the prisoners are sleeping on the cement floor without mat, without anything, and yet the jail authorities, and even the city authorities, could not do anything because they do not have the funds.

Thank you.

THE PRESIDENT. We now proceed to vote on the amendment that has been accepted by the committee, which reads: "EXERCISE VISITORIAL POWERS OVER JAIL, PRISON OR DETENTION FACILITY."

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

REV. RIGOS. Madam President, we ask that Commissioner Rama be recognized.

THE PRESIDENT. Commissioner Rama is recognized.

MR. RAMA. My amendment was already stated by Commissioner Davide.

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REV. RIGOS. Madam President, we ask that Commissioner Rosario Braid be recognized.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. Madam President, may I join Commissioner Davide in this amendment on overseas labor. I have this as one of my amendments, and the other one will be an amendment to line 12, paragraph (4) which now becomes paragraph (5). After the sentence "Establish a continuing program of education and information to propagate the primacy of human rights," add the following: "UNDERTAKE RESEARCH ON PEACE, DEMILITARIZATION, NONVIOLENT STRATEGIES, AND RELATED PROBLEM AREAS." May I give the reason for this amendment?

THE PRESIDENT. The Commissioner will please proceed.

MS. ROSARIO BRAID. Madam president, the present functions focus on investigative and recommendatory powers given to the commission which would include situationers and statistics on human rights violations, which is a short-term strategy. The policy research aspect here would include the medium- to long- term program which will undertake research on means to attaining national and international peace, studying ways of working towards the goal of respect for all the rights of people without distinction to race, sex, language, religion or philosophical conviction, attending to factors which lead to violence, ethnic, racial or religious discrimination, including colonialism and neocolonialism; and expanding programs or rehabilitation of torture victims. This would, therefore, expand the tools of legal measures now employed to research and would lead to more continuing education and more use of media in achieving the ends of the commission.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. The committee accepts the spirit of the amendment but would like to simplify matters by inserting between "of" and "education" on line 12, the word RESEARCH, so lines 12 to 13 would read: "Establish a continuing program of RESEARCH education and information to propagate the primacy of human rights." This is with the understanding that the research, education and information program covers the whole grant of the things Commissioner Rosario Braid has enumerated.

THE PRESIDENT. Does Commissioner Rosario Braid accept the amendment?

MS. ROSARIO BRAID. I accept the amendment as long as I have it on record.

I have another amendment, Madam President.

THE PRESIDENT. Let us have the amendment approved first.

Is there any objection to the proposed amendment of Commissioner Rosario Braid which has been accepted by the committee? (Silence) The Chair hears none; the amendment, amended, is approved.

MS. ROSARIO BRAID. May I read my other amendment: "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 VIOLATIONS OF THESE RIGHTS AND ESTABLISH APPROPRIATE MECHANISMS AND PROGRAMS THAT SHALL PROMOTE THESE RIGHTS."

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. I think we would again accept the spirit of the amendment with the understanding that all those are covered by the present paragraph (5), which is now paragraph (6): "Perform such other duties and functions as may be fixed by law."

MS. ROSARIO BRAID. I accept, Madam president, as long as it is read into the record for the purpose of future legislation.

Thank you, Madam President.

MR. OPLE. Madam President, I thought I would like to support the main idea behind some of the previous remarks of Commissioner Rosario Braid with respect to the international treaty obligations of the Philippines in the filed of human rights. Commissioner Garcia had earlier referred several times to our international treaty obligations under various United Nations covenants, the latest of which are the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, and, of course, right now the Philippine government is a respondent in various forums on human rights within the United Nations system.

Will the committee, in the spirit of the remarks earlier made by Commissioner Rosario Braid, therefore, consider just one more function for the Human Rights Commission? I propose that before paragraph (5), on line 14, we insert the following: "MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL

TREATY OBLIGATIONS ON HUMAN RIGHTS," which means that the Human Rights Commission then becomes the focal point for the efforts of the Philippine government in seeing to it that Congress enacts the proper laws by way of implementing our treaty obligations and in the exercise of this function it may actually call upon other agencies of the government, especially the diplomatic service, to render support to the commission.

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THE PRESIDENT. Will Commissioner Ople please restate his proposed amendment?

MR. OPLE. The amendment, which would now become section 5, reads: "MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS." This is a monitoring function, but based on experience, we know how difficult it is to respond to these international obligations. Very often, the Ministry of National Defense to assemble the information that we submit to the various international fora.

MR. GARCIA. The amendment can be accepted by the committee as long as it is understood that it is in an independent monitoring of the compliance of the Philippine government to international standards which, in fact, if I understand it correctly, is being done right now by independent private organizations, like the Task Force Detainees and other such organizations.

MR. OPLE. Yes. What I am saying is that this is a more congenial focal point for the Philippine government especially for private organizations that do collaborate in putting together the information that we submit to international fora including the human rights commissions in Geneva and other bodies in specialized agencies, such as the Committee of Application of Standards in the International Labor Organization, which is also in Geneva so that this monitoring function is part of the independent mandate of the Commission on Human Rights.

MR. GARCIA. Yes, I accept. I think that would be acceptable and also its credibility, of course, in international circles would depend very much on its independence and effectivity.

MR. OPLE. Yes. It also happens based on our experience that many queries from abroad concerning human rights in the Philippines are generally referred to the Ministry of National Defense, which takes a long time before it acknowledges these queries. So if we build this independent monitoring function into the Human Rights Commission, I think the mutual flow of information will be much better.

MR. GARCIA. Yes, I think so, Madam President.

THE PRESIDENT. What does the committee say?

MR. SARMIENTO. The amendment is accepted, Madam President.

MR. OPLE. Thank you.

THE PRESIDENT. Is there any objection to this proposed amendment of Commissioner Ople which has been accepted by the committee?

MR. OPLE. Commissioner Rosario Braid and I are the sponsors of this amendment, Madam President.

THE PRESIDENT. Commissioner Tan is recognized.

SR. TAN. Madam President, I just want to make an observation.

If I understand it correctly, when Commissioner Sarmiento was explaining the spirit and the origin of this proposed commission, it was supposed to be a modest commission which should give immediate relief and action on cases of human rights violations especially for the "indigent" which was changed to "underprivileged." But now we are becoming immodest. We have research, we have cultural rights, and now we have to take care of international treaties on human rights. I am just afraid that the commission will have no time to take care of the individual violations of human rights.

MR. OPLE. I appreciate the point made by Commissioner Tan, which is a very good precaution about the Human Rights Commission getting overextended right from the start. But I think the research function already built into the commission is very compatible with this monitoring function, and I think this really means that three or four people combined into a modest section can take care of this monitoring function with highly disproportionate benefits to the country, Madam President.

MS. ROSARIO BRAID. Madam President.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. If I may add to what Commissioner Ople said, these functions could be linked or related to existing research institutions. A small unit within the commission can identify the problem areas and can link these areas as concerns of existing research institutions, like the UP. So it really will not mean considerable overhead costs. They will monitor and identify the problem areas and suggest them for research by other more established research bodies.

Thank you.

MS. AQUINO. Madam President, just one comment.

THE PRESIDENT. Commissioner Aquino is recognized.

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MS. AQUINO. After all the amendments have been approved and with the very liberal posture of the committee in terms of the spiritual endowments of the article, do we still want to be confined to the definition of this commission as an administrative body? Surely, we must provide some kind of a conceptual cohesion between the powers and the nature of the commission.

MR. SARMIENTO. I think Commissioner Aquino is now asking about the nature of the Commission on Human Rights because previously we said it was purely an administrative body. But because of its new functions, it has acquired a new feature, a new character, so it is now a quasi-judicial body.

MS. AQUINO. So this would necessarily require a readjustment in the functions and the concepts of the commission.

MR. SARMIENTO. Madam President, considering the adjustments we made, the new powers we added, the commission will no longer be a purely administrative body; it will be a quasi-judicial body.

MS. AQUINO. Thank you, Madam President.

MR. OPLE. Madam President, a quasi-judicial body still belongs to the genus of administrative bodies.

Thank you.

THE PRESIDENT. We are now ready to vote on this Ople amendment which has been accepted by the committee.

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

REV. RIGOS. Madam President, we ask that Commissioner Davide be recognized.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Madam President. The first amendment is on the original Section 2 (5), line 13, which is to substitute the word "propagate" with "ENHANCE."

THE PRESIDENT. What does the committee say?

MR. SARMIENTO. It is accepted, Madam President.

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

MR. DAVIDE. Still on Section 2, but before paragraph (5), I propose to insert the following: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. NOLLEDO. Anterior amendment, Madam President. I think that should be the last section as recommended by Commissioner Monsod, if the Commissioner would note a while ago.

MR. DAVIDE. No, this is not the last section; this is entirely different. the proposal of Commissioner Monsod was the possibility of extending the authority of the commission to include practically all kinds of violations of human rights, not just civil and political rights. But this is among the functions: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

FR. BERNAS. Could we have the amendment again? I think we have that in the Bill of Rights.

MR. DAVIDE. There is, but the one in the Article on Bill of Rights is for victims of tortures and similar practices. This one now is broader.

FR. BERNAS. Could we have the amendment again.

MR. DAVIDE. It reads: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUAMN RIGHTS

AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. SARMIENTO. It is accepted, Madam President.

THE PRESIDENT. Is there any objection?

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. I thought, in my interpellation on the original Section 2 (3), the answer of Commissioner Sarmiento was the words "provide appropriate legal measures" cover recommendations to Congress of such laws which may be promulgated. Why are we providing this now, if it is already covered by paragraph (3)?

MR. SARMIENTO. I recall, in answer to Commissioner Maambong's question yesterday, that I said legal measures would cover indemnification of victims of human rights violations. So, possibly, we can have a reformulation of these paragraphs to accommodate the amendment of Commissioner Davide for more clarity.

FR. BERNAS. Would the Commissioner have any problem with this amendment? It makes clearer the functional recommendation.

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MR. MAAMBONG. I would not have, if it makes clearer the functional recommendation. I was thinking that probably the committee, as suggested by Commissioner Sarmiento, could accommodate the amendment of Commissioner Davide right in the original paragraph (3), which is now paragraph (4), so that we do not have to put in a new paragraph. If it cannot be done, then I have no objection to this amendment.

FR. BERNAS. The paragraph, perhaps, will get very long. I just have one question of Commissioner Davide regarding compensation.

MR. DAVIDE. It reads: "FOR COMPENSATION TO VICTIMS," which means that the commission will recommend to congress measures to compensate the victims.

FR. BERNAS. but it will not fix the compensation.

MR. DAVIDE. No, it will only recommend. So the authority of the commission would necessarily include some remedial measures by way of recommendation for necessary legislation to compensate victims of human rights violations.

MR. NATIVIDAD. Madam President.

THE PRESIDENT. Commissioner Natividad is recognized.

MR. NATIVIDAD. Will the Commissioner Davide yield to one question?

MR. DAVIDE. Gladly, Madam President.

MR. NATIVIDAD. I have the impression that in the Article on Bill of Rights we have already provided for a mandate to Congress to provide for a victim compensation plan or system to victims of violations of human rights.

MR. DAVIDE. No, Madam President. The provision on the Article on Bill of Rights is limited to victims of tortures and other similar practices.

MR. NATIVIDAD. But these are violations of human rights, Madam President.

MR. DAVIDE. Yes, these are human rights violations, but the proposal is broader. The tortures there may be accomplished while a person is under detention.

MR. NATIVIDAD. I ask this question, Madam President, because I intend to propose an amendment to Commissioner Davide's proposal so that it would read: "THE COMMISSION SHALL ADMINISTER THE GOVERNMENT'S VICTIM COMPENSATION SYSTEM," rather than for the commission to just recommend now a law with regard to the compensation of victims of human rights. I propose that the commission be the one to administer the payment of victim compensation, because I already presuppose in my mind that a direction for Congress to provide for such a law is already in the Article on Bill of Rights. And, therefore, in this article it is much better to make one step farther by providing that the commission should be the one to administer the victim compensation system to strengthen its function as the human rights enforcer of our country. But if it is the pleasure of the commission that we now recommend a new victim compensation system, I will now insist on this amendment. I thought that we are ready.

Madam President, the better step would be to provide that any victim compensation system shall be administered by the commission so that it will reinforce its functions. It will deal directly with the victims of human rights violations and pay them in accordance with the availability of funds and with the rules that it might promulgate.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Since it is Congress which will provide for the compensation, together with the system of compensation, I think we would rather leave it to Congress to decide how this victim compensation system is to be administered. at any rate, if Congress decides that it should be administered by this commission, it can be given to this commission. And Congress may think of some other more effective ways.

MR. NATIVIDAD. My interest here is that presently, the Ministry of National Defense and the Philippine Constabulary pay the compensation for victims of human rights violations. There is this provision in the appropriations law, so I am worried by the fact that even with this provision in the article, if we do not make a clear message or signal to the incoming Congress, it might give this function to the Ministry of National Defense. And I do not see this schematic relationship. It should be to this commission because I do not want to leave the gap open, whereby we amass the responsibilities to deal with the problem of human rights violations and then in the final act of helping them materially and financially, Congress might opt to give it to the Ministry of National Defense. So if the committee agrees, we should state clearly that this functional

area should belong to the functions and responsibilities that we reserve for the Commission on Human Rights.

MR. DAVIDE. Madam President, may I say that the recommendation itself for such compensation may provide that the compensation to be appropriated by Congress shall be handled by the commission itself. I think that would be the most logical step for any such recommendation to be made by the commission.

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MR. NATIVIDAD. How would Commissioner Davide word it now, Madam President?

MR. DAVIDE. It is built into the proposed power: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUAMN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOALTIONS OF HUAMN RIGHTS." So the very recommendation may already contain how these funds are to be kept and who shall distribute the funds to the victims of human rights violations.

MR. NATIVIDAD. It does not say so in that statement, Madam President.

MR. DAVIDE. That is why in the recommendation itself the commission may, otherwise we will also be broadening the power of the commission, include the function of the treasurer. I think it would be best that we leave or we grant greater flexibility to Congress as to how the compensation which may be legislated shall be distributed or allotted. I am sure that the recommendation itself will contain, for instance, who are the beneficiaries, taking into account already the discovery of violations of human rights. So, the report, in the nature of a recommendation, will even enumerate how much funds should be allotted and to whom these funds shall be given.

FR. BERNAS. It seems to me, Madam President, that it is an administrative detail which we need not put in here and which can be provided for by the law itself providing for compensation.

MR. NATIVIDAD. I submit. I just wanted to make clear that it is best that the commission handle this function.

FR. BERNAS. Madam President, before Commissioner Davide returns to his seat, may I be allowed to go back to his amendment on page 2, line 13, which states "information to enhance the primacy of human rights." I propose to add after "enhance," "RESPECT FOR."

MR. DAVIDE. It is accepted, Madam President.

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

MR. JAMIR. Madam President.

THE PRESIDENT. Commissioner Jamir is recognized.

MR. JAMIR. May I propose an amendment to the last amendment of Commissioner Davide.

MR. DAVIDE. That would not be the last; that would be the latest.

MR. JAMIR. I mean, the current one. I propose to substitute the last three words "OF HUMAN RIGHTS" with the word "THEREOF," because there are two "HUMAN RIGHTS" already: "TO PROMOTE HUMAN RIGHTS AND FOR COMPENSATION TO VICTIMS, AND THEIR FAMILIES, OF VIOLATIONS OF HUMAN RIGHTS."

MR. DAVIDE. No, Madam President, because "THEREOF" would refer to just "HUMAN RIGHTS," not to compensation to victims of violations of human rights. If we delete that phrase and substitute it with "THEREOF," it would have no sense because the first is promotion of human rights, and the latter is compensation to victims of violations of human rights.

MR. JAMIR. But what is being violated is human rights, so they are being compensated for that.

MR. DAVIDE. The compensation would be given to the victims or the families.

MR. JAMIR. I am just suggesting that as an amendment. If the Commissioner does not accept, I will not press for it.

MR. DAVIDE. Thank you.

THE PRESIDENT. May we have a vote now?

Commissioner Monsod is recognized.

MR. MONSOD. May I just ask a question. Would the coverage of the human rights violations include violations by private parties?

MR. DAVIDE. All kinds of violations pursuant to paragraph (1) of this section.

MR. MONSOD. Yes. So here we are saying that regardless of who perpetrated it, the victims would be entitled to a compensation under the Commissioner's amendments.

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MR. DAVIDE. That would be subject to the recommendation of the Human Rights Commission. I think the Human Rights Commission will have to determine also the priority of what kind of violation should be subject to a recommendation of adequate compensation by Congress.

FR. BERNAS. In other words, the compensation need not come from the government?

MR. DAVIDE. That is correct, Madam President.

FR. BERNAS. But the law can require the guilty party to pay the compensation.

MR. DAVIDE. Yes.

MR. MONSOD. So this is not corresponding strictly to the section in the Article on Bill of Rights.

FR. BERNAS. The provision on the Article on Bill of Rights contemplates offenses committed between the two provisions.

FR. BERNAS. But even in the Article on Bill of Rights, if a government compensates for offenses of public officers, then the government can also collect from the public officers themselves.

MR. MONSOD. Yes. Thank you, Madam President.

THE PRESIDENT. Will Commissioner Davide restate his amendment so that we can put it to a vote?

MR. DAVIDE. Immediately preceding the original paragraph (5), between lines 13 and 14, insert: "RECOMMEND TO CONGRESS EFFECTIVE MEASURES TO PROMOTE HUAMN RIGHTS AND FOR COMPENSATION TO VICTIMS, OR THEIR FAMILIES, OF VIOALTIONS OF HUAMN RIGHTS;" and a semicolon (;).

THE PRESIDENT. This has been accepted by the committee.

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

MR. DAVIDE. And the next, Madam President, would another paragraph to follow the amendment just approved. it reads: "APPOINT ITS OFFICIALS AND EMPLOYEES IN ACCORDANCE WITH LAW;" and a semicolon (;).

MR. SARMIENTO. It is accepted, Madam President.

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

REV. RIGOS. There are other amendments, Madam President, so we ask that Commissioner Gascon be recognized.

THE PRESIDENT. Commissioner Gascon is recognized.

MR. GASCON. I have some proposed additional paragraph to the powers of the Human Rights Commission. The first is to read: "TO GARNT 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;"

MR. SARMIENTO. One question, Madam President. That power is one of the powers of the existing Presidential Committee on Human Rights.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. May I request that the consideration of the Commissioner's amendment be deferred because I have a proposal to the effect that until Congress shall provide otherwise, the Presidential Committee on Human Rights shall continue to exercise its functions in addition to the rights conferred in this new

provision.

FR. BERNAS. I think, Madam President, the purpose of this amendment is to enshrine the power in the Constitution.

MR. DAVIDE. To institutionalize this power?

FR. BERNAS. That is rights, so that even if the existing executive order is repealed, the power will continue.

MR. DAVIDE. There will be no conflict.

MR. GASCON. May I know what is the position of the committee.

MR. SARMIENTO. The amendment is accepted, Madam President.

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THE PRESIDENT. Is there any objection to this proposed amendment of Commissioner Gascon which has been accepted by the committee? (Silence) The Chair hears none; the amendment is approved.

MR. GASCON. Another proposed power which is also included at present in the Executive Order No. 8, creating the Presidential Committee on Human Rights, is: "TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNIT."

MR. SARMIENTO. It is accepted, Madam President.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. May I introduce an amendment to add after "ASSISTANCE" the following: "IN THE EXERCISE OF ITS FUNCTIONS."

MR. SARMIENTO. It is accepted, Madam President.

THE PRESIDENT. The amendment has been accepted.

Is there any objection to this proposed amendment by Commissioner Gascon as amended by Commissioner Davide? (Silence) The Chair hears none; the amendment, as amended, is approved.

Commissioner Rodrigo is recognized.

MR. RODRIGO. The President of the Philippines has control over all ministries, bureaus and offices. We are creating a commission which is an island in itself, separate from the President. This is an exception from that. And now we are derogating from this power of control of the President over ministries, bureaus and offices, and transferring part of that power to this commission. Am I correct, Madam President?

MR. GASCON. No, that is not. It is just in the exercise of its function. It may be necessary for the commission to seek assistance from other ministries or agencies or bureaus but it is not taking power from the President.

MR. RODRIGO. Suppose the ministry or bureau does not comply with the request?

MR. GASCON. From my point of view, in the exercise of the powers of the commission, it should comply so that the advocacy for and protection of human rights will be assured.

MR. RODRIGO. But suppose the bureau director does not comply and says: "Well, we are under the President/ Let the President order us." What can the commission do? Can it compel?

MR. SARMIENTO. I think the Commissioner is correct, Madam President.

FR. BERNAS. May I offer something else. We give power to the commission, but then the President has a right to refuse in case the bureau or ministry feels that it should not be doing it. And then, if the President says it should not do it, that is the end of it.

MR. RODRIGO. That is the end of it; the commission cannot compel.

FR. BERNAS. Yes, Madam President.

MR. GASCON. As it is written now, my proposal is the power to call upon agencies, ministries, bureaus, etcetera to assist.

FR. BERNAS. On the understanding that this can be countermanded by the President.

MR. GASCON. Yes, Madam President.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Maybe this is a parallel provision in the Article on Commission on Elections, where it mentions "deputized, with the concurrence of the President," and this would be more in line with the statement of Commissioner Rodrigo. So I should suggest to Commissioner Gascon that probably in order not to encounter constitutional roadblocks, we could adopt some form of a terminology as this one: "deputize, with the concurrence of the President or authorize, with the concurrence of the President."

MR. GASCON. The committee has already accepted my amendment, and I think the suggestion of the Commissioner is within the jurisdiction of the committee now.

MR. SARMIENTO. We are willing to accommodate the amendment of Commissioner Maambong for harmony.

MR. MAAMBONG. It is not an amendment. It is just a suggestion so that we can align it with the provision in the Commission on Elections where there is concurrence by the President.

MR. GASCON. So it shall read: "TO CALL UPON, WITH THE CONCURRENCE OF THE PRESIDENT, ANY MINISTRY, BUREAU..."

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FR. BERNAS. Would it not be more effective if we just say: "SUBJECT TO A COUNTERMAND ORDER OF THE PRESIDENT"?

MR. MAAMBONG. It will amount to the same thing.

FR. BERNAS. In other words, no prior concurrence of the President is needed.

MR. MAAMBONG. Yes, as long as there is presidential involvement so that we can do away with the objection of Commissioner Rodrigo that the proposed power might be in derogation of the powers of the President. At least, the President should know one way or the other.

MR. GASCON. May I ask the committee how it is reworded based on the comments of Commissioner Rodrigo.

FR. BERNAS. It reads: "PROVIDED THAT THE PRESIDENT MAY COUNTERMAND." We want to preserve the control of the President over all executive agencies. On the other hand, we also do not want to paralyze the commission. So, if the President feels that what the commission is asking should not be done, then he can give the necessary order to countermand the request.

MR. MAAMBONG. In concept, I have no difficulty with that but the word "COUNTERMAND" does not seem to sound good. Could the committee please recommend some other word?

FR. BERNAS. We would entertain something better; perhaps, we can say, "SUBJECT TO THE PRESIDENT'S RIGHT OF REFUSAL."

MR. MAAMBONG. We are still thinking, Madam President.

FR. BERNAS. But the concept is there. We would like the President to have the last word.

MR. MONSOD. Why do we not just say, "SUBJECT TO REFUSAL BY THE PRESIDENT"?

FR. BERNAS. The Committee on Style can take care of it.

THE PRESIDENT. Will Commissioner Gascon restate his amendment as modified.

MR. GASCON. It would read: "TO CALL UPON ANY MINISTRY, BUREAU, OFFICE OR AGENCY FOR ASSISTANCE IN THE EXERCISE OF ITS FUNCTIONS WHICH SHALL FORTHWITH BE FURNISHED OR ACCOMPLISHED BY SUCH GOVERNMENT UNIT, SUBJECT TO REFUSAL BY THE PRESIDENT."

MR. DAVIDE. Madam President, it is a fact that right now we have such a law. So it could be adequately provided by law, but if there is a need to institutionalize this particular power, can we not just simply say: REQUEST THE ASSISTANCE OF ANY MINISTRY, OFFICE OR AGENCY IN THE EXERCISE OF ITS FUNCTIONS? It may be a request, but I am sure that no agency will reject or decline.

MR. GASCON. So we will delete the proposal "SUBJECT TO."

MR. DAVIDE. We delete "REQUEST" and "AGENCY."

FR. BERNAS. Then the understanding is that that request can be declined.

MR. GASCON. What is the position of the committee which has already accepted my amendment?

FR. BERNAS. I think we can rely on the prestige of the commission, and also it would be politically costly for the President to decline the request of the commission.

MR. MAAMBONG. Madam President, I think that would be a good compromise considering that, if the bureau or office requested will comply, we can presume regularity of the performance or the functions of its office, which means that it must have the clearance from the Office of the President. So I think it is a good compromise.

MR. SARMIENTO. It is accepted, Madam President.

THE PRESIDENT. Is there any objection to this proposed amendment, as amended? (Silence) The Chair hears none; the amendment, as amended, is approved.

REV. RIGOS. Madam President, we ask that Commissioner Davide be recognized.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Madam president, this will be a proposed Section 3, which will read as follows: "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY AND ITS MEMBERS SHALL BE SUBJECT TO THE SAME DISQUALIFICATIONS AND DISABILITIES AS MEMBERS OF THE CONSTITUTIONAL COMMISSIONS."

MR. SARMIENTO. May I ask Commissioner Monsod to comment on that amendment.

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MR. MONSOD. Madam President, we may be limiting the members of the commission too much by comparing them to members of other constitutional commissions, because it is possible that they could also be working part-time or they may be of a different discipline. Perhaps, we should leave the matter to Congress, just like the members of the Monetary Board. But the fiscal autonomy is one of the features that the committee wants to install.

FR. BERNAS. Could we consider "FISCAL AUTONOMY" separately?

MR. DAVIDE. I will delete "FISCAL AUTONOMY."

FR. BERNAS. No, consider it separately.

MR. DAVIDE. Yes. On the matter of the disqualification and disabilities of the members of the commission, we are not putting them on the same level with the members of the other commissions. It cannot be said that they would be serving part-time. We provide for a definite term- one will serve for seven years, the

second for five and the third for three years- this would demand full-time work. And if it would not be full-time, we will dilute really the special place the we have allocated for them. It is a Commission on Human Rights.

FR. BERNAS. Madam President, could we defer consideration of that amendment until after we consider Section 1?

MR. DAVIDE. I would be willing to defer because there might be some changes in the matter of the creation and the composition of the commission.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Madam President, I just want to inquire whether or not that proposed provision on fiscal autonomy has been accepted.

FR. BERNAS. We are not so clear on the status of that. We have asked that it be separated from disqualifications, and the proponent was agreeable to separating it. So it is neither dead nor alive now.

MR. MAAMBONG. It appears to me that the amendment of Commissioner Davide is that the commission shall enjoy fiscal autonomy. I would just like to advance an amendment to that amendment by deleting that portion and just say: "THE APPROVED ANNUAL APPROPRIATION FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY..." This would be in line with the provision on the constitutional commissions. But I understand that will be taken up later.

Thank you.

FR. BERNAS. Perhaps, we can go to the composition of the office now, unless we have more to discuss on powers and functions.

MR. NOLLEDO. I think my proposed amendment should also pertain to the powers of the commission. This should appear as section 3, Madam President, as recommended by Commissioner Monsod when I was interpellated by him in connection with my amendment authorizing the Commission on Human Rights to fix the cases that should fall within its jurisdiction. It reads: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHOULD FALL WITHIN THE ECLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS." According to Commissioner Monsod, there should be some points of reference to guide Congress in fixing the jurisdiction of the Commission on Human Rights; namely, 1) the pertinent provisions of the Article on 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 Commissioners Sarmiento and Garcia, to the interpellations of Commissioner Bengzon. According to Commissioner Monsod, the other members of the committee apparently 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 Committee on Human Rights shall continue to function. So I would like to know the reaction of the committee.

Thank you, Madam President.

ADJOURNMENT OF SESSION

REV. RIGOS. Madam President, we ask that we adjourn until tomorrow at nine-thirty in the morning.

THE PRESIDENT. Is there any objection that we adjourn until tomorrow at nine-thirty in the morning? (Silence) The Chair hears none; the session is adjourned until tomorrow at nine-thirty in the morning.

It was 5:13 p.m.

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CONSIDERATION OF PROPOSED
RESOLUTION NO. 539
(Article on the Constitutional Commission on Human Rights)
Continuation

PERIOD OF AMENMENTS

MR. RAMA. I move that we continue the consideration of Committee Report No. 37 on Proposed Resolution No. 539

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

The honorable members of the committee, Commissioners Foz, Monsod, Sarmiento, Garcia and the others, are requested to occupy the front table.

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

THE PRESIDENT. Commissioner Nolleto is recognized.

MR. NOLLEDO. Thank you, Madam President.

I would like to give a short background on what happened in yesterday's session. I presented amendment to the report of the Committee on Constitutional Commissions authorizing the Commission on Human Rights to set forth the cases that shall fall within its jurisdiction. The amendments was objected to by Commissioners Bernas and Monsod. Commissioner Monsod suggested that it should be Congress that should be authorized to fix the cases which shall fall within the exclusive jurisdiction of the Commission on Human Rights and that we should be provide in the Transitory Provisions that, until Congress shall provide otherwise, the presently constituted Commission on Human Rights shall continue to function. And so, I presented this amendment to the committee yesterday afternoon- an amendment that should appear as Section 3 of the committee report and it reads as follows: " CONGRESS SALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS. "

We will have a provision in the Transitory Provisions of the 1986 Constitution authorizing the continuity of the discharged of functions of the presently constituted Commission on Human Rights. In giving some guidelines to Congress, I stated that the following shall be the points of reference that shall be taken into account by Congress in fixing the jurisdiction of the Commission on Human Rights: the pertinent [provisions of the Universal Declaration of Human Rights; the provisions of the International Covenant on Civil and Political Rights; and the answers of Commission Garcia Bengzon with respect to cases that should fall within

the jurisdiction of the Commission on Human Rights.

And so, I so would like the committee to react to this proposed amendment that I am now presenting, as suggested by Commissioner Monsod and accepted by my coauthors, Commissioners Bengson and Tingson.

MR. SARMIENTO. Would the Gentleman kindly repeat the amendments?

MR. NOLLEDO. The amendment that should in Section 3 reads as follows: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS."

We agreed also that there will be a provision on the TRANSITORY PROVISIONS authorizing the presently constituted Commission on Human Rights to continue exercising its powers and function until otherwise provided by the Congress.

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THE PRESIDENT. Please restate the amendment.

MR. NOLLEDO. Yes, Madam President. The amendments will read: "SEC. 3. CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE EXCLUSIVE JURISDICTION OF THE COMMISSION ON HUMAN RIGHTS."

This is coauthored by Commissioners Bengzon and Tingson.

MR. SARMIENTO. Madam President the amendment is accepted.

MR. MONSOD. We are accepting it with the manifestation that will be a complementary provision in the Transitory Provisions.

MR. PADILLA. Madam President.

THE PRESIDENT. Are there any comments?

Commissioner Padilla is recognized.

MR. PADILLA. Will the distinguished proponent yield to a few question.

MR. NOLLEDO. Gladly, Madam President.

THE PRESIDENT. I hear that the proposed Section 3 mentions violations of human rights within the exclusive jurisdiction of the commission. Does the Gentleman realize that the Bill of Rights, which guarantees human rights and the protection of which is the concern of the entire nation, should be the concern of the entire government machinery including the law enforcement agencies and the effective administration of justice to arrest, prosecute and punish the guilty?

MR. NOLLEDO. I agree with the Vice- President but the words "EXCLUSIVE JURISDICTION" are used in the

light of the functions of the Commission on Human Rights which are investigative and recommendatory. We do not do away with the enforcement of civil and political rights by other agencies of the government in appropriate cases.

MR. PADILLA. No, we are not talking of civil, political or what they sometimes call economic and cultural rights; they are human rights. If this commission is only investigative and recommendatory, it must have as effective arms the law enforcement agencies, including the prosecution arm of the government and the prosecution, trial and judgment to be rendered by the competent courts. Why should we mention "EXCLUSIVE JURISDICTION" as if the other branches of government, particularly the judiciary and the executive, and not to exclusive the legislative, should have not only jurisdiction but must implement the protection of human rights and, therefore, prevent and punish those violators of human rights?

MR. NOLLEDO. In the light of the Vice-President's observations and to avoid some confusion, I will recommend to the committee that we talk of jurisdiction here, we are talking of cases that can be investigated by the Commission on Human Rights and in relation to which appropriate recommendation may be given by the Commission on Human Rights.

MR. PADILLA. There is no question about the commission having the authority to investigate and recommend but the more important thing is for these violators of human rights to be arrested, prosecuted, tried and convicted, and this cannot be done by the commission. It has to rely on the other branches of government particularly the law of enforcement agencies- and an effective administration of justice to be administered by the trial courts up to the Supreme Court.

MR. NOLLEDO. Yes, I agree with the Gentleman. That is why I am favor of deleting the word "EXCLUSIVE".

MR. PADILLA. The Gentleman's amendment starts with "CONGRESS SHALL PROVIDE FOR THE CASES." Why should Congress the duty to specify provide as if we are violations? We all know what human rights stand for; these are provide and guaranteed by the Bill of Rights. We do not have to tell Congress, "provide or specify the various violations."

MR. NOLLEDO. The Vice-President will notice that in previous sessions of our Commission on Human Rights. And he asked several question that will indicate that probably all cases of violations in the Revised Penal Code, even maltreatment of children, et cetera, may fall under the jurisdiction the Commission on Human Rights. It is on the basis of these interpellations by Commissioner Bengzon that the committee felt there was a need to specify the cases that can be investigated by the Commission on Human Rights.

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MR. PADILLA. The danger in specifying or enumerating is that it might mean the exclusive of others not specified or enumerated under that basic principle of *inclusio unius, exclusio alterius*. I think it is not necessary and, in fact, it is even dangerous to limit the functions of the commission.

MR. NOLLEDO. We do not preclude Congress from stating that the violations of human rights that may fall under the jurisdiction of the commission shall include but are not limited to the following, because if one will really study the provisions of the Universal Declaration of Human Rights in the Bill of Rights, practically all conceivable violations may fall under the jurisdiction of the Commission on Human Rights.

MR. PADILLA. That is precisely my point. The Bill of Rights mentions many human rights, including the rights of a person to liberty, property, due process, equal protection, et cetera. Why should we require Congress to specify the cases? These are the two problems.

MR. NOLLEDO. Commissioner Monsod would like explain further, Madam President.

MR. MONSOD. Madam President, things might be clarified if we put this in the context of the deliberations yesterday. During the interpellations yesterday, it was the intent of the committee that the commission would have very modest objectives because there were certain concrete and immediate matters that needed to be addressed. While a constitutional commission that we see has a horizon wider than the present functions of the President Committee on Human Rights, the objectives now of the commission would be modest.

So, perhaps, we can try place this in the context of this provision, if it is all right with the Commissioner. We wanted a catch-all provision so that over time, the commission's functions could be enlarged, if indeed we come to the point where there is less problem on the political and civil rights that are now the subject of the President Committee on Human Rights. That was the purpose of suggesting a catch-all phrase. But the catch-all phrase, as I understand it from Commissioner Padilla, might have two problems. One is the problem of the word "EXCLUSIVE" and the other is that Congress might unnecessarily expand the scope of the commission beyond its intended modest objectives at the present. So, we were wondering if we could put the phrase "IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION" WHICH would tie in the proposed Transitory Provision.

We respect to the word "EXCLUSIVE," the committee that has accepted the amendment is not inflexible as to its use because Commissioner Padilla's points are also well taken.

MR. NOLLEDO. Madam President, I understand Commissioner de los Reyes is intending to amend the amendment.

MR. DE LOS REYES. Madam President, may I seek recognition?

MR. MONSOD. Is it acceptable if we put "IN ACCORDANCE WITH THE PRIORITY RECOMMENDATIONS OF THE COMMISSION"?

MR. NOLLEDO. Yes, it is acceptable to me, Madam President.

MR. MONSOD. Thank you.

MR. NOLLEDO. And then we delete the word "EXCLUSIVE:"

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. Madam President.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. And may I offer an amendment of Commissioner Nolleddo that instead of using the word "JURISDICTION" which might be confused with the jurisdiction of the regional trial courts, the municipal courts, we put "AUTHORITY" I think that will be a more appropriate term in defining the scope of the work of

the commission. Is that acceptable to Commissioner Nolledo?

MR. NOLLEDO. I would like to consult the committee because if we accept the amendment of Commissioner de los Reyes, more or less the amendment will read as follows: "CONGRESS SHALL PROVIDE FOR THE CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION ON HUMAN RIGHTS TO INVESTIGATE." Will the committee be amenable?

MR. SARMIENTO. We will take into account the priorities recommended by the Human Rights Commission.

MR. DE LOS REYES. So, it will be "AUTHORITY" instead of "JURISDICTION."

THE PRESIDENT. Is that acceptable?

MR. NOLLEDO. I will accept the amendment, Madam President.

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MR. SARMIENTO. The amendment is accepted, Madam President.

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner Davide, I think, was ahead. Commissioner Davide is recognized.

MR. DAVIDE. Madam President, may I be allowed to introduced an amendment to carry the intent of the committee? "UPON RECOMMENDATION OF THE COMMISSION, CONGRESS SHALL DEFINE THE CASES OF VIOLATIONS OF HUMAN RIGHTS WHICH SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION."

THE PRESIDENT. How did it begin? Will Commissioner Davide please state it again?

MR. DAVIDE. It will read: "UPON RECOMMENDATION OF THE COMMISSION, CONGRESS SHALL DEFINE THE CASES OF VIOLATIONS OF HUMAN RIGHTS WHICH SHALL FALL WITHIN THE AUTORITY OF THE COMMISSION."

So, we leave it to the commission to determine the cases over which it may have expanded jurisdiction or authority, but it should be mandated by Congress.

MR. MONSOD. May we just ask a question on this. We might have a "chicken and egg" situation here, because theoretically, the commission will nit come into existence until the law has been formulated.

MR DAVIDE. No, Madam President, because we will provide that the existing Presidential Committee on Human Rights shall continue its functions and exercise the powers conferred to the commission created in this Constitution.

SUSPENSION OF SESSION

MR. RAMA. Madam President, the phrase "mandated by Congress" is a little controversial. May I ask for a

suspension of the session for us to confer.

THE PRESIDENT. The session is suspended for a few minutes. I request the Commissioners to please confer on the matter.

It was 10:46 a.m.

RESUMPTION OF SESSION

At 11:35 a.m., the session was resumed.

THE PRESIDENT. The session resumed. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Madam President, during the suspension of the session, Commissioners Nolleto and Davide made a reformulation of the proposed amendment, so may we ask Commissioner Davide to share that reformulated amendment with us.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Thank you.

This is the modified proposal which is jointly authored by the following: Commissioner Nolleto, the principal author, Commissioner de los Reyes, the main proponent, Commissioners Regalado, Bengzon, Monsod, Garcia, Sarmiento, and this Member. The new Section 3 will read as follows: "CONGRESS MAY PROVIDE FOR TOTHER CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION, TAKING INTO ACCOUNT ITS RECOMENDATION."

MR. NOLLEDO. Madam President, that is an amendment to my amendment. I would like to say that I am gladly accepting the amendment with the understanding that the primary jurisdiction of the Commission on Human Rights found in Section 2(1) of the committee report, and with the further understanding that we are going to provide in the Transitory Provisions that the presently constituted Commission on Human Rights shall continue to function until otherwise provided by the Congress.

MR. PRESIDENT. Thank you.

MR. DAVIDE. These understanding bear our full accord.

THE PRESIDENT. What does the committee say so that we can submit it to a vote.

MR. SARMIENTO. Accepted, Madam President.

VOTING

THE PRESIDENT. It has been accepted. This has been read by Commissioner Davide.

As many as are in favor of this particular new section please raise their hand. *(Section Members raised their hands.)*

As many as are abstaining, please raised their hand. (*No Member raised his hand.*)

As many as are against, please raise their hand. (*Few Members raised their hand.*)

The results 24 votes in favor, none against and 2 abstentions; the new section , as amended, is approved.

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MR. SARMIENTO. Madam President, from the committee, we wish to introduce an amendment to the amendment proposed by the body yesterday. Yesterday we adopted this amendment which reads: "Adopt its own PRIORITIES AND rules of procedure, cite for contempt for violations there of in accordance with the Rules of Court in the Philippines."

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. It will affect the amendment I earlier introduced. May I be allowed to modify to clearly distinguish the two and define the scope of each? I would proposed that it should read as follows: "Adopt its PRIORITIES, PROMULGATE ITS OWN rules of procedure."

THE PRESIDENT. Is that accepted?

MR. SARMIENTO. Accepted, Madam President.

MR. DE LOS REYES. Madam President, may I ask for recognition?

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. May ask some clarificatory questions of the committee?

THE PRESIDENT. Please proceed.

MR. DE LOS REYES. During the discussion yesterday, it was made clear that the authority of this commission shall extend not only to violations committed by those who are working against the government forces. When we say "priorities," does it mean, for example, that the commission, in exercising its right to prioritize its investigation, can investigate only violations committed by the military disregarding in the meanwhile abuses committed by private parties? As I understood it yesterday, when Commissioner Ople introduced his amendment, the purpose of placing therein investigations of violations committed by those who rebel against the government and the military is to strike a balance between the investigation and reporting of the results of the investigation by this commission. But with the word "priorities," it can defeat that purpose by simply concentrating in its investigation on violations of human rights by the military. So what is the real meaning of "priorities"? Why is there a need for that insertion?

MR. SARMIENTO. As explained yesterday, we stated that the commission shall investigate all forms of human

rights violations committed by public officers, civilian and military authorities and private parties, so there will be no exception, Madam President. When we say "priorities," we will leave it to the commission to give priority as to what forms of violation should be first investigated because we expect massive human rights violations. So, considering the volume of work, we leave it to the commission as to what forms of violation should be given priority.

MR. DE LOS REYES. In the first place, I think there is no need to state that in the Constitution. Any commission, I think, has the right to investigate all violations not on the basis of what it thinks should be prioritized but on a first-come, first-served basis because if other people, for example, will complain against violations of human rights by forces outside the military, certainly the commission's duty should be to investigate these things on a first-come, first-served basis and not on what it thinks should receive priority. And for this reason, I respectfully object, what all due respect to the amendment being introduced.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. I would also be in favor of explicitly saying that the commission can adopt its own priorities as recognition of the fact that it can be overwhelmed with complaints and so forth. So it does have to make a choice. But as far as where the provision should be, may I propose an amendment by transposition by putting the subject of priorities in the last paragraph of this section. So that the last paragraph would read: ESTABLISH ITS OWN PRIORITIES and perform such other duties and functions as may be provide by law."

MR. SARMIENTO. No objection to the proposed amendment by transposition.

THE PRESIDENT. So what is to be voted now?

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MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

I agree with the observations of Commissioner de los Reyes. It is not proper, I believe, that the priorities to be recognized by the commission be placed in the Constitution. In the first place, when one is in that office, he is already making up in his mind the priorities of his job. And it would be quite misplaced if we place in the Constitution what will be in the minds of the people performing their work. Certainly, when one goes to a certain job, he has certain priorities. But it would not be good for the Constitution to state so.

Thank you, Madam President.

MR. SARMIENTO. Madam President.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Since we have accepted the proposed amendment by transposition, and since we have this objection from Commissioners de los Reyes and de Castro, may we throw the issue to the body?

THE PRESIDENT. Please read the wordings of this amended section or subsection again.

MR. FOZ. This is the last paragraph: "ESTABLISH ITS OWN PRIORITIS and functions as may be FIXED by law." So the amendment actually consist of the following words: "ESTABLISH ITS OWN PRIORITIES" as the last subsection.

MR. DE CASTRO. Madam President, if there is a voting on this, I move that the voting be only on the wording, "ESTABLISH ITS OWN PRIORITIES" and not to include "perform such other duties and functions."

MR. FOZ. Madam President, I was just reading the whole provision and I said the amendment would actually consist of the following words: "ESTABLISH ITS OWN PRIORITIES."

MR. CONCEPTION. Madam President.

THE PRESIDENT. Commissioner Conception desires to be recognized. May we hear from him.

MR. CONCEPTION. Thank you, Madam President.

The reason for the statement of priorities is that the commission would not want to create expectations on the parts of the public which cannot be fulfilled immediately. There are a number of violations of human rights like hunger, for instance. The commission knows that whatever it does, it cannot do anything about that. That is a question of economic development, social consciousness and a number of things. Even in the case of violation of human rights, the commission may have to determine which type of violation, regardless of the order in which complaints have been filed, deserve precisely to avoid creating an expectation and then there after disillusionment on the part of the public if every complaint cannot be attended soon enough, considering that this is the first time that a constitutional commission of this type is established for the defense, protection, and promotion of human rights.

I thank you, Madam President.

SUSPENSION OF SESSION

THE PRESIDENT. May we suspend the session for a few minutes.

It was 11:50 a.m.

RESUMPTION OF SESSION

At 12:01 p.m., the session is resumed

THE PRESIDENT. The session is resumed.

MR. SARMIENTO. Madam President, may ask that Commissioner Regalado, after conferring with Commissioners de los Castro, de los Reyes and Davide, be recognized for his amendment.

MR. REGALADO. Thank you, Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. This is also in collaboration with the proposals of Commissioners Natividad and Guingona by way of an amendment to subparagraph 2 to read as follows: "ADIPT ITS OPERATIONAL GUIDELINES, RULES OF PROCEDURE, AND CITE FOR CONTEMPT FOR VIOLATIONS THEREOF IN THE PHILIPPINES."

May I explain, Madam President?

THE PRESIDENT. Please proceed.

MR. REGALADO. The use of the phrase " OPERATIONAL GUIDELINES" is understood to underscore the fact that in its operations, the commission shall not resort to any discriminatory programs but should have the enforcement of its policies, as well as operations, done on the basis of equality, parity and without any intent to unduly put at a disadvantage a particular sector, but also in consideration of the volume of work that may be encountered by the commission.

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VOTING

THE PRESIDENT. As many as are in favor of this particular section- because this was already approved yesterday- as amended, please raise their hand. *(Several Members raised their hand.)*

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

As many as are abstaining, please raise their hand. *(Few Members raised his hand.)*

The result show 30 votes in favor, none against and 2 abstentions; the section, as amended, is approved.

Are there any other pending amendments?

MR. RAMA. There is a one more, Madam President. May I ask that Commissioner Davide be recognized.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Madam President, my amendment is on Section 1, but my I first seek the recognition of Commissioner Bengzon.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. Madam President, this will be the second paragraph because the first paragraph states that there shall be an independent Commission on Human Rights.

The second sentence shall read as follow: "THE COMMISSION SHALL BE COMPOSED OF FIVE SHALL BE

NATURAL-BORN CITIZENS OF THE PHILIPPINES AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE COMMISSION SHALL BE PROVIDED BY LAW."

May we know the reaction of the committee?

MR. FOZ. Madam President, after the word "FIVE," may we suggest that we put the word "MEMBERS"?

MR. BENGZON. Yes.

MR. SARMIENTO. Accepted, Madam President.

MR. GUINGONA. Madam President.

THE PRESIDENT. Is there any comment?

MR. GUINGONA. Instead of saying "COMPOSED OF FIVE," we say "COMPOSED OF CHAIRMAN AND FOUR MEMBERS."

MR. BENGZON. We accept the amendment.

THE PRESIDENT. Shall we submit this particular portion to a vote.

MR. BENGZON. Yes.

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

MR. BENGZON. I have another paragraph, Madam President. This could be a separate section or another paragraph depending on what the committee desires and what the Committee on Style would wish: "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY. THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED." It will align this Human Rights Commission with other commissions that we have created in the Constitution in order to further insure the independence of the Human Rights Commission.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. I introduced that particular amendment yesterday, but there was a proposed modification presented by Commissioner Maambong to delete the first sentence. I am in favor of the modification presented earlier. So, may I propose that the particular amendment should not carry the first sentence, only the second sentence which reads: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

MR. BENGZON. Why do we want to delete the sentence which says, "THE COMMISSION SHALL ENJOY FISCAL AUTONOMY"?

MR. DAVIDE. That would be a surplusage because the autonomy actually intended is the automatic release of those appropriations.

MR. BENGZON. If that is the cases, then may be we should also delete such sentence in the other articles that we have approved. I will just leave it up to the Committee on Style, as long as it is in the record that is the sence of the Commission, Madam President.

THE PRESIDENT. What does the committee say on this point.

MR. SARMIENTO. Accepted, Madam President. We leave it to the Committee on Style, so long as the intent is there.

MR. BENGZON. In others words, what we are really saying is that if the Committee on Style fees that it would be more elegant and it is a surplusage to include the first sentence, then so be it as long as it is recorded in the Journal that it is the sense of the Commission that the Human Rights Commission will enjoy fiscal autonomy.

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MR. GUINGONA. Madam President.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Guingona is recognized.

MR. GUINGONA. May I respectfully invite the attention of the honorable Commissioners that there are two committee that are tasked with the same work and, therefore, reference can be made not only to the Committee on Style but also to the Sponsorship Committee.

Thank you, Madam President.

MR. MONSOD. Maybe we should just say that the minimum condition that the committee agrees to is: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED." That is a minimum condition and we just allow the committees to add the first sentence if they wish. But with the second sentence, the sense is already there.

MR. BENGZON. No problem, Madam President.

THE PRESIDENT. But it was deferred, I understand, Madam President. So if we approve this now, then it will be firmly included.

THE PRESIDENT. So, will read the amendment as accepted. "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

THE PRESIDENT. Is there any objection to this proposed amendment which has been accepted by the committee?

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. The wording reminds me of the provisions under the judiciary and the constitutional commissions. Is the intention to elevate the position of this proposed commission which is only investigative and recommendatory to the high dignity of a constitutional commission, as well as the independence of the judiciary, by making a positive statement in the Constitution that its appropriation shall be released automatically and so forth? It seems that we are complicating and also reiterating several provisions that would make our Constitution not only too long but too complicated. I wonder if that is the purpose because even other bodies with semi-judicial functions do not enjoy such kind of constitutional guarantee. It is just an inquiry.

MR. BENGZON. It is not so much the fact that we want to elevate this into a constitutional commission as it is more of an insurance that the independence of the Human Rights Commission, even though it is not considered as a constitutional commission as contemplated and as compared to the Civil Service Commission, the COMELEC and COA, is maintained. And this is as elegant as the other sentences. So, we submit the same to the body.

MR. SARMIENTO. The proposed amendment has been accepted by the committee, but we have this objection from Commissioner Padilla. So, may we throw the issue to the body?

MR. GUINGONA. Madam President, just for clarification. Does the amendment of the honorable Commissioner Bengzon refer only to the released? I was thinking that although I am very strongly in favor of this commission and would give it one of the top priorities, there are other top priorities that we may want to address ourselves to. For example, in the Committee on Human Resources, we would like to give top priority to education: therefore, if this does not refer only to an automatic and regular release but would refer to the matter of priorities in the preparation of the both the budget, then I am afraid that we might already be curtailing too much the discretion on the part of both the legislature and the executive to determine the priorities that should be given at a given time.

MR. BENGZON. Madam President, the sentence means what it says and it is clear.

THE PRESIDENT. Will the Commissioner please read.

MR. BENGZON. It only refers to the release which should be automatic and regular.

THE PRESIDENT. Please state it again so that we will be clarified before we take a vote.

MR. GUINGONA. Thank you, Madam President.

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MR. BENGZON. It will read: "THE APPROVED ANNUAL APPROPRIATIONS OF THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED."

VOTING

THE PRESIDENT. As many as are in favor of this particular section, please raise their hand. (*Several Members raised their hand.*)

As many as are against, please raise their hand. *(Few Members raised their hand.)*

As many as are abstaining, please raise their hand. *(Two Members raised their hand.)*

The result show 26 votes in favor, 4 against and 2 abstentions; the amendment is approved.

MR. RAMA. Madam President, there is one last amendment from Commissioner Davide. I ask that he be recognized.

This will be the last sentence to Section 1. It will read: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL EXERCISE THE POWERS CONFERRED TO THE COMMISSION HEREIN CREATED."

MR. MONSOD. May ask a question of the proponent, Madam President?

THE PRESIDENT. Please proceed.

MR. MONSOD. Just a matter of placement. Does the proponent believe that this is better placed here than in the Transitory Provision?

MR. DAVIDE. Madam President, to give strength to the proposal and in order to attain a symmetry in the matter of our recognition of the National Economic and Development Authority, as well as our recognition of the Monetary Board in the Article on National Economy, where this almost similar proposal appears, I think the proper situs for this must be here.

MR. FOZ. One suggestion, Madam President, instead of the words "TO THE COMMISSION," we suggest "ON THE COMMISSION."

MR. GUINGONA. Madam President.

THE PRESIDENT. Commissioner Guingona is recognized.

MR. GUINGONA. May I respectfully express my view that this particular provision should be entered in the Article on Transitory Provisions.

MR. DAVIDE. I have also expressed my view, Madam President, that in the Article on the National Economy and Patrimony, more particularly on the creation and establishment by Congress of an independent economic and planning agency, we provided as a second paragraph the following: "Until otherwise provided by law, the National Economic and Development Authority shall be the independent planning agency"; and in the matter of second paragraph the following: "Until otherwise provided by Congress or by law, the Monetary Board shall be the central monetary authority."

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We just want to call the attention of the proponent that the National Economic and

Development Authority, the Monetary Board and the Central Bank have been established by law. These have been created by virtue of an act of Congress. The present Committee on Human Rights is not a creation of Congress. Does that not make a differences?

MR. DAVIDE. It would not make any difference because even if it is created as a committee, the authority creating it is the President of the Philippines in the exercise of her legislative power. And so, even if it is created merely by an executive order, that executive order partakes of the nature of law because it is by virtue of the authority of the President to legislate.

Moreover, the importance of why it should be stated here is the fact that we should now want this particular committee to exercise immediately upon the ratification of the Constitution the very functions and powers conferred to the commission created.

MR. GUINGONA. Madam President, he desire of the honorable Commissioner that there should be immediate implementation could also be achieve even if there is a transfer to the Article on Transitory Provisions. Besides, my understanding is that there is a motion or a request which we will consider regarding the reopening of the Article on National Economy and Patrimony. And, perhaps, it would be best to include all of these provisions about the Monetary Board, the Transitory Provisions.

MR. DAVIDE. I will leave it to the body, Madam President, insofar as the proper place for this is concerned. But, perhaps, we can vote on the concept already. So, the moment we approve this, the succeeding motion will be that it should be placed in the Transitory Provisions.

THE PRESIDENT. Will Commissioner Davide please repeat what he said about the present Committee on Human Rights?

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MR. DAVIDE. The entire paragraph, which may be a section in the Transitory Provisions, will read: "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION HEREIN CREATED."

MR. MONSOD. The committee accepts that amendment subject to a decision of the body on its proper placement.

VOTING

THE PRESIDENT. As many as are in favor of this particular amendment of Commissioner Davide which has been accepted by the committee, with the reservation as to its proper place, please raise their hand. (Several Members raise their hand.)

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

As many as are abstaining, please raise their hand. (*Few Members raise their hand.*)

The result show 29 votes in favor, none against and 2 abstentions; this new amendment is approved.

MR. GUINGONA. Madam President.

THE PRESIDENT. Commissioner Guingona is recognized.

MR. GUINGONA. Regarding the reservation made by Commissioner Monsod, may we defer action on this until we definitely know whether or not we are reopening the Article on National Economy and Patrimony so we can take of these proposed transfer at the same time?

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. We believe that these issues can be handled separately because, as we pointed out, there is a difference between this section and the other sections of the Article on National Economy and Patrimony and that those have already been created by law, whereas we are talking of an executive order here.

MR. GUINGONA. Then, Madam President, I respectfully move transfer this particular subsection to the Article on Transitory Provisions.

MR. SARMIENTO. Madam President.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. We would rather throw it to the body as to whether this should be placed in this article or be transposed to the Article on Transitory Provisions.

VOTING

THE PRESIDENT. As many as are in favor that this particular amendment just approved be placed in the Transitory Provisions of the new Constitution, please raise their hand. (Few Members raise their hand.)

As many as are against, please raise their hand. (Several Members raise their hand.)

As many are abstaining, please raise their hand. (Four Members raise their hand.)

The results show 11 votes in favor, 16 against and 4 abstention; the motion is lost.

MR. DE LOS REYES. Madam President, parliamentary inquiry.

MR. RAMA. Commissioner Rustico de los Reyes would like to be recognized, Madam President.

THE PRESIDENT. Commissioner de los Reyes is recognized.

MR. DE LOS REYES. Is this not the function of the Sponsorship Committee – to decide which article to place a specific provision in? Suppose we decide now that it should be placed in the Transitory Provisions, is the Sponsorship Committee not empowered anymore to transfer it to another place?

MR. GUINGONA. Madam President.

THE PRESIDENT. Commissioner Guingona is recognized.

MR. GUINGONA. The view of some of the members of the Sponsorship Committee is that, with regard to matters that have been decided on the floor, the committee should respect the decision of the Commission in plenary. Of course, we are divided on this issue, but that is the view of some of the members of the Sponsorship Committee where a matter has not been decided. For example, if the transfer of a provision from one article to another has not been decided on the floor, then we have the prerogative to suggest or recommend. But once it is decided on the floor, some of us believe that there is no longer the power or authority on the part of the Sponsorship Committee to make any change or suggest any change.

Thank you.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

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MR. RAMA. The parliamentary situation calls for a—on the whole Section 1 as amended.

MR. SARMIENTO. Madam President, the section will read: "THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED A COMMISSION ON HUMAN RIGHTS. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS INCLUDING THE CHAIRMAN AND FOUR MEMBERS ALL OF WHOM SHALL BE NATURAL- BORN CITIZENS OF THE PHILIPPINES, AND A MAJORITY OF WHOM SHALL BE MEMBERS OF THE BAR. THE TERM, QUALIFICATION AND DISABILITIES OF THE MEMBERS SHALL BE PROVIDED BY LAW."

THE PRESIDENT. May Commission Sarmiento repeat that last sentence.

MR. SARMIENTO. "THE TERM , QUALIFICATION AND DISABILITIES OF THE MEMBERS OF THE COMMISSION SHALL BE PROVIDED BY LAW."

And then, the last sentence reads, "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION."

THE PRESIDENT. That is irrespective of its present membership, I suppose. I understand the present committee is composed of seven, while we have now put five here.

MR. SARMIENTO. Yes, Madam President.

THE PRESIDENT. So, will Commissioner Sarmiento read the whole section again?

MR. SARMIENTO. Yes, Madam President, "THERE IS HEREBY CREATED AN INDEPENDENT OFFICE CALLED COMMISSION ON HUMAN RIGHTS.

"THE COMMISSION SHALL BE composed of one Chairman AND four MEMBERS ALL WHOM shall be natural-born citizens of the Philippines, AND A MAJORITY OF WHOM SHALL BE members of the Bar. THE TERM, QUALIFICATION AND DISABILITIES OF THE MEMBRES OF THE COMMISSION SHALL BE PROVIDED BY LAW.

"THE APPROVED ANNUAL APPROPRIATIONS FOR THE COMMISSION SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

"UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS CONFERRED ON THE COMMISSION."

THE PRESIDENT. Will the Gentleman repeat that last sentence?

MR. SARMIENTO. "UNTIL OTHERWISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTION AND SHALL EXERSICE THE POWERS CONFERRED ON THE COMMISSION."

THE PRESIDENT. Yes, Commissioner Bacani.

BISHOP BACANI. Madam President, when we say "CONFERRED ON THE COMMISSION CREATED BY THIS..." is its existence really de facto?

MR. SARMIENTO. It should "ON THE COMMISSION BY THE CONSTITUTION."

BISHOP BACANI. Because it is herein created?

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. The commission referred to is the Commission on Human Rights to be created in the Constitution, because the existing body is not a commission but merely a committee.

BISHOP BACANI. Thank you very much.

MR. SARMIENTO. To make it clear, Madam President, the amendment should read: "UNTIL OTHER WISE PROVIDED BY LAW, THE EXISTING PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS SHALL CONTINUE TO PERFORM ITS FUNCTIONS AND SHALL EXERCISE THE POWERS COFERRED ON THE COMMISSION HEREIN CREATED."

VOTING

THE PRESIDENT. As many as are in favor of the entire Section 1, as read by Commission Sarmiento, please raise their hand. *(Several Members raised their hand.)*

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

As many as are abstaining, please raise their hand. *(One Member raised his hand.)*

The results show 36 votes in favor, none against and 1 abstention; Section 1 as amended, is approved.

MR. RAMA. Madam President, I move that we vote on the entire Section 2, as amended.

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MR. SARMIENTO. Madam President, Section 2 will read: "The Commission on Human Rights shall have the following [powers and function:

"(1) Investigate all forms of human rights violations INVOLVING CIVIL AND POLITICAL RIGHTS;

"(2) ADOPT ITS OPERATIONAL GUIDELINES AND RULES OF PROCEDURE, AND cite for contempt for violations there of in accordance with the Rules of Court;

"(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, AS WELL AS CITIZENS OF THE PHILIPPINES RESIDING ABROAD, AND PROVIDE FOR PREVENTIVE MEASURES AND legal aid services TO THE UNDERPRIVILEGED whose human rights have been violated or IN need OF protection;

"(4) EXERCISE VISITORIAL POWERS OVER JAILS, PRISONS, OR DETENTION FACILITIES;

"(5) Established a continuing program OF RESEARCH, education and information to ENHANCE RESPECT FOR THE primacy of human rights;

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

"(7) MONITOR FOR THE PHILIPPINE GOVERNMENT COMPLIANCE WITH INTERNATIONAL TREATY OBLIGATIONS ON HUMAN RIGHTS;

"(8) GRANT IMMUNITY FROM PROSECUTION TO ANY PERSONS 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;

"(9) REQUEST THE ASSISTANT OF ANY MINISTRY, BUREAU, OFFICE OR AGENCY IN THE PERFORMANCE OF ITS FUNCTIONS;

"(10) APPOINT ITS OFFICERS AND EMPLOYEES IN ACCORDANCE WITH LAW; AND

"(11) Perform such other duties and functions as may be PROVIDED by law."

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner DAVIDE is recognized.

MR. DAVIDE. There were two amendments earlier accepted by the committee and voted upon favorably by

the Commission which were not incorporated in what has been read: The first on Section 2 (1) which says: "ON ITS OWN OR ON COMPLAINT BY ANY PARTY;" AND THE Section 2(10) which says: "APPOINT ITS OFFICERS AND EMPLOYEE IN ACCORDANCE WITH LAW."

MR. SARMIENTO. We read the amendments, Madam President.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. In Section 2(1), did I hear the term "civil and rights" instead of human rights?

MR. SARMIENTO. Will the Gentleman kindly repeat his question?

MR. PADILLA. I was inquiring whether I heard correctly the term "civil and political rights" instead of human rights on Section 2(1).

MR. SARMIENTO. Yes, Madam President. Let me read the whole paragraph: "Investigate, ON ITS OWN OR ON COMPLAINT BY ANY PARTY, all forms of human rights violations INVOLVING CIVIL AND POLITICAL RIGHTS."

THE PRESIDENT. So, the Gentleman is limiting human rights to violations of civil and political rights. Is that the intention?

MR. SARMIENTO. In this section, yes, Madam President.

MR. PADILLA. I do not know about the wisdom of limiting human rights only to civil and political rights. In fact, I doubt whether political rights are included strictly in the term "human rights."

MR. SARMIENTO. Madam President, we have another section covering that point; it will be Section 3. May I ask Commissioner Nolledo to read Section 3, his amendment?

MR. NOLLEDO. May I refer the body to Commissioner Davide who made this substitute amendment.

MR. DAVIDE. Madam President, Section 3 reads: "CONGRESS MAY PROVIDE FOR OTHER CASES OF VIOLATIONS OF HUMAN RIGHTS THAT SHALL FALL WITHIN THE AUTHORITY OF THE COMMISSION, TAKING INTO ACCOUNT ITS RECOMMENDATIONS."

MR. PADILLA. Madam President, I do not believe in the wisdom of limiting human rights violations, under Section 3(1), to civil and political rights.

THE PRESIDENT. Commissioner Bacani is recognized.

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BISHOP BACANI. I have a question for clarification before we vote, Madam President. When there is an assertion of the primacy of human rights, primacy vis- a- vis what? We are speaking of the primacy of human rights- primacy in relation to what? "Primacy" is a relational term. One may speak of the primacy of labor in relation to capital, for example. But here it is spoken of absolutely. So, what do we mean by that?

MR. GARCIA. Here, we are referring to the basic human rights which are inalienable. In other words, these are constitutional guarantees that must be respected regardless of any emergency situations which perhaps may occur where some rights can be derogated. As is accepted also in international covenants or conventions, there are certain situations where some rights may be derogated, but they are basic rights which can never be taken away, and these are the basic rights that we are respecting.

BISHOP BACANI. Yes. But when we are speaking of the primacy of human rights have the primacy. Which among the human rights has the primacy? We are just speaking of primacy of human rights tout court; it is just like that.

MR. GARCIA. In general, we are saying that these rights are fundamental or are important. This is the kind of idea that we want to put across in this statement.

BISHOP BACANI. Does the Gentleman mean all civil and political rights?

MR. GARCIA. Yes, especially those which are inalienable; in other words, those belonging to the individual. In other words, the power of the State, or what we would call reasons of State, can never touch basic human rights which are given to each person in society.

BISHOP BACANI. Madam President, would the Gentleman consider the right to assembly among the human rights that he wishes to indicate?

MR. SARMIENTO. Yes, Madam President.

BISHOP BACANI. Under certain circumstances, such a right can be controlled by the State, can it not?

MR. SARMIENTO. That is correct.

BISHOP BACANI. Therefore, when we speak of the primacy of human rights in that sense, it would not be correct?

MR. SARMIENTO. As a general rule, Madam President, we should respect the primacy of human rights, but this not mean that we should not take into account other provisions of the Constitution.

BISHOP BACANI. That is it, Madam President. What is it "primacy" in relation to? That is what I am speaking of.

MR. SARMIENTO. Madam President, these are basic inalienable human rights. We should not speak of rights in relation to anything, to any person or entity.

BISHOP BACANI. My difficult is this- pardon me if I use religious terminology- when we speak for example, of the primacy of the Pope, we speak of the primacy of one person over others. When we speak of the primacy of the President in this Constitutional Commission, we speak of her primacy in relation to the Members. But here, we simply speak of the primacy of human rights in relation to what?

MR. GARCIA. The primacy of life, for example, over property rights. Human rights are the rights that a person needs to be able to survive, to be called "human," and these are the basic rights that he is endowed with.

BISHOP BACANI. Yes, I have no quarrel about that. Primacy in relation to what? That is my very simple question. Is it primacy in relation, for example, to the exigencies of development?

MR. GARCIA. Yes, definitely to other rights.

THE PRESIDENT. May we call on Commissioner Villegas? Maybe he would like to contribute something to this discussion.

MR. VILLEGAS. Yes. To clear up the ambiguity of words, could we say "ENHANCE RESPECT FOR THE INALIENABLE NATURE OF HUMAN RIGHTS," because I think that is the meaning it seeks to convey.

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. I think the discussion of the concepts of primacy in the context of its being a relation concept is at best a diversion. When we speak of a relational concept, it does not necessarily have to be adversarial. In fact, it can be mutually supportive, mutually reinforcing such as, I understand, the position of the committee when it says "the primacy of human rights." We do not have to compare this in a hierarchy of values. In fact, the position of the committee is that, in the hierarchy of legal values or constitutional mandate, human rights take preeminence over other considerations which may even support or reinforce it. It does not have to be adversarial. It is not, of course, a zero sum.

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BISHOP BACANI. Yes. That is what I am asking.

THE PRESIDENT. How about Commissioner Rosario Braid?

MS. ROSARIO BRAID. Maybe, the difficulty of Commissioner Bacani that he needed to compare the concept of human rights with another noun.

BISHOP BACANI. I was really asking for something of the sort.

MS. ROSARIO BARID. So, if we equate human rights with individual rights, we could say primacy of individual rights over collective rights. This is probably what Commissioner Bacani is seeking for. I mean, Commissioner Bacani is seeking for the primacy of human rights over something.

BISHOP BACANI. Please let me explain. If we speak of the primacy of human rights without any qualification

whatsoever, I ask precisely about the rights to assembly. In this case, that right to assembly under certain circumstances may yield to something else and, hence, it is not shown to have any primacy at all.

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. The way I appreciate the dilemma of Commissioner Bacani is that he wants to canalize the concept of primacy within a negative relationship wherein one offsets the other. It does not have to be so because the basic postulate of the committee is that human rights are important, they have preeminence, and in the hierarchy of values, they take prior notice.

MR. GARCIA. Madam President, I think the issue has been explained very well. That is precisely the point we want to make- the preeminence of human rights.

BISHOP BACANI. Preeminence over what?

MR. GARCIA. Political, civil, social and economic rights. We are not trying to compare. We are simply saying the preeminence of human rights, of the totality of these rights. That is the sense.

BISHOP BACANI. Madam President, when we speak of the preeminence of something, it is over some other thing which is not necessarily adversarial. I am not saying it is necessarily adversarial. But when we speak of preeminence, it is over something or over some persons. This is what I am just trying to clarify because if we speak of them completely in that sense, just wholesale, as was admitted by Commissioner Sarmiento, we cannot simply speak of the preeminence of this particular human right over, for example, the exigencies of national security at the particular point in time.

MR. MONSOD. Madam President.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. I was just wondering, Madam President, if we can resolve this in the context of a parallel provisions. If we will recall in the Article on Social Justice, we talked about Congress giving highest priority to the enactment of laws. The explanation was that highest priority does not necessarily mean the exclusion of other priorities, but that this is the first that should be taken up by Congress. I do not know if that resolves the issue raised by Bishop Bacani. In this case, when we say "the primacy of human rights" we mean the highest value but it does not necessarily mean that there are no values that could be at par with it.

BISHOP BACANI. Yes. But I wish to point out that I am not opposed to this. I am only asking for an explanation so I can vote intelligently. In this particular case, it was quite well explained by Commissioner Bernas that when we speak not of the highest priority, this means it should be among the laws that Congress will tackle first. And there is a particular point of reference. There is a point of relationship. The only thing I am asking for is the point of reference here, especially because the word used is really stronger than highest priority- we are speaking of primacy.

THE PRESIDENT. Let us be guided by the intent of the committee in the use of the word "primacy". I suppose that will settle the whole matter.

MR. SARMIENTO. The intent of the committee, Madam President, is to stress the importance of human rights, not primacy of human rights over anything, but to stress the importance of human rights.

BISHOP BACANI. So. Why do we not say "TO PROPAGATE THE GREATEST IMPORTANCE OF HUMAN RIGHTS"?

MR. RAMA. Madam President. Does Commissioner Azcuna wish to be recognized?

MR. AZCUNA. I yield to Commissioner Suarez, Madam President.

THE PRESIDENT. Commissioner Suarez is recognized.

MR. SUAREZ. Thank you. Madam President.

I heard Commissioner Padilla question the propriety of practically defining the sphere and scope of human rights under Section 2 (1). I do not know if this matter has already been taken up in connection with the question of jurisdiction. This provision would operate against the jurisdiction of exiting investigatory bodies. For example, an investigation conducted by the Commission on Human Rights would operate to divest the fiscals of jurisdiction to investigate mother cases which could also involve at the same time violations of human rights.

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THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Madam President, we explained a few days ago that investigation will be conducted by the Human Rights Commission without depriving appropriate agencies of the government to conduct prosecution. But the fiscal on his can also conduct a supplementary investigation of human rights violations.

MR. SUAREZ. Are they not exclusive of each other?

MR. SARMIENTO. Not exclusive, Madam President.

MR. SUAREZ. If an investigation is already being conducted by the fiscal, will that not operate to deprive the Commission on Human Rights of jurisdiction to conduct further investigation on the human rights aspects?

MR. SARMIENTO. Our submission is that primacy will be given to the investigation being conducted by the Commission on Human Rights.

MR. SUAREZ. Suppose there are two conflicting findings- a fiscal would say after investigation, "There is a strong case"; and here is the Commission on Human Rights saying after investigation, "There is a strong case." What happens then with respect to the prosecution of the guilty party or parties?

MR. SARMIENTO. Our position, Madam President, is that all forms of human rights violations involving civil and political rights will be conducted by this commission to the exclusion of other agencies of the government.

MR. SUAREZ. It will not go further than the indictment of the guilty parties?

MR. SARMIENTO. There will be no indictment. As we said, we limit it to the investigation. The prosecution will be conducted by the fiscal, by the Ministry of Justice or agencies of the government.

MR. SUAREZ. Madam President, if we promote the investigation to the judicial level on the assumption that the fiscal would already file the case after conducting a preliminary investigation and the case is now pending before the courts, will that not serve to divests the Commission on Human Rights of further right to investigate the human rights violation?

MR. SARMIENTO. If the case has been filed by the fiscal and is now pending before the courts, then that deprives the commission of the right to conduct its investigation. All it can do is to assist the fiscal in the prosecution of these cases.

MR. SUAREZ. Would that not subordinate what we call the-primacy of human rights to judicial proceedings, Madam President? I thought we were fighting for the primacy of human rights.

MR. SARMIENTO. Let us clarify, Madam President. We have said that the investigation of all forms of human rights violations involving civil and political rights will be conducted primarily by this commission. The prosecution will be conducted by the fiscals.

MR. SUAREZ. I see. But it is theoretically possible that the noble motivation behind the creation of the Commission on Human Rights may not be effectively exercised the moment a case is filled in court. Can we think of ways and means to prevent the stifling of this noble primacy of human rights theory?

MR. SARMIENTO. Madam President, let us make a distinction. The prosecution of cases will be handled by the fiscals. All that the Commission on Human Rights will undertake is the investigation. The prosecution of all cases involving human rights will not be stifling that power to investigate by the commission. Here we should make a distinction- investigations shall be conducted by the commission; prosecution to be conducted by the fiscals.

MR. SUAREZ. But may I go back to my original example. If there are conflicting findings, what would be the recourse of the Commission on Human Rights in order to further the prosecution in accordance with its findings when the fiscal says: "No case, sir"? What are we going to do?

MR. FOZ. Madam President, there are remedies. The procedure under our existing rules is for the fiscal to conduct the preliminary investigation or the prosecutor of the Ministry of Justice will conduct the preliminary investigation. But before that, the fact-finding aspect is handled exclusively by the proposed Commission on Human Rights. In other words, the evidence, the materials are gathered by the commission itself. After the investigation, all evidence all the papers are referred to the fiscal's office for the formal preliminary investigation. During the preliminary investigation, I suppose the commission will actively itself by providing assistance to the aggrieved parties. And from thereon, if the fiscal files the case or refuses to file the case on the ground of lack of evidence, lack of probable cause of prima facie evidence, then there is the remedy of appeal to the Ministry of Justice to review the findings of the fiscal.

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MR. SUAREZ. That is correct from the procedural standpoint but what happens to the good decision and findings of the Commission on Human Rights when it is faced with the findings of the fiscal that there is no violation? Can we not strengthen this office over and above the findings of the fiscal?

MR. FOZ. Unless we are willing to grant the proposed commission judicial or quasi-judicial functions, it will stop short of doing just that.

MR. BENGZON. Madam President, may I request Commissioner Suarez to yield to me because this was precisely the thrust of my interpellation when we were in the period of interpellations?

MR. SUAREZ. Gladly, Madam President.

MR. BENGZON. Madam President, this was precisely my difficulty when we are in the period of interpellations. I had envisioned possible confusion in the investigation of these human rights violations that is why I wanted to zero in on what human rights violations mean. I wanted to sharply focus the jurisdiction of the commission over human rights violation because my interpretation of this section was that the Human Rights Commission would have exclusive jurisdiction in the investigation of human rights violations. After they investigate and they find a prima facie case, then they should refer this to the fiscal's office, and the fiscal has no choice but to prosecute. But the way I understand the explanation of the committee now is that this is not exclusive. A complaint goes to the Human Rights Commission and files his complaint, but at the same time he can also go the fiscal's office and file his complaint. So, there will be two agencies investigating the case and there may be two conflicting decisions. What I understand was that human rights violations will be exclusively investigated by the commission, to the government, to the exclusion of the Ombudsman and to the exclusion of the fiscal's office.

MR. FOZ. What I have just explained refers to the ordinary interpretation of the word "investigate". But if our intention really is to strengthen the proposed Commission on Human Rights, then we should be able to give it its investigate power to include an exclusive power to investigate, to the exclusion of the ordinary prosecutory offices of the government. That would conform the views now expressed by Commissioner Bengzon, so that an investigation completed by the commission would no longer be reviewed by the fiscal's office or the Ministry of Justice. Once the papers of the case are received by the fiscal's office of the Ministry of Justice, the fiscal's only duty would be to file the case in court and prosecute it.

SUSPENSION OF SESSION

MR. BENGZON. Madam President, may I move that we suspend the session until two-thirty this afternoon.

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

It was 1:02 p.m.

RESUMPTION OF SESSION

At 3:02 p.m., the session was resumed.

THE PRESIDENT. The season is resumed.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. I move that we continue consideration of the Article on Human Rights.

THE PRESIDENT. May we ask the honorable members of the committee to please come to the front table?

MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. I ask that Commissioner Bengzon be recognized.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. Madam President, this is on the matter of the difficulty that Commissioner Suarez and I had late this morning just before we recessed for lunch, and this is with respect to Section 2(1). We are willing to leave the sentence as is:

Investigate on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.

With regard to the investigative powers of the commission, after discussing this matter with the committee over lunch, we agreed that the word "investigate" would mean that the Human Rights Commission will have the exclusive power to investigate all human rights violations. And therefore, we would like to read this in the Record and in the Journal. Should the commission find a prima facie case, then it shall transmit these records to the proper fiscal, after reviewing on its own the files of the case, believes otherwise, then the records would automatically be elevated to the Minister on Justice who will, in turn, make the necessary review. And if the findings of the Minister of Justice agree with the findings of the commission, a special prosecutor would then be appointed by the Minister of Justice to prosecute the case. If, however, the findings of the Minister of Justice would be in agreement with the findings of the fiscal, then that is the end of it.

With that interpretation entered in the Record, then I believe Commissioner Suarez and I will be satisfied with this particular paragraph.

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MR. SARMIENTO. Madam President, some Commissioners have expressed their reservations with respect to the comments made by Commissioner Bengzon. It is possible, they say, that the Ministry of Justice will not be supportive of the commission, so that it is possible that the ministry will delay the case. That would defeat the purpose of the commission. Because of that reservation, we have formulated a section which we would like to share with the body for their comments.

MR. BENGZON. Is it a section that will be included in the Constitution or will it be just the interpretation of

this sentence that will be read in the records?

MR. SARMIENTO. This will be an interpretation of that paragraph concerning investigation.

MR. BENGZON. Can we hear it then?

MR. SARMIENTO. "The Commission may deputize fiscals or government prosecutors if warranted by the evidence for the filing of appropriate cases in court."

MR. BENGZON. Does the Gentleman mean that the commission will now have the power to directly deputize the fiscal of the proper province or city to file the case in court should it find that there is a prima facie case?

MR. SARMIENTO. Yes, Madam President.

MR. BENGZON. And under that instance, the fiscal has no choice but to file and prosecute the case?

MR. SARMIENTO. Yes.

MR. BENGZON. What happens if the does not agree, then the commission can deputize any competent person to prosecute the case.

MR. BENGZON. Any practicing lawyer, for instance?

MR. SARMIENTO. He could be a practicing lawyer.

MR. BENGZON. Let me consult with Commissioner Suarez on that.

MR. FOZ. Or maybe an alternative would be for the commission to consult the Ministry of Justice for the assignment of another fiscal or state prosecutor who may be deputize for the purpose.

MR. BENGZON. The problem there is that it is really the Minister of Justice who has control and supervision over all these prosecution agencies. And, therefore, for us to give this additional power to the commission would be making an exception to the rule.

MR. FOZ. But we envision that this will not be a regular thing, that the deputation will be an exceptional procedure, that the commission will be every careful in referring or in deputizing the fiscals or the government prosecutor and will see to it that only in those instances where the evidence is really strong and can hold water will the commission really go ahead with the deputation.

MR. BENGZON. That is a bit vague. In other words, is the Gentleman trying to say then that this proposal of his is just a fall-back position, and that the general procedure would be to refer the matter first to the fiscal and only in the event that the fiscal refuses to prosecute would the commission then have the right to deputize another fiscal or any practicing lawyer that would have the right to prosecute? Am I to understand that, Madam President?

MR. FOZ. No. It will be a direct action by the commission to deputize the fiscal concerned and if the fiscal withdraws or refuses, then the commission may request the Ministry of Justice to assign a state prosecutor

which is a regular practice by the Ministry of Justice. In case the regular fiscal is not available for any reason at all or is accused of bias or prejudice in a certain case, the practice in the Ministry of Justice is actually to assign a state prosecutor to handle the case even if it is out of town or in far-flung provinces.

MR. BENGZON. In other words then, I am wrong in understanding that under the proposal of Commissioner Foz, the commission can directly appoint a special prosecutor.

MR. FOZ. No, that is the first step. The commission will directly deputize the fiscal concerned and the fiscal is bound by the filings of the commission. And so, the fiscal will file the case in court and prosecute with the active assistance of the commission or its lawyers.

MR. BENGZON. Yes. If it happens that the fiscal does not believe in the findings of the commission?

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MR. FOZ. Then that is the time for the commission to request the Ministry of Justice for the assignment of a special prosecutor whom it will also deputize, whom it will also designate as its deputy in the prosecution of that particular case.

MR. BENGZON. So, the only difference between the proposal of Commissioner Foz and mine is that, in my case, the records will still have to be reviewed by the Minister of Justice; while in his in case, there is no more need for the Minister of Justice to review because the Constitution will give that right to the commission to request the Minister of Justice to immediately assign a special prosecutor.

MR. FOZ. Yes. There is a short circuiting of the procedure so that there is a quick, speedier action on a particular case.

MR. BENGZON. That is all right with me.

THE PRESIDENT. The Chair believes, in brief, that the Commission on Human Rights is now becoming a superbody over and above even the Ministry of Justice.

MR. BENGSON. That is the reaction that I am beginning to consider, Madam President.

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Madam President, is that is also my concern because we seem to have a dichotomy in the matter of prosecutor services. Under our present system of justice, it is the Minister of Justice who is in full charge of all prosecutorial services from which even now, the special prosecutor, formerly the Tanodbayan, has to get his bearings in the matter of deputation.

Firstly, according to what I have heard, it is the position of the committee that the moment the Human Rights Commission finds a prima facie case- under the present rules, we do not call that a prima facie case anymore nor a probable cause, we call that now "only sufficient grounds to believe that a crime has been committed" under the 1985 Rules of Criminal Procedure-then it will prosecute. This was actually taken from Presidential

Decree No. 911. When the case is sent to the fiscal's office, and this time the commission is in effect the complaining party, the fiscal has to proceed in accordance with the 1985 Rules of Criminal Procedure. If the fiscal differs from the position of the commission, which is the complaining body, he cannot be bound and be compelled to prosecute even if the fiscal believes there is no prima facie case because a fiscal is not a ministerial officer. The fiscal is a quasi-judicial officer and to compel him to prosecute the case, as has been explained in the case of *Liwag vs. Sacedo* or rather *Salcedo vs. Liwag*, would do grave injury to our prosecutorial system of penal justice. We cannot compel a person vested with discretionary powers to file and prosecute a case as if he were a ministered officer. That has been pointed out as early as in the case of *Guiao vs. Figueroa* a long time ago. If the fiscal disagrees, the remedy is for the complaining party to bring up the matter to the Minister of Justice. That was the procedure even before as explained by the Supreme Court in the case of *Assistant Provincial Fiscal of Bataan vs. Dollete*. It later became P.D. No. 911 and now, it is part of our Rules on Criminal Procedure adopted in 1985. But to compel the fiscal and bind him by the finding of a mere robot. That is why the law has made such provisions.

However, if the commission wishes to avoid all the trouble of going to the fiscal's office, and since they themselves can be assisted by a special prosecutor, then they can avail of the provisions of the Revised Administrative Code- Section 1686, for instance, provides additional counsel to assist fiscal. They can have special prosecutors assigned to them by the Ministry of Justice which prosecutors will conduct the preliminary investigation and proceed to file the case without having to deal anymore with the regular or city fiscals, provincial fiscals as the case may be.

But to proceed on that theory that the fiscals are bound by the findings of the commission and can there by be compelled to file and prosecute the case, I think, will destroy completely the concept of the prosecutorial service that we have for so many years already.

MR. SARMIENTO. Madam President, we are aware of the procedure. However, we have these fears that if elevated to the Ministry of Justice, the Ministry of Justice might delay the case or might decide otherwise.

MR. REGALADO. Then why not have special prosecutors assigned to the commission itself?

MS. AQUINO. Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. With due respect to the position of the committee, I fully support the dissertation made by Commissioner Regalado. There is no reason for us to feel insecure about the potency of the Human Rights Commission. The fact is we have already elevated it to the level of a constitutional body. That by itself renders it viable and potent in implementing and enforcing its power and functions. It would be different if it were any ordinary administrative or quasi-judicial body. But the fact that it is a constitutional body gives it enough moral compulsion such that its ruling and decision will have a very strong persuasive effect on the prosecutorial arm of the judiciary. At this moment we cannot deprive the fiscals of their discretionary powers lest we disturb the very essence of the adversary system in prosecution.

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MR. BENGZON. Madam President, in view of all these statements, I would like now to have the issue on our interpretation decided by the body.

MR. FOZ. Madam President.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. Madam President, we have consulted with several Commissioners who are far wiser than we in the committee. We are, however, concerned with the sad prospects that the findings of the commission might just be sidelined or thrown aside by the fiscal who would not exactly agree with the findings of the commission. In such a case, an appeal could be made to the Minister of Justice following the regular procedure on appeals from the rulings and resolutions of fiscals, considering that if we grant the commission the power to directly deputize, the fear has been expressed that this might destroy existing provisions of law and existing procedures on the discretionary power of the fiscals in such matters that directly bear on his functions. The committee is then willing to subscribe to the interpretation made by the chairman of the Steering Committee on the provision of the extent and the scope of the power of the Commission on Human Rights to investigate. Thank you.

MR. BENGZON. Thank you very much.

MR. NOLLEDO. Madam President, I would like to make some important remarks, if I may be permitted by the Chair.

THE PRESIDENT. Commissioner Nolleddo is recognized.

MR. NOLLEDO. I understand that under the 1985 Rules on Criminal Procedure which adopted some provisions of P.D. No. 911, the fiscal does not conduct actual hearings for purpose of preliminary investigation. The complainant files an affidavit, together with supporting affidavits, of his witnesses and the respondent files counteraffidavits. It is only when the fiscal would like to be clarified on certain matters that he will propound some clarificatory question. So, Madam President, I feel that the Commission on Human Rights is really a fact-finding body and, therefore, there should be a provision in the committee report that, as a fact-finding body, the duty of the fiscal to determine the existence of prima facie case should be taken over by the Commission on Human Rights. Therefore, the moment the Commission on Human Rights determines the existence of a prima facie case, there should be a provision that the commission can deputize any prosecutor or any person, any lawyer for that matter, to prosecute the case before the appropriate court of justice. What I mean is that the fiscal is deprived of the jurisdiction to determine the existence of prima facie case and it is the Commission on Human Rights that should determine the existence of the prima facie case. And when the existence of the case is so determined, the commission should not be powerless to deputize any person, even a fiscal, or to request the Ministry of Justice to appoint a fiscal to be deputized by the commission to prosecute the case. Thank you. Madam President.

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

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. Thank you, Madam President. I heard Commissioner Bengzon use the word "exclusive," and from the committee, I heard that the commission "may deputize" fiscal. Madam President, under Rule 110 of the 1985 Rules on Criminal Procedure, which updated the 1940 and the 1964 Rules of Court, the prosecution of offenses is commenced by complaint or information. And Rule 112 provides for preliminary investigation. This covers felonies not only under the Revised Penal Code but also under the special penal laws, and all those may involve violations of human rights. For example, a person is murdered or there is a holdup or serious felonies but there are so many other grave felonies, less grave felonies, less grave and light felonies. Our present system is to have a complaint filed with the fiscal's office, and the fiscal's office in every province, and probably even in every city and municipality, will conduct a preliminary investigation in accordance with the Rules on Criminal Procedure. There are thousands, may be hundreds of thousands, of cases being filed all over the country but under this proposal all the criminal cases may have to be referred to the Commission on Human Rights. How can the commission undertake the immediate preliminary investigation leading to the filing of the criminal information for prosecution, trial and judgment? We may be destabilizing the whole system of criminal procedure in our country under these proposals of the committee, which seem to ignore the present satisfactory situation. There may be a few instances where the fiscal prosecutes when he should not, or he does not prosecute when he should, but these are exceptional cases, and the Rules provide for the aggrieved party to file an appeal with the Minister of Justice. There are cases where a complaint or an information has already been filed in court, and notwithstanding the efforts of the fiscal to either prosecute or to dismiss the case, the trial courts correctly hold that once the information has been filed and especially after the accused has been arraigned, it is no longer the province of the prosecuting arm. The decision rests exclusively on the courts of justice.

We cannot make the prosecution of offenses which involve the more important human rights dependent on the action of this proposed commission. Our system now is that a private person, the aggrieved party, the police, the constabulary, the peace or law enforcement agencies, and even private prosecutors, may file a complaint leading to an information by the fiscal. But to provide that the commission must first deputize the fiscals or that the commission must have the exclusive authority or jurisdiction is not to promote or protect human rights nor to punish the violators of human rights, but maybe to place so many impractical obstacles in the speedy administration of justice.

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MR. SARMIENTO. Madam President, we have accepted the interpretation made by Commissioner Bengzon, but we have these remarks made by commissioner Nolleddo. We would like to throw the issue to the body.

MR. BENGZON. Madam President.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. Before the body votes, may I just restate the issue so that everything is clear.

There were two things were brought up by Commissioner Padilla, one is this exclusively aspect and the other one is the deputization aspect. I suggest that we take up these two issues one by one and vote on them one at a time. The first issue I would like to put to a vote is whether or not the Human Rights Commission will exclusively investigate human rights violations.

MR. PADILLA. Madam President, I think the first issue has been decided this morning when I objected to the phrase "exclusive jurisdiction" or "exclusive authority," and Commissioner Nolleto and the committee sustained the objections to exclusively.

MR. BENGZON. That is precisely why I stood up and raise this question again because during the period of interpellations I was made to understand that the commission will have exclusive jurisdiction over the investigation of these human rights violations.

SUSPENSION OF SESSION

THE PRESIDENT. The Chair suspends the session for a few minutes.

It was 3:28 p.m.

RESUMPTION OF SESSION

At 3:36 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President, I ask that Commissioner Sarmiento, the chairman of the committee, be recognized.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Madam President, after conferring with the members of the committee, this is now our interpretation of Section 2(1): The commission shall exclusively investigate all forms of human rights violations. This means that if there is a prima facie case, the commission will refer it to the fiscal for filing. If the fiscal agrees to file it, then there is no problem. If the fiscal disagrees, the case will automatically be elevated to the Ministry of Justice. If the Ministry of Justice agrees with the commission's findings, the case will be assigned to a special prosecutor whom the Ministry of Justice will deputize. If the Ministry of Justice, after evaluation of the case, disagrees with the commission, that is the end of the case. That is our interpretation of Section 2(1).

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Just one clarificatory question. In the first statement given by Commissioner Sarmiento, he used the word "exclusive" to define "jurisdiction." In the second reading of the interpretation, the word "exclusive" no longer appeared. Which shall be the controlling statement?

MR. SARMIENTO. May I clarify that point, Madam President. The second statement is the controlling statement, not the first one.

MR. NOLLEDO. Madam President, one very importance clarificatory question. The moment the Minister of Justice decides not to file the case, considering that he is an alter ego of the President, I disagrees that the case is terminated there because of the possibility of appeal to the Office of the President. It is only when the

Office of the President affirms the decision of the Minister of Justice that the case terminates there, because the Minister is under the control of the President. So I hope the committee will qualify its statement that the moment the Minister of Justice says that there is no prima facie case, we do not preclude an appeal on the part of the aggrieved party or the complaint to the Office of the President. Am I right?

MR. SARMIENTO. Yes, the Commissioner is right.

MR. NOLLEDO. Thank you very much.

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THE PRESIDENT. I would just like to call the attention of the Commissioners whether or not all these different subsections of Section 2 have been approved individually, either yesterday or this morning.

What we are going to do now vote on the whole. Section 2 with all its subsections. I request Commissioner Sarmiento to read the whole Section 2.

MR. PADILLA. Madam President, before the reading of the whole Section 2, may I say that this matter be left to the Supreme Court because this is part of the judicial system. Why will this Commission now provide for certain rules when the Rules on Criminal Procedure, as well as the Rules of Court, has been promulgated by the Supreme Court? That is already covered by the approved Article on the Judiciary.

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. Madam President, before the reading of the whole Section 2, may we request the committee to listen to the explanation of Commissioner Aquino regarding that primacy, because the explanation of the committee was not so convincing and persuasive. I would like to ask Commissioner Aquino to present to the committee for approval her own explanation of it.

MR. SARMIENTO. May I yield to Commissioner Aquino, Madam President.

THE PRESIDENT. Commissioner Aquino is recognized.

MS. AQUINO. I hope this will satisfy Commissioner Bacani and the committee. I think the intent of the concept of primacy or terms of application is that any apparent conflict between the exigencies of the times and the people's basic human rights must be resolved according to the principle that a social organization exist to serve and to protect men, and that it cannot claim to serve the common good if human rights are not safeguarded.

MR. SARMIENTO. May I proceed, Madam President. Section 2 states: "The Commission on Human Rights shall have the following powers and functions.

"(1) Investigate, on its own or complaint by any party, all of human rights violations involving civil and political rights;

- "(2) Adopt its operational guidelines, rules of procedure and cite for contempt for violations thereof in accordance with the Rules of Court;
- "(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as citizens of the Philippines residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
- "(4) Exercise visitorial powers over jails, prisons, or detention facilities;
- "(5) Establish a continuing program of research, education and information to enhance respect for the primacy of human rights;
- "(6)" Recommend to Congress effective measures to promote human rights and for compensation to victims or their families of violations of human rights;
- "(7) Monitor the Philippines government's compliance with international treaty obligations on human rights;
- "(8) 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;
- "(9) Request the assistance of any ministry, bureau, office or agency in the performance of its functions;
- "(10) Appoint its officers and employees in accordance with law; and
- "(11) Perform such other duties and functions as may be provided by law."

VOTING

THE PRESIDENT. As many as are in favor of the whole Section 2 as read by Commissioner Sarmiento, please raise their hand. *(Several Members raised their hand.)*

As many as against, please raise their hand. *(A Member raised his hand.)*

As many as are abstaining, please raise their hand. *(Two Members raised their hand.)*

The results show 3 votes in favor, 1 against and 2 abstentions; the whole Section 2 is approved.

MR. RAMA. Madam President. I move that we close the period of amendments on the Article on Commission on Human Rights.

THE PRESIDENT. I think there is still another section for consideration, which is Section 3.

MR. RAMA. I ask that Commissioner Sarmiento be recognized.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. Section 3 says that Congress may provide for other cases of human rights violations that should fall within the authority of the Commission taking into account its recommendations.

BISHOP BACANI. Madam President.

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THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. Madam President. May ask the committee how that would differ substantially from the last function of the commission as enumerated, which states: "Perform such other duties and functions as may be provided by law." Is not that the last one?

MR. SARMIENTO. No, this is intent of Section 3, Madam President. As we have said, this commission has a modest attempt and that is to investigate all forms of human rights violations involving civil and political rights, but we envision the inclusion of other human rights like economic, social and cultural rights. In the future, or as the need arises, the Commission may investigate human rights violations affecting these rights. This is the reason we leave it to Congress to provide for other cases of human rights violations upon the recommendation of the commission.

BISHOP BACANI. But, precisely, is that not covered by the last function, "Perform such other duties and functions as may be provided by law"?

MR. FOZ. Madam President, Section 3 is a more particular directive to Congress to look into the feasibility of providing that other cases or instances of human rights violations may also be investigated or fall within the authority of the commission to investigate. On the other hand, Section 2(11) is a catchall provision which would authorize the commission to perform other functions that Congress may assign to it.

BISHOP BACANI. Yes, but, precisely, since it is a catchall provision, I thought that was what the Commissioner meant by this Section 3.

MR. FOZ. Yes. But there is nothing like providing for a specific directive to congress to look into the feasibility of, perhaps, expanding the authority of the commission to investigate other cases of human rights violations.

BISHOP BACANI. Does the Commissioner not think that Section 2(11) would be adequate?

MR. FOZ. I do not think that would be adequate to express the constitutional directive to Congress to make such a feasibility study into further broadening the scope of the authority of the commission.

BISHOP BACANI. In fact, to be honest with the Commissioner, when I voted for the whole Section 2, I thought the understanding was that that last function, "Perform such other duties and function as may be provided by law," covers what is now proposed in Section 3. So I have no objection to that.

MR. FOZ. We look at the said section in that light, Madam President.

MS. ROSARIO BRAID. Madam President.

THE PRESIDENT. Commissioner Rosario Braid is recognized.

MS. ROSARIO BRAID. I also ask the same question asked by Commissioner Bacani because I did make a proposal worded similarly to that effect, and Commissioner Bernas said that that is contained in the last provision under "other function." That is the reason why I have withdrawn my proposal for Congress to expand the functions because I was satisfied by Commissioner Bernas' reply that that would be taken care of by the last provision. So if we look at yesterday's Journal, that is the same proposal I made yesterday.

MR. SARMIENTO. Madam President, this amendment was proposed by Commissioner Nolledo and we voted on it favorably. So may we ask Commissioner Nolledo what is the intent of this proposal which was approved by the body.

MR. NOLLEDO. I understand that the primary jurisdiction of the Commission on Human Rights is set fourth in Section 2(1), where we talk of civil and political rights. I remember Commissioner Padilla asking, "How about economic and social rights or other rights, or rights other than civil and political rights?" That is the reason why we are opening an avenue towards expanding the jurisdiction of the Commission on Human Rights as provided for in Section 3. We leave it to Commission on Human Rights.

MR. PADILLA. Madam President.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. The statement of Commissioner Nolledo might give the wrong impression that I was that satisfied with human rights. Precisely, I was questioning why he qualifies human rights involving civil or political rights. I never wanted to expand further because I am against the entire provision which is superfluous and overlapping.

THE PRESIDENT. Commissioner Bacani is recognized.

BISHOP BACANI. Madam President, if this Section 3 is submitted to a vote, it is with the understanding that it will be a surplusage since the last provision in Section 2 already covers the provision.

MR. SARMIENTO. As we have explained before, this is a section that looks forward. At present we are limiting the jurisdiction to civil and political rights. The need may arise when the commission must investigate other human rights violations involving economic, social and cultural rights.

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BISHOP BACANI. Yes, but the other provision also looks forward. It does not look backward—"Perform such other duties functions as may be provided by law." That certainly looks forward.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. Section 3 is the formulation after the modification of the Nolledo proposal. May I explain that this is not a surplusage. This is with full meaning and import. If we consider Section 2(1), we will notice that the power is to investigate violations of human rights affecting civil and political rights. Let us remember that this is a power. Section 2(5), which was pointed to by Commissioner Bacani, refers to other duties and functions which would not, therefore, include the broadening of the power to investigate other cases of human rights violations I repeat, it is not a surplusage; it is not repetitious. It seeks to broaden precisely the power of the commission later because it is only starting rather very modestly.

MR. NOLLEDO. Madam President, just one statement. If we are to adopt the interpretation of Commissioner Bacani, we will be unduly burdening the Commissioner on Human Rights and, in fact, we negate the laudable purposes for which it was established.

Thank you.

MR. RAMA. Madam President, the body is now ready to vote.

THE PRESIDENT. The Chair asks Commissioner Sarmiento to read Section 3 again.

MR. SARMIENTO. Section 3 provides: "Congress may provide for other cases of human rights violations that should fall authority of the commission taking into account its recommendation."

VOTING

THE PRESIDENT. As many as are in favor of this section, please raise their hand. *(Several Members raised their hand.)*

As many as are against, please raise their hand. *(Few Members raised their hand.)*

As many as are abstaining, please raise their hand. *(Two Members raised their hand.)*

The results show 28 votes in favor, 3 against and 2 abstaining: Section 3 is approved.

MR. RAMA. Madam President, I move that we close the period of amendments on the Article on Human Rights Commission.

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

MR. RAMA. Madam President, if there is no objection from any of the Commissioners, I move that we approve on Second Reading the Article on Commission on Human Rights.

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. Before we vote on Second Reading on the Article on Human Rights Commission, I would like to propound a few questions.

The object of my question is to apprise our people on what to expect and what not to expect from these provisions which we are considering. I would like to premise my question by stating that this provision regarding the creation of a Commission on Human Rights is not self-implementing. It calls for an implementing legislation, especially for the appropriation of needed funds by Congress. Am I correct, Madam President?

MR. SARMIENTO. The Commissioner is correct, Madam President.

MR. RODRIGO. In the meanwhile, while Congress has not yet acted, the Presidential Committee on Human Rights continues to function. And, as a matter of fact, in the Transitory Provisions, there is a proposal to give to the Presidential Committee on Human Rights the powers given to the Commission Human Rights. Am I correct?

MR. SARMIENTO. Yes, Madam President.

MR. RODRIGO. I was just imagining that, if I were a Members of Congress, and I see that we have this Presidential Committee on Human Rights which is functioning very well, a committee with teeth which is being backed by the President who has the control over the ministries, bureaus and offices of the government, then I would consider this newly proposed commission, which is an "island" segregated from the President, with no inherent powers of its own.

If there a Member of Congress, I would say, "Instead of appropriating money for this new and untried commission, why do we not appropriate more for the Presidential Committee on Human Rights?" Suppose Congress does that, which I think is a very wise move, or Congress does not pass any implementing legislation to give life to this proposed commission or does not appropriate but instead strengthens the Presidential Committee on Human Rights, would Congress be acting in accordance with its constitutional powers and prerogatives?

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MR. SARMIENTO. Madam President, we have this provision approved by the body, and the Constitution shall provide that there be an independent office for the Commission on Human Rights. So Congress is required to create this commission.

MR. RODRIGO. It is already created by the Constitution. But suppose Congress does not only want to appropriate money for it? Instead of wasting the money of the people on this Commission on Human Rights which I label a "paper tiger," why not use that money to strengthen an already existing and tried Presidential Committee on Human Rights?

MR. SARMIENTO. But the existing Committee on Human Rights is a presidential creation.

MR. RODRIGO. Yes. Suppose Congress says, "All right, let us give it a congressional blessing. Instead of appropriating money for a new and untried Commission on Human Rights."

MR. SARMIENTO. That is different, Madam Presidential. This Commission is an independent constitutional body. If Congress insists on its decision, then it will be violating the Constitution, because it mandates Congress to create an independent constitutional body.

MR. RODRIGO. Suppose Congress does what I said, the Commissioner claims it would be violating the Constitutional. But what can we do about it?

FR. BERNAS. Madam President.

THE PRESIDENT. Is Commissioner Rodrigo through?

MR. RODRIGO. No, not yet, I have some other questions. This matter is very important. We might be raising the hopes of our people but afterwards frustrate them.

MR. SARMIENTO. May I yield to Commissioner Bernas.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Madam President, this morning we approved this provision:

Until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its function and shall exercise the powers conferred on the Commission.

The understanding here is that upon the ratification of this Constitution, the present Presidential Committee on Human Rights becomes the Human Rights Commission and it begins to enjoy the status of the Human Rights Commission being created by the Constitution. It ceases to be a mere creation of the President, so that whatever Congress appropriates, it appropriates for the Human Rights Commission.

MR. RODRIGO. No, there is a distinction between the Human Rights Commission and the Presidential

Committee on Human Rights: There is a basic difference; and this, to me, is very important. The Presidential Committee on Human Rights is backed up by the President, with all the powers of the President over the whole executive department behind it. On the other hand, the Commission on Human Rights which we plan to create by means of this provision in the Constitution is isolated from the President, independent of the President and does not have inherent powers of its own.

FR. BERNAS. What I am saying is that upon the ratification of this Constitution, that present Presidential Committee on Human Rights ceases to be dependent on the provision. That is the intent of the paragraph we approved this morning.

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. May I ask one clarification According to Commissioner Bernas, upon the ratification of this Constitution the Presidential Committee or Human Rights.

FR. BERNAS. The composition, Madam President.

MR. REGALADO. But what this provision approved this morning states is: "Until otherwise provided by law the existing Presidential Committee on Human Rights shall continue to perform its functions."

So there is a little gap from the time of the ratification of the Constitution to the time Congress shall have convened and have passed a law. What I would like to find out is what would be the committee's or the commission's status during that period between the ratification of the Constitution and until such a law has been passed by Congress.

FR. BERNAS. Precisely, what I am saying is that upon the ratification of this constitution, the status of the present committee becomes constitutional although its composition, until it is otherwise provided by law will continue to be the way it is.

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MR. REGALADO. That would not be the way I would read it, Madam President, because the phrase until otherwise provided by law" qualifies that succeeding clause "shall continue to perform its functions." I am just concerned with respect to this cutoff or starting point because, on the one hand, we have, as the Commissioner has said, the ratification of the Constitution and, on the other, this continuance of functions and powers of the present Presidential Committee on Human Rights until otherwise provided by Congress. So how do we reconcile this?

MR. RODRIGO. May I add something to what Commissioner Regalado said?

MR. DAVIDE. Point of information, Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. This is a point of information because Commissioner Regalado did not read the entire section. He stopped at merely "exercise its functions." We added- and this was my amendment-"and to exercise the functions conferred on the commission herein created." So is very clear that the Bernas interpretation is the correct interpretation of that particular amendment which I introduced.

MR. REGALADO. Was that an amendment? When we voted this morning, this was the one I voted for, which ended with the word "COMMISSION." This is the one furnished us by the committee, ending with the word "Commission" and canceling "herein created."

MR. SARMIENTO. As read, Madam President, we added the words "herein created."

BISHOP BACANI. Madam President, I asked a question this morning which led to the clarification by the committee and the addition of the words "herein created."

MR. RODRIGO. Madam President, let us start from that premise- that the Presidential Committee on Human Rights, as now functioning, continues to function until otherwise provided by law. Suppose Congress, instead of abolishing the Presidential Committee on Human Rights, decides to create by legislation this Presidential Committee on Human Rights, instead of the commission provided for in the Constitution, because this Presidential Committee on Human Rights is more effective- it is backed by the President- unlike the proposed commission which is an island segregated from the President. It has to plead with fiscals; it has to lead with prosecuting officers; it has no power; it is a toothless commission. What happens then? Can we compel Congress to appropriate money for this if Congress says, "No, we do not want to appropriate money for that; that is a waste of money. We prefer the Presidential Committee on human Rights"?

FR. BERNAS. Madam President, I take exception to the statement that even after the ratification of this Constitution the present Presidential Committee on Human Rights continues to be a presidential commission. It ceases to be a presidential commission. And it, therefore, becomes independent of the President.

MR. RODRIGO. But it says here that the President will appoint five commissioners. Does the Commissioner mean we have automatically appoint, by means of this constitutional provision, the five commissioners? Are there five commissioners in the Presidential Commission on Human Rights now?

THE PRESIDENT. There are seven commissioners.

MR. RORIGO. Madam President, it is provided in these provisions we are discussing that the President shall appoint the chairman and the four members of the commission. Before that appointment shall have been done, I do not suppose there will be any commission.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. The meaning of the phrase "until otherwise provided by law" has reference to the scope and extent of the powers of the present Presidential Committee on Human Rights. In other words, the moment the Constitution is ratified, the Commission on Human Rights has all the powers given to the presidential committee, together with the powers given that are here, and what may be charged by law are the powers given to the presidential committee which are not found here.

MR. RODRIGO. At present, the Presidential Committee on Human Rights is under the President, supported by the President and backed by the powers of the President. So it can, with the backing of the President, call on any fiscal, prosecuting officer to cooperate. Does the Commissioner mean to say that when this Constitution takes effect, we shall say: "Well, you, in the Presidential Committee on Human Rights are now an isolated island."

FR. BERNAS. Yes, Madam President., this is the precise intention.

MR. RODRIGO. If this is the case, I want to speak en contra, Madam President.

FR. BERNAS. Madam President, the entire discussion or tenor we had when we were creating this commission was to make it independent of the President, precisely, so that it cannot be pressured by the President.

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MR. RODRIGO. But this is ironic, because by making independent of the President, we weaken instead of strengthening it. It is all right to make an office independent of the President, if we vest it with powers of its own. But what if its power is merely recommendatory, merely investigative, with no power to act on it own? It is stronger if backed by the President. We weaken that office if we segregate it from the President and make it an isolated island in an uncharted sea.

FR. BERNAS. I think it is very clear that the Commissioner's position is in complete disagreement with the position of the committee.

MR. RODRIGO. Yes. May I ask another question. Let us say the implementing legislation is enacted and Congress appropriates the money for the commission; but the Presidents says: "No, I do not want to appoint the chairman and the members of that commission, because I already have the presidential committee and I am very happy with it. It is doing very good work; it is very effective, and I think if this other commission is created, if I appoint the members, it will not be as effective as the committee that I have now. As a matter of fact, it will be a 'paper tiger.'" Can the President refuse to appoint?

FR. BERNAS. The fact is that once this is ratified, the Presidential Committee on Human Rights ceases to exist. So the President will have no authority to appoint anybody to the presidential committee because the office no longer exists. If the President appoints somebody to a non-existing office, that is a violation of the Constitution.

MR. RODRIGO. No. The provision says that the President must appoint the chairman and the members of this commission that is being created by this constitutional provision. But suppose the president says: "No, I will not appoint anybody to the commission."

FR. BERNAS. Its is a speculation, Madam President.

MR. RODRIGO. No, it is not a speculation because the President is happy with the present presidential committee. I think it is very profitable. Why waste money on a new commission which is untried and powerless? This came out during the interpellations. Can this commission investigate, and later on tell the fiscal, "You file a case?" The answer is: "No, it cannot compel." So what is the use of spending money on it? We

will just be raising the hopes of our people and then frustrate them later on.

Another thing, Madam President. Even if Congress, let us say, appropriates the money, and the President appoints the five commissioners, we will have a commission with its office in Manila.

Human rights are violated all over the Philippines: in Mindanao, Visayas, Luzon, up to Batanes. How will the victims of human rights violation in faraway places communicate with the commission in Manila?

FR. BERNAS. It is obvious, Madam President, that Commissioner Rodrigo wants to speak en contra. I think the matter he is raising was already raised here during the period of amendments, and it is just a question of voting on Second Reading.

REV. RIGOS. Madam President.

THE PRESIDENT. Commissioner Rigos is recognized.

REV. RIGOS. I am a member of the committee but when I voted for the last paragraph of Section 1, which reads "Until otherwise provided by law, the existing Presidential Committee on Human Rights shall continue to perform its functions..." my impression was that to perform its function as a Presidential Committee on Human Rights and will not automatically become the Commission on Human Rights envisioned in this article. That was my understanding.

In other words, the Presidential Committee on Human Rights will continue to function until this Commission on Human Rights is created. Following the provisions we have spelled out in this article, it does not automatically become the Commission on Human Rights.

FR. BERNAS. Madam President, I think it is quite obvious that there are varying interpretations of the provisions by this body. So, perhaps, a motion for reconsideration would be in order.

SUSPENSION OF SESSION

THE PRESIDENT. May we suspend the session for a few minutes.

It was 4:18 p.m.

RESUMPTION OF SESSION

At 4:37 p.m., the session was resumed.

THE PRESIDENT. The session is resumed.

The Floor Leader is recognized.

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

THE PRESIDENT. Commissioner Rigos is recognized.

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REV. RIGOS. Madam President, I move for a reconsideration of the approval of Section 1 (3) of the Article on the Commission on Human Rights.

VOTING

THE PRESIDENT. As many as are in favor of the motion of Commissioner Rigos to reconsider the approval of Section 1 (3), which was the section involved just before the suspension of the session, please raise their hand. *(Several Members raised his hand.)*

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

The results show 31 votes in favor and none against; the motion for reconsideration is approved.

MR. RAMA. Madam President, I ask that Commissioner Regalado be recognized to present the amendment.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Thank you, Madam President. In connection with the last paragraph of Section 1 (3), I respectfully submit this amendment, coauthored by Commissioners Rodrigo, de los Reyes and Rigos, to read as follows: "Until THIS COMMISSION IS CONSTITUTED, the existing Presidential Committee on Human Rights shall continue to EXERCISE its PRESENT actions and powers."

THE PRESIDENT. What does the committee say?

MR. SARMIENTO. We have no objection, Madam President.

MR. NOLLEDO. Clarificatory questions, Madam President.

THE PRESIDENT. The Commissioner please proceed.

MR. NOLLEDO. When we use the phrase "Until THIS COMMISSION IS CONSTITUTED," does this mean that Congress is mandated to create the commission within a reasonable time?

MR. REGALADO. Yes, Madam President.

MR. NOLLEDO. Thank you.

MR. DE CASTRO. Madam President, point of clarification.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Madam President, the first statement of Commissioner Regalado was "Until THIS COMMISSION IS CONSTITUTED." In his answer to the Honorable Nolleddo, he said, "Until it is created by Congress."

Section 1 clearly states that the commission shall be created. So Section 1 already created it.

MR. REGALADO. I did not mention the word "created." I just gave the answer yes, because Commissioner Nolledo was asking whether by the phrase "Until THIS COMMISSION IS CONSTITUTED," Congress is mandated to create the commission within a reasonable time. my answer was yes. I did not use the word "created."

What we mean here by "CONSTITUTED" is when Congress passes the enabling law which includes, among others, the statement about the qualifications, as well as the ratification and the conjoint action of the president in appointing the Commissioners therein, from that moment this proposed commission is constituted.

MR. DE CASTRO. So the Commissioner means that the word "constituted" here is different from the word "created" as used in Section 1.

MR. REGALADO. Yes, Madam President.

MR. DE CASTRO. Thank you.

MR. TINGSON. Madam President.

THE PRESIDENT. Commissioner Tingson is recognized.

MR. TINGSON. Does the word "mandate" refer to the first Congress or could it be to subsequent Congresses?

FR. BERNAS. It certainly refers to the first Congress, but if the first Congress does nothing about it, it is a continuing mandate.

MR. TINGSON. That is what I wanted to find out. It is a continuing mandate. But the first Congress does not need to do it, if it does not want to.

FR. BERNAS. We cannot compel Congress, Madam President.

MR. TINGSON. Thank you, Madam President.

MR. SUAREZ. Madam President.

THE PRESIDENT. Commissioner Suarez is recognized.

MR. SUAREZ. May we ask some clarificatory questions of the distinguished Commissioner Regalado. When the Commissioner says that the commission should be constituted, I understand he has in mind the organization of this commission by virtue of the appointment by the President of its membership. Am I correct, Madam President?

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MR. REGALADO. Yes, Madam President, consequent to the enabling legislative act.

MR. SUAREZ. Thank you. From that time on, it will be this commission that will be operative.

MR. REGALADO. That is right, Madam President.

MR. SUAREZ. And that means the automatic abolition of what is now known as the Presidential Committee on Human Rights.

MR. REGALADO. The Presidential Committee on Human Rights will thereby become functus officio.

MR. SUAREZ. Thank you.

What would happen to the cases pending before the committee upon its abolition?

MR. REGALADO. Congress, I suppose, should make the corresponding provisions with respect to pending cases, as well as with respect to the disposition of the personnel, the transfer of equipments and assets, and the accounting of undisbursed funds which is standard, after all, in any congressional act whether a new office is created in lieu of a pre existing one.

MR. SUAREZ. And what the Commissioner is declaring now can be read into the record.

MR. REGALADO. Yes, Madam President.

MR. SUAREZ. What will happen to the personnel and officers of the present committee, Madam President?

MR. REGALADO. As I have stated, as is standard in most congressional acts of this nature, there are provisions as to whether these personnel, those who are qualified, will be given preferential appointment to the new commission or will be considered automatically absorbed therein.

MR. SUAREZ. That could also be read into the record for future reference by Congress.

MR. REGALADO. Yes, Madam President, for the guidance of the Members of Congress when they work on this.

MR. SUAREZ. Thank you, Madam President.

MR. REGALADO. Thank you.

VOTING

THE PRESIDENT. As many as are in favor of this proposed amendment read by Commissioner Regalado, please raise their hand. *(Several Members raised their hand.)*

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

The results show 35 votes in favor and none against; the amendment is approved.

MR. RAMA. Madam President, in view of the fact that we do not have the clean draft of the Article on the Commission on Human Rights, I move for deferment of the vote on Second Reading until this clean text shall have been distributed among the Members.

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

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

THE PRESIDENT. Commissioner Bengzon is recognized.

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MR. RAMA. Madam President.

THE PRESIDENT. The Floor Leader is recognized.

MR. RAMA. The Chairman of the Committee on Constitutional Commissions and Agencies seeks first to make some statements before we vote on Second Reading on the Article on the Commission on Human Rights. May I ask that Commissioner Foz be recognized.

MR. FOZ. Madam President, copies of Proposed Resolution No. 539 were distributed yesterday. Before we vote on Second Reading on the Article, we would like to present some corrections for consideration by the Committee on Style.

- 1) On page 1, line 9, substitute the phrase "all of whom shall" with the words "WHO MUST".
- 2) On page 2, line 1, delete the comma (,) after "guidelines" and add the word "AND", so that it will read: "Adopt its operational guidelines AND rules of procedure..."
- 3) On the same page 2, line 7, delete the phrase "citizens of the Philippines" and in lieu there of insert "FILIPINOS".
- 4) On page 3, line 2, amend it to read: "Congress may provide for other cases of VIOLATIONS OF HUMAN RIGHTS."
- 5) On the same page 3, lone 3, insert comma (,) between "Commission" and "taking".

Thank you, madam President.

MR. RAMA. Madam President, I move that we vote on Second Reading on the Article on the Commission on Human Rights, as corrected by the Chairman.

THE PRESIDENT. Let us request first for a vote on the corrections submitted by the honorable chairman.

Is there any objection? (Silence) The Chair hears none; let the proper corrections be made.

The Floor Leader may please proceed.

MR. RAMA. Madam President, I reiterate my motion to vote on Second Reading on the Article on the Commission on Human Rights.

THE PRESIDENT. Is there any objection? (SILENCE)

The Chair hears none; the motion is approved.

May we ask the Secretary-General to read the title of Proposed Resolution No. 539

THE SECRETARY-GENERAL. Proposed Resolution No. 539 entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION THE PROVISIONS ON THE COMMISSION ON HUMAN RIGHTS.

APPROVAL OF PROPOSED RESOLUTION NO. 539 ON SECOND READING
(Article on the Constitutions-Commission on Human Rights)

THE PRESIDENT. As many as are in favor of this proposed resolution to incorporate in the new Constitution the provisions on the Commission on Human Rights, please raise their hand. *(Several Members raised their hand.)*

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

As many as are abstaining, please raise their hand. *(A Member raised his hand.)*

The results show 31 votes in favor, none against and 1 abstention.

Proposed Resolution No. 539, as amended, is approved on Second Reading.

The Chair inquires where this particular Article will be placed.

MR. FOZ. We have not decided yet but we would rather that this matter be resolved by the Committee on Sponsorship. I think it is within its competence to decide where just exactly to place this provision.

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MR. RAMA. Madam President, I ask that Commissioner Foz be recognized for a motion to vote on Third Reading on the Article on Human Rights.

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. Madam President, I thought that the Floor Leader would call for approval on Third Reading of Proposed Resolution No. 539 which would incorporate in the new Constitution the provisions on the Commission on Human Rights.

Is that the motion of the Floor Leader now?

MR. RAMA. I move, Madam President, for a vote on Third Reading on the Article on Human Rights.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. May I move to amend the motion of the Floor Leader, because there was an understanding that it should not be known as an article; it may be placed anywhere depending on the action of the Committee on Sponsorship. It is not an article.

MR. RAMA. That will be explained precisely by Commissioner Foz.

MR. FOZ. Madam President, this is a proposed resolution to incorporate in the new Constitution the provisions on the Commission on Human Rights. So, we are not calling this a separate article.

Madam President, before we go into Third Reading approval of this resolution concerning the creation of the Commission on Human Rights, we would like to call attention to a reservation made by Commissioner Regalado, and to which the Committee on Constitutional Commissions and Agencies has subscribed, regarding a provision which this body had earlier approved in connection with the Article on Accountability of Public Officers.

I refer specifically, Madam President, to Section 12 (2) of the Article on Accountability of Public Officers where the following phrase, as presented by Commissioner Regalado and approved by the committee, appears and I quote: "including any violation of civil, political, or human rights." This has reference to the jurisdiction of the Office of the Ombudsman. That amendment was approved by the Committee on Accountability of Public Officers and by this body, with the understanding that if the proposal to create a Commission on Human Rights is approved by this body, then this phrase in question would be deleted.

So, with the approval by this body of the proposed Commission on Human Rights, I would like to call the attention of the Committee on Sponsorship and also, perhaps, the Committee on Style, so that the phrase "including any violation of civil, political, or human rights" which is now part of the Article on Accountability of Public Officers, section 12 (2), be deleted accordingly.

Thank you, Madam President.

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SUSPENSION OF SESSION

THE PRESIDENT. The session is suspended.

It was 10:51 a.m.

RESUMPTION OF SESSION

At 11:00 a.m., the session was resumed.

THE PRESIDENT. The session is resumed.

MR. RAMA. Madam President.

THE PRESIDENT. The Floor leader is recognized.

MR. RAMA. Madam President, this is with respect to the motion to vote on Third Reading on the Article on Accountability of Public Officers, as well as the proposed resolution on the Commission on Human Rights.

THE PRESIDENT. Which shall we take first?

MR. RAMA. Commissioner Foz has agreed I was right that there was no Third Reading vote on the Article of accountability of Public Officers. So, I ask that we vote first on Third Reading on the Article on Accountability of Public Officers.

THE PRESIDENT. Is that correct? When we suspended the session, there was a proposal to have a Third Reading vote on the resolution on the Commission on Human Rights.

May we ask Commissioner Foz which he prefers to take up first, because of the remarks he made.

NOMINAL VOTING ON PROPOSED RESOLUTION NO. 539 ON THIRD READING
(Article on the Constitutional Commissions- Commission on Human Rights)

MR. FOZ. I move, Madam President, that we first approve on Third Reading Proposed Resolution No. 539 on the Commission on Human Rights. Then after that, we go on to the Article on the Accountability of Public Officers.

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

Printed copies of Proposed Resolution No. 539 were distributed on September 1, 1986 pursuant to Section 28, Rule VI of the Rules of the Constitutional Commission.

Voting on the proposed resolution on Third Reading is, therefore, in order.

THE SECRETARY-GENERAL. Proposed Resolution No. 539, entitled: RESOLUTION TO INCORPORATE IN THE CONSTITUTION THE PROVISIONS ON THE COMMISSION ON HUMAN RIGHTS.

FIRST ROLL CALL

THE PRESIDENT. The body will now vote on this proposed resolution and the Secretary-General will call the roll.

THE SECRETAY-GENERAL, reading:

Abubakar.....	Foz.....Yes
Alonto.....	Garcia.....
Aquino.....	Gascon.....Yes
Azcuna.....	Guingona.....Yes
Bacani.....Yes	Jamir.....
Bengzon.....	Laurel.....
Bennagen.....Yes	Lerum.....
Bernas.....Yes	Maambong....Yes
Rosario Braid...	Monsod.....Yes
Calderon.....Yes	Natividad.....Yes
Castro de.....	Nieva.....
Colayco.....Yes	Nolledo.....Yes
Concepcion.....	Ople.....Yes
Davide.....Yes	Padilla.....

COMMISSIONER PADILLA EXPLAINS HIS VOTE

MR. PADILLA. Madam President, I also vote yes but I hope that this would not be a duplication and worse, a relegation of the entire governmental machinery for the enforcement of human rights and the prosecution and trial and conviction of violators thereof. As I stated in my earlier observations, the enforcement and protection of human rights will not merely depend on a Commission on Human Rights but would involve the entire governmental machinery, including the law enforcement agencies, the prosecution arm of the government and an effective administration of justice.

Thank you, Madam President.

THE SECRETARY-GENERAL, reading:

Munoz Palma.....Yes	Suarez.....Yes
Quesada.....Yes	Sumulong.....
Rama.....Yes	Tadeo.....
Regalado.....	Tan.....
Reyes de los.....Yes	Tingson.....Yes
Rigos.....	Trenas.....
Rodrigo.....Yes	Uka.....
Romulo.....Yes	Villacorta.....Yes
Rosales.....	Villegas.....Yes
Sarmiento.....Yes	

MR. OPLE. Madam President, may I know how my vote was recorded?

THE SECRETARY-GENERAL. Yes.

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MR. OPLE. May I explain my vote, Madam President?

THE PRESIDENT. Please proceed.

COMMISSIONER OPLE EXPLAINS HIS VOTE

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MR. OPLE. I think this is a historic milestone in the entire history of the struggle for civil liberties and human rights in our country. Some of us had initial reservations about setting up a constitutional body that would act with reasonable independence of the government itself in the pursuit of the crusade for human rights, but I think a consensus grew that nothing short of a constitutional sanction and mandate would be required in order to make human rights or the concern for human rights second nature to our countrymen.

Madam President, it is unfortunate but true that when one leaves the boundaries of the metropolitan areas, the protection of the Constitution for civil rights seems to diminish or dwindle in direct proportion to the distance. And that is the reason why in Metro Manila we do not hear of newspapermen being killed; it is very seldom when we hear of members of the mass media being assassinated in Metro Manila because we have in metropolitan areas existing infrastructure for the enforcement of constitutional rights. We have ready access to media; we have ready access to the highest levels of government for redress. We have human rights groups that are eager to listen, but in the proportion to the distance from metropolitan centers, the risk for the exercise of human rights and civil liberties aggravates. And that is the reason why in 1985, no less than 18 members of media- newspaper editors, and radio commentators- were killed, and I think in the majority of cases, the authorities have not come up with findings on who perpetrated these brutal assassinations which are considered a way of striking at the roots of press freedom.

And so, in voting for this provision for a Human Rights Commission, Madam President, I see my mind focusing on the possibilities for this commission to propagate a human rights consciousness so that even in the remote hinterlands of our country, the people who lack the infrastructure of redress and of amenities in metropolitan areas will begin to assimilate the significance of human rights in their lives as a civilized society.

Thank you, Madam President.

SECOND ROLL CALL

THE PRESIDENT. The Secretary-General will conduct a second call for those who have not registered their votes.

THE SECRETARY-GENERAL, reading:

Abubakar.....Yes
 Alonto.....Yes
 Aquino.....Yes
 Bengzon.....Yes
 Rosario Braid.....Yes
 Castro de.....Yes
 Concepcion.....Yes
 Garcia.....Yes
 Jamir.....Yes
 Laurel.....Yes
 Lerum.....
 Nieva.....Yes

Regalado.....Yes
 Rigos.....Yes
 Rosales.....
 Sumulong.....Yes
 Tadeo.....Yes
 Tan.....Yes
 Trenas.....
 Uka.....Yes

APPROVAL OF PROPOSED RESOLUTION NO. 539 ON THIRD READING
 (Article on the Constitutional Commissions- Commission on Human Rights)

THE PRESIDENT. The results show 44 votes in favor, none against and no abstention.

Proposed Resolution No. 539 is approved on Third Reading.

MR. RAMA. Madam President, I move that we vote on Third Reading on Proposed Resolution No. 456, entitled:

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

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Before we go to the voting, I would request certain clarifications on the Article on Accountability of Public Officers. On page 4, Section 6, line 3 speaks of the Ombudsman to be known as Tanodbayan. In this connection, I would like to relate this incident to the body. Last Saturday evening, when I met the Honorable Raul Gonzalez, he immediately accosted me and asked, "Why did the Commission prohibit me from running for election?" I was dumbfounded, Madam President; I did not know what he was talking about, until I realized that he was the Tanodbayan. And so I told Honorable Gonzalez point-blank, as I usually speak because I am not a diplomat, "Your Honor, you are not the Ombudsman; you are a special prosecutor of the Sandiganbayan, and the one we are prohibiting from running for election is the Ombudsman." There really is a little difference or some misunderstanding when we say:

There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan.

To avoid all misunderstanding on this point, until such time that we may be able to have the appropriate word for Ombudsman, I will really move that the words "to be known as Tanodbayan" deleted from the third line of Section 6, page 4.

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THE PRESIDENT. May we hear from the chairman, Commissioner Monsod?

MR. MONSOD. Madam President, I believe that the article is quite clear. As a matter of fact, we should draw the attention of the present Tanodbayan to Section 5 of the article, not Section 6, which says: "The Tanodbayan, presently existing, shall hereafter be known as Special Prosecutor." In effect, what we are saying here is that, Justice Gonzalez, after the ratification of this Constitution, is to be known as the Special prosecutor, to whom no disability applies in running for the Senate. If, however, the President so chooses to appoint him in accordance with this article as the Tanodbayan or Ombudsman under the new Constitution and he accepts such appointment, then the prohibition will apply to him. So, we submit, Madam President, that there is no need for any amendment because the article, as written, is quite clear.

MR. DE CASTRO. Madam President, with the explanation, I submit, and that I just like to give the information to this body about the apparent misunderstanding of the present Tanodbayan- that he is the Ombudsman.

Thank you.

MR. RAMA. The body, Madam President, is now ready to vote on Third reading on said article.

MR. MONSOD. Madam President, I believe that Commissioner Foz had earlier made a manifestation. And before we vote, may I repeat the manifestations as chairman of the committee. That in accordance with the reservations and the record of the debates on the section on the Ombudsman, Section 12 (2), we approve on Third Reading this article with the deletion of the phrase "including any violation of civil, political, or human rights." With the approval of the proposed Commission on Human Rights, this phrase would really be eliminated once the Commission on Human Rights is approved by this body.

THE PRESIDENT. So that there will be a period (.) after "duties."

MR. MONSOD. Yes, Madam President.

MR. MAAMBONG. Madam President.

THE PRESIDENT. Commissioner Maambong is recognized.

MR. MAAMBONG. Just a point of clarification from Commissioner Monsod. Does this mean that any violation of civil, political or human rights in the performance of duties of public officers will no longer be within the jurisdiction of the Tanodbayan, and should be with the Commission on Human Rights?

MR. MONSOD. Yes. The jurisdiction over civil and political rights, defined in the Commission on Human Rights as the human rights under its jurisdiction, is now taken out of the jurisdiction of the Ombudsman.

MR. MAAMBONG. Forgive me, but I was acting under the impression that any kind of violation, as long as it is committed by public officers, should exclusively pertain to the Tanodbayan, regardless of whether it is a violation of civil, political or human rights. The benchmark I thought was that, in cases where public officials or public employees or public officers are involved, these should properly be with the Tanodbayan.

MR. MONSOD. I think the jurisdiction of the Commission on Human Rights is quite clear- that all violations of human rights involving civil and political rights are now within the jurisdiction of the Commission on Human Rights, and one of the issues that was precisely raised by Commisisoner Bengzon at that time was that we should try to eliminate overlaps in government offices. Therefore, with this amendment and in consonance with the representation at that time of Commissioner Regalado, this is now taken out of the area of the Ombudsman and placed under the Commission on Human Rights.

MR. MAAMBONG. Just one point, Madam President. If we are agreed that violations of civil, political or human rights committed by public officers will be with the Commission on Human Rights, I would assume that there will be practically no cases within the jurisdiction of the Tanodbayan. During my interpellation of the committee, when we talked about civil, political or human rights, the committee was very specific in saying that when we say "political rights" we are also talking of violations of individual rights, and this will take out practically all the jurisdiction of the Tanodbayan.

MR. MONSOD. No, I believe it was clarified in the interpellations and debates and debates that the area of the Commission on Human Rights is much narrower and there was even an enumeration of those violations mentioned by the panel at that time. we are only trying to take out the overlap here, Madam President. I agree with the Gentleman that if one were to take human rights in its broadest context, then the Commission itself, will it expand the area of the coverage of the Commission on Human Rights.

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MR. MAAMBONG. Madam President, if it will not gravely damage the schedule on this article, would it be all right, with the permission of Commissioner Monsod, that we defer consideration on Third Reading of this particular article?

MR. MONSOD. May I know, Madam President, the basis of the request for deferment, because the records of the deliberations on the article are, I believe, quite clear, and the interpretation will now be left to the courts and for Congress to implement. I believe there is enough in the records, to solve any of these overlaps.

MR. MAAMBONG. I was thinking that we should discuss this not necessarily on the floor so that it will not take much of our time. However, I will not insist, Madam President.

THE PRESIDENT. Commissioner Maambong, this was already approved on Second Reading with that reservation.

MR. MAAMBONG. Yes, I understand that, Madam President, but I am not really insisting on it. I was just thinking that perhaps the chairman of the committee would take this under proper advisement and we can talk about it first.

MR. MONSOD. Madam President, perhaps we can go ahead with the Third Reading and Commissioner Maambong can make the manifestations in the record invoking the distinctions that must be made in order to avoid overlaps in the functions of these two offices.

MR. MAAMBONG. We submit, Madam President. That would be all right.



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PARIS PRINCIPLES:

PRINCIPLES RELATING TO
THE STATUS OF
NATIONAL INSTITUTIONS

**UN COMMISSION ON HUMAN RIGHTS RESOLUTION 1992/54
OF 3 MARCH 1992, ANNEX (E/1992/22);
GENERAL ASSEMBLY RESOLUTION 48/134 OF 20 DECEMBER 1993, ANNEX**

COMPETENCE AND RESPONSIBILITIES

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation regulations and practices with the

- international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
 - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

COMPOSITION AND GUARANTEES OF INDEPENDENCE AND PLURALISM

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) Parliament;
 - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff

and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

METHODS OF OPERATION

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combatting racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI-JURISDICTIONAL COMPETENCE

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

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"Strengthening the Human Rights Infrastructure in the Philippines"



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