

**2005 CONSULTATIVE COMMISSION  
To Propose the Revision of the 1987 Constitution**

**Committee on Judiciary**  
Minutes of the Meeting  
Tuesday, November 15, 2005

**CALL TO ORDER**

At 12:57 p.m., Committee Co-chairman Rita Linda V. Jimeno called the meeting to order.

**ROLL CALL**

Upon suggestion of the Chair, there being no objection, the Body dispensed with the roll call.

*The following members were present:*

Abueg, Alfredo Jr. E.  
Adamat, Ronald L.  
Angeles, Emmanuel Y.  
Bautista, Andres  
Duavit, Gilberto M.  
Gonzalez, Nelia T.  
Jimeno, Rita Linda V.  
Lambino, Raul L.  
Naval, David C.  
Pedrosa, Carmen N.  
Peña, Fernando O.  
Rodriguez, Oscar S.  
Romualdo, Pedro P.

*The following members were absent:*

Abueva, Jose V.  
Amin, Omar U.  
Apostol, Sergio A.F.  
Bengzon, Ma. Romela M.  
Garcia, Pablo P.  
Lorenzana, Lito Monico C.  
Ortega, Victor F.  
Ortiz-Luis Jr., Sergio R.  
Varela, Miguel B.

**BAUTISTA AMENDMENT**

In Section 5(2)(d) of Article VIII, as proposed by Commissioner Bautista, there being no objection, the Body approved the deletion of the words “or higher” and in lieu thereof, after the word “*perpetua*,” the insertion of a comma(,) the words “life imprisonment, or death.”

Commissioner Bautista then asked if the power of the Supreme Court to promulgate rules, as provided in Section 5(5) of Article VIII is exclusive or just parallel to such power of Congress. The Chair replied that it is only the Supreme Court that has that power to promulgate rules on matters specified in the provision.

Commissioner Adamat noted that the provision refers to the promulgation of rules of procedure in all courts, therefore it should be left intact.

Upon motion of Commissioner Adamat, seconded by Commissioner Gonzales, there being no objection the Committee retained the original provision of Section 5(5) of Article VIII of the 1987 Constitution.

**INQUIRY OF  
COMMISSIONER BAUTISTA**

Commissioner Bautista inquired under what branch or division the Office of the Court Administrator should be placed. The Chair concurred with Commissioner Bautista that the Office of

the Court Administrator should still be part of the Supreme Court.

### **INQUIRY OF THE CHAIR**

In reply to the Chair's query on the appointment of personnel, Commissioner Romualdo stated that in practice, the Supreme Court *en banc* has the power to appoint personnel down to the position of janitor.

On the Chair's suggestion that such administrative task of appointment be removed from the Supreme Court *en banc* so that it can concentrate on deciding cases, Commissioner Angeles expressed doubt whether the Commission could propose specific amendments to such power of the Supreme Court. He informed the Body that Justice Puno, in his personal capacity, would give his inputs and proposals before the Committee.

Commissioners Bautista and Naval both agreed that the issue of the Supreme Court's administrative tasks is an internal matter.

Commissioner Bautista observed that there is a very big difference in the benefits of the Supreme Court Justices and those of the congressmen. He noted that congressmen receive benefits apart from their pork barrel. Commissioner Romualdo stated that the pork barrel should not be considered personnel benefits as it is intended for projects and there is transparency in its disposal.

Commissioner Adamat stated that the Supreme Court should come up with their own rules and guidelines regarding the appointment of their personnel. He added that the Commission should not interfere if the Supreme Court "enjoys appointing their personnel by sitting *en banc* all the time." Commissioner Adamat pointed out that the Commission's main function is to come

up with proposed policies, not to go into the details of administrative matters.

### **MOTION OF COMMISSIONER ADAMAT**

Upon motion of Commissioner Adamat, there being no objection, the Body agreed that a representative from the judiciary be invited as resource person to address the issue of administrative functions of the Supreme Court.

In particular, Commissioner Bautista suggested that Justice Josue Bellosillo be invited, as the latter was formerly a Court Administrator and Acting Chief Justice. Commissioner Angeles also proposed inviting former Chief Justice Narvasa.

Thereupon, Commissioner Adamat asked that the Committee defer the discussion on the matter, pending the appearance of the abovementioned resource persons.

### **MOTION OF COMMISSIONER ROMUALDO**

Commissioner Romualdo moved that the Committee retain the second sentence of Section 7(1) of Article VIII, even as he noted that judges rarely apply for the position.

Commissioner Angeles asked why judges do not want to apply for the position. Commissioner Romualdo replied that some judges prefer to be judges or to continue their practice in the provinces.

Commissioner Abueg commented that previously, there were no fixed rules in the Supreme Court. He added that it was only during the time of Chief Justice Hilario Davide that written rules were created. He noted, though, that unwritten rules tend to get "broken from time to time."

Upon motion of Commissioner Romualdo, seconded by Commissioner Bautista, there being no objection, the Body retained Section 7(1) of Article VIII.

### **JIMENO AMENDMENT**

As suggested by the Chair, being no objection, the Committee approved the substitution of the term "Congress" with "Parliament" in Section 7(2) of Article VIII of the 1987 Constitution.

### **MOTION OF COMMISSIONER BAUTISTA**

The Chair mentioned that women's groups and certain groups in Davao proposed the addition of the term "gender sensitivity" in Section 7(3) of Article VIII. It explained that gender sensitive judges supposedly understand and address the needs of women.

Commissioner Bautista suggested that justices should be "gender sensitive" but there is no need to put it in the Constitution.

Upon motion of Commissioner Bautista, there being no objection, Section 7(3) was retained without amendment.

### **COMMISSIONER ROMUALDO'S COMMENT ON THE JBC**

Commissioner Romualdo mentioned that before Martial Law was declared, the Commission on Appointments confirmed all RTC judges. Commissioner Adamat stated that the proposed repeal of the Judicial and Bar Council (JBC) should be subject to scrutiny.

The Chairman noted that the issue is whether the JBC should be retained or not. The Chair offered a compromise in that the Prime Minister should appoint

all Justices and confirmed by the Commission on Appointments, but all lower court judges should be confirmed by the JBC. The JBC, in turn, should be composed of lawyers without political affiliations, she added.

Commissioner Bautista proposed that the Supreme Court should appoint all judges subject to confirmation. He added that congressmen are usually interested in the judges of their particular localities.

Commissioner Duavit brought forward the issue of the Prime Minister appointing the judges, pointing out that the scenario is different in a parliamentary system of government. In a presidential system, he noted that the opposition is represented in the Commission on Appointments but in the parliamentary system, if it is the Prime Minister who will be in-charge of appointing lower court judges, the situation will be precarious.

Commissioner Romualdo stated that the JBC, which was created in 1971, served as a screening body in lieu of the Commission on Appointments.

### **INQUIRY OF COMMISSIONER ADAMAT**

Commissioner Adamat asked if there would still be a Commission on Appointments in a parliamentary system. Majority of the members replied that there would be none. Commissioner Bautista pointed out that presently, the President and members of the Congress may not belong to the same party; in the parliamentary system, the executive and legislative branches are of the same party.

Commissioner Romualdo noted that before Marcos declared Martial Law, Congress used the Commission on Appointments and there was evident "political power play" in the appointment

of judges. This, he said, was the impetus for creating the JBC, in lieu of the Commission on Appointments.

Commissioner Pedrosa proposed that a study distinguishing the system of appointments in the parliamentary and presidential systems be made. The Chair suggested that the Body wait for the recommendations of Justice Puno regarding this matter.

#### **REPORT OF COMMISSIONER PEDROSA**

The Chair informed the Committee that Commissioner Pedrosa prepared a report on the possibility of setting up a Constitutional Court as discussed during the last Committee meeting.

Thereupon, Commissioner Pedrosa read her report.

Asked by the Chair whether the Constitutional Court is structured below the Supreme Court, Commissioner Pedrosa replied that the Constitutional Court and the Supreme Court are structured alongside each other; the Constitutional Court is a special court on constitutional law.

Commissioner Naval asked what the functions of the Supreme Court would be in relation to the Constitutional Court. Commissioner Bautista replied that the Supreme Court would handle the appeals of civil and criminal cases, as there will be a Constitutional Court that would focus on the constitutional questions. In addition, the power of judicial review should be given to the Constitutional Court, according to Commissioner Bautista.

Commissioner Peña commented that the Judiciary is a branch that should be "least tinkered with." He proposed that a resource person bring forth the issue of the Constitutional Court.

#### **INQUIRY OF COMMISSIONER ADAMAT**

Commissioner Adamat requested Commissioner Pedrosa to explain the relevance of her report towards addressing the problem of check and balance. Commissioner Pedrosa noted that the greatest fear with regard to the combined powers of the legislative and executive branches is check and balance. She explained that it would be the Constitutional Court that would decide if a proposed legislation is in consonance with the Constitution; it also has the "policing power but without an army."

#### **INQUIRY OF COMMISSIONER GONZALES**

Commissioner Gonzalez asked who the final arbiter would be between the Supreme Court and the Constitutional Court. The Chair noted that per report of Commissioner Pedrosa, there would be no conflict because only matters relating to constitutional issues would be taken up by the Constitutional Court. Commissioner Gonzales pointed out that some issues that would be decided by the Supreme Court might have relevance to the Constitution.

Commissioner Baustista explained that only civil, criminal and labor cases would go to the regular Supreme Court. However, in matters of constitutional doubt, both courts could address some cases.

#### **COMMENT OF COMMISSIONER ADAMAT**

Commissioner Adamat commented that the presentation earlier given by Commissioner Pedrosa on the Constitutional Court did not address the issue of check and balance, which is a paramount issue that the Committee needs to address. Commissioner Bautista said that while the presentation

did mention this, such court could declare an act or law passed by Congress or Parliament as unconstitutional. The Chair said the Committee would further address this concern later on.

## **INQUIRY OF COMMISSIONER BAUTISTA**

Commissioner Baustista questioned the need for a specialized court, and Commissioner Pena inquired whether there is really a need for this to be provided for in the Constitution.

Agreeing thereto, Commissioner Adamat pointed out that devolving the power of the Supreme Court on constitutional issues would further imbalance or aggravate the checks and balances in the parliament.

Commissioner Bautista said that they might be adulterating the power of the current Supreme Court and spinning it off into another court, which would only make parliament stronger.

Commissioner Pena observed they had gone back to the primary problem of appointing powers in the parliamentary system, which could be easily done by reviewing other countries' processes.

Commissioner Lambino said that under the present law, discussion on constitutional issues is not limited to the Supreme Court alone. According to him, even the lower courts – Municipal Trial Courts, Regional Trial Courts and Court of Appeals could handle issues pertaining to constitutionality. He referred to Section 5(2)(a), which provides for the power of the Supreme Court to review the final judgments of the lower courts in -- "(a)ll cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question."

Commissioner Lambino pointed out that creating a "new" Supreme Court to decide on specific constitutional issues would violate the present practice of having only one Supreme Court.

Commissioner Pedrosa said that the ultimate check and balance is when a court can look after the people's rights.

Commissioner Naval referred the Committee to the last paragraph of Commissioner Pedrosa's paper, which says: "The Constitutional Court checks both the legislative and the executive branches of government by ruling on whether legislation and/or actions are constitutional. The character of a constitutional court is determined by the way justices are appointed. A balance is achieved by other countries by dividing that appointing power between the legislature, the parliamentary chairman, and the chief justice of the Supreme Court. The president or the prime minister nominates the chief justice of the Constitutional Court. Cases for consideration by the Constitutional Court can also be stringent or liberal depending on the required number for majority."

According to Commissioner Naval, lower courts like the Regional Trial Courts and the Court of Appeals could rule on constitutionality issues, with the Supreme Court having the last say. He said that the 1987 Constitution had defined judicial power in the second paragraph of Section 1, particularly in the case of grave abuse of discretion amounting to excess of jurisdiction of any branch. He said that this was the reason why he had vigorously objected to the deletion of such provision during the last meeting, because it gives the power to the SC to rule on the constitutionality of the acts of the Executive and Legislative branches.

Commissioner Lambino disagreed, saying that Section 1, paragraph 2, does not refer to decisions of courts on constitutional issues, but only to acts with grave abuse of discretion amounting to lack or excess of jurisdiction.

He noted that there is no relationship between Section 1, paragraph 2 and Section 5, though the Supreme Court had tried to justify the power under the latter through the second part of Section 1, paragraph 2, saying it is handling such cases in its exercise of power against grave abuse.

Commissioner Bautista opined that actions against the Constitution could constitute grave abuse, while the power of judicial review is in Section 5.

Commissioner Naval mentioned his earlier objection to the deletion of the section and his initial plan to move for a reconsideration of the deletion in the plenary session. The Chair suggested that since the decision to delete the section was carried by the majority, Commissioner Naval could take it up in plenary for a revote, if he wished to do so.

On Commissioner Naval's query whether the proposal would mean that a separate court would be created, Commissioner Pedrosa affirmed that a separate court would be created, which could come from the existing Supreme Court, for example, the Chief Justice and two other justices could constitute the Constitutional Court.

Commissioner Pedrosa likened the Supreme Court and the specialized court to the situation of a doctor and a specialist. She said it was not an infringement of rights of the general practitioner to specialize in certain cases.

Commissioner Pedrosa reiterated the need for laws to address checks and balances in the parliamentary system. Commissioner Bautista believed that this was not an issue because check and balance is already there under the current Supreme Court.

Commissioner Pedrosa noted that if the country had adopted the parliamentary system during the Marcos regime, Martial Law would not have been declared. Commissioner Bautista attributed this to the "weak people" in government at the time and not the system. According to him, once a person is appointed to the Supreme Court, his/her loyalty is to the Constitution and country.

Commissioner Pedrosa clarified that she wanted to construct a Constitutional Court that would not be at the mercy of executive laws.

Commissioner Pena pointed out that the problem lies in the separation of powers and appointing powers, which the resource persons might care to address.

Commissioner Adamat moved that the Committee consider the presentation as one of the materials that they would consult with their resource persons.

Commissioner Pedrosa clarified that she did not consider the presentation as a formal proposal and the Committee had not voted on the matter.

#### **PROPOSAL OF COMMISSIONER LAMBINO ON SECTION 8**

Commissioner Lambino proposed the abolition of the existing Judicial and Bar Council. He said that the present composition of the JBC was its weakness, as it has four regular

members appointed by the President for a term of four years subject to reappointment, and these members become subservient to the appointing power because of the possible reappointment. He said that the four members include the representative of IBP, a retired justice of the SC, a member of the academe and a member of the private sector. Including the Secretary of Justice, the alter ego of the President as an ex officio member, he noted that the JBC has actually five members under the direct control of the President.

Commissioner Lambino disclosed that it was a fear among many lawyers that when appointed members of the SC, they would owe a lot of favors to their appointing authority. He averred that the biggest politician is the President in power (not necessarily President GMA), who has the biggest stake in Supreme Court decisions. Therefore, if the President has the control of the JBC, he/she has essential control of the Judiciary. He believed that the appointees to the SC and lower collegiate courts should be subjected to the confirmation process of the Commission on Appointments. He stressed that appointment is a political act that needs to be checked by another political department to ensure that the person appointed is indeed qualified for the job.

Commissioner Lambino said that this would presume the existence of a Commission on Appointments in a parliamentary system of government. He pointed out that the Commission on Appointments is a political body where the membership is based on proportional representation of the political parties in Congress or Parliament, hence the existence of checks against the abuses of majority party and the appointing authority. He said that there are no prohibitions regarding the creation of a Commission

on Appointments even in a parliamentary system.

But Commissioner Lambino noted that Members of Parliament who would be appointed to the Cabinet should be exempted from the confirmation process; only members of cabinet who would be appointed from outside should be subjected to the confirmation by the CA.

The Chair said that a possible problem with this kind of set-up would be that the judiciary would be weaker than the executive and legislative branches.

Commissioner Lambino said that once appointees to the Judiciary have accepted their appointment, their loyalty should be to the Constitution and not to the appointing authority. He explained that his concern was that unless appointees are subjected to a confirmation process, there is no way for people to know if they are really fit for the job.

The Chair suggested a JBC without politicians as members, focusing more on lawyers, academicians and members of the private sector.

However, Commissioner Lambino cautioned that this would be more dangerous if they would remove members of Congress as ex-officio members in the JBC, as all its members would be practically appointees of the President.

The Chair averred that the present process of appointments usually involves trade-off with the people who helped appointees get appointed. It pointed out the problem of justices and judges who are beholden to people in power.

Commissioner Bautista pointed out that despite the weaknesses of the Commission on Appointments, its strength remains in the transparent consideration of the qualifications of the appointees.

As an amendment to the proposal, Commissioner Naval stated that judges of lower courts should be appointed by the Prime Minister subject to confirmation by the Commission on Appointments.

Asked by the Chair whether such was not included in the proposal, Commissioner Lambino explained that his proposal was to subject the appointments of the members of the Supreme Court and lower collegiate courts, excluding the trial courts to the confirmation process. He said he also proposed a new body to be called the Judicial Commission, which rather than taking over administrative or disciplinary powers of the Supreme Court would have the powers currently being exercised by the JBC to recommend from the list of nominees submitted to appointing authority, who would be appointed to the lower courts. He clarified that the composition of the Judicial Council would be different from the JBC since the new body would be composed of nine members including the Chief Justice and Secretary of Justice, and seven other members to be appointed by the President from different sectors.

Commissioner Jimenez noted that such was similar to her proposal, with a different name.

Commissioner Lambino said his proposal was not limited to lawyer-appointees to the Judicial Commission. He proposed that managers and economists be appointed in the JC because they would be the ones in charge of administration. He said that Supreme Court Justices were not

trained as administrators or managers, but as judges only.

Commissioner Lambino also noted that he had no objection to Commissioner Naval's proposal regarding lower court judges being subject to confirmation by the Commission on Appointments. Commissioner Naval added that the same process should be applied to the justices in the Supreme Court.

On the Chair's inquiry on who would be nominating them, Commissioner Lambino said that anybody could apply and there would be no need for nomination coming from a certain body.

## **PROPOSAL OF THE CHAIR**

The Chair proposed a JBC without the membership from the Senate, Congress and politicians; the JBC would be composed of 7 members representing the academe, lawyers, civil society and a retired justice of the Supreme Court. She said that lawyers are the ones practicing in court and have knowledge of who are corrupt, good or efficient in the Judiciary, which would be beneficial in the nomination process.

Commissioner Lambino expressed his reservations if the JBC was to be retained but without the representatives from Congress as ex officio members. According to him, aside from the Chief Justice, the members of Congress are the only members of the JBC who are not subject to the control of the President; the others like the Secretary of Justice (the alter ego of the President) and the four members are all subject to reappointment.

Commissioner Bautista pointed out that the problem then lies in the reappointments, so he suggested that there should be no reappointments.

Commissioner Lambino proposed that the Judicial Commission be appointed by the President in a parliamentary system to serve for a term for nine years without reappointment. Some members of the Committee commented that this seemed like a long term.

Commissioner Bautista said that during some discussions with Justice Bellosillo, the latter believed that the JBC was not a complete disaster; however, the justice had suggested taking out politicians from the JBC and placing a fixed term so that regular members would stop campaigning to get reappointed and not feel beholden to the appointing authority.

The Chair averred that while the JBC may not be perfect, it was still needed and it saw no alternative to it. It suggested however that the composition be changed.

Commissioner Lambino agreed to the proposal for the lower courts, but not the collegiate courts and justices of the Supreme Court, to be subject to the confirmation process. He said that the biggest politician would be the Prime Minister, who could possibly be suspected of controlling the composition of the Supreme Court if the appointees were not subjected to the confirmation process.

Commissioner Bautista recalled the point of Commissioner Duavit earlier that the majority in Parliament and the Prime Minister both came from the same party, therefore the Commission on Appointments would be controlled by the Prime Minister. He inquired about check and balance in this case.

Commissioner Lambino said that majority of Commission on Appointments would come from the majority party, but the proportional representation would include members

from the minority party who could check on abuses of the majority.

Commissioner Bautista asked Commissioner Duavit if having minority members would provide sufficient check from his experience. Commissioner Duavit said that it did in a way but in a bicameral setting.

Commissioner Lambino said he was proposing that the Commission on Appointments be composed of 36 members. He mentioned that in the US Senate, there were 100 members who also stood as members of the Commission on Appointments.

The Chair inquired whether the Committee wished to take a vote on Section 8 or wait until after the guest resource speaker, Justice Bellosillo, a former court administrator and SC justice, shall have made his proposals. Commissioner Bautista stated that the guest speaker requested them to submit their questions so he could respond to these during his presentation.

Upon suggestion of the Chair, the voting on Section 8 was deferred until after the presentation by Justice Bellosillo.

Likewise, upon suggestion of the Chair, the voting on Section 9 was deferred.

## **SECTION 10**

Commissioner Naval referred the Body to Section 10 on the salaries of the Chief Justice and the Associate Justices of the Supreme Court and the judges of the lower courts. He said that the retired justices of the Supreme Court, Court of Appeals and Sandigan-bayan received the same benefits including salary increases as the incumbent, and this had been a complaint from retired Regional Trial and Municipal Trial Court judges who were asking for the same

benefits under retirement laws. He requested that Section 10 specify uniform retirement benefits for all retired justices and judges from the Supreme Court to the lower courts.

Commissioner Bautista said that while he commiserated with Commissioner Naval's position, he was not sure if the matter should be tackled in the Constitution. He suggested that the Regional Trial Court judges lobby with Congress regarding the benefits and remuneration.

Commissioner Abueg noted that there was a Presidential Decree on this, which included not only members of Supreme Court but also officers of the Armed Forces.

Commissioner Lambino said that the retirement benefits of the Supreme Court and lower collegiate courts were subject of the case entitled *Bengzon vs. Drilon*. When this particular subject matter was incorporated in the GAA of Congress, he recalled, an amount of P500 Million was appropriated to address the retirement benefits of Justices pursuant to the increase lobbied by the justices of the Supreme Court; but the President vetoed the item in GAA. The SC said that it was not a proper veto by the President because he was not vetoing an item but a provision regarding the manner of disposition of this particular money. Because of the decision, benefits of retired Supreme Court justices, Court of Appeals and Sandiganbayan Justices were increased similar to the benefits the current Justices of the Supreme Court were receiving. This however, did not include the lower courts.

The Chair therefore proposed that the provision reflect that retirement benefits and salary of all members of the Judiciary must be uniform.

Commissioner Abueg commented that the legislature must enact a law if this was retroactive or not. But Commissioner Naval said that this should be contained as a mandate in the Constitution. Commissioner Lambino said that this would help strengthen the independence of the courts.

Commissioner Rodriguez asked whether Commissioner Naval was referring to the pension of retired justices. Commissioner Naval said that he was referring to the benefits being received by the incumbents from the local government. Commissioner Apostol and Commissioner Lambino pointed out that these are additional benefits provided for by law, as well as the RATA upon discretion of local government. The Committee agreed that "pension" is the correct term to use in the case of the retirees..

Commissioner Bautista commented that Section 10 was a unique provision in the Judiciary that could not be found in other branches of government, even independent Constitutional Commissions which were given fiscal autonomy.

In this regard, Commissioner Rodriguez said that putting special consideration for certain officials might be questioned by the officials in other departments of government. Commissioner Naval clarified that this special provision is already provided in Article VIII of the Constitution.

Upon suggestion of the Chair, the Committee deferred consideration of Section 10.

Thereafter, the Chair announced that the next Committee meeting would be held next Wednesday, November 23, at 2:00 p.m., Executive Room, Innotech.

#### **ADJOURNMENT OF MEETING**

There being no other matters to be discussed, the meeting was adjourned.

*It was 2:51 p.m.*