

**CONSULTATIVE COMMISSION
TO PROPOSE THE REVISION OF THE 1987 CONSTITUTION**

**Committee on General Provisions/Constitutional Commissions/
Amendments and Transitory Provisions and
Committee on Civil Service/Accountability of Public Officers**

MINUTES

Joint Committee Meeting

Wednesday, November 23, 2005

CALL TO ORDER

At 10:35 a.m., the Co-Chairman of the Committee on General Provisions/Constitutional Commissions/Amendments and Transitory Provisions, Jose C. Bello, called the joint committee meeting to order.

ROLL CALL

Upon motion of Com. Alfredo E. Abueg Jr., there being no objection, the joint Committee agreed to dispense with the roll call.

The following members were present:

Abueg Jr., Alfredo E.
Acevedo, Anthony Y.
Bello Jr., Jose C.
Bondoc, Jarius Y.
Calisin, Jesus B.
Garcia, Pablo P.
Matula, Jose Sonny G.
Mendoza, Democrito T.

Non-member:

Seno, Cecilio T.

**SPEECH OF CHAIRPERSON KARINA
CONSTANTINO-DAVID**

Chairperson Karina Constantino-David, of the Civil Service Commission (CSC) who was the resource person of the joint committee meeting, noted that

certain government agencies were made constitutional commissions largely because they were oversight commissions.

Compared with the constitutional provisions on other commissions like the Commission on Elections, the Commission on Audit and even the Commission on Human Rights and the Ombudsman, whose reasons for being made into constitutional bodies are fairly easy to see, some provisions on the CSC are confusing.

Chairperson David made the following observations:

First, the CSC, being the central personnel manager of government, entails the single biggest expense in the government budget. As such, it is one of the most important offices in government.

Second, despite technological advancements, it is still people who matter most.

Third, most governments, especially those with parliamentary systems, succeed only when there is a professional bureaucracy. The level of economic development of Thailand, Malaysia, Singapore, and Hong Kong, has kept pace with the professionalization of their civil service.

In the Philippines, the lowering of professionalism in the civil service has also come with the lowering of economic development. As long as there is no independent professional bureaucracy, the country will continue to suffer from an endless cycle of politicians fighting with each other.

Government stability as well as continuity of government programs are anchored on career professionals.

The present Constitution refers to the Civil Service Commission as an entire system rather than as a commission. The constitutional provisions talk about generalities and do not limit the role and functions of personnel management.

Chairperson David offered the following solutions to the challenges besetting the commission:

First, there is a need to distinguish between the civil service system being the professional bureaucracy and the CSC as a constitutional body.

Second, there is a need to clarify the coverage especially of presidential appointments, which do not usually pass through the commission. There had been appointees in the past (without attributing to any President) who were not even college graduates, but no one questioned such appointment by the President. It surely does affect the professionalism of the bureaucracy.

At the minimum, the functions of the commission should be clear on what it should cover:

a) the CSC should be responsible for recruitment, qualification standards, approval of appointments, and the kind of examinations to be administered;

b) it should cover a system of performance management, basically a clear-cut mechanism for an independent body to analyze the performance of people and agencies;

c) there should be a body which will take care of capability-building and human resource management, particularly on training and re-training;

d) it should be involved in the formulation of salary standards in order to come up with good performance and personnel policies;

e) it has to be a commission that has a hold of all personnel records. By 2006, the records of all 1.5 million government personnel shall have been computerized; and

f) it should have control over the discipline especially of presidential appointees. At present these appointees cannot be held accountable for what they do because the Office of the President is not set up to do administrative justice. For instance, a regional director, a presidential appointee, was accused of sexual harassment but remains in office while the case is still pending in court.

Chairperson David noted that the idea of abolishing the CSC has come up in the Consultative Commission. She underscored politics as the major problem of personnel in government. She noted that, especially in a parliamentary system, it is the politicians who choose their personnel. Without an independent body to implement basic standards in personnel recruitment, she said, the Philippines would be the only country with a parliamentary system that does not have a strong civil service.

The bottom line of all successful parliamentary systems, she observed, is a strong, independent bureaucracy.

She pointed out that these governments have permanent career secretaries who run the day-to-day affairs of their respective agencies. With term limits, she added, these career people provide support, without necessarily being loyal, to the party in power, as she cited countries like Canada, Thailand, Malaysia, Singapore, Japan, India, the United Kingdom, with very strong bureaucracies.

On the other hand, the country is saddled with a lack of professionalism in the career bureaucracy and, ultimately, with its own politicians who meddle with the functions of the commission and even threaten to cut its budget if the favors they ask for their personnel are not granted, she concluded.

INTERPELLATION BY CHAIRMAN BELLO

Queried by Chairman Bello on the kind of safeguards the Commission would like to propose in order to professionalize the civil service, Chairperson David offered the following proposals: a) under a presidential system, the president should not be allowed to appoint people in the career service; and b) a parliamentary system, on the other hand, should have a civil service commission, which creates standards, while ministers can move around, but not appoint, people to different posts in the bureaucracy.

Citing the case of Singapore, which has separate groups of independent civil service institutions --- one in charge of recruitment, another on training, and so on, she pointed out that it is the commission which should create a pool of career people from which the ministers can choose the people they want to work with.

INTERPELLATION BY COMMISSIONER GARCIA

Commissioner Garcia asked how the commission could minimize the influence of politicians in order to professionalize the civil service. Claiming that she is not a purist, Chairperson David said she still believes that, one way or the other, elected officials need to participate in the process. She also thought that the Commission on Appointments is an important aspect of checks and balances.

Chairperson David reiterated her past suggestion that the heads of the six constitutional bodies be the ones to come out with either a shortlist or an entire list of nominees and submit the same to the Commission on Appointments for approval.

At this point, Commissioner Garcia asked if the CSC can adopt the same process as the JBC screening recommendations before submitting the same to the President, without need for approval by the Commission on Appointments.

Chairperson David noted that it took her the longest two years before she could be confirmed by the Commission on Appointments because of her refusal to give in to the demands of the CA members. Yet she said she espouses the idea that the Commission on Appointments is still a better body than just the President alone. The only simple, practical solution, she offered, is a time period, for instance, if within three months anything is found in favor of or against a nominee, and as long as bottom line qualifications are observed, he or she is either confirmed or denied.

At this juncture, Commissioner Bondoc voiced out his strong sentiments

against the JBC as just another presidential body.

Commissioner Garcia admitted that politics cannot be ruled out under a democratic system; it has certain defects or ills but he wondered if there was anything better. The task at hand is how to minimize the influence of politics, he stressed. He recalled that when the Americans came in the early 1900s, one of the first laws enacted by the Philippine Commission was the establishment of Office of the Civil Service, which became very effective and powerful.

Chairperson David surmised that it was powerful because then the bureaucracy itself was the power; there were no real politicians at the time; and it was the career people running the government under the tutelage of the Americans. But as the politicians gained more power, she noted, the bureaucracy lost more power. In the 1935 Constitution, the CSC became a little thing that did only records management, and it was then that professionalism really took a nosedive, she said.

In the 1986 Constitutional Commission, she noted that there was hardly anyone who had practical knowledge of the bureaucracy, resulting in the mere reproduction of the 1973 Constitution.

Since it continued to give the President most of the powers as it did during the Marcos years, Chairperson David pointed out that the CSC became more politicized and its members became more beholden to the appointing authorities, giving rise to too many exceptions, such as eligibility by testimonial and contradictory decision depending on the politician who would ask for it.

Commissioner Garcia asked if the commission would welcome the idea of giving out all the professional examinations instead to the Professional Regulations Commission (PRC).

Chairperson David believed that the PRC, or any single body for that matter, can no longer handle professional examinations; it is the CSC that should deal with government employees while the PRC should deal with all other professionals. She averred that the PRC itself needs some shaking up because of the too many miracles happening in the agency. One way to streamline government, according to Chairperson David, is to attach an agency to the CSC that deals with professional examinations to be handled by professional groups.

Commissioner Garcia asked how the CSC would reconcile personnel supervision and control with the PRC. In reply, Chairperson David said that things are very clear -- the sub-professional, professional and managerial level eligibilities in government are equivalent to all board and bar examinations given to the professionals. But even the bar and board passers still need to take the managerial level examinations if they enter government service.

Commissioner Garcia questioned the proper jurisdiction over administrative cases by the different disciplining authorities, such as the Ombudsman and the Presidential Anti-Graft Commission. Chairperson David opined that in general, the laws on jurisdiction over administrative justice in the country are contradictory; what the CSC has done, for one, is to sign a Memorandum of Agreement with the Ombudsman detailing which cases go to which body.

Commissioner Garcia also inquired on the status of the length of preventive suspension of any public officer. Again citing contradictory implementing laws, Chairperson David said that while CSC has a 90-day preventive suspension period, other agencies like the local government units observe only 60 days.

Commissioner Garcia stated that in Japan, the bureaucracy can overrule the Prime Minister. But Chairperson David asserted that this probably refers to career bureaucracy being questioned in Parliament. Both parties can debate and argue but in the end, it is the decision of the Prime Minister that will prevail, she said.

Asked by Commissioner Garcia on the CSC rules on the matter of promotion and seniority, Chairperson David said that there is wide latitude of discretion on this matter; the main problem is the many court decisions interpreting the CSC's decisions.

INTERPELLATION BY COMMISSIONER ABUEG

Commissioner Abueg sought clarification on the Supreme Court decision stating that the function of CSC is merely to attest appointments. Responding to the question, Chairperson David said that while the constitutional provisions do not spell out any clear-cut authority, the administrative code is clear --- for an employee to enter government service and to enjoy security of tenure, his qualifications must first be checked and verified by the commission.

Citing the case of PCSD which has continuously defied a CSC ruling for almost two years now, Commissioner Abueg asked if the CSC has any coercive power to make sure that government agencies respect the former's decisions. Chairperson David

acknowledged that since the agency has no direct contempt powers, it can turn to other courses of action: first is to ask the Commission on Audit to implement its ruling that receiving salary without an appointment is illegal, thereby making the appointing authority accountable for it; and second, if the council still refuses, the CSC can go to the Ombudsman since it has more coercive powers.

Chairperson David admitted that her agency has been asking Congress for direct contempt powers, especially in the matter of appointments.

INTERPELLATION BY COMMISSIONER ACEVEDO

Commissioner Acevedo recounted his 45 satisfactory years in the career service, however, he was saddened when the CSC allowed the amendment of the law limiting its power to approve to mere attestation. During his time, he recalled, he and his colleagues fought for a strong career service, and it took a long time to strengthen the civil service. Now he said he would like to know the status of the career executive service board and the career service officers as well as the CSC's recommendations.

In the commission's strategic plan, Chairperson David said, the most critical part of the entire civil service is the top 1%, meaning, from the directors all the way to undersecretaries. That is why, she stressed, the commission cannot allow the appointment process to be a political one, otherwise, the country will develop not a professional bureaucracy, but a beholden one to the appointing authority. The main issue of strengthening the CSC, according to Chairperson David, is to serve as insulation against straight political interference.

Second, she stated that the 1987 Constitution mentioned the CSC but forgot that there is a career executive service board that is responsible for the third level managerial positions. Today, according to her, these two institutions have unified, the latter being an attached agency of the CSC.

Chairperson David suggested that the provisions on CSC with regard to recruitment, human resource development, performance management, compensation packages, record-keeping and administrative discipline, be very clearly mentioned in the Constitution as independent set of authorities, otherwise, the Supreme Court will make all the personnel policies, she added.

Queried as to whether this would be a centralized agency, Chairperson David answered in the affirmative, in the sense that all government hirees have to meet minimum standards.

INTERPELLATION BY COMMISSIONER BONDOC

Commissioner Bondoc inquired on the matter of appointments at the municipal or city levels. Chairperson David replied that appointments can be made at the local levels except for the position of treasurer, who is supposed to be recommended by the LGU and appointed by the Secretary of the Department of Finance.

Asked about other gray areas in terms of performance management, Chairperson David pointed out the provision on midnight appointments made not only by the President but by all appointing officials.

Most of the problems on appointments stem from the lack of clear-cut policies, according to Chairperson David. As such, she

suggested a system of performance management across all government agencies as well as a guaranteed performance-based security of tenure.

Another problem is on compensation, which should be based on a wider range of issues, and not only on the Department of Budget and Management appreciation of what it can afford, she averred.

In this regard, Chairperson David informed the Body that CSC has just finished a compensation study, benchmarked with the private sector, which analyzed why it remains impossible to retain good people at the middle and higher levels in government; it turned out that the compensation scheme for below managerial positions are 10 to 15% higher than those in the biggest private corporations but are 70% lower for the managerial position in medium-sized companies.

Commissioner Bondoc inquired if supervisory authority of the CSC reaches all the way down to the barangay. Chairperson David replied that it only covers the secretary and treasurer because these are personnel with appointment to a position and which has a regular salary.

FURTHER QUESTIONS OF COMMISSIONER GARCIA

Commissioner Garcia asked the difference between direct contempt and indirect contempt. Chairperson David explained that direct contempt applies when one does not follow the ruling of the commission, thus, he or she can be fined or charged.

Commissioner Garcia said that disobedience of a court order or a writ is indirect contempt and requires a process and under the Constitution, only a judicial court can issue a warrant of

arrest. In the 1973 Constitution, he noted, either a judge or an officer could issue a warrant but under the present Constitution, only a judge can issue a warrant. Therefore, should a situation arise in which a person fails to obey a subpoena, he opined that not even the sergeant-at-arms of the House of Senate can issue a warrant; however, they can initiate an investigation, because direct contempt of a court order is already a criminal proceeding.

Chairperson David said that the Committee must take it upon itself to discuss this point. She stated that the dilemma facing the CSC occurs when people do not follow regulations and orders: while 95% of the appointing authorities do follow regulations, there are still 5% who make a mockery of the rules and the CSC does not have the power to hold them accountable. She said she would provide the Committee with a copy of the proposed bill in Congress which requests certain powers that will help the CSC resolve this issue.

INTERPELLATION BY COMMISSIONER CALISIN

Commissioner Calisin inquired the constitutional provisions cover appointive officials in the local government units. In reply, Chairperson David said that only elective officials are not covered by these provisions. She added that she would submit a copy of the CSC memorandum regarding such rules, particularly with regards to local government units. She explained that because there is security of tenure in the civil service, it is common for an elective official, for instance a mayor, to appoint and promote people loyal to him, which practice would tie the hands of his successors to appoint qualified personnel. The CSC, she said, has internal rules to avoid this situation so

that even in the exigency of service, appointments must be made on a temporary basis so as not to impose on the next incumbent. However, she said that this is not always followed and after every election, the CSC handles more and more cases in this regard.

Commissioner Calisin inquired whether there could be any safeguard for appointments at the local levels to be free from the intervention of congressmen and other elective officials. There have been cases, he said, when a senior civil servant did not get a position because the congressman or another higher politician intimidated the regional director. A common threat, he said, was that the budget for the region would be slashed.

Chairperson David said that the bulk of political intervention on the level of the President who appoints all the top officials. Matters would be very much different, she said, if the positions concerned were filled based on merit.

Further, she pointed out that the portion in the Constitution that deals with fiscal autonomy needs fleshing out, as constitutional bodies are guaranteed fiscal autonomy in the Constitution but its meaning is not clear. Thus, she proposed a revision of the constitutional provision dealing with fiscal autonomy, to read as: "All constitutional bodies shall enjoy fiscal autonomy. Their budgets will be regularly and without diminution released by DBM and they cannot be reduced by Congress or by Parliament."

Commissioner Garcia pointed out that the problem with this proposal is that the source of funds is with Congress, and appropriations will therefore depend upon this body. Chairperson David replied that her proposal is not new but in fact already part of the law. She said she was merely

advocating that this provision be extended to the five constitutional bodies concerned.

Commissioner Calisin inquired whether fiscal autonomy means exemption from the provisions of the GAA. Chairperson David replied that constitutional bodies with fiscal autonomy are not exempt from the GAA, but that safeguards should be provided so that the constitutional bodies would be free from threats of budgetary slash. Some agencies have even been threatened with receiving only a one-peso budget, she said. This can be resolved, she opined, if there is a constitutional provision stating that the budget of a constitutional body in the preceding year cannot be reduced.

ADJOURNMENT OF MEETING

There being no other matters on the agenda, the meeting was adjourned.

It was 12:25 p.m.

Certified correct:

Com. Jose C. Bello, Jr.
Committee Co-Chairman

_____ December 2005